





The Commonwealth of Massachusetts

Report of the Attorney General for Fiscal Year 2003

July 1, 2002 - June 30, 2003



PUBLICATION OF THIS DOCUMENT APPROVED BY ELLEN M. BICKELMAN, STATE PURCHASING AGENT.

Publication Number CR1097-06/05-4.50—Docuprint Express



THOMAS F. REILLY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 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, 2002 to June 30, 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. F. Reilly", written over a horizontal line.

Thomas F. Reilly
Attorney General

TABLE OF CONTENTS

| | |
|--|----|
| ASSISTANT ATTORNEY GENERAL APPOINTMENTS | i |
| EXECUTIVE BUREAU | 1 |
| General Counsel's Office | 2 |
| Human Resource Management Office | 5 |
| External Affairs Office | 6 |
| Information Technology Division | 7 |
| Budget Office | 9 |
| Operations Division | 10 |
| Communications Office | 11 |
| Francis X. Bellotti Law Library | 12 |
| BUSINESS AND LABOR PROTECTION BUREAU | 17 |
| Fair Labor and Business Practices Division | 17 |
| Insurance and Unemployment Fraud Division | 24 |
| Medicaid Fraud Control Unit | 30 |
| CRIMINAL BUREAU | 39 |
| Appellate Division | 40 |
| Corruption, Fraud, and Computer Crime Division | 45 |
| Victim/Witness Assistance Division | 54 |
| Special Investigations and Narcotics Division | 61 |
| Environmental Crimes Strike Force | 69 |
| Criminal Justice Policy Division | 72 |
| Victim Compensation and Assistance Division | 77 |
| Financial Investigations Division | 81 |
| Safe Neighborhood Initiative Division | 85 |

TABLE OF CONTENTS

| | |
|--|-----|
| GOVERNMENT BUREAU | 101 |
| Administrative Law Division | 103 |
| Trial Division | 114 |
| | |
| PUBLIC PROTECTION BUREAU | 125 |
| Civil Rights and Civil Liberties Division | 126 |
| Consumer Protection and Antitrust Division | 136 |
| Environmental Protection Division | 154 |
| Insurance Division | 169 |
| Investigations Division | 177 |
| Division of Public Charities | 180 |
| Utilities Division | 186 |
| Mediation Services Division | 197 |
| | |
| REGIONAL OFFICES | 201 |
| Western Massachusetts | 203 |
| Central Massachusetts | 209 |
| Southeastern Massachusetts | 217 |

APPOINTMENTS

Fiscal Year 2003 (7/1/02 - 6/30/03)

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL, THOMAS F. REILLY
FIRST ASSISTANT ATTORNEY GENERAL, DEAN RICHLIN

| | | |
|--------------------------|--------------------------------|--------------------------------|
| ANN ACKIL | NORACHOROVER | MARIANNE GELULA (29) |
| MICHAEL ADELMAN | JOHN CHRISTIN | SALVATORE GIORLANDINO |
| JENNIFER ADREANI (7) | LAWRENCE CHRISTOPHER (27) | FRANCO GOBOURNE (18) |
| DAVID ANDREWS | JAMES CLARK | I. ANDREW GOLDBERG |
| MARION ANTONUCCI | PETER CLARK | LORRAINE GOLDENBERG- JARROW |
| JAMES ARGUIN | STEPHEN CLARK | RICHARD GORDON (21) |
| FREDERICK AUGENSTERN | ALEXANDER COCHIS | ELIOT GREEN |
| EVA BADWAY | RICHARD COLE | HANNAH GREENWALD (25) |
| THOMAS BARNICO | JEFFREY COLLINS (13) | JOHN GROSSMAN |
| CHRISTOPHER BARRY SMITH | JOANNA CONNOLLY | DANIEL HAMMOND |
| JASON BARSHAK | ROSEMARY CONNOLLY | NANCY (BETSY) HARPER |
| R. DAVID BECK | COLLEEN CONNOR (11) | KATHERINE HATCH |
| ANNETTE BENEDETTI | MARGRET COOKE (41) | JANICE HAFALY |
| ROBERT BENSON (6) | PAIRICIA CORREA | RICHARD HEIDLAGE (20) |
| MATTHEW BERGE | DAVID COSGROVE (28) | MICHAEL HERING (26) |
| CRISPIN BIRNBAUM | PIERCE CRAY | HILARY HERSHMAN |
| NANCY BLOOMBERG | JOHN CRIMMINS | ERIC HIGHTOWER (10) |
| WILLIAM BLOOMER | JOHN CURSEADEN | SARA HINCHHEY |
| EDWARD BOHLEN | PAMELA DASHIELL | JOHN HITT |
| WILNER BORCELLA | GERALD D'AVOLIO JR. | BART HOLLANDER |
| JOHN BOWEN | THOMAS DEE (21) | PAMELA HUNT |
| JOHN BOWMAN | LINDA DELCASTILHO | MARSHA HUNTER |
| JULIE BRADY (11) | BARBARA DILLON DESOUZA (30) | CAROLIANCU |
| MATTHEW BROCK | STEPHEN DICK | MATTHEW IRELAND |
| MATTHEW BUEHLER (41) | THOMAS DIGANGI (5) | DEEPA ISAC (46) |
| RANJANA BURKE | JENNIFER DOHERTY (8) | MARIA HICKEY JACOBSON |
| JOSEPH CALLANAN | KIRSTEN ENGEL | THOMAS JOHNSON (4) |
| ROMEO CAMBA | BENJAMIN ERICSON | JOCELYN JONES |
| JESSE CAPLAN | BARBARA FAIN | TIMOTHY JONES |
| SANDRA CARDONE | JAMES D. P. FARRELL | ROSALIND KABRHEL |
| ERIC CARRIKER | DANIEL FIELD | MICHELLE KACZYNSKI |
| PATRICK CASSIDY (31) | ELIZABETH ANN FOLEY | STEPHANIE KAHN |
| ALOEK CHAKRAVARTY | MARY FREELEY | JUDY ZEPRUN KALMAN |
| JULIE CHATTOPADHYAY (19) | ROSALYN GARBOSE (17) | GLENN KAPLAN |

APPOINTMENTS

| | | |
|--------------------------|------------------------|---------------------------------|
| JAMIE KATZ | BRIAN MONAHAN (29) | JOSEPH ROGERS |
| RONALD KEHLOE | DAVID MONAHAN | DEIRDRE RONEY |
| DAVID KERRIGAN | NATALIE MONROE (3) | JULIE ROSS (40) |
| KATHARINE KLUBOCK | ALICE MOORE | AMY ROYAL (23) |
| MARK KMETZ | TIMOTHY MORAN (12) | JOSEPH RUCCIO (6) |
| URSULA KNIGHT (27) | MARK MULDOON | PETER RUSSELL |
| PAMELA KOGUT | MARK MULLIGAN (22) | FRANK RUSSO (29) |
| NICK KOSIAVELON (27) | DAVID NALVEN | PETER SACKS |
| SIU TIP LAM | CATHRYN NEAVES | ERNEST SARASON |
| JUDITH LASTER | EILEEN O'BRIEN | KURT SCHWARTZ |
| KELLI LAWRENCE | JAMES O'BRIEN | JEFFREY SHAPIRO |
| DIANE LAWTON | THOMAS O'BRIEN | MATTHEW SHEA |
| DANA LECCESE (16) | CHERYL O'CONNELL (1) | ADAM SIMMS |
| PATRICK LEE | JOHN O'LEARY (44) | GINNY SINKEL |
| PETER LEIGHT | MARY O'NEIL | JOHANNASORIS |
| MADELINE LEONE | WILLIAM O'NEILL | AMY SILVER SPECTOR |
| JUDY LEVENSON (11) | KRISTEN O'ROURKE (40) | CHRISTOPHER SPERANZO |
| DAVID LIEBER (14) | DONNA PALERMINO (43) | DAWN STOLFSTALENHOF |
| CAROLYN LONG (21) | JAMES PAPPALIOANOU (2) | CAROL STARKEY (24) |
| STEPHANIE LOVELL | EMILY PARADISE | DEBORAH STEENLAND |
| ANITA MAIETTA | WILLIAM PARDEE | CATHERINE SULLIVAN |
| MARIA MAKREDES (45) | HOLY PARKS (27) | MARK SUTLIFF |
| TIMOTHY MALEC | MARGARET PARKS | JAMES SWEENEY |
| DAVID MARKS | MAITE PARSİ | JOHN TALBOT |
| LAURA MARLIN | M. JULIE PATINO (26) | ROSEMARY TARANTINO |
| STEPHEN MARSHALEK | ROBERT PATTEN | NEIL TASSEL |
| LAURA MASLOW-ARMAND (30) | PETER PAULOUSKY | DANA H TENCH |
| TINA MATSUOKA | SUSAN PAULSON | STEVEN THOMAS |
| LEA BRISTER MAY (9) | ANTHONY PENSKI | LINDA TOMASELLI (37) |
| DEAN MAZZONE | MARY A. PHILLIPS | MARINI TORRES-BENSON |
| COLLEEN MCCONNELL (15) | MARY B. PHILLIPS | BRUCE TRAGER |
| PHILIP MCGOVERN | KEVIN PLANTE (8) | TRACEY TURNER |
| CONSTANCE MCGRANE | WILLIAM PORTER | TERI WILLIAMS VALENTINE (32) |
| TIMOTHY MCGUIRE | ANNE POWERS (37) | LINDA WAGNER |
| MICHAEL MCNALLY (36) | CHRISTOPHER QUAYE | TERESA WALSH |
| WILLIAM MEADE (34) | JASON QUEENIN | PAMELA WECHSLER (35) |
| PATRICIA MEDEIROS | KATHLEEN QUILL (42) | PETER WECHSLER (39) |
| PAMELA MEISTER | ROBERT QUINAN | RICHARD WEI ZEL (38) |
| BETH MERACHNIK | KAREN REED | JAMES WHITCOMB |
| HOWARD MESHNICK | WILLIAM REYNOLDS | DORIS WHITE |
| NICHOLAS MESSURI | JULIANA RICE | JONATHAN WHITE (33) |
| JAMES MIEKEY | DEAN RICHLIN | JUDITH WHITING |
| PAUL MOLLOY | ROBERT RITCHIE | |

APPOINTMENTS

BETSY WHITEY

GEOFFREY WHY

JESSICA COCCOLIVHIGUS

JANE WILLOUGHBY

NATHANAEI WRIGHT

CHARLES WYZANSKI

HERMEN YEE (25)

JUDITH YOGMAN (42)

SHEILA YORK

KARLA ZARBO

CATHERINE ZIEHL

APPOINTMENTS

APPOINTMENT DATE

TERMINATION DATE

| | | | |
|------|----------|------|----------|
| (1) | 07/29/02 | (21) | 07/05/02 |
| (2) | 07/31/02 | (22) | 07/12/02 |
| (3) | 09/03/02 | (23) | 07/19/02 |
| (4) | 09/09/02 | (24) | 07/26/02 |
| (5) | 09/16/02 | (25) | 08/02/02 |
| (6) | 09/30/02 | (26) | 08/16/02 |
| (7) | 12/02/02 | (27) | 08/30/02 |
| (8) | 12/16/02 | (28) | 09/06/02 |
| (9) | 12/30/02 | (29) | 09/13/02 |
| (10) | 01/06/03 | (30) | 10/11/02 |
| (11) | 01/13/03 | (31) | 10/25/02 |
| (12) | 02/10/03 | (32) | 11/08/02 |
| (13) | 03/03/03 | (33) | 12/27/02 |
| (14) | 03/24/03 | (34) | 01/02/03 |
| (15) | 03/31/03 | (35) | 01/10/03 |
| (16) | 05/05/03 | (36) | 01/24/03 |
| (17) | 05/12/03 | (37) | 01/31/03 |
| (18) | 06/02/03 | (38) | 02/04/03 |
| (19) | 06/23/03 | (39) | 02/21/03 |
| (20) | 06/30/03 | (40) | 02/28/03 |
| | | (41) | 03/21/03 |
| | | (42) | 04/04/03 |
| | | (43) | 04/11/03 |
| | | (44) | 04/25/03 |
| | | (45) | 05/30/03 |
| | | (46) | 06/20/03 |

EXECUTIVE BUREAU

GENERAL COUNSEL'S OFFICE

HUMAN RESOURCE MANAGEMENT OFFICE

EXTERNAL AFFAIRS OFFICE

INFORMATION TECHNOLOGY DIVISION

BUDGET OFFICE

OPERATIONS DIVISION

COMMUNICATIONS OFFICE

FRANCIS X. BELLOTTI LAW LIBRARY

EXECUTIVE BUREAU

The Executive Bureau's primary function is to provide the Office with overall administration management, policy setting, staff supervision, and employee training. It is also charged with the responsibility of administering technical support to over 450 employees located throughout the Commonwealth. Additionally, the Executive Bureau is responsible for a number of specialized functions, including the coordination of legislative affairs, constituent relations, community outreach, and all communications, both internal and external.

The Office of the Attorney General is located in four areas in Massachusetts. The main office is located in Boston with three regional offices in Springfield, Worcester, and New Bedford. The Executive Bureau is designed to develop and maintain the agency's infrastructure, enabling all the Offices of the Attorney General to function productively and effectively for the benefit of the Commonwealth's citizens.

The Executive Bureau consists of the Office of the First Assistant Attorney General, which oversees all legal matters and includes the Office of the General Counsel. The Chief of Staff is responsible for the day-to-day activities of the Attorney General, ensuring that the Attorney General's schedule reflects his priorities. The Chief of Staff is also responsible for the overall management of the following divisions: Human Resource Management, Budget, Information Technology, Operations, Support Services, and the Francis X. Bellotti Law Library.

In recognition of the Executive Bureau's dual responsibility to provide leadership on the office's overall mission and priorities and to administratively support the office to ensure efficiency and effectiveness, the office reorganized the management of the bureau to better reflect these equal, but distinctly different functions in January 2003.

The new Chief of Staff, Stephen Bilafer, was given oversight over several key functions of the Executive Bureau, including Communications, External and Intergovernmental Affairs, Public Information and Constituent Services, as well as Scheduling. In addition, the Chief of Staff was responsible for working directly with the bureaus to develop and coordinate the key policy initiatives and priority issues of the office. Added was the newly created position of Chief of Administration and Finance, assumed by Jason Queenin. The Chief of Administration and Finance was responsible for oversight of all the elements that go into ensuring the smooth, efficient and effective operations of the office, with the primary focus of working with the bureaus to develop an even more coordinated and positive work environment. Within the Executive Bureau, the Chief of Administration and Finance has responsibility for the management of Human Resources, Operations, Budget, Information Technology and the Law Library.

In Fiscal Year 2003, the Executive Bureau included Dean Richlin, First Assistant Attorney General; Stephen Bilafer; Kerri Burridge; Ellen Donaghey; Diane MacDonald; Jason Queenin; and Jeffrey Shapiro.

Smooth operation of the Attorney General's Office is also reliant on the dedicated professionalism of the following staff members in the Bellotti Law Library and the Telecommunications Division: Karin Thurman, Library Director; Michael Ball; Catherine Douglas; Susan Lindsey; Raymond Manigault; and Denise McCartin.

GENERAL COUNSEL'S OFFICE

The General Counsel's Office is within the Office of the First Assistant Attorney General. This Office provides recommendations on legal and policy matters to the Attorney General, the First Assistant Attorney General, and the Chief of Staff. The Office also advises and supports all other staff members, both legal and nonlegal, in the Office of the Attorney General.

More specifically, this Office advises on the Rules of Professional Conduct and the State Ethics Law; provides legal advice and assistance to the administrative staff within the Executive Bureau; through the *AG Institute* provides and conducts office-wide, in-house training programs for all staff; coordinates the appointments of Special Assistant Attorneys General (SAAG); reviews and approves legal services contracts for state agencies; reviews and circulates petitions and notices from the Board of Bar Overseers; coordinates the office-wide review of tax settlements between the Department of Revenue and individuals who have failed to pay taxes; retains and manages the state's Operating Under the Influence (OUI) notices to drinking establishments; monitors the National Association of Attorneys General (NAAG) recommendations and submission of *amicus* briefs for the First Assistant, and coordinates bureau responses; monitors and reviews NAAG's recommendations to join other Attorneys General throughout the country in letters of support and/or opposition to proposed legislation or regulations; represents and provides technical support to the Office of Campaign and Political Finance (OCPF) on matters before the Superior Court; reviews public records law appeals referred for enforcement action by the Secretary of State through the Supervisor of Public Records; and investigates open meeting law violations by state agencies.

The General Counsel's Office includes five attorneys, one paralegal, and one secretary: Pamela M. Dashiell, General Counsel; Eileen Carey; Akiti Chandler; Lorraine Goldenberg-Tarrow, Judy Zeprun Kalman; Christopher Speranzo; Deborah Steenland; and Teri Williams Valentine.

SIGNIFICANT CASE SUMMARIES

The General Counsel's Office manages all internal personnel matters in conjunction with the Human Resource Management Office. It is responsible for handling workers' compensation claims, union arbitrations and grievances, discrimination complaints, and disciplinary proceedings up to and including employee terminations.

On occasion, the General Counsel's Office will provide assistance to other bureaus with respect to cases involving litigation. Therefore, some members of the staff carry an active caseload of work unrelated to the core responsibilities of the General Counsel's Office.

STATISTICAL SUMMARY

| | |
|---|-------|
| <i>Amicus</i> Briefs Received | 40 |
| NAAG Sign-ons Received | 35 |
| Legal Services Contracts Received | 62 |
| SAAG Appointments Made | 29 |
| SAAG Appointments Vacated | 19 |
| Public Records Enforcement Appeals Received | 46 |
| Public Records Requests Received | 42 |
| Open Meeting Law Complaints Received | 9 |
| OCPF Cases Received | 6 * |
| Board of Bar Overseers/Tax Settlements Received | 27 |
| OUI Notices Received | 3,548 |

*The number of cases dropped significantly from Fiscal Year 2002 (17) due to the new protocol instituted by this Office at the beginning of Fiscal Year 2003, under which the OCPF will represent

itself in Superior Court. This Office, however, continued to provide technical support by issuing warning letters to respondents and by reviewing the OCPF paperwork and serving complaints for the OCPF.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Staff of the General Counsel's Office worked with the Human Resource Management Office to conduct training on the Attorney General's Anti-Discrimination and Sexual Harassment Policy. The Members of the General Counsel's staff were involved in other cross-bureau initiatives, including the Diversity Committee, the Employee Benefits Committee, and The Elder Protection Unit of the Public Protection Bureau. The *AG Institute* created a knowledge management system, The VAULT, integrated within the office-wide case management system, and initiated training on how to use the system. This Office also had a staff member lead an internal group charged with developing an office-wide policy on the interpretation and applicability of rule 4.2 of the Massachusetts Rules of Professional Conduct.

In keeping with the Attorney General's priority of ensuring that staff has access to the latest information and training available, and in furtherance of their professional development, the *AG Institute* provided continuing education to legal and nonlegal staff on a variety of topics. During Fiscal Year 2003, the *AG Institute* offered 41 programs and brought in six "Distinguished Lecturers."

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2003, the staff of the General Counsel's Office provided training to state and local government agencies on open meeting law issues and public records law matters. One staff member served on a Board of Bar Overseers hearing panel. Other staff members were active in the Boston, Massachusetts, and American Bar Associations where they functioned in leadership positions on various committees. They also served as panelists and speakers at NAAG seminars, Massachusetts Continuing Legal Education forums, and other legal programs offered across the country sponsored by the various bar associations noted above. Members of the staff also participated in the Citizens Schools mock trial program and volunteered their services at the Paul McLaughlin Center and with other community groups in their own neighborhoods.

HUMAN RESOURCE MANAGEMENT OFFICE

The Human Resource Management Office staff is responsible for the recruitment and hiring of employees, benefits administration, performance appraisals, the hiring of legal and collegiate interns, and time and attendance data entry. During Fiscal Year 2003, staff members included Diana LaRochelle, Director; James Chu; Joyce Delgado; Thomas Kopaczynski; Sandra Macdonald; Meade Munroe; Joseph Shea; Marie Urciuoli; and Christine Wilson.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

ANTI-DISCRIMINATION AND SEXUAL HARASSMENT POLICY

The Office reissued the Anti-Discrimination and Sexual Harassment Policy in April 2003. The Office seeks to remind all employees that it is committed to the goal of having a workplace that is respectful, inclusive, and diverse.

OFFICE-SPONSORED BAR ASSOCIATION MEMBERSHIPS

In addition to sponsoring memberships for all attorneys in the Boston Bar Association or a county bar association, AAGs were also offered the opportunity to join one of the many minority and women's bar associations in Massachusetts. This benefit was continued from previous years to further the OAG's commitment to enhance attorneys' professional development, and to encourage involvement with organizations composed of diverse members and experience.

LEGAL AND COLLEGIATE INTERN PROGRAMS

The Attorney General's Office continued its strong commitment to the Legal and Collegiate Intern Programs during Fiscal Year 2003. The OAG participates each winter in the Massachusetts Law School Consortium interview process to recruit and select summer legal interns. In addition to this valuable source of candidates, the Office coordinates and holds over a hundred interviews in late winter and early spring with students from numerous law schools.

The OAG received applications from 134 law students and placed 56, the majority of whom took part in the Summer Legal Intern Program. The law students are afforded a unique opportunity to participate in a full-time, structured nine-week summer program which is unfunded, aimed at both utilizing the knowledge of the law students and giving them hands-on experience and training in some of the most interesting legal cases in the Commonwealth.

The Collegiate Intern Program attracts a large number of applicants throughout the year but has the largest component during the spring and summer months. In Fiscal Year 2003, the OAG placed

103 of the 114 collegiate interns who applied. These interns volunteer at least 15 hours per week and are assigned in all six bureaus across the office. The term of their internships varies from student to student but often exceeds nine weeks.

Additionally, some Assistant Attorneys General run clinical programs throughout the year for students at three area law schools – Harvard Law School, Boston College Law School, and the New England School of Law.

PERSONNEL ACTIVITY

During Fiscal Year 2003, the Attorney General's Office hired 27 attorneys and 38 nonlegal staff, for a total of 65 employees. There were 98 staff members who separated from the Office.

EXTERNAL AFFAIRS OFFICE

The External Affairs Office of the Executive Bureau is responsive to the public and the legislature. Its function is to serve as a liaison between the community, the legislature, and the Attorney General.

The External Affairs Office included the following staff members: Laura Marlin, Director; Jeffrey Collins; Leah Green; Sally Ogine-Noel; and Lyndsay Wolf.

OFFICE OF COMMUNITY PARTNERSHIPS

Attorney General Reilly created the Office of Community Partnerships in 1999 to work with Massachusetts' mayors, other urban leaders, and local town officials to address issues that relate to our cities and towns, particularly as they affect the health and safety of our children, environmental concerns, and housing issues. This Office acts as a direct liaison between the Attorney General's Office and the state's cities and towns.

INTERGOVERNMENTAL AFFAIRS

The Intergovernmental Affairs Office acts as the liaison to other state and federal government offices and officials, including the state legislature and members of the Massachusetts congressional delegation. Intergovernmental Affairs works with other bureaus to develop and file legislative proposals, and monitors legislation and budget items relevant to the Office of the Attorney General.

In Fiscal Year 2003, on behalf of the Office, the Intergovernmental Affairs Office drafted legislation and worked to enhance the laws that improve the environment, improve our criminal justice system, and protect consumers, working families, and our most vulnerable citizens, children and the elderly.

Additionally, the Intergovernmental Affairs Office acts as the contact for members of the legislature and staff who have questions for or need assistance from the Office of the Attorney General on behalf of their constituents. In Fiscal Year 2003, the office handled hundreds of calls and written inquiries from members of the state legislature and congressional delegation pertaining to a wide range of matters.

COMMUNITY LIAISON

The Community Liaison is responsible for constituent services. The position was created as a resource for the community to obtain information for either internal or external assistance, through e-mail, letters, telephone calls, and walk-ins. In Fiscal Year 2003, approximately 3,000 telephone requests were fielded and resolved.

INFORMATION TECHNOLOGY DIVISION

The Information Technology Division (IT Division) is responsible for the operation and maintenance of the agency's computer network and related technical resources. The division maintains a wide area network (WAN) at One Ashburton Place, which provides connectivity from the main office in Boston to the local area networks (LANs) installed at 200 Portland Street, Boston, and the regional offices in Springfield, Worcester, and New Bedford.

The mission of the IT Division is to provide network communications, hardware, software, and end-user assistance for all agency staff in all locations. The Division's staff supports 17 mail and application servers, seven backup servers, one DNS server, one firewall server, five routers, more than 25 network switches, and over 600 computer devices, including desktop PCs, Notebook PCs, printers, scanners, and other peripheral equipment. During Fiscal Year 2003, IT Division staff included Paula M. Durant, Director; Ronald Rossetti, Network Manager; Thomas Smith, LAN Manager; Christine Heneghan, Notes Database Administrator; Visakha Samaraweera, Relational Database Developer; Claudette Clement, Administrative Coordinator; Bruce Crosby, Technical Support Specialist; Jean Exantus, Technical Support Specialist; and Jack Ngan, Technical Support Specialist.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2003, the Attorney General's IT Division continued to maintain and improve the quality of its technical resources. Having previously replaced outdated servers and obsolete operating systems, the IT Division turned its focus to improving network backbone communications. The initial phase of the project, which involved server memory upgrades and the installation of new core switches for each of the main computer rooms, substantially improved overall network performance and server-to-server communications. In the second phase, the IT Division replaced all existing wiring hubs with new switching equipment and upgraded individual PC memory, which allowed agency staff to realize a significant increase in data transfer speed and improved client/server response.

Network security is a priority. To increase protection for agency resources and information, the Attorney General's IT Division recently upgraded its firewall technology. The agency also continued to maintain a subscription to keep its antivirus products current. In Fiscal Year 2003, the IT Division was also able to procure Internet monitoring and filtering products, which will act as an additional safeguard when implemented.

Other enhancements were made at the desktop level. Recognizing the need to participate in federal and state electronic filing initiatives, and to provide a simple method of document and information exchange, the IT Division took steps to provide WinZIP and Adobe Acrobat licenses for each PC. In addition, printer upgrades were completed and the agency was able to replace a number of outdated PCs.

Along with making agency-wide improvements, the IT Division also responds to the needs of particular agency divisions. During Fiscal Year 2003, the IT Division worked with various divisions to implement scanning equipment and software to assist with document management; procured and installed software updates and color printing solutions for publications and Web management; converted and implemented a SQL back-end database for the Consumer Complaint Information Section; and provided database assistance and GIS software for the Health Care team.

The need for presentation technology and litigation support tools continued to increase. To enable the Multimedia Unit to meet this rising demand, the IT Division worked to acquire updated presentation and mobile computing equipment, and procured additional licenses for litigation support software packages.

OUTREACH, EDUCATION, AND TRAINING

The Information Technology Division continued to provide a high quality of end-user assistance upon request. Two Help Desks are maintained for user convenience, one at Ashburton Place and one at 200 Portland Street, where IT staff members receive and respond to user calls encompassing a wide variety of issues. Reported hardware problems are referred to the next available Technical Support Specialist, and any calls requiring a particular expertise are directed to the IT staff member best qualified to assist. In addition, orientation sessions are held for new employees and interns upon start of work.

As in past years, the IT Division communicated with agency staff regularly via e-mail, issuing a variety of policy reminders, virus alerts, and technical bulletins. The IT staff continued to provide individual and group training as needed.

BUDGET OFFICE

The Budget Office included the following staff members: Frank Velluto, Director; James Creedon; Kerisotellia Ford; Mary Jane Grace; Jennifer Hanly; Kristine Hill; Penny Michalski; Gail Sarno; and Lynette Smith. Support Services staff included William Coughlin, Manager; Stephen Cress; Timothy LeBlanc; Pier Minghetti; Nestor Morales, Jr.; David Scafati; and Harold Tafler.

The challenge to the Budget Office in Fiscal Year 2003 was to provide for the increasing needs of the Office while anticipating that Fiscal Year 2003 funding would be reduced due to the ongoing state budget crisis.

To meet these demands, during the second part of the fiscal year, the Budget Office recommended that most positions vacated through regular attrition and retirements associated with the Commonwealth's Early Retirement Incentive Program not be filled. Unfortunately, further reductions were necessitated by anticipated Fiscal Year 2003 cuts, and at the end of the year, the Office further reduced staffing through 11 layoffs. Although difficult, these decisions allowed the Office to absorb an almost 5% reduction in its main appropriation in the following year without further reductions.

Even with diminished resources, the Budget Office worked to fund costs associated with a number of high-profile cases and various cost-share agreements.

Additionally in Fiscal Year 2003, the Budget Office worked with staff from the Insurance Fraud Division to establish a new inter-governmental service agreement with the Social Security Administration

(SSA), administered through the Massachusetts Rehabilitation Commission. With funding provided by SSA, the Office hired two investigators to combat disability fraud and to ensure that disability benefits are awarded only to deserving individuals. To allow the project to go forward, the Budget Office worked with the State Comptroller's Office to arrive at a lower indirect cost rate.

In Fiscal Year 2003, the management and supervision of the time and attendance function was moved from the Human Resource Management (HRM) Office to the Budget Office. This change resulted in a streamlining of business processes to simplify the reporting procedure while also significantly reducing the wasteful use of paper. This has resulted in a more accurate reporting of employees' time and greater productivity for both Budget and HRM staff.

During Fiscal Year 2003, Budget staff processed over 12,000 payment voucher (PV) documents totaling \$18,456,943.

Among these totals were 2,427 PVs totaling \$621,331 that were issued to claimants who benefited from settlements made with various retailers and over \$1 million in recovered wages.

OPERATIONS DIVISION

The Operations Division offers professional, timely, and valuable ancillary services that allow the Office of the Attorney General to effectively carry out its mission. The multitude of initiatives, functions, cases, and day-to-day business activities are supported by the technical ability within the realm of the Operations Division. In Fiscal Year 2003, new personnel along with a new focus enhanced the ability of the division to become more engaged in daily facility operational matters and offer greater leadership to staff.

In Fiscal Year 2003, the division staff included Kristine Hill, Director; Chris Adams; Anthony Melius; Meade Munroe; Kevin Nolan; and Pasha Polihronidis.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In Fiscal Year 2003, the Operations Division completed a significant five-month project involving physical inventory of all office equipment and furniture at both Boston offices and the regionals. This comprehensive process involved the services of a private consultant along with operation staff to complete. The project now allows the office to accurately track and inventory all new purchases, quickly identify

current in-house stock, and effectively monitor and allocate inventory to satisfy staff needs. In addition, new inventory procedures related to purchasing, moving, and disposal of furniture were developed to provide a coherent, consistent, user-friendly system.

In light of the events of September 11, 2001, the Office of the Attorney General felt additional security measures were required to protect the safety of staff and to prevent unauthorized individuals from accessing office space. To help accomplish these measures, all OAG staff were issued identification badges that include a photo and division assignment. These ID badges allow staff to comfortably work within OAG office space with a greater sense of security and provide a uniform method of identifying employees. In addition, all interns and visitors receive badges that identify either the work location or the division being visited.

Another important effort accomplished in Fiscal Year 2003 was the relocation and consolidation of the Multi-Media Lab, which now provides a centralized location for a variety of professional services, including media, audio, color duplication, visual presentations and exhibits, and photo IDs. The lab is outfitted with technical media equipment that provides the Office staff with resources comparable to those used in the private sector. The technical expertise of the Operations staff resulted in high-quality presentations, professional services, and timely response to increased demand for such services.

The Operations Division also coordinated the archiving of closed case files and the recalling of files from both the State Records Center and Iron Mountain. This task involved training and oversight of all bureau and division personnel involved in the maintenance of records, as well as the acquisition and distribution of record maintenance materials to all central and regional sites.

Other functions within the scope of Operations included vehicle maintenance, staff parking, acquisition and maintenance of emergency remote communications devices, responding to facility alarms, and general physical plant upkeep.

COMMUNICATIONS OFFICE

The Communications Office coordinates all media-related matters for the Office of the Attorney General. The chief responsibility of the Communications Office is to serve as a centralized public voice for the agency. To that end, the Communications Director and Deputy Press Secretaries work with Executive staff and Bureau Chiefs to ensure that the Attorney General's priorities are reflected in all public statements and materials, including press releases, advisories, public statements, interviews, publications, the Attorney General's Web site (www.ago.state.ma.us), and other public appearances and events.

To effectively communicate within the agency and with the public, the Communications Office has implemented policies to handle media inquiries, create publications and brochures, and manage content on the Attorney General's Web site.

The Communications Office staff are Ann E. Donlan, Director; Sarah Nathan, Beth Stone, and Corey Welford, Deputy Press Secretaries; and Jen Adams, Web Site Manager.

WEB SITE

In existence since December 1999, the Office's Web site continued to expand during Fiscal Year 2003. In an effort to improve the hosting of the Office's Web site, in December 2002, the site was migrated from the previous host company to bx.com. Following the successful migration, bx.com also updated the functionality of the site's "search" feature to yield more thorough results.

The site traffic reports demonstrated between 56,000 and 66,000 visitors per month. Current publications continued to be added to the Web site in PDF and, if possible, HTML formats (for accessibility compliance). All press releases disseminated from this Office were made accessible on the site, as well as customized directions to all office locations, hotline numbers, and up-to-date information on employment opportunities and policies.

In addition, in August and September 2003, the Community Benefits Web Project was launched. The project included facilitating the electronic filing of annual reports, promoting public access to hospital and HMO Community Benefit Annual Reports, and providing tools to find and analyze these reports. Users of this online tool successfully uploaded their reports for Fiscal Year 2002.

FRANCIS X. BELLOTTI LAW LIBRARY

The library provides the Office of the Attorney General with the finest possible research facility and supports the research activities of the attorneys and staff. The collection includes 2,564 book titles and 161 periodical, law review, newspaper, and newsletter titles. The library contains the only complete index to Opinions of the Attorney General, town bylaw and zoning approval letters on microfiche, and Bid Protest Decisions and Advisory Opinions from the Fair Labor and Business Practices Division. The attorneys also have access to Westlaw for online searching of legal and newspaper databases. Library staff frequently assist individuals who are not affiliated with the Office in locating these materials. Outside individuals must make an appointment with the library in order to use the special collections.

The library joined the Boston Regional Library System in the fall of 2002, facilitating interlibrary loan from nonlegal libraries. Included with membership is access to OCLC, a national bibliographic database, which locates material nationwide.

During Fiscal Year 2003, the library staff included Karin Thurman, Director; and Raymond Manigault.

OUTREACH, EDUCATION, AND TRAINING

In Fiscal Year 2003, all new attorneys, paralegals, and interns received tours of the Library, and an introduction to the online Internet and CD-ROM databases available to them. During Fiscal Year 2003, 25 attorneys and paralegals, and 107 interns were trained. Westlaw training was mandatory for all new attorneys and available for any attorney wishing to expand his/her knowledge.

BUSINESS AND LABOR PROTECTION BUREAU

FAIR LABOR AND BUSINESS PRACTICES DIVISION
INSURANCE AND UNEMPLOYMENT FRAUD DIVISION
MEDICAID FRAUD CONTROL UNIT

BUSINESS AND LABOR PROTECTION BUREAU

The Business and Labor Protection Bureau, a bureau comprising approximately 100 lawyers, investigators, and administrative staff, maintained responsibility for policing and prosecuting a variety of business crimes and related civil wrongs. The bureau consists of the Fair Labor and Business Practices Division, the Insurance and Unemployment Fraud Division, and the Medicaid Fraud Control Unit. The bureau's mission is to use its enforcement responsibility and public education initiatives to prosecute and deter fraud in the marketplace and to create a fair environment in which businesses and workers can participate.

The bureau's primary offices continued to be located at 200 Portland Street, Boston. The bureau also staffed the Attorney General's regional offices in Springfield, Worcester, and New Bedford as well as its part-time satellite locations in Fall River and Pittsfield. Staff also regularly maintained office hours in Lawrence.

In Fiscal Year 2003, bureau management staff comprised David Nalven, Bureau Chief; David Marks, Chief Prosecutor; Connie McGrane, Deputy Bureau Chief; and Vicky Scolnick, Administrative Assistant.

FAIR LABOR AND BUSINESS PRACTICES DIVISION

The Fair Labor and Business Practices Division (FLBP) was responsible for enforcing many of the Commonwealth's statutes and regulations concerning conduct in the workplace and the protection of workers and their wages. As Fiscal Year 2003 witnessed a decline in the national and regional economies, and brought to the fore many business problems arising from a failure of corporate responsibility, the demands placed on FLBP increased dramatically. FLBP, through its telephone hotline, served as a workplace-law information center for both workers and businesses. FLBP investigators investigated thousands of formal and informal complaints received through this hotline. Most of the problems raised in these complaints were resolved following a FLBP inquiry, but many others required FLBP staff to pursue resolution through administrative, civil, and criminal processes.

During Fiscal Year 2003, FLBP staff included Dan Field, Division Chief; Rosalyn Garbose, Deputy Division Chief; Randy Berg, Chief of Investigations; Jeff Ambrose; Jeb Banks; Bruce Bergman; Patricia Bopp; Cecile Byrne; Ronald Cabezas; Jay Clark; Susan Decker; Joseph Drzyzga; Mary Dullinger; Patrick Faherty; Michelle Gamble; John Gatti; Lorraine Goldenberg-Tarrow; Paul Gordon; Michael Guarin; Marsha Hunter; Tom Johnson; Jocelyn Jones; Barbara Kane; Patricia Kelleher; Noreen Kelly; Katharine Klubock; Robert Lamarre; Brian Macera; Jeffrey Mahoney; Anita Maietta; Mildred Markham; Katherine

Mulligan; Mario Paiva; Iona Powell-Headley; Anne Powers; Greg Reutlinger; Mario Rosado; Jed Ruccio; Elizabeth Rufo; Palmer Santucci; Steven Spencer; Bruce Trager; Theresa Ukleja; and Karla Zarbo.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The FLBP Division is charged with enforcing the Massachusetts wage and hour laws, including the prevailing wage, minimum wage, and nonpayment of wages and overtime laws. FLBP is also charged with enforcing child labor laws. In addition, FLBP maintained responsibility for enforcement of laws concerning adherence to public contracting requirements. FLBP is also responsible for reviewing and ruling on applications by businesses for waivers from compliance with certain workplace laws.

OVERALL INVESTIGATORY ACTIVITY

The FLBP Division received and investigated in excess of 3,700 formal complaints in Fiscal Year 2003. In many instances FLBP's investigators recovered payment of full restitution or provision of another appropriate remedy to the aggrieved employee without initiating the civil citation process or litigation. In many other cases, consistent with its law enforcement mission and approach, FLBP's staff employed its prosecution authority to pursue instances of unlawful conduct and regularly sought civil and criminal sanctions to be imposed on workplace law offenders. Through these efforts, in the last fiscal year, FLBP recovered in excess of \$1.8 million in wages that were owed, but unpaid, to Massachusetts workers, as well as administrative and criminal penalties and costs.

PREVAILING WAGE ENFORCEMENT

Attorney General Tom Reilly's FLBP division placed a high priority on enforcement of the prevailing wage law. Well-documented complaints often formed the basis for FLBP's most effective prosecutions and wage recoveries. FLBP inspectors also conducted unannounced site inspections at numerous public construction projects to encourage compliance and a level playing field for all employers. During Fiscal Year 2003, FLBP investigators conducted over 230 public construction site inspections throughout the Commonwealth. This proactive approach not only assisted in the discovery of unlawful conduct, but also served the important public purpose of deterring workplace misconduct that might otherwise take place.

The following provides a representative sampling of prevailing wage cases undertaken by FLBP during Fiscal Year 2003:

- Diebold, Inc. Employer failed to pay telecommunications prevailing wage rate to 15 employees. Settlement reached, \$31,000 restitution. *Zarbo, Reutlinger.*

- Cornerstone Masonry Prevailing wage case arising from employer's misclassification of employees as apprentices. Settlement agreement reached, including payment of approximately \$37,000 in restitution, and a \$2,500 penalty. *Zarbo, Macera.*
- Zenone Prevailing wage case. DALA decision upholding citation. Appealed to Superior Court. Citation upheld. Bristol Superior Court. *Maietta, Byrne.*
- E.I. Sciaba Contracting company was cited for failing to pay prevailing wage. The original decision vacated the citation. Motion filed for reconsideration pointing out that the factual findings supported the conclusion that the company had violated the law. Upon reconsideration, the citations were affirmed and the company was ordered to pay \$13,300 in restitution and penalties. *Jones, Reutlinger.*
- KDK Enterprises Waltham-based painting company performed work on numerous PW projects. Two complainants alleged they were not paid the correct PW rate for work they performed as painters. Settlement agreement executed with restitution of \$20,000. *Maietta.*
- Robert L. Delhorne, Frank J. Arena, Charter Environmental Settlement agreement arising from failure to pay prevailing wage rate to 44 laborers misclassified as "deleaders" relating to work performed on the Callahan/Summer Tunnel ventilation rehabilitation project. Terms of agreement included payment of \$88,732 in restitution and a \$6,000 penalty. *Zarbo, Macera.*
- Laidlaw Transit Co., Inc. Company providing statewide public school bus service failed to pay prevailing wage to drivers in Plymouth, MA, for two years. The company cooperated and conducted a self-audit of both years. Finalized settlement agreement included \$18,000 in restitution to approximately 40 employees and \$3,000 in penalties. *Jones, Lannarre.*
- Sharpe Painting Fines and debarment through 2006 upheld by DALA against employer with a history of prevailing wage violations. *Zarbo, Macera, Bopp.*

PAYMENT OF WAGES ENFORCEMENT

The FLBP Division is authorized to issue civil citations for violations of the wage and hour laws. A civil citation issued by FLBP can require the employer to comply with the law, pay restitution to the employees, and pay a civil penalty. FLBP has issued such citations to employers who fail to pay wages, overtime, the minimum wage, or prevailing wages, or who fail to provide certified payroll or other employment records required to be maintained and produced under Massachusetts law. Under the law, during Fiscal Year 2003, FLBP issued 149 civil citations for violations of the payment of wages and prevailing wage statutes.

The following provides a representative sampling of unpaid wage cases undertaken by FLBP during Fiscal Year 2003:

- SMG National arena-management company operating in Worcester was indicted for failure to remit service charge to its employees. Company charged patrons 18% service charge and retained proceeds. SMG was placed on pre-trial probation and ordered to pay \$445,148 restitution, a \$100,000 civil assessment, and \$2,000 court costs, as well as sign a compliance agreement. *Trager, Johnson, Bopp.*
- Booktech Settlement of citation resulting from failure to pay \$84,000 wages to 30 employees of closed Internet company. *Zarbo, Rosado.*
- Framingham Excavating Settlement of prosecution of union company that made payroll deductions for union from wages of nonunion employees but did not remit deductions to employees' or union health and welfare plan. Agreement to pay \$52,000 to union fund and a penalty of \$4,500. *Trager, Bopp.*
- John Crowley (Cape Allied Transit) Cape Cod courier company failed to meet payroll and closed their doors, resulting in nonpayment of final week's wages to 31 employees. But new company appeared to be doing old company's business, and shutdown appeared to be a sham. Defendant pleaded guilty to 14 counts of nonpayment of wages; was placed on probation for one year; and was ordered to pay \$20,410 restitution and \$1,500 fine and to submit a sworn statement of compliance, monthly DET and DIA filings to probation, and monthly copies of payroll and bank account statements to OAG. *Maietta, Gordon.*
- Atlantic Packaging, Inc. Settlement agreement finalized regarding overtime and payroll record-keeping violations affecting 60 immigrant employees, arising from the employer's practice of paying overtime wages to its non-exempt hourly employees only for hours worked over 50 in a work week. Back wage payment of approximately \$26,000. *Zarbo, Powell-Headley, Rosado, Rufo, Mahoney.*
- Bilafer Landscaping Bilafer pleaded guilty last year for failure to pay seven immigrant landscaper employees. Violation of Probation hearing this quarter yielded a guilty finding. Bilafer was sentenced to 10 days in the House of Correction for failing to provide workers' compensation insurance and six months in the House of Correction, suspended, with supervised probation, and was ordered to continue to pay restitution and fines of \$15,600. *Johnson, Mahoney.*

- Estes Express Lines, Inc. Trucking firm failed to pay overtime to 44 employees amounting to \$23,000. Estes performed a self-audit and OAG reviewed. Estes immediately offered to comply with findings and paid restitution. *Clark, Santucci.*
- Lawrence Baker Owner of defunct local television company failed to pay wages to three employees and was ordered to pay \$41,000 restitution and a civil penalty of \$2,940. *Hunter, Powell-Headley.*
- Old Dominion Freight Line, Inc. \$8,500 settlement agreement arising from employer's failure to pay overtime wages to 24 non-exempt loading dock workers. *Zarbo, Rosado.*
- Oyster Harbors Club Failure to pay service charge to waitstaff. No financial loss to employees because of elevated wage. Settlement includes agreement to revise practice going forward and \$5,000 penalty. *Jones, Gordon.*

PUBLIC CONTRACTS OVERSIGHT

The Attorney General's Office continued to provide a professional and accessible forum for the resolution of public construction bidding disputes, including investigating allegations of impropriety in connection with public-works project bidding. The Attorney General's primary enforcement efforts in this area have been undertaken by FLBP's Public Contracts Unit. The tools employed by the Public Contracts Unit include adjudication of disputes through a quasi-administrative hearing process, offering informal advice through its Unit Hotline and public education. In Fiscal Year 2003, the Unit issued written decisions in 62 cases.

The Unit also provided informal advice by telephone to the Commonwealth's awarding authorities and contractors who bid on public-works projects. During Fiscal Year 2003, the Public Contracts Unit received thousands of written and telephone inquiries. The Unit's telephone support has become an established resource for contractors and awarding authorities. Telephone assistance also has served as a significant prevention tool, often delivering the information necessary to prevent (or quickly remedy) a violation of the public bidding laws.

FLBP's public contracts enforcement efforts also included an educational component that provided public contracting participants with information regarding the public bidding laws. Among other things, the Attorney General's Office distributed the written public contracts bid protest decisions to the public construction community. In addition, FLBP's staff participated in educational programs that provided substantive and procedural information to the construction industry and their counsel necessary to properly solicit or submit public-works construction bids. Such proactive efforts have served many useful purposes.

not the least of which has been to decrease the number of bid protests, and provide clear and consistent guidance.

Following are two examples of significant public contract disputes resolved by FLBP in Fiscal Year 2003:

- Pittsfield Pipers v. Mass. Moca Bid protest of award of \$475,000 HVAC contract was denied after investigative hearing. Bidder did not violate public bid laws in not listing manufacturer's consultant.
- Foundation for Fair Contracting of Mass. v. New Leadership Charter School Renovation of Springfield facility fell under the ambit of the public bidding laws, although private funds were involved. Accordingly, the bid protest was allowed.

CHILD LABOR

The Massachusetts child labor laws were established to protect workers under the age of 18. These workplace laws implicitly recognize the special vulnerabilities of young workers. The laws have allowed young workers to optimize their educational opportunities by restricting the number of hours minors of certain ages may work. In recognition of the increased rate of workplace injury among teenage workers, these laws also have helped shield minors from working on hazardous tasks and equipment. In addition, the permitting process, in which FLBP's specially trained child labor inspectors are closely involved, has created a structure for school superintendents, who issue work permits, to review the intended employment to ensure that it is safe, is consistent with the child labor laws, and serves the best interests of the minor.

During Fiscal Year 2003, FLBP inspectors investigated reports of child labor violations and conducted workplace site inspections, visiting many businesses where minors were employed, noting violations, and advising employers of their responsibilities and legal obligations under the child labor laws.

- Dunkin' Donuts/John Salema Settlement agreement following investigation that revealed thousands of child labor and wage violations in more than 20 Western Mass. Dunkin' Donuts franchises. The agreement included a \$150,000 civil fine and three-year compliance plan overseen by outside auditor. The Attorney General agreed to conduct a series of management training seminars for management employees. *Clark, Decker*
 - Six Flags New England Employer delivered first reports on 14- to 15-year-olds as agreed last year. The AG reviewed orientation processes which were satisfactory. Employer submitted additional material as part of waiver application for time extension for 16- to 17-year-olds, including agreeing to all conditions of 2001 waiver. Waiver issued. *Clark, Decker*.
-

WAIVERS AND INDUSTRIAL HOMEWORK

FLBP is charged by statute with the authority to waive certain requirements of the labor laws under certain conditions. During Fiscal Year 2003, FLBP processed more than 70 waiver applications and industrial homework certificate requests. Each request for a waiver was carefully evaluated before a determination was made to grant or deny the request. FLBP enforced 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, where applicable. FLBP also monitored these companies to ensure compliance with the minimum wage and overtime laws.

STATISTICAL SUMMARY

| | |
|-----------------------------------|-----------------------------------|
| Restitution Recovered | \$1,822,936 |
| Hotline Calls | In excess of: 51,770 ¹ |
| Formal Complaints Filed | 3,788 |
| Cases Closed | 3,917 |
| Civil Citations Issued | 149 |
| Public Contract Dispute Decisions | 62 |

OUTREACH, EDUCATION, AND TRAINING

Attorney General Reilly has long believed that public education is the first step in promoting compliance with workplace law. Accordingly, outreach to the employee and employer communities, and their unions, trade associations, counsel, and other advocates, has been a FLBP priority. One means to this end has been FLBP's telephone hotline, which has served as a workplace-law information center for workers and businesses. In Fiscal Year 2003 the FLBP hotline received over 52,000 inquiries in the three quarters for which statistics are available. In many instances, workers were apprised of their rights and were assisted in obtaining their rightful wages.

¹Statistics not available for one quarter. Number reflects total of three quarters.

The Immigrant Worker Outreach Project, in the third year since its inception, continued to make headway. The Attorney General has long touted his support for fair treatment of immigrants in the workplace; this project is one way to help ensure that all workers in the Commonwealth receive an honest day's wages for an honest day's work. To that end, FLBP continued to pursue immigrant worker exploitation cases with vigor and expanded its translation efforts. In the past year, FLBP staff made 44 presentations to immigrant advocacy groups and their constituents. The program also began to make presentations to employer groups in an effort to educate that group regarding their rights and responsibilities concerning immigrant employees.

Outreach was conducted in other areas, as well. During Fiscal Year 2003, FLBP staff made more than 70 presentations to bar association and continuing legal education groups, professional organizations, trade associations, labor unions, and employee advocacy groups. These presentations ranged from nuts-and-bolts primers on the Commonwealth's wage and hour laws, and employee and employer rights and responsibilities under these laws, to sophisticated presentations on such topics as worker classification under the prevailing wage law and the treatment of accrued vacation time as wages.

The FLBP Division has also sought to educate relevant communities about wage and hour issues through the production and distribution of advisories and other publications, including a minimum wage and workplace rights poster. FLBP also worked with the Commonwealth's Division of Occupational Safety on the compilation and distribution of a Compendium of Massachusetts Prevailing Wage Law, for use by awarding authorities, contractors, workers, and other participants in Massachusetts public-works construction projects.

FLBP has endeavored, in the past year, to convey information to the community through the Workers' Rights section of the Attorney General's Office's Web site. The FLBP portion of the Web site was established to contain basic summaries of Massachusetts workplace law, many of the OAG's workplace-related advisories and publications, and other resources. The Web site was accessed by callers to the hotline as well as the general public, thus achieving its goal of serving as another means of providing information to the people of the Commonwealth.

INSURANCE AND UNEMPLOYMENT FRAUD DIVISION

The mission of the Insurance and Unemployment Fraud Division (IUF) has been to investigate and prosecute fraud against all types of insurers in Massachusetts and against the Commonwealth's unemployment security system. IUF prosecuted these crimes to protect Massachusetts businesses, consumers, and taxpayers from the hidden tax that fraud on these systems imposes.

IUFD's cases varied widely, including multi-million-dollar workers' compensation premium fraud cases, conspiracies by medical and legal professionals, fraud in auto repair businesses, staged motor vehicle accidents, inflated claims against homeowner's policies, cases involving claimants working while collecting workers' compensation benefits, and fraud by businesses on the Commonwealth's unemployment security fund. IUFD gave special attention to policing fraud by insurance industry insiders, including insurance agents, claims adjusters, and damage appraisers, whose frauds could have had an especially corrosive effect on public confidence in the insurance and unemployment compensation systems.

Throughout Fiscal Year 2003, IUFD received referrals from a number of sources. The largest source of referred cases was the Massachusetts Insurance Fraud Bureau, a non-governmental entity created by the Massachusetts Legislature and funded pursuant to statute indirectly by the Massachusetts insurance industry. In addition, IUFD received referrals from the Commonwealth's 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. IUFD also received complaints and referrals from concerned citizens, private attorneys, and court personnel. The wide range of referrals helped exemplify that IUFD's efforts in fighting insurance fraud are appreciated throughout the Commonwealth.

IUFD included the following staff members during Fiscal Year 2003: Eliot Green, Division Chief; Jennifer Adams; Dave Andrews; Robert Benson; Julie Brady; Colleen Connor; Ronald Coutu; Jack Crimmins; John Curseader; Marty Flood; Julie Goodwin; Hannah Greenwald; Daniel Kornetsky; Madeline Leone; Gloria Luk; Tim Malec; Lea May; Michael McNally; Shauna Neuhauser; John O'Leary; John Talbot; Tracy Turner; and Cindy Walsh.

SIGNIFICANT CASE SUMMARIES

The following are representative cases that were concluded in Fiscal Year 2003:

FRAUD BY PROFESSIONALS

- Gregg Doonan Peabody chiropractor whose license was revoked continued to practice and submit claims, including for services allegedly rendered while he was incarcerated on drug charges. Guilty plea resulted in two consecutive two-year sentences in the House of Correction, followed by three years probation, and \$21,912 restitution order. Essex County Superior Court. *Andrews*.
- Mario Moretti This was one of the last cases arising out of the Ellis & Ellis criminal enterprise. Moretti, a physician, was indicted on multiple counts for assisting in a series of

fraudulent insurance claims by providing false medical reports and information to insurers. Moretti pleaded guilty to one count of Motor Vehicle Insurance Fraud and was sentenced to one year probation and a \$10,000 fine. Worcester Superior Court. *Marks, O'Leary*.

FRAUD BY INSIDERS

- Salvatore Cortese During 1999 and 2000, Cortese worked as a claims adjuster for an insurance adjusting agency. Cortese used his position to have 21 fraudulent checks issued to a fictitious private investigation agency that he set up for the purpose of stealing money from his firm. The checks were issued for surveillance work on workers' compensation files. Eighteen of the checks, totaling almost \$17,000, were cashed by Cortese. He pleaded guilty and was sentenced to two years probation and ordered to pay full restitution. Middlesex Superior Court.
- Trevor Garrick Garrick, owner of an insurance agency, sold a workers' compensation and employers' liability insurance to a construction company and pocketed the money rather than obtaining the coverage. Garrick subsequently submitted false documents to the Division of Industrial Accidents and the Division of Insurance when he was asked to prove the existence of a valid workers' compensation policy. Garrick pleaded guilty and was sentenced to six months in the House of Correction, suspended for three years probation, and restitution of \$3,000. *Turner*.
- Wilbur Withrow Insurance agent with Boston Mutual diverted over \$35,000 in premiums for his own purposes. Upon pleading guilty, he was sentenced to five years probation and ordered to pay \$25,285 in restitution. Suffolk Superior Court. *McNally*.

MOTOR VEHICLE INSURANCE FRAUD

- Vincent Monahan "Operation Kodiak" case. These cases, referred by the Governor's Auto Theft Strike Force, involved an undercover operation in which the Massachusetts State Police uncovered nine separate instances of an insured's motor vehicle reported stolen days after the same car had been given to an undercover officer. The insureds then collected claim settlements from various insurance carriers. Eleven individuals were indicted on 53 charges, which had caused seven insurance carriers to pay \$58,000 in fraudulent claims. Monahan reported the theft of his pickup truck to Canton Police and his insurance company, when, in fact, the vehicle had been given away by Daniel Brunke to an undercover state trooper six days earlier. He pleaded guilty and was sentenced to two years in the House of Correction, suspended for three years probation, with an order to pay \$10,400 in restitution. *Crimmins*.
 - Charles Bergen "Operation Kodiak" case. Bergen reported the theft of his pickup truck to the Avon Police and his insurance company, when, in fact, the vehicle had been given away by Daniel Brunke to an undercover state trooper nine days earlier. He pleaded guilty and was
-

sentenced to six months in the House of Correction, suspended for three years of probation, with an order to pay \$7,842 in restitution and a \$500 fine. *Crimmins*.

- Gary Kelly Conspiracy to commit motor vehicle insurance fraud with Newton Police Officer Coakley. Kelly pleaded guilty and was sentenced to two years probation with a \$1,000 fine, per joint recommendation. Middlesex Superior Court. *Richlin, O'Leary*.
- Leo Giovanni and Joel Perez/King Auto Repair Giovanni and Perez were staging motor vehicle accidents and collecting the insurance proceeds. Both defendants pleaded guilty on all counts. Giovanni was sentenced to two years probation, with a \$1,000 fine and a \$5,550 joint restitution order. Perez was sentenced to 18 months probation with a \$500 fine. Malden District Court. *Turner*.

WORKERS' COMPENSATION FRAUD

- John Greene/Custom Transportation Services Limousine company catering to corporate clients engaged in over \$200,000 workers' compensation premium avoidance through mischaracterization of employees as independent contractors, use of phony shell subsidiaries, and concealment of payments to alleged subcontractors. Guilty plea resulted in sentence of two years probation, \$251,000 in restitution, and \$125,000 in fines. Plymouth Superior Court. *Crimmins*.
- Jeanne Meade Meade was one of several people who cashed blank checks that were stolen in 1985 from the Salem office of the Division of Employment and Training (DET). This case was charged in 1988, but the defendant defaulted in 1989. She removed that default on December 11, 2002. On March 10, 2003, the defendant pleaded guilty. Pursuant to an agreed plea recommendation, Meade was sentenced to two years probation. Malden District Court.
- Mary Ann Camilli (A.L. Corp.) A.L. Limited was formed to continue operations of A.L. Corp. to escape its accrued liabilities, which included federal and state payroll tax withholding, as well as nonpayment to DET. Camilli pleaded guilty and was sentenced to one year in the House of Correction, suspended for three years probation, and a \$10,000 restitution order. Cooperation agreement. Suffolk Superior Court. *Curseaden*.

UNEMPLOYMENT COMPENSATION FRAUD

- Bruce Turner Ex-Taunton police officer, terminated from the Taunton Police Department as a result of unrelated criminal indictments brought in Bristol County, was working as a cook while collecting unemployment benefits. Turner pleaded guilty and was sentenced to six months in the House of Correction, committed, followed by three years probation with a \$16,000 restitution order. Bristol Superior Court. *Curseaden, Flood*.

- Juan Hernandez Hernandez was involved in a scheme in which he collected another person's unemployment checks. He pleaded guilty and was sentenced to 23 days in the House of Correction, committed, with credit for the 23 days he had served while held on bail. *O'Leary*.
- John Feeley Feeley allegedly injured his back while working as a laborer on the Central Artery Tunnel project. While receiving disability benefits, he worked at another job. He pleaded guilty to workers' compensation fraud and was sentenced to one year probation with a \$2,300 restitution order. Boston Municipal Court. *Malec*.
- Julio Estrella Estrella worked while receiving workers' compensation benefits, using an alias. He was sentenced to two years probation, \$15,000 restitution. Brockton District Court. *Turner*.
- Jason Trombley Trombley worked while collecting workers' compensation for injury sustained as an ironworker on the Central Artery Tunnel project. Pursuant to a plea recommendation, Trombley was sentenced to two years probation, \$1,000 restitution and a \$500 fine. Boston Municipal Court. *Brady*.

PERSONAL INJURY FRAUD

- Salvatore Ferrandi Ferrandi filed separate claims with two insurance companies for the same injury, claiming they resulted from different accidents. Neither company was told of the other incident or the other claim. He collected over \$77,000. Upon pleading guilty, Ferrandi was sentenced to one year in the House of Correction, committed, followed by three years of supervised probation with restitution in the amount of \$57,000, although Judge Quinlan ruled that Ferrandi only had a present ability to pay \$25,000 and would not be required to pay more barring a change in his financial condition. Suffolk Superior Court. *Crimmins*.
 - Helen Biliouris One of the Ellis & Ellis series of prosecutions, Biliouris conspired with her former husband and former son-in-law to fake a fall and injury while allegedly making a delivery for her employer, a donut company. She pleaded guilty and was sentenced to four years probation with a \$15,000 restitution order. *Marks, O'Leary*.
 - Franz Blass Phony hit-and-run claim. Guilty plea resulted in sentence of six months in the House of Correction, suspended for two years probation with a \$3,652 restitution order. Dedham District Court. *Crimmins*.
 - Ashley Allen Slip and fall at an Ann & Hope store allegedly resulted in injuries, medical expenses, and lost wages, the latter for jobs she did not hold. Sentenced to two years probation, and \$3,500 restitution. Wrentham District Court. *Turner*.
-

STATISTICAL SUMMARY

| | |
|---|-----------|
| Referred Complaints | 411 |
| Investigations Opened | 153 |
| Investigations Closed without Prosecution | 71 |
| Cases Charged | 28 |
| Cases Disposed of | 64 |
| Cases Disposed with Committed Prison Time | 7 |
| Restitution & Fines Recovered | \$619,665 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

One major initiative undertaken in Fiscal Year 2003 was creating a private health insurance task force. As health care costs continue to rise, it has become all the more crucial to stop criminals from perpetrating fraud on private insurers as a means of ensuring that the majority of the privately insured do not pay the increased costs that result from fraud. Working with Blue Cross/Blue Shield, Harvard Pilgrim, and Tufts, the task force established a joint case-identification working group. Several cases were being considered to determine appropriateness for prosecution within two quarters of the task force's inception.

IUFD also worked with the Federal Bureau of Investigation's Health Care Fraud Unit. This relationship was developed to facilitate the joint investigations and prosecutions of health care provider fraud cases affecting the automobile insurance market. Massachusetts has some of the highest car insurance rates in the country; all contributing aspects of this problem must be addressed to reach an adequate remedy for consumers. At the end of Fiscal Year 2003, IUFD and the FBI had researched several cases that appeared appropriate for prosecution.

OUTREACH, EDUCATION, AND TRAINING

IUFD maintained its involvement with various industry groups throughout the state, including the Insurance Fraud Bureau (IFB). Additionally, IUFD has worked closely with the Department of Unemployment Assistance to investigate and prosecute fraud perpetrated upon that agency.

As in prior fiscal years, the IUFD staff uniformly attended continuing education classes on various subjects with high frequency. Identity fraud, a crime that has become more prevalent in this age of the Internet, is one area that IUFD personnel focus on, with the joint goals of prevention and prosecution. In a similar vein, staff members were involved in the OAG Privacy Committee. Attorneys were also active in the OAG Childrens' Protection Project and in the Citizen Schools Program, a program that introduces inner-city students to the legal system through involvement with a mock trial.

MEDICAID FRAUD CONTROL UNIT

The Medicaid Fraud Control Unit (MFCU) was established to protect the Massachusetts Medicaid program, which administers over \$5 billion of health care services to 700,000 indigent and disabled recipients in Massachusetts. In addition to prosecuting corporate and individual health care providers who commit crimes against the Medicaid program, MFCU was also responsible for prosecuting companies and individuals who abused, neglected, or mistreated elderly and disabled residents of the Commonwealth's 550 long-term care facilities, most of which have been funded extensively, if not exclusively, by the Medicaid program.

During this reporting period, Attorney General Tom Reilly's MFCU remained committed to aggressively investigating and prosecuting Medicaid provider fraud and those who abuse, neglect, or financially exploit elder, and disabled residents of long-term care facilities. The MFCU brought several recovery actions utilizing the state's civil Medicaid fraud statutes and reviewed over 685 patient abuse and neglect referrals. In addition to the indictments and convictions reported herein, the Massachusetts MFCU returned \$5,517,768.23 to the Medicaid program through restitution, fines, and penalties.

Recognizing that Medicaid fraud is complex and costly to prosecute, the federal government has provided approximately 75% of the funding for MFCU's operation. Among its counterparts in other states across the nation, Attorney General Reilly's MFCU has been a leader in the number of successful criminal prosecutions and affirmative civil actions it has produced.

MFCU included the following staff members during Fiscal Year 2003: Nick Messuri, Division Chief; Steve McCarthy, Deputy Division Chief; Mark Muldoon, Managing Attorney; Ann Ackil; Kris

Barrett; Al Brown; Eileen Casey; Julie Chattopadhyay; Peter Clark; John Curley; Steve Devlin; Catherine Fielding; Elizabeth Foley; Lai Ho Teresa Liu; Anthony Megathlin; James Pappaioanou; Bob Patten; Jenny Prokopovich; Shirley Rokosz; Mike Russo; Susanne Snow; and Christine Soloperto.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2003, MFCU brought both criminal and civil enforcement actions against hospitals, nursing home owners, pharmacies, physicians, dentists, home health care companies, billing intermediaries, and other medical providers. These enforcement actions focused on providers that misrepresented the services they provided to the Medicaid program, inflated the costs of their services, provided medically unnecessary services, or violated Medicaid's anti-kickback laws. As a result of its efforts, MFCU initiated and completed approximately 500 investigations, obtained indictments, and secured convictions against corporate and individual defendants.

In the past fiscal year, a great deal of MFCU attention was focused on prescription drug pricing, from two very different perspectives: (1) manufacturer price inflation through average wholesale price (AWP) fraud, kickbacks, and other schemes; and (2) diversion of prescription drugs for non-medical use by physicians and other providers. Much of the work on the first set of investigations is being undertaken with various MFCUs in other states, and the United States Attorney's Office. MFCU has also continued to devote resources to its mission of protecting elders in nursing homes, through prosecution of abusers, investigation of financial fraud by nursing homes and elder care facilities, and coordination with the Department of Public Health's Division of Health Care Quality.

In addition, MFCU investigated physicians and psychiatrists who prescribed controlled substances for non-medical reasons or that were not supported by medical diagnosis or necessity. MFCU investigated dentists and durable medical equipment companies for upcoding and unbundling their services. MFCU also looked at the area of pharmacy chains and pharmaceutical companies that overcharged the Medicaid program and inflated the costs of prescription drugs. In Fiscal Year 2003, MFCU also investigated the relationships between physicians, hospitals, and laboratories to detect illegal referrals, kickbacks, and issues of sub-standard patient care.

SIGNIFICANT CASE SUMMARIES

Consistent with its mission to protect the Medicaid program on a statewide basis, MFCU made extensive use of the Special Grand Jury sitting in Boston, as well as its statutory and regulatory discovery

authority, to obtain indictments and convictions and to recover funds for the Medicaid program well in excess of its budget.

With increased professional training and a multi-disciplinary approach to investigating and prosecuting health care fraud and nursing home abuse, the Massachusetts MFCU is proud to highlight the following significant case activities during this reporting period. These accomplishments represent a sampling of activities during this period and do not reflect all cases handled by the Unit during Fiscal Year 2003.

BILLING FRAUD

- Merrimack Valley MRI Allegations of medically unnecessary documented services. Civil settlement \$278,711. *Muldoon, Casey, Megathlin.*
- Brigham & Women's Anesthesia Voluntary disclosure of Medicaid overpayments involving anesthesia units. Civil settlement \$143,113. *Muldoon, Devlin, Megathlin.*
- Tenet Metro West Healthcare Agreed to pay \$92,000 to settle allegations that their rehabilitation day program exaggerated disability levels of their disabled clients to obtain higher Medicaid payments. Company immediately agreed to institute corrective compliance program. *Clark, Curley, Fielding.*
- Mass. General Anesthesia Association Voluntary disclosure of upcoding of \$268,000 of anesthesia services resulting in a \$1.5 million civil settlement. Problem was more widespread than initially disclosed. *Muldoon, Devlin.*
- Texeira Registered nurse pleaded guilty to falsifying documentation for more than 600 patient visits while working as a psychiatric nurse for Home Health VNA, Inc. The defendant was sentenced to four years probation and 500 hours of community service. The corporation paid full restitution to Medicaid. Suffolk Superior Court. *Pappaioanou, Ackil, Devlin, Casey.*

PHARMACEUTICAL PRICING

- Pfizer, Inc./Parke Davis/Warner Lambert As part of a \$49 million settlement involving 48 state Medicaid programs, Massachusetts Medicaid settled for \$2.2 million to resolve allegations that Parke Davis concealed discounts and grants extended to Ochsner Health Plan, a Louisiana managed care organization, in exchange for Ochsner giving Lipitor preferred formulary status. The false pricing information resulted in the underpayment of rebates to Medicaid. *Patten, Megathlin, Brown.*

- Mylan Pharmaceuticals Inc. Working in cooperation with a multi-state antitrust investigation to review Mylan's deliberate interference with competing pharmaceutical companies to manufacture lorazepam and clorazepate, MFCU investigators recovered \$246,270 in Medicaid program damages. *Messuri, Caruso, Brown.*

ELDER SERVICES

- United States v. Joyce Godbout Operator of adult day care center who was convicted and sentenced for Medicaid fraud pleaded guilty in U.S. District Court for sending 18 anthrax hoax/death threat letters to OAG prosecutors and investigators. *Messuri, Muldoon, Fielding, Curley, Casey.*

MEDICAL EQUIPMENT AND SUPPLY COMPANIES

- LifeScan, Inc. Following a criminal plea by LifeScan, Inc. on charges of marketing a defective device to diabetes patients, LifeScan, Inc. paid 46 state Medicaid programs \$5.1 million and Massachusetts Medicaid \$180,000. The California whistle-blower lawsuit led to a federal criminal investigation in which LifeScan admitted that it had failed to advise consumers of a defect in their blood sugar detection product. *Patten, Megathlin, Brown.*

PHARMACIES

- Maureen Forte Fraud on private insurer by wife of Osco pharmacy technician as part of larger prescription reimbursement scheme. Guilty plea to misdemeanor charge resulted in probation and restitution of \$4,300. Middlesex Superior Court. *Nalven, Muldoon, Brown.*

PHYSICIANS

- Commonwealth v. Kennard Kobrin Fall River psychiatrist was convicted for prescription fraud and ordering medically unnecessary services. Guilty verdict on three counts. Sentenced to probation, suspension of prescribing privileges for two years, 750 hours of community service, and \$11,000 in fines. Potential administrative action by DEA, HHS, and BORIM. Bristol Superior Court. *Clark, Ackil, Messuri, Rokosz, Curley.*
- Corrado DiMartino, MD Internist illegally prescribed and billed Medicaid for fictitious appointments. Guilty plea, one year home confinement, and \$335,000 in penalties and restitution. As part of the sentencing, defendant's license to practice medicine anywhere in the United States was revoked and defendant may not re-apply or practice. *Muldoon, Messuri/Russo, McCarthy.*

NURSING HOMES

- Blaire House Tewksbury nursing home agreed to pay Medicaid \$41,529 to settle allegations that it provided substandard and neglectful care to five of its residents over a several-month

period. Four patients developed painful skin ulcers when care plans were not followed. *Ackil, Devlin, Snow*:

- Franvale Nursing Home Joint settlement agreement with the United States Attorney's Office involving double billing on cost reports for Medicare Part B procedures. Civil settlement \$89,994. *Ackil*.
- Horizon Healthcare Corporation/The Greenery Nursing Home Nursing home provided inadequate levels of skilled nursing services to ventilator-dependent patients. MFCU staff worked in conjunction with consumer protection assistant attorneys' general during their investigation of alleged violations of M.G.L. 93A nursing home regulations. Settlement included \$625,000 in penalties and \$150,000 in restitution to Medicaid for reimbursement of skilled nursing services not provided during the period of neglectful treatment. *Ackil, Curley, Devlin, Snow*.

STATISTICAL SUMMARY

| | |
|---------------------------------------|-------------|
| Health Care Fraud Investigations | 463 |
| Formal Health Care Fraud Cases Opened | 30 |
| Formal Health Care Fraud Cases Closed | 26 |
| Patient Abuse Referrals Reviewed | 685 |
| Patient Abuse Investigations | 33 |
| Formal Patient Abuse Cases Opened | 1 |
| Formal Patient Abuse Cases Closed | 7 |
| Civil Dispositions | 11 |
| Criminal Indictments | 5 |
| Criminal Dispositions | 8 |
| Restitution and Fines Recovered | \$5,517,768 |

OUTREACH, EDUCATION, AND TRAINING

The Massachusetts MFCU is committed to providing its personnel with training and education regarding current techniques and information pertinent to the objectives of the Unit. A substantive in-house training program has been maintained to augment the staff's knowledge regarding administrative and procedural operations.

The MFCU's training directive is consistent with Attorney General Reilly's overall commitment to enhancing the breadth, quality, and professionalism of services provided by the Office of the Attorney General. In addition, assistant attorney generals, investigators, and support staff have participated in training seminars and conferences offered by various state, federal, and national organizations. External training opportunities provide a major vehicle through which the MFCU staff stay abreast of investigative and prosecutorial techniques and developments, and allow for the exchange and discussion of information and ideologies with colleagues from multi-disciplinary perspectives.

MFCU staff made numerous presentations on Medicaid fraud prevention and health care law to outside groups, such as the Healthcare Corporate Compliance Conference; National Association of SURS Officials; Colleges and Universities; and the Medical Payment Systems Association. Staff also gave presentations on elder abuse and attended programs aimed at enhancing prosecution of this heinous crime.

Outreach and education initiatives have served as integral components in maintaining MFCU's high level of efficiency. MFCU staff had regular dealings with the Division of Medical Assistance, which administers the Medicaid program, in connection with a range of issues, including working with the Department of Public Health and the Pharmacy Board in an effort to ameliorate prescription drug abuse, including OxyContin. MFCU also worked with the Department of Mental Health in connection with patient abuse issues. In addition, staff were involved in a drug diversion task force with the Massachusetts State Police and the DEA. MFCU's Director of Investigations continued to lead the Northeast Healthcare Law Enforcement Association's efforts in coordinating joint investigations and training for the Northeast MFCUs. MFCU staff also were actively involved with the Boston office of the FBI on a health care fraud working group.

MFCU staff continued to take advantage of the rich training opportunities available nationwide to health care law enforcement personnel, with several new investigators and lawyers attending multi-day trainings and conferences. Staff also continued to attend in-house programs that targeted such areas as improved courtroom techniques.

During the next fiscal year, Attorney General Reilly will continue to target health care providers that commit Medicaid provider fraud as well as caretakers who abuse and neglect elder and disabled citizens.

CRIMINAL BUREAU

APPELLATE DIVISION

CORRUPTION, FRAUD, AND
COMPUTER CRIME DIVISION

VICTIM/WITNESS ASSISTANCE DIVISION

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

ENVIRONMENTAL CRIMES STRIKE FORCE

CRIMINAL JUSTICE POLICY DIVISION

VICTIM COMPENSATION AND ASSISTANCE DIVISION

FINANCIAL INVESTIGATIONS DIVISION

SAFE NEIGHBORHOOD INITIATIVE DIVISION



CRIMINAL BUREAU

The Attorney General's Criminal Bureau has four broad missions: investigate and prosecute violations of state criminal law, promote effective law enforcement and criminal justice, prevent crime, and provide assistance to crime victims.

The Criminal Bureau is organized into the following 10 divisions, each of which reflects an area of specialization and expertise: Appellate; Corruption, Fraud and Computer Crime; Victim/Witness Assistance; Special Investigations and Narcotics; Environmental Crimes Strike Force; Financial Investigations; Criminal Justice Policy; Safe Neighborhood Initiative; Victim Compensation and Assistance; and State Police Detective Unit.

The Criminal Bureau's staff of experienced State Police detectives, investigators, and assistant attorneys general focus on investigating and prosecuting violations of state criminal law that result in or involve significant economic loss or injury, harm to the environment, misconduct by public employees or elected officials, crimes against public agencies, organized crime, large-scale drug trafficking, complex criminal conspiracies, consumer fraud, and crimes involving computers and other forms of technology. The majority of criminal cases prosecuted by the Criminal Bureau result from investigations conducted by the bureau's 23 State Police detectives, three Environmental Police officers, and seven civilian investigators. Cases are developed through citizen complaints and referrals from other local, state, and federal agencies. During Fiscal Year 2003, the Criminal Bureau received more than 1,700 inquiries and complaints from citizens and other agencies. Additionally, assistant attorneys general in the Criminal Bureau reviewed 126 rendition and extradition requests forwarded to the bureau by the Executive Office of the Governor.

Assistant attorneys general assigned to the Criminal Bureau represent the Commonwealth in criminal prosecutions throughout the state, handle proceedings in state and federal courts challenging criminal convictions, and represent prosecutors, judges, and other state criminal justice employees who are sued in the performance of their duties.

The Criminal Bureau promotes effective law enforcement through its Criminal Justice Policy Division. This division reviews crime data and trends, proposes legislation, participates in training programs for law enforcement officers and other criminal justice professionals, and maintains working relationships with many local, state, and federal criminal justice agencies. Through these working relationships, bureau members regularly convene or participate in multi-agency working groups dealing with criminal justice issues such as anti-terrorism planning, drug and alcohol abuse, court and sentencing reform, prisoner re-entry initiatives, domestic violence, juvenile justice, and child abuse. The Criminal Justice Policy Division also publishes the *Criminal Justice News*, which is widely distributed to local, state, and federal criminal justice professionals.

The Criminal Bureau's Safe Neighborhood Initiative Division promotes crime prevention in communities by fostering partnerships between schools, community groups, prosecutors, police officers, courts, and other criminal justice professionals. Through these partnerships, the division helps communities implement crime prevention programs and other initiatives to prevent and deter involvement in crime, steer those involved in minor criminal offenses into prevention programs, and aggressively prosecute those responsible for crimes that severely impact the community's quality of life. During Fiscal Year 2003, Safe Neighborhood Initiative programs operated in Taunton, Brockton, Lawrence, Methuen, Orange, and the Dorchester and Grove Hall sections of Boston.

An equally important mission of the Criminal Bureau is to provide support to victims of crime. The bureau's Victim Compensation and Assistance Division provides financial support and social services assistance to crime victims and relatives of homicide victims. The division reaches victims and their families through outreach efforts and relationships with police departments, court officials, and social service agencies. During Fiscal Year 2003, the division received more than 1,300 applications for financial assistance from crime victims and their family members, and distributed more than \$4 million to these victims and family members.

The Chief of the Criminal Bureau is Kurt N. Schwartz, and the Deputy Chief is Michele L. Adelman.

The Division Chiefs within the Criminal Bureau during Fiscal Year 2003 were: Appellate Division, William J. Meade and thereafter Cathy Neaves; Corruption, Fraud and Computer Crime Division, John A. Grossman; Victim/Witness Assistance Division, Kathleen Morrissey; Special Investigations and Narcotics Division, William F. Bloomer; Environmental Crimes Strike Force, Paul J. Molloy; Financial Investigations Division, Paul Stewart; Criminal Justice Policy Division, James O'Brien; Victim Compensation and Assistance Division, Cheryl Watson; Safe Neighborhood Initiative Division, Ellen Frank; and State Police Detective Unit, Detective Lieutenant Stephen Matthews.

The Criminal Bureau also had two bureau attorneys during Fiscal Year 2003. Assistant Attorney General Mary A. Phillips served as the bureau's Grand Jury Coordinator, and Assistant Attorney General Beth Meraclnik served as the Senior Litigation Counsel for the bureau.

APPELLATE DIVISION

The Appellate Division handles a wide variety of criminal, federal habeas corpus, state habeas corpus, and other civil cases that impact criminal prosecutions and the criminal justice system. The division's caseload includes appeals and post-conviction matters in criminal cases prosecuted at the trial level by the Attorney General's Criminal Bureau and appeals 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 sued civilly in state or federal court for actions taken during the criminal justice process. The assistant attorneys general in the division defend the constitutionality of criminal statutes, as well as other statutes, court rules, practices, and procedures that concern all aspects of the criminal justice system; represent the interests of prosecutors when subpoenaed to testify or provide documents in federal civil cases; supervise agency staff attorneys handling litigation involving the Department of Correction, the Parole Board, and the Commissioner of Probation; and handle appeals and federal court litigation concerning the Parole Board.

In addition to their casework, division attorneys provide assistance to other Criminal Bureau attorneys on investigations, motions, trials, post-conviction proceedings, and single justice actions, and consult with or assist other bureaus in matters where their criminal justice expertise or perspective is important. 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.

The Appellate Division files approximately 50 appellate briefs per year in the United States Supreme Court, Court of Appeals for the First Circuit, Supreme Judicial Court, and Massachusetts Appeals Court. The division files *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. The division also files in the United States District Court approximately 130 substantive memoranda of law per year in opposition to federal habeas corpus petitions.

The Appellate Division included William Meade, Division Chief; James Arguin; Eva Badway; Annette Benedetto; Olivia Blanchette; Maureen Giacoppo; David Lieber; Dean Mazzone; Cathryn Neaves; and Linda Wagner.

SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Gavin G. Commonwealth's appeal from an order of the district court expunging a juvenile's probation record. On August 12, 2002, the Supreme Judicial Court reversed the district court's order of expungement. Supreme Judicial Court

- John M. McCambridge v. Timothy Hall En banc appeal from First Circuit's grant of a writ of habeas corpus in a 1995 Suffolk County manslaughter conviction. On August 27, 2002, the en banc court reversed the panel's decision and affirmed the district court's denial of the petition seeking a writ of habeas corpus. First Circuit Court of Appeals
- Commonwealth v. Marc Cacchiotti Appeal from conviction in the prosecution of an attorney, by the Attorney General's Office, for various larceny and public integrity crimes. On August 28, 2002, the Appeals Court affirmed the convictions. Massachusetts Appeals Court
- Rashad v. James T. Walsh Appeal from the district court's grant of a writ of habeas corpus in a 1992 Suffolk County rape conviction. On August 14, 2002, the First Circuit reversed the grant of the writ and reinstated the petitioner's conviction. First Circuit Court of Appeals
- Theodore Trigones v. Lynn Bissonnette Appeal from the denial of a habeas corpus petition challenging a 1984 Middlesex County conviction for first-degree murder. On July 10, 2002, the First Circuit affirmed the denial of the writ. First Circuit Court of Appeals
- Sheriff of Suffolk County v. Pires Appeal on a reservation and report of a G.L. c. 211, § 3 petition filed by the Office of the Attorney General on behalf of the sheriff to challenge the use of state habeas corpus as a mechanism to review bail revocation orders. On November 5, 2002, the court held that state habeas corpus could not be so used, and vacated the judgment of the Superior Court granting the petition. Supreme Judicial Court
- James Lattimore v. Larry DuBois Appeal from district court's grant of a writ of habeas corpus in a 1983 Suffolk County murder conviction. On November 14, 2002, the First Circuit reversed the grant of the writ and reinstated the petitioner's conviction. First Circuit Court of Appeals
- Francesco Campiti v. James Matesanz (First Circuit) Appeal from district court's denial of petition for writ of habeas corpus in 1989 Hampden County convictions for trafficking in cocaine. On June 27, 2003, the First Circuit affirmed the district court's denial of the petition.
- Charles Fryar v. Lynn Bissonnette Appeal from denial of federal habeas petition challenging petitioner's Hampden County first-degree murder conviction. On February 5, 2003, the First Circuit affirmed the denial of the petition. First Circuit Court of Appeals

- Arthur Jackson v. William Coalter Appeal from denial of federal habeas corpus petition challenging 1998 Suffolk County conviction for armed robbery. On July 28, 2003, the First Circuit affirmed denial of the petition. First Circuit Court of Appeals
- James Rodwell v. Peter A. Pepe, Jr. Appeal from district court's determination that petitioner's Rule 60(b) motion constituted a second and successive petition. On April 1, 2003, the First Circuit affirmed the district court's determination. First Circuit Court of Appeals
- Paul F. Walsh, Jr. v. Dortch-Okara, et al. Petition under G.L. c. 211, § 3 by the District Attorney, reported to the full court for administrative consideration, seeking an order to immediately establish a second criminal session in Bristol County to try a particular criminal case, and to maintain that session on a monthly basis. On July 19, 2002, the court released an unpublished memorandum and order denying the petition, finding that the District Attorney failed to make an adequate showing to support his requests, and that the judges had not abused their discretion in the assignment process. Supreme Judicial Court

STATISTICAL SUMMARY

| | CASES OPENED | CASES DISPOSED | TOTAL CASES HANDLED |
|---|-----------------|-------------------|---------------------|
| Federal Habeas | 153 | 244 | 469 |
| Federal Civil | 20 | 32 | 57 |
| State Civil | 15 | 52 | 86 |
| State Habeas | 12 | 34 | 51 |
| Criminal | 26 | 53 | 90 |
| 211 § 3 and Other Single Justice Cases | 12 | 17 | 30 |
| TOTAL | 238 | 432 | 783 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to the large caseload handled by the division, the division was involved in a number of significant initiatives. Among these efforts were the following:

- Elder Task Force
- Clerk, American Middle Eastern Lawyers Association
- Volunteer Reader, Paul McLaughlin Center
- Council Member, Criminal Justice Section Council of Massachusetts Bar Association
- Panelist, Clerks' Seminar Series, Administrative Office of the Trial Court

OUTREACH, EDUCATION, AND TRAINING

The Appellate Division devoted a substantial amount of energy and resources to training and outreach. These efforts included the following:

- Massachusetts District Attorneys Association Conference
- Commonwealth Appellate Attorneys Action Project
- Lecturer and Clinical Coordinator at Harvard Law School
- Comments Editor, Massachusetts Law Review
- Associate Editor, Massachusetts Law Review
- National Advocacy Center, Training on Appellate Advocacy
- National Advocacy Center, Training on International Rendition/Extradition
- Governor's Commission on Sexual and Domestic Violence
- Attorney General Representative on the Massachusetts Citizen Corps Council
- Tutor, Paul McLaughlin Center
- Co-chair, BBO's September 11th Victim Compensation Fund Committee
- Committee Member, Regaining One's Self-Esteem (violence prevention organization)

CORRUPTION, FRAUD, AND COMPUTER CRIME DIVISION

The mission of the Corruption, Fraud and Computer Crime Division (CFCC) is to assure that individuals who reside and work and businesses that are run in the Commonwealth and choose to “play by the rules” are protected. Accordingly, the division focuses on:

- “Corporate Community Prosecution,” responding to the priorities of the corporate community, primarily by addressing cases of insider theft, computer intrusions, and theft of intellectual property;
- High Priority Consumer Protection Cases, such as (a) fiduciary embezzlement—particularly those targeting the elderly, (b) Internet crimes—particularly those targeting children, and (c) immigration cons and other multi-victim swindles; and
- Public Corruption Cases, whether they involve officials betraying the public trust or companies and individuals stealing from the government.

Additionally, CFCC handles cases that involve threats to the public order, whether related to domestic terrorism or less-organized attempts to commit crime against the Commonwealth.

In addition to investigating and prosecuting criminal cases, CFCC consults with and provides training to other law enforcement agencies; is involved in corporate associations and other public education efforts that promote the prevention of and, failing that, efficient response to, white-collar and computer crime; and drafts and sponsors legislation where the current statutes fall short.

CFCC included the following staff members at year-end: John Grossman, Division Chief; Jennifer Austin and Lillian Cox, support staff; Kathy Chen, Eric Hightower, Dana Leccese, Madeline Leone, Phillip McGovern, and Molly Parks, Assistant Attorneys General; and Eric Lundberg, Computer Forensic Specialist. A significant number of CFCC’s cases were handled by the Criminal Bureau’s representative in Western Massachusetts, Assistant Attorney General Matt Shea, and by Senior Trial Counsel Beth Merachnik. The cases, however, were in no way pursued alone; CFCC worked as an integrated team with the members of the Financial Investigations Division, the State Police High Tech Unit, the State Police White Collar and Public Corruption Unit, and the Victim/Witness Assistance Division. On various occasions, CFCC also collaborated with the Criminal Investigation Bureau of the Department of Revenue, the Criminal Investigations Division of the Office of the Inspector General, the State Auditor, and a number of federal and local law enforcement agencies.

SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Gaspard Francois (Suffolk Superior Court) This defendant targeted working immigrants, who hoped to expedite their applications with the INS, by posing as an Immigration official, and milked his victims for thousands of dollars. On several occasions, when his victims questioned him, he threatened to have them deported. He pleaded guilty to multiple counts of larceny and is now serving two to three years in state prison.
- Commonwealth v. Jeffrey Walls (Essex County Superior Court) We began an investigation of the defendant based on information that he had downloaded child pornography to his work computer. During the course of the investigation, the team discovered that the defendant had sexually assaulted a young boy on numerous occasions between the victim's fifth and eighth birthdays. State Police also identified a second young boy whom the defendant also sexually assaulted on several occasions. The defendant pleaded guilty to rape of a child, indecent assault and battery on a child, and possession of child pornography. He is now serving five to six years in state prison.
- Commonwealth v. Robert Whitty (Barnstable Superior Court) For many years, Whitty was the Town Assessor in Barnstable. A routine audit of the town's computer system revealed that he had stored child pornography on his network share. Citing our expertise in the area, and the high profile of the target, the Barnstable Police requested our assistance. Our investigation showed that Whitty was operating Internet chat rooms devoted to the trading of child pornography from his home and work computers. He pleaded guilty to dissemination and possession of child pornography and dissemination of obscene material, and received a sentence of two and one half years in the House of Correction, with six months to serve, and the balance suspended for 10 years.
- Commonwealth v. Nancy Jane McDonald (Cambridge District Court) At the height of the anthrax mailings in the fall of 2001, ENDECA, a Cambridge-based high-tech business, received a number of anthrax-related threats through their Web site. On Friday, October 19, 2001, the victim contacted the Office of the Attorney General. By that evening, we had identified the source of the threats, executed a search warrant, and seized a computer. On Tuesday, October 23, 2001, Nancy Jane McDonald surrendered herself to the Cambridge District Court to face charges of threats to commit a crime and assault. On April 9, 2003, after the Commonwealth answered ready for trial, she pleaded guilty to making threats to commit a crime, was placed on probation for two years, and was ordered to perform 40 hours of community service.

- Commonwealth v. Bruce Hollis This case began as an investigation of a relatively minor harassment case that we took on because the target was using a technology — Voiceover IP (the Internet) — that few, if any, other local law enforcement agencies have the capacity to deal with, and we saw it as an opportunity to learn the technology — a goal we reached by arranging a briefing from the experts at Genuity. We did not expect a significant public safety impact. Because of the outstanding work by the prosecution team, however, we learned that Hollis was an incorrigible harasser with multiple victims, who continued his behavior even after being placed on probation by the Court. As a result, he was sentenced to 14 months committed at the House of Correction, concurrent with a six-month sentence that had originally been continued without a finding. Quincy District Court
- Commonwealth v. John J. Wilbur and Commonwealth v. Luis Vasquez Wilbur and Vasquez each filed multiple false tax returns — 30 and 107 respectively — with the Commonwealth, and as a result of their fraudulent conduct, received substantial refunds that they were not entitled to — over \$40,000 and \$70,000, respectively. They each pleaded guilty. Vasquez received a sentence of two and one half years in the House of Correction, with nine months to serve, and the balance suspended for three years. Wilbur received a sentence of two and one half years in the House of Correction, with three months to serve, and the balance suspended for three years. Each was ordered to pay restitution. Suffolk Superior Court
- Commonwealth v. Tina Ross and Commonwealth v. Sonya Grant Ross, a Trial Court employee, and Grant, a Department of Probation employee, each pleaded guilty to bribery and CORI violations for using their positions to access and sell confidential criminal record information to a private investigation firm. Each received a sentence of two years in the House of Correction, suspended for two years, and Grant paid a \$1,250 fine, and Ross paid a \$2,500 fine. Suffolk Superior Court
- Commonwealth v. Douglas Boudreau Boudreau, at one time a Boston College (B.C.) senior, pleaded guilty to wiretap violations, unauthorized access to computer systems, breaking and entering to commit a felony, larceny over \$250, and other charges in connection with his scheme to place secret keystroke logging software on over 200 computers around the B.C. campus. This software would allow him to gather personal information from over 5,000 members of the community, and then to use some of that data to burgle B.C. buildings to further his scheme, to attempt to change his grades, and to steal from the B.C. bookstore by using stolen identities. Boudreau was placed on probation for five years and was ordered to pay restitution and attend counseling. Middlesex Superior Court

- Commonwealth v. Lauren Gazzola, et al. In the early part of the year, we began an investigation of a campaign of fear against a Back Bay family orchestrated by an extremist animal rights group known as SHAC (Stop Huntington Animal Cruelty). We allege that they targeted the family in question because one of its members happened to work for a company that brokered insurance to Huntington (an animal testing lab). The investigation led to indictments against 10 individuals and a complaint in juvenile court against an 11th for charges ranging from extortion to threats to commit a crime. Our prosecution is emblematic of the corporate community prosecution model that CFCC strives to pursue. We learned of a significant problem that was affecting a member of the community and were able to act rapidly, aggressively, and responsibly to protect the community, and to do so working cooperatively with various law enforcement representatives (our State Police department, State Police's Criminal Intelligence Section, and the FBI) and the private sector. These cases are now scheduled for trial. Suffolk Superior Court, and Boston Juvenile Court
- Commonwealth v. Barry A. Tobins Barry Tobins was charged with two counts of willful failure to pay state income tax returns and three counts of willful failure to file state income tax returns for failing to pay taxes on the substantial income he received annually from an off-shore family trust. He pleaded guilty and was sentenced to five years of probation and ordered to pay a fine of \$25,000 or provide 1,000 hours of community service. He also agreed to work with the Department of Revenue (DOR) to resolve his outstanding tax liabilities. Suffolk Superior Court
- Commonwealth v. James Pallone Pallone pleaded guilty on the day of trial to conning 12 people in an unusually brazen case of home improvement contractor fraud. He was placed on probation for five years, was banned from running a home improvement business, was ordered to pay restitution, and perform 50 hours of community service. Middlesex Superior Court
- Commonwealth v. Stephen Holt Holt pleaded guilty to embezzling over \$2 million from his employer to finance day-trading losses. Due to outstanding sentencing advocacy on the part of the prosecution team, Holt received an unusually stiff (and appropriate) sentence for a white-collar crime adjudicated in state court: three to five years in state prison, followed by 10 years on probation during which time he is to pay restitution. Suffolk Superior Court

STATISTICAL SUMMARY

During Fiscal Year 2003, CFCC charged 36 individuals with various crimes, including stalking, rape of a child, larceny over \$250, unauthorized access (computer hacking), identity fraud, criminal harassment, making false entries in corporate books, and dissemination of child pornography. Twenty-six people pleaded guilty or otherwise admitted to sufficient facts in Superior or District Courts across the Commonwealth.¹ Twelve of these defendants were ordered to serve time in state prison or in a county House of Correction. Additionally, these defendants have been ordered to pay in excess of \$2.5 million in restitution, and nearly \$35,000 in fines. CFCC prosecutors also worked on cases outside of the division. For example, two prosecutors devoted a substantial amount of time to the investigation of the Roman Catholic Archdiocese of Boston.

The following chart summarizes the case referrals that CFCC screened for possible investigation and prosecution during Fiscal Year 2003, and the number of those referrals that matured into formal investigations. When a case fell into more than one category, we tried to place it based on the prospective lead charge.

| CASE DESCRIPTION | NUMBER OF REFERRALS | NUMBER OF CASES OPENED |
|--|------------------------|---------------------------|
| Auction/Internet Fraud (not from IFCC) | 25 | 5 |
| Auction/Internet Fraud (from IFCC) ² | 133 | 2 |

¹Some of the cases charged this year remain pending, just as some of the cases resolved this year were charged previously.

²The Internet Fraud Complaint Center (IFCC) is a joint project of the National White Collar Crime Center (of which the Office of the Attorney General is a member) and the FBI that seeks to consolidate all Internet fraud complaints in one database. IFCC refers to CFCC every complaint (a) that concerns a Massachusetts target or is received from a Massachusetts victim; and (b) where the dollar amount in aggregate is over \$10,000 or there are more than three victims. CFCC then screens the referrals and targets the most compelling cases, most of which involve targets in the Commonwealth who have defrauded a substantial number of people. Other cases are referred for review by the Public Protection Bureau's Consumer Protection Division.

| | | |
|--------------------------------------|------------|-----------|
| Child Exploitation | 37 | 17 |
| Computer Intrusions/Hacking | 42 | 15 |
| Purchase of Explosives/Illegal Goods | 5 | 2 |
| Threats/Harassment | 17 | 6 |
| Spam | 10 | 0 |
| Miscellaneous | 9 | 4 |
| Forensics Assistance | 6 | N/A |
| Legal Advice or Assistance | 16 | N/A |
| TOTAL | 300 | 51 |

ECONOMIC CRIME

| CASE DESCRIPTION | NUMBER OF REFERRALS | NUMBER OF CASES OPENED |
|------------------------------------|---------------------|------------------------|
| Fiduciary and Insider Embezzlement | 33 | 12 |
| Home Improvement Fraud | 12 | 3 |
| Identity Fraud | 40 | 1 |
| Immigration Fraud | 6 | 4 |
| Securities Fraud | 10 | 6 |
| Other Consumer Fraud | 88 | 16 |
| Other Larcenous Schemes | 41 | 10 |

| | | |
|--|-----|-----|
| Theft of Trade Secrets or Other Intellectual Property | 13 | 3 |
| Miscellaneous | 1 | 0 |
| Legal Advice or Assistance | 2 | N/A |
| <hr/> | | |
| TOTAL | 246 | 55 |

PUBLIC CORRUPTION

| CASE DESCRIPTION | NUMBER OF REFERRALS | NUMBER OF CASES OPENED |
|--|------------------------|---------------------------|
| State Employee Corruption | 29 | 13 |
| Municipal Employee Corruption | 55 | 15 |
| Procurement Fraud and Other Theft from the Commonwealth | 13 | 8 |
| Perjury | 8 | 4 |
| Tax Fraud | 14 | 8 |
| Miscellaneous | 13 | 3 |
| Legal Advice or Assistance | 10 | N/A |
| Auditor's Reports and Ethics Notifications Reviewed | 24 | 0 |
| <hr/> | | |
| TOTAL | 166 | 51 |

MISCELLANEOUS MATTERS

| CASE DESCRIPTION | NUMBER OF REFERRALS | NUMBER OF CASES OPENED |
|-----------------------------|---------------------|------------------------|
| Other Crimes | 24 | 4 |
| Legal Advice or Assistance | 7 | N/A |
| TOTAL | 31 | 4 |
| CFCC FISCAL YEAR 2003 TOTAL | 743 | 161 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division has historically been involved in encouraging and coordinating efforts between the public and private sectors to promote Internet and computer security. In Fiscal Year 2003, together with the Consumer Protection and Antitrust Division of the Public Protection Bureau, Bentley's McCallum School of Business, and the Massachusetts Software and Internet Council, we convened a highly successful conference that representatives from law enforcement, industry, academia, and consumer advocacy groups attended to consider how to better secure "the weak link in cyberspace" — small business and home Internet users. Additionally, division members continued to play a leadership role with Infragard Boston — the FBI's public/private cybersecurity outreach program — the Anti-Terrorism Task Force's Public/Private Working Group, and the Secret Service's New England Electronic Crimes Task Force. The division chief also was asked to speak at a town hall meeting convened at MIT by the White House's Critical Infrastructure Protection Board to talk about the Draft National Strategy to Secure Cyberspace. Also on the panel of three were Richard Clark, the Chairman of the Critical Infrastructure Protection Board, and the President's advisor on cybersecurity.

We also have made a major commitment to prosecuting computer crime that targets children by formalizing our relationship with the state's Internet Crimes Against Children (ICAC) Task Force and appointing our first dedicated ICAC prosecutor. This assistant attorney general will spend a significant amount of her time on outreach and training in the field, both inside the Commonwealth and throughout the country, as well as on providing legal advice to the Task Force and prosecuting cases.

In the areas of public corruption, we have worked hard to maintain and renew relationships with other agencies working in similar areas, and now have regular meetings with the Office of the State Auditor, the Inspector General, and the State Ethics Commission. Additionally, in a cross of our focus on both public corruption and computer crime, at the suggestion of CFCC, the Enterprise Security Board of the State's Information Technology Department (ITD) has passed a policy requiring all users of the state network (the largest in the Commonwealth) to report criminal or other inappropriate use of the network to ITD, which will in turn alert CFCC.

Finally, CFCC prosecutors worked closely with staff from the Executive Bureau to research, draft, and/or promote various legislative changes. The changes included amendments to the administrative subpoena and search warrant statutes that would assure that local law enforcement has the tools to protect its constituencies from computer crime and money-laundering legislation.

OUTREACH, EDUCATION, AND TRAINING

In addition to the cases that we investigated and prosecuted within CFCC, the division assisted other divisions within the Office of the Attorney General and District Attorneys' Offices in over 41 separate matters. In some cases, this assistance consisted of legal advice and reviewing search warrants, and in others, it was performing computer forensics. As the capacity for computer forensics grows throughout the Commonwealth, the number of times we are asked to assist in other people's cases has decreased. This decrease allows us to devote more energy to developing cases of our own and reflects a positive trend in Massachusetts law enforcement that is, at least in part, attributable to our outreach and training efforts.

CFCC also devoted a substantial amount energy and resources to more formal training and outreach efforts, particularly in the area of computer crime. These efforts allow us to leverage our relatively limited resources to: (a) teach people and institutions to avoid becoming victims of high-tech crimes; and (b) where we cannot prevent the crimes from happening, assure them that law enforcement has the capacity to respond.

Among the highlights in this area over the last year were:

- Participation in a number of law enforcement training conferences focused on computer crime that were sponsored by various entities, including the High Tech Criminal Investigators Association, the Northwest District Attorney's Office, and the National Association of Attorneys General (NAAG);

- Safe and Ethical Internet Use presentations made at schools around the Commonwealth to students, parents, and educators; and
- Trainings within the Office of the Attorney General on fraud targeting elders.

We also participated in various programs to ensure that we remain current in the dynamic field of computer crime, including NAAG classes, seminars sponsored by the National Center for Missing and Exploited Children, and computer forensics training.

VICTIM/WITNESS ASSISTANCE DIVISION

The Victim/Witness Assistance Division (VWAD) of the Attorney General's Criminal Bureau was developed to meet the following goals: (1) to provide crisis assessment and intervention to crime victims and witnesses to facilitate their emotional, psychological, physical, and financial recovery from victimization; (2) to reduce the level of secondary victimization associated with victims' and witnesses' involvement in the criminal justice system and other collateral systems; and (3) to aid in the prosecution of criminal cases by ensuring that crime victims and witnesses are provided with the rights and services mandated by the Victim Rights Law (G.L. c. 258B). Advocates provide victim advocacy and witness management services to the following divisions in the Criminal Bureau: Appellate; Corruption, Fraud, and Computer Crime; Criminal Justice Policy; Environmental Crimes Strike Force; Financial Investigations; Special Investigations and Narcotics; and the State Police Detective Unit.

Advocates are occasionally assigned to prosecutions in other bureaus of the Office when the prosecutor identifies the need for victim/witness services. The nature of these cases varies depending on the referral source. Advocates also provide victim/witness coverage on conflict cases referred to the Office by the 11 District Attorneys' Offices across the Commonwealth. These referrals typically involve cases of violent crime. The Victim/Witness Assistance Division, in an effort to build community partnerships and to address victim issues identified as mandated priorities of Attorney General Tom Reilly, participates in a number of initiatives relating to children, safety in our schools, elders, fraud, health care, high-tech and computer crime, domestic violence, diversity, and curative legislation.

During Fiscal Year 2003, VWAD staff included Kathy Morrissey, Director; and Kelly McDonough, Victim/Witness Advocate.

SIGNIFICANT CASE SUMMARIES

Six cases of particular note illustrate work in priority areas set by Attorney General Tom Reilly: consumer protection, guns, high-tech and computer crime, identity theft, and immigrant outreach.

- Commonwealth v. James Pallone (Corruption, Fraud, and Computer Crime Division) In April 2002, the defendant, James Pallone, was indicted and subsequently arraigned on 36 criminal violations of the Home Improvement Contractors Act. Pallone, despite not being licensed as a home improvement contractor, had provided either one service or partial service to over 30 identified victims. Indictments were returned relating to 12 victims. His victims paid him over \$100,000. Throughout the pendency of the case, Pallone repeatedly, though unsuccessfully, sought bankruptcy protection in order to avoid creditors.

On May 5, 2003, Pallone pleaded guilty before Judge Elizabeth Donovan in Middlesex Superior Court to the following 36 criminal violations of the Home Improvement Contractors Act: (1) Operating as an Unlicensed Home Improvement Contractor (12 counts); (2) Taking Excess Deposits on Home Improvement Contracts (12 counts); and (3) Failing to Specify Starting and Completion Dates on Home Improvement Contracts (12 counts). Judge Donovan sentenced the defendant to five years of probation. Additionally, Judge Donovan ordered the defendant to pay restitution to six of the 12 victims in the amount of \$14,100 within the first year of his term of probation. Special conditions of probation included that the defendant: (1) have no direct or indirect contact with the victims; (2) obtain Home Improvement Contractors certification per M.G.L. c. 142A (19); (3) not solicit or perform any work requiring a Construction Supervisor's license; (4) not solicit or perform any home improvement work without Home Improvement Contractors certification; (5) submit all Home Improvement Contractors contracts to the chief administrator of the Board of Building Regulations and Standards; (6) complete 250 hours of community service over the five-year probationary period (50 hours per year); and (7) pay a \$90 Victim/Witness Assessment Fee.

The advocate was assigned to the Pallone case in June 2001. Throughout the pendency of the investigation and the trial process, the advocate provided victim advocacy, witness management, and ongoing notification of case updates to over 30 victims (12 of whose cases were eventually indicted), including many elder victims, as well as court accompaniment at the time of the defendant's change of plea. The advocate, together with the prosecution team, conducted many one-on-one meetings with the victims and assisted them with the completion of Victim Impact Statements, many of which were read in court at the time of sentencing. Following disposition, the advocate assisted several victims with creditor intercession and provided post-conviction consultation with the probation department regarding restitution.

- Commonwealth v. Noel Roberts (Corruption, Fraud and Computer Crime Division) The defendant, Noel Roberts, ran Freedom Trails Travel Group, a non-profit organization in Amesbury, Massachusetts, which marketed and organized sober trips for recovering alcoholics. In late 2001 and early 2002, Roberts (Freedom Trail Travel Group) advertised a cruise to Bermuda on his Web site and accepted payment of approximately \$1,000 each from over 100 victims. Roberts paid \$45,000 to National Leisure Group, the agency that booked the cruise, and then failed to pay the remaining amount of \$57,000 due to the agency. Roberts converted this money to his personal use. As a result, the victims were not able to attend the Bermuda cruise and forfeited their payments. While Roberts embezzled at least \$57,000, his victims lost over \$100,000 collectively.

On his Web site, Roberts also advertised a trip to Hawaii which was scheduled for November 2002 and a trip to Disney which was scheduled for January 2003.

On October 18, 2002, the defendant, Noel Roberts, pleaded guilty to one count of Larceny over \$250 by a continuous scheme. The defendant was sentenced to one year in the House of Correction, three months to serve, the balance suspended for three years. As conditions of his probation, Roberts was ordered to pay restitution in the amount of \$78,479.70, to the victims and to attend Alcoholics Anonymous or Narcotics Anonymous five times a week. The defendant also was ordered to remove all references to trips from his Web site, www.freedomtrails.com, and to pursue no employment in the travel industry.

The advocate was assigned to the Roberts case to provide victim advocacy and witness management.

- Commonwealth v. Philip O'Neill and Commonwealth v. Kevin O'Neill (Special Investigations and Narcotics Division) The above-captioned defendants were arrested as a result of an undercover investigation of numerous OxyContin robberies by a nine-plus member ring operated out of Charlestown, Massachusetts. The investigation was led by the Massachusetts State Police Narcotics Unit in the Office of the Attorney General.

On January 30, 2003, the defendants, Philip O'Neill and Kevin O'Neill, pleaded guilty before Judge Catherine White in Middlesex Superior Court.

Philip O'Neill pleaded guilty to the following charges: (1) Armed Robbery while Masked; (2) Conspiracy to Commit Armed Robbery while Masked (2 counts); (3) Attempt to Commit Armed Robbery while Masked; (4) Unlawful Possession of a Firearm; (5) Possession of an Assault Weapon; (6) Possession of a Large Capacity Weapon; (7) Possession of a Large Capacity Feeding Device; (8) Assault with a Deadly Weapon; (9) Trafficking of Opium Derivative; and (10) Conspiracy to Commit Trafficking.

Judge White sentenced Philip O'Neill to a State Prison term of 10 to 12 years with three years of probation from and after the term of incarceration. Judge White also ordered the defendant to pay a \$90 Victim Witness Assessment Fee.

Kevin O'Neill pleaded guilty to the following charges: (1) Conspiracy to Commit Armed Robbery while Masked; (2) Attempt to Commit Armed Robbery while Masked; (3) Larceny of a Motor Vehicle; (4) Unlawful Possession of a Firearm; (5) Possession of Ammunition without Firearms Identification; (6) Possession of an Assault Weapon; (7) Possession of a Large Capacity Weapon; (8) Possession of a Large Capacity Feeding Device; and (9) Obliterated Serial Number. Judge White sentenced Kevin O'Neill to a state prison term of three to five years with three years of probation from and after the term of incarceration. Judge White also ordered the defendant to pay a \$90 Victim Witness Assessment Fee.

The advocate assigned to the O'Neill cases provided victim assistance and witness management to the numerous victims and witnesses present during the commission of the robberies. The advocate, along with the Massachusetts State Police, conducted many in-person meetings with the victims (pharmacy employees and customers) to discuss the status of the case and to address safety concerns. In particular, the advocate assisted two originally reluctant victims, a customer of the pharmacy and her 12-year-old son, both of whom were present during the robbery and were threatened with a gun by one of the defendants. The advocate provided counseling referrals and notification regarding case updates. The advocate also provided notification of disposition and post-conviction follow-up.

- Commonwealth v. Nancy Jane McDonald (Corruption, Fraud and Computer Crime Division) In October 2001, the defendant, Nancy Jane McDonald, was arraigned in Cambridge District Court and charged with Threatening to Commit a Crime relating to messages she left on her former employer's Web site. The messages included several references to the Taliban and the World Trade Center attacks and also threatened the lives of the employer and several of his employees with the use of anthrax.

On April 9, 2003, McDonald pleaded guilty before Judge Brian Merrick in Cambridge District Court to Threatening to Commit a Crime. Judge Merrick sentenced the defendant to two years of probation. Special conditions of probation included that the defendant complete 20 weeks of anger management counseling and perform 40 hours of community service. Additionally, Judge Merrick ordered the defendant to pay a \$60 Victim Witness Assessment Fee.

This case was sensitive in nature in the wake of the September 11th terrorist attacks and the heightened sense of fear and alarm across the nation due to the ongoing threats of future terrorist attacks and biological warfare attacks. The advocate assigned to the McDonald case provided victim advocacy and witness

management to the former co-workers of the defendant, whose threatening actions compromised the former co-workers' perception of safety, both in and out of the workplace. The advocate provided support and ongoing notification of case updates to the victims and witnesses.

- Commonwealth v. John Driscoll (Corruption, Fraud and Computer Crime Division) The defendant, John Driscoll, a former State House employee, created online profiles of the victim, a former co-worker of Driscoll's, using several different computers. The online profiles contained the victim's full name, age, and address. The profiles also portrayed the victim as being interested in older men and couples, and included an option users could click on to contact the victim at her legitimate e-mail address. As a result of the defendant's actions, the victim was inundated with sexually explicit e-mails and telephone calls.

The advocate assigned to the Driscoll case provided victim assistance to the victim, whose perception of safety was compromised as a result of Driscoll's actions. The advocate provided numerous services, including: multiple conference telephone calls with the prosecution team to help alleviate the victim's fears and concerns, counseling referrals, creditor intercession as a result of the identity theft, and ongoing notification of the case status.

- Commonwealth v. Gaspard Francois (Corruption, Fraud and Computer Crime Division) On May 13, 2003, the defendant, Gaspard Francois, pleaded guilty to five counts of Larceny over \$250, before Judge Regina Quinlan in Suffolk Superior Court. Francois stole \$26,578 from five recent immigrants by telling them that he was somehow employed by or connected with INS and promising to expedite their applications for green cards. He persuaded his victims to produce money by manufacturing fraudulent INS documents, and if they questioned him, he would explicitly or implicitly threaten to use his power to have them deported.

On June 2, 2003, Judge Nonie Burns sentenced the defendant to two to three years of State Prison, committed. A \$90 Victim Witness Assessment Fee was also imposed.

The advocate was assigned to the Francois case to provide victim advocacy to five especially vulnerable illegal aliens from Costa Rica. Due to the nature of the crime, the critical task early on was to build a relationship with the victims because they mistrusted the government. For many of the victims, English was their second language. The services that the advocate provided included: arranging for interpreter services; ongoing case notification; crisis counseling; accompaniment during trial preparation; guidance during the completion of victim impact statements; court accompaniment; and accompaniment at the Attorney General's press conference immediately following sentencing. This was a significant case given the defendant's decidedly egregious behavior perpetuated on exquisitely vulnerable victims.

STATISTICAL SUMMARY

In Fiscal Year 2003 the Victim/Witness Assistance Division provided services to a high volume of victims and witnesses. Victim advocacy and witness management services were provided by the victim/witness advocates on 63 cases across the Commonwealth. The case breakdown is as follows:

| REFERRAL SOURCE | NUMBER OF CASES |
|---|-----------------|
| Appeals Division | 4 |
| Corruption, Fraud and Computer Crime Division | 39 |
| Environmental Crimes Strike Force | 2 |
| Special Investigations and Narcotics Division | 14 |
| Conflict Cases | 4 |
| TOTAL | 63 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2003, members of the division were involved in significant activities and initiatives in an effort to respond to issues of critical import.

The VWAD Director participated as a panelist at the First Annual Victim/Witness Advocate Conference at Bentley College, Waltham, Massachusetts. The director collaborated with the Parole Board and the Suffolk District Attorney's Office on a panel titled "Dealing with the Past in the Present: New Challenges for Survivors and Their Advocates." The panel was designed to engage advocates to think about all of the issues involved when reaching out to victims/survivors years later in light of DNA hits, cold cases, and federal habeas corpus cases.

The VWAD Director attended the Massachusetts Office for Victim Assistance's planning meeting for the 2003 Victim Rights Conference and also attended the International Women's Day Leadership Breakfast at Simmons College, Boston, Massachusetts.

On the heels of the clergy abuse scandal, the division provided ongoing consultation to calls from survivors of clergy abuse. The division coordinated with the Massachusetts Office of Victim Assistance, each of the 11 District Attorneys' Offices, and collateral service providers to identify resources and referrals. The division also provided ongoing in-house consultation to prosecutors, investigators, and State Troopers by screening and responding to duty calls and correspondence from the public when victim/witness issues were identified.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2003, the division's advocates maintained numerous outreach efforts in community activities, and both taught and attended training classes inside and outside of the Office of the Attorney General, including:

- Attending bi-monthly meetings of the Victim and Witness Assistance Board chaired by Attorney General Tom Reilly;
- Attending regular meetings for statewide Victim/Witness Directors sponsored by the Massachusetts District Attorneys Association;
- Serving as the Attorney General Liaison at bi-monthly meetings of the Boston Area Sexual Assault Coalition at Massachusetts General Hospital;
- Continuing to provide telephone consultation to clergy abuse survivors;
- Attending the Annual Victim Rights Conference in April 2003, sponsored by the Massachusetts Office for Victim Assistance, the Victim and Witness Assistance Board, Attorney General Tom Reilly, and the Massachusetts District Attorneys Association;
- Attending and participating as a panelist at the First Annual Victim/Witness Advocate Conference, Bentley College, Waltham, Massachusetts;
- Attending 18 educational training seminars across the Commonwealth relating to victim/witness issues; and
- Conducting training related to the implementation of the Victim Rights Law and the role of the Victim/Witness Assistance Division to the Criminal Bureau summer interns.

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

The Special Investigations and Narcotics (SI&N) Division coordinates and prosecutes a variety of complex, multi-jurisdictional criminal cases. The division also proactively investigates traditional criminal enterprises, including so-called organized crime families, and large-scale drug trafficking organizations, as well as non-traditional criminal organizations such as street gangs and armed robbery rings. A priority of the division is to identify and prosecute individuals and groups involved in the illegal sale or possession of firearms. SI&N prosecutors are also responsible for providing assistance in the drafting of legislation pertaining to electronic surveillance, racketeering and corruption, narcotics, firearms, and child protection. Division members are encouraged to participate in the conception 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 as well as gaming violations. Funds recovered by the Unit are distributed in accordance with the Commonwealth's forfeiture laws.

Among the general categories of crimes the SI&N Division investigated and/or prosecuted during Fiscal Year 2003 were the following: armed robbery, narcotics trafficking and related offenses, armed career criminal violations, perjury, armed assault with intent to murder, theft of controlled substances, larceny of motor vehicles, larceny of construction equipment, gaming, extortion and loan-sharking, habitual criminal offenders, and a variety of conflict cases from District Attorneys' Offices across the state.

Attorneys, State Police Officers, and investigators assigned to the SI&N Division also continued to work with and provide technical, legal, and other forms of investigative support and assistance to federal, state, and local law enforcement agencies. These agencies included the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, the Suffolk County Sheriff's Department, the Department of Corrections, District Attorneys' Offices, and various state and local police departments and task forces throughout the Commonwealth, and in some circumstances across the country. These joint undertakings included investigations of large-scale drug distribution and money laundering organizations, organized larceny rings, and armed career criminals.

Members of the division for all or part of Fiscal Year 2003 included Assistant Attorney General William F. Bloomer, Chief; Kelly Burns; Alope Chakravarty; Carole Conley; Joanna Kennefick; Alexandra Moffatt; Eileen O'Brien; Peter Paulousky; Mary P. Phillips; Peter Russell; and Matthew Shea (Western Massachusetts Division). Approximately 10 Massachusetts State Troopers are assigned to the SI&N

Division within the Office of the Attorney General. During Fiscal Year 2003, Detective Lieutenant Stephen Matthews oversaw the command of all State Police Detectives assigned to the Office of the Attorney General including SI&N Troopers. Lieutenant Francis Matthews, with Sergeant Richard Prior, formed the central core of the remaining command structure for SI&N Troopers.

SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Anthony Rizzo (Suffolk and Middlesex Superior Courts); Commonwealth v. Anthony Cardillo (Suffolk and Middlesex Superior Courts); Commonwealth v. Paulo Tizzano (Suffolk Superior Court); Commonwealth v. Pasquale Regnetta (Suffolk Superior Court); Commonwealth v. Richard Moretto (Suffolk and Middlesex Superior Courts); Commonwealth v. William Meehan (Suffolk Superior Court); Commonwealth v. Andrew Arinello (Suffolk and Middlesex Superior Courts); Commonwealth v. Dean Rosati (Suffolk and Middlesex Superior Courts); Commonwealth v. Louis Carpinto (Suffolk Superior and Peabody District Courts); Commonwealth v. Wilberto Pagan (Middlesex Superior Court); Commonwealth v. Norge Olivero (Middlesex Superior Court); Commonwealth v. Frank Coscarelli (Middlesex Superior Court); Commonwealth v. Scott Lindberg (South Boston District Court); Commonwealth v. Mark Regnetta (Boston Municipal Court); Commonwealth v. Cristina Gaudin (Boston Municipal Court); Commonwealth v. Steven Distefano (Boston Municipal Court); Commonwealth v. Ray Mondello (Boston Municipal Court); and Commonwealth v. Robert Alex (Chelsea District Court). On December 19, 2002, over 130 state, federal, and local police officers executed 17 search warrants at locations in the North End and throughout Greater Boston following the SI&N Division's investigation into the criminal activities of "La Cosa Nostra." Police seized 13 guns, explosive devices, hundreds of Percocets, trafficking quantities of cocaine and marijuana, and approximately \$132,000 in drug money. The 15-month investigation, dubbed "Operation Neighbor-Hoods," involved the electronic surveillance of seven telephones and the placement of a bugging device and GPS Tracking System in a target's vehicle. Eighteen individuals were arrested or charged, including the primary target, Anthony Rizzo, an alleged "made" mafia soldier. As a result of the concerted efforts of the State Police and Assistant Attorney General Patrick Lee, five of the defendants have already pleaded guilty to a variety of offenses, including conspiracy to traffick in a controlled substance and possession of a firearm, in state courts.
- Commonwealth v. Frank Fister (Worcester and Suffolk Superior Courts); Commonwealth v. Ronald Cavaliere (Worcester Superior Court). These cases illustrated the outstanding work

done on a daily basis by State Police investigators and prosecutors assigned to the SI&N Division. In the spring of 2002, State Troopers assigned to the SI&N Division received information from the New Hampshire State Police informing them that a large quantity of marijuana would be delivered to Cavaliere's residence in Milford. Upon corroborating this information through surveillance, troopers seized over 350 pounds of marijuana from Fister's vehicle as well as an additional 110 grams of cocaine and several thousand dollars. During the booking process, Fister made several statements that alerted investigators to the possible removal of evidence from a realty business on Beacon Hill in Boston. The follow-up investigation resulted in the seizure of an additional five pounds of cocaine, and six pounds of marijuana that had been removed from Fister's office by an accomplice. Assistant Attorney General Peter Paulousky tried the marijuana trafficking case against Cavaliere before a jury in Worcester Superior Court during Fiscal Year 2003. Cavaliere was convicted, and a judge sentenced him to a term of six to 10 years in state prison. Fister is scheduled to enter a change of plea to trafficking offenses in Fiscal Year 2004. Following the arrests of Fister and Cavaliere, State Police and prosecutors assigned to the Office of the Attorney General pored through volumes of documentary evidence and, as a result of their efforts, initiated contact with the Drug Enforcement Administration in Virginia, Massachusetts, and Colorado. What happened next was an intense national investigation that ultimately led to the seizure of over 300 kilograms (more than 600 pounds) of cocaine in the State of Maine. This seizure represented the single largest seizure of cocaine by law enforcement in the history of New England.

- Commonwealth v. Philip O'Neil (Middlesex and Suffolk Superior Courts); Commonwealth v. Kevin O'Neil (Middlesex Superior Court); Commonwealth v. Paul Allen (Middlesex and Suffolk Superior Courts); Commonwealth v. Jason Souza (Middlesex Superior Court); Commonwealth v. Jeffrey Houlihan (Middlesex, Suffolk, and Essex Superior Courts); Commonwealth v. Nelson Baez (Middlesex Superior Court); Commonwealth v. Norberto DeJesus (Middlesex Superior Court); Commonwealth v. Larry Mulcahy (Essex Superior Court); Commonwealth v. Sean Noonan (Essex Superior Court); Commonwealth v. James Garvey (Suffolk Superior Court); Commonwealth v. William Wadman (Suffolk Superior Court); Commonwealth v. Brendan Houlihan (Suffolk Superior Court); Commonwealth v. Gerald Poliskey (Suffolk Superior Court); Commonwealth v. Daniel Feeney (Somerville District Court); Commonwealth v. Nelson Perez (Suffolk Superior Court); and Commonwealth v. A Juvenile (Cambridge District Court). In 2001, police and prosecutors were confronted with a rash of pharmacy robberies targeting the theft of OxyContin pills — a highly addictive, opiate pain killer. Facing a public safety and public health emergency due to the escalating numbers of pharmacy robberies, Attorney General Reilly formed the "OxyContin Task Force" in August of

2001. The Task Force consisted of members of the Massachusetts State Police, the Boston Police, local police departments, federal law enforcement agencies, and prosecutors assigned to the SI&N Division, and district attorneys' offices throughout Eastern Massachusetts. The initial goal of the Task Force was to identify and apprehend the most violent repeat offenders who, if not stopped, posed a significant risk of killing or seriously injuring someone. These perpetrators, after carefully casing targeted pharmacies, committed the robberies in organized groups armed with guns while disguising their physical features. The Task Force spent several months actively gathering intelligence through a variety of means, including electronic and physical surveillance, undercover police work, and cultivating informants. This process led Task Force members to identify several loosely affiliated groups that resided in or had ties to Charlestown. By the end of Fiscal Year 2003, Task Force members had arrested and charged 12 individuals in connection with six armed robberies of pharmacies, which occurred in Suffolk, Middlesex, and Essex Counties; and an additional four people, including a Suffolk County Deputy Sheriff, for drug-related offenses. Firearms, including a "Tec 9" large-capacity weapon and handguns with obliterated serial numbers, knives, a bullet-proof vest, masks, gloves, thousands of dollars, and hundreds of OxyContin pills and other narcotics were seized by Task Force members. During Fiscal Year 2003, as a result of the efforts of Assistant Attorney General Eileen O'Brien and Assistant Attorney General William Bloomer, 11 of the 16 individuals pleaded guilty in a number of courts to charges ranging from Armed Robbery While Masked to Trafficking in OxyCodone to Armed Career Criminal violations. Three of the leaders of the organized armed robbery rings — Sean Noonan, Paul Allen, and Philip O'Neil — received sentences of more than 10 years in State Prison for their offenses. The results of Attorney General Reilly's task force initiative represented an outstanding coordinated effort between state and local law enforcement, including Sheriffs' Departments, to combat this newly evolving threat to the public.

- United States v. Meraldo Lizardo (U.S. District Court, Boston, MA). From September 27, 1999, through January 10, 2000, 40 wiretap warrants were issued by a Massachusetts Superior Court judge authorizing troopers and prosecutors in the division to secretly intercept and record certain wire communications occurring over a variety of electronic devices in the Greater Lawrence area. At the conclusion of the wiretap investigation, a federal grand jury indicted Carlos Bello and Meraldo Lizardo, an Essex County Deputy Sheriff, for conspiracy to distribute cocaine. In June 2003, Lizardo was tried before a jury in Boston Federal Court by Assistant Attorney General William Bloomer (sworn in as a Special Assistant U.S. Attorney) and Assistant U.S. Attorney Heidi Brieger. The jury convicted Lizardo of conspiring with Bello, a multi-kilogram cocaine dealer, as well as several counts of unlawful use of a telecommunication facility. In February 2002, Bello pleaded guilty in federal court to conspiring to distribute 49 kilograms of cocaine.

- Commonwealth v. Timothy White and Robert Crisafulli (Norfolk Superior Court). On January 27, 2003, Sergeant Timothy White of the Massachusetts State Police was arrested at his home of 65 Southworth Court, Stoughton, Massachusetts, after he allegedly assaulted his wife, Maura White, with his service weapon — a .40-caliber Sig Saur handgun. At the time of his arrest, Sergeant White was assigned to the Narcotics Inspection Unit (NIU) of the State Police. Subsequent investigations revealed approximately 13 kilograms of cocaine and other narcotics as missing from the NIU storage facility in Framingham. After interviews of witnesses and search warrant executions, Sergeant White was indicted for, among other things, the theft and distribution of nearly all of the missing cocaine as well as varying amounts of marijuana and ecstasy taken from the bunker. An acquaintance of the Whites named Robert Crisafulli allegedly sold multiple ounce quantities of cocaine for White from October through December 2002. On February 28, 2003, troopers searched a storage bin rented by Crisafulli in Hyde Park and discovered approximately 700 grams of cocaine. These cases came to the Office of the Attorney General, specifically to the SI&N Division, upon requests from the Massachusetts State Police and the Norfolk County District Attorney's Office.

- Commonwealth v. Tehran Lewis (Hampden Superior Court); Commonwealth v. \$12,553, One 1993 BMW and One 1993 Ford Explorer (Hampden Superior Court). Following an intense investigation the State Police assigned to the Western Massachusetts Office and the SI&N Division, Tehran Lewis was arrested and charged with several counts of trafficking in over 100 grams of cocaine. Assistant Attorney General Matthew Shea tried the case to a conclusion before a jury in Hampden Superior Court. Lewis was found guilty on all counts and sentenced to 10 years in State Prison. In what is a "typical" example of the coordinated efforts of SI&N prosecutors, the Asset Forfeiture Unit then successfully moved to forfeit the defendant's drug proceeds as well as the vehicles he used in plying his illegal trade.

- Commonwealth v. Luis Cotto (Middlesex Superior Court); Commonwealth v. Jason King (Middlesex Superior Court); Commonwealth v. Antonio Centeno (Middlesex Superior Court); Commonwealth v. George Milliard (Middlesex Superior Court); Commonwealth v. David Texeira (Middlesex Superior Court); Commonwealth v. Marcial Cubi (Essex Superior Court); Commonwealth v. Maria Cubi (Essex Superior Court); Commonwealth v. Diego Rojas (Essex Superior Court); Commonwealth v. Kurt Weldon (Lowell District Court); Commonwealth v. Alex Ortiz (Lowell District Court); Commonwealth v. Felix Baez (Lowell District Court). During a six-month investigation, prosecutors and troopers from this division assisted the Drug Enforcement Administration and Lowell Police Department in conducting a wiretap investigation of an organization that was responsible for importing sizable quantities of cocaine and heroin into the Lawrence and Lowell areas from New York City. Six cellular telephones and two residential

telephones were monitored pursuant to court orders during this investigation. At the conclusion of the investigation, 18 search warrants were executed at locations in Middlesex and Essex Counties. Approximately one kilogram of cocaine, heroin, ecstasy pills, steroids, and tens of thousands of dollars were seized by police and federal agents. The primary targets of the investigation, Luis Cotto and Jason King, and five others were arrested. Four additional individuals were indicted following a grand jury investigation. To date, as a result of the efforts of Assistant Attorney General Alope Chakravarty, all but one of the defendants has pleaded guilty to a variety of offenses, ranging from trafficking in cocaine to conspiracy to distribution of controlled substances. The remaining defendant is scheduled for trial in Fiscal Year 2004. This investigation exemplified the successful cooperative efforts of three separate law enforcement entities working together with one prosecution entity to attain one goal.

STATISTICAL SUMMARY

At any given time, the division generally has in excess of 100 cases 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. The statistical breakdown of the number of arrests, criminal cases initiated, and cases disposed during Fiscal Year 2003 is set forth below.

GENERAL CASE INFORMATION

| | |
|--------------------------|-----|
| Felony Arrests | 70 |
| Criminal Cases Initiated | 65 |
| Cases Disposed | 108 |

Approximately 98 cases initiated in previous fiscal years were disposed of during Fiscal Year 2003.

From July 1, 2002, through June 30, 2003, State Police assigned to the SI&N Division made approximately 70 felony arrests. Prosecutors in the division in turn successfully disposed of 108 pending cases in the Massachusetts Superior and District Courts (approximately 98 cases initiated in previous fiscal years were disposed of during Fiscal Year 2003), while initiating approximately 65 new cases in those same courts. Of the number of drug cases investigated by the division in Fiscal Year 2003, about 15% of these involved two controlled substances rapidly growing in popularity among young adults: oxycodone, a highly addictive painkiller (the active ingredient in pharmaceutical OxyContin); and

Methylenedioxy-N-Methylamphetamine (MDMA), otherwise known as the designer drug "ecstasy." The remaining percentage of narcotics cases included the more common street drugs such as heroin, cocaine, and marijuana. The vast majority of these cases involved trafficking quantities of these drugs.

FIREARMS

| | |
|--|----|
| Guns Seized or Purchased | 16 |
| Individuals Charged with Firearms Offenses | 8 |

From July 1, 2002, through June 30, 2003, State Police assigned to the SI&N Division seized at least 16 guns ranging from an Intratec 9 mm semi-automatic firearm to several weapons with obliterated serial numbers, and a .357 magnum handgun. During a number of raids, the state police also seized explosive materials, such as blasting caps and stun grenades. Based upon these seizures as well as undercover purchases of weapons, prosecutors in the SI&N Division charged eight individuals with a variety of firearms offenses, including armed career criminal violations, possession of large-capacity weapons, and receiving firearms with obliterated serial numbers.

ASSET FORFEITURE

| | |
|----------------------------------|----|
| Civil Forfeiture Cases Initiated | 8 |
| Civil Forfeiture Cases Disposed | 44 |

Approximately 17 cases initiated in previous fiscal years were disposed of during Fiscal Year 2003.

During Fiscal Year 2003, the Asset Forfeiture Unit initiated eight new civil forfeiture actions (not including forfeitures pursued by means of criminal motions) and concluded 44 actions involving money, cars, and jewelry. By way of example, the unit commenced civil actions against cars that were used to facilitate the distribution of narcotics or were purchased with the proceeds from the distribution of narcotics, including one 1997 Mercedes, one 1996 Mercury Marquis, one 2000 Toyota Camry, one 1994 Infiniti, one 1998 VW Jetta, and one 1993 Audi. In addition, the Asset Forfeiture Unit has referred a case involving a house and a parcel of land in Somerville to the DEA/DOJ for prosecution.

In addition to prosecuting their pending criminal cases, assistant attorneys general in the SI&N Division responded to six post-trial motions. These motions, filed by convicted felons, sought new trials or sentence reductions. Of the number of post-trial motions filed, five were denied, and one remains outstanding.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Assistant attorneys general assigned to the SI&N Division continue to provide service and assistance both in and out of the office that exceed the scope of traditional prosecutorial responsibilities. Some of these extracurricular contributions include: service on the Youth Violence Task Force; "The Law and You" presentation to eighth-grade students at the Curtis Middle School; the Citizens School Community Outreach Program, which allows students an opportunity to participate in a "mock" trial as prosecutors and criminal defense attorneys; Northeastern University's Moot Court Competition; the Springfield Task Force addressing inner-city drug and gun problems; the South Asian Bar Association; the Governor's Racial Profiling Task Force; Suffolk Law School's Career Symposium; Massachusetts Continuing Legal Education; the Attorney General's Loan Forgiveness and Assistance Program for Public Employees; and the Massachusetts Law Review. In addition, a new wiretap legislative proposal was drafted by Assistant Attorney General Eileen O'Brien and testimony was submitted in support of that bill by Assistant Attorney General William Bloomer to a legislative committee.

During Fiscal Year 2003, attorneys in the SI&N Division were also required to act as point persons for the office on a variety of topics that require specialized knowledge in certain areas of law. For instance, prosecutors in the division provided advice and assistance to attorneys and police officers across the state in rendition matters. In addition, all public record inquiries directed to the division are fielded by an assistant attorney general. Prosecutors also served as the division's intern coordinators, supervising and monitoring the progress of law student interns assigned to the division.

OUTREACH, EDUCATION, AND TRAINING

Members of the division attended trainings both inside and outside the office during Fiscal Year 2003 in an effort to keep abreast of important current issues and trends in the law. These trainings encompassed a variety of topics including ethics, anti-discrimination, computer forensics, international investigative issues, and trial advocacy techniques. Some of the trainings attended by assistant attorneys general in the division included Massachusetts Continuing Legal Education's program on Attacking and Defending Search Warrants; NAAG's Trial Advocacy Training; the National District Attorneys Association's Computer Forensics and Cyberstalking Investigations Training; the National District Attorneys Association's Cross Examination Course; the Massachusetts District Attorneys Association's DNA Training; the National District Attorneys Association's International Issues Seminar; and a conference sponsored by the Office of the Attorney General that related to shaken baby syndrome. In addition, Assistant Attorney General Patrick Lee arranged for an office-wide training on gangs in Southeastern Massachusetts, which included

a guest speaker from the Department of Corrections, while Assistant Attorney General William Bloomer participated in an information exchange program with representatives from the Bench and the Bar in Tomsk, Siberia.

Assistant attorneys general in the division also served as faculty for the National Association of Attorneys General, Trial Practice Academy; the National Advocacy Center for the National District Attorneys Association; and Massachusetts Continuing Legal Education. In 2002, Assistant Attorney General Bloomer also was appointed Associate Editor of the Massachusetts Law Review.

ENVIRONMENTAL CRIMES STRIKE FORCE

The Massachusetts Environmental Crimes Strike Force (ECSF) is a unique interagency enforcement tool used in the investigation and prosecution of the Commonwealth's environmental enforcement efforts. Through the cooperation of the Attorney General, the Secretary of Environmental Affairs, the Department of Environmental Protection (DEP), and the Massachusetts Environmental Police, the ECSF brings specialized prosecutorial, technical, and police resources under a single umbrella. The ECSF thus provides the legal, scientific, and investigative expertise necessary to identify environmental violations, evaluate their impact on public safety and the environment, and develop the evidence necessary to prosecute environmental crimes. Among the general categories of environmental crimes the ECSF investigated and/or prosecuted during Fiscal Year 2003 were the following: illegal treatment and disposal of hazardous waste; discharging pollutants to the waters of the Commonwealth; illegal dumping; open burning of hazardous wastes; illegal removal of asbestos; and filling or altering of wetlands. In addition the ECSF division investigated or prosecuted traditional white-collar crimes like larceny by false pretense, procurement fraud, identity fraud, and conflict cases from District Attorneys' Offices from across the state. In addition, division attorneys often worked with local police and fire departments, federal law enforcement officials, Attorney Generals' Offices from neighboring states, District Attorneys Offices from across the state, and investigators assigned to other state agencies.

Members of the division for all or part of Fiscal Year 2003 included Paul J. Molloy, Division Chief; Jennifer Doherty; Nicholas Kosiavelon; Kevin Plante; and secretaries, Jenny Prokopovich and Nancy Rojas. Three Massachusetts Environmental Police Officers were assigned to the ECSF within the Office of the Attorney General. Lieutenant Gail Larson and Environmental Police Officers Pat Haley and Michael Moore comprised the investigative staff.

SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Norman Reno (Worcester Superior Court) The defendant, the owner and president of A&W Metal Fabricators, Inc., pleaded guilty to illegally treating and disposing of hazardous waste that resulted in an employee and two firefighters sustaining second-degree burns, was sentenced to five years probation, and was fined \$75,000.
- Commonwealth v. Jeff Masciadrelli (Worcester Superior Court) The defendant, the general manager of A&W Metal Fabricators, pleaded guilty to seven counts of illegally treating and disposing of hazardous waste, was sentenced to five years probation and 300 hours of community service, and was fined \$25,000.
- Commonwealth v. R.M. Packer Co. (Edgartown District Court) The defendant, a Martha's Vineyard corporation that was the sole supplier of petroleum products on the island, admitted to sufficient facts that it failed to notify Department of Environmental Protection of releases of oil resulting in oil slicks on Edgartown Harbor and Lagoon Pond. The defendant was fined \$100,000, \$50,000 in fines suspended, and placed on probation for two and a half years.
- Commonwealth v. BATG Environmental, Inc. (Suffolk Superior Court) Alleged that the defendant, a Big Dig subcontractor, misrepresented that environmental health and safety plans, which were submitted to the CA/T Project, had been prepared by a certified industrial hygienist. The defendant was indicted on four counts of Identity Fraud and four counts of Procurement Fraud.
- Commonwealth v. Richard Denham (Suffolk Superior Court) Alleged that the defendant, a BATG Environmental employee, prepared environmental plans purportedly prepared by a certified industrial hygienist and submitted them to the CA/T Project. The defendant was indicted on four counts of Identity Fraud, four counts of Procurement Fraud, and two counts of Attempted Larceny by False Pretense.
- Commonwealth v. Richard LaBelle (Hampden Superior Court) Conflict Case - After a three-day jury trial involving the deaths of two small children, the defendant was found guilty of Reckless Operation of a Motor Vehicle. He was sentenced to two years probation.

STATISTICAL SUMMARY

| | |
|----------------------------|----|
| Opened Investigations | 19 |
| Closed Investigations | 26 |
| Indicted in Superior Court | 2 |
| Disposed in District Court | 1 |
| Disposed in Superior Court | 3 |

During Fiscal Year 2003, the Environmental Crimes Strike Force opened 19 investigations and closed 26 (some of which were opened in the prior fiscal year). There was one corporation charged in District Court, and one corporation and one individual indicted in Superior Court. There was one Superior Court trial that resulted in a conviction. Three cases resulted in guilty pleas. Of the three pleas, two were handled in Superior Courts and one in District Court. In addition, the environmental police executed two search warrants.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to the cases that we investigated and prosecuted, division members undertook significant initiatives. ECSF attorneys worked closely with the Executive Bureau to draft the Environmental Endangerment Act and testified in support thereof before the legislature. The Act became law in July 2003. The ECSF assisted the United States Attorney's Office in the investigation of the Buzzards Bay oil spill by coordinating the investigations conducted by the Massachusetts Environmental Police and the Department of Environmental Protection. The ECSF assisted the New Hampshire Attorney General's Office by executing search warrants in Massachusetts that resulted in New Hampshire indictments of a Massachusetts developer for violating the New Hampshire Clean Air Act. A division member participated in the Attorney General's Citizen Schools - 8th Grade Academy as a coordinator and volunteer writing coach. Another division member was the Criminal Bureau representative for the Employee Benefits Committee. In addition, the Division Chief also became the Criminal Bureau's member of the Attorney General's Institute (an internal program designed to enhance training to all staff members).

CRIMINAL JUSTICE POLICY DIVISION

The Criminal Justice Policy Division (CJPD) was created in July 2002, in conjunction with the consolidation of the Community-Based Justice Bureau into the Criminal Bureau. The mission of CJPD is to understand and assess topical criminal justice policy issues, and to advise the Attorney General and his staff so that they can effectively carry out the Attorney General's leadership role as the Chief Law Enforcement Officer in the Commonwealth. Through collaborative relationships with all members of the criminal justice community, CJPD is uniquely positioned to use its knowledge and experience to further decision-making that is in the public interest. Toward this end, CJPD responsibilities fall into five broad categories: 1) liaison to external criminal justice and law enforcement agencies and organizations; 2) criminal justice legislation; 3) criminal justice education; 4) crime prevention initiatives; and 5) policy-based appellate briefs, amicus briefs, investigations and prosecutions, and various other special assignments.

The Criminal Justice Policy Division included James O'Brien, Division Chief; Pamela Hunt, Senior Counsel for Criminal Justice Matters; Emily Paradise, Assistant Attorney General; Catherine Sullivan, Assistant Attorney General; Marsha Cohen, Staff Writer; and Jean Fanning, Administrative Assistant.

SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Diemer (Appeals Court) Article 36 of the Vienna Convention on consular relations requires law enforcement officials to notify a detained or arrested foreign national of the right to contact his or her consulate office. Diemer, a foreign national, was arrested in Florida for a Massachusetts crime and returned to Massachusetts. It was conceded that he was not advised of his right to contact his country's consular officials either at the time of his arrest or before he made statements to Massachusetts police officers. Defense counsel moved to suppress certain evidence on this basis. The Norfolk County District Attorney's Office opposed the motion. A trial judge agreed with the District Attorney's Office, and after his conviction, Diemer appealed. CJPD identified this appeal as one of substantial potential significance to law enforcement officers in Massachusetts. Division members prepared and filed an *amicus curiae* brief in support of the Norfolk District Attorney's Office and the important law enforcement interests at stake. The Appeals Court ruled it did not need to decide whether the treaty creates rights enforceable by an individual in a criminal case, because even if it did, suppression of evidence would not be an appropriate remedy for a violation. The Supreme Judicial Court (SJC) denied the defendant's application for further appellate review. The defendant has filed a petition for certiorari in the United States Supreme Court.

- Andrew, A Juvenile v. Department of Youth Services and Commonwealth v. Andrew, A Juvenile (Supreme Judicial Court and Lynn Juvenile Courts) These two cases involve constitutional rights and legal challenges to the statutory process for extending a juvenile's commitment to the Department of Youth Services (DYS) beyond his or her 18th birthday. In addition to defending the statutes and cases, CJPD staff worked closely with DHS legal counsel and qualified examiners contracted to perform evaluations and also assisted DHS in developing a process to handle these types of cases that would pass constitutional muster. The two cases are now pending in the SJC.
- Roman Catholic Archdiocese of Boston Grand Jury Investigation (Suffolk Grand Jury) The division chief was involved extensively as a member of the Office of the Attorney General's team that investigated the Roman Catholic Archdiocese of Boston (RCAB). The investigation consisted of two phases: 1) assessing whether clergy/RCAB personnel with a history of sexual misconduct involving a minor remained in positions that presented a current risk for committing such misconduct; and 2) historical review of management knowledge and decision-making regarding clergy/RCAB personnel accused of sexual misconduct involving a minor, and whether the management conduct rose to the level of criminal misconduct. As of the close of Fiscal Year 2003, the RCAB team had determined that indictments were unlikely and had drafted a lengthy report detailing the investigation's findings, conclusions, and recommendations. Public release of that report was expected in early Fiscal Year 2004.
- Commonwealth v. William Rodriguez, et al. (Middlesex, Essex, Norfolk, and Hampden Superior Courts) This case involved the prosecution of a burglary ring that targeted retail stores around the state. One hundred sixteen indictments were returned against nine men on six break-ins that took place in four counties (Middlesex, Essex, Norfolk, and Hampden). Four of the defendants have pleaded guilty, receiving sentences of incarceration, followed by probationary supervision. The remaining cases are pending.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

An important role of the division's attorneys is serving as liaisons to external law enforcement agencies and organizations. The meetings and personal contacts are some of the primary means by which CJPD learns of, and becomes knowledgeable about, the important criminal justice issues of the day. During Fiscal Year 2003, CJPD attorneys were actively involved with the Anti-Terrorism Task Force, Boston Bar Association Criminal Justice Section, Coalition on Underage and Problem Drinking, Commonwealth's Appellate Attorneys Action Project, Commonwealth's Criminal Justice Research Group, Criminal History

Systems Board, Department of Public Health Emerging Drugs Task Force, Equal Justice Partnership, Governor's Advisory Council on Alcoholism, Interagency Drug Diversion Task Force, Massachusetts Association of Campus Law Enforcement Administrators, Massachusetts Chiefs of Police Association, Massachusetts Sentencing Commission, Massachusetts Bar Association Corrections and Sentencing Practice Group, Massachusetts District Attorneys Association (MDAA) Clergy Reporting Working Group, MDAA Legislative Subcommittee, MDAA Juvenile Justice Subcommittee, MDAA DNA Working Group, MDAA Sexually Dangerous Person Working Group, Massachusetts Emergency Management Agency, Municipal Police Training Committee, National Association of Attorneys General Violence Against Women Group, SJC Standing Advisory Committee on Criminal Rules, Statewide Child Fatality Review Team, and the Trial Court Criminal Standing Committee of the MassCourts Project.

Criminal Justice legislation is another core function of CJPD. It works closely with, and serves as the Criminal Bureau's primary liaison to, the Attorney General's Intergovernmental Affairs Division. In Fiscal Year 2003, CJPD played a coordinating role in soliciting ideas and making recommendations on the Office of the Attorney General's slate of criminal bills. It drafted and testified on behalf of various proposals. In addition to the Attorney General's own bills, CJPD also: 1) participated on the MDAA Legislative Subcommittee and shared information, ideas, and respective priorities within and between a variety of law enforcement agencies; and 2) reviewed and made recommendations on a wide array of criminal justice bills, which were not sponsored by the Office of the Attorney General but which had potentially significant criminal justice implications.

During Fiscal Year 2003, significant bills that either were sponsored by the Office of the Attorney General or were the subject of noteworthy CJPD involvement included: Sentencing Guidelines; Partnerships for Children's Safety/Information Sharing; Terrorism (Terrorist Threats, Use of Biological and Chemical Weapons, Hoax Substances, Statewide Grand Jury, Administrative Subpoenas); Firearms; Identity Theft; Enticement of a Minor; 51A Penalties; Environmental Endangerment; Hacking; Identity Fraud; Money Laundering; Wiretap Statute; and Witness Intimidation.

Three important pieces of legislation sponsored by the Office of the Attorney General were enacted into law during this period:

- Enticement of a Minor — criminalizes enticing a child under 16 (either directly or through a medium such as the Internet) with the intent to commit a sex crime against the child.
- Terrorist Threats — provides protections against terrorism, including creating the crime of communicating a terrorist threat. Allows restitution for costs incurred by the city or town.

- Environmental Endangerment — makes it a crime to knowingly or recklessly commit an environmental violation which thereby causes serious bodily injury to another, or which causes a substantial risk of more than \$25,000 in damages to natural resources or the property of another.

CJPD's primary function is policy, not programs. Notwithstanding, from time to time CJPD becomes involved in crime prevention initiatives, either because the program started as a policy idea within the division or because there is a particular interest or expertise in that area. Noteworthy crime prevention initiatives included:

- Liaison to Anti-Terrorism Task Force (ATTF), ATTF Working Group, and the various ATTF regional sub-groups established to prevent, disrupt, and respond to terrorist acts;
- Post September 11th Hate Crimes Working Group: CJPD worked closely with the Office's Civil Rights Division to coordinate and advance the Attorney General's work in protecting people who were targeted, or were at risk of being targeted, for hate crimes in response to the September 11th terrorist attacks;
- Massachusetts Alliance for the Promotion of Sportsmanship (MAPS) Initiative: This joint project of the Attorney General's Office/Suffolk District Attorney's Office brought together an "alliance" of key stakeholders, including all of the major professional sports teams in the state, to address issues of sportsmanship and violence prevention. Leadership for the initiative was transitioned to Northeastern University's Center for the Study of Sport in Society and the Massachusetts Interscholastic Athletic Association, whose representatives now co-chair MAPS and have taken the lead in moving the Alliance's initiatives forward; and
- Coalition on Underage and Problem Drinking: In partnership with the Department of Public Health, brought together the Commonwealth's colleges and universities to address problems of alcohol abuse and binge drinking by students.

OUTREACH, EDUCATION, AND TRAINING

Another core function of CJPD is to educate and inform about issues of importance to the criminal justice community. This goal is accomplished in three distinct ways: 1) through publication of the *Criminal Justice News (CJN)*; 2) through formal educational training; and 3) through informal educational training.

One of the top priorities of CJPD was to redesign and produce the Attorney General's *Criminal Justice News*, which replaced the former *Law Enforcement Newsletter*. All division members played an

active role in this project, including story development, research, writing, editing and proofreading, design and layout, compilation of the e-mail list, and distribution. Both the objectives of the newsletter and its target audience were redefined. The new *CJN* focused less on case law updates and more on emerging and significant criminal justice news, events, trends, data, and related information of general interest to the broader criminal justice community. During Fiscal Year 2003, the inaugural 16-page issue was produced and distributed via e-mail to prosecutors, police, sheriffs, public defenders, the courts, other state and local law enforcement agencies, and a number of private or non-profit entities whose work impacts the criminal justice system. The division also began the research/story development process for the Fall/Winter 2003 issue, analyzed and refined the e-mail distribution process, and began planning a special four-page issue focusing on the topic of "consular notification."

The four attorneys in the division are experienced prosecutors — two have trial backgrounds, while the other two have appellate backgrounds. They frequently are invited to serve as faculty/staff for formal training programs. These trainings afford CJPD lawyers the opportunity to share their expertise with other criminal justice professionals. Significant trainings included:

- Annual Prosecutors' Conference presentation on proposals for sentencing reform and how sentencing guidelines would impact the daily lives of prosecutors
- Appellate Prosecutors' Group presentations on the proposed criminal rules amendments, and the Health Insurance Portability and Accountability Act (HIPAA law) and how it would affect prosecutions and investigations
- MDAA DNA Training Conference
- Boston Foundation Focus Group on Prisoner Re-entry
- NAAG Trial Advocacy Training
- Plymouth District Attorney's Office Ethical Issues Training for Prosecutors
- MDAA Annual Conference on Handling Sexually Dangerous Persons Cases

In addition to the more formal educational assistance and training, the division attorneys routinely fielded legal queries and an array of other requests for information and guidance from professionals throughout the criminal justice community. Without giving formal legal opinions, division members provided objective guidance and assistance. A large part of every workweek was spent providing this service to law enforcement officials and others within the criminal justice network. During Fiscal Year 2003, particular assistance was provided to the Criminal History Systems Board, DYS, the Commissioner of Probation, the Massachusetts District Attorneys Association, Boston and numerous other local police departments, and the Sex Offender Registry Board on a broad variety of subjects, including the propriety

of putting warrants on the Internet, putting civil rights restraining orders on the domestic violence registry, information sharing, engaging in education on how to read and use CORI records, gun licenses, the impact of the new law requiring schools, camps, and youth groups to conduct CORI checks on volunteers and employees, sexually dangerous persons, DNA, possible crimes involved in assisted suicide, licensing of private detectives, the HIPAA law, and sentencing and probation matters.

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, mental health counseling, 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. In addition, since 2002, the Office of the Attorney General has assumed responsibility for the payment of claims, having taken over that responsibility from the State Treasurer's Office.

There was significant staff turnover during Fiscal Year 2003 as well as the division transition to the Criminal Bureau. Division staff included Cheryl Watson, Division Director; Sandra Clark; James Clarkin; Erica Johnson; Joanna Kennefick; Julie King; Deikel Lynch; Linda McDonough; Laura Michalski; Susan Ragucci; and Jennifer Wilson.

STATISTICAL SUMMARY

| <u>CLAIM INFORMATION</u> | <u>TOTAL NUMBER OF CLAIMS</u> |
|----------------------------|-------------------------------|
| New Claims Received | 1,392 |
| New Claims Opened | 1,113 |
| Supplemental Claims Opened | 864 |
| Administrative Review | 81 |

| | |
|----------------------|-----|
| Decision Affirmed | 60 |
| Modified or Reversed | 21 |
| Homicide Claims | 224 |
| Judicial Review | 4 |

In Fiscal Year 2003, the Victim Compensation and Assistance Division received 1,392 new claims. This number represents an approximately 20% decline from the 1,742 new claims received in Fiscal Year 2002. During Fiscal Year 2003 the division received 224 homicide claims, down from the 287 claims received in Fiscal Year 2002, but higher than the 194 received in Fiscal Year 2001. The division continued to work on claims submitted by family members of victims of the September 11, 2001 attacks and paid 21 claims in Fiscal Year 2003.

EXPENDITURES

During this fiscal year, the total compensation awarded to victims was \$4,076,957.00. Approximately \$2.1 million came from state funds, and the remainder was from federal funds. This represents an approximate 25% increase over awards issued last year. This is the eighth consecutive year in which the division had adequate funding to support expenditures.

PROGRAM EVALUATION

Each claimant is sent an application with the decisional letter. The division received 510 completed surveys from claimants. Surveys were overwhelmingly positive, with approximately 87% of claimants agreeing or strongly agreeing that the application was easy to fill out, the letters were easy to understand, and the victim compensation staff treated them with respect. In spite of the periodic understaffing, most claimants agreed that their phone calls were returned promptly, and they were satisfied with the amount of time it took to process their claims.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

GRANT ACTIVITY

The division applied for and received a continuation grant for Fiscal Year 2003 from the Executive Office of Public Safety through the Department of Justice, Violence Against Women Act funds in the amount of \$50,000. These funds continue to support Julie King, an investigator/victim advocate who provides specialized services to domestic violence, sexual assault, and stalking victims who seek compensation and services from the division.

The division applied for an annual grant for Fiscal Year 2003 from the Department of Justice through Victims of Crime Act Funds (VOCA) in the amount of \$1,142,000. This increase in VOCA funding represents the Department of Justice's percentage increase in funding for compensation from 40% of what was spent in state-generated funds to 60%. Due to late distribution of the grant applications from the Department of Justice, the deadline for submission of the annual grant was June 30, 2003.

FEDERAL REPORTING REQUIREMENTS

The division submitted its annual Certification Report and Quarterly Reports to the Department of Justice, Office for Victims of Crime for the Victims of Crime Act. In addition, the division submitted quarterly reports to the Executive Office of Public Safety for the grant under the Violence Against Women Act, referenced above. Finally, an annual Performance Report and Grant Application were submitted requesting continuation funding from the Department of Justice through the Victims of Crime Act.

AUTOMATION

The division continued to work with the Genoa Group in Colorado to correct problems with the new victim compensation software. Many of the problems have been resolved, and staff are pleased with the ease and efficiency of the program. The division director will continue to work with the software developer to enhance reporting capabilities in order to eliminate the need to manually compute information necessary to complete the quarterly and annual reports to the Office of the Attorney General and the federal government.

DIVISION MATERIALS

For the second year, in recognition of Victim Rights Week, division staff developed a new calendar using posters created by art students at the Paul McLaughlin Youth Center. The calendar was distributed at the annual Victim Rights Conference in Marlboro, held in April.

Using funding available in the Victim Assistance Witness Assistance grant, the division developed small "palm" cards, which contained information about the Victim Compensation program. The cards included division contact information as well as the Domestic Violence Safelink 24 Hour Hotline number.

The implementation of the HIPAA law necessitated the development of an additional Authorization for Release of Information. The release cites G.L. c. 258C, section 5 (a)(2), which directs all service providers to cooperate with the division in the investigation of claims.

As a result of a division investigation regarding a mental health provider, the division also developed a new mental health verification and treatment form. The form requests more comprehensive information

about the mental health treatment being provided to victims. The form was created after reviewing a number of forms that are used by other victim compensation programs across the country.

OUTREACH, EDUCATION, AND TRAINING

Outreach and training about the program and its benefits continued to be a major focus during Fiscal Year 2003. Victim compensation training was provided to:

- SAFEPLAN domestic violence advocates in Worcester, Gardner, and Marlboro, Massachusetts
- Administrators of VOCA Funded programs, sponsored by MOVA
- University of Massachusetts Medical Fair, Norfolk District Attorney's Children's Advocacy Mental Health Providers, Brockton Family Resource Center, Rape Crisis Counselor training at Tufts University, On the Rise staff training
- Participation on a panel for the Leadership and Healing in Times of Crisis Conference sponsored by Simmons College
- Public Protection Bureau's workshop on Hate Crimes
- Division-sponsored training for National Victims' Rights Week provided by the Good Grief Program on working with children who suffered traumatic loss

Division staff also represented the Attorney General at a number of committee meetings throughout Fiscal Year 2003. These included:

- Governor's Domestic Violence Commission
- Massachusetts District Attorneys Association Domestic Violence Subcommittee
- Norfolk District Attorney's Children's Advocacy Advisory Board
- MOVA Victim Witness Assistance Board
- Executive Office of Public Safety Sexual Assault Evidence Collection Kit Advisory Committee

Staff were also active on the Office of the Attorney General's Employee Benefits Committee and the Diversity Committee.

Division staff attended the NACVB national conference in New Orleans, the Massachusetts District Attorneys' Association Training for Experienced/Advanced Advocacy, and the NACVB regional conference in Portsmouth, New Hampshire.

FINANCIAL INVESTIGATIONS DIVISION

The Financial Investigations Division provides the Criminal Bureau with seven experienced civilian investigative professionals who investigate and assist in the prosecution of white-collar criminal cases. These investigations include larceny, identity theft, public corruption, securities fraud, tax fraud, and all other white-collar frauds that 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. Investigators assigned to the Financial Investigations Division work as part of the bureau's team approach to criminal investigative work. Division members become involved in matters at the start of the investigation and work closely with Criminal Bureau prosecutors and Massachusetts State Police assigned to the bureau's Criminal Investigation Division.

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

As part of the investigation and prosecution team, division investigators assist in the design and implementation of an investigative plan for each investigation. The planning requires that each member of the division understand the nature of the allegation, elements of the crime, and evidence required to prove the matter at trial.

Criminal Bureau investigations involve prolific documentary evidence, and require division investigators to perform extensive examination and analysis of business, personal, and financial records, to document the illegal activities of the white-collar criminal. Additionally, division investigators conduct interviews of victims, witnesses, and targets, and provide summary witness testimony before special grand juries and at trial. Further, utilizing modern computerized technology, investigators are able to scan a wide array of informational databases as well as the Internet to track and profile potential subjects of criminal investigations.

The majority of the division's investigative assignments come from the bureau's Corruption, Fraud, and Computer Crime Division. The division works closely with the Division Chief of the Corruption,

Fraud, and Computer Crime Division during the screening process and then with the assigned assistant attorney general when a matter has been accepted for formal investigation.

During Fiscal Year 2003 the division also committed investigative resources to the Special Investigations and Narcotics Division. Since the division's formation in 1995, it also has performed investigative assignments for the bureau's Environmental Crimes Strike Force and the Appellate Division.

This fiscal year, division personnel included two Certified Fraud Examiners (CFE) and five investigators with backgrounds from the banking and insurance industries. Members of the division for all or part of the year were: Paul Stewart, Division Director, Certified Fraud Examiner CFE; David Baker; Jennifer Chaves; Michael Guarin; Jen Hollingsworth; Brendan Kelleher; Jim McFadden, CFE; Jon Murphy; and Sallyann Nelligan.

SIGNIFICANT CASE SUMMARIES

Division members served as Commonwealth summary witnesses in the grand jury for a number of matters indicted during the year. Additionally, division members were scheduled to serve as summary witnesses at trial for matters that reached a final disposition as a result of guilty pleas. The Corruption, Fraud, and Computer Crime Division requested the involvement of the Financial Investigations Division in each matter, and more specific information about each of these matters can be found by referring to the Corruption, Fraud, and Computer Crime Division's section in the bureau's report. A statistical summary of matters investigated by the Financial Investigations Division immediately follows the case summaries section.

Three of the indicted matters involved attorney embezzlement:

- Commonwealth v. Stephen J. Milstein
- Commonwealth v. Roberta Golden
- Commonwealth v. Neil Cola

Two were matters with multiple small business or consumer victims:

- Commonwealth v. David Gill
 - Commonwealth v. Noel Roberts
-

This group of indicted matters involved tax fraud, identity theft, and employee embezzlement, respectively:

- Commonwealth v. Luis Vasquez
- Commonwealth v. Kevin Bruce White
- Commonwealth v. Richard Anzivino

The following matters reached a final disposition as a result of guilty pleas and included an immigration matter involving multiple victims, an employee embezzlement, and an identity fraud case:

- Commonwealth v. Gaspard Francois
- Commonwealth v. Stephen Holt
- Commonwealth v. Zachary Hildreth

STATISTICAL SUMMARY

| REFERRING SOURCE | NUMBER OF CASES |
|---|-----------------|
| Corruption, Fraud, and Computer Crime Division | 59 |
| Special Investigations and Narcotics Division | 1 |
| TOTAL | 60 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division also performs many administrative duties for the bureau with respect to cars, seized evidence, and the spending of forfeited funds. The division is responsible for the assignment, reporting, and maintenance 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 safety deposit boxes, and the contents are

inventoried on a quarterly basis by division staff. Additionally, the division prepares an accounting of all funds forfeited through the Special Investigations and Narcotics Division, which subsequently 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.

The division also works with State Police command to assist with background and warrant checks and NCIC inquiries.

Division members also take a turn in the rotation as duty officers. The daily duty officer's duties involve dealing with all citizen inquiries for that particular day.

OUTREACH, EDUCATION, AND TRAINING

As an integral part of the bureau's outreach to referral agencies, the staff maintains contact with the BBO's Senior Financial Investigator and CIB's Chief Investigator by updating them periodically on the status of all referrals from their respective agencies to the bureau. BBO and CIB cases are referred through the Corruption, Fraud, and Computer Crime Division. Our outreach efforts are designed to complement those of the Corruption, Fraud, and Computer Crime Division Chief.

Division members maintain memberships in many external organizations, including: the *Boston Clearing House Association-Check Fraud Subcommittee (Boston Clearing House)*, *High Tech Crime Investigators Association (HTCIA)*, *International Association of Certified Fraud Examiners*, *International Association of Financial Crimes Investigators (IAFCI)*, and the *International Association of Law Enforcement and Intelligence Analysts*. The division member with the IAFCI membership helped plan the curriculum and coordinate IAFCI's 2002 International Conference, which drew more than 1,000 IAFCI members from around the world to Boston in September 2002.

Internally, division members are members of the Attorney General's Benefits Committee, Elder Task Force, Office-Wide Health Care Committee, and Public Records Office. They also have volunteered as tutors at the Paul McLaughlin Center.

As part of the *Attorney General Institute (AG Institute)*, division members have prepared and taught training sessions to their colleagues as well as personnel from outside referral agencies and groups such as *Arson Investigators Association*, *Boston Chapter of the International Association of Certified Fraud Examiners*, *Boston Clearing House*, and the *Southeastern Massachusetts Fraud Investigators Association*.

Presentations included:

- Financial Investigative Techniques
- How to Acquire Bank Records and What Information They Provide
- Interview and Report Writing Techniques

During the 2003 Fiscal Year, division members attended the following trainings:

- AG Institute Grand Jury Practice
- Bentley College Cyberspace
- CFE Electronic Organized Crime
- Communicating with Crime Victims with Disabilities
- Eucase Computer Forensics
- HTCIA Forensic and Operational Security
- Kroll Financial Statement Training
- National White Collar Crime Committee Financial Investigations Practical Skills
- United States Custom Electronic Funds Tracing
- Westlaw

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 graduate and undergraduate programs throughout New England.

SAFE NEIGHBORHOOD INITIATIVE DIVISION

The first Safe Neighborhood Initiative (SNI) partnership was established in Dorchester in February 1993 by the Office of the Attorney General, the Suffolk County District Attorney's Office, the Mayor's Office of the City of Boston, and the Boston Police Department. Based on the premise that no single entity alone can solve all problems faced by a community, the SNI Division provided a framework for community residents and service providers to work collaboratively with law enforcement and government agencies to identify and address priority public safety and quality-of-life issues in the community. The SNI model has been replicated in a number of communities across the Commonwealth — each using a

somewhat different approach. Some are law enforcement-driven while others are community-driven, but all are organized around these core principles of coordinated law enforcement: neighborhood revitalization, and prevention, intervention, and treatment. During Fiscal Year 2003, the Office of the Attorney General participated in active SNI partnerships in Taunton, Brockton, Orange, and the Grove Hall and Dorchester neighborhoods of Boston. In addition to maintaining its various ongoing SNI partnerships, the SNI Division embarks on a number of innovative community-based activities, many of which are described in the sections below, to prevent crime and promote public safety.

During Fiscal Year 2003, division staff included Division Director Ellen Frank; Assistant Attorneys General Jennifer Adreani, Linda DelCastilho, Katherine Hatch, Cheryl O'Connell, and Neil Tassel; and staff members Helena Almeida, Jennifer Grigoraitis, Kristen Palma, Christina Ruccio, and Lenell Silva.

SIGNIFICANT CASE SUMMARIES

Community prosecution is critical to the coordinated law enforcement component of the SNI model. As a result of their close and ongoing work with community partners, the assistant attorneys general assigned to SNI establish roles beyond those of traditional prosecutors. They participate in regular community meetings and special events, and serve as valuable resources for law enforcement, residents, and local service providers. As a result of their direct community involvement, the SNI prosecutors are able to assess issues of importance to the community, and help determine how resources from the Office of the Attorney General, local District Attorneys' Offices, and other agencies are best utilized to address those concerns. The Superior Court assistant attorneys general for the Dorchester and Grove Hall SNIs prosecute major felonies consisting primarily of serious drug offenses (and repeat offenders), large-scale drug seizures, armed robberies, armed career criminals, and firearm offenses. The District Court assistant attorneys general for the Grove Hall and Lawrence/Methuen partnerships prosecute primarily narcotics, firearms, prostitution, and other quality of life offenses that are priorities for the respective communities. The district court prosecutor for Orange prosecutes all district court cases arising from the Town of Orange as well as other cases in the Orange District Court jurisdiction involving defendants from Orange. Summaries of examples of cases handled by SNI prosecutors are included below.

- Commonwealth v. Dawon Williams (Suffolk Superior Court) This defendant was well-known to the police as a drug dealer and was thought to be moving operations into the downtown area by squeezing out smaller dealers through violence and threats. An undercover officer was introduced to him and purchased some cocaine. Because of the defendant's history with firearms, the police stopped him immediately and found him to be in possession of additional cocaine and

a loaded Taurus firearm. He was indicted as an armed career criminal. After a plea, he was sentenced to 10 to 12 years in State Prison.

- Commonwealth v. James Chaney (Suffolk Superior Court) Within 30 days after release from an eight- to 12-year State Prison sentence for robbery, this defendant committed the first of three robberies; the second and third robberies were committed less than two weeks later. All three victims were women, and two were walking with small children at the time they were robbed.

Robbery One: A woman was walking home from work after getting off a bus when the defendant grabbed her by the jacket and said, "Give me the money or I'll shoot you." The defendant took six rings, a compact disc player with earphones, and two \$20 bills.

Robbery Two: A woman was walking on the street with her 3-year-old daughter when she was approached by the defendant, who said, "Don't scream. I just want your purse." The victim was fearful and gave the defendant her purse, which contained approximately \$60, three social security cards, and other personal items.

Robbery Three: Later that same day, another woman was approached by the defendant as she was walking home from church with her 7-year-old daughter. The defendant demanded her money, and when she refused, he hit and then kicked her. Police officers arrived on the scene and saw the defendant running with a handbag under his arm and the victim chasing after him and screaming for help.

The three robberies were joined for trial. There was a second trial on the habitual offender counts. The defendant was found guilty as a habitual offender. He was sentenced on the robbery counts to three concurrent life sentences.

- Commonwealth v. Fedley Jean-Charles and Martel Horton (Suffolk Superior Court) The gas station located on Blue Hill Avenue and Quincy Street had been the scene of numerous violent incidents and disruptions in the community. Therefore, officers routinely checked plates of cars going in and out of that location. At 3:40 one morning, officers stopped a motor vehicle with a revoked license plate, and that vehicle was being operated by Martel Horton. As the first officer approached the operator, several other officers who had arrived to assist observed the backseat passenger, Fedley Jean-Charles, making a number of movements. Upon observing this behavior, the officers removed Mr. Jean-Charles from the vehicle. After a loaded .25-caliber firearm was observed underneath the driver's seat, an inventory search was completed. In the trunk, inside a bag placed on top of mail addressed to Mr. Horton, was a fully loaded 9mm

firearm with a high-capacity clip (with 11 rounds in the clip and one in the chamber). Mr. Horton also had three rounds of .25-caliber ammunition on his person while at the booking desk.

Mr. Horton was indicted on two counts of Possession of a Firearm (under c. 269, § 10(a) for the .25-caliber and 9mm firearms; Possession of a High-Capacity Feeding Device; and three counts of Possession of Ammunition. After trial, the defendant was found guilty on all counts. He was sentenced to two to two and a half years and one day in State Prison for possession of the high-capacity clip and two additional two to two and a half years and one day for possession of the .25-caliber and the 9mm firearms. All three sentences were to run concurrently. For the three counts of possession of ammunition, he was sentenced to two years probation from and after the State Prison sentence with the following conditions: seek and maintain employment; obtain GED; and undergo random urine screens. This defendant was 22 years old with no prior adult record.

Mr. Jean-Charles was indicted on one count of Possession of a Firearm (under c. 269, § 10(a)) for the .25-caliber firearm and one count of Possession of Ammunition. After trial, the defendant was found guilty on the firearm charge. He was sentenced to two to two and a half years in the House of Correction, one year to serve and the balance suspended for two years, with the following conditions: seek and maintain employment; complete two-year program at Roxbury Community College; and undergo random urine screens. This defendant was 20 years old with no prior record.

- Commonwealth v. Christopher Chicoine (Orange District Court) The defendant was charged with Entering a Dwelling in the Nighttime, Placing a Person in Fear, and Assault & Battery. The defendant forced his way into his former girlfriend's house, where he assaulted her and her new boyfriend. The defendant pleaded guilty and was sentenced to two and a half years in the House of Correction.
- Commonwealth v. Jose Muniz, Jr. (Orange District Court) The defendant was charged with Domestic Assault & Battery. The victim, his girlfriend, was uncooperative with the prosecution. The prosecutor filed a motion to have the defendant determined dangerous under c. 276, § 58a. The victim testified in support of the defendant. The prosecutor proceeded on the basis of the police report. The prosecutor also obtained copies of police reports from another jurisdiction demonstrating the defendant's violent history of assaults involving guns and knives. The defendant was determined to be dangerous under 58a and was held pending trial. The victim continued to be uncooperative. On the day of trial, the defendant pleaded guilty and was sentenced to 18 months in the House of Correction; 75 days to serve, the balance suspended for one year.

- Commonwealth v. Juvenile (Youthful Offender) (Lawrence District Court) This 16-year-old juvenile and another boy approached three teenage boys who were standing outside a variety store. The juvenile pointed a gun at the boys and demanded money and the items they had just purchased. When the boys refused and ran, the juvenile fired the gun several times, hitting one of the boys in the back three times. The gun turned out to be a BB gun. Based on the serious and violent nature of this incident, the age of the juvenile, and his prior record, this juvenile was indicted as a youthful offender on charges of Armed Assault with Intent to Rob, Assault & Battery with a Dangerous Weapon, and Assault. The matter is still pending at the time of this report.

- Commonwealth v. Inez Jones (Roxbury District Court) At 1:20 AM officers from the Boston Police Department responded to Brookledge Street upon report of an armed robbery. On arrival, the officers spoke with the 73-year-old victim, who stated the defendant, a friend, Ms. Inez Jones, put a 14-oz. can in a sock and began swinging it at the victim, hitting the walls inside the apartment. Ms. Jones then grabbed a kitchen knife and yelled to the victim, "I'll kill you for your money." Jones then pushed the victim over a dining room table and chair, and while holding the knife toward the victim in a threatening manner, reached into his pants pocket and took \$185. She then took the victim's keys and fled the apartment. The defendant was arrested and charged with Armed Robbery, two counts of Assault with a Dangerous Weapon on a Person Over 60, and Assault & Battery. The victim was subsequently uncooperative with the prosecution of the case and did not appear on the trial date.

The day of trial, the defendant pleaded guilty on all counts. She was sentenced to 18 months in the House of Correction, 140 days to serve (time served), the balance suspended for one year with probation, and the following conditions: a mentoring program, drug and alcohol treatment, and an order to stay away from the victim. The defendant had a serious prior record and approximately 12 aliases. Without the cooperation from the victim, however, it would have been difficult if not impossible to proceed to trial.

- Commonwealth v. Edelmiro Vasquez (Roxbury District Court) At approximately 8 PM one evening, officers from the Boston Police Department Drug Control Division (DCU), with the assistance of the Entry and Apprehension team, went to execute a search warrant at 51 Holworthy Street, basement apartment. As the officers arrived at the address, two males ran from the driveway next to the apartment building to the back porch area. There were three back porches, one on top of the other, and a window next to each. The two males (one being the defendant) climbed up to the second floor porch and tried unsuccessfully to enter through the porch door. He then climbed through the window next to the porch and into a stairwell.

Officers then observed the defendant open the third-floor window (located directly above the window he had gone through previously) and attempt to throw an object up onto the roof, which fell to the ground at the officers' feet. The object was a Ruger 9mm semi-automatic handgun with one live round in the chamber.

The entry team entered the building and secured the occupants. In the rear stairway (the same stairway the defendant entered the building from the second-floor window, and the same stairway that accessed the third-floor window from where the defendant was seen throwing the gun), officers found a 9mm magazine for a Ruger handgun with 10 rounds of ammunition. The defendant was located in the third-floor apartment. He was bleeding from his hand, and officers found blood on the second-floor window, from which he had entered the building. The search warrant was executed in the basement apartment, where the defendant allegedly lived. Officers recovered five bags of heroin, small zip-lock bags, a plastic bag with numerous smaller plastic bags in it, a hand-held scale, a gun cleaning kit, one live round of 9mm ammunition, house keys, and personal papers in the defendant's name.

The defendant was arrested and charged with Possession of a Firearm; Possession of a Firearm With an Obliterated Serial Number; Possession of Ammunition; Possession of a High-Capacity Feeding Device (this charge was dismissed when it was determined that the case would stay in district court); and Possession of Class A with Intent to Distribute.

After trial, the defendant was found guilty on the firearms charges (the high-capacity charge was dismissed for lack of jurisdiction) and was found not guilty of the drug charge. On the three counts that the defendant was convicted of, he was sentenced to two and a half years in the House of Correction, one year to serve, balance suspended for three years.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

BROCKTON SNI

The Office of the Attorney General supports the position of the SNI Community Liaison, who is based in the Plymouth County District Attorney's Office, and works closely with that office and the other principal partners from the City of Brockton and the Brockton Police Department as well as with community residents and service providers. The Brockton SNI Advisory Council meets monthly to identify and address community concerns primarily related to crime and public safety. The Brockton SNI collaborates with community service providers and public agencies on a number of initiatives. Two

examples of initiatives from this year are listed below. Additionally, a description of the *Diversity and Cultural Competency Court Project* appears in the section "Byrne Memorial Grants."

- **Vacant Lot/Neighborhood Clean-Ups:** This initiative is a partnership among the Plymouth County District Attorney's Office, the Mayor's Office, the Office of Community Corrections, and the Department of Public Works. The purpose of the project is to provide community residents with assistance in cleaning vacant lots and neighborhood streets in the SNI that may pose crime or health and safety hazards when not maintained.
- **Landlord Notifications:** The purpose of this initiative is to provide notification to landlords whose tenants have been charged with drug-related offenses. Landlords are given information regarding their obligations to maintain the safety of their properties. The SNI Community Liaison works with the District Attorney's Office on this initiative and is responsible for implementing the system for notifications.

DORCHESTER SNI

The Dorchester SNI Advisory Council continued to meet monthly to identify and address the most pressing issues, including those that have consistently plagued the community, such as youth violence, truancy, and a lack of job and training opportunities. The Boston Police Department and other law enforcement partners focused primarily on "impact players" and quality-of-life issues, while other service providers focused on providing after-school programming that offered recreational, educational, and job training programs. In order to help bolster the capacity of community agencies to address these issues, the Office of the Attorney General allocated \$200,000 of its Fiscal Year 2003 budget to seven community-based agencies and the Boston Police Department for crime prevention initiatives in the SNI target area. Additionally, with \$187,500 in Byrne Memorial Grant funds from the Executive Office of Public Safety, the SNI Division and Dorchester SNI partners implemented the first year of the *Dorchester Youth and Family Project* described in the "Byrne Memorial Grant" section later in this report.

GROVE HALL SNI

In October 2002, the Grove Hall SNI entered its seventh year as an officially recognized Weed and Seed site as designated by the Department of Justice, Executive Office for Weed and Seed. At that time, the Department of Justice, through the the Office of the Attorney General, awarded \$225,000 to the Grove Hall SNI/Boston Weed and Seed Site to support its activities centered on the four core Weed and Seed principles: (1) Law Enforcement; (2) Community Policing; (3) Neighborhood Restoration; and (4) Prevention, Intervention, and Treatment. The Attorney General sub-contracts all Weed and Seed funds to the Boston Police Department and other community-based agencies serving the neighborhood.

Each year the Grove Hall SNI/Boston Weed and Seed Site's Coordinating Council holds seven regular meetings and five community meetings attended by dozens of community residents, in addition to representatives from law enforcement, government agencies, courts, service providers, and faith-based organizations.

On January 15, 2003, Attorney General Reilly was sworn in to his second term in Office at the Jeremiah E. Burke High School in Grove Hall. Several hundred staff from the Office of the Attorney General and numerous guests attended the event. The Attorney General selected the Burke High School as the location for his inauguration in order to recognize and honor the successful collaboration among community residents, government agencies, service providers, and law enforcement in their crime prevention and community development efforts.

ORANGE SNI

The newly formed Orange SNI is a collaboration of the Office of the Attorney General and the Northwestern District Attorney's Office, with the Town of Orange, the Orange Police Department, community residents, educators, government agencies, and service providers. The Orange SNI Advisory Council meets on a monthly basis and this year worked toward identifying priority public safety and quality-of-life issues. The assistant attorney general assigned to the Orange District Court prosecutes criminal cases occurring in the Town of Orange and offenses committed by Orange residents in other towns in the court's jurisdiction. Her caseload primarily involves offenses including domestic violence and other assaultive conduct, breaking and entering, and substance abuse involving both alcohol and narcotics.

TAUNTON SNI

The Taunton SNI continues to focus on law enforcement, prevention, and neighborhood restoration through its sub-committees and collateral activities (i.e., Criminal Justice, Treatment and Prevention, Education, Neighborhood, Crisis Intervention Team, Community Crisis Spiritual Care Response Team). The City of Taunton plays a pivotal role in leading the efforts of SNI. In addition to participating on the SNI Advisory Council, this year, the SNI Division continued to facilitate the collaboration of the Office of the Attorney General with the City of Taunton and Pro-Home, Inc. on the rehabilitation of the previously abandoned single-family home on Highland Street. The rehabilitation was completed during the year. The property was scheduled to be sold below cost to a qualified first-time home-buyer selected by lottery in August 2003.

LAWRENCE AND METHUEN WEED AND SEED SITES

SNI staff represent the Attorney General on the steering committees of both the Lawrence and Methuen Weed and Seed Coalitions, each in its second year as an officially recognized Weed and Seed site

as designated by the U.S. Department of Justice, Executive Office for Weed and Seed. Additionally, the Office of the Attorney General supports the Lawrence and Methuen Weed & Seed efforts through the provision of the Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor and through Generating New Capacity as described in the section below on "Byrne Memorial Grants."

SNI JOBS FOR YOUTH

One of the major SNI Division efforts aimed at prevention and intervention is the SNI JOBS FOR YOUTH Program. The program, which started in 1996, has grown from employing 23 youth in five communities in that year to employing more than 60 young people in nine communities throughout the state in Fiscal Year 2003. JOBS FOR YOUTH sites offer job opportunities throughout the year. Each of the JOBS FOR YOUTH sites is described below.

- Boston Twenty-four youths from the Grove Hall and Dorchester SNI target areas were employed through the City of Boston's Centers for Youth and Families. The goal is to provide employment opportunities, hands-on training, safe havens, and adult support. Partnering with local businesses and agencies, Boston's Centers for Youth and Families placed young people in a variety of positions, enabling them to learn skills related to entrepreneurship, leadership, and civic duty. Placements included local community centers, private businesses, and neighborhood social services agencies.
- Holyoke Holyoke's JOBS FOR YOUTH program is administered by the Teen Resource Project, which serves youths from low-income neighborhoods, particularly in downtown Holyoke. This program reinforces literacy skills, education, and responsible work behavior, and over the course of the year, helps five youths aged 13 to 15. Youths assisted as readers and mentors, and read to younger children at sites including family shelters and after-school programs.
- Worcester The JOBS FOR YOUTH program in Worcester, run by the YMCA of Greater Worcester, serves at-risk youths in the Worcester area. Ten youths, aged 15 to 18, participated during the year and were employed as computer tech assistants, office assistants, camp counselors, and medical assistants. The participants also completed a 19-week employment training program and performed 100 hours of volunteer work.
- Brockton The Old Colony YMCA in Brockton just completed its seventh year as a JOBS FOR YOUTH site. The program serves teens in the Brockton area who are enrolled in school or another educational program. The program's goal is to provide job opportunities, educational trainings, and recreational activities. This year the three teens aged 15 to 17 worked at an after-school community center.
- Lynn Lynn's program is administered by the City of Lynn's Office of Economic and Community Development and serves disadvantaged and at-risk youths. During this fiscal year, the program

employed five teens who worked in various positions at after-school programs and community arts programs.

- **Taunton** Six youths aged 16 to 19 were placed through the Taunton Department of Human Services during this fiscal year. The youths were assigned to various city agencies, including the Taunton Public Schools, Taunton Public Library, and the Department of Human Services. The program's goal is to provide employment and educational opportunities to youths to build skills and future employment capability.
- **Springfield** The Springfield SNI JOBS FOR YOUTH program is administered through the Springfield Southwest Community Health Center and serves youths from low-income families. The program provides youths with opportunities to increase their employability, self-esteem, and knowledge and skills in the area of health promotion. Five youths aged 13 to 18 were employed as Youth Health Liaisons during this fiscal year. They participated in delivering health education information, including violence prevention, to other youths at local community centers and assisted with MassHealth and Health Center enrollment.
- **New Bedford** Eleven at-risk youths aged 17 to 20 from New Bedford received training through the University of Massachusetts/Dartmouth Division of Continuing Education. The goal of the program is to provide training and support for youths to become employed and to continue their education. Internship placements included local businesses, courthouses, colleges, social service agencies, and the City of New Bedford.
- **Chelsea** This year marked the City of Chelsea's eighth year as a JOBS FOR YOUTH site. In addition to employment, the program offers opportunities for recreational team-building and for helping youths develop skills that enable them to choose challenging careers. This fiscal year, the program provided positions for seven Chelsea teens at several area businesses and city agencies, including the Chelsea Public Library and Chelsea Cable TV.

BYRNE MEMORIAL GRANTS

- **Diversity and Cultural Competency Court Project:** More than 100 participants from the Brockton Trial Court took part in this one-year pilot project. Six 90-minute lunchtime diversity and cultural competency workshops were held at the Brockton courthouse during the months of February and March. In June, Brockton's Cape Verdean Association hosted a workshop where staff from the Brockton Trial Court volunteered to describe their respective courts and how the community can access court resources. Staff from the association described their mission and the services they provided to the Brockton community. During the next year, the Brockton SNI will extend this second component by facilitating additional workshops where volunteer panelists from the court participate in workshops hosted by other organizations in the community that

serve diverse populations. The Office of the Attorney General contributed the required 25% hard cash matching funds for this project.

- **Dorchester SNI Youth and Family Project:** The Dorchester Youth and Family Project began its first year and complemented the ongoing efforts of the Dorchester SNI, focused on the diverse youth in the SNI target area. Funding and programming supported a variety of programming to coordinate enrichment and recreational activities for youths and a middle-school truancy initiative. Additionally, a Byrne fund also supported training police officers on issues related to child witnesses and violence, and expanding therapeutic resources for adolescent witnesses to violence. The sub-grantees contributed the required 25 percent hard cash matching funds for this project.
- **Generating New Capacity:** Generating New Capacity was a one-year project aimed at bolstering the capacity of small community-based organizations to build meaningful collaborations with law enforcement entities in order to plan effective and fundable programs. More than 40 community agencies participated in parallel workshop series that consisted of training on program development and evaluation, and grant-writing. One series was geared to agencies in the Dorchester and Grove Hall SNI/Boston Weed and Seed Site target areas, and the other was geared to agencies serving the Lawrence Weed and Seed Site target area.
- **Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor:** In December 2003, an assistant attorney general was assigned to the Essex County District Attorney's Office to provide a district court community prosecution component to Lawrence and Methuen Weed and Seed initiatives. The SNI community prosecutor maintains a caseload consisting primarily of priority quality-of-life offenses arising from the targeted Arlington neighborhood, which spans the cities of Lawrence and Methuen. The prosecutor also seeks to improve coordination and communication between law enforcement and the community through regular attendance at relevant public safety and community meetings in both cities. The Office of the Attorney General contributed the required 25 percent hard cash matching funds for this project.
- **SNI Community Re-Entry Project:** The Re-Entry Project began its second year of funding during Fiscal Year 2003 and is integrated with the efforts of the Dorchester and Grove Hall SNIs. There are two project components: (1) the Grove Hall component focuses on juvenile offenders 14 years old to 21 years old returning to the Grove Hall neighborhood upon release from custody in a Department of Youth Services secure treatment facility; and (2) the Bowdoin-Geneva component focuses on offenders 17 years old to 24 years old returning to the Bowdoin-Geneva neighborhood, following a period of incarceration at the Suffolk County House of Correction. Both components utilize an enhanced case-management model to provide the necessary assistance for participants to successfully return to their communities. Re-entry coordinators for each component manage a caseload of 20 to 30 offenders over the year.

The principal partners coordinating with the Office of the Attorney General on the Grove Hall component are: the Department of Youth Services; Roxbury Youthworks, Inc.; the Boston Police Department, and the Suffolk County District Attorney's Office. The principal partners coordinating with the Office of the Attorney General on the Bowdoin-Geneva component are: the Suffolk County Sheriff's Department, Community Resources for Justice, Inc., the Boston Police Department, and the Dorchester District Court Probation Department. The sub-grantees and the Boston Police Department provided the required 50 percent hard cash matching funds for this project.

- YES Project: The YES Project was established in the fall of 2000 in response to a need for after-school and violence prevention programming, as identified by the Dorchester Safe Neighborhood Initiative. The YES Project established a partnership between the Office of the Attorney General and the Colonel Daniel Marr Boys and Girls Club/Paul R. McLaughlin Youth Center in Dorchester. The Project aims to provide teens with supervised after-school activities that offer meaningful life skills education to help youths overcome the negative influences that can lead to school failure, substance abuse, involvement in the criminal justice system, or victimization by crime. The YES Project also provides training and educational programming for McLaughlin Center staff.

The YES Project Manager, in collaboration with McLaughlin Center staff, continued to develop and implement the YES Project curriculum. More than 100 volunteers, mostly from the Office of the Attorney General, participated in implementing YES Project activities this year. Examples of the YES Project activities for youth continued this year were:

- Weekly one-on-one academic tutoring for approximately 30 youths;
- Workshops on topics ranging from Internet safety to substance abuse prevention to health and safety for working teens;
- A two-day workshop for peer leaders on conflict resolution and mediation skills;
- A college preparation program, including: college alumni panels, application workshops, financial aid sessions, college tours, and essay-writing workshops;
- Ballet and tap dance classes taught by volunteers from the Office of the Attorney General; and
- A holiday toy drive.

Each of these activities was implemented with volunteers from the Office of the Attorney General. Staff trainings included topics such as: the juvenile justice system; communications skills; 51A mandatory reporting and family violence prevention; health and safety for working teens; and child labor laws.

A major focus of the YES Project during this third and final year of Byrne funding was development and filing of *Understanding Violence*, a documentary created to help youth explore the underlying causes and consequences of violence. The film was developed in collaboration with the Gang Unit of the Suffolk County District Attorney's Office and The Mirror Project. It will be a part of a six-session violence prevention curriculum also developed by the YES Project this year. The film and curriculum will eventually be distributed to Boys and Girls Clubs and other youth-serving agencies across the Commonwealth. Additionally, to ensure the sustainability of the YES Project beyond Byrne funding, the YES Project Manager began development of a comprehensive YES Project curriculum, which documents the many YES Project activities and provides materials so activities may be replicated. The YES Project curriculum will also be distributed to Boys and Girls Clubs across the Commonwealth.

The Office of the Attorney General provided the required 50 percent hard cash matching funds for the YES Project.

OUTREACH, EDUCATION, AND TRAINING

The philosophy of the SNI is predicated on partnering with community stakeholders to enhance public safety and quality of life for neighborhoods. As such, all SNI staff regularly participate in formal and informal outreach activities to solidify existing working relationships as well as to build new ones. Moreover, SNI staff serve as a resource, providing technical assistance and training, both formally and informally, to community partners. Many of the SNI Division's outreach, education, and training activities are described in the previous sections of this report.



GOVERNMENT BUREAU

ADMINISTRATIVE LAW DIVISION

TRIAL 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 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 2003 continued 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.

The Government Bureau consists of an Administrative Law Division and a Trial Division. During Fiscal Year 2003, several attorneys were assigned to work permanently in both the Administrative Law and Trial Divisions, and a sampling of cases from each division was assigned 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. Both divisions initiated affirmative litigation on behalf of state agencies and the Commonwealth and submitted 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 also is 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 torts, real estate matters, contract-related disputes, employment disputes, civil rights violations, 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.

During Fiscal Year 2003, the Government Bureau included the following staff members: Stephanie Lovell, Chief; Sherrie Costa; Peter Sacks; and Ernest Sarason. Staff members assigned to particular divisions within the Government Bureau are listed below.

AFFIRMATIVE LITIGATION

Both the Administrative Law Division and the Trial Division initiate affirmative litigation on behalf of the Commonwealth, when such litigation is in the public interest; furthers the Attorney General's priorities; and has a significantly high monetary value or raises legal or policy issues of concern to the public and the Commonwealth. The Government Bureau maintained an active docket of affirmative litigation in Fiscal Year 2003 to protect the public interest and the interests of its state agency clients. Highlights of this affirmative litigation were as follows:

- Commonwealth v. Dolphin Forwarding, Inc. and Mary M. White (Suffolk Superior Court) The Attorney General filed suit on behalf of the state Department of Education against a storage company and its owner for allowing \$1.6 million of food owned by the department and local school districts to become contaminated. The United States Department of Agriculture had donated the food to the department for school lunch programs.
- Commonwealth v. Eligia Ratchell (Suffolk Superior Court) The Attorney General filed suit on behalf of the State Board of Retirement to recover \$28,600 mistakenly overpaid to a former state employee.
- Metropolitan District Commission v. T Equipment (Suffolk Superior Court) After filing suit on behalf of the MDC to recover rent from tenant who continued to use the property after it had been acquired for park purposes, the Attorney General entered into an agreement for judgment requiring the defendant to pay \$100,000.
- Griffin v. Heck (Suffolk Superior Court) A former state employee filed a lawsuit against the owner of the office building where she had allegedly become ill. On behalf of the State Board of Retirement, the Attorney General intervened to recoup some of the disability retirement benefits previously paid to the plaintiff.
- Commonwealth and City of Easthampton v. William Chicoine (Hampshire Superior Court) The Attorney General, on behalf of the Department of Agriculture, filed suit to enforce the terms of an Agricultural Preservation Restriction (APR). The defendant had allegedly violated the APR by subdividing the subject parcel into two lots of property.
- Criminal History Systems Board v. Harold E. Archaibeau, Jr., Chief of Police of the Town of Becket, and Pittsfield District Court (Berkshire Superior Court) On behalf of the Criminal History Systems Board, the Attorney General intervened in an action in Pittsfield District Court seeking judicial review of the decision of the Becket licensing authority to deny

a license to carry a firearm to an applicant who had a sealed criminal record. After the District Court reversed the licensing authority's decision, the Board appealed to the Superior Court, which restored the decision of the licensing authority denying the license.

- Total Highway Services, Inc. v. Smith v. Metropolitan District Commission (MDC) (Middlesex Superior Court) After the MDC had been named a third-party defendant in a motor vehicle negligence action, the Attorney General on behalf of the MDC filed a counterclaim against the construction company for damaging the MDC's bridge. At a jury trial, the MDC was awarded \$106,000 in damages plus interest.
- Metropolitan District Commission (MDC) v. Hodgdon d/b/a Blue Hills Adventure (Suffolk Superior Court) Prior to Fiscal Year 2003, the Attorney General, on behalf of the MDC, had obtained a preliminary injunction preventing the defendant from advertising, conducting, and charging his customers for adventure outings on MDC property without having first obtained the necessary permits from the MDC. In Fiscal Year 2003, the Attorney General returned to Suffolk Superior Court to obtain an amended preliminary injunction after it became evident that the defendant was violating the spirit of the original injunction by seeking donations for his outings.
- Commonwealth v. Young Dimensions Day Care (Suffolk Superior Court) On behalf of the Office of Child Care Services (OCCS), the Attorney General filed a lawsuit against a day care provider which had allegedly misappropriated \$750,000 of state contract funds.

Government Bureau attorneys also litigated cases through the Attorney General's Abandoned Housing Project. The project is designed to assist community groups in choosing and appointing their own people to take over abandoned houses that, due to the absentee owners' indifference, have created a health, safety, and crime hazard for the community. The Attorney General assists the community groups by petitioning the appropriate court for an order that permits the community group to appoint their receiver and take charge of the blighted property, for the benefit of the neighborhood. Once the receiver is appointed, the receiver and the community group work together on the actual repair and rehabilitation of the property.

ADMINISTRATIVE LAW DIVISION

The Administrative Law Division has four principal functions: (1) to defend lawsuits against state officials and agencies concerning the validity of statutes and regulations and the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) to defend suits for judicial

review of adjudicatory decisions of state administrative agencies; (3) to undertake a legal review of newly enacted town by-laws; and (4) to prepare 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 2003, significant events occurred in each of these areas, as set forth below.

During Fiscal Year 2003, the Administrative Law Division included the following staff members: Judith Yogman, Division Chief; William Porter, Division Chief; James Arguin; Luna Bacon; Dena Barisano; Thomas Barnico; John Bowman; Erin Browne; Romeo Camba; Judith Cassino; Julie Collins; Pierce Cray; Daniel Hammond; John Hitt; Quinette Littleton; Bernadette Lovell; Maite MacDonald; Maria Makredes; Pauline O'Brien; Susan Paulson; Anthony Penski; Christopher Quay; Robert Quinan; William Reynolds; Juliana Rice; Deirdre Roney; Adam Simms; Ginny Sinkel; Amy Spector; Steven Thomas; Peter Wechsler; Richard Weitzel; Jane Willoughby; and Sheila York.

SIGNIFICANT CASE SUMMARIES

Highlights of some of the most significant cases handled by the Administrative Law Division in Fiscal Year 2003, grouped by subject matter, are as follows:

ELECTIONS

- **First v. Attorney General** (Supreme Judicial Court) The court rejected a claim by registered voters that the Attorney General's ballot summary of an initiative petition concerning bilingual education was unfair and should therefore disqualify the measure from the ballot.
- **Pawlick v. Birmingham** (Supreme Judicial Court) Plaintiffs sought a judgment declaring that the Senate President, in his individual capacity, acted unlawfully in failing to cause a joint session of the Legislature to vote on a proposed initiative amendment to the state constitution. The Court reaffirmed its prior holding that declaratory relief is not available against a Senate President in his official capacity with respect to a joint session's action on proposed initiative amendments to the Constitution. The Court also held that declaratory relief was not available against the Senate President in his individual capacity, because in that capacity he had no duties with respect to the proposed amendment.

SEPARATION OF GOVERNMENTAL POWERS

- **First Justice of the Bristol Division of the Juvenile Court Department v. Clerk-Magistrate of the Bristol Division of the Juvenile Court Department** (Supreme Judicial Court) Two trial

court justices asserted that recently enacted statutes unconstitutionally undermined the ability of the judiciary to control and supervise trial court clerks, assistant clerks, and probation officers. The Supreme Judicial Court held that: (1) the statutes, when narrowly construed, did not unconstitutionally deprive trial court judges of their inherent judicial authority to supervise and control personnel, and (2) enactment of the challenged provisions in "outside sections" in a general appropriation bill did not violate Amendment Article 63 of the Massachusetts Constitution.

DELIVERY OF LEGAL SERVICES

- **Brown v. Legal Foundation of Washington** (U.S. Supreme Court) Legal clients argued that the Interest on Lawyers' Trust Accounts (IOLTA) program in the State of Washington violated the Takings Clause of the Fifth Amendment. Under the Washington IOLTA program (and similar programs in every other state), interest earned on pooled client trust accounts holding only short-term or nominal funds is used to fund civil legal services for indigent persons. The Supreme Court upheld the program, finding that clients whose funds were pooled suffered no pecuniary loss. The Attorney General co-authored an amicus brief signed by 36 states in support of the position adopted by the Court. After the **Brown** decision was issued, a similar challenge to the Massachusetts IOLTA program pending in U.S. District Court in Boston was dismissed.
- **Ruci v. Clients Security Board** (Appeals Court) The Appeals Court affirmed in part and remanded in part a judgment of the Superior Court dismissing a claim by a convicted murderer that he was entitled to reimbursement from the Clients' Security Fund because of misconduct by his defense attorney.

EDUCATION

- **Student No. 1 v. Board of Education** (United States District Court and Suffolk Superior Court) Cases were filed in both federal and state courts on behalf of several students in the high school Class of 2003 seeking to block implementation of the Board's new requirement that students must pass the Massachusetts Comprehensive Assessment System (MCAS) test or its equivalent in order to graduate from high school. Both courts denied the students' motions for a preliminary injunction against the graduation requirement. In the state court case, a Superior Court judge rejected the students' claim that the graduation requirement conflicted with the state Education Reform Act. In the federal case, the Court denied a preliminary injunction motion asserting that the graduation requirement violated the Due Process Clause of the United States Constitution. As a result of these two rulings, the graduation requirement went into effect as scheduled in June 2003.

- **Comfort v. Lynn School Committee** (U.S. District Court) After a bench trial, the Court held that the Commonwealth's voluntary public school desegregation law and the public school student assignment plan, adopted by the City of Lynn pursuant to the law, did not violate the Equal Protection Clause of the 14th Amendment. Plaintiffs have appealed.

HEALTH AND HUMAN SERVICES

- **Philip Morris, Inc. v. Reilly** (U.S. Court of Appeals, First Circuit) The Court, sitting en banc, held that the Massachusetts Tobacco Ingredients and Nicotine Yield Act violates the Takings Clause of the Fifth Amendment because it allows public disclosure of trade secret tobacco ingredient information.
- **Rosie D. v. Swift** (U.S. Court of Appeals, First Circuit) In this action by Medicaid-eligible minors diagnosed with severe psychiatric or behavioral disorders, the Court held that the plaintiffs' attempt to enforce in court their claim of entitlement to particular medical services under the federal Medicaid act was not barred by sovereign immunity, notwithstanding that the Medicaid statute expressly prescribes a limited remedial scheme for such claims in the form of a fair hearing process.
- **Rolland v. Romney** (U.S. Court of Appeals, First Circuit) In this class action brought by nursing home residents with mental retardation or other developmental disabilities, the Court held that the defendant state agencies had a duty under federal law to provide "specialized services" to the plaintiffs in a way that results in active treatment when combined with services provided by nursing facilities and others, if screening deems such services necessary.
- **McGuire v. Reilly** (U.S. District Court) In this action, anti-abortion advocates challenged a state law that requires those engaged in protest, education, or counseling to observe a six-foot "buffer zone" around persons entering reproductive health care facilities. The Court held that the law does not, on its face, violate the First Amendment, but decided that the plaintiffs should be permitted an opportunity to attempt to prove that the law is unconstitutional "as applied" to the plaintiffs' activities, and so the Court scheduled additional time for further discovery.
- **Atlanticare Medical Center v. Commissioner of the Division of Medical Assistance** (Supreme Judicial Court) After concluding that the federal Medicaid act mandates that the state itself seek payment from third parties who are liable for Medicaid expenditures, the Court held invalid a state regulation that required health care providers to reimburse Medicaid payments the providers had received from the state and re-bill liable third parties who were belatedly discovered.

- **Hingham Healthcare Limited Partnership v. Division of Health Care Finance and Policy** (Supreme Judicial Court) The Court upheld the division's decision to implement the 1998 and 2000 amendments to the Medicaid reimbursement rate methodology. The Court concluded that (1) substitution of a uniform capital payment for a cost-based approach was not in excess of the division's statutory authority; and (2) the division's use of a peer group cost analysis to determine an efficiency-promoting uniform rate was not arbitrary or capricious, and actually increased the rates of reimbursement of both of the plaintiff nursing homes.
- **Athol Memorial Hospital v. Commissioner of the Division of Medical Assistance** (Supreme Judicial Court) In this appeal from denial of Medicaid reimbursement for services the division deemed not medically necessary, the Court held that the plaintiff medical providers were required to exhaust their administrative remedies, even though they (1) styled their claims as breach-of-contract; and (2) asserted that administrative review would have been confined to a question of law, namely the validity of the agency's regulations.
- **Doe v. Commissioner of Transitional Assistance** (Supreme Judicial Court) The Court held that a state law imposing a six-month residency requirement on qualified aliens seeking benefits under a newly created supplemental program of transitional aid to families with dependent children (TAFDC) did not violate equal protection. The Court concluded that the statute was consistent with national policies regarding alienage, that it placed no burdens on aliens beyond those imposed by federal law, and that the six-month residency requirement had a rational basis in ensuring that aliens first attempt to be self-sufficient before applying for state-funded welfare benefits.

CHILDREN AND FAMILIES

- **Department of Revenue v. Mason M.** (Supreme Judicial Court) The Court held that child support payments to a non-marital child were required to be increased so that there was no discrimination between the father's non-marital and marital children under the Child Support Guidelines. The Court also held that the trial judge erred: (1) in basing the support order on the father's presumptive income under the guidelines, instead of his greater actual income; and (2) in refusing to consider his wife's income, since she had a duty to contribute to the support of the two marital children and shared household expenses with the father.
- **In re Emily** (Appeals Court) The Court held that the trial court could not terminate the parental rights of a parent for failure to ensure her child's attendance at school, when that child was over age 16, the maximum age at which children are required by law to attend school.

- **Adoption of Rhona** (Appeals Court) The Court vacated a decree terminating parental rights, holding that a two-year delay between the end of the trial and issuance of the decree called into question the accuracy of the Juvenile Court's factual findings.
- **Adoption of Roni** (Appeals Court) In this termination-of-parental-rights case, the Court held that (1) the trial court did not abuse its discretion in excluding the parents and their interpreter from the courtroom during the children's testimony; and (2) in the circumstances, the failure to complete the "72-hour hearing" (following removal of the children from the parents' custody) within the statutorily prescribed period did not violate the parents' right to due process.

EMPLOYMENT AND RETIREMENT

- **State Police for Automatic Retirement Association v. DiFava** (U.S. Court of Appeals, First Circuit) The Court affirmed dismissal of a complaint by an association of state police officers seeking to compel the Department of State Police to enforce a law requiring state police officers to retire at age 55, where enforcement of that law had been enjoined by the U.S. District Court in 1992. The Court held that the federal Age Discrimination in Employment Act (ADEA) applied to the Commonwealth, barring enforcement of the state mandatory retirement age of 55, and did not provide plaintiffs with a private right of action to enforce the mandatory retirement age under an ADEA "grandfather" clause.
- **Greaney v. Colonel, Department of State Police** (Supreme Judicial Court) Relying on the state veterans' tenure act, a State Police major challenged his demotion to the rank of the captain. The Court held that the act does not apply to a demotion of a major in the department.
- **Hertz Corporation v. Acting Director of the Division of Employment and Training** (Supreme Judicial Court) In an employer's challenge to the division's award of unemployment compensation to striking employees, the Court agreed with the division that because the main business of the employer continued uncurtailed during the strike, the evidence supported a finding that there was no "stoppage of work" such as would disqualify striking employees from receiving unemployment compensation.
- **Athol Daily News v. Division of Employment and Training** (Supreme Judicial Court) The Court held that adult newspaper carriers who controlled the mode, means, and manner of their delivery services and were free to deliver newspapers for other publishing companies were not "employees" of Athol News entitled to unemployment compensation.

- **Boston Bicycle Couriers, Inc. v. Deputy Director of Division of Employment and Training** (Appeals Court) The Court held that a bicycle courier was an employee of the plaintiff courier company, not an independent contractor, and that the company was therefore required to make payments to the state unemployment compensation fund. The Court noted that the courier was not an independent businessman with other customers and did not advertise his services or maintain a separate place of business or telephone listing.
- **Houde v. Contributory Retirement Appeals Board** (Appeals Court) The Court affirmed the denial of an application for accidental disability retirement benefits, rejecting the plaintiff's claim that the physicians on her medical panel were financially biased because they were associated with an entity that did business with claimant's employer, the City of Cambridge.

INSURANCE

- **Bowler v. Hawke, as United States Comptroller of the Currency** (U.S. Court of Appeals, First Circuit) The Massachusetts Commissioners of Insurance and Banks filed a petition challenging a ruling by the United States Comptroller of the Currency that federal law pre-empts state laws governing the sale of insurance by banks. The petition was dismissed on the ground that it did not present a "regulatory conflict" within the meaning of the federal law that authorizes expedited review in the courts of appeal.
- **Ruthardt v. United States** (U.S. Court of Appeals, First Circuit) The Court held that the federal statute granting a priority to the United States in the distribution of insurance guaranty funds pre-empted the claim-filing deadline established under Massachusetts law for claims by creditors in insurance liquidation proceedings in state court.

TAXATION

- **Circuit City Stores v. Commissioner of Revenue** (Supreme Judicial Court) The Court held that tangible personal property purchased at a Massachusetts store and picked up by a customer at an out-of-state location is subject to Massachusetts sales and use tax, where title passed to the customer in Massachusetts.
- **Sherwin-Williams v. Commissioner of Revenue** (Supreme Judicial Court) Reversing the Appellate Tax Board, the Court held that royalty payments to wholly owned subsidiaries for use of trade names and trademarks were not sham transactions, but rather were motivated by valid business purposes and were therefore deductible as business expenses.
- **Route One Liquors v. Secretary of Administration and Finance** (Supreme Judicial Court) Parking lot owners challenged the constitutionality of an excise tax on the privilege of operating

commercial parking lots near Gillette Stadium in Foxboro. The Court held that the tax was constitutional because the operation of a commercial parking lot is a commodity subject to an excise, and the tax statute had a public purpose and benefit, did not unreasonably treat parking lot owners unequally, and was not facially invalid based on the amount of the tax. The Court also held that the tax was not an unconstitutional taking of property.

- Tenneco v. Commissioner of Revenue (Appeals Court) The Court affirmed the Appellate Tax Board's decision that monthly management fees received from the taxpayer's corporate subsidiaries were "net income" to the taxpayer.

UTILITIES

- Greater Boston Real Estate Board v. Department of Telecommunications and Energy (DTE) (Supreme Judicial Court) The Court held that the DTE lacked statutory authority to require apartment building owners to allow competing telecommunications carriers access to attach wires and cables to such apartment buildings. The Court concluded that the buildings were not "utilities" within the meaning of the relevant statute and therefore could not be subjected to the non-discriminatory-access requirements applicable to utilities.
- City Council of Agawam v. Energy Facilities Siting Board (Supreme Judicial Court) The Court affirmed the Board's grant of approval for an electric utility to store fuel oil at its power plant in Agawam. The Court also affirmed the Board's jurisdiction to issue the requested approval, deferring to the Board's interpretation of the statutes it is charged with enforcing.

ALCOHOL AND FIREARMS REGULATION

- Miller Brewing Co. v. Alcoholic Beverages Control Commission (Appeals Court) The Court upheld the Commission's decision that (1) a beer manufacturer's extension of more lenient credit terms to one wholesaler than to other wholesalers constituted unlawful price discrimination, and (2) the manufacturer's sale of alcoholic beverages to a ship chandler that lacked the required wholesaler and importer's license violated Massachusetts law.
- Dupont v. Chief of Police of Pepperell (Appeals Court) The Court held that a statute under which a person convicted of a misdemeanor punishable by imprisonment for more than two years is disqualified from obtaining a license to carry firearms should be construed to include convictions that predate the enactment of the statute.
- Sullivan v. Department of State Police (Appeals Court) Relying on a regulatory prohibition against selling guns from a residence, the Court affirmed the denial of a gun-sales permit to the plaintiff, who was using garage space located under his home as the site for his gun-sales business.

The Court rejected plaintiff's argument that the regulation did not apply where there was a separate entrance to the garage.

ADMINISTRATIVE AND JUDICIAL PROCEDURE

- **Paquette v. Department of Environmental Protection** (Appeals Court) This case presented the recurring procedural question whether an appeal from an administrative agency decision is timely where the appealing party files in court, moves for reconsideration before the agency, and then does not refile in court after the agency denies the motion for reconsideration. The Appeals Court held that dismissal was inappropriate on the facts of this case because of the preference for adjudication on the merits, the absence of prejudice to defendants, and the unlikelihood that judicial review would disrupt the agency decision-making process.
- **Putignano v. Treasurer and Receiver General** (Appeals Court) Due to plaintiff's contributory negligence, the Court affirmed the dismissal of her claims against the Land Court Assurance Fund arising from the loss of title to her land.

PUBLIC RECORDS

- **Globe Newspaper Company v. District Attorney for the Middlesex District** (Supreme Judicial Court) The Court held that docket numbers on criminal cases that were not correlated with any defendant-specific information were public records subject to mandatory disclosure. The Court reasoned that this information was not protected under the Criminal Offender Record Information (CORI) statute because docket numbers were within CORI's express exception for chronologically maintained court records of public judicial proceedings.
- **Globe Newspaper Company v. Commissioner of Education** (Supreme Judicial Court) A newspaper claimed that it should have received access to raw data concerning the Massachusetts Comprehensive Assessment System (MCAS) in less than the 10 days prescribed by statute for responding to public records requests. The Court held that the release of public records within 10 days of receipt of a request is presumptively reasonable and that the newspaper had failed to overcome the presumption in this case.
- **Donahue v. City of Boston** (U.S. Court of Appeals, First Circuit) The Court rejected plaintiff's claim that various state officials had violated his civil rights by withholding certain documents in alleged violation of the state public records law.

STATISTICAL SUMMARY

During Fiscal Year 2003, the Administrative Law Division opened 832 cases and closed 497 cases. At the close of the fiscal year, 1,617 cases were pending in the division. Cases handled by the division resulted in 20 reported decisions of the Supreme Judicial Court, 15 reported decisions of the Massachusetts Appeals Court, seven reported decisions of the United States Court of Appeals for the First Circuit, and four reported decisions of the United States District Court for the District of Massachusetts. In addition, division attorneys were involved in numerous cases in those courts and in state trial courts that resulted in unpublished decisions.

MUNICIPAL LAW UNIT

The Administrative Law Division's Municipal Law Unit discharges the Attorney General's responsibility of reviewing and approving municipal by-laws and by-law amendments from the more than 300 towns throughout the Commonwealth. By statute, the Attorney General is charged with the review of town general by-laws (G.L. c. 40, § 32), town zoning by-laws (G.L. c. 40A, § 5), town historical district by-laws (G.L. c. 40C), and city and town Home Rule Charter amendments (G.L. c. 43B).

During Fiscal Year 2003, the Municipal Law Unit included the following staff members: Robert Ritchie, Director; Sandra Giordano; Kelli Lawrence; and Eva Wanat.

With respect to town by-laws, the Attorney General exercises a limited power to disapprove local legislative action if the proposed amendment is found to be inconsistent with the laws or the Constitution of the Commonwealth. The Attorney General has 90 days from the date on which he receives by-law amendments from the Town Clerk in which to conduct his review. He will disapprove any amendment, or appropriate portion thereof, where the amendment is in facial conflict with substantive state law or where mandatory procedural requirements of adoption are not met.

With respect to Home Rule Charter amendments, G.L. c. 43B prescribes that municipal charters and charter amendments from any of the 351 cities and towns in the Commonwealth must be reviewed by the Attorney General, who must render his opinion on consistency with state law within 28 days after receipt of a proposed charter amendment. The Attorney General is not required to review municipal charters or charter amendments enacted by the Legislature in special acts.

During Fiscal Year 2003, the Municipal Law Unit reviewed: (a) 718 general by-laws, of which 651 (93.9%) were approved, 42 (6.1%) were approved with partial deletion, 11 (1.6%) were disapproved, and 14 (2.0%) were returned with a finding that no action by the Attorney General was required by

state law; (b) 881 zoning by-laws, of which 825 (95.4%) were approved, 40 (4.6%) were approved with partial deletion, 13 (1.5%) were disapproved, and three (0.1%) were returned with a finding that no action by the Attorney General was required by state law; (c) 160 zoning map amendments, all but one of which were approved; (d) five historic district by-laws, of which all (100%) were approved; and (e) 24 charter amendments, of which all (100%) were found to be consistent with state law.

During Fiscal Year 2003, the authority conferred by Chapter 299 of the Acts of 2000 was exercised in over 65 instances, an increase of 24 from the previous year. In all instances, no objection was filed to the Attorney General's waiver of minor procedural deficiencies. There was one disapproval, however, for a town's non-compliance with Chapter 299 and a partial disapproval of another town's submission because of a substantive reason. Chapter 299 was also used on four occasions to extend the 90-day review period by mutual consent of the town counsel and the Attorney General.

Above and beyond what is required by statute, by choice the Attorney General has extended the services and resources of his Municipal Law Unit by providing, time permitting, voluntary informal review of proposed town by-law amendments, and — even though not subject to review by the Attorney General — proposed city ordinances. During Fiscal Year 2003 the unit experienced an increase in the number of calls from local public officials and members of the general public, many of which related to anticipated changes in local laws and charters.

During Fiscal Year 2003, the unit experienced an increase in the number of cases in litigation in which municipal law issues were involved. Even where the Attorney General initially elected not to intervene or otherwise participate in such cases, the unit monitored developments so that the Attorney General could become involved if warranted by developments in the case. At the close of Fiscal Year 2003, unit attorneys were monitoring approximately 60 such matters, a slight increase over the previous year.

The most prevalent subjects of local regulation during Fiscal Year 2003 were by-laws regulating affordable housing, telecommunications facilities, wetlands, open space, agricultural uses and structures, and sexually oriented businesses. Inclusionary zoning by-laws were more in evidence this year than in previous years.

Over time, unit personnel have gradually increased the unit's outreach efforts by writing and speaking to groups all around the Commonwealth. Particular emphasis has been placed on working with town clerks and local planning boards, as both are intimately involved in the substance and procedure of local legislation. Unit personnel participated in dozens of outreach and educational events during Fiscal Year 2003.

Form 6 required for the submission of all by-laws was completely revised, and was presented and explained at the town clerk's conferences and meetings. Unit personnel attended the Massachusetts Town Clerk's Conferences to hold classes and to explain the necessity of the changes in the form used for submitting the by-law packets. The unit also participated in the 3rd Annual Municipal Law Update Conference.

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 that 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 makes or approves the opinion request. During Fiscal Year 2003, no formal opinions were issued.

During the same time period, the Attorney General issued 27 letters providing informal advice, providing a certification or designation to a federal agency in connection with the Commonwealth's participation in a federal program, or declining to give advice.

TRIAL DIVISION

The Trial Division is responsible for defending the Commonwealth in civil cases brought against the Commonwealth and its departments, agencies, and employees in a variety of actions primarily consisting of tort, eminent domain, employment, contract, civil rights, and land registration actions. Members of the division analyze each case at the outset to see if the case should be resolved through

settlement or in favor of the Commonwealth by dispositive motion. If not, the case proceeds through the discovery phase, and the division continues to try to resolve the case through settlement or by filing a summary judgment motion. Alternative dispute resolution approaches are always considered and are utilized at any appropriate stage of the case. The experience of the Trial Division in representing the Commonwealth in civil lawsuits is consistent with private practitioners in this area of law in that the majority of cases resolve prior to a trial. If the case goes to trial, the Trial Division aggressively defends the Commonwealth and its employees. The Trial Division also handles any appeals arising from its cases, whether brought in state or federal court. Several appeal decisions are highlighted below. The Trial Division has enjoyed impressive results by defending the Commonwealth and its employees in its trials, resulting in millions of dollars in savings to the Commonwealth and the public reserves.

During Fiscal Year 2003, the Trial Division included the following staff members: David Kerrigan, Division Chief; Jason Barshak; Matthew Berge; Crispin Birnbaum; John Bowen; Ranjana Burke; Joseph Callanan; Stephen Clark; Rosemary Connolly; Stephen Dick; Janet Elwell; Lisa Fauth; Susan Gaeta; Norine Gannon; Salvatore Giorlandino; Franco GoBourne; Mary Hall; Michelle Kaczynski; Ronald Kehoe; Jennifer Lespinasse; Lucinda MacDonald; Howard Meshnick; Alicia Oladayiye; Maite Parsi; Fran Riggio; Peter Russell; A. Tom Smith; Mark Sutliff; James Sweeney; Marini Torres-Benson; Theresa Walsh; Doris White; Jessica Wielgus; Nathaniel Wright; and Charles Wyzanski.

TORTS

Most of the trials conducted by members of the Trial Division involve claims that the Commonwealth or one of its employees breached a duty of care owed to a member of the public, resulting in injury or property damage. The following cases are typical of the tort cases tried by members of the division during the course of the year.

- **Yann v. MDC** (Suffolk Superior Court) The Commonwealth obtained a defense verdict in this case in which plaintiff claimed that she slipped and fell while riding her bicycle on a path near the Hatch Shell. Plaintiff argued that the MDC was responsible because it had failed to maintain the path in a safe manner. The division defended the case on the basis that the recreational use statute barred the claim and based on the fact that the plaintiff failed to show what caused her fall. After a two-day jury trial, the jury returned a verdict for the Commonwealth.
- **Bohne v. Cape Cod Community College** (Barnstable Superior Court) The plaintiff claimed she was injured as a result of a slip and fall on college property. After the Commonwealth demonstrated that it was not liable for the condition that allegedly caused the fall and subsequent injuries, the jury returned a verdict for the Commonwealth.

Many of the tort cases are also resolved through other means, such as dispositive motions or settlement. The following cases are examples of resolutions achieved through those means:

- **LaSalle v. State Police** (Essex Superior Court) The Commonwealth obtained dismissal on the basis that the plaintiff had failed to make proper service of process, as required by the Rules of Civil Procedure, within the allotted 90-day period.
- **Mahoney v. MDC** (Suffolk Superior Court) The plaintiff claimed that she was injured after falling at an MDC rink due to hazardous conditions at the rink. The Commonwealth obtained summary judgment on the basis that the recreational use statute barred plaintiff's claim.
- **Carle, Administratrix v. Department of Mental Health** (Suffolk Superior Court) The estate of a DMH patient on leave from a state hospital claimed that the Commonwealth and several of its employees were negligent and violated the decedent's civil rights by not properly monitoring him when he left the hospital. The patient was later found drowned in the Charles River. The Commonwealth obtained summary judgment on the basis that the G.L. c. 258 immunities applied and that plaintiff could not meet her burden of proving causation.
- **Lembryk v. Salem State College** (Essex Superior Court) Plaintiff, a soccer player from a visiting team, sued after being injured at a soccer match by a Salem State player. Plaintiff claimed that the college encouraged rough play, resulting in his injury. The Commonwealth obtained summary judgment on the basis that it did not condone rough play and that it could not be held liable for injuries incidental to playing a contact sport.
- **Kent v. Commonwealth** (Supreme Judicial Court) This case involved a claim against members of a parole board who were involved in the decision to release a prisoner. Eight years later, the parolee shot a police officer, who then sued the Commonwealth. The Supreme Judicial Court held that the Commonwealth has the right to immediately appeal from a denial of a motion to dismiss based on the state's immunity from suit without having to wait until there is a final judgment on the merits of all claims in the case. The court also ruled that the claim against the Commonwealth should have been dismissed, because the parole board's decision did not "originally cause" the shooting, and thus the Commonwealth was immune from suit under G.L. c. 258, § 10(j).

In Fiscal Year 2003 several tort cases were successfully settled, resulting in significant savings to the Commonwealth. The following cases are typical of the types of settlements reached in tort cases.

- **Accardi v. Commonwealth** (Middlesex Superior Court) The plaintiff suffered a herniated disc as a result of a car accident with a car driven by a Commonwealth employee. The plaintiff's demand was \$90,000 and was settled for \$58,000.
- **Deschene v. Department of Mental Health** (Middlesex Superior Court) The plaintiff claimed that she had been raped by another patient at a DMH facility. She claimed that the Commonwealth negligently supervised the patient in light of the fact that the patient had a history of sexual assault. Under the Massachusetts Tort Claims Act, plaintiff would have been eligible to recover up to \$100,000 at trial; this case was favorably settled for \$75,000 before trial.
- **Higgenbottem v. Massachusetts State Hospital School** (Plymouth Superior Court) The plaintiff claimed that the defective maintenance of a walkway to the school caused her to fall and injure her knee, resulting in medical expenses and lost wages. Her demand was \$60,000 and the case was settled before trial for \$6,000.
- **Mackie v. Nason** (Bristol Superior Court) The plaintiff's estate sued for the wrongful death of a former Department of Mental Health (DMH) client on the theory that DMH failed to properly supervise the housing where the client lived. The client died as a result of a fire at the housing, and the plaintiff contended that there were numerous building code violations. As the trial was about to begin, the Commonwealth settled the case against it for \$2,500.

CONTRACTS

The division defends the Commonwealth and its agencies in a variety of contract actions consisting of construction disputes, breach of lease cases, and bid protests. These cases are complex because they often involve interpretation of bidding regulations and a complicated statutory framework. These cases also frequently require the division to defend requests for preliminary injunctive relief which may be dispositive of the entire case. Unlike tort cases, there is no statutory cap on the potential exposure to the Commonwealth, so the Commonwealth's liability exposure can be quite large in any given case.

The following are examples of the types of contract cases handled by the division:

- **Massachusetts Organization of State Engineers and Scientists v. Executive Office of Transportation and Construction** (Appeals Court) The court held that the Commonwealth's decision in awarding the contract for construction work on a Route 3 project did not violate the applicable statute.

- Massachusetts Correctional Officers Federated Union v. Commissioner of Correction (Suffolk Superior Court) The union obtained a preliminary injunction to prevent the layoff of 12 corrections officers, allegedly in violation of a union contract. The court then accelerated the trial date and, after a two-day bench trial, concluded that the preliminary injunction against the Commonwealth should not have been entered and that the Commonwealth's interpretation of the disputed contract was correct.
- Town of Boylston v. Metropolitan District Commission (Worcester Superior Court) The town sought a preliminary injunction to prohibit the MDC from commencing work on a town sewer project unless the MDC complied with town codes and obtained town permits. The Superior Court denied the town's request, and a single justice of the Appeals Court upheld that ruling.

In addition to the types of cases just mentioned, the division in Fiscal Year 2003 consulted with MHD and the Central Artery/Tunnel Project and approved settlements involving contract claims arising from aspects of the project.

REAL ESTATE

The real estate cases handled by the Trial Division consist primarily of eminent domain cases, along with miscellaneous other types of real property cases. Like contract cases, there is no statutory cap that limits the Commonwealth's exposure to damages in these types of cases, so the potential liability in any case can amount to millions of dollars depending on what the jury concludes is the highest and best use for the land taken by the Commonwealth. The following are examples of the types of cases handled in this area and the manner in which they were resolved.

- Gluck v. Commonwealth (Worcester Superior Court) Plaintiff owned land in Worcester that was taken as part of the Route 146 project. Plaintiff's appraiser testified that the lot was worth \$450,000, while the Commonwealth's expert testified that the land was worth \$230,000. After trial, the jury returned with a verdict for \$228,000, which was \$2,000 below what the Commonwealth's own expert testified to concerning value. This verdict saved the Commonwealth approximately \$275,000.
- Guerrero v. Division of Capital Asset Management (Plymouth Superior Court) This lawsuit arose from the eminent domain taking for the new Brockton Trial Court. The *pro tanto* was \$1.095 million, and the plaintiffs claimed they were entitled to \$2.7 million. The jury verdict was for \$1.8 million, generating a savings to the Commonwealth of more than \$1 million when interest is factored into the exposure.

- **Daddano v. Commonwealth** (Norfolk Superior Court) The plaintiff claimed that two parcels taken on Route 1 in Plainville should have been valued at \$220,000. After a bench trial, the court entered a verdict of \$121,000, resulting in a substantial savings to the Commonwealth.
- **Cape Cod Conservatory v. Commonwealth** (Barnstable Superior Court) This taking involved 2.5 acres of land on Cape Cod. The plaintiffs sought \$242,000. The jury verdict was \$159,000, or \$83,000 less than the plaintiffs' expert had testified to at trial.
- **Spaulding Rehabilitation Hospital v. Commonwealth** (Suffolk Superior Court) Plaintiff brought an eminent domain claim as a result of 11 surface and below-surface permanent and temporary easements taken for the C/A/T project. Plaintiff's appraisal of the market value was approximately \$40 million, including interest. After extensive negotiations with the Commonwealth, the case settled for approximately \$20 million, resulting in a savings of more than \$20 million.
- **U-Haul v. Commonwealth** (Appeals Court) U-Haul sought to enjoin a taking of its property in Springfield on the ground that the Legislature had not appropriated enough money for just compensation. The division obtained dismissal in the Superior Court, and the Appeals Court affirmed that result.
- **Frontage Development v. Commonwealth** (Appeals Court) After a complex eminent domain trial resulted in a verdict favorable to the Commonwealth, plaintiff appealed, claiming that the trial court erred in admitting or excluding certain evidence and that it was prejudiced by an allegedly improper reference in a closing argument. The Appeals Court upheld the favorable verdict for the Commonwealth.

In addition, in Land Court, the division has been moving to dismiss older cases due to the lack of prosecution by the plaintiffs who had originally brought these cases and named the Commonwealth in their actions to quiet title to their land. In Fiscal Year 2003, more than 20 cases were dismissed from Land Court for lack of prosecution.

EMPLOYMENT, CIVIL RIGHTS, AND OTHER CASES

Increasingly the Trial Division is called upon to defend the Commonwealth and its agents in employment and civil rights cases. These cases are factually and legally complex and present challenging issues to the division. Also, because there is no statutory cap on the monetary damages that can be awarded in these cases, and because these types of claims frequently are brought against officials or employees in their individual capacity, the potential financial exposure can be significant. The division handled a number of civil rights cases during Fiscal Year 2003, including the following:

- **Mihos v. Swift** (United States District Court) Plaintiff, a member of the Turnpike Authority Board, claimed that the Governor violated his First Amendment rights when the Governor sought to terminate his appointment to the Board. The Governor argued that the district court erred in failing to grant the Governor qualified immunity for her conduct. The court also held, however, that although there had been a violation of plaintiff's First Amendment rights, he was not entitled to any damages. Both parties appealed to the First Circuit Court of Appeals, where the matter remained at the close of Fiscal Year 2003.
- **Clancy v. McCabe** (Appeals Court) The plaintiff was a female motorist who had been sexually assaulted by an on-duty state trooper. Plaintiff claimed that the former Commissioner of Public Safety had violated her civil rights by failing to terminate or discipline the trooper more harshly than the six-month suspension that the trooper had received for two prior acts of misconduct involving asking female motorists out on dates. The Commissioner argued that he was entitled to qualified immunity for his discipline decision. The Appeals Court disagreed; however, the Supreme Judicial Court then accepted the case for further appellate review, and it will be argued in Fiscal Year 2004.
- **Stephens v. Executive Office of Health and Human Services and Department of Social Services** (Appeals Court) EOHHS and DSS social workers were sued for alleged civil rights violations in their abuse and neglect investigations. The Appeals Court affirmed the entry of summary judgment for the defendants, agreeing that the Commonwealth had sovereign immunity from suit and the individually named defendants had qualified immunity from suit.

The Trial Division resolved, by way of trial or otherwise, a number of significant employment cases, including the following:

- **Dasey v. State Police** (United States Court of Appeals for the First Circuit) The court affirmed the grant of summary judgment to the State Police who had been sued for dismissing a probationary-status trooper because he had lied in his admission application and smoked marijuana before becoming a state trooper.
- **Lyons v. Trial Court** (United States District Court) This official capacity civil rights claim was dismissed on the ground that the individual no longer holds the office that is the subject of the claim; survival of these claims requires a showing that the successor will continue the unlawful practice.
- **O'Neil v. Middlesex Community College** (Suffolk Superior Court) Plaintiff, a contract employee at the college, claimed that he was discriminated against on the basis of his Christian

religion and that the college breached its contract with him when it failed to renew his employment contract. Plaintiff sued the college and several past and present college administrators in both their official and individual capacities. After a week long trial, the jury returned a verdict for the defendants on all counts.

The Trial Division often moves to dismiss employment lawsuits on legal grounds and in many cases is successful in dismissing some or all of the claims. For example:

- **Gerety v. Commonwealth** (Suffolk Superior Court) Plaintiff brought this action against the Commonwealth alleging that she failed to get merit pay increases at the Chelsea Soldiers' Home because of her gender. The Commonwealth sought and obtained summary judgment on the basis that the plaintiff did not receive pay increases because of gender-neutral policies reorganizing salary structures.
- **Boucicaut v. Department of Transitional Assistance** (United States District Court) The court granted summary judgment in a case in which the plaintiff had previously entered into a settlement agreement with DTA which called for it to pay him for work-related illnesses, provided that he did not bring any other claims. Plaintiff subsequently brought this Title VII claim, and the court found that the agreement barred the claim.

In other cases, if a dispositive motion has not been or would not be successful, then the Division often employs mediation or other alternative forms of dispute resolution to obtain a fair and cost-effective result.

- **Gilbert v. O'Neill** (Suffolk Superior Court) In this case a former attorney for the Commonwealth claimed he was discriminated against due to his sexual orientation and removed from his position in retaliation for participating in a sexual harassment investigation. The Commonwealth and the individually named defendants denied the claims. After extensive discovery, the parties sought mediation before a former state court judge. The plaintiff's demand at the start of the negotiations was \$551,000, including damages against individually named defendants and attorney's fees. After mediation, the case finally settled for \$165,000, including a dismissal of all defendants and no admission of liability.
- **Lynch v. Bonaparte** (Middlesex Superior Court) Plaintiff claimed that he was a whistle-blower and was retaliated against in his employment at the Registry of Motor Vehicles as a result of his conduct. After negotiations, his claim was reduced and the case settled for \$30,000, thereby eliminating the potential exposure for attorney's fees and other damages under the whistle-blower law.

STATISTICAL SUMMARY

During Fiscal Year 2003 the Trial Division resolved and closed more cases than it opened, which favorably affected the division's overall case inventory. Specifically, in Fiscal Year 2003 the division opened 414 cases, and resolved and closed 449, resulting in a net decrease of 35 cases and a total open case inventory of 1,853 cases at the close of Fiscal Year 2003. More specifically, in Fiscal Year 2003 the division opened 213 tort cases and closed 284; opened 27 contract cases and closed 19; opened 38 real estate cases and closed 60; and opened 138 miscellaneous trial cases and closed 89. The Trial Division is dedicated to effectively and efficiently resolving civil lawsuits to protect and defend the Commonwealth and the public resources.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2003, Assistant Attorneys General in the Trial Division participated in a wide range of outreach and training efforts, including serving as faculty in Massachusetts Continuing Legal Education programs, participating in the Citizen Schools Project, and assisting in trial training and moot court programs at various law schools.

PUBLIC PROTECTION BUREAU

CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

CONSUMER PROTECTION AND ANTITRUST DIVISION

ENVIRONMENTAL PROTECTION DIVISION

INSURANCE DIVISION

INVESTIGATIONS DIVISION

DIVISION OF PUBLIC CHARITIES

UTILITIES DIVISION

MEDIATION SERVICES DIVISION

PUBLIC PROTECTION BUREAU

The Public Protection Bureau manages and oversees civil affirmative litigation on behalf of the Commonwealth and its citizens; the development of policy, legislative, and regulatory proposals; and personnel for eight divisions: Civil Rights and Civil Liberties, Consumer Protection and Antitrust, Environmental Protection, Insurance, Investigations, Public Charities, Utilities, and Mediation Services. 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 develops and coordinates health care policy initiatives to improve the coordination, enhancement, and expansion of current health care policy enforcement efforts. The bureau targets its efforts to preserve access to affordable, high-quality health care that is responsive to the needs of communities.

The bureau's Mediation Services Division coordinates and staffs Attorney General Tom Reilly's Student Conflict Resolution Experts (SCORE) Program. SCORE is a nationally recognized peer mediation program created to reduce violence in schools and foster safer learning environments for students. In addition, this division oversees 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.

The bureau oversees Attorney General Reilly's Community Benefits Guidelines for both hospitals and HMOs. Members of the Insurance Division, the Consumer Protection and Antitrust Division, and the Public Charities Division staff the Community Benefits initiative.

The bureau also has an Elder Protection Unit that seeks to enhance protections for Massachusetts' elders by improving both the coordination of the Attorney General's outreach efforts as well as the response to matters involving elder fraud and abuse.

The Public Protection Bureau included Alice Moore, Bureau Chief; David Beck; Charlene Best-Brown; Richard Cole; Kirsten Engel; Katharine London; Anna Marie Meola; Kristy Phillips; Isabel Silva; Linda Tomaselli; and Rose Ursino.

CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

The Civil Rights and Civil Liberties Division enforces the Massachusetts Civil Rights Act (MCRA). The MCRA authorizes the Attorney General to seek injunctive relief when threats, intimidation, or coercion based on an individual's race, color, national origin, ethnic background, gender, sexual orientation, disability, age, or religious affiliation interfere with the exercise of that person's civil rights. A violation of a civil rights injunctive order constitutes a criminal offense, punishable by a maximum of 10 years in State Prison if the victim suffers bodily injury, or up to two and one half years in a correctional facility if no bodily injury results.

The division also enforces the 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. Division staff also focus on employment discrimination, discrimination in places of public accommodations, and educational equity.

The Disability Rights Project works to increase enforcement of state and federal laws regarding equal access to places of public accommodation like restaurants and stores, and access to municipal buildings and services. The project protects the rights of individuals with disabilities not only through litigation, but also through assistance for individuals, training, publications, intervention with municipal entities, and speaking engagements.

The Civil Rights and Civil Liberties Division included Cathy Ziehl, Division Chief; Nicole Bradick; Patricia Correa; Bethany Hyland; Rosalind Kabrhel; Jennifer Keating; Judy Levenson; Maria MacKenzie; and Tina Matsuoka.

SIGNIFICANT CASE SUMMARIES

BIAS AGAINST ARAB-AMERICANS AND MUSLIMS

The Civil Rights Division aggressively used the MCRA to respond to violence directed at persons actually, or perceived to be, of the Muslim faith and/or Middle Eastern ancestry in the aftermath of the terrorist attacks on September 11, 2001, and the recent military engagement in Iraq.

- **Commonwealth v. Jeffrey Lizotte, Craig Jennings, and a Juvenile** (Bristol Superior Court)
The division obtained a final judgment by consent in July 2002, in this case against three young men who, in retaliation for the September 11th terrorist attacks, firebombed a Somerset convenience store owned by a person they believed to be from the Middle East but who was actually of Indian descent.

- **Commonwealth v. Scott Leader** (Suffolk Superior Court) The division obtained a permanent injunction on July 12, 2002, against Scott Leader, who entered a Dunkin' Donuts in South Boston and threatened a store employee of Iranian descent with physical violence, threw an object at him, and called him a terrorist and other racial epithets.
- **Commonwealth v. Miguel Camargo, Phe Meas, and Jamie Roldan** (Bristol Superior Court) The division obtained a preliminary injunction on March 5, 2003, against three men who assaulted a man of Pakistani descent at the 7-11 convenience store in Easton where he worked as a clerk. The attackers yelled racial epithets and accused the man of being a terrorist related to Osama bin Laden.
- **Commonwealth v. Perry, et al.** (Middlesex Superior Court) The Court granted a preliminary injunction on April 9, 2003, against three white teenagers who verbally and physically assaulted two Indian students from UMass-Lowell and yelled "F-- Osama" as they kicked the students.

RACIAL, NATIONAL ORIGIN, AND RELIGIOUS BIAS

The division addressed and responded to violence motivated by bias against a person's race, national origin, or religion.

- **Commonwealth v. Ten Juveniles** (Suffolk Superior Court) The division obtained a preliminary injunction against a total of 10 current and former Grover Cleveland Middle School (Boston) students who participated in one or more of three separate bias-motivated incidents against fellow classmates:

January 7, 2003, Attack On January 7, 2003, at least four African-American teenage girls assaulted a fellow classmate because she was white. The victim was walking near a neighborhood McDonald's with several friends when the four attackers threatened her, calling her a "white bitch" and "white cracker" while pulling her hair, kicking and punching her, and striking her with a belt.

February 28, 2003, Attack The second attack occurred on the morning of February 28, 2003, as buses arrived at Grover Cleveland school. Four black students, including one student involved in the January 7, 2003, attack, attacked two female Afghan students who were new to the country. One of the Afghan girls suffered facial contusions and a left arm fracture.

March 10, 2003, Attack A third attack took place shortly after school on an MBTA train on March 10, 2003. Six black and one Hispanic current or former Grover Cleveland students attacked a fellow black student who had recently immigrated from West Africa. While the

perpetrators taunted the victim about her African heritage, one of the girls struck the victim in the head and stole her hair. The attack escalated when the original attacker began to kick the victim and was joined by several other girls until MBTA officers intervened. Three of the girls involved in this attack were participants in the January 7, 2003, attack.

- **Commonwealth v. Three Juveniles** (Bristol Superior Court) The division obtained a preliminary injunction on March 26, 2003, against two 13-year-old students from Henry Lord Middle School (Fall River) who beat up a classmate, targeted because she was white.

EMPLOYMENT DISCRIMINATION

The division litigated and/or monitored employment discrimination matters and filed briefs on important legal issues in the appellate courts of Massachusetts.

- **Massachusetts Bay Transportation Authority** The division continued to monitor the MBTA pursuant to an Equal Employment Opportunity Agreement and EEO Compliance Program the Attorney General and MBTA executed on February 6, 1997, in response to long-standing complaints of discrimination, harassment, and retaliation at the MBTA. On August 8, 2002, the division provided the MBTA with a "Notice of Material Non-Compliance with EEO Agreement and Identification of Findings of Non-compliance and Recommendations to Correct, Pursuant to Agreement." The MBTA contracted with the law firm Holland & Knight LLP ("Holland & Knight") to review its operations related to civil rights and diversity issues. Holland & Knight prepared a written report, "Review, Assessment, and Recommendations for Enhancement of the Massachusetts Bay Transportation Authority Office of Organizational Diversity and Civil Rights and Related Matters," dated May 17, 2002. KKO and Associates, LLC, also issued a computer consultant report regarding its audit of the PeopleSoft data system ("KKO" or "KKO Report"), dated February 22, 2002. In January 2003, the MBTA entered into an agreement with the Attorney General to implement all the recommendations in both the Holland & Knight and KKO reports. The division remains in close contact with the MBTA and Holland & Knight concerning their ongoing review of the MBTA's implementation of their recommendations.
- **Commonwealth v. Bull HN Information Systems, Inc.** (United States District Court) The division, along with the Equal Employment Opportunity Commission, continued to actively litigate the age discrimination issues in Commonwealth v. Bull HN Information Systems, Inc. The court entered declarations and ordered relief on a number of the Commonwealth's claims 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 40 and older. Cross summary judgment motions were filed regarding Bull HN's termination practices during the fiscal year and whether they were in compliance with federal law.

- **Sahli v. Bull HN Information Systems, Inc.** (Supreme Judicial Court) The division filed an *amicus curiae* brief in this case, which raised the issue of whether a cause of action exists under Massachusetts' anti-discrimination law, G.L. c. 151B, when an employer initiates retaliatory litigation against a former employee because the former employee filed a discrimination complaint in the MCAD against the employer. The Supreme Judicial Court concluded that Chapter 151B does contemplate such a legal claim, as the division had argued.
- **EDI Specialists, Inc. v. Steven A. Mills** (Supreme Judicial Court) The Supreme Judicial Court asked the Attorney General to file an *amicus* brief on the question of whether an employer can obtain contribution and indemnification from an employee accused of sexual harassment. On August 15, 2002, the SJC agreed with the division's position that such a claim for contribution does not exist under Chapter 151B.

EDUCATIONAL EQUITY

- **Comfort et al. v. Lynn School Committee, et al.** (United States District Court) In June 2002, the division completed an 11-day trial in this case challenging Lynn's 14-year-old voluntary school desegregation plan and the state's school desegregation law under the federal and state constitutions. Attorney General Reilly, joined by the City of Lynn, argued that the city's voluntary plan has succeeded in giving the city's youngest students an appreciation, understanding, and respect for racial and ethnic differences that enhanced their educational achievement and experience. In the absence of Lynn's integration plan, many of Lynn's 18 elementary and four middle schools would become re-segregated, with some schools again becoming overwhelmingly white or minority. Closing arguments in the case were held on December 13, 2002, and the court issued its decision on June 6, 2003, that the United States Constitution does not prohibit school districts from implementing voluntary plans to desegregate their primary and secondary schools. The court found that, as a result of Lynn's success in integrating its schools, students received the considerable benefits of learning from and with children from other races and ethnic groups, and were better prepared for success in racially and ethnically diverse workplaces and communities. Further, the court found that racially and ethnically diverse students maintain positive inter-group relations, minimizing tensions and violence in the schools. The federal court also attributed the end of racial isolation and segregation of Lynn's students, and its successful implementation of its integration plan, with the positive academic achievement and performance gains by Lynn's students, and their improving test scores.

- **Grutter v. Bollinger and Gratz v. Bollinger** (United States Supreme Court) The Attorney General joined an *amicus* brief endorsing the affirmative action admission policies of the University of Michigan and Michigan Law School and similar programs used for more than 25 years to increase the number of qualified minority students admitted into universities and colleges throughout this country. The brief, prepared by the New York Attorney General's Office, with input from the Civil Rights Division, presented constitutional, practical, and educational reasons to maintain affirmative action programs in higher education, including in Massachusetts. It addressed why it is educationally beneficial for students to learn in schools with racially and ethnically diverse student bodies, and why in most circumstances race-neutral programs, such as those adopted by Florida, Texas, and California, are ineffective to assure sufficiently diverse and academically prepared student bodies.

HOUSING DISCRIMINATION

The division settled 15 cases, which resulted in affirmative injunctive relief changing the business practices, including equal housing opportunity policies, complaint and investigation procedures, anti-discrimination training, and reporting mechanisms, of landlords, management companies, and rental agents. Through training programs and prosecuting housing discrimination cases, the division also worked 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 and affordable housing for families with young children.

- **Commonwealth v. Crown Place Realty** (Plymouth Superior Court) Allegations of disability and public assistance discrimination, settled for \$25,000, and injunctive and affirmative relief. The court approved a Final Judgment by Consent on December 9, 2002.
- **Commonwealth v. Kelleher** (Essex Superior Court) Allegations that a landlord refused to rent to the complainant because of her Section 8 voucher and the requirements of the Section 8 voucher program, settled for \$25,000, and prohibitory and affirmative injunctive relief on January 18, 2003.
- **Commonwealth v. Kenwood** (Middlesex Superior Court) Allegations that a management employee of a housing complex sexually harassed a female tenant, settled for \$15,000, and prohibitory and injunctive relief on October 30, 2002.
- **Commonwealth v. Raffaele Russo, Maria Russo Podgurski & Paula Sullivan** (Hampden Superior Court) Allegations of racial discrimination, settled for \$30,000 on November 15, 2002.

- Commonwealth v. Estate of Mary Moore (Suffolk Superior Court) Three now deceased landlord, after being notified of the existence of lead in the apartment, allegedly harassed the family and made threats against them until they moved out, settled for \$12,000 on July 30, 2003.
- Commonwealth v. Hatfield Housing Authority (Hampden Superior Court) Allegations of failure to accommodate a disability, settled for \$12,500 and prohibitory and affirmative injunctive relief on May 20, 2003.
- Commonwealth (and Housing Discrimination Project) v. Richard Cheicko, et al.; Commonwealth (and Harry & Betty Washington) v. Richard Cheicko, et al.; Commonwealth (and Tonya Cox and Owen Garvey) v. Richard Cheicko, et al.; Commonwealth (and Cynthia Burgos) v. Richard Cheicko, et al. (Hampden Superior Court) Allegations of racial discrimination by operators of an apartment rental business, settled for \$7,000, and prohibitory and affirmative injunctive relief. The Housing Court approved a Consent Judgment on September 16, 2002.
- Commonwealth and Housing Discrimination Project v. Joseph Collette (Western Housing Court) The owner and manager of a housing complex, who failed to show available housing because of race, color, national origin, handicap, or status as a recipient of AFDC or Section 8, gave false statements to testers from the Housing Discrimination Project and settled for \$31,000 and prohibitory and affirmative injunctive relief. The Western Housing Court approved and entered a Consent Decree on November 27, 2002.
- Commonwealth v. Byrnes and Bauer (Norfolk Superior Court), based on allegations of Section 8 discrimination, settled for \$5,000 and prohibitory and affirmative injunctive relief.
- Commonwealth v. George Georgaklis. Allegations that a real estate agent refused to rent because Section 8 would not be accepted, settled before filing on December 18, 2002, for \$3,000 and prohibitory and injunctive relief.
- Commonwealth v. Resendes (Norfolk Superior Court), where a landlord allegedly refused to accommodate a tenant's disability and then retaliated against him for seeking to enforce his rights, settled for \$1,500. The Court entered a Final Judgment by Consent on September 30, 2002.
- Commonwealth v. Robert Laquidara and European Property and Management, Inc. (Middlesex Superior Court), based on allegations that a real estate agent engaged in discriminatory practices by refusing to rent based on the existence of lead and publishing an advertisement

offering an Everett apartment for "adults" only, settled for \$3,700 and injunctive relief on November 26, 2002.

REPRODUCTIVE CHOICE

- **McGuire v. Reilly** (United States District Court) The Division continued to defend against this challenge to the facial constitutionality of the state buffer zone law, G.L. c. 266, § 120E 1/2. On August 13, 2001, the First Circuit reversed the District Court's November 20, 2000, ruling declaring the statute unconstitutional and preliminarily enjoining its application. The Court of Appeals remanded the case to the district court, where the division filed a summary judgment motion on the "facial" and "as applied" challenge. The district court then dismissed the facial challenge on July 9, 2003.

PUBLIC ACCOMMODATIONS

The division enforced the laws ensuring the right of the citizens of the Commonwealth to equal access to places of public accommodation, regardless of race, color, religion, national origin, ethnic background, gender, sexual orientation, or disability.

- **Commonwealth v. Haverhill Country Club** (Appeals Court) The division continued to defend on appeal the October 1999 jury verdict against Haverhill Golf & Country Club (HCC) in this gender discrimination case, and the Suffolk Superior Court's order in January 2000, finding that HCC had engaged in a pattern and practice of gender discrimination against its women members, and entering a permanent injunction ordering HCC to cease discriminating against female members of the Club. HCC appealed this verdict; the division filed its brief on September 20, 2002; the Appeals Court heard oral argument on December 19, 2002, and rendered its decision on June 13, 2003, affirming the trial jury's award of \$1,967,400 and the trial court's order of permanent injunctive relief.
- **Commonwealth v. Footaction** (Massachusetts Commission Against Discrimination "MCAD") The division filed a Complaint and Consent Decree at the MCAD on August 9, 2002, resolving a complaint that Footaction employees discriminated against Hispanic customers at a Footaction retail store. The settlement included a requirement that Footaction create a customer non-discrimination policy, customer complaint protocols, and an anti-discrimination training program for employees applicable to all Footaction stores in Massachusetts.

DISABILITY RIGHTS

- **Commonwealth and National Federation of the Blind v. E*TRADE** The division entered into a Settlement Agreement on June 10, 2003, with E*TRADE Access, Inc., operator of one of the largest ATM networks in the country, to ensure blind consumers equal access to thousands

of E*TRADE-owned ATMs, including 17 machines in Massachusetts. In conjunction with the National Federation of the Blind, the division also filed a complaint on June 10, 2003, with the Massachusetts Commission Against Discrimination alleging that E*TRADE has failed to make the ATMs it operates, but does not own, accessible to the blind. The four plaintiffs, all Massachusetts residents, represent the approximately 35,000 blind people in Massachusetts, who, in accordance with the Massachusetts Public Accommodations Act, are seeking the same access to bank and investment services available to sighted ATM users.

Friendly's The division entered an Assurance of Discontinuance on March 21, 2003, arising from a complaint that a Friendly's restaurant in Franklin denied service to a group of disabled residents from the Wrentham Developmental Center and their counselors. The settlement included a \$5,000 contribution to the Center's recreational outing fund, and establishment of anti-discrimination policies and procedures at all 67 Friendly's restaurants in Massachusetts.

CVS The division continued to monitor the Assurance of Discontinuance with CVS stores, which requires them to remedy violations of turning radius and aisle width requirements, through review of audit reports and site visits.

Participation in Amicus Briefs (Supreme Court) The Attorney General joined an *amicus* brief Minnesota drafted arguing that Title II of the Americans with Disabilities Act was a valid abrogation of the states' 11th Amendment immunity. California withdrew its appeal and no decision was rendered.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Sexual Abuse by Clergy The division continued its work with the Roman Catholic Archdiocese of Boston (RCAB) and the Cardinal's Commission for the Protection of Children, advocating for comprehensive child protection measures, including monitoring and risk assessment of priests who sexually abused, and age-appropriate sex abuse education for all parochial and religious education, during the development of the RCAB's new child protection policies and procedures.

The Massachusetts Hate Crimes Task Force The Attorney General's Hate Crimes Task Force continued to focus its work on the prevention of and response to post-September 11th hate crimes, along with implementing other hate crime-related initiatives. The Task Force, comprising about 100 law enforcement officers and prosecutors, community leaders, civil rights advocates,

victim assistance professionals, educators, and other leaders from throughout the Commonwealth, shares information and highlights efforts in Massachusetts related to hate crimes enforcement, response, training, and prevention. The Attorney General expanded the Task Force membership by appointing representatives of communities most affected by a September 11th backlash, including leaders from the Arab, Muslim, and South Asian communities in Massachusetts.

Civil Rights in the Schools The division continued its focus on ensuring the civil rights of students attending schools in the Commonwealth. The division provided educational training to students, teachers, and administrators on hate crimes, discrimination, and sexual, racial, national origin, and religious harassment. Training included programs for school administrators and teachers on their liability for failure to properly respond to hate crime and harassment incidents. Programs also included how to create comprehensive civil rights protection programs for students in middle and high schools and respond effectively to hate crimes on college and university campuses.

The division held workshops, "Protecting Students from Harassment and Hate Crimes: Next Steps in Implementing an Action Plan for Schools," as a follow-up to earlier regional conferences. Workshops held on February 27, 2003 (representatives from 10 Eastern Massachusetts school districts participated), and April 10, 2003 (representatives from 13 Central and Western Massachusetts school districts participated), offered educators additional technical assistance, at a time of increasing reports of harassment and hate crimes in schools; reminded educators of the continued importance of addressing these issues, even at a time of budgetary constraints and other educational challenges; provided ongoing guidance, advice, and assistance to educators; and afforded educators a further opportunity to learn from and inspire one another. The workshops focused on post-September 11th-related civil rights, harassment, and hate crime issues.

Civil Rights and Police In a collaborative effort to promote civil rights, assist police departments, and provide departments with technical assistance, the division offered and provided 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 also investigated allegations of police misconduct. Police departments regularly consulted with the division for assistance on internal civil rights investigations. The division has worked closely with departments to ensure that they take appropriate remedial steps when credible evidence substantiates civil rights complaints.

Racial Profiling The division continued to play an important role in trying to address comprehensively the concerns about racial and other forms of bias and prejudice in the provision of law enforcement services in the Commonwealth. Chapter 228 of the Laws of 2000, An Act Providing for the Collection of Data Relative to Traffic Stops, requires law enforcement departments and agencies to collect data related to all traffic stops where a traffic citation or warning was issued. If the information "suggests" that a State Police barracks or municipal police department "appears" to have engaged in racial or gender profiling, the Secretary of the Executive Office of Public Safety, with the Attorney General, makes a determination whether to collect data on all traffic stops, including those not resulting in a warning, citation, or arrest.

The division has been an active member of the Executive Office for Public Safety Secretary's Racial and Gender Profiling Working Group, a group of about 70 law enforcement and community leaders from throughout the Commonwealth convened to advise the Secretary about data collection and data analysis required by the statute. At the end of the fiscal year, Northeastern University's Institute on Race and Justice was analyzing the collected data as to citations, warnings, and any searches incident to the issuance of a ticket or warning.

Ensuring Municipal Access The Disability Rights Project continued its efforts to assure that municipalities understand their access obligations under state and federal law. On March 12, 2003, the Attorney General and Massachusetts Office of Disability re-issued their joint advisory on municipal access obligations, including the obligation that towns make public meetings accessible. The project also obtained written assurances from three towns (Millbury, Swampscott, and Newbury) that had been holding public meetings in a Town Hall inaccessible to mobility-impaired persons, to correct barriers to access identified through site visits.

Voting Access Advisory The Massachusetts Office of Disability, the Secretary of State, and the Attorney General issued a joint advisory to all cities and towns on providing access to persons with disabilities at polling places on April 25, 2003.

Civil Rights Initiatives With NAAG Division members continue to serve in leadership positions in the National Association of Attorneys General's (NAAG) Civil Rights Working Group, consisting of representatives of state Attorneys General from throughout the country. This group works to enhance the cooperative relationship between the states, the U.S. Department of Justice, and the Equal Employment Opportunity Commission in civil rights enforcement.

OUTREACH, EDUCATION, AND TRAINING

Outreach to Disability Community On February 26, 2003, the Attorney General, the Disability Law Center, Boston Center for Independent Living, and the Northeast Independent Living Program co-sponsored a "Disability Rights Forum" attended by close to 100 members of the disability community.

Municipal Access Training The Disability Rights Project organized a session on municipal access issues for the Municipal Law Forum held on April 15, 2003.

Massachusetts Chapter of the National Association of Housing and Redevelopment Officials The division presented on fair housing law as it pertains to people with disabilities, and on Americans with Disabilities Act to public housing authorities at a May 2003 conference.

CONSUMER PROTECTION AND ANTITRUST DIVISION

The Consumer Protection and Antitrust Division (CPAD) is the leading voice in the Commonwealth for consumers disadvantaged by unfair or deceptive acts or practices in the marketplace. The division enforces both state and federal consumer protection and antitrust laws by investigating and prosecuting civil cases involving a wide array of consumer and competition issues. CPAD also promulgates consumer protection regulations, mediates consumer complaints against businesses, and provides information to the public through the Attorney General's Consumer Hotline, advisories, information on the Attorney General's Web site, distribution of brochures on a number of issues affecting consumers, and speaking engagements across the Commonwealth.

Through the Consumer Complaint and Information Section (CCIS), the division acts as a resource for consumers and businesses, providing information, direction to additional resources at the state and federal levels, and free mediation services to consumers who have encountered a problem in a purchase of consumer goods or services. The division also provides grants to a statewide network of 19 Local Consumer Programs (LCPs) and nine Face-to-Face Mediation Programs to furnish information and mediation services. The information CCIS and the LCPs gather is available to the division for review and evaluation for possible legal action. Many cases the division has brought over the years have had their genesis in CCIS and the LCPs, and patterns of unfair or deceptive conduct revealed by these cases also have served as the basis for draft legislation (anti-spam, identity theft, telemarketing fraud) and regulations (travel services, long-term care facilities).

In addition to investigating and prosecuting abuses within Massachusetts, the division also addresses regional disparities, as well as consumer protection and antitrust issues that may have a nationwide effect. The division works closely with other states to investigate and file cases addressing unfair or deceptive conduct, or antitrust issues, in areas such as predatory lending, privacy, health fraud, tobacco sales, pharmaceutical pricing, and high-tech industries.

CPAD included Jesse Caplan, Division Chief; Steven Bandar; Christopher Barry-Smith; Paul Carey; Jack Christin; Emily Coleman; James D'Amour; Barbara DeSouza; Julie Esposito; Mary Freeley; Jennifer Galante; Brian Goodwin; Sara Hinchey; Deepa Isaac; Jeremy Janow; Stephanie Kahn; Brenda King; Mark Kmetz; Pam Kogut; Diane Lawton; Ronnie Lee; Carmen Leon; Betty Maguire; Mary Marshall; Lois Martin; Kenneth Miller; Rose Miller; David Monahan; Timothy Moran; Janis DiLoreto Noble; Donna Palermino; Astrid Panameno; Julie Papernik; Jessica Roberts; Lisa Senay; Ransom Shaw; Andria Simon; Michelle Stone; Christine Sullivan; Erika Tarantal; Judith Whiting; Betsy Whittey; Geoffrey Why; Marvina Wilkes; Mary Wollenhaupt; Hermen Yee; and Emily York.

SIGNIFICANT CASE SUMMARIES

HEALTH CARE

- Commonwealth v. Logan Healthcare Facility, Inc., et al. (Suffolk Superior Court) In June 2003, CPAD, with the assistance of the Department of Public Health, filed suit against the owners and operators of five nursing home facilities located in the South Shore and Southeastern Massachusetts, alleging that they grossly mismanaged the financial operations of the nursing homes, putting the health and welfare of the facilities' 349 patients at risk. CPAD also sought and successfully obtained the appointment of a temporary receiver over four of the nursing homes, and a preliminary injunction against the defendants, all members of the Logan family, preventing them from transferring any of their assets or the assets of the facilities. The case is being litigated.
- Commonwealth v. Horizon Healthcare, et al. (Suffolk Superior Court) In October 1998, CPAD, with the assistance of the Department of Public Health, filed suit against Horizon Healthcare Corporation, Horizon/CMS Healthcare Corporation, and Integrated Health Services, Inc., the owners and/or operators of several long-term care facilities, including the Greenery facilities in Middleboro and Brighton, Massachusetts. The Commonwealth's complaint alleged that the nursing home facilities, which specialized in the care of severely brain-injured patients, violated state and federal consumer protection and long-term care laws and regulations and a

1995 Consent Judgment by failing to comply with minimum standards of care for residents. In April 2003, CPAD obtained a Consent Judgment against the companies that resolved the lawsuit. Under the Consent Judgment, Horizon paid the Commonwealth \$525,000 in penalties and attorney's fees, and made a \$100,000 contribution to the Local Consumer Aid Fund; IHS, which had filed for Bankruptcy protection, agreed to an allowed unsecured claim in the amount of \$750,000; and the companies agreed to injunctive relief designed to prevent future violations.

- Commonwealth v. M.C.K., Inc., Michael Konig, et al. (Suffolk Superior Court) In 1997, CPAD, with the assistance of the Department of Public Health, filed suit against Michael Konig and related entities, alleging that they violated consumer protection and long-term care laws and regulations in their ownership and operation of five different nursing homes, including the Union Square Nursing Center in Allston, Massachusetts; failed to comply with minimum standards of care for residents; and financially abandoned one or more of the nursing home facilities. CPAD and DPH successfully obtained a receiver over the nursing homes, and in 2000, the Supreme Judicial Court upheld the lower court's ruling in favor of the Commonwealth, allowing the forced sale of the Union Square facility, including the real estate, by the receiver. The remaining issues proceeded to litigation, and in February 2003, CPAD obtained a Consent Judgment, resolving the lawsuit. Under the Consent Judgment, the defendants paid the Commonwealth a total of \$450,000, covering reimbursement to the receiver and the Massachusetts Division of Medical Assistance, civil penalties, and Local Consumer Aid Fund contributions, and agreed to injunctive relief designed to prevent future violations.

- Commonwealth v. Bristol Nursing Home (Suffolk Superior Court) In May 2003, CPAD obtained a Consent Judgment against Bristol Nursing Home, settling a lawsuit filed in September 2001 that alleged that the nursing home facility had violated state consumer protection and long-term care regulations by, among other things, financially abandoning the facility and the residents. The Consent Judgment resulted in a payment to the Commonwealth of \$50,000 in penalties and attorney's fees.

- Pharmacy Assessment Cases (Suffolk Superior Court) In April and May 2003, CPAD, working with the Insurance Division, obtained Assurances of Discontinuance with four major chain pharmacies, CVS Pharmacy, Inc., Stop & Shop, Walgreens, and Wal-Mart, resolving claims that the pharmacies had violated state consumer protection and insurance laws by misrepresenting to consumers that the so-called "Pharmacy Assessment" law, which imposed fees on pharmacies based on the number of prescriptions filled, was a tax obligation on the consumers, and improperly billing those consumers for this assessment. The Assurances of Discontinuance followed the Attorney General's investigation of, and warning letters to, the

pharmacies based on this conduct. Under the Assurances of Discontinuance, the pharmacies agreed to reimburse all affected consumers (refunds totaling more than \$6 million) and also paid the Commonwealth monetary awards totaling \$485,000 (CVS — \$300,000; Stop & Shop — \$65,000; Walgreens — \$60,000; Wal-Mart — \$60,000). The pharmacies also agreed to significant injunctive relief preventing future violations.

- **Bristol-Myers Squibb (“BMS”) Buspar Litigation** (U.S. District Court, NY) In November 2001, CPAD joined 20 other states in filing suit against BMS relating to improper attempts to extend its patent monopoly over its Buspar anti-anxiety medication. The lawsuit included allegations that BMS perpetrated fraud on both the United States Patent and Trademark Office and the Food and Drug Administration in its attempts to bar generic competition. In March 2003, BMS entered into a Consent Judgment with Massachusetts and 33 other states resolving the lawsuit. BMS agreed to pay over \$90 million to state agencies and consumers nationwide, with the Massachusetts Medicaid program qualified to receive approximately \$3.8 million, and to significant injunctive relief designed to prevent similar behavior in the future. The Consent Judgment is subject to final approval by the court.
- **Bristol-Myers Squibb (“BMS”) Taxol Litigation** (U.S. District Court, D.C.) In June 2002, CPAD joined 28 other states in filing suit against BMS in connection with allegations that BMS kept cheaper generic versions of its cancer drug, Taxol, off the market by manipulating U.S. Patent and Trademark Office processes to secure patents for its name-brand drug that had no legal validity. In April 2003, BMS entered into a Consent Judgment with Massachusetts and all 49 other states resolving the lawsuit. BMS agreed to pay \$55 million to state agencies and consumers nationwide, with Massachusetts agencies likely to receive over \$500,000, and to significant injunctive relief designed to prevent similar behavior in the future. The Consent Judgment is subject to final approval by the court.
- **Commonwealth of Massachusetts v. CVS Corp.** (Suffolk Superior Court) In January 2003, CPAD, working with other states, obtained an Assurance of Discontinuance from CVS resolving allegations that the company engaged in a pattern of unfair and deceptive conduct by submitting claims and accepting payment for the value of full prescriptions when, in fact, CVS pharmacies had only partially filled many of those prescriptions. In many cases, consumers did not return to pick up the balance of their prescriptions, yet CVS retained the full prescription payment. Under the settlement, CVS paid Massachusetts approximately \$58,000 divided among the Local Consumer Aid Fund and *cy pres* restitution to consumers, and agreed to injunctive relief designed to prevent such conduct in the future.

- **Commonwealth v. Pfizer, Inc.** (Suffolk Superior Court) In January 2003, CPAD, working with other states, obtained an Assurance of Discontinuance from Pfizer, a major pharmaceutical manufacturer, resolving allegations that the company engaged in unfair and deceptive acts and practices by misrepresenting the efficacy of its Zithromax oral suspension in comparison to other antibiotics used to treat common ear infections in children, and failing to make all appropriate disclosures in advertising and other promotional materials. Under the settlement, Pfizer paid Massachusetts \$127,000 and agreed to injunctive relief designed to prevent such conduct in the future.

ELDER PROTECTION

- **Commonwealth v. David Johnston d/b/a Johnston Funeral Home** (Plymouth Superior Court, U.S. Bankruptcy Court) In August 2002, CPAD filed suit against David Johnston d/b/a Johnston Funeral Home seeking restitution for at least 48 consumers who paid over \$140,000 in pre-need funeral deposits after Johnston, in violation of state law, could not account for those deposits. CPAD obtained a consented to Preliminary Injunction and Real Estate Attachment against Johnston and the funeral home. In December 2002, Johnston filed for Bankruptcy protection. The division is seeking to ensure full restitution for consumers through the Bankruptcy proceeding and Superior Court action.
- **Commonwealth v. Bick & Curry Funeral Home** (Suffolk Superior Court) In February 2002, CPAD filed suit against the Bick & Curry Funeral Home seeking restitution for consumers who paid over \$98,000 in pre-need funeral deposits after Bick & Curry, in violation of state law, could not account for those deposits. In October 2002, CPAD obtained a Consent Judgment that resulted in complete restitution to the injured consumers.
- **Commonwealth v. Affordable Hearing Aid Technology** (Suffolk Superior Court) In April 2003, CPAD filed suit against Affordable Hearing Aid Technology and its principal, Debra D. Arnett, alleging that Arnett deceived elders in the marketing and sale of hearing aids by, among other things, engaging in false advertising, employing unqualified staff, charging consumers arbitrary prices, failing to obtain necessary medical clearances or medical waivers, failing to honor warranties and money-back guarantees, and violating state and federal laws governing hearing aid sales. In May 2003, CPAD successfully obtained a real estate attachment and preliminary injunction against Arnett preventing her from transferring or otherwise disposing of her assets. CPAD continues to litigate this case.

CHILD PROTECTION

- **Lead Paint Warning Labels** In May 2003, Attorney General Reilly, leading an effort on behalf of 47 other state Attorneys General, finalized an agreement with the National Paint and

Coating Association aimed at educating and warning consumers and families about the risk of lead paint exposure during repainting and other home renovation work. The agreement requires paint manufacturers to affix warning labels on paint cans, and to provide consumer education and training, alerting consumers to the hazards of lead paint exposure and how to avoid it. The agreement is significant because, while lead paint has not been manufactured since 1978, most new paints instruct consumers to sand old paint surfaces before repainting, without warning consumers of the potential serious health risks to consumers, especially young children, from exposure to the lead paint dust that such surface preparation can cause.

- **On-Line Sales of Illegal Fireworks** (Suffolk Superior Court) In June 2002, the Attorney General issued cease and desist letters to three out-of-state companies for selling illegal fireworks to consumers in Massachusetts via the Internet, and followed those letters by filing suit. The lawsuits, filed against American Eagle Fireworks, Inc., American Tradition Fireworks, and Thunderbolt Fireworks, Inc., arose from an undercover sting operation where investigators from the Investigations Division were able to purchase illegal fireworks from these companies over the Internet, and to have them delivered to addresses within Massachusetts. Two of the fireworks dealers, Thunderbolt and American Tradition, entered into Consent Judgments resolving the allegations, each paying penalties of \$5,000 and agreeing to injunctive relief prohibiting future violations. In December 2002, CPAD obtained a preliminary injunction against the third dealer, American Eagle Fireworks, and that case is currently being litigated. In June 2003, CPAD and the Investigations Division conducted a follow-up sting operation, which resulted in a cease and desist letter being issued to 2 Price Fireworks, Inc.

- **Commonwealth v. Great Lake Camp, Inc. d/b/a Quabbin Camps** (Worcester Superior Court) In March 2003, CPAD obtained a Final Judgment and Order against George Deren, founder and president of Quabbin Camps, finding him liable for defrauding consumers who had paid to send their special needs children to the camp, only to be told at the last minute that the camp would not be opening and that the consumers would not receive refunds. The judgment requires Deren to refund \$140,000 to consumers. The Attorney General's Worcester Office originally filed the case in February 2002; CPAD continues to litigate the case against co-defendant Charles Sub.

PROTECTION OF IMMIGRANTS AND MINORITIES

- **Commonwealth v. Jorge Manual Dias** (Suffolk Superior Court) In August 2002, CPAD obtained a Consent Judgment against Jorge Manual Dias, d/b/a Cambridge Services Agency, settling a lawsuit for contempt arising out of Dias' practice of falsely holding himself out as an immigration lawyer and defrauding, among others, recent immigrants from Cape Verde and

the Dominican Republic. In 1994, CPAD had obtained a judgment against Dias prohibiting him from engaging in the unauthorized practice of law. A later investigation determined that Dias, in defiance of the court order, continued to collect fees from immigrants between 1997 and 2000. In October 2000, CPAD filed a contempt action against Dias. The Consent Judgment provides \$75,000 in restitution to victimized consumers, and enjoins Dias from, among other things, engaging in any immigration-related services.

- **Commonwealth v. Joseph Hai Nyugen and Stelios Vavlitis** (Suffolk Superior Court) In February 2003, CPAD filed a consumer protection action alleging that Joseph Hai Nyugen and Stelios Vavlitis targeted Vietnamese-speaking home buyers in a mortgage and real estate brokering scam by exploiting the language barrier facing Vietnamese property buyers and their unfamiliarity with mortgage financing. They illegally held themselves out as mortgage lenders, mortgage brokers, and real estate brokers, inducing the consumers to pay thousands of dollars in advance fees and then failing to arrange financing as promised. This case continues to be litigated.

INTERNET AND HIGH TECH

- **Commonwealth v. eb2i Solutions, Inc.** (Suffolk Superior Court) In August 2002, CPAD filed suit against eb2i Solutions, Inc. and its principals, Nick and John Moukas, alleging that they used a telemarketing and invoicing scheme to defraud small businesses by offering them free literature and then, without their consent, signing them up and billing them for "e-commerce" services. In November 2002, CPAD obtained a Consent Judgment against the defendants that, among other things, bans them from engaging in telemarketing practices for a period of five years.
- **Commonwealth v. Mainline Airways and Luke R. Thompson** (Suffolk Superior Court) In June 2003, CPAD filed suit against Mainline Airways and its principal, Luke R. Thompson, alleging that Thompson defrauded consumers by selling them discounted flights between Los Angeles and Honolulu on a non-existent airline he called "Mainline Airways." Thompson allegedly used an elaborate Web site and online booking system to perpetrate the fraud. Simultaneous with the filing of the lawsuit, CPAD obtained a temporary restraining order effectively shutting down the Mainline Airways operation. The case is currently being litigated.

PRIVACY

- **Commonwealth v. Eli Lilly & Co.** (Suffolk Superior Court) In July 2002, CPAD, working with seven other states, obtained an Assurance of Discontinuance against Eli Lilly & Co., resolving allegations that the pharmaceutical manufacturer violated consumer protection laws

by releasing the e-mail addresses of approximately 700 consumers who subscribed to the company's "prozac.com" e-mail alert system. Prozac is a psychotropic medication manufactured by Lilly, and the states alleged that, by releasing the e-mail addresses, Lilly violated consumers' privacy rights. The Assurance of Discontinuance required Lilly to strengthen its privacy protections and resulted in a \$20,000 payment to the Commonwealth.

- **Commonwealth v. Doubleclick** (Suffolk Superior Court) In August 2002, CPAD, working with nine other states, obtained an Assurance of Discontinuance against Doubleclick, an Internet marketing company. Massachusetts and the other states had investigated Doubleclick's practice of placing tracking files called "cookies" on consumers' computers as they visit Web sites, monitoring consumers' Web browsing and purchasing practices, and then using the information for marketing purposes. The states alleged that Doubleclick's practices were at odds with the company's stated privacy policies and promises to consumers. The Assurance of Discontinuance requires Doubleclick to limit its data-gathering activities to situations where a Web site warns consumers that their Web activities are being tracked. Doubleclick also paid the Commonwealth \$35,000.

- **Amazon.com Privacy Policy Agreement** On September 23, 2002, CPAD, on behalf of Massachusetts and 16 other states, successfully negotiated an agreement with Amazon.com that protects personal and sensitive information collected from consumers nationwide. The states collectively raised their concerns with Amazon.com, an Internet bookseller, that its privacy policy did not adequately inform consumers of how their confidential information was being used, or adequately protect it from potential abuses. As a result of the states' efforts, Amazon.com agreed to changes in its privacy policy that heightened protections for consumer data, including promises not to sell its customer database to marketers.

CONSUMER CREDIT & PREDATORY LENDING

- **Commonwealth v. Household International** (Suffolk Superior Court) In December 2002, CPAD, working with the Massachusetts Division of Banks and Attorneys General and banking regulators in other states, filed suit against Household International, also known as Household Finance Corporation and Beneficial Finance, for violations of state consumer protection and banking laws. The lawsuit alleged that Household, one of the nation's largest mortgage companies, defrauded consumers by, among other things, charging higher interest rates than promised, adding costly pre-payment penalties, and providing deceitful information about insurance policies. Simultaneous with the filing of the lawsuit, the states obtained Consent Judgments that resolved the allegations. Under the settlement with the states, Household agreed to pay \$484 million in restitution nationwide, the largest consumer lending settlement

ever. The Massachusetts Consent Judgment returned approximately \$13.4 million to 13,000 Massachusetts consumers who obtained mortgage or home-equity loans with the company, and required a \$255,000 payment directly to the Commonwealth. Household also agreed to injunctive relief that significantly changes the way the company does business.

- **Commonwealth v. Lease Funding Service, Inc.** (Suffolk Superior Court) In June 2003, CPAD filed suit against Lease Funding and its principal, Stephen P. Games, for defrauding consumers and small businesses by offering financing for equipment leases, collecting significant up-front fees, and then failing to provide the financing. During the litigation the defendant filed for Bankruptcy protection, and on January 15, 2003, CPAD obtained a Consent Judgment resolving the litigation. Pursuant to the Consent Judgment, the defendants are required to pay \$75,000 in restitution to victims and a penalty of \$25,000 to the Commonwealth.

TELEMARKETING

- **Commonwealth v. Integrated Credit Solutions, Inc., and Flagship Capital Services Corp.** (U.S. District Court, Massachusetts) In December 2002, CPAD filed an enforcement action against Integrated Credit Solutions (ICS) and Flagship Capital Services Corp., two telemarketing companies, alleging that they violated the federal Telephone Consumer Protection Act and state consumer protection laws by using pre-recorded telephone messages to deceptively induce thousands of consumers to pay exorbitant “enrollment” and “education” fees to obtain “non-profit” credit counseling services. According to the complaint, ICS unlawfully delivered as many as 120,000 pre-recorded messages to Massachusetts residents in a single day and collected over \$1 million in unlawful fees from Massachusetts consumers. In April 2003, the defendants filed a motion to dismiss one of three counts against the companies; CPAD opposed the motion and continues to litigate this case.

- **Do Not Call Enforcement** The Massachusetts Do Not Call Registry went into effect on April 1, 2003, and CPAD initiated a multi-pronged enforcement initiative that included: (1) consumer advisories explaining the new law and how to file a telemarketing complaint with the Office of the Attorney General; (2) a specialized telemarketing complaint form available to consumers online at the Attorney General’s Web site; (3) issuing warning letters to approximately 70 companies; and (4) identifying specific telemarketers with multiple violations for potential civil prosecution.

OTHER CONSUMER PROTECTION

- **Commonwealth v. Leasecomm Corporation** (Suffolk Superior Court) In May 2003, CPAD, leading a group of eight states and the Federal Trade Commission, obtained a Consent

Judgment against Leasecomm Corporation, resolving allegations that the company used deceptive practices to force thousands of consumers nationwide to make unwarranted lease and fee payments, often leaving these consumers in debt. Massachusetts and the other states alleged that Leasecomm targeted consumers looking for "work-at-home" opportunities for high-pressure sales pitches that often led to consumers signing leasing arrangements with Leasecomm that required them to pay thousands of dollars for equipment and software, like credit card swipe machines and "virtual terminals," that did not work or the consumers did not want. Consumers found that they could not get out of the leases and that Leasecomm would automatically debit their accounts, charge unwarranted collection fees, and force the consumers to defend against collections lawsuits in Massachusetts courts. Under the Consent Judgment, Leasecomm agreed to significant changes in its business practices, agreed to relieve debts totaling \$24 million allegedly owed by over 6,000 consumers nationwide, and was required to pay \$1 million to the participating states, with Massachusetts receiving \$200,000.

- **Commonwealth v. H&R Block Services, Inc.** (Suffolk Superior Court) In April 2003, CPAD, working with Attorneys General in 41 other states, obtained an Assurance of Discontinuance against H&R Block settling allegations that the tax preparation company violated state consumer protection laws by automatically charging consumers additional fees for its "peace of mind" guarantee without first obtaining their consent. H&R Block agreed to establish a \$1 million consumer restitution fund covering consumers nationwide, pay the Commonwealth \$50,000, and change its practices.

- **Commonwealth v. Kmart Corporation** (Suffolk Superior Court) In August 2002, CPAD obtained a Consent Judgment against Kmart Corporation in connection with the company's significant pricing errors on consumer items. Working with inspectors from Boston's Department of Weights and Measures, CPAD determined that the electronic check-out systems at several Kmart stores in the Boston area significantly overcharged consumers. The Consent Judgment resolved these allegations by requiring Kmart to take measures to ensure substantial pricing accuracy.

- **Commonwealth v. Ford Motor Company** (Suffolk Superior Court) In December 2002, CPAD, as part of a multi-state group, obtained a Consent Judgment against Ford Motor Company resolving allegations that the company used deceptive practices in the advertising and sale of its sport utility vehicles (SUVs). The states had investigated Ford's failure to disclose safety risks it was aware of concerning Firestone ATX and Wilderness AT tires recalled by the company in August 2000. The states also alleged that Ford's advertising exaggerated the safe loading capacity and maneuverability of its SUVs. Under the terms of the Consent Judgment,

Ford provided \$30 million for a nationwide public service consumer education campaign on SUV safety and paid Massachusetts \$300,000 to fund local consumer programs.

- **Commonwealth v. Gaetano J. Scarpaci and Scarpaci Waterproofing, Inc.** (Suffolk Superior Court) In January 2003, CPAD filed an enforcement action against Gaetano Scarpaci and Scarpaci Waterproofing, alleging that Scarpaci used deception to procure home improvement contracts from consumers, then violated consumer protection laws and regulations by, among other things, requiring unlawfully large deposits from consumers, performing shoddy and dilatory work, failing to complete projects, and then threatening or intimidating consumers who complained about him. CPAD's civil case, which seeks restitution for harmed consumers, followed the Attorney General's successful criminal prosecution against Scarpaci in 2002. CPAD continues to litigate the civil action.
- **In re The Terminix International Company** (Suffolk Superior Court) In December 2002, CPAD, with the assistance of the Environmental Protection Division, obtained an Assurance of Discontinuance against The Terminix International Company, which operates five Terminix offices in Massachusetts, settling allegations that the company violated consumer and environmental protection laws and regulations in the marketing and application of pest control services and treatments. CPAD alleged that, since 1998, Terminix had routinely charged consumers for unwarranted and unnecessary outdoor pesticide applications for carpenter ants in winter months (carpenter ants are dormant in winter and not found outdoors, except in nests). Terminix agreed to change its consumer contracts and carpenter ant treatment practices, and paid Massachusetts \$100,000.
- **Commonwealth v. Francis P. Bellotti, Jr. and Insurance Restoration Services, Inc.** (Suffolk Superior Court) In June 2003, CPAD filed an enforcement action against Francis P. Bellotti, Jr., a South Attleboro contractor, for defrauding at least 13 fire victims. According to the lawsuit, Bellotti would rush to house fires, use high-pressure tactics to get the homeowners to contract for his restoration services, and then have them sign over their insurance checks. Bellotti would then fail to complete the work or abandon the projects, leaving many homeowners living in trailers or other accommodations for a year or longer. The lawsuit seeks consumer restitution, penalties, and injunctive relief. CPAD continues to litigate this case.
- **Commonwealth v. Needham Appliance and Lighting Center** (Suffolk Superior Court) In March 2003, CPAD filed suit against Needham Appliance and Lighting Center and its principal, Kenneth Kaplan, for violating consumer protection laws by, among other practices, charging consumers' credit cards without their authorization, overcharging consumers for items

they purchased, failing to order or deliver purchased appliances, failing to provide refunds to consumers, and issuing bad checks. CPAD's lawsuit seeks restitution for consumers, civil penalties, and injunctive relief preventing Kaplan from future violations. CPAD continues to litigate this case.

- **Commonwealth v. All County Storage** (Suffolk Superior Court) In November 2002, CPAD filed suit against a Lynn warehouse, All County Storage, and its principals, Nikki Granitsas and William Kennedy, for threatening to destroy an estimated 1,300 fur coats and jackets belonging to consumers. The fur garments had been stored at All County Storage after they were transferred, without notice to consumers, from a Framingham fur storage firm owned by Steven Kazis. The lawsuit alleged All County Storage, Granitsas, and Kennedy refused to deal with consumers to disclose the whereabouts of their garments, refused to return the garments unless the consumers paid unreasonable storage fees, ranging from \$500 to \$1,000, and threatened to destroy the garments. In November 2002, the court issued a Preliminary Injunction ordering the defendants to permit an inspection of the garments, and then released them to another storage company. In May and June 2003, CPAD coordinated the return of approximately 400 garments to their rightful owners. In another lawsuit filed against All County Storage in September 2002, CPAD alleged that Kennedy and Granitsas had prevented as many as 20 other consumers from retrieving their personal belongings. CPAD successfully obtained a preliminary order in that case that resulted in the return of belongings to two of the consumers. CPAD continues to litigate both these cases.

ANTITRUST

- **Microsoft Antitrust Litigation** (U.S. Court of Appeals, D.C./U.S. District Court, D.C.) Litigation continues against Microsoft for monopolizing the operating systems market and other predatory practices. On June 28, 2001, the D.C. Circuit unanimously affirmed the trial court's finding that Microsoft had engaged in illegal monopolistic practices, but vacated the trial court's decision to break up the company, and remanded to the trial court for further proceedings on remedies. In November 2001, the Department of Justice (DOJ) and nine states (the "settling" states) agreed to a proposed settlement with Microsoft. Pursuant to the Tunney Act, the DOJ settlement was submitted to the court for a determination, after public comment, whether entry of the settlement was in the public interest. Massachusetts and nine other states (the "litigating" states) refused to settle the case and filed their own remedies proposal with the court. Beginning on March 18, 2002, the court held a 32-day evidentiary trial on an appropriate antitrust remedy and then issued three separate orders on November 1, 2002: (1) approving DOJ's settlement under the Tunney Act; (2) approving the "settling" states' consent judgment; and (3) ordering a remedy in the case pursued by the "litigating" states which

substantially tracked the DOJ settlement. On November 29, 2002, Massachusetts announced that it was appealing the remedies decision to the D.C. Circuit. West Virginia also initially filed a notice of appeal but later dismissed its appeal after settling with Microsoft. The remaining eight "litigating" states did not appeal the remedies decision. On December 13, 2002, Massachusetts filed its motion for attorney's fees in the district court. On March 13, 2003, the D.C. Circuit granted Massachusetts' motion for full *en banc* review and expedited consideration of the appeal. Two industry organizations, the Computer and Communications Industry Association and the Software and Information Industry Association, appealed the Tunney Act decision to the D.C. Circuit. In May and June 2003, Massachusetts and the other parties to the two appeals filed their legal briefs, and oral argument for both appeals is scheduled for November 4, 2003. CPAD is continuing to prepare for the appeal, is continuing to litigate its attorney's fee motion, and is moving forward with efforts to enforce the current order against Microsoft.

- **Vitamin Price Fixing** In August 2002, CPAD entered into a \$667,000 out-of-court settlement with six major vitamin manufacturers, resolving allegations that the manufacturers conspired over several years to fix the price of vitamins and vitamin additives used in milk, bread, and cereal. The settlement reimbursed the Commonwealth for inflated prices that various state agencies, such as the state Department of Corrections, paid for these foods. The six companies, all of which are either European- or Japanese-based, were Hoffman-La Roche Inc. and Roche Vitamins Inc.; BASF Corporation; Aventis Animal Nutrition S.A., formerly Rhone-Poulenc Animal Nutrition S.A.; Takeda Chemical Industries, Ltd.; Eisai Co., Ltd.; and Daiichi Pharmaceutical Co., Ltd. In February 2002, in a private class-action suit brought against these same vitamin manufacturers, the Supreme Judicial Court ruled in a landmark decision, Ciardi v. F. Hoffman-La Roche, 436 Mass. 53, that consumer claims for antitrust damages could proceed under the Massachusetts Consumer Protection Act. This followed CPAD's filing of an *amicus curiae* brief in support of Massachusetts consumers. As a result of that decision, the six vitamin manufacturers entered into a \$19.6 million settlement of the private class action, with the money to be distributed to Massachusetts charitable organizations for food nutrition programs.

- **CD Antitrust Litigation** (U.S. District Court, ME) In November 2000, CPAD joined over 40 other states in filing an antitrust lawsuit against the major record companies and music retailers, alleging an illegal conspiracy to prevent discounting in the sale of music CDs. In September 2002, the states announced the entry of a Consent Judgment against the record companies and music retailers that settled the lawsuit and would result in consumer restitution in excess of \$67 million and the distribution of over 5 million free CDs to public libraries and/

or other state entities. In June 2003, the district court approved the Consent Judgment and distribution plan.

- **In re Stericycle, Inc. and Scherer Healthcare, Inc.** (Suffolk Superior Court) In January 2003, CPAD obtained an Assurance of Discontinuance against Stericycle and Scherer Healthcare, resolving antitrust concerns stemming from the merger of these two medical waste disposal companies. Massachusetts and Connecticut jointly investigated the competitive impact of Stericycle's proposed acquisition of Scherer's medical waste operations and determined that the acquisition would likely substantially lessen competition in Massachusetts and Connecticut for the sale of medical waste disposal services and for the operation of medical waste transfer facilities, resulting in higher costs to hospitals, medical clinics, and other healthcare institutions. The Assurance of Discontinuance required the parties to divest one of their two Haverhill, Massachusetts, medical waste transfer facilities to an independent operator, and required Stericycle to give the states advance notice of future acquisitions.
- **In re Big Y Foods, Inc.** (Suffolk Superior Court) In April 2003, CPAD obtained an Assurance of Discontinuance against Big Y Foods in connection with its acquisition of A&P Foodmart supermarkets in the Springfield, Massachusetts, area. CPAD determined, based on its antitrust review, that the proposed acquisitions of several A&P stores could substantially lessen supermarket competition in the area and result in higher grocery prices to consumers. The Assurance of Discontinuance required Big Y, for a period of three years, to price its grocery items at its new stores the same as the prices used at its other Springfield-area stores, which face greater competition. Big Y also was required to attempt to sell its leasehold interest in its West Springfield store to another competing supermarket.
- **Commonwealth v. Echostar Communications Corp. et al.** (U.S. District Court, D.C.) In October 2002, CPAD joined the U.S. Department of Justice and 24 other states in filing an antitrust lawsuit to prevent the merger of Echostar's Dish Network and Hughes Electronic Corp.'s DirecTV, the only two nationwide direct broadcast satellite television providers. DOJ and the states alleged that the proposed merger would result in a monopoly in satellite television services, would reduce competition even in areas where consumers had a cable television option, and would result in higher prices and fewer offerings to consumers. On December 10, 2002, the two companies announced that they had cancelled their plans to merge because of the antitrust challenge.
- **Commonwealth v. Salton, Inc.** (U.S. District Court, NY) In September 2002, CPAD joined 43 other states, Puerto Rico, and the District of Columbia in settling antitrust allegations

that Salton, Inc., manufacturer of the George Forman grills, coerced retailers into fixing the price of George Forman grills and excluding Salton's competitors from their shelves, which resulted in higher prices to consumers. If a retailer sold the George Forman grill at a discount, or sold a competitor's grill, Salton would suspend deliveries to that store. Under the settlement, formalized as a Consent Judgment, Salton agreed to pay a total of approximately \$8 million in *cy pres* restitution to participating states. The court approved the Consent Judgment on May 30, 2003, and the restitution will be distributed sometime after March 2004.

TOBACCO

- **In re ExxonMobil** (Suffolk Superior Court) In August 2002, CPAD joined 42 other states in settling allegations of tobacco sales to minors at Exxon and Mobil convenience stores. ExxonMobil agreed, in an Assurance of Discontinuance, to institute procedures designed to reduce the number of underage sales, including personnel training requirements and undercover compliance checks. The company paid \$100,000 to the states, with \$2,644 paid to the Massachusetts Local Consumer Aid Fund.
- **Commonwealth v. CVS Corp.** (Suffolk Superior Court) In February 2003, CVS entered into a Consent Judgment relating to its use of self-service displays for smokeless tobacco and little cigars in violation of a 1998 Assurance of Discontinuance and the Attorney General's tobacco sales regulations. The judgment provided, among other things, that CVS would pay \$90,000 to the Local Consumer Aid Fund for distribution to local programs addressing consumer issues relating to tobacco; would pay another \$30,000 if additional self-service tobacco displays were found; would implement new training and self-auditing procedures; and would report annually to the Attorney General.
- **NPM Enforcement** (Suffolk Superior Court) CPAD filed five new actions and six amended complaints against cigarette manufacturers that did not comply with G.L. c. 94E, either by signing and performing under the tobacco Master Settlement Agreement or (as Non-Participating Manufacturers or "NPMs") by funding qualified escrow accounts to pay judgments or settlements in actions brought against them by the Commonwealth. Two companies sued during Fiscal Year 2002 came into compliance and paid a 100% penalty, and default judgments were entered against three other companies. Attorney General Reilly also joined Attorneys General in other states in defending litigation brought to challenge the NPM enforcement activities of those states as unconstitutional. Attorney General Reilly also proposed legislation to reduce the extent of violations of Chapter 94E, to make it easier to enforce, and to close an unintended loophole in the law.

STATISTICAL SUMMARY

| | |
|--|--------------------------|
| Penalties/Costs/Other Money Returned to the Commonwealth | \$3,822,357 |
| Consumer Restitution Recovered | |
| CPAD | \$7,935,387 ¹ |
| CCIS | \$ 398,163 |
| Local Consumer Programs | \$4,649,531 |
| Consumer Hotline Calls | |
| CCIS | \$ 69,346 |
| Local Consumer Programs | \$ 90,717 |
| Consumer Complaints Filed | |
| CCIS | \$ 4,581 |
| Local Consumer Programs | \$ 10,079 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIESTOBACCO SETTLEMENT PAYMENTS

The Commonwealth received approximately \$300 million during Fiscal Year 2003, under the 1998 tobacco Master Settlement Agreement (MSA), bringing the total amount received to more than \$1.1 billion. The Fiscal Year 2003 total included \$86.4 million in Initial Payments received in December 2002 and January 2003, \$206.6 million in Annual Payments received in April 2003, and \$7 million as a share of the settlement of a number of outstanding payment disputes between the states and certain tobacco companies. CPAD closely monitored and enforced the settlement to ensure that the Commonwealth received the full amounts due under the agreement. Among other things, Attorney General Reilly notified Philip Morris USA in April 2003 that he would bring enforcement proceedings against the company if it failed to timely pay its annual payment in light of a then-pending appeal bond requirement in class-action litigation in Illinois. The Attorney General reported to the legislature quarterly on MSA payments, under G.L. c. 29D, § 3(i).

¹This restitution amount does not include refunds to consumers required under CPAD's Assurances of Discontinuance with H&R Block (\$1 million nationally) or judgments against consumers dismissed or forgiven pursuant to the Final Judgment by Consent filed against Leascomm Corporation (estimated at \$24 million nationwide).

AMICUS CURIAE

In addition to signing on to *amicus curiae* briefs sponsored by other state Attorneys General, CPAD wrote and submitted two successful *amicus curiae* briefs, one each in federal and state courts:

- In Wal-Mart Stores, Inc. v. Anabelle Rodriquez, No. 02-2710 (1st Cir. March 20, 2003), CPAD filed an *amicus curiae* brief on behalf of 20 states in support of the Secretary of Justice of Puerto Rico. CPAD's brief, filed on February 25, 2003, sought to have the First Circuit reverse a lower court ruling enjoining Puerto Rico from prosecuting its state law antitrust claim against Wal-Mart, arising out of Wal-Mart's acquisition of several stores on the island. The lower court had ruled, among other things, that Puerto Rico was pre-empted from enforcing its own antitrust laws by a settlement of the antitrust claims by the Federal Trade Commission. Massachusetts argued that settled Supreme Court precedent authorized all states, including Puerto Rico, to prosecute their own state antitrust cases in state courts, irrespective of federal action. Immediately after the Massachusetts brief was filed, Wal-Mart agreed to dismiss the underlying action, and on March 20, 2003, the First Circuit vacated the lower court decision.
- In Commonwealth Mutual Insurance Co. v. Vigorito, No. 9798 (App. Div. Feb. 7, 2003), CPAD filed an *amicus curiae* brief in support of Commonwealth Mutual Insurance Co. CPAD's brief, filed on September 27, 2002, sought to have the Appellate Division affirm the lower court's decision holding that the defendant auto repair shop could be held liable under the Massachusetts Consumer Protection Act, G.L. c. 93A, for misusing the "Mechanics Lien" statute to force a consumer to pay excessive repair and storage fees. On February 7, 2003, the Appellate Division (Coven, J.) affirmed the lower court decision in part, holding that the repair shop's use of the lien statute to secure improper and excessive fees violated c. 93A.

LEGISLATION

CPAD drafted two pieces of consumer protection legislation submitted to the legislature:

- Anti-Spam Legislation On December 4, 2002, Attorney General Reilly and State Senator Jarrett T. Barrios of Cambridge filed proposed anti-spam legislation. SB 1911, *An Act Regarding Commercial Electronic Mail*, would, among other things, prohibit electronic marketers from using misleading information in commercial emails, require senders of unsolicited commercial e-mails to label their e-mails with "ADV," and "ADLT" if they contain adult content, provide a mechanism for consumers to opt out of receiving commercial e-mail messages, and provide the Attorney General and consumers with the ability to seek monetary damages against spammers who violate the law.

- Legislation Prohibiting Tobacco “Kiddie Packs” The legislature approved, as part of the Fiscal Year 2003 budget, a prohibition on the sale of cigarette packs of less than 20 cigarettes. These so-called “kiddie packs” can be particularly attractive to minors.

NORTHEAST NETFORCE AND CYBERSECURITY INITIATIVES

On November 13, 2002, Attorney General Reilly joined the Federal Trade Commission, other state Attorneys General, and federal authorities in announcing, in Boston, the Northeast Netforce initiative, in which CPAD participated, targeting deceptive spam and Internet scams. Simultaneously, Attorney General Reilly announced the proposed state anti-spam legislation. On December 12, 2002, Attorney General Reilly and Bentley College co-sponsored a cybersecurity forum, “Securing the Weak Link in Cyberspace.” The forum, developed with the assistance of CPAD, brought together representatives from law enforcement, academia, the high-tech sector, and consumer groups to create a model program for enhancing cyber security for computer users in Massachusetts.

OUTREACH, EDUCATION, AND TRAINING

CONSUMER PROTECTION EDUCATION AND ADVISORIES

In Fiscal Year 2003, CPAD assisted in the publication and release of Attorney General Reilly’s *Consumer Guide to the Internet* and consumer advisories addressing nursing home user fees, the Massachusetts Do Not Call Law, and misleading e-mails. CPAD also sponsored several National Consumer Week initiatives in February 2003.

CONSUMER COMPLAINT AND INFORMATION SECTION (CCIS)

In Fiscal Year 2003, CCIS successfully mediated 844 consumer complaints filed against businesses, returning \$398,163 to these consumers. CCIS also provided consumer information on all manner of issues by responding to over 69,000 telephone calls to the Consumer Hotline, by responding to letters, by distributing brochures, and through public speaking engagements. CCIS also responded to press and consumer inquiries requesting complaint information against specific businesses and responded to 186 public records requests. Staff members also participated in National Consumer Week activities in February 2003 by, among other things, providing consumers at several MBTA stations with brochures on various consumer protection issues and consumer complaint forms.

CPAD ATTORNEYS

CPAD Attorneys participated as speakers and panelists in consumer education events, as well as in industry seminars and forums, on numerous issues, including identity fraud, Internet safety, predatory lending, manufactured housing, telemarketing fraud, and other consumer protection issues.

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, and 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 laws, 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.

Environmental Protection Division staff included James Milkey, Division Chief; Frederick Augenstern; Dena Barisano; Freda Boden; Matthew Brock; Nora Chorover; Carolyn Edwards; Benjamin Ericson; James Farrell; I. Andrew Goldberg; Nancy (Betsy) Harper; Carol Iancu; Matthew Ireland; Eleanor Johnson; Siu Tip Lam; Trevor Murray; William Pardee; Dawn Stolfi Stalenhoef; and Danah Tench.

SIGNIFICANT CASE SUMMARIES

STATE AIR POLLUTION LAWS AND REGULATIONS

- **Auto Emissions Standards** EPD was again active in enforcing state laws regarding pollution resulting from the operation of automobiles. Massachusetts is one of the few states that has taken advantage of Section 177 of the federal Clean Air Act allowing states to adopt California's stringent vehicle emissions standards. During Fiscal Year 2003, EPD handled cases against two automobile dealerships to enforce these low emissions standards: 128 Sales and RJ Foley, Inc. In both cases, EPD secured summary judgment in the Commonwealth's favor.
- **Vapor Recovery Standards** EPD was also active in defending and enforcing Massachusetts' Stage II Vapor Recovery Standards. Stage II vapor recovery systems control releases of gasoline vapors when vehicles are refueled. They require gas stations to install and maintain equipment to capture vapors that would otherwise escape to the atmosphere and contribute to ozone and smog formation. In Fiscal Year 2003, EPD reached a significant settlement with Exxon/Mobil

requiring payment of \$175,000 in civil penalties and injunctive relief. In addition, EPD defended regulatory amendments that the Department of Environmental Protection (DEP) made to the Stage II program.

- **Gitto Global** EPD continued the prosecution of its case against Gitto Global Corp., a plastics manufacturer's facility in Lunenburg. EPD alleges that the company violated various state environmental laws, including bypassing its air pollution control equipment. Throughout Fiscal Year 2003, EPD pursued both discovery and settlement negotiations.
- **Power Plants** In May 2001, DEP adopted new emissions standards for the six older power plants in Massachusetts. EPD is defending a challenge to those regulations filed by the owner of one of the affected power plants.

NATIONAL AND REGIONAL AIR POLLUTION ISSUES

- **Global Warming/Climate Change** The Attorney General has made the problem of global warming a priority issue. In July 2002, Attorney General Reilly led a coalition of 11 states that called on President Bush to rethink his global warming policies. In June 2003, Massachusetts, together with Connecticut and Maine, filed a first-of-its-kind lawsuit seeking to require that EPA regulate carbon dioxide emissions under the Clean Air Act. During Fiscal Year 2003, Massachusetts also joined a multi-state *amicus* brief in a California lawsuit arguing that EPA has a duty to review the existing New Source Performance Standard for power plants and that it must, in this context, consider setting an NSPS for carbon dioxide.
- **New Source Review** EPD continued to play a significant role in a multi-state and EPA enforcement action against a large Ohio-based power company for upgrading plants without installing Best Available Control Technology as required by the New Source Review (NSR) provisions of the federal Clean Air Act. During Fiscal Year 2003, discovery in American Electric Power continued. In the meantime, EPA finalized several proposed regulatory changes that will significantly weaken the NSR program, and Massachusetts joined with several other states to challenge this action before the D.C. Circuit. EPA also proposed further significant changes to the NSR program, and EPD filed comments opposing these changes.
- **American Power Co. v. U.S. EPA (126 Litigation)** EPD was instrumental in obtaining a court ruling that should reduce emissions from Midwestern and Southern power plants that contribute pollution to the state air shed. In American Power Co. v. U.S. EPA, Massachusetts intervened in federal court to defend EPA's decision to grant a petition, under Section 126 of the federal Clean Air Act, to require EPA to impose emissions reductions on power plants

located in Midwestern states. In a May 15, 2001 ruling, the D.C. Circuit largely upheld EPA's rule requiring emissions reductions by Midwestern and Southeastern power plants, but ruled in favor of certain plant-specific claims, and also directed EPA to explain an element of its decision on remedy. EPA issued a draft ruling on remand and, following our comments, finalized that ruling. Industry challenged that ruling, and EPD took the lead among the intervening states in defending the ruling.

- **State of Michigan v. U.S. EPA** (the "NOx SIP Call" litigation), a case related to the Section 126 litigation. Massachusetts intervened to defend EPA's decision to require 22 states to amend their air state implementation plans (SIPs) to include mandatory reductions in nitrogen oxides (NOx) from in-state power plants. In early March 2002, the Supreme Court let stand the decision of the U.S. Court of Appeals for the District of Columbia Circuit upholding EPA's "NOx SIP Call Rule." That rule, which EPA adopted in 1998, required 22 eastern states and the District of Columbia to reduce emissions of NOx within their borders, so as to reduce the movement (transport) of NOx to downwind areas, primarily in the northeastern states. The case continues, however, because the administrative ruling that EPA made on remand with respect to the Section 126 litigation covers the issues on remand in the SIP Call case as well. As mentioned above, that ruling is under appeal, with EPD taking the lead for the intervening states.

ENERGY

Massachusetts joined a challenge before the Court of Appeals for the D.C. Circuit to the Federal Department of Energy's decision to roll back energy efficiency standards that DOE had set for central air conditioners and heat pumps. The Court heard oral argument in January 2003.

ENFORCING HAZARDOUS AND SOLID WASTE DISPOSAL AND MANAGEMENT LAWS

Under G.L. c. 21E, the Attorney General is charged with recovering funds the Commonwealth spent cleaning up hazardous waste sites. Where possible, EPD enters into settlements with the parties responsible for the contamination to obtain their agreement to clean up the site, rather than pursuing a cost-recovery action after the state has stepped in itself to clean up the contamination. This saves the Commonwealth money up front and results in the efficient administration of site cleanups. EPD also enforces Massachusetts' hazardous and solid waste management laws to prevent environmental contamination from occurring in the first place.

- **Hardwick Landfill** In this case involving a landfill expansion undertaken without DEP approval, the Attorney General obtained a settlement that required the payment of a \$175,000 civil penalty.

- **Wayland Landfill** In this case, the Commonwealth alleged that the Town of Wayland collected recyclable material and then buried it at the town landfill in violation of the state's solid waste regulations. The case was settled for a \$25,000 civil penalty, a portion of which can be waived if the town stays in compliance.
- **Walgreens** This case involved numerous violations of DEP's Environmental Results Program relating to silver wastes. The Attorney General obtained a settlement that included injunctive relief and a payment of a civil penalty of \$185,000, a portion of which can be waived if the company stays in compliance.
- **D.B. Enterprises** EPD continued its prosecution of owners and operators of a large landfill in the Town of Wendell. EPD is seeking to recover millions of dollars that DEP spent to stabilize the landfill in order to prevent its catastrophic collapse.
- **Hercules Wrecking** EPD had previously obtained a consent judgment requiring cleanup of a site in Brockton on a certain schedule. Cleanup was not completed, and the owner claimed ability-to-pay problems. EPD settled a contempt action against the owner for a \$50,000 penalty and executed a Brownfields Covenant Not to Sue Agreement with a new buyer who wanted to redevelop the site through building a salvaging operation. This allowed the transfer of the property to be consummated and the site to be cleaned up and redeveloped.
- **Starmet** EPD continued its case against Starmet Corp. (formerly known as Nuclear Metals), a company that manufactured armor-piercing bullets and other munitions from spent radioactive fuels at a site in Concord. EPA has placed the site on the National Priority List. While the site itself is contaminated, there are also some 3,800 barrels of radioactive materials essentially abandoned at the site. EPD filed its state court lawsuit to require the company to establish an escrow account for site decommissioning, to maintain security at the facility, and to remove the barrels. The company agreed to establish the escrow account, and the court ordered it to continue to maintain site security while the case proceeds. During Fiscal Year 2003, the Attorney General recovered \$80,000 through the settlement of a related bankruptcy action in South Carolina, obtained summary judgment against Starmet, and defeated a Motion to Dismiss against a second defendant related to Starmet.
- **MBTA** EPD also continued prosecution of its lawsuit against the MBTA regarding significant lead and arsenic contamination at the Readville Yard. In its complaint, EPD alleged that the T failed to clean up the site despite its statutory liability, and that children were gaining access to the contaminated areas at the site. Through this case, EPD is seeking not only relief to address

the specific violations, but also broad-scale relief to force appropriate institutional changes regarding how the T manages its environmental compliance issues.

- **JEMS of New England** EPD also continued prosecution of its lawsuit for 21E regulatory violations against JEMS of New England, a company that was performing a site cleanup. EPD alleged that JEMS failed to comply with DEP orders to provide clean water to a family whose well water was contaminated. JEMS, a former petroleum supplier, delayed compliance with the orders while it sought a waiver of liability. The case is an important test of the 21E privatized cleanup program.
- **Mendon Road** EPD continued to pursue recovery of costs the Commonwealth spent to clean up coal-related wastes containing a compound known as ferric ferrocyanide. The so-called Mendon Road Case was filed several years ago against Narragansett Electric for cleanup costs spent by the state, which now total several million dollars, with interest. The First Circuit referred the question of whether ferric ferrocyanide is a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act to EPA, and EPA issued a preliminary ruling that it was. During Fiscal Year 2003, EPD submitted additional comments supporting EPA's preliminary ruling, which, if finalized, would allow Massachusetts to argue that it was entitled to the millions of dollars currently sitting in escrow, and EPD defeated the defendant's efforts to terminate the First Circuit's referral to EPA.
- **229 Main St. Limited Partnership** This controversy involves contaminated property owned by 229 Main St. Limited Partnership in Natick. EPD previously won a First Circuit case upholding DEP's right to file a lien on the property after the owner went into bankruptcy. During Fiscal Year 2003, EPD induced the owner to dismiss a second appeal that had been pending in the state Appeals Court, and negotiated an agreement-in-principle resolving the remaining cleanup, cost recovery, and bankruptcy issues.
- **Boston Junk** In another major 21E action, EPD is seeking recovery, from Boston Edison and others, of monies being spent to clean up the site of the Boston Convention Center. EPD is working closely with the Massachusetts Convention Center Authority and the Boston Redevelopment Authority, co-plaintiffs in the case.
- **Colonial Shoppe** EPD continued its case against the Colonial Shoppe, a liquor store in Hudson that EPD alleged was violating the Bottle Bill by paying only four cents per can or bottle redeemed, instead of the five cents required by the statute.

NATURAL RESOURCE RECOVERY, PROTECTION, AND PRESERVATION

- **Environmental Review** EPD handled many cases that arose under the Massachusetts Environmental Policy Act (MEPA). In the most significant case, MassPort filed suit seeking to modify a 1976 state court injunction, issued under MEPA, enjoining the authority from constructing an additional runway at Logan Airport. In the lawsuit, MassPort alleged that modification of the injunction was warranted because the Secretary of Environmental Affairs had certified the environmental impact report for the proposed new runway. EPD is defending the Executive Office of Environmental Affairs in this lawsuit, which went to trial in Fiscal Year 2003.
- **Protection of Endangered Species and Plants** In *WRT v. DFW*, EPD defended actions of the Division of Fisheries and Wildlife (DFW) implementing the Massachusetts Endangered Species Act (MESA). The developer of a golf course in Sturbridge brought a declaratory judgment action challenging DFW's statutory authority to require "conservation permits" for habitat impacts under MESA, as well as its authority to certify vernal pools. In an important decision, the Superior Court ruled in DFW's favor. During Fiscal Year 2003, the Appeals Court dismissed the appeal as moot.

Much of EPD's environmental work is done to protect the Commonwealth's water-related resources, including our water bodies, drinking water, wetlands, and tidclands. The Attorney General brings suit against parties that violate the state laws passed to protect these critical resources.

- **Battye Trucking** EPD recently sought and won a court order stopping a Methuen contractor from dumping and piling concrete and construction debris in the wetlands on his property in violation of state laws pertaining to wetlands protection, rare species, and solid waste disposal.
- **Servitank** EPD also secured a \$160,000 settlement with two trucking companies involved in a chemical spill in Colrain, Massachusetts, that allegedly killed fish and aquatic life in the North River.
- **Costa** In a case involving wetlands and solid waste violations at the Costa Farm in Fairhaven, EPD obtained judgments against the owner of the farm and a trucker who hauled rotting clamshells to the farm.
- **Karl's Site Work** In a case involving water pollution and hazardous waste violations at a site in Hadley, EPD obtained a settlement requiring injunctive relief and a civil penalty of \$80,000.

- **Hoosac Water Quality District** The Attorney General brings many cases with the federal government against municipal entities that operate publicly owned treatment works that discharge into water bodies. During Fiscal Year 2003, he helped secure a settlement with the City of North Adams, the Town of Williamstown, and the Hoosac Water Quality District (which manages sewage treatment for the two municipalities), under which the defendants will take specific steps to prevent future violations, and pay civil penalties totaling \$100,000. Williamstown will also complete a Supplemental Environmental Project valued at \$168,400.

The Attorney General also defends the public's rights in coastal tidelands. For example, in Trio Algarvio, Inc. v. Commissioner of DEP, EPD defended the Commonwealth's right to charge tidewater displacement fees and tidelands occupation fees for a private party's use of filled land that lies seaward of the historic low tide line. During Fiscal Year 2003, the state Appeals Court issued a ruling striking down both fees, and the Attorney General obtained further appellate review from the Supreme Judicial Court and re-briefed and re-argued the case.

STATISTICAL SUMMARY

During Fiscal Year 2003, EPD handled enforcement proceedings leading to judgments requiring payments of \$1,133,125. This figure is for penalties, cost recovery, and other payments awarded in Fiscal Year 2003, whether or not actually paid in Fiscal Year 2003. It does not include penalties that are subject to waiver if the defendant stays in compliance. In Fiscal Year 2003 EPD received actual payments totaling \$1,692,393.30 in penalties, cost recovery, and other payments. Other cases resulted in court judgments requiring private parties to undertake costly cleanups, a savings of millions of dollars for the Commonwealth.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

BROWNFIELDS

Chapter 206 of the Acts of 1998, "An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property," otherwise known as the "Massachusetts Brownfields Act," encourages the cleanup and redevelopment of brownfields sites through both liability reforms and financial assistance. The Act authorizes the Attorney General to enter into Brownfields Covenants that provide liability relief beyond what is otherwise available under Chapter 21E. The Brownfields Covenant Program addresses site-specific liability concerns for complex cleanups and important redevelopment efforts.

The Attorney General assesses applications for Brownfield Covenants according to the benefits they create for local communities and the Commonwealth by creating new permanent jobs and affordable housing benefits, preserving historic buildings, creating or revitalizing open space, and/or providing some other public benefit to the community in which the site is located.

In Fiscal Year 2003, EPD's Brownfields Unit continued to work on a number of diverse cleanup and redevelopment projects throughout the Commonwealth. The Brownfields Unit considered several applications for Brownfields Covenants and finalized two (2) Agreements designed to promote cleanup and reuse projects in Brockton and Norton, both of which were involved in long enforcement efforts. The Brownfields Unit has continued its ongoing efforts on various long-term priority projects and also has continued to solicit new projects through outreach and education.

BROWNFIELDS AGREEMENTS FINALIZED

- Champion City Recovery, LLC Project, Brockton In August 2002, the Brownfields Unit issued a Brownfields Covenant to Boxer Realty Redevelopment, LLC, Champion City Recovery, LLC, and New England Waste, LLC for the cleanup and redevelopment of the former Hercules Wrecking Co. site, a 10-acre parcel located at 138 Wilder Street in Brockton. The recipients of this Brownfields Covenant intend to construct a permitted facility to process construction and demolition debris that will be sorted, recycled, and transferred from the facility and use best efforts to create approximately 60 new jobs.
- Kilburn Isotronics, Norton The Brownfields Unit worked with DEP, Kilburn Glass, and Gifford Investments to amend the 1989 Final Judgment in Commonwealth v. Kilburn Glass Industries, Inc. and Gifford Investments, Inc. (Civil Action No. 79163), which addressed claims under the Massachusetts Clean Water Act and Chapter 21E to lead to a more aggressive cleanup, and make the electrical and glass components manufacturing facility more attractive to prospective purchasers who could, in turn, create more jobs at the facility.

BROWNFIELDS APPLICATIONS FILED

- Stoklosa Middle School Project, Lowell In March 2002, the City of Lowell and KeySpan Energy Delivery New England (KeySpan) jointly submitted an application for a Brownfields Covenant. The City of Lowell intended to build a 600-student middle school on 6.5 acres of former industrial property, a portion of which KeySpan Energy owned. Although the Brownfields Unit worked closely with the City and KeySpan throughout Fiscal Year 2003 to promote the most protective cleanup feasible, KeySpan ultimately transferred the property to the City of Lowell and the project did not require a Brownfields Covenant in order to proceed.

- **Grove Willow, LLC, at the former Raytheon Facility, Waltham and Watertown** In September 2000, Grove Willow, LLC submitted an application for the redevelopment of the former Raytheon facility. Grove Willow intends to redevelop Raytheon's former 78-acre manufacturing plant into a state-of-the-art telecommunications park and potentially create 1,000 jobs. Grove Willow is reconsidering the redevelopment project, and the Brownfields Unit continues to monitor the project.
- **Glover Estates, LLC (former Chadwick Lead Mills Site), Salem and Marblehead** In 2001, Glove Estates, LLC submitted a Brownfields Covenant application involving the cleanup of a former lead mill site and the construction of 55 units of senior assisted living, with a percentage devoted to low- to moderate-income residents. The development would create between 50 and 60 new jobs. The Brownfields Unit conducted a public forum on the project in April 2001 and continued to monitor this project throughout Fiscal Year 2003.
- **Iron Horse Park Superfund Site, Billerica** In 2001, Iron Horse Park LLC, Easton Exchange Holding, Inc., and Easton Exchange Services LLC submitted an application for a Brownfields Covenant to redevelop a portion of the Iron Horse Park Superfund Site known as "Penn Culvert" as a storage, handling, and distribution facility that would include an 81,200-square-foot warehouse building, a paved parking lot, and a railroad spur to revitalize the site, generate new jobs, improve the property value, and increase the tax base in Billerica. In Fiscal Year 2003, the applicant informed the Brownfields Unit that the project would not require a Brownfields Covenant in order to proceed.
- **395 Lynnway Project, Lynn** In June 2003, the current owner and a prospective purchaser submitted an application for a Brownfields Covenant to clean-up and reuse idle property located at 395 Lynnway, Lynn. This project involves a 100,000-square-foot commercial building and will result in the creation of 10 to 14 jobs.

BROWNFIELDS APPLICATIONS ANTICIPATED

- **GenCorp/Lawrence Gateway Project, Lawrence** One of the Brownfields Unit's long-term priority efforts is the Gateway Area of Lawrence. The redevelopment of the GenCorp site into a parking lot/garage and the abutting Oxford Paper site into a park and an open space recreation area will be catalysts for revitalization of the Gateway area, inspiring new development and increased occupancy and use in existing mill buildings as well as expansion of Lawrence General Hospital services. This project would create hundreds of jobs and spur economic development of the Gateway area and much of the mill area, creating significant public benefits to Greater Lawrence. In Fiscal Year 2003, the Brownfields Unit continued to participate in regular Gateway

meetings convened to move the GenCorp and Oxford Paper projects forward, promoted the formation of an entity to assume operation and management responsibilities of hundreds of parking spaces on the site that abutting mill owners could use by 2004, and advocated for near-term parking spaces on appropriate portions of the site. GenCorp has submitted a draft application for consideration.

- **Rail Yard, New Bedford** Another of the long-term priority brownfields efforts is the New Bedford Redevelopment Authority project involving the conversion of the 30-acre New Bedford rail yard into a multi-use intermodal transit area. The Brownfields Unit worked with New Bedford officials to address the project's liability issues.
- **BFI/Decor Project, Whitman** A current tenant, with an existing business, formed a company interested in completing the cleanup and expanding paper manufacturing operations (creating approximately 30 new jobs), but had liability concerns associated with these efforts. The Brownfields Unit continued its efforts on this project.
- **Riverside Avenue Project, New Bedford** In April 2003, Norseman Properties, the new owner of the former Cliftex Building in New Bedford, submitted a draft application for a Brownfields Covenant. Norseman intends to redevelop the former mill with a variety of uses but faces significant challenges relating to liability and environmental issues as well as financial complexities. The Brownfields Unit devoted significant time to moving this project forward.
- **Manchester Street Project (Part 2), Lowell** In Fiscal Year 2002, the Brownfields Unit issued a Brownfields Covenant for a project at 77 Manchester Street, Lowell, to promote the cleanup and construction of housing units, including affordable housing. The developer is interested in expanding the project to include the abutting property located at 125 Manchester Street.
- **Smith & LaMountain Service Corp., Project Monson** In June 2002, Smith & LaMountain Service Corp. submitted a draft application for a Brownfields Covenant for a project in Monson. The applicant intends to clean up and redevelop a 5-acre site with a 10,000-square-foot abandoned auto repair/dealership building into its company headquarters, creating 35 new jobs. The Brownfields Unit clarified some of the liability issues for the applicant to promote the project.
- **Microfab Site, Amesbury** The Brownfields Unit has been working with the City of Amesbury to assist the redevelopment of an abandoned property subject to a DEP lien. DEP

using a Brownfields grant from EPA, recently completed the Phase II Comprehensive Assessment of the property, which provides valuable information for potential developers. The Brownfields Unit has been meeting with a variety of stakeholders involved in the project including the city, EPA, DEP, and a developer interested in applying for a Brownfields Covenant.

- **Former Corian Corporation Project, Holliston** A prospective purchaser intends to acquire an abandoned site in an industrial park and create 30 manufacturing jobs, but is concerned about the complicated environmental conditions at the site. The Brownfields Unit received a draft application for a Brownfields Covenant in March 2003, met with DEP and the applicant, and continued to monitor the project.
- **Aerovox Building Project, New Bedford** The Brownfields Unit and EPD worked with the City of New Bedford, DEP, EPA, and USDOJ to settle a bankruptcy matter regarding the environmental liabilities associated with electrical capacitor manufacturing operations at the Aerovox facility in New Bedford so that the vacant building can be returned to productive use as soon as possible.
- **South Shore Tri-Town Development Project (Former Weymouth Naval Station), Weymouth, Rockland, and Abington** The Brownfields Unit became involved in a project that will clean up and redevelop 1,400 acres of land at the former Weymouth Naval Station located in the towns of Weymouth, Rockland, and Abington. DEP will address some portions of the property administratively under solid waste laws and regulations, and other portions will be addressed under Chapter 21E. Still other portions of the property will be addressed under CERCLA.
- **Brooks Park Project, Lawrence** Lawrence Community Works is interested in purchasing the site of a former dry cleaning operation in the North Common neighborhood to redevelop it into a park. The Brownfields Unit worked with LCW and the site's owner on site assessment activities to complete the appropriate response actions for its use as a park.
- **Revere Copper and Brass Site, Plymouth** In June 2002, the Plymouth Redevelopment Authority submitted a draft application for the cleanup and redevelopment of a 1.5-acre site formerly operated by the Revere Copper and Brass Company. The Brownfields Unit continued to monitor the progress of this project.
- **Former Ford Dealership Project, Attleboro** The Brownfields Unit received a draft Application for a Brownfields Covenant from a prospective purchaser interested in revitalizing

a vacant car dealership, worked with DEP to review the application, and provided comments and suggestions to the applicant.

- **Lucent Property/Ozzy Properties Project, North Andover** The Brownfields Unit has been working on the Lucent Technologies project in North Andover. Ozzy Properties is interested in purchasing the site with the protections available under a Brownfields Covenant. The Brownfields Unit received a draft application for a Brownfields Covenant and continued to work with the parties as the project has moved forward.

BROWNFIELDS MUNICIPAL GRANTS PROGRAM

In April 2002, in order to assist municipalities with brownfields revitalization, the Attorney General awarded grants totaling approximately \$1.3 million to 27 communities, representing more than 30 brownfields projects. During Fiscal Year 2003, the Brownfields Unit worked closely with recipient municipalities as they completed and submitted Status Reports required under the program.

BROWNFIELDS PROGRAM DEVELOPMENT

Throughout Fiscal Year 2003, the Brownfields Unit explored cleanup and redevelopment opportunities with a variety of prospective developers. These redevelopment projects could lead to the creation of new jobs across the Commonwealth, involving significant tracts of land and commercial space as well as the creation of affordable housing and open space.

In many instances, the Brownfields Unit has encouraged cleanup and redevelopment projects to proceed by providing interested parties with an understanding of the liability relief available under the statute. Although a Brownfields Covenant is sometimes not necessary for a project to proceed (as with the Stoklosa and Iron Horse projects, for example), a large percentage of the cleanup and redevelopment projects are longer-term by their nature with complexities that ultimately give rise to the need for a Covenant. In those cases where the cleanup is complex, the liability is potentially substantial, and the redevelopment opportunity may be of great significance to the economic viability of a community, a Brownfields Covenant is often a critical component of the transaction. Fiscal Year 2003 continued to highlight the important role that the Brownfields Covenant Program plays in both public and private efforts to transform brownfields properties throughout the Commonwealth.

LEAD PAINT

Massachusetts has a high-incidence rate of lead poisoning among children due, at least in part, to exposure to lead-based paint in the state's older housing stock. Luckily, Massachusetts also has one of the nation's strongest lead-based paint notification and abatement laws. The Massachusetts lead law requires the de-leading or interim control of lead hazards existing in homes built before 1978 where

children under age 6 are living. Owners must also notify tenants that a property has not been de-leaded, regardless of whether a child under the age of 6 lives there.

During Fiscal Year 2003, Massachusetts continued a lead paint enforcement initiative in cooperation with the EPA and the U.S. Department of Housing and Urban Development (HUD). The initiative seeks to enforce the state law requiring disclosure of lead hazards and the abatement of lead paint with enforcement of the federal disclosure requirements. EPD's actions are part of a larger Public Protection Bureau initiative that includes civil rights actions against landlords who seek to evade the lead law by refusing to rent to families with small children, and enforcement actions against unlicensed lead abatement contractors.

ENVIRONMENTAL HEALTH AND SAFETY IN THE SCHOOLS

Consistent with Attorney General Reilly's safe schools priority, EPD participated in numerous initiatives to address environmental health and safety concerns in Massachusetts' public schools, especially indoor air quality. Attorney General Reilly has been a consistent advocate of schools adopting Environmental Management Systems to address their environmental compliance issues on an ongoing basis.

During Fiscal Year 2003, EPD continued to work with community groups and other state agencies to identify the common environmental health and safety issues in the schools, the challenges the schools face in addressing those issues, and the gaps in the laws and regulations on those issues. EPD is currently working with several members of the Healthy School Council to develop legislation to address environmental health and safety issues in the schools.

PROTECTING CONSUMERS FROM EXPOSURE TO ASBESTOS, TOXICS, AND PESTICIDES

Massachusetts has a long-standing commitment to reducing human exposure to harmful substances, such as asbestos, toxics, and pesticides. In Fiscal Year 2003, EPD continued its enforcement initiative against asbestos abatement contractors and owners/operators of facilities where improper removal of asbestos has resulted in the release of asbestos into the environment.

- O. Ahlborg EPD reached a settlement against a Rhode Island company that allegedly violated asbestos-related regulations at a facility in Seekonk. The settlement required injunctive relief and payment of a \$75,000 penalty.
- Massachusetts Innovation Center EPD brought an enforcement lawsuit against a Fitchburg company for asbestos violations that allegedly occurred during a renovation project at the firm's facility.

- Hopkins EPD settled this case against the owner of a Worcester restaurant and apartment building who allegedly violated asbestos regulation and the Solid Waste Management Act. The settlement required payment of a \$32,000 penalty, injunctive relief, and a SEP worth \$10,500 (asbestos abatement work in another property).

CAPE WIND

In November 2001, Cape Wind Associates filed an application with the Army Corps of Engineers for a permit, in conjunction with a proposal, to build a "wind farm" on Horseshoe Shoals in Nantucket Sound. The proposal envisioned 170 (now scaled down to 130) wind turbine generators on pylons standing approximately 260 feet above sea level, spread over 28 square miles of the Sound. Horseshoe Shoals is located in the center of the Sound, more than three miles beyond the coastline and closing lines, and therefore outside of Massachusetts' territorial waters.

Although federal law establishes a comprehensive scheme for licensing areas of the seabed on the continental shelf for mineral exploration and extraction, including oil and gas, there is no such scheme applicable to other sorts of projects on the continental shelf. The developer of the proposed wind farm appears to take the position that in these circumstances a permit from the Army Corps will suffice to authorize the project.

The Attorney General has concluded that this position poses a substantial threat to the public interest and public rights in the Sound and elsewhere along the Massachusetts coast. Quite apart from the particular proposal, the developer's line of reasoning could ignite a "land rush" off the coast by developers with all sorts of projects. In this way, the rights of the public generally would be appropriated for private gain with very little control as to siting and permissible uses, and without compensation to the public for the loss. The immediate proposal illustrates the problem, with its massive industrial installation located in the middle of a body of water cherished by millions for its aesthetic and recreational values and for its contribution to the livelihoods of fishermen and coastal towns.

Accordingly, in Fiscal Year 2003, the Attorney General began to raise these concerns in many different forums. He submitted testimony in support of federal legislation to establish a comprehensive regulatory regime to govern developments such as the Cape Wind proposal, and urged the United States Attorney General to consider the theory of the developer that a mere navigational permit by the Army Corps could authorize a long-term occupation of the seabed. The Attorney General also submitted an *amicus* brief in a case in federal district court, refuting an attempt by the federal government to argue that the United States has no property interest in Horseshoe Shoals.

MMR LEASE NEGOTIATIONS

The Commonwealth owns most of the Massachusetts Military Reservation on Cape Cod, but the property is subject to long-term leases to the federal government. During Fiscal Year 2003, Governor Romney signaled his intent to extend these leases for another 25 years (to 2051). The Attorney General urged the Governor not to extend the leases without first securing environmental concessions from the federal military. Separate from the lease negotiations, EPD is involved in ongoing discussions with the federal military about its liability for natural resource damages.

BUZZARD'S BAY OIL SPILL

A barge owned by Bouchard Transportation spilled approximately 50,000 gallons of oil into Buzzard's Bay. EPD has been assisting the state and federal Natural Resource Trustees to ensure that natural resource damage issues are adequately addressed.

TITLE 5 INITIATIVE

Consumers across the Commonwealth have to deal with the septic system regulations known as "Title 5." This exposes them to the potential for consumer fraud by septic system inspectors, brokers, and people marketing "quick fixes." During Fiscal Year 2003, EPD settled its action against a company (Caldwell Environmental) that offered a "miracle cure" for failed Title 5 systems, and is developing cases involving similar violations. EPD also filed suit against B&M Fitzgerald, another Title 5 case that raises potential consumer protection issues, and issued a consumer advisory. The seller allegedly took fraudulent actions to make it appear that a non-complying septic system passed an inspection. Finally, EPD filed an enforcement action against Brickyard Marketplace, a Mashpee owner of a strip mall, that allegedly installed a large septic system without the necessary state approval.

LEGISLATIVE EFFORTS

Much of EPD's legislative work this year was in fighting efforts by the U.S. Department of Defense (DOD) to secure additional exemptions from federal environmental laws. For example, in congressional testimony he submitted opposing such efforts, the Attorney General pointed out that historically DOD has been one of the worst environmental violators and that the major federal environmental laws already provide DOD with sufficient flexibility to ensure that environmental compliance will not compromise military readiness.

On the state side, Attorney General Reilly and Senator Brewer submitted legislation that would create a statute of limitations for cases brought to enforce the state's cleanup statute, G.L. c. 21E. The proposed statute would key the statute of limitations to the discovery of the violation instead of to its occurrence. This change preserves the integrity of the largely privatized state cleanup program.

INSURANCE DIVISION

The Insurance Division represents the public interest in administrative insurance rate setting proceedings. The Commissioner of Insurance sets these rates, and the administrative proceedings are held at the Commissioner's Division of Insurance. The Insurance Division also brings actions in state court against insurers for unfair acts and practices, provides comments and testimony regarding proposed regulations and laws relating to insurance, mediates claims on behalf of consumers, and provides assistance on insurance and other issues to members of the Massachusetts elder community.

The Insurance Division included Glenn Kaplan, Chief; Stacy Book; Matt Buehler; Gerald Cahill; Joyce Coughlin; Gerald D'Avolio; Lydia Froese; Sue Melucci; Judy dePontbriand; Barbara Fain; Burt Feinberg; Maureen Forbes; Rebecca Frade; Stacey Gotham; Maureen Hensley-Quinn; Hilary Hershman; Tonic Jhun; Peter Leight; Pamela Meister; Tom O'Brien; Mary Jane Preskenis; Katie Rhodes; Rachel Weiner.

SIGNIFICANT CASE SUMMARIES

RATE CASE LITIGATION

- **2003 Automobile Insurance Rate Setting Proceeding** (Division of Insurance) The Automobile Insurance Rate Setting proceeding is an annual administrative proceeding in which the Commissioner of Insurance, based on proposals and evidence submitted by the auto industry and other parties, sets automobile insurance rates for the coming year. The Insurance Division represents the public interest in these proceedings and submits its own proposed rate filing. The case, if pursued to its conclusion, requires litigation in four separate dockets, each dealing with a portion of the overall rate computation. The industry filed for an 8% rate increase, and the division opposed the increase. The Commissioner's final decision raised rates by approximately 3%. The division's intervention saved consumers \$200 million in excess premium increases.
- **2003 Workers' Compensation Insurance Rate Proceeding** (Division of Insurance) Workers' Compensation Insurance provides coverage for medical and related expenses stemming from job-related injuries. Businesses in the Commonwealth must carry Workers' Compensation Insurance. The rates for Workers' Compensation Insurance are set in a cyclical rate proceeding. For this cycle, insurers filed seeking an 11% rate increase, which the data did not support. The division intervened and litigated for a rate decrease. After completion of the rate case, the

Commissioner ruled that rates should decrease by 4%. The division's intervention saved Massachusetts small businesses and other employers \$150 million.

- **Hartford Life/Medicare Supplement Rate Case** (Division of Insurance) Medicare Supplement insurance provides coverage for certain medical expenses outside the scope of the federal Medicare program. Health insurers offering this type of coverage to seniors must submit proposed rate increases to the Commissioner of Insurance for approval. Hartford Life filed seeking premium increases of 40%. The division intervened in this docket and then settled with Hartford, after negotiating a significantly reduced increase. Under the settlement, consumers who use Hartford's Medisup II Plan will each save over \$1,200 per year compared to the company's requested rate increase.
- **Bankers Life/Medicare Supplement Rate Case** (Division of Insurance) Bankers Life sought rate hikes for its various Medicare Supplement plans ranging from 10% to 55%. The division intervened and settled the case for significantly smaller increases. Bankers Life consumers saved an aggregate of \$700,000, and customers of certain Bankers' plans saved more than \$300 per year compared with what the insurer sought to charge.
- **Oxford Life/Medicare Supplement Rate Case** (Division of Insurance) Oxford sought rate increases of 35% to 50% on its Medicare Supplement insurance plans, and the division opposed the increases as excessive. The case settled after the division intervened. The division saved Oxford consumers approximately \$1 million compared to what they would have paid under the requested rate increases.

SUPERIOR COURT LITIGATION

- **Commonwealth v. Delta Dental** (Suffolk Superior Court) Delta Dental failed to give notice to members of group dental plans terminated for nonpayment of premium by their employer. Delta agreed to an Assurance of Discontinuance, which included a \$25,000 payment to the Commonwealth.
- **Commonwealth v. General Electric Capital Assurance Co.** (Suffolk Superior Court) General Electric Capital Assurance Corp. (GECA) is one of the state's largest providers of long-term care insurance, a type of private health insurance that provides benefits to individuals who can no longer take care of themselves due to chronic illness. GECA failed to pay claims from Massachusetts residents, opining that Massachusetts assisted-living facilities were not "licensed" (Massachusetts calls those facilities "certified") as required by GECA policies. GECA agreed to

a Consent Judgment including injunctive relief, restitution, and a \$50,000 payment to the Commonwealth.

- **Commonwealth v. CIGNA** (Suffolk Superior Court) CIGNA failed to provide legally required notices to consumers when it cancelled their health-care coverage. The division obtained a Consent Judgment, which included a \$10,000 payment to the Commonwealth and injunctive relief.
- **Commonwealth v. Bellingham Chiropractic Center** (Suffolk Superior Court) Dr. Clifford McLaughlin of Bellingham Chiropractic Center allegedly charged members of the GIC Indemnity Plan and PLUS Plan more than the amounts allowed by the plans, a violation of the Balance Billing Law, G.L. c. 32A, § 20. Dr. McLaughlin signed an Assurance of Discontinuance, agreeing to a \$5,000 penalty and reimbursements for consumers.
- **Commonwealth v. Guarantee Trust Life Insurance Company** (Suffolk Superior Court) Guarantee Trust Life Insurance Company violated G.L. c. 175, § 117C by failing to update its insurance rates properly. The division filed a Consent Judgment, which required the company to make a \$50,000 payment to the Commonwealth, as well as restitution to consumers.
- **Commonwealth v. Insurance Shopping Network** (Suffolk Superior Court) Insurance Shopping Network, d/b/a Insurecom.com, runs an Internet Web site that obtains insurance rate quotes for consumers. The Web site promises in its privacy policy that it will provide personal data only to selected insurers who have agreed to keep the information private. In fact, Insurecom.com shared consumer information with third parties in violation of the company's promises to consumers. The division settled this case with an Assurance of Discontinuance, including a \$15,000 penalty.
- **Commonwealth v. Protective Consumer Direct** (Suffolk Superior Court) Protective Consumer Direct misled consumers into believing that its discount medical plan was actually insurance. Protective agreed to an Assurance of Discontinuance requiring them to send out corrective notices and refunds to over 200 Massachusetts consumers, make appropriate disclosures in future marketing efforts, and pay \$7,500 to the Commonwealth.
- **Commonwealth v. Labrie** (Suffolk Superior Court) Labrie, a long-term care insurance salesman, gave elders legal advice even though he is not a practicing lawyer. The division entered into a Consent Decree with Labrie in which he was permanently enjoined from, among other things, misrepresenting his legal qualifications, offering legal advice, and otherwise violating the long-term care insurance regulations.

ASSISTING IN THE OFFICE'S CONSUMER PROTECTION MISSION

- **Pharmacy Assessment** (Suffolk Superior Court) Pharmacies allegedly misled consumers regarding certain state assessments on the retail pharmacy industry. Neither the pharmacies nor the health insurers were willing to pay for these assessments, which the pharmacies then unlawfully charged directly to consumers. Working with the Consumer Protection and Antitrust Division, the division investigated these matters and prepared to bring actions against several large pharmacy chains, including CVS, Walgreens, and Wal-Mart. These matters were settled by Assurances of Discontinuance, which required reimbursements for consumers and more than \$400,000 in payments to the Commonwealth.
- **Commonwealth v. Phirong Phat and Phillip Huy** (Suffolk Superior Court) Phirong Phat and Phillip Huy misled consumers and engaged in the unlicensed practice of dispensing and repairing hearing aids. The division obtained an Assurance of Discontinuance that included equitable relief, restitution, and a \$5,000 penalty.

TESTIMONY

The division also provides testimony at administrative public hearings and before the legislature regarding regulatory initiatives and changes in insurance law. During Fiscal Year 2003, the division provided guidance to the legislature on a number of issues, including auto insurance reform, long-term care insurance oversight, credit scoring, home insurance coverage for fuel oil spills, gender equality in annuities, the proposed interstate insurance compact, and concierge medical practices. Similarly, the division also gave testimony at public hearings at the Division of Insurance on a variety of regulatory issues, including consumer privacy, competition enhancement in auto insurance, changes in standards for Health Maintenance Organization coordination of benefits, cost-saving measures on auto glass and auto repair standards, and tiered health plans.

STATISTICAL SUMMARY

Insurance Division case activity has more than doubled, and in some cases quadrupled:

| | FISCAL 2002 | FISCAL 2003 ² |
|--------------------------|-------------|--------------------------|
| Investigations initiated | 11 | 40 |

² These figures do not include recoveries for cases handled jointly with other divisions, such as the pharmacy assessment matters brought against the retail drugstore chains. If those were included, 2003 would show an even greater increase over the activity in 2002.

| | | |
|--|-----------|-----------|
| Litigations initiated (Superior Court) | 1 | 5 |
| Judgments obtained (Superior Court) | 1 | 4 |
| Assurances of Discontinuance | 2 | 7 |
| Restitution in consumer cases | \$293,000 | \$803,000 |
| Payments to the State | \$ 47,000 | \$222,000 |

In addition to investigations and recoveries relating to court proceedings, the division also saved consumers vast sums of money by litigating administrative rate cases before the Division of Insurance. The successful litigation, and in some instances settlement, of those actions resulted in significant reductions from the rates sought by insurers in the Commonwealth. For instance, the division's intervention in the Workers' Compensation insurance rate case (the first time the Attorney General has done so under the existing Workers' Compensation regime) resulted in a significant rate decrease and saved Massachusetts insurance customers approximately \$150 million.

| <u>INSURANCE RATE CASE</u> | <u>SAVINGS COMPARED TO INDUSTRY RATE REQUEST</u> |
|---------------------------------|--|
| Automobile Insurance | \$200 million |
| Workers' Compensation Insurance | \$150 million |
| Medicare Supplement Insurance | \$ 2 million |

Finally, the division also pursued a mediation mission to help consumers resolve certain individual disputes without legal action. The division's two mediation projects, the Insurance Mediation Program and the AG Elder Hotline, handled a significant volume of consumer complaints and provide a vital service to consumers.

| <u>MEDIATION PROJECT</u> | <u>CONSUMERS ON HOTLINE</u> | <u>MEDIATIONS</u> | <u>ASSISTED RECOVERIES</u> |
|------------------------------|---------------------------------|-------------------|--------------------------------|
| Insurance Mediation | 8,900 | 1,300 | \$1.5 million |
| AG Elder | 3,600 | 187 ¹ | \$100,000 |

¹This figure reflects mediations with a monetary recovery.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

INSURANCE HOTLINE AND MEDIATION PROGRAM

In Fiscal Year 2003, approximately 8,900 people, an average of 750 a month, called the Insurance Division to ask questions and seek help with insurance problems. More than 45% of the callers were concerned about health insurance issues. Many of the callers had been recently laid off from their jobs and needed information about their health insurance rights; others were concerned about the cost of prescriptions, claim denials, and medical bills. Approximately 25% of the callers sought help with auto insurance problems. Most of these callers were having difficulty with accident claims; others raised questions about premium billing, cancellations, and surcharges.

The division received a large volume of calls and letters in January and February of 2003, when a \$1.30 assessment on prescription medications took effect. Some 900 people called the division to protest the assessment; more than 100 wrote letters. Many who contacted the Office were senior citizens, people with disabilities, and unemployed families. Mediation staff provided consumers with timely information about the assessment and tracked complaints against each of the major pharmacy chains.

In addition to the consistently high volume of calls related to health and auto insurance, the division also received inquiries related to a broad range of other issues, including short- and long-term disability insurance, life insurance and annuities, travel insurance, credit insurance, and possible insurance scams. Callers asked questions about how to evaluate insurance before purchasing a policy, how to cancel unwanted insurance, how to appeal a denied claim, and how to deal with incorrect billing.

The division's mediators answered the questions of callers, providing information and referrals and, when appropriate, mailing consumer complaint forms.

In Fiscal Year 2003, the division opened 1,300 consumer complaint files, the majority of which were submitted on consumer complaint forms or as letters to the division. As with the telephone inquiries, a significant portion of the written complaints related to health insurance. Over 600 of the new complaints, approximately 50% of the total, involved health insurance. The most prevalent complaint category was claim denials.

This past fiscal year, 13 undergraduate interns from nine colleges and universities received training from the Insurance Mediation Program to mediate consumer insurance complaints. More than half of the interns received academic credit for their work. During the summer and academic year, interns volunteered nearly 3,000 hours in the mediation program.

In Fiscal Year 2003, Insurance Division mediators closed 1,100 consumer complaint files and recovered approximately \$1.5 million for Massachusetts consumers.

AG ELDER HOTLINE

The Attorney General's Elder Hotline (AG Elder) (1-888-243-5337) provides a central place where senior citizens, age 60 and older, and their families can call for assistance. AG Elder provides written and oral information, referrals within the Office of the Attorney General or to other government agencies, and mediation services on a wide range of consumer complaints. During Fiscal Year 2003, AG Elder received more than 7,500 calls (from 3,600 consumers) and saved consumers over \$100,000.

The top four categories of complaints remained constant between Fiscal Years 2002 and 2003. The number one complaint was against businesses, including auto dealerships and retail stores (over 600 complaints). The number two category comprised complaints related to telemarketing, sweepstakes, lotteries, mail solicitations, and fraud (almost 500 complaints). The third area related to health insurance issues, including prescription drug coverage (almost 400 complaints). Problems regarding credit card and other types of debt remained the fourth most common category of complaint during the last fiscal year, with over 300 complaints registered.

Following these top categories were approximately 200 complaints against home improvement contractors, 150 complaints regarding utilities, 130 complaints of financial exploitation, 130 complaints against health care businesses or health care workers, 120 housing-related complaints (primarily involving senior housing complexes and assisted-living facilities), and 100 complaints regarding tenant and landlord issues.

HOSPITAL AND HMO COMMUNITY BENEFITS

Division staff oversee the Attorney General's Community Benefits Guidelines for hospitals and HMOs, including the Attorney General's Community Benefits Advisory Task Force. The Advisory Task Force includes representatives of hospitals, HMOs, community health advocacy groups, and relevant state agencies. It is organized into several working groups that focus on the key elements of community benefits, including reporting and community engagement.

During Fiscal Year 2003, the Attorney General implemented revisions to the original Community Benefits Guidelines, working with the Massachusetts Hospital Association, the Massachusetts Association of Health Plans, and consumer health advocates in this process.

Division staff also continued to implement the new process and format for community benefits annual reports developed during the prior fiscal year. This included conducting training sessions for

hospital and HMO community benefits managers, and providing guidance to hospitals and HMOs in their preparation of their Fiscal Year 2002 annual community benefits reports.

Division staff also worked closely with an Internet applications contractor to complete the design and development of a community benefits Web-enabled database and electronic filing system for annual reports. The first phase of the Community Benefits Web application was launched at the end of Fiscal Year 2002; the remaining work was completed in the first half of Fiscal Year 2003. The hospital and HMO Community Benefits Annual Reports for this period were filed electronically, and the public access features of the application are now fully operational.

Finally, division staff worked with an Advisory Task Force working group to design and plan a series of regional community benefits public forums around Massachusetts. The first two of these forums, for Central and Southeastern Massachusetts, took place during Fiscal Year 2003.

ELDER PROTECTION UNIT

The Elder Protection Unit seeks to enhance protections for Massachusetts elders by improving the coordination and monitoring of elder issues, including the Office's outreach efforts, as well as its response to matters involving elder abuse and fraud. The unit draws on the talents of staff throughout the Office.

The Unit coordinated two conferences on elder fraud and abuse. The conferences, held in New Bedford and Pittsfield, were collaborative efforts involving the Attorney General's Public Protection and Fair Labor Bureaus and Southeastern and Western Massachusetts Offices, and state protective services offices. Conference panelists discussed telemarketing, identity and home improvement fraud, local scams, and how to recognize and report abuse in nursing homes and in the community. More than 150 elders, elder providers, and law enforcement professionals attended these free, half-day events.

Unit staff trained municipal police cadets on elder fraud and abuse, participated in a National Association of Attorneys General presidential listening conference on end-of-life issues, and collaborated with the Massachusetts End of Life Commission to educate the public about health care proxies and hospice care.

Unit staff conducted extensive outreach to elders and elder providers during Fiscal Year 2003 on unfair debt collection, telemarketing, home improvement fraud, charity fraud, and identity theft. In addition to participating as panelists for a series of televised programs on elder issues in Western Massachusetts, staff provided information at 12 different events around the Commonwealth. These events, for the most part, were speaking engagements at different sites where seniors live or gather,

including assisted-living facilities, senior centers, and community groups. Staff information tables also were set up at the annual conference of the Massachusetts Councils on Aging and at a public event in Cambridge.

Staff also serve as representatives on various elder advisory boards.

ELDER ABUSE GRANT

In late 2002, the Office of the Attorney General was awarded a 24-month Department of Justice training grant to establish an inter-disciplinary initiative and training programs designed to improve the capacity of law enforcement, elder service, and domestic violence professionals to recognize, investigate, and prosecute abuse perpetrated against older individuals.

During this fiscal year, staff met with project partners and others, attended a technical training conference, hired a project manager, and convened a Steering Committee.

INVESTIGATIONS DIVISION

The Investigations Division conducts investigations primarily for divisions within the Public Protection and Government Bureaus. In addition, the division also investigates cases or matters on occasion for the Executive Bureau, or in conjunction with the Criminal Bureau.

Division investigators locate and interview victims, witnesses, subjects, and others; obtain and review documentary evidence from numerous sources, including individuals, corporations, and federal, state, county, and municipal agencies; conduct surveillance, background checks, and asset checks; analyze financial records and perform other forensic accounting functions; and testify before grand juries and at trial. In some cases investigators worked closely with other state attorneys general, 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.

The Investigations Division included Quinton Dale, Director; Dante Annicelli; Kerri Burrigge; Maria Yola Cabrillana; Monique Cascarano; Mayra Connolly; Todd Davis; Ashley Dizel; Jim Gentile; Karen Leary; Nozomi Murakami; Nicholas Paras; Lou Russo; Janice Spillane; Dawn Valchuis; and Nancy Ward.

SIGNIFICANT CASE SUMMARIES

In Fiscal Year 2003, the division initiated 239 investigations in the following major areas:

CONSUMER PROTECTION AND ANTITRUST

Investigators helped bring G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas. The division initiated several investigations and surveys to determine compliance with existing consumer laws and regulations, including multi-state and nationwide investigations into fraudulent sweepstakes promotions and telemarketing scams. The division also participated in Internet scams, the gun enforcement initiative, and health care.

CIVIL RIGHTS AND CIVIL LIBERTIES

The division investigated hate crimes, allegations of police misconduct, and other violations of the Massachusetts Civil Rights Act. The division also conducted investigations 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.

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 cleanup 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. The investigators also provided investigative support to the lead paint enforcement project.

PUBLIC CHARITIES

The division investigated individuals associated with organizations who raised funds from the public in violation of Massachusetts law. 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.

INSURANCE

Investigators continued to work with attorneys in the Insurance Division to review and investigate businesses and organizations that withheld employee contributions for health insurance premiums but failed to actually purchase the health insurance coverage. The division also investigated an unlicensed insurance company and an Internet Web site that offered insurance quotes and conducted a sting operation testing the unlawful sales practices of long-term care insurance agents.

CRIMINAL BUREAU

Investigators worked on cases that resulted in indictments and convictions against individuals for violations of the Commonwealth's criminal laws, including larceny against the elderly and vulnerable by home improvement contractors.

TRIAL DIVISION

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 occurring on state-owned property and/or in accidents on state roads or involving state vehicles. The division also investigated cases involving contract disputes and eminent domain proceedings.

SAFE NEIGHBORHOOD INITIATIVE (SNI)

The division assisted the Attorney General's Abandoned Properties Project by conducting research on target properties in several communities, primarily to determine the status of ownership and existence of encumbrances on the buildings, and, in some instances, helping inspect properties scheduled for renovation. The division researched properties located in Taunton, New Bedford, and Worcester.

STATISTICAL SUMMARY

The division opened 239 investigations in Fiscal Year 2003, with 327 investigations ongoing as of June 30, 2003.

| <u>DIVISION/BUREAU</u> | <u>OPENED DURING FY 2003</u> | <u>ONGOING AS OF 6/30/03</u> |
|-----------------------------------|----------------------------------|----------------------------------|
| Consumer Protection and Antitrust | 26 | 82 |
| Civil Rights and Civil Liberties | 29 | 54 |
| Public Charities | 5 | 6 |
| Insurance | 17 | 14 |
| Utilities | 0 | 0 |
| Criminal | 1 | 5 |

| | | |
|--------------------------|-----|-----|
| Government | 6 | 6 |
| Environmental Protection | 11 | 23 |
| Trial | 144 | 137 |
| <hr/> | | |
| TOTAL | 239 | 327 |

DIVISION OF PUBLIC CHARITIES

The Division of Public Charities carries out the Attorney General's responsibilities to represent the public interest in the proper solicitation and use of charitable funds and 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, § 8.

More than 22,000 charities are registered with the division in addition to over 300 professional fundraisers presently soliciting donations on behalf of charities in Massachusetts. A public charity is a non-profit entity, whose purpose is charitable and that benefits a portion of the public, in addition to philanthropic organizations. Examples of public charities include non-profit 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.

The division focused much of its efforts on health care. Consistent with the Attorney General's strong interest in resolving problems related to the delivery of health care, the division monitored the actions of a number of the significant health care institutions that are public charities in Massachusetts, including both hospitals and insurers.

The division engages in these corporate governance and oversight initiatives, whether directed at health care organizations or other kinds of charities, to ensure that the governing boards of these institutions carry out their fiduciary duties of due care and loyalty. The division also continued its activities during Fiscal Year 2003 in two areas central to its mission: enforcement litigation to address deception and fraud in charitable fundraising and estate and trust actions to ensure that charitable trust funds were appropriately administered and applied.

The division also recognizes that charities provide vital services in our communities while both enjoying certain benefits from their tax-exempt status and assuming certain obligations. As a result, the division was involved in a number of initiatives in Fiscal Year 2003 intended to strengthen the charitable sector. These efforts included making presentations to various public groups and bar organizations on charities issues, issuing the division's annual report on charitable fundraising, and working with the Boston Bar Association on legislation that would revise the non-profit corporation statute.

The Public Charities Division included Jamie Katz, Chief; Marion Antonucci; Caitlin Calder; Sandra Cardone; Eric Carriker; Patricia Clifton; Kevin Fennessey; Daniel Ferullo; Ann Giroux; Ann Higgins; Cathy Hoffman; Beth McGillicuddy; Kathleen O'Connell; Richard Reuss; Deirdre Rosenberg; and Johanna Soris.

SIGNIFICANT CASE SUMMARIES

CHARITY GOVERNANCE

The Attorney General's oversight of charitable corporations focuses on stewardship by charity boards of directors. The division may become involved when directors breach their individual fiduciary duties of due care and loyalty, or to prevent the misuse of charitable funds. In some cases, the division has engaged in investigations and then negotiated governance agreements that provide for reforms in how charities will operate. In other cases, the division has filed enforcement actions in court after investigations.

The Yawkey Foundation II Following the Attorney General's investigation of the sale of the Boston Red Sox to determine whether the Yawkey Foundation II would receive full value for its ownership share of the Red Sox, the Attorney General entered into a settlement providing \$30 million more for the Yawkey Foundation II, and a new foundation to be set up by the group of Red Sox purchasers led by John Henry. That settlement also included an extensive governance agreement with the Yawkey Foundation II. After the board of the Yawkey Foundation II made certain substantial gifts to a variety of charitable institutions, the division reviewed whether the board had approved those gifts in a manner that violated the terms of the Foundation's own by-laws and the governance agreement. During the course of Fiscal Year 2003, the division looked into the circumstances under which the Foundation made the gifts, the Yawkey Foundation II board ultimately agreed to accept the division's interpretation of its by-laws, and the parties agreed on a process for discussing issues that might arise under the governance agreement.

Roxbury Action Program The Roxbury Action Program (RAP) is a Boston charity that owns housing projects in Roxbury and advocates on behalf of affordable housing. The division became aware of RAP's intent to sell a subsidized housing project to a for-profit developer. After attempts to negotiate a resolution based on the division's concerns failed, the division sued RAP for a variety of charities law violations. The division continues to litigate this case.

Young Dimensions This non-profit provider of services (such as transportation, administrative services, and training) to family day care centers received substantial funds from the Commonwealth and was regulated by the Office for Child Care Services (OCCS). After the division determined that the individuals running this charity had violated charities laws, the division alerted OCCS to its concerns, and OCCS determined that Young Dimensions owed the Commonwealth substantial amounts of money as a result of the charity's improper actions. The division supported the Administrative Law Division in an action brought against Young Dimensions that resulted in a receivership for the charity. The charity has been closed, and the Commonwealth will recoup perhaps as much as \$1 million.

FOR-PROFIT ACQUISITIONS

The division continued to devote considerable time and resources to reviewing proposed for-profit acquisitions of health care providers and other charitable corporations. Massachusetts charitable organizations may not, on their own, "convert" to for-profit status. If a charity transfers assets to a for-profit, the transfer 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 conflicts of interest. The division reviewed a number of proposed transactions and either agreed to the transactions or negotiated resolutions.

REVIEW OF ASSET DISPOSITIONS

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). On a regular basis and in substantial volume, the division reviewed correspondence and documents about transactions involving charities.

Bradford College The college closed following the conclusion of the spring semester in 2000. Following the closing, the division discussed and resolved a variety of issues concerning the college's handling of its remaining assets. In addition, the division met with college representatives and others to deal with ongoing issues related to the disposition of the college's assets in the face of substantial debts owed by the college. After Bradford College went into bankruptcy during Fiscal Year 2003, the division dealt with issues that arose concerning the final sale of the college's

real estate (which was completed during Fiscal Year 2003) and with questions surrounding the disposition of Bradford's remaining restricted funds, which will extend into Fiscal Year 2004.

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.

- **FTC Educational Effort and Commonwealth v. American Police Officers Association**

The division, along with other state regulatory bodies, participated with the Federal Trade Commission (FTC) in a coordinated set of events designed to educate the public about fraudulent solicitation and to bring attention to certain cases. The FTC and state regulators jointly announced a series of educational initiatives and a number of lawsuits against telemarketers and charities engaged in improper fundraising from the public. For its part, the division brought an action against an out-of-state charity, the American Police Officers Association, which engaged in fundraising in Massachusetts without having registered here. In addition, the division issued a memorandum to police and fire departments throughout the Commonwealth outlining facts pertaining to the telemarketers that police and fire groups most frequently use and the contributions to charities those telemarketers actually pay.

- **Commonwealth v. Jeffrey R. Scott and Dawn A. Scott** This action filed in Hampshire Superior Court in Fiscal Year 2002 alleged that the Scotts engaged in deceptive, unauthorized, and unregistered solicitation under the banner of 9/11 disaster relief. The Scotts solicited funds and sold flag decals, purportedly for 9/11 charities, but never turned over the funds to charities and commingled the charities' funds with their own. The division and the Western Massachusetts regional office prosecuted the Scotts.

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 involving 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.

STATISTICAL SUMMARY

CHARITABLE CORPORATION DISSOLUTIONS

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. The division reviewed many transactions involving proposed dissolutions and assented to 139 final judgments dissolving charitable corporations pursuant to section §11A during Fiscal Year 2003.

WILLS, TRUSTS, AND OTHER PROBATE STATISTICS

During Fiscal Year 2003, the division received and reviewed 811 new wills, and received and reviewed 1,071 interim accounts for executors and trustees as well as 570 final accounts. In addition, the division received, reviewed, and assented to 41 petitions for license to sell real estate and received and reviewed 1,268 miscellaneous complaints and filings.

ACCOUNTABILITY

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. The division responded to over 868 requests to view files in the past fiscal year and, in response, provided approximately 1,935 files for public viewing.

CHARITABLE ORGANIZATIONS: REGISTRATION AND ENFORCEMENT

From July 1, 2002, through June 30, 2003, the division processed approximately 17,325 annual financial reports and annual filing fees totaled \$1,662,391. During this period, the division reviewed 1,232 new organizations, determined them to be charitable, and registered them. The division sent each new organization 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 THAT FUNDRAISE

Under G.L. c. 68, § 19, every charitable organization that 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 FUNDRAISING COUNSEL

Under G.L. c. 68, §§ 22 and 24, 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. All fundraisers must also file with the division a copy of each fundraising contract they sign with any charitable organization. Solicitors must later file a financial return regarding each fundraising campaign.

During Fiscal Year 2003, the division received and approved 301 registrations, resulting in \$59,750 in fees to the Commonwealth. The Commonwealth received registrations from 90 solicitors, 148 fundraising counsel, and 63 commercial co-venturers.

MONEY RECOVERED FOR THE COMMONWEALTH

| | |
|---|--------------------|
| Charitable and Fundraiser Registration Fees | \$1,760,065 |
| Other fees, requests for copies, requests for computer information | \$ 1,975 |
| TOTAL | \$1,762,040 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

HEALTH CARE INITIATIVES

The division was involved in a variety of efforts to analyze and stabilize the health care sector:

- CareGroup The division continued to monitor the financial and operating condition of CareGroup and its affiliates (Beth Israel Deaconess Medical Center, Mt. Auburn Hospital, and New England Baptist Hospital). Division staff reviewed substantial amounts of financial and operational data and met regularly with representatives of the system and the affiliates. In addition, division and office staff worked with experts to assess, on a regular basis, how effectively

the board and officers of the health care system were performing in turning around the system's finances.

- G.L. c. 180, § 8A(d), reviews The division also reviewed, under G.L. c. 180, § 8A(c), CareGroup's sale of Nashoba Valley Medical Center (formerly Deaconess Nashoba Medical Center) to Essent Healthcare. The review included scrutiny of the valuation of the hospital and its financial prospects, whether the transaction was in the public interest, and a public hearing. The division ultimately approved the sale.
- Harvard Pilgrim Health Care During Fiscal Year 2003, the division worked with Harvard Pilgrim in connection with its retention of an independent health care analyst.

TECHNOLOGY AND PUBLIC ACCESS

The division began designing and implementing a new computer database for charities registered with the division. While that database will not be accessible to the public, it will allow the division to retrieve far more information about charities than is possible with its existing database. In addition, the database is an important step toward implementing electronic registration for charities. The division is also continuing to scan images of filed documents, and this project, too, will ultimately assist both information retrieval and compliance efforts and will allow the public better access to the documents.

OUTREACH, EDUCATION, AND TRAINING

The division continued its ongoing public education efforts regarding charitable giving and charity stewardship. In addition to continuing distribution of a wide variety of public education materials, division staff spoke to numerous charitable groups, served on several continuing professional education panels and national educational conference panels, and contributed to educational publications.

UTILITIES DIVISION

The Utilities Division represents utility consumer interests and is authorized to intervene in administrative and/or judicial proceedings on behalf of consumers in connection with any matter involving the rates, charges, prices, or tariffs of an electric, gas, telephone, or telegraph company doing business in the Commonwealth and subject to the jurisdiction of the Department of Telecommunications and Energy (DTE). G.L. c. 12, § 11E. The division appears before state and federal courts as well as administrative regulatory bodies such as the DTE, the Federal Energy Regulatory Commission (FERC), and the Federal Communications Commission (FCC). In many of these matters, particularly public

utility rate cases, the division is the only active participant advocating on behalf of Massachusetts consumers.

The Utilities Division included Joseph Rogers, Chief; Edward Bohlen; Wilner Borgella; Michelle Cataldo; Alexander Cochis; Mary Flohr; Pat Kelley; Judith Laster; Colleen McConnell; Timothy Newhard; Doe Pichard; and Karlen Reed.

SIGNIFICANT CASE SUMMARIES

UTILITY RATE CASES

- **Fitchburg Gas and Electric Light Company, DTE 02-24/02-25** (Department of Telecommunications and Energy) Fitchburg Gas and Electric Light Company proposed a 48.5% or \$3.4 million increase in its gas distribution or base rates and a 27% or \$3.7 million increase in its electric distribution rates. The Company's proposed gas rate increase would not be evenly distributed across all of Fitchburg's customers or classes of customers. The division raised concerns about the performance of the Company's management, and the DTE, agreeing with those concerns, granted the Company a 42% or \$2.9 million increase in gas distribution rates and a 14% or \$1.96 million increase in electric distribution rates and set the Company's rate of return at the lower end of the reasonable range. The DTE concluded that the record "demonstrates sub-par management performance . . . , with particular respect to Fitchburg's failure to provide the department with complete information regarding a number of issues that have the potential to affect ratepayers." As a result of the division's efforts, customers saved \$1.79 million.
- **Boston Gas d/b/a KeySpan Energy Delivery New England, DTE 03-40** (Department of Telecommunications and Energy) On April 16, 2003, KeySpan filed a general rate case seeking a \$65 million annual increase for its distribution base rates, the largest general rate case the division had seen since 1995, and asked the DTE to renew, and continue indefinitely, its performance-based regulation that began in 1995. The division promptly intervened, executed an aggressive discovery plan, and retained experts. At the end of the fiscal year, the division was cross-examining the company's numerous witnesses.
- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company, DTE 03-47** (Department of Telecommunications and Energy) On April 16, 2003, the Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, and NSTAR Gas Company (NSTAR) filed a request with

the DTE for approval of a new recovery mechanism related to pension and post-retirement benefits other than pensions (PBOP). The DTE ordered the tariff suspended until August 1, 2003, and proposed an expedited discovery schedule. The matter was pending at the end of the fiscal year.

ELECTRIC MATTERS

FERC Wholesale Rate Issues

- Sithe New Boston, ER02-648 (Federal Energy Regulatory Commission) On December 28, 2001, Sithe New Boston filed with FERC a Reliability Must Run (RMR) agreement among Sithe New Boston, Sithe New England Holdings, LLC, and the Independent Service Operator New England, Inc. (ISO-NE) seeking recovery of the charges allegedly associated with provision of up-lift/congestion services to ISO-NE from Sithe New Boston's electric generating facility located in South Boston. The division intervened and then participated in FERC settlement conferences. On December 20, 2002, the FERC commissioners approved the agreed-upon settlement but held that the case did not constitute precedent for other RMR agreements.

Electric Utility Transition Charge Reconciliations

The transition charge is a mechanism established by the Electric Utility Restructuring Act of 1997 for an electric distribution company to recover its allowable stranded costs as a charge to customers. The Restructuring Act, G.L. c. 164, § 1A(a), and 220 C.M.R. 11.03(4)(e), requires a company to annually reconcile or "true-up" its transition charges between what it forecast it would recover and what it in fact did recover through its rates. The division reviews the filing to ensure that the company recovers only costs permitted by the Restructuring Act.

- Fitchburg Gas and Electric Light Company, DTE 01-103 (Department of Telecommunications and Energy) On December 3, 2001, Fitchburg Gas and Electric Light Company filed a petition requesting approval of its electric reconciliation mechanism and inflation adjustment. The division conducted discovery and questioned the Company's accounting of the proceeds of the sale of its generating units and interest calculations. The division and the Company reached a Settlement Agreement, and as a result, the Company's electric customers will save \$7.2 million on their electric bills over the next several years.
- Western Massachusetts Electric Company, DTE 01-36/02-20 (Department of Telecommunications and Energy) The DTE opened an investigation into the 2000 and 2001 reconciliation filings of the company's transition charge, energy efficiency, renewable charges, and other matters. After extensive negotiations, the parties agreed on a lump sum settlement

that addressed several accounting and cost reconciliation issues without specific findings. The DTE approved the settlement on December 27, 2002, which saved customers \$21 million by the end of 2002 (and the total value of the settlement could grow to \$33 million in present value over the next several years).

- **Fitchburg Gas and Electric Light Company, DTE 02-84** (Department of Telecommunications and Energy) In December 2002, Fitchburg Gas and Electric Light Company filed a petition requesting approval of its electric reconciliation mechanism and inflation adjustment. The division asked the DTE to deny the Company's request to recover congestion costs, require the Company to correct its miscalculated working capital requirement, and require the Company to monitor a \$450,000 uniform transition charge under-collection from its G-3 customers. The DTE had not issued a Final Order at the end of the fiscal year.
- **Massachusetts Electric Company and Nantucket Electric Company, DTE 02-79** (Department of Telecommunications and Energy) In November 2002, Mass. Electric and Nantucket Electric filed their Transition Charge Rate Reconciliation and Adjustment with the DTE. The sole issue in dispute was whether customers should pay for the Company's estimated \$2.1 million error in misclassifying several thousand standard-offer customers as default service customers. The division objected to the recovery; the DTE had not issued a Final Order at the end of the fiscal year.

Affiliate Transactions

- **Fitchburg Gas and Electric Light Company, DTE 03-9** (Department of Telecommunications and Energy) During the course of Fitchburg Gas & Electric Light Company's last rate case, the division learned that the Company had procured its most recent electric default service through an Internet exchange platform, and that Unitil, the Company's parent corporation at the time of the procurement, partially owned the operator of the exchange, Enermetrix. The division asked DTE to conduct a public hearing and assess monetary penalties against Fitchburg for violating the DTE's affiliate transaction regulations. The DTE opened an investigation and the division urged the DTE not only to assess an appropriate penalty, but to order the Company to refund the \$19,126 brokering fee that its customers had indirectly paid to Enermetrix. This matter remained open at the end of the fiscal year.

Electric Industry Restructuring Related Cases

- **Default Service Notice of Inquiry, DTE 02-40** (Department of Telecommunications and Energy) On June 21, 2002, the DTE opened a proceeding to investigate all aspects of the manner in which default service is provided to ensure that it is compatible with the development

of an efficient competitive market. The division took the lead in securing agreement among low-income, labor and business representatives, and NSTAR on a set of Guiding Principles for Default Service changes and on the design for Default Service. On February 13, 2003, the DTE issued an order adopting those joint positions.

- **Distributed Generation Notice of Inquiry, DTE 02-38** (Department of Telecommunications and Energy) On October 3, 2002, the DTE opened a proceeding to investigate the potential technical, economic, and regulatory barriers to the development of distributed generation. The DTE granted the division's request to establish a collaborative under the auspices of the Massachusetts Renewable Energy Trust to implement distributed generation. The collaborative met over several months and on May 16, 2003, filed a consensus interconnection tariff for approval. This matter was still pending at the end of the fiscal year.
- **Massachusetts Electric Company and Nantucket Electric Company, DTE 03-67** On February 27, 2003, Massachusetts Electric and Nantucket Electric asked the DTE to approve an Amendment to the Company's Standard Offer supply contract(s) with Constellation Power Source, a standard offer supplier, that would resolve a delivery point/congestion cost dispute by allowing the company to pay an additional annual fee of \$3.2 million to Constellation. The company proposed to recover the fee from its customers. This matter remained open at the end of the fiscal year.

Wholesale Market Restructuring Issues

- **New England/New York Regional Transmission Organization (NERTO), RTO2-3-000** (Federal Energy Regulatory Commission) On August 23, 2002, ISO-NE and the New York Independent System Operator filed a declaratory request at FERC seeking approval to merge and create a single entity to operate the wholesale grid and power markets in New York and New England. The division opposed the formation of the Northeast Regional Transmission Organization without a showing of substantial benefits to Massachusetts customers (the cost/benefit analysis conducted for the proposed merger indicated that it would cost New England customers \$65 million/year for the next 10 years; since Massachusetts is 46% of the total New England load, this proposal would cost Massachusetts customers approximately \$30 million). The division coordinated with other New England Attorneys General and Consumer Advocates on this issue and filed joint comments with FERC. As a result, the ISOs withdrew their merger proposals, saving Massachusetts customers \$30 million.
- **National Standard Market Design** (Federal Energy Regulatory Commission) On July 31, 2002, FERC issued a Notice of Proposed Rulemaking (NOPR) to establish a national Standard Market Design (SMD) for wholesale electric markets. On November 15, 2002, the division

filed joint comments with the other New England consumer advocates objecting to this proposed rule. The matter was still pending before FERC at the close of the fiscal year.

- **New England Standard Market Design, ER02-2330-000** (Federal Energy Regulatory Commission) On July 15, 2002, ISO-NE and the NEPOOL Participants Committee jointly filed a New England version of "standard market design" (SMD-NE), including locational marginal pricing and a multi-settlement system. The division intervened because there had been insufficient analysis of the rate impact of the new design on Boston-area customers and the proposed designated congestion area pricing plan, and opposed the ISO-NE proposal to create a "safe harbor" for generators in Greater Boston to sell power with virtually no regulatory scrutiny. The division also intervened in Connecticut's appeal before the D.C. Circuit Court of Appeals challenging the start of SMD-NE. FERC approved the designated congestion area pricing plan but made a number of changes, including the removal of the safe harbor provisions.

Nuclear Power Plant Sales

- **New England Power Company, DTE 02-33/Cambridge Electric Light, DTE 02-34** (Department of Telecommunications and Energy) On May 17, 2002, New England Power Company (NEP), Canal Electric Company, Cambridge Electric Light Company, and Commonwealth Electric Company asked the DTE to approve the sale of NEP's interest in Seabrook Nuclear Power Station to FPL Energy Seabrook, LLC pursuant to G.L. c. 164, §§ 1A, 1G, 76. The division objected to the sale on the grounds that Massachusetts customers should receive equal treatment regarding the sharing of excess decommissioning funds. On September 6, 2002, the DTE approved the sale and adopted the division's position on the sharing of decommissioning funds.

Power Plant Siting

- **Massachusetts Technology Collaborative Cape & Islands Offshore Wind Public Outreach and Education Initiative** The Massachusetts Technology Collaborative established a stakeholder collaborative to discuss issues surrounding Cape Wind's proposal to develop a wind farm on Horseshoe Shoals in Nantucket Sound, and convened a five-month stakeholder group process to examine those issues. The division and more than 40 key individuals representing the interests of the Cape and Islands as well as state and federal agencies and elected officials participated in the process, and at the end of the fiscal year the division continued to monitor the issues.
- **Salem Harbor Power Plant** (Federal Energy Regulatory Commission) On May 9, 2003, PG&E National Energy Group filed a petition with ISO-NE seeking permission to retire all four power plant units it owns in Salem on the grounds that it cannot afford the \$175 million of

equipment needed to comply with Department of Environmental Protection air regulations requiring sulfur dioxide and nitrogen oxide reductions, and cannot comply as required by October 2004. The DTE also opened an inquiry into this matter. This matter remained pending at the end of the fiscal year.

Utility Financing Proposals

- Western Massachusetts Electric Company, DTE 02-49 (Department of Telecommunications and Energy) Western Massachusetts Electric Company (WMEC) petitioned the DTE for authorization to issue up to \$105 million in long-term debt and for authorization to use some of the proceeds from the \$105 million to create and finance a trust to meet prior spent nuclear fuel (PSNF) obligations. The division urged the DTE to grant WMEC's request for authority to issue the long-term debt, but to deny the company authority to establish the separate trust. WMEC has collected approximately \$48 million from its customers that, at some point in the future, it must pay the U.S. Department of Energy for the disposal of spent nuclear fuel (related to its ownership of the Millstone nuclear power plants in Waterford, CT). Customers receive interest payments from the company (in the form of a credit on their bills) for the prepaid \$48 million, and WMEC proposed reducing the interest rate paid from 11.84% to around 1.3%, resulting in a loss of approximately \$5 million/year in interest credited to customers. In response, WMEC withdrew its PSNF request, saving customers \$5 million/year.

NATURAL GAS

Appeals

- Fitchburg Gas and Electric Light Company, DTE 99-66 (Supreme Judicial Court) In a May 31, 2001, order, the division prevailed in securing a refund of approximately \$1.5 million, including interest, from the company when the DTE agreed with the division that the company had double-charged its customers interest costs related to financing its natural gas supplies. The company appealed the order to the Supreme Judicial Court; briefs are due in the next fiscal year.

Natural Gas Company Long-Range Load Forecasts and Resource Plans

- NSTAR Gas Company, DTE 02-12, KeySpan Energy Delivery New England, DTE 01-105, Bay State Gas Company, DTE 02-75 (Department of Telecommunications and Energy) Natural gas companies must get DTE approval of their Long-Range Load Forecast and Five-Year Resource Plans. The DTE reviews gas company sendout forecasts for the appropriateness and accuracy of the forecast, and reviews gas company supply plans for their adequacy and cost.

The division intervened in a number of these proceedings to ensure that the gas company's plans are adequate and offered comments on a number of aspects of these resource plans.

Gas Cost Incentive Mechanisms

- **Bay State Gas Company, DTE 01-81** (Department of Telecommunications and Energy) On October 26, 2001, Bay State Gas Company filed a Petition to establish a Gas Cost Incentive Mechanism that entails "innovative portfolio management" in connection with gas commodity options and futures. The division asked the DTE to protect the company's customers from the potential financial risk and harm associated with Bay State's efforts to engage in gas commodity derivative trading and other hedging activities in the New York Mercantile Exchange (NYMEX). On December 5, 2002, the DTE approved the company's proposal but limited it to only residential customers.

Cost of Gas Adjustment

- **Fitchburg Gas and Electric Light Company's 2003 Winter CGA** (Department of Telecommunications and Energy) Noting concerns with increasing energy costs in the Fitchburg Gas and Electric Light Company service territory, the division filed a Motion for an Investigation and Public Hearing into Temporary Rate Relief for Utility Customers. The company filed a response urging the DTE to deny the rate relief motion. This matter remained pending at the end of the fiscal year.

Affiliate Transaction Proposals

- **Bay State Gas Company, DTE 02-73** (Department of Telecommunications and Energy) The company filed a petition to incur up to \$50 million in long-term debt from its affiliate NiSource Finance, and to be exempt from the advertising and competitive bid requirements of G.L. c. 163, § 15. Arguing that the proposed affiliate transaction was fraught with problems and the potential for abuse, the division urged the DTE to condition terms of the company's financing to those of NiSource Finance's near future \$350 million bond issue in order to safeguard against possible abuse. On February 4, 2003, the DTE approved the proposal without any of the Attorney General's requested safeguards.

TELECOMMUNICATIONS

Appeals

- **WorldCom et al. v. Federal Communications Commission, D.C. Cir. 01-1198** (D.C. Circuit Court of Appeals) The division appealed an FCC decision that allowed Verizon to enter the

Massachusetts long-distance telephone market under Section 271 of the Telecommunications Act of 1996. The division contended that the FCC's findings on switching rates are arbitrary and capricious because the FCC illegally relied on its New York findings on switching rates as conclusive evidence, and because the Massachusetts switching rates were not cost-based. Verizon's failure to offer DSL at a resale discount merits reversal, and the FCC erred in not considering evidence of a price squeeze as part of its public interest determination. On October 22, 2002, the court denied the first two claims but granted the third claim, remanding the price squeeze issue back to the FCC for consideration.

Retail Rates

- Verizon's Alternative Regulation Plan, DTE 01-31 (Phase II) (Department of Telecommunications and Energy) Verizon filed an Alternative Regulation Plan to establish the method by which the DTE will regulate the intrastate residential retail rates that Verizon charges its customers. In May, Verizon received pricing freedom (no regulation) for most rates the company charges its business customers. For residential customers, the company proposed, in its Phase II Plan, to increase residential dial-tone rates and cap annual increases to 5%, or higher if given DTE approval. On April 11, 2002, the DTE denied Verizon's request to raise rates annually by up to 5% and stated that it will continue to review Verizon's service quality plan. The division saved residential telephone customers nearly \$31 million this year, and more each year thereafter.
- Wireline E911 Surcharge, DTE 03-63 (Department of Telecommunications and Energy) On May 29, 2003, the DTE opened a new docket to set the interim Emergency-911 services surcharge for all residential and business telephone customers in Massachusetts. Acts of 2002, c. 239, § 1. Verizon and the Statewide Emergency Telecommunications Board (SETB) filed a joint proposal for an interim surcharge amount of \$.85 per month per customer (calculated over five years). The division intervened in the case and asked the DTE to adopt an interim surcharge of \$.64 per month rate for only Sept. 1, 2003, to June 30, 2004, until the DTE fully investigated Verizon's claimed Emergency-911 deficit. The matter remained pending at the close of the fiscal year.

Wholesale Rates

- Verizon's Unbundled Network Elements (UNE) Tariff, DTE 01-20 (Department of Telecommunications and Energy) On May 1, 2001, Verizon filed its proposed unbundled network element (UNE) rates. In this docket, the DTE examined the prices that Verizon charges its competitors to lease parts of its telephone system. In its Final Order, the DTE

agreed with the division's position that the wholesale rates should be set at a level where competitors can buy the network elements and provide service at competitive rates and set UNE rates at a reasonable level.

Telephone System Security Procedures

- **Verizon's Collocation Security Procedures, DTE 02-8** (Department of Telecommunications and Energy) The DTE opened a docket to investigate the alleged security concerns Verizon has with the DTE's collocation security rules for competitors' cageless collocation equipment placed in Verizon's central offices and remote terminals. This matter remained pending at the end of the fiscal year.

Wireless Telephones

- **National Association of Attorneys General Wireless Inquiry** The division participated in a joint effort by 26 states to investigate the rates, terms, and conditions of three wireless carriers: Verizon Wireless, Cingular Wireless, and Sprint PCS. The states, led by Massachusetts, Illinois, and Tennessee, worked to resolve complaints concerning wireless service and carrier business practices, prevent poor service, and stop unfair and deceptive acts and practices by the carriers. This matter remained pending at the close of the fiscal year.

STATISTICAL SUMMARY

During Fiscal Year 2003, the Utilities Division saved customers approximately \$90,990,000:

| | |
|---|---------------------|
| Fitchburg Gas & Electric Light Company, DTF 02-24/02-25 | \$ 1,790,000 |
| Fitchburg Gas & Electric Light Company, DTE 01-103 | \$ 7,200,000 |
| Western Massachusetts Electric Company, DTE 01-36/02-20 | \$21,000,000 |
| New England/New York Regional Transmission Organization (NERTO) FERC Docket No. RTO2-3-000 | \$30,000,000 |
| Verizon, DTE 01-31 (Phase II) | \$31,000,000 |
| TOTAL | \$90,990,000 |

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

UTILITY SERVICE QUALITY

The division examined the issue of Utility Service Quality, working with consultants to review service quality performance of Massachusetts-based companies in comparison to each other and in other states based on identifiable performance measures, and speaking with unions, customer groups, and other interested parties. At the end of the fiscal year, the division was reviewing recommendations to improve service quality standards and oversight in Massachusetts.

Investigation by the Department into the Remaining Utilities' 2002 Service Quality Report, filed pursuant to Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, DTE 99-84, Att. 1, IX (June 29, 2001), DTE 03-11, 03-12, 03-13, 03-14, 03-15, 03-16, 03-17, 03-18, 03-19, 03-20, 03-21, 03-22, 03-23 (Department of Telecommunications and Energy) The state's gas and electric companies made their annual 2002 service quality reports to the DTE. The division asked the DTE to initiate an investigation and made recommendations to enhance the annual service quality reporting and review process. The matter remained open at the end of the fiscal year.

Special Commission to Conduct an Investigation and Study Relative to the Adequacy and Effectiveness of Existing Licensing and Regulation of the Cable Television Operations by Municipalities and the Commonwealth (Massachusetts Legislature) The division participated in the Special Cable Commission's review of issues pertaining to cable television operations, including customer service, rates, slamming/cramming, franchising, increasing competition statewide, access, and high-speed Internet service, and began preparing a Cable Consumer Bill of Rights for inclusion in the Commission's final report. This matter was still pending at the end of the fiscal year.

OUTREACH, EDUCATION, AND TRAINING

The division, working with the AG Elder Hotline, made several presentations on telephone and consumer fraud issues.

Enhanced Outreach Program The DTE approved an Enhanced Outreach Program, developed as a settlement among NSTAR, the Attorney General, and the Low Income Energy Affordability Network (LEAN), on August 31, 2001. This program would increase low-income customer participation in energy efficiency programs and prevent the shut-off of low-income customers

who are in arrears on their electric bills. The division continued to monitor the program and worked with IEAN and NSTAR during Fiscal Year 2003 to enhance the program by revising the eligibility requirements, changing the schedule of arrearage reductions, and initiating post-Program monitoring.

Utility Shut-off and Low Income Assistance Brochures The division worked with the CCIS, the National Consumer Law Center, and the Community Action Programs to prepare consumer information brochures addressing utility shut-off procedures and low-income heating assistance. The division also issued a consumer advisory concerning natural gas increases and describing programs to help customers with high heating bills.

MEDIATION SERVICES DIVISION

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

SCORE

Founded in 1989, the Student Conflict Resolution Experts program (SCORE) is a school-based program that uses trained student mediators to resolve conflict among peers. In fiscal year 2003, the Attorney General awarded \$396,000 to 26 schools across Massachusetts in Boston, Dartmouth, Greenfield, Holyoke, Lowell, Lynn, Malden, Medford, Quincy, Pittsfield, Somerville, Springfield, Taunton, Wakefield (serving 12 communities), and Worcester. Student mediators in SCORE programs mediated 1,900 conflicts involving 4,750 youth, and 97% of these conflicts were resolved through the use of peer mediation. The conflicts included situations involving physical fights, harassment, name-calling, stealing, threats, bullying, property damage, and rumors.

Division staff maintained close contact with participating schools, monitored grants, and provided technical assistance. During the fiscal year, division staff served as training faculty for student mediator training events in which over 150 new mediators received training. In addition, division staff also provided advanced training and support to adult mediation program coordinators.

FACE-TO-FACE

The Face-to-Face Consumer Mediation Program (FTF), established in 1983 to provide mediation services for the resolution of consumer and landlord/tenant disputes, offers disputants a convenient, non-adversarial alternative to court action. In fiscal year 2003, the Attorney General awarded grants totaling \$315,000 to nine community mediation programs across Massachusetts in Brockton, Fitchburg, Greenfield, Haverhill, Hyannis, Lowell, Somerville, Springfield, and Worcester.

This \$315,000 investment in mediation resulted in the return of \$953,977 in cash and \$170,198 in non-cash value to Massachusetts consumers. The nine community programs mediated 1,909 disputes involving auto repairs, home improvement, landlord/tenant issues, debt collection, and broken contracts.

Division staff monitored grant activities, provided technical assistance, served as training faculty for basic training sessions for new volunteer mediators, provided advanced training for experienced community mediators, oriented new program coordinators, and provided regional forums for participating programs to share strategies and resources.

CONFLICT INTERVENTION TEAM

The Conflict Intervention Team (CIT) is a collaborative project among the Attorney General, the Massachusetts Department of Education, and the Massachusetts Association of Mediation Programs and Practitioners. Composed of a network of specially trained community mediators, CIT provides mediation services, on a short-term basis, to schools experiencing large-scale conflicts. In addition to the in-kind contributions of the Attorney General's staff assigned to the project, a grant from the Hewlett Foundation has funded CIT since 1992.

Although the CIT was not dispatched for an on-site response to school conflict, division staff responded to six school conflict situations to assess the need for a CIT intervention and/or offer information and referral services to support resolution of the situations.

YOUTH MEDIATING SOLUTIONS

Funded by a grant from the Executive Office of Public Safety, Youth Mediating Solutions (YMS) is a community-based, peer mediation program modeled after the SCORE program. During the fiscal year, division staff began implementing YMS in three pilot communities — Brockton, Dorchester, and Roxbury.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2003, division staff participated in a wide range of outreach and training events concerning the application of mediation and violence prevention strategies. These trainings included advanced trainings for mediators; trainings for experienced mediators to coordinate or participate in future CIT activity; the Federal Reserve Bank's 2003 Life Smarts Youth Consumer Education competition; workshops for middle school and high school students; and the 10th Annual Peacemakers Summit for middle and high school mediators. In addition to outreach events, division staff served on the Attorney General's Children's Protection Project, Diversity Committee, Post-9/11 Working Group, Safety Task Force, Massachusetts Task Force on Hate Crimes, and Affordable Housing Initiative.

REGIONAL OFFICES

WESTERN MASSACHUSETTS

CENTRAL MASSACHUSETTS

SOUTHEASTERN MASSACHUSETTS



WESTERN MASSACHUSETTS DIVISION

The Western Massachusetts Division of the Office of the Attorney General, located at 1350 Main Street, Springfield, and a part of the Regional Operations Division of the Executive Bureau, is responsible for handling affirmative criminal and civil investigations and litigation, as well as civil defensive litigation and administrative law matters arising in the four Western Massachusetts counties: Hampden, Hampshire, Franklin, and Berkshire. The Government Bureau's statewide Municipal Law Unit is also housed in the Western Massachusetts Division and provides by-law review and approval, as well as training and advice to town and municipal officials throughout the state. The Business and Labor Protection Bureau (BLPB) Fair Labor Division's Western Massachusetts office is responsible for enforcing the state's wage and hour laws on behalf of the citizens of Western Massachusetts. The division also responds to a large number of consumer complaints and provides educational outreach to area residents.

The division consists of the following full-time staff members: a division chief, deputy division chief, 10 assistant attorneys general, three civilian investigators, a consumer liaison, one investigator assigned to the BLPB's Medicaid Fraud Unit, four Massachusetts State Police Officers, four Fair Labor Division inspectors, one administrative assistant, one paralegal, and six support staff.

During Fiscal Year 2003, the Western Massachusetts Division staff included: Janice Healy, Division Chief; Michelle Aubé; James Clark; Susan Decker; Susan DeVine; Joseph Drzyzga; Robyn Gay; John Gibbons; Sandra Giordano; Bart Hollander; Timothy Jones; Karen Kapusta; Michael Konderwicz; Kelli Lawrence; Tom Nartowicz; William O'Neill; Robert Ritchie; Laurie Rowan; Amy Royal; Michael Russo; Palmer Santucci; Matthew Shea; Cynthia Sherman-Black; Maria Smith; Steven Spencer; Christopher Speranzo; Richard Steward; John Talbot; Rosemary Tarantino; Theresa Ukleja; Eva Wanat; James Whitcomb; and Judy Zeprun Kalman.

SIGNIFICANT CASE SUMMARIES

The following provides an overview of several significant cases undertaken by the Western Massachusetts Division during Fiscal Year 2003:

BUSINESS AND LABOR PROTECTION BUREAU

- **Dunkin' Donuts**: Our investigation began with a sweep of designated Dunkin' Donuts stores located in Metro Springfield in June of 1998, following an injury to a 14-year-old. The

investigators found multiple child labor violations. The division provided training and ordered the company to remedy these infractions. The division thereafter conducted a comprehensive audit of all stores.

The audit showed a continuing pattern of child labor violations, particularly minors working during prohibited times. Other infractions included: permitting minors to work over the maximum allowable hours per day, failing to obtain proper working papers, and failing to observe the day of rest requirement for minors. In all, the investigators found over 2,000 child labor violations. In a settlement agreement signed by the OAG and the franchise owner, a \$150,000 civil penalty was paid and a three-year corporate compliance plan was put into place.

CRIMINAL BUREAU

- **Commonwealth v. Tehran Lewis** (Hampden Superior Court) The defendant was arrested, following an investigation in which a State Trooper, acting undercover, made a purchase of 100 grams of crack cocaine. Following a jury trial, the defendant was sentenced to 10 years in State Prison.
- **Commonwealth v. Girard Davis, Pedro Alvarez** (Hampshire Superior Court) This case arose out of an investigation and purchase of crack cocaine by an undercover state trooper of over 200 grams of cocaine with a street value of \$8,000+. Following a jury trial, the defendants were found guilty of trafficking and sentenced to state prison.

GOVERNMENT BUREAU

- **Robert Pannone v. Division of Employment and Training** (Hampshire Superior Court) The plaintiff, whose employment contract was terminated by DET following a complaint by a co-worker, claimed he was fired in retaliation for rejecting advances of his supervisor. The defendant's Motion for Summary Judgment was allowed by the Court. The plaintiff has, however, filed a notice of appeal.
- **Paul, et al. v. Commonwealth of Massachusetts** (Hampden Superior Court) In this G.L. c. 258 claim, the plaintiff alleged that she had sustained personal injuries after being rear-ended by a State Police Officer. The plaintiff's son also alleged that he sustained personal injuries, as well as a loss of consortium. Following a jury trial, the jury returned a verdict in which they found that the State Trooper had been negligent in the operation of his vehicle, but that the negligence was not the proximate cause of the injuries sustained by either the plaintiff or her son. As a result, a defendant's verdict was entered by the Court.

- **Perez, Jr., et al. v. Department of Social Services** (Hampden Superior Court) This case involved a 6-year-old foster child who was allegedly sexually molested by an 8-year-old foster child, while in foster care. The plaintiffs alleged that the Department of Social Services breached its duty when it failed to place the child in an appropriate foster home and, after he was placed, failed to adequately monitor the child's placement and properly ensure his safety and well-being. The plaintiffs alleged emotional distress, great bodily harm, conscious pain and suffering, and negligently inflicted emotional distress. Although the Plaintiffs' settlement demand was for \$300,000, the case was ultimately settled for \$7,500.
- **Libby v. MCAD, et al.** (Franklin Superior Court) In this wrongful termination case, the plaintiff asserted claims of gender discrimination and retaliation. The Massachusetts Commission Against Discrimination (MCAD) found in favor of the Department of Agriculture based on the statute of limitations but indicated that the plaintiff would have otherwise prevailed on the merits. A Motion to Dismiss filed on behalf of the Commonwealth defendants was allowed by the Superior Court.

PUBLIC PROTECTION BUREAU

Civil Rights Division

- **Commonwealth, Housing Discrimination Project and Edward Fleming v. Joseph Collette** (Housing Court-Western Division) This housing discrimination case involved an allegation by the Housing Discrimination Project ("HDP") that defendant Collette made derogatory remarks and discriminatory statements to plaintiff Fleming and HDP testers about the availability of housing in an apartment complex that he owns and manages. It was additionally alleged that the defendant made false statements to testers regarding the availability of housing and failed to show available housing because of their race, color, national origin, handicap, or status as a recipient of public assistance. Following mediation, a settlement was reached in which the defendant agreed to pay \$31,000 in damages and also agreed to the entry of Consent Decree.
- **Commonwealth & Michelle Repollett v. Judy Thompson & Abaladejo Management** (Housing Court-Western Division) This housing discrimination case involved allegations that the defendants made discriminatory statements through an agent which indicated a preference against renting to families with children. The case was settled for \$35,000 and specific injunctive relief was obtained through a Consent Judgment.
- **Commonwealth & Patricia Knight v. Russo, et al.** (Housing Court-Western Division) In this housing discrimination case, the defendants were alleged to have discriminated against the

plaintiff based on her race. While attending Mt. Holyoke College, Ms. Knight, who is African-American, was denied housing by the defendants, who used a rental agency to rent the apartment in question to a white person/family. Following mediation, a settlement was reached in which the defendants agreed to pay \$30,000 and abide by the terms of a Consent Judgment containing specific injunctive relief.

Consumer Protection and Antitrust Division

- Commonwealth v. McKnight Homeowners' Association and David Gaby (Hampden Superior Court) This case arose out of the filing of illegal liens against 109 properties in the historic McKnight neighborhood in Springfield by the Executive Director of the McKnight Homeowners' Association. Following the filing of the Commonwealth's complaint, the defendants signed a Consent Decree in which they agreed to discharge all liens.

Public Charities Division

- Commonwealth v. Jeffrey and Dawn Scott (Hampshire Superior Court) The Commonwealth filed a civil action against the defendants alleging that they illegally solicited funds from the public in the aftermath of the September 11th tragedy, by failing to register as a charity and failing to properly account for the funds that they collected. It was also alleged that the defendants violated G.L. c. 93A and the Attorney General's regulations by engaging in a course of action that was deceptive and breached the public trust. Following a jury-waived trial in March 2003, the court took the matter under advisement.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

GOVERNMENT BUREAU

Civil Defensive Litigation The Attorney General's Western Massachusetts (WMAS) Division continued to provide the highest quality of legal representation to agencies and individual state employees required to respond to litigation filed by members of the public. During Fiscal Year 2003 there were 159 civil defensive litigation matters active in the division.

PUBLIC PROTECTION BUREAU

Civil Rights Division The WMAS Division continued to meet its statutory responsibilities to affirmatively prosecute housing discrimination actions throughout Western Massachusetts and obtained significant settlement results in four housing discrimination cases.

During Fiscal Year 2003, the WMAS Division also continued with its efforts to assist schools throughout the region in ensuring that students' civil rights are protected. To that end, division staff participated in numerous outreach and training efforts designed to educate school personnel at all levels regarding the key components of a comprehensive student civil rights policy, along with more specific trainings focusing on the prevention of bullying, harassment, hate crime, and civil rights violations.

Consumer Protection and Antitrust Division Through the efforts of our division's Consumer Liaison, as well as the efforts of our civil investigative staff, and local consumer protection programs which are funded through our office, the needs of consumers throughout the region were effectively met. Additionally, our division continued to advance the Attorney General's priorities in the area of elder protection through cross-bureau outreach and education programs and an elder protection conference designed to educate senior and elder protection providers regarding scams, fraud, and abuse.

CRIMINAL BUREAU

Assistant Attorney General Matthew Shea and Trooper Tom Nartowicz both received "Special Achievement Awards" from the New England Narcotics Enforcement Officers Association. The awards were in recognition of successful undercover operations and prosecution of several drug traffickers in 2003.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2003, staff in the WMAS regional office were actively engaged in advancing numerous OAG cross-bureau initiatives and trainings. Division staff advanced the Attorney General's child protection and school safety priorities by assisting the Springfield School System with the implementation of its student civil rights policy and conducting numerous civil rights training programs for school personnel. The Deputy Division Chief, four Assistant Attorneys General, and six support staff participated in a variety of programs, including the Springfield School Volunteers Program. The division's Criminal Bureau AAG and Insurance Fraud Division AAG conducted Internet Safety Training

programs to over 500 school students. WMAS staff also participated at the local level in the Attorney General's office Holiday Toy and Food Drive by coordinating a clothing and food drive, as well as a holiday toy drive to benefit ARCH, the YWCA's domestic violence shelter program. Additionally, addressing the needs of elder-consumers was designated as a priority of the Public Protection Bureau. Regional staff advanced this priority by conducting numerous educational training programs for area seniors and elder service providers.

In order to foster communication and cooperation among local law enforcement agencies, staff attended the monthly meetings of the WMAS Chiefs of Police Association. Increasing our connections with local community groups was advanced through staff participation in the Springfield Violence Prevention Task Force, the Big Brothers/Big Sisters Program, and the Peacemaker's Peer Mediation Summit. AAG staff also actively fostered our office's relationship with the local legal community through participation in the Women's Bar Association and the Hampden County Bar Association and as panelists for legal programs at Western New England College School of Law. Additionally, staff in the Municipal Law Unit continued to provide numerous training and educational programs for towns and municipalities throughout Western Massachusetts.

Division staff also actively participated in numerous cross-bureau working groups, including the Diversity Committee, the Web site Committee, and the Professional Development Unit working group. Lastly, Western Massachusetts staff participated in numerous professional development training programs presented by the *Attorney General's Institute*.

CENTRAL MASSACHUSETTS DIVISION

The Central Massachusetts Division (CMAS) strives to be an office reflective of and responsive to the needs of the Central Massachusetts community. CMAS strives to increase the office's visibility and accessibility to the region's constituents. CMAS pursues affirmative litigation in the areas of Consumer Protection and Insurance Fraud and steadfastly defends the Commonwealth's interests in numerous cases.

This Division during Fiscal Year 2003 included the following staff members: Maria Hickey Jacobson, Chief; Patricia Bopp; Margaret Cooke; John Gatti, Jr.; James Gentile; Salvatore Giorlandino; Karen Leary; John O'Leary; Kristen O'Rourke; Wendy Parsons; and, Suzanne Uncapher.

SIGNIFICANT CASE SUMMARIES

GOVERNMENT BUREAU

Highlights of the cases handled by Salvatore Giorlandino, Kristen O'Rourke, and Maria Hickey Jacobson of the Government Bureau's Trial Division in Fiscal Year 2003 are the following:

- **Wojcik v. State Lottery Commission, et al.** (U.S. Court of Appeals for the First Circuit) This was a federal civil rights suit against several Massachusetts officials, including former Treasurer Shannon O'Brien, arising out of the Lottery Commission's firing of the plaintiff for misconduct. The U.S. District Court granted summary judgment to the defendants in June 2001. The plaintiff appealed to the First Circuit. In August 2002, the First Circuit panel affirmed the summary judgment award.
- **Tamasy v. Department of Public Health** (Massachusetts Appeals Court) The Department of Public Health ("DPH") appealed from a \$500,000 jury verdict in an age discrimination case tried before a Suffolk Superior Court jury in May and June 1998. In June 2002, the Appeals Court affirmed the decision. DPH chose not to seek further appellate review from the Supreme Judicial Court. After DPH did not seek further appellate review, the plaintiff filed a motion in the Appeals Court seeking \$71,450.26 in appellate attorney's fees and costs. DPH opposed this request because it was excessive. The Appeals Court awarded \$13,051.24 in appellate attorney's fees, or just \$350 more than the \$12,700 DPH had proposed.

- **Puorro v. Middlesex Sheriff James DiPaola** (Massachusetts Appeals Court) This was a wrongful termination case brought by a former Middlesex Deputy Sheriff against Sheriff DiPaola. The focal issue was the parties' cross-appeals in the case. The Sheriff's appeal contended that the Superior Court lacked subject matter jurisdiction to hear the case under G.L. c. 35, § 51, and that the Superior Court erred in ruling that the plaintiff was fired in violation of the statute. The plaintiff's cross-appeal challenged the Superior Court's refusal to reinstate him to his former position after ruling that the Sheriff had not complied with G.L. c. 35, § 51 when he was fired.
- **Commonwealth v. Phillips** (Suffolk Superior Court) The "Greedy Granny Case" was a civil suit by the Commonwealth to recover nearly \$1 million in pension overpayments made by the State Treasury to a retired school teacher. In June 2001, the Court entered a judgment for the Commonwealth of nearly \$1 million. In December 2001, the Court ordered the defendants' attached assets (approximately \$250,000 to \$300,000) to be transferred to the Commonwealth. In March 2003, the Court denied the defendants' Motion for Reconsideration Denying the Defendants' Request for Payment of Attorney's Fees and Costs.
- **Fisher v. Massachusetts State Police** (Worcester Superior Court) This is a highly litigious "Whistle Blower" case arising out of State Police disciplinary actions taken against a State Trooper for his misconduct in 1998. Discovery deadlines have been extended, and the case is ongoing.
- **Stephens v. Department of Social Services, et al.** (Massachusetts Appeals Court) The Appeals Court affirmed the Superior Court's summary judgment award to the Department of Social Services ("DSS") and several of its employees. The plaintiff contended that DSS and its employees violated her constitutional rights and committed other wrongful acts when the social workers investigated G.L. c. 119, § 51A reports from medical and police personnel in Easthampton, Massachusetts, alleging that the plaintiff's three children had been abused by her live-in companion.
- **Kahanic v. Department of Social Services, et al.** (Worcester Superior Court) This is a wrongful death and negligence action against the Department of Social Services ("DSS") and a private foster care agency arising out of DSS's placement of an infant with private foster parents. The child disappeared while in the foster parents' care (the child has been missing more than five years). The plaintiff, the child's natural father, contends that the child is dead, even though Probate Court has not declared the now 5-year-old dead. Discovery is ongoing.

- **Kobza v. Massachusetts Maritime Academy** (Suffolk Superior Court) The plaintiff, a cadet officer at the Academy, filed suit to be reinstated at the Academy and to be allowed to graduate even though one evening he became intoxicated, entered the dorm room of two sleeping subordinate female cadets, and climbed into one cadet's bunk bed without her permission or consent. A preliminary injunction seeking an order to effectuate his reinstatement was allowed after a hearing. The Academy's Petition for Interlocutory Review of the Superior Court's Preliminary Injunction Order was denied by a Single Justice after a hearing. Discovery is ongoing.
- **Ellis v. Commissioner Griffin of the Department of Industrial Accidents** (Massachusetts Appeals Court) Attorney James N. Ellis, Sr. sought to collect attorney's fees and other legal expenses on three workers' compensation cases dating as far back as seven years. The claims had been filed by his son, James Ellis, Jr. In an effort to collect the money at issue, Ellis, Jr. and later Ellis, Sr. requested hearings before administrative judges of the Department of Industrial Accidents (DIA). The hearings were not scheduled because the DIA paperwork reflected that Ellis, Jr. had not filed the requisite fee with his Notice of Appeal, pursuant to G.L. c. 152, §§ 10A and 11A and the regulations 452 CMR 1.00, et seq. Ellis, Sr. claimed that a fee was not due as the respective appeals did not involve medical issues. Instead of petitioning DIA Commissioner Thomas J. Griffin and requesting a hearing for reasonable cause, as allowed by the statute, Ellis, Sr. commenced this action in Worcester Superior Court against Commissioner Griffin. Framing his verified complaint as one for declaratory relief and mandamus, Ellis, Sr. sought an injunction directing Commissioner Griffin to schedule three separate hearings on the three third-party claims for attorney's fees and other legal expenses. Commissioner Griffin successfully moved to dismiss the complaint for lack of subject matter jurisdiction because Ellis, Sr. had failed to exhaust his administrative remedies available with DIA. Ellis, Sr. appealed. Both parties have filed their briefs with the Appeals Court and await a hearing date.
- **Chakrabarti v. Department of Public Health** (Massachusetts Appeals Court) This was a civil rights case against the Department of Public Health (DPH) and several of its employees. The Appeals Court affirmed the Superior Court's summary judgment for DPH.

PUBLIC PROTECTION BUREAU

Highlights of the cases handled by Margaret Cooke with the assistance of Investigator Jim Gentile in Fiscal Year 2003 are the following:

- **Commonwealth v. Great Lakes Camps, Inc. d/b/a Quabbin Camps, George Deren and Charles Sub** (Worcester Superior Court) This affirmative litigation case involved approximately

50 families who paid between \$4,000 and \$8,000 to Quabbin Camps, a specialized summer camp for children with autism and Asperger's syndrome. The camp was scheduled to open in June 2001, but it never opened. Parents were told to contact the camp's lawyer, Robert M. Fuster and Associates of Pittsfield, Massachusetts, to make arrangements for reimbursements. A few parents were reimbursed between \$1,000 and \$3,000 through Fuster and Associates, which were portions of the \$8,000 they had paid for eight weeks at the camp. A complaint was filed in February 2002. In March 2002, an injunction was granted against the owners of Quabbin, prohibiting them from reopening the camp. Forty-three families are owed \$139,180 in tuition reimbursements. In March 2003, final judgment was entered against George Deren for the total amount of the tuition owed the families, plus an additional \$50,000 in fines. At this time a settlement is being negotiated with Charles Sub.

- Commonwealth v. Smith/Berkeley, LLC d/b/a Shadow SB, and Teresa Smith (U.S. District Court) Between approximately April 2001 and October 2002, Smith sold Apple computers through Internet auction Web sites to the public. Consumers were required to pay by cashier's check or via wire transfer. To generate immediate sales, Smith sold the computers for less than what she paid for them, which amounts to a Ponzi scheme. Smith was unable to provide all of her customers with merchandise. A lawsuit was filed against Smith in July 2002, with a preliminary injunction being granted against Smith which prohibited her from operating over the Internet. During the course of the scheme, she defrauded approximately 375 victims of over \$880,000. Because of the scope of the investigation, which included victims from several different countries, the criminal prosecution was handled by the United States Attorney's Office. In December 2002, Smith pleaded guilty to five counts of wire fraud and five counts of mail fraud in federal court. Smith was sentenced to four years and nine months in prison and ordered to pay full restitution.
- Auburn Racquet and Health Club (Worcester Superior Court) The Auburn Racquet and Health Club was a private health club located in Auburn, Massachusetts. In July 2001, the owner of the club, Matthew Merritt, began a 20-year anniversary membership drive. Memberships were sold at a significant discount. Approximately four month later, Merritt entered into negotiations to sell the club, while continuing to sell memberships at discounted rates. The potential buyer, Walter Beede, only wanted to buy the building, not the existing business. Merritt continued to sell memberships knowing that his buyer would not honor them after the sale was facilitated. In April 2002, the Auburn Club closed its doors to the public without warning. In May 2002, the club opened again under the name "Auburn Wellness Complex" and now was managed by Beede. The Auburn Wellness Complex refused to honor

the discounted memberships sold by Merritt. Despite the contracts Merritt entered into with consumers, Merritt has not reimbursed his customers for “defunct” memberships to the Auburn Club. In October 2002, the Attorney General filed a lawsuit against the Auburn Racquet and Health Club and Merritt for unfair and deceptive acts and practices in violation of consumer protection laws. In October 2002, a preliminary injunction was granted against Merritt freezing his assets. The Office of the Attorney General voluntarily agreed to lift the injunction, to allow for the sale of the property from Merritt to the new owner. Some of the proceeds from the sale of the property have been deposited into an escrow account in anticipation of litigation and possible damages. Approximately 125 club members submitted consumer complaint forms to the Office of the Attorney General. After receiving and auditing records from the Auburn Club concerning its membership drive, it was determined that there are 903 victims who are owed \$180,184.56 in reimbursements.

- **Herb Chambers of Auburn, Inc. v. Jennifer Davis Carey, et al.** (Massachusetts Appeals Court) In September 2001, Ann M. Garrity filed for arbitration with the Office of Consumer Affairs and Business Regulation (“OCABR”) pursuant to G.L. c. 90, § 7N½, commonly referred to as the Used Car Vehicle Warranty Law or the Lemon Law. After an arbitration hearing in November 2001, Garrity was awarded \$15,413.12 in damages — the repurchase price of her minivan. Seven weeks later, Herb Chambers brought a “declaratory relief” action in Worcester Superior Court seeking judicial review of OCABR’s arbitration award. OCABR moved to dismiss the suit for lack of subject matter jurisdiction, and the Court allowed this motion. Garrity later filed a motion for summary judgment, which was allowed, and Herb Chambers was ordered to pay treble damages in the amount of \$46,239.36, attorney’s fees in the amount of \$4,230, and costs. Herb Chambers appealed both decisions to the Appeals Court. Herb Chambers acknowledged that it knew of the pending arbitration sponsored by OCABR, yet it failed to avail itself of the administrative process afforded by OCABR, by filing a timely appeal with either the District or Superior Court. The parties have filed their respective briefs with the Appeals Court and await a hearing.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Being Safe, Smart, and Savvy on the Internet This cross-bureau initiative combined the talents of staff who work on issues in Child Protection and High Tech. This training was targeted toward middle school students in an effort to educate students to the dangers that they may have heard about, but did not believe that they could be exposed to, as they “surf” the Net. As

part of the program, students were led through two scenarios which emphasize the potential dangers of the Internet. The first *Victimization* focused on a student who was stalked online after she had corresponded with another "student" whom she had met in a chat room. The second, *Kids as Perpetrators of Internet Crimes*, dealt with students who engage in illegal activities using the Internet. The training also assisted educators in responding to situations raised by new circumstances encountered with the increased use of the Internet.

Focus on Elders (Elder Protection Program) This program, developed to educate seniors about issues that affect them, focused on consumer fraud, problems with home improvement contractors, lottery and phone scams, financial exploitation, Internet safety, and elder abuse. The program highlighted the Office's Elder Protection Project and Elder Hotline. CMAS staff spoke to elders in Spencer and Worcester.

Rising Stars at Union Hill School Union Hill Elementary School in Worcester and the CMAS Division continued to enjoy a special collaboration. Not only have staff read for different classes on Community Reading Day, but also Chief Jacobson initiated the Rising Stars Program for students. At graduation, two of these students were selected for a citywide project fair, and one student won. A "Rising Star" also received a scholarship to Worcester Academy.

Bullying, Harassment, and Hate Crimes This training program was targeted toward middle school students to address incidents of bullying and harassment that not only affect all students but may lead to bias and hate crimes. The training models taught students to appreciate "protected classes" through small group discussions and working through case scenarios. It has been utilized by several schools in response to incidents at their respective schools.

Hate Crimes and Bias CMAS staff collaborated with staff from the Community-Based Justice Bureau and created three PowerPoint trainings. The first, an intensive two-hour lecture, is divided into three sections: (1) Understanding What Hate Crimes and Bias Incidents Actually Are; (2) Defining and Describing an Effective Law Enforcement Response — the Police, the DA's Office and the OAG; and (3) A Community's Response. The second PowerPoint provides an overview of bias and hate crimes. It is an ideal introductory piece and has been proffered to many community boards in the Central Massachusetts area. The third PowerPoint was designed for graduating high school seniors who are continuing their education or who are headed to the workplace. It highlights workplace issues, hazing, and other legally inappropriate behavior and the resulting consequences. Chief Jacobson and Assistant Attorney General Cooke were also members of the City Manager's Community Task Force on Hate Crimes and Bias. Jacobson and Cooke went to Nashoba Regional High School (Bolton) for a program, A Global Approach

to Hate and Harassment in the Schools: An Update. Chief Jacobson and Michelle Booth went to the IDS Project Worcester — Bias and Hate Crimes.

Shaken Baby Syndrome (“SBS”) The Central Massachusetts Shaken Baby Syndrome Prevention Campaign was formed in 2001 in response to six serious cases, including one death, of SBS in Central Massachusetts. The Campaign included representatives from numerous state agencies, area community groups, law enforcement offices, and area hospitals. To date, Chief Jacobson has presented at Worcester Community Action Council’s Early Head Start Program in Southbridge; Worcester Healthy Start Initiative; Quincy Medical Center’s Pediatric Educational Program; and Stamford Hospital and Greenwich Hospital in Connecticut for the Pediatric Nurses Practitioners Associations. She attended a press conference held by Health Foundation of Central Massachusetts to announce its support of a comprehensive child abuse prevention project, which included a multi-year grant for the Central Massachusetts Shaken Baby Syndrome Prevention Campaign. Chief Jacobson also worked with the Children’s Justice Act and the UMass Memorial’s Children’s Medical Center as Chair of the Advisory Board and raised money for the Matty Eappen Foundation by running the Boston Athletic Association’s half marathon in October 2002 and the Boston Marathon in April 2003.

OUTREACH, EDUCATION, AND TRAINING

Internet CMAS staff regularly presented Internet safety programs, Being Safe, Smart, and Savvy on the Internet and The Parents Guide to the Internet, to students, parent groups, faculty members, and community groups, and for programs sponsored by local public libraries. To date, over 5,000 students and parents have been reached in Ashburnham, Clinton, Fitchburg, Harvard, Holden, Lakeville, Lancaster, Leicester, Leominster, Millbury, Northborough, Northbridge, Palmer, Princeton, Southbridge, Sutton, Westborough, Westminster, Winchendon, and Worcester. Chief Jacobson also led a program at UMass Boston’s Graduate School on Internet Safety and Child Abuse.

Consumer Fraud CMAS staff conducted presentations on consumer fraud throughout the Central Massachusetts community for seniors and for the general public. They continued to collaborate with the Worcester Community Action Council and the Better Business Bureau to ascertain trends affecting consumers and to increase consumer and awareness in Central Massachusetts.

Participation in Community Groups Staff members participated in Community Reading Day at Union Hill Elementary School in Worcester, Edwards Elementary School in West Boylston, and Holland Elementary School. Staff continued throughout the year to read to and tutor

students at Union Hill. Staff worked with several community groups, including the Worcester Chapter of Employers Against Domestic Abuse, Montachusets Girl Scout Council, Inc., the Children's Medical Center Advisory Board (part of UMass Memorial Health Care), Worcester County Bar Association, Boston Inn of Court, St. Stephen's Episcopal Church in Westborough, City Managers Community Task Force on Bias and Hate Crimes (Worcester), Central Massachusetts Shaken Baby Syndrome Prevention Campaign, and Department of Social Services South Central Area Board. Assistant Attorney General Salvatore Giorlandino was a Joshua Guberman Teaching Fellow at Brandeis University. Chief Jacobson took part in the Boston College Law School's First Year Law Students' Mentoring Program.

Speaking Engagements Members of the CMAS staff addressed audiences at: the American Association of University Women (Worcester); the Lithuanian Society of Worcester; the Worcester Healthy Start Initiative; the Worcester Institute for Senior Education; Applewild School in Fitchburg; Kids on the Block in Lakeville; Pathfinder Vocational High School in Palmer; the Leicester High School; the Leominster Library; Spencer Senior Center; Thayer Memorial Library in Lancaster; Linwood Middle School in Northbridge; the AIDS Project Worcester; Julie Country Day School in Leominster; and the Thomas Prince School in Princeton.

Office Representations CMAS staff appeared on behalf of the Office at the Annual Labor Day Breakfast in Worcester, Accelerated Learning Lab School's Family Night featuring a display of community agencies, the groundbreaking ceremony with Attorney General Tom Reilly for the Henry Heywood Library in Gardner, the NCCJ Leadership Dinner, Red Mass for the Worcester County Bar Association (WCBA) and St. Thomas Moore Society, the Trial Court Committee, and the meeting of the WCBA's Federal Court Committee, and attended the Eagle Scout Court of Honor for former intern Steven Donovan and several Wachusett Area Chamber of Commerce events.

SOUTHEASTERN MASSACHUSETTS DIVISION

The Southeastern Massachusetts Division (SE MA) located at 105 William Street, New Bedford, is a cross-bureau initiative which comprises lawyers, inspectors, mediators, and administrative staff and continues to be committed to promoting Attorney General Tom Reilly's initiatives in the Southeastern Massachusetts region. The SE MA Division consists of staff who work through the Business and Labor Protection Bureau's Fair Labor and Business Practices Division; Public Protection Bureau's Civil Rights and Civil Liberties Division and the Consumer Protection and Antitrust Division; Government Bureau's Administrative Law and Trial Divisions, and who handle a wide range of matters from various areas of the Office of the Attorney General.

During Fiscal Year 2003, SE MA staff included Mary O'Neil, Chief; Cecile Byrne; Todd Davis; Diane Lopes Flaherty; Paul Gordon; Anita Maietta; Stephen Marshalek; Timothy McGuire; Patricia Medeiros; Mario Paiva; and Patricia Tapper.

SIGNIFICANT CASE SUMMARIES

The following provides an overview of cases undertaken by SE MA staff during Fiscal Year 2003.

DEFENSIVE LITIGATION

- Barnstable County Retirement Board v. Contributory Retirement Appeal Board, et al. (Barnstable) County Board challenged CRAB ruling that makeup payments for veterans' service time can be made by installments. 30A Appeal from decision of CRAB to allow to purchase credible service — Voluntary Dismissal
- Ring v. DSS (Plymouth) Court Ordered Dismissal with prejudice
- St. Anne's Credit Union of Fall River, MA v. Joni Miranda, et al. (Bristol) Interpleader action after mortgage foreclosure by credit union. After the sale there was a surplus, so the plaintiff deposited the funds with the court and notified the creditors of the approximately \$23,000 in surplus. However, the total claims of the defendant creditors were approximately \$150,000 of which DOR's share was approximately \$8,900. DOR disclaimed any interest in this case — Voluntary Dismissal

- Borvin v. Civil Service Commission (Bristol) 30A alleging Improper Bypass - Appellant's Motion for Judgment on the Pleadings is Denied and Respondent's Cross Motion for Judgment on the Pleadings is Allowed.
- Barnstable County Retirement Board v. Public Employee Retirement Administration et al. (Barnstable) Plaintiff's Motion for Judgment on Pleadings is Denied. Defendant's Cross Motion for Judgment on Pleadings is Allowed. PERAC's decision is Affirmed.
- Caswell Sr., et al. v. Mello and Labrie (Bristol) Motion to Quash Subpoena — Allowed
- Harrop v. DSS (Bristol) 30A appeal of a fair hearing decision to uphold a DSS finding of sexual abuse — Agreement for Judgment
- Fisher d/b/a, et al. v. Alcoholic Beverages Control Commission (Barnstable) Appeal from ABCC decision revoking liquor license — Plaintiff's Motion for a Preliminary Injunction Denied. Defendant's Motion to Dismiss for Failure to Prosecute is Allowed.
- Souza v. BSEA (Plymouth) 30A appeal from BSEA's decision granting Carver's Motion to Dismiss — Appeal Affirmed
- Ruppert v. RMV (Barnstable) Appeal from RMV suspension of license and preliminary injunction — Settlement — Default judgment removed and agreement entered whereby RMV would not suspend plaintiff's license and would remove all indications of suspension from plaintiff's driving history which resulted from the incident on May 1, 2002.
- Fremault v. RMV, et al. (Bristol) 30A — Plaintiff's Motion for Judgment on the Pleadings is Denied. Judgment entered for the Defendant. Plaintiff takes nothing and the action is dismissed on the merits. Defendant Board of Appeal recover its costs of action from the plaintiff.
- Miranda v. DSS (Plymouth) 30A — Motion to Dismiss Allowed
- Grimaldi v. RMV (Plymouth) 30A — Dismissed without prejudice based upon the plaintiff's failure to prosecute
- Mandell v. Terry (Barnstable) Habeas Corpus — Court Ordered Dismissal
- Plaud v. UMass Dartmouth (Bristol) Complainant was hired as a grant administrator and alleges that she did not receive the salary increase that was promised with the position. UMass General Counsel

- Seminara, as the Trustee of the Quivett Neck Realty Trust, et al. v. County of Barnstable et al. (Barnstable) Motion to Compel Keeper of Records for Natural Heritage and Endangered Species Program to appear at deposition and produce documents — Department of Fisheries & Wildlife will handle.
- Bergman v. Board of Appeal on Motor Vehicle Liability Policies & Bonds (Bristol) Plaintiff appealing suspension of his driver's license on account of controlled substance law violations — Plaintiff's Motion for Judgment on the Pleadings Denied — Defendant Motion for Judgment on the Pleadings — Allowed
- Koonce v. RMV (Plymouth) Appeal of a decision of the RMV. Defendant's Motion to Dismiss for Failure to Exhaust Administrative Remedies Allowed
- Hoefler v. Bristol County Sheriff's Department and MHD (Bristol) Civil/Defensive — Harm Personal Injury — Summary Judgment Allowed
- Andrade v. DSS (Bristol) 30A appeal from DSS decision supporting 51A report — Appeal Affirmed
- McFish, Inc. d/b/a McMenemy's Seafood of Raynham v. Raynham Selectman Board, et al. (Bristol) 30A appeal from ABCC's Affirmance of revocation of plaintiff's liquor license. Appeal dismissed for failure to comply with Standing Order 1-96
- Teixeira v. Frank L. Bailey (Bristol) Tort action against MHD alleging negligence by employee. Accident involving employee who hit plaintiff's vehicle — Stipulation of Dismissal
- Chute v. Board of Appeal on Motor Vehicle Liability Policies and Bonds (Barnstable) 30A appeal from Board decision affirming Registry's suspension of plaintiff's license — Appeal Reversed
- Dennis Housing Corp. v. Housing Appeals Committee, et al. (Bristol) 40B-HAC was to hear appeal on a related matter. Town of Dennis opted not to participate. A default judgment was entered. A comprehensive permit was issued by HAC permitting the construction of affordable senior housing by the plaintiff's rendering this case in Superior Court moot.
- Safety Insurance Co. aso Mathis v. Commonwealth of MA (Suffolk) Subrogation suit where insurer sought reimbursement from Commonwealth. Commonwealth vehicle collided

with insured's vehicle. Insurer failed to make presentment, and defendant's motion for summary judgment was granted — Full, for the Defendant

- **Marchetti v. Board of Appeal on Motor Vehicle Liability Policies and Bonds** (Barnstable) 30A appeal from decision of Registrar suspending plaintiff's license for three years after plaintiff pleaded guilty to three drug law violations — Appeal Affirmed
- **Ford v. RMV** (Barnstable) 30A Motor Vehicle Licensure — Plaintiff failed to appeal to the Board of Appeals. Court remanded to that administrative agency. Stipulation of Dismissal

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The first Youth Court in Massachusetts, New Bedford Youth Court, convened at the Southern New England School of Law with the Office of the Attorney General as a collaborating partner. Staff in the SE MA Regional office trained students, volunteered as judges, and sat on the advisory board of this juvenile diversion program recognized by the National Youth Court Center. In a most effective project, Southeastern Massachusetts' network of elder providers was brought together by SE MA Regional staff in October of 2002 at an Elder Fraud and Abuse Conference where Attorney General Reilly was the keynote speaker. This valuable network was strengthened as the need for awareness of financial scams and personal protection of our elders was discussed.

Community involvement in 15 neighborhood associations along with the numerous activities that they promote, New Bedford's Drug Task Force's Weed and Seed collaboration, and Abandoned Housing Projects in Taunton and New Bedford continued as SEMA staff promulgate the commitment Attorney General Reilly has to the region.

OUTREACH, EDUCATION, AND TRAINING

Protecting children remains a priority of Attorney General Reilly, and SEMA staff were involved in numerous projects provided as part of Safe Harbors, Youth Summit; New Bedford Prevention Partnership, Mentor Program; and New Directions' Summer Youth Program. Educational outreach was provided to over 500 students on Internet safety, and the office hosted two interns through the School-to-Career program of New Bedford High School.

Empowering communities with consumer and fraud alert tips at neighborhood meetings and presenting workshops regularly at area elder housing complexes and Council on Aging locations throughout Southeastern Massachusetts kept SEMA staff in communication with the public served in this region. The Annual Symposium for Consumer Advocates and regular meetings with the regions' Local Consumer Programs enabled staff to provide quality assistance. Participating in programs such as Domestic Violence Awareness, Ethics Seminar Training, AIDS Awareness, United Way Review Board, Threat Assessment Seminar, and Alzheimer Association Forum as well as providing training in the areas of workers' rights and civil rights allowed the SE MA Attorney General's staff to promote the Office's initiatives.

SEMA staff participated in office-wide training programs provided by the *AG Institute*, such as Employment Discrimination Training, MCRA Training, Word & Grammar Training, Executive Etiquette 101, Anger Management, Evaluation Training, Investigator Course, Civil Rights Training, Management Training/Book Club/Mentor Program, Grant Writing Seminar, as well as various MCLE Trainings that ensure high standards and professional current knowledge. Cross-bureau initiatives provided the opportunity for SEMA staff to coordinate projects facilitated by the Employee Benefits Committee, Children's Protection Project, Diversity Committee, and Web site Committee.





