

# The Commonwealth of Massachusetts

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## Report of the Attorney General for Fiscal Year 2001

July 1, 2000 - June 30, 2001

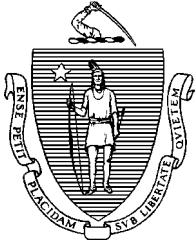
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THOMAS F. REILLY  
ATTORNEY GENERAL

# 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, 2000 to June 30, 2001.

Respectfully submitted,

Thomas F. Reilly  
Attorney General

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FISCAL YEAR 2000 (JULY 1, 2000 - JUNE 30, 2001)

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL - THOMAS F. REILLY  
 FIRST ASSISTANT ATTORNEY GENERAL - DEAN RICHLIN  
 CHIEF OF STAFF - JEFFREY SHAPIRO

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ASSISTANT ATTORNEYS GENERAL:

Ann Ackil	John Bowen	Pierce Cray
Dorothy Anderson	Martha Bower	John Crimmins
David Andrews	John Bowman	John Curseaden
Linda Andros	Matthew Brock	William Daggett
Marion Antonucci	Kimberly Brooks (54)	Norman D'Amours (41)
James Arguin (1)	Matthew Buehler	Pamela Dashiell
Michael Atleson	Ranjana (Chand) Burke	Gerald D'Avolio Jr.
Frederick Augenstern	Romeo Camba	George Dean (61)
Steven Baddour	Jesse Caplan	Edward Deangelo (59)
Eva Badway (11)	Sandra Cardone	Thomas Dee (5)
Lori Balboni (3)	Eric Carriker	Irene Delbono (56)
Thomas Barnico	Eugenia Carris	Linda Delcastilho
Jason Barshak	James Caruso, Jr.	Stephen Dick
Mary Elizabeth Basile (55)	Aloke Chakravarty	Kristen Dionisi
R. David Beck	John Christin, Jr.	Joseph Driscoll (28)
Annette Benedetto	James (Jay) Clark (17)	Anne Edwards
Barbara Berenson	Peter Clark	Kirsten Engel (4)
Matthew Berge	Stephen Clark	Barbara Fain
Anne Berlin (31)	Alexander Cochis (9)	James Farrell
Crispin Birnbaum	Richard Cole	Daniel Field
Nancy Bloomberg (21)	Joanna Connolly	Freda Fishman
William Bloomer	Rosemary Connolly	Francis, Jr. Flaherty (32)
Edward Bohlen	Margret Cooke (18)	Elizabeth Ann Foley
Wilner Borgella	Patricia Correa	Mary Freeley
Jenifer Bosco (8)	Arlie Costine-Scott	Elizabeth Frumkin (60)

Cynthia Gagne	Judy Kalman	Elisabeth Medvedow (45)
Rafael Garcia	Glenn Kaplan	Pamela Meister
Dana Gershengorn	Jamie Katz	Beth Merachnik
Marianne Geula (9)	David Kerrigan	Howard Meshnick
Suzanne Glick Gilfix (57)	Karen Kleiman (52)	Nicholas Messuri
Salvatore Giorlandino	Mark Kmetz	James Milkey
I. Andrew Goldberg	Pamela Kogut	Alexandra Moffatt (12)
Caryn Gordon	Nick Kosiavelon (10)	Paul Molloy (6)
Richard Gordon	Siu Tip Lam	Brian Monahan (9)
Eliot Green	Judith Laster (23)	David Monahan
Catherine Greene	Andrew Latimer	Alice Moore
Hannah Greenwald (2)	Kelli Lawrence	Mark Muldoon
John Grossman	Angela Lee	Mark Mulligan
John Grugan (39)	Peter Leight	David Nalven
Daniel Hammond	Gerard Leone, Jr.	Cathryn Neaves (24)
John Hanrahan (14)	Madeline Leone (8)	Amy Nechtem (17)
Nancy (Betsy) Harper	Martin Levin (33)	Eileen O'Brien
Katherine Hatch	Carolyn Long (16)	James O'Brien
Ladonna Hatton (42)	Stephanie Lovell (7)	Thomas O'Brien
Janice Healy	Jacinta Ma (37)	James O'Connell (49)
Michael Hering (38)	Glenn Mackinlay (48)	John O'Leary
Hilary Hershman (15)	Anita Maietta	Erin Olson (35)
Muriel Hervey	Maria Makredes	Mary O'Neil (19)
John Hitt (46) (30)	M. Toni Maloney	William O'Neill (24)
Bart Q Hollander	David Marks	James Paikos (53)
Pamela Hunt	Laura Marlin	Donna Palermino
Marsha Hunter	Laura Maslow-Armand	Emily Paradise
Carol Iancu	Dean Mazzone (29)	William Pardee
Matthew Ireland	Catherine McClure (52)	Holly Parks (9)
Marcia Jackson	Timothy McDonough	Margaret Parks
Maria Hickey Jacobson	Philip McGovern	Maite Parsi (10)
Jocelyn Jones (8)	Constance Mcgrane	M. Julie Patino
Michelle Kaczynski	Marianne Meacham (47)	Robert Patten
Stephanie Kahn	William Meade	Peter Paulousky

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Susan Paulson	Ginny Sinkel	Jonathan White
Anthony Penski	Johanna Soris	Judith Whiting (11)
Mary Phillips	Amy Spector	Betsy (Sawyer) Whittey
Mary (Polly) Phillips (10)	Carol Starkey	Geoffrey Why (28)
William Porter	Deborah Steenland	Jane Willoughby
Anne Powers (25)	Catherine Sullivan	Howard Wise (44)
Stephen Prunier	Mark Sutliff	Nathanael Wright (2)
Christopher Quaye	James Sweeney	Chi Chi Wu (50)
Jason Queenin	Diane Szafarowicz	Charles Wyzanski
Robert Quinan	Daniel Szostkiewicz (43)	Hermen Yee (20)
Karlen Reed	John Talbot (13)	Judith Yogman
William Reynolds	Pamela Talbot (58)	Karla Zarbo
Juliana Rice	Rosemary Tarantino	Catherine Ziehl
Dean Richlin	Neil Tassel	
Robert Ritchie	Danah Tench	
Lena Robinson	Louisa Terrell	
Beverly Roby	Steven Thomas	
Anthony Rodriguez	Linda Tomaselli	
Joseph Rogers	Marini Torres-Benson	
Deirdre Rosenberg	Bruce Trager	
Julie Ross	Hung Tran (59)	
Amy Royal (17)	Thomas Ulfelder	
Mary Ruppert	Teri Williams Valentine	
Peter Russell (27)	Dorothy Varon (51)	
Frank Russo (9)	Linda Wagner	
Peter Sacks	Teresa Walsh	
Ernest Sarason	Pamela Wechsler	
Kurt Schwartz	Peter Wechsler	
Jeffrey Shapiro	William Weinreb (36)	
Amy Sharff (40)	Richard Weitzel (26)	
Matthew Shea	Karen Wells	
Timothy Shea (34)	Kimberly West (8)	
Patricia Siefer (22)	James Whitcomb	
Adam Simms	Doris White	

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**APPOINTMENTS**

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<b>APPOINTMENT DATE</b>		<b>TERMINATION DATE</b>	
(1)	7/17/00	(31)	7/3/00
(2)	7/31/00	(32)	7/7/00
(3)	8/7/00	(33)	7/10/00
(4)	8/14/00	(34)	7/31/00
(5)	8/21/00	(35)	8/4/00
(6)	9/1/00	(36)	8/22/00
(7)	9/3/00	(37)	9/30/00
(8)	9/5/00	(38)	11/10/00
(9)	9/11/00	(39)	11/14/00
(10)	9/25/00	(40)	11/24/00
(11)	10/2/00	(41)	11/25/00
(12)	10/3/00	(42)	12/1/00
(13)	10/16/00	(43)	1/2/01
(14)	10/23/00	(44)	1/7/01
(15)	10/30/00	(45)	1/16/01
(16)	11/13/00	(46)	2/7/01
(17)	11/27/00	(47)	2/9/01
(18)	12/24/00	(48)	2/16/01
(19)	1/2/01	(49)	2/23/01
(20)	1/8/01	(50)	3/2/01
(21)	1/29/01	(51)	3/16/01
(22)	1/30/01	(52)	3/30/01
(23)	2/5/01	(53)	5/4/01
(24)	2/12/01	(54)	5/11/01
(25)	3/19/01	(55)	5/25/01
(26)	4/2/01	(56)	6/2/01
(27)	4/15/01	(57)	6/14/01
(28)	4/30/01	(58)	6/15/01
(29)	5/7/01	(59)	6/22/01
(30)	6/4/01	(60)	6/29/01
		(61)	6/30/01

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**STATEMENT OF FINANCIAL POSTION**  
**FISCAL YEAR 2001**

			<b>STATEMENT of FINANCIAL POSTION</b>				
			<b>FISCAL YEAR 2001</b>				
Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance		
2001	08100000	DEPARTMENT OF THE ATTORNEY GENERAL	21,633,622	21,605,348	28,274		
2001	08100003	CHILD PROTECTION UNIT	250,000	241,676	8,324		
2001	08100014	EXPENSES OF PUBLIC UTILITY PROCEEDINGS	1,469,796	1,299,008	170,788		
2001	08100017	JUDICIAL PROCEEDINGS RELEVANT TO THE FUEL CHARGE C.6A, S.9A, MGL	75,000	35,099	39,901		
2001	8100021	FOR ADMINISTERING THE MEDICAID FRAUD CONTROL UNIT	1,836,486	1,795,535	40,951		
2001	08100045	FOR THE WAGE ENFORCEMENT PROGRAM	3,286,832	3,193,539	93,293		
2001	08100201	EXPENSES INCURRED IN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS	1,458,382	1,347,671	110,711		
2001	08100338	AUTOMOBILE INSURANCE FRAUD INVESTIGATION & PROSECUTION	285,882	283,887	1,995		
2001	08100399	WORKERS' COMPENSATION INSURANCE FRAUD PROSECUTION	285,882	283,808	2,074		
2001	08100411	COVENANT NOT TO SUE	1,929,967	98,296	1,831,671		
2001	08300100	COMMISSION ON UNIFORM STATE LAWS,	34,400	34,099	301		
		TOTAL, DIRECT APPROPRIATIONS	32,546,249	30,217,968	2,328,281		

## TRUSTS

## FISCAL YEAR 2001

TRUSTS					
FISCAL YEAR 2001					
Fiscal_Year	Appropriation	ACCOUNT NAME	Obligation	Expended	Balance
2001	08100033	LOCAL CONSUMER AID FUND, REIMBURSEMENT FOR SERVICES	1,237,395	436,257	801,138
2001	08100034	STUDENT CONFLICT RESOLUTION EXPERTS (SCORE)	43,314	30,000	13,314
2001	08100036	MERGER CENTRAL MASS HEALTH CARE, INC. (CMHC) AND HEALTHSOURCE, INC.	21	0	21
2001	08100039	BROCKTON SAFE NEIGHBORHOOD INITIATIVE (MGL C.12, S.4A)	22	0	22
2001	08100040	GLASS TOP LOUNGE DORCHESTER SAFE NEIGHBORHOOD INITIATIVE COMMUNITY ACCOUNT	72	0	72
2001	08100041	CONFLICT INTERVENTION TEAM PROJECT ADMIN	23,434	23,355	79
2001	08100042	CONSUMER PROTECTION TRANSLATION INITIATIVE	3,994	0	3,994
2001	08100043	SEARS TRANSLATION INITIATIVE	9,130	1,843	7,287
2001	08100044	AGO'S GUIDE TO HEALTHCARE AND FINANCE	10,000	0	10,000
2001	08100301	BLUECROSS BLUESHIELD TOBACCO LITIGATION (MGL C.12, S.4A)	551,034	551,034	0
2001	08100409	W.K. KELLOGG FOUNDATION GRANT	21,525	0	21,525
2001	08100414	STATE FORFEITURE	322,221	96,204	226,017
2001	08100415	EXPENDABLE TRUST	79,192	0	79,192
2001	08100416	CONFERENCE ACCOUNT	116,476	56,687	59,790
2001	08100417	NATIONAL ASSOCIATION ATTORNEYS GENERAL	7,004,634	388,703	6,615,931
2001	08100444	FEDERAL FORFEITURE	360,210	133,918	226,292
2001	08106614	ATTORNEY GENERAL TRUST FUND (680014)	80,732	0	80,732
2001	08106630	WATER POLLUTION CONTROL PROGRAM ENFORCEMENT ACTIVITIES	6,760	0	6,760
2001	08106631	AIR POLLUTION CONTROL PROGRAM ENFORCEMENT ACTIVITIES	2,339	0	2,339

## TRUSTS

## FISCAL YEAR 2001

<u>TRUSTS</u>						
<u>FISCAL YEAR 2001</u>						
Fiscal_Year	Appropriation	ACCOUNT NAME	Obligation	Expended	Balance	
2001	08106656	STUDENT CONFLICT RESOLUTION EXPERTS	581	0	581	
2001	08106659	JOHN HANCOCK MUTUAL SETTLEMENT ACCOUNT	244,358	240,768	3,590	
2001	08106661	COASTAL ZONE MANAGEMENT PROGRAM	2,693	0	2,693	
2001	08107027	ST VINCENT LLC EXPERT ANALYSIS	17,092	17,092	0	
2001	08107060	METLIFE SETTLEMENT	702,074	78,668	623,405	
2001	08107066	NEW ENGLAND MUTUAL LIFE INSURANCE	450,000	0	450,000	
		TOTAL TRUSTS	1,416,797	336,527	1,080,270	

**INTERDEPARTMENTAL FUNDS**  
**FISCAL YEAR 2001**

<b>INTERDEPARTMENTAL FUNDS</b>					
<b>FISCAL YEAR 2001</b>					
Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance
2001	08100020	CRIMINAL TAX UNIT, C. 164, ACTS (DOR)	181,887	178,318	3,569
2001	08100024	YOUTH EMPOWERING SKILLS PROJECT (CCJ)	100,000	61,598	38,402
2001	08100025	MULTI-JURISDICT COUNTER CRIME TASK FORCE (CCJ)	150,000	0	150,000
2001	08100096	DORCHESTER COMMUNITY HEALTH INITIATIVE (CCJ)	250,000	250,000	0
2001	08100300	ENFORCEMENT OF SMOKING RELATED LAWS (DPH)	200,000	132,261	67,739
2001	08100311	ROLLAND V CELLUCCI USDC NO. 98-30208-KPN (DMA)	0	0	0
2001	08101999	CA/T OVERSIGHT COORDINATION COMMISSION (ANF)	450,000	81,489	368,511
2001	08102206	WORCESTER LITIGATION EXPENSES (DCAM)	171,000	1,560	169,440
2001	08103382	LIABILITY MANAGEMENT REDUCTION FUND (CTR)	108,703	72,333	36,370
2001	08106654	SAFE NEIGHBORHOOD INITIATIVE-COMMUNITIES (CCJ)	0	0	0
2001	08107981	SAK RECYCLING CASE LITIGATION SUPPORT (ANF)	118,427	30,959	87,468
2001	08108208	EMINENT DOMAIN ACQUISITIONS LITIGATION (DPW)	239,172	1,026	238,146
2001	08108872	WORCESTER SH LITIGATION EXPENSES (DCAM)	4,954	0	4,954
2001	08108938	LEGAL SERVICES FOR PARKS & WATERSHED (MDC)	668,193	219,389	448,805
2001	08108964	LEGAL SERVICES FOR PARKS (MDC)	419,521	96,374	323,147
2001	08109716	MHD FEDERAL AID PROJECT EXPENSES (DPW)	750,000	193,666	556,334
2001	08109717	MHD EXPENSES INCURRED BY AGO (DPW)	1,369,352	463,071	906,281
2001	08109936	CA/T FEDERAL AID EXPENSES (DPW)	1,400,000	217,273	1,182,727
		TOTAL ISA's	6,581,208	1,999,319	4,581,890

**FISCAL YEAR 2001**ix

**SUSPENSE FUNDS**  
**RECEIPTS AND REIMBURSEMENTS**  
**FISCAL YEAR 2001**

<b>SUSPENSE FUNDS</b>					
<b>RECEIPTS and REIMBURSEMENTS</b>					
<b>FISCAL YEAR 2001</b>					
Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance
2001	08100400	CHARLES GEORGE LANDFILL	177,368	0	177,368
2001	08100401	TOWN OF METHUEN LANDFILL	105,181	51,174	54,007
2001	08100402	MLA/MCFT CIVIL ACTION 90-2274	610,888	4,999	605,889
2001	08100403	94-1645	11,327	0	11,327
2001	08100407	94-6371	350	0	350
2001	08100408	PROCEEDS OF ACCOUNT DOCKET #99-06SW026	6,194	0	6,194
2001	08100413	MSP CASE #2000-034-3599-0061	9,740	0	9,740
2001	08100526	ATTORNEY GENERAL UNCLAIMED MINIMUM WAGE	295,750	111,948	183,802
2001	08106862	COMM. OF MASS. VS CENTURY AUTO APPRAIS.	6,800	0	6,800
2001	08106885	COMM. OF MASS. VS ERIC BARTLETT D/B/A	2,000	0	2,000
2001	08106887	COMM. OF MASS. VS BRUCE LEDBURY D B A	11,287	0	11,287
2001	08106915	COMM. OF MASS. VS BARRY CUSHNER D/B/A	1,088	0	1,088
2001	08106917	COMM. OF MASS. VS DIAMOND CHEVROLET	7,396	0	7,396
2001	08106919	COMM. OF MASS. VS RUSTY JONES INC.	2,263	0	2,263
2001	08106925	COMM. OF MASS. VS A. J. LONG'S INC.	7,137	0	7,137
2001	08106934	COMM. OF MASS. VS VILLAGE TRUCK SALES	69	0	69
2001	08106941	COMM. V. MARIO CHIEREGHIO D/B/A LEE AUTO SALES	3,302	0	3,302
2001	08106943	COMMONWEALTH VS WILLIAM WOLF	518	0	518
2001	08106944	COMMONWEALTH VS ALAN S. MILLER/FURNITURE OUTLET	466	0	466
2001	08106946	COMMONWEALTH VS TIJUANA GOLDSTEIN STAR, ET AL	2,032	0	2,032
2001	08106950	ABRAMS ET AL VS HERTZ CORP.	4,584	0	4,584
2001	08106952	COMMONWEALTH VS MISSIONS OF MERCY, INC.	1,865	0	1,865

**SUSPENSE FUNDS**  
**RECEIPTS AND REIMBURSEMENTS**  
**FISCAL YEAR 2001**

Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance
		SUSPENSE FUNDS			
		RECEIPTS and REIMBURSEMENTS			
		FISCAL YEAR 2001			
2001	08106953	COMMONWEALTH OF MA VS OUTDOOR WORLD, INC	16,474	0	16,474
2001	08106954	COMMONWEALTH VS EUROPEAN HEALTH SPA	1,323	0	1,323
2001	08106957	COMMONWEALTH VS MICHAEL COLLINS	1,397	0	1,397
2001	08106959	COMM OF MA V. STEPHEN J. FAVORITO	52	0	52
2001	08106962	COMM OF MASS VS TROTIER	354	0	354
2001	08106965	HOME REPAIR, INC. ET AL VS COMM OF MASS	1	0	1
2001	08106966	COMM OF MASS VS RAYMOND A. NOYES	2,500	0	2,500
2001	08106967	GETTY PETROLEUM VS. COMM OF MASS	75,000	0	75,000
2001	08106970	COMMONWEALTH OF MASS VS. PAMPALONE	349	0	349
2001	08106979	COMM OF MASS VS NATIONAL FINANCIAL CORP	15,000	0	15,000
2001	08106980	COMM OF MASS V. ROY PARKES D/B/A SHOPPERS SAMPLERS	2,200	0	2,200
2001	08106982	COMM VS CAREFREE BUILDING PRODUCTS, INC.	6,250	0	6,250
2001	08106985	COMM VS DIRECTORY PUBLISHING SERVICES	1	0	1
2001	08106991	COMM OF MASS VS LIFETIME NUTRITION, INC. ET AL	9,968	0	9,968
2001	08106994	COMM OF MASS VS NNLC D/B/A LECTRA CITY	4,207	0	4,207

**SUSPENSE FUNDS**  
**RECEIPTS AND REIMBURSEMENTS**  
**FISCAL YEAR 2001**

<b>SUSPENSE FUNDS</b>					
<b>RECEIPTS and REIMBURSEMENTS</b>					
<b>FISCAL YEAR 2001</b>					
Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance
2001	08106996	COMMONWEALTH VS GEORGE MUIR D/B/A JOURNEYS ON DIALYSIS	1,750	0	1,750
2001	08106997	COMMONWEALTH VS JORGE MANUEL DIAS	7,984	1,637	6,346
2001	08107000	COMM OF MASS VS PAUL E. MORRISON	1,500	100	1,400
2001	08107002	COMM OF MASS VS EMPLOYMENT NETWORK INC.	3	0	3
2001	08107005	COMM VS SUZANNE BANNISTER & DIRECT LINK	1,695	0	1,695
2001	08107006	COMM VS HENRY ENGEL,MARGARET ENGEL,AND ALL SEASONS TRAVEL AGENCY, INC.	311	0	311
2001	08107007	COMM VS CAREN ABREU D/B/A/ HAMPDEN COUNTY LEGAL ASSISTANCE CENTER	420	0	420
2001	08107009	MERRILL LYNCH FEDERAL FORFEITURE	175,595	0	175,595
2001	08107010	COMM VS ROBERT PORE,D/B/A NATIONAL CITIZENSHIP and IMMIGRATION and FLEET BANK	576	0	576
2001	08107013	COMM VS RESORT PROPERTIES	16,504	0	16,504
2001	08107014	COMM OF MA VS NICKERSON ENTERPRISES, INC DANIEL NICKERSON & AMERICAR SUPERSTORE	2,187	0	2,187
2001	08107016	COMM VS JOHN F. KENNEDY, D/B/A JFK TV	159	0	159
2001	08107017	COMM VS MASSDENT BUSINESS MANAGEMENT INC D/B/A DDS DENTAL CENTER	26,435	0	26,435
2001	08107018	COMM OF MASS VS SEARS ROEBUCK & COMPANY	9,465,294	1,196	9,464,098
2001	08107019	COMM OF MASS VS SEARS ROEBUCK & COMPANY	148,057	0	148,057
2001	08107021	COMM OF MASS VS FRANCIS A. LEAHY, D/B/A SOUTH SHORE AUTO SALES	250	0	250
2001	08107022	COMM OF MASS VS NORTH SHORE ATHLETIC CLUB, INC. & KENNETH P. MAGNO	501	0	501



**SUSPENSE FUNDS**  
**RECEIPTS AND REIMBURSEMENTS**  
**FISCAL YEAR 2001**

<b>SUSPENSE FUNDS</b>					
<b>RECEIPTS and REIMBURSEMENTS</b>					
<b>FISCAL YEAR 2001</b>					
Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance
2001	08107023	COMM OF MASS VS DANIEL BUCK, D/B/A CLEARING-HOUSE PUBLICATIONS	7,217	0	7,217
2001	08107024	COMM OF MASS VS PAUL E. JONDLE, ET AL	10,000	1,029	8,971
2001	08107025	COMM OF MASS VS UNITED COMPANIES LENDING	3	0	3
2001	08107029	COMMONWEALTH VS CAPITAL FUNDING CORP	21,370	0	21,370
2001	08107030	COMMONWEALTH VS KING OF BAY STREET, INC.	328	0	328
2001	08107032	COMMONWEALTH VS HIDE-A-WAY HEALTH CLUB LEANN M. KELLY & CAROL J. FOSDICK	5,281	0	5,281
2001	08107034	COMMONWEALTH VS BOSTON ROAD MOTORS CORP, TOUCHDOWN LEASING CORP. & MARK AXENROTH	221	0	221
2001	08107035	COMMONWEALTH VS PAUL J. PEREIRA, & D/B/A FRATERNAL INSURANCE/DENTAL/TRAVEL GROUP	2,000	0	2,000
2001	08107037	COMMONWEALTH VS BETTY ANN ZEDIKER, AND UNITED COMPANIES LEASING CORP.	20	0	20
2001	08107038	COMMONWEALTH VS SECOND FEDERAL CREDIT INC., AND FRANK DeMAIO	1,000	0	1,000
2001	08107039	COMMONWEALTH VS HENRY J FRATTAROLI, JR., INDI- VIDUAL WORK AS CREDIT REPAIR NETWORK	4,435	0	4,435
2001	08107040	COMMONWEALTH VS PHILLIPS HALL INC. CORP. D/B/A ALLIED CREDIT SERVICE & HOWARD HALL	1,500	0	1,500
2001	08107042	FORFEITURE PENDENCY PROCEEDS 58-954-3	8,286	0	8,286

**SUSPENSE FUNDS**  
**RECEIPTS AND REIMBURSEMENTS**  
**FISCAL YEAR 2001**

<b>SUSPENSE FUNDS</b>					
<b>RECEIPTS and REIMBURSEMENTS</b>					
<b>FISCAL YEAR 2001</b>					
Fiscal Year	Appropriation	Account Name	Obligation	Expended	Balance
2001	08107048	COMM VS PAUL ELLIOT GIBBONS SPECIALTY CARS OF NEW HAMPSHIRE	10,000	10,000	0
2001	08107049	COMM VS ANDREW RUDNICK & MEDICAL WEIGHT LOSS CENTER, INC.	3,046	0	3,046
2001	08107051	COMM VS TRAVEL OPPORTUNITIES, INC.	25,000	0	25,000
2001	08107052	COMM VS 1ST NETWORK INC; & RANDY DOMINGS	1,570	0	1,570
2001	08107053	COMM VS CARLYLE IND; SPORTS WORLD TOURS; SAUGUS CTR TRAVEL, TICKET TO TRAVEL, etc.	15,321	15,321	0
2001	08107055	PROCEEDS OF ACCOUNT #0190219121, CHRISTOPHER DeSIMONE	16,225	0	16,225
2001	08107056	COMMONWEALTH VS R & R INTERNATIONAL D/B/A TAKE A BREAK STUDENT TRAVEL, et al.	762	200	562
2001	08107057	COMMONWEALTH VS GUY EXELL EMMANUEL ET AL	275	0	275
2001	08107058	CLAIMED WAGES ATTORNEY GENERAL	915,071	855,035	60,036
2001	08107059	COMM VS AYAL ABRAMS D/B/A NATIONAL COUP-ON NETWORK, AMERICAN PUBLISHERS, ETC.	13	0	13
2001	08107062	COMM VS JAY PATEL & NARANBHAI PATEL D/B/A MAIL BOXES, ETC.	1,890	990	900
2001	08107065	COMM VS JOHN LECLAIR D/B/A LUKE'S AUTO SALES & GEORGE RENO	1,000	1,000	0
			990,172	882,546	107,626

# EXECUTIVE BUREAU

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OFFICE OF THE LEGAL COUNSEL

HUMAN RESOURCE MANAGEMENT OFFICE

EXTERNAL AFFAIRS OFFICE

INFORMATION TECHNOLOGY DIVISION

BUDGET OFFICE

OPERATIONS DIVISION

COMMUNICATIONS DIVISION

## **EXECUTIVE BUREAU**

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The Executive Bureau is the service bureau within the Office of the Attorney General. This 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 500 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 Office of the General Counsel, and the Office of the Chief of Staff, which oversees administrative matters and includes Human Resource Management, Budget, Information Technology, Operations, External Affairs, Communications, Support Services and the Francis X. Bellotti Law Library.

The Attorney General has identified children's protection as one of his top priorities. To highlight these priorities and other initiatives Attorney General Tom Reilly sponsored several conferences in Fiscal Year 2001. In February 2001, the office launched the first in a series of four regional conferences on hate crime and harassment in schools. In addition, the Attorney General and Suffolk County District Attorney hosted a series of conversations among educators, local professional and college sports teams, and law enforcement about violence in sports. Those meetings led to a new partnership of sports teams, law enforcement and the Massachusetts Interscholastic Athletic Association to promote sportsmanship. In June 2001, the Attorney General sponsored and participated in an Internet Webcast with middle school children at the Fuller Middle School in Framingham to address Internet safety for kids and parents.

Massachusetts is a national leader in the high tech arena. To that end, Attorney General Tom Reilly hosted a National Association of Attorneys General two day conference for Attorneys General

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and their staff from across the country in April 2001. This conference, held in Massachusetts, addressed the complex legal issues that have emerged due to the rapidly changing landscape of the technology boom.

Another major initiative of critical importance is health care. In Fiscal Year '00 the Attorney General played a key role in the stabilization of Harvard Pilgrim Health Care, a Massachusetts HMO on the verge of ceasing services to over one million members. As a result of this Office's involvement, in Fiscal Year '01 the Office entered into a partnership with the Donahue Institute of the University of Massachusetts and with UMass Medical School on a joint project to publish and distribute information that focuses on certain aspects of the state's health care system. In order to streamline information and ensure accuracy, the Massachusetts Health Systems Benchmarks was established. Its goals are to provide mission-critical data about the state's health care system and to coordinate and improve systems that will institutionalize timely and useful data collection, reporting, analysis and interpretation. This information collection and dissemination point was the first in the nation to focus on making this type of comparison data widely and easily accessible.

Additionally, another priority for the Attorney General is keeping municipal officials apprised of changes in the area of municipal law. Every year, the Attorney General holds a forum for municipal employees to keep them up-to-date with current issues and legislation to Massachusetts law with respect to cities and towns. The annual forum "Keeping You Current" was held in April of 2001 and was attended by over 300 city and town officials, focusing on issues important to them as they exercise their local government responsibilities. In May of 2001, Attorney General Tom Reilly hosted the annual conference for members of non-profit boards, a valuable training opportunity for new--as well as established non-profit organizations--in complying with the special requirements imposed on non-profit businesses. This is another conference that is well attended every year, dealing with issues that are critical to non-profit boards.

To better serve the public, more information on the Attorney General's priorities and services available to the citizens of the Commonwealth may be found by logging on to [www.ago.state.ma.us](http://www.ago.state.ma.us).

During Fiscal Year '01, the Executive Bureau included the following staff members: Dean Richlin, First Assistant Attorney General; Jeffrey Shapiro, Chief of Staff; Ellen Donaghey, Deputy Chief of Staff; Jill Reilly, Teresa Polhemus; Meredith Baumann; Karen Charles; Diane MacDonald; Susan Kenneally; Pasha Polihronidis; and Mary Wollenhaupt.

## OFFICE OF THE LEGAL COUNSEL

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The Office of the Legal Counsel provides recommendations on legal and policy matters to the Attorney General, the First Assistant Attorney General and the Chief of Staff. Legal Counsel also advises all other staff members, both legal and non-legal. Five attorneys staff the Office of the Legal Counsel, each of whom is assigned specific and general areas of responsibility, with the support of one paralegal and one secretary.

Specific areas of responsibility within this Office include: advising on the Rules of Professional Conduct and the State Ethics Law; providing legal advice and assistance to the administrative staff within the Executive Bureau, coordinating the appointments of Special Assistant Attorney Generals (SAAGs); reviewing and approving legal service contracts for state agencies; reviewing and circulating petitions and notices from the Board of Bar Overseers; coordinating the office-wide review of Department of Revenue tax settlements with individuals who have failed to pay taxes; retaining and managing the state's OUI notices to drinking establishments; monitoring the National Association of Attorneys General (NAAG) recommendation and submission of amicus briefs for the First Assistant and coordinating bureau responses; monitoring and reviewing NAAG's recommendations to join other Attorneys General throughout the country in letters of support and/or opposition to proposed legislation or regulations; and the overall representation of the Office of Campaign and Political Finance before the Superior Court.

The Office of the Legal Counsel responds to questions and complaints from the public about the Open Meeting Law, as it applies to state agencies, and reviews public records law referrals from the Supervisor of Public Records in the Secretary of State's Office. In Fiscal Year '01, Legal Counsel responded to approximately 55 of these questions and complaints in writing and resolved numerous inquiries orally. Additionally, Legal Counsel serves as the Public Records Officer for the Executive Bureau, and coordinates the handling of requests for that bureau and all the bureaus within the Office. Approximately 40 public records requests were addressed by Legal Counsel staff or the public records officers assigned within the bureaus.

Through their work with the Human Resource Management Office, the Legal Counsel staff established a new staff orientation program in Fiscal Year '01 to effectively transition new employees into the work environment of the Office of the Attorney General. These two groups also worked together to conduct training on the Office's Anti-Discrimination and Sexual Harassment Policy. Legal Counsel staff was involved in many cross-bureau initiatives. In keeping with the Attorney General's priority of ensuring staff has access to the latest information and training available, the

Professional Development Unit was established within the Office of the Legal Counsel in Fiscal Year '01. This Unit was in the proposal stage in Fiscal Year '00 and demonstrates the Attorney General's commitment to this valuable program. The Professional Development Unit provides continuing education to legal and non-legal staff on a variety of topics. The programs offered by the Professional Development Unit are open to all employees within the Office of the Attorney General.

The Office of the Legal Counsel also monitors and/or drafts briefs that are filed in state and federal court. Most notably, in Fiscal Year 01 the Legal Counsel staff handled the matter of *Dodd, et al., and DeSalvo, et al. v. Thomas Reilly, et al.* In addition to their regular duties, many staff involved themselves with community service activities and professional associations. In Fiscal Year '01, a few employees served as volunteers in nursing homes, neighborhood community health care centers, and in educational settings.

The Office of the Legal Counsel included the following staff members: Pamela M. Dashiell, Legal Counsel; Deborah Steenland; Eileen Carey; Akiti Chandler; Renee Coleman; Catherine Green; LaDonna Hatton; Judy Zeprun Kalman; Kathleen Sullivan; and Teri Williams Valentine.

## **HUMAN RESOURCE MANAGEMENT OFFICE**

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### RESTRUCTURING OF THE HRM OFFICE

Due to the increasing demands on the Human Resource Management Office and the desire to better serve its employees and applicants, responsibilities were realigned and titles were changed to better reflect those new areas of oversight. As such, the titles Director of Recruitment and Hiring, and the Director of Employee Relations were instituted.

The Director of Recruitment and Hiring oversees all of the recruitment and hiring efforts, but specifically directed all of the legal hiring for the Office. This Director worked closely with the Hiring Coordinator, who was responsible for the hiring of support and non-legal staff. The Hiring Coordinator also oversaw the need for temporary help, assisted with coverage issues within the Executive Bureau and the monthly Administrative Assistants' meetings. Those positions were critical as the disparity between public and private compensation increased exponentially and as

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the professional salary limitations required significant recruitment efforts to attract top-level candidates .

The Director of Employee Relations is responsible for a number of employee services in the Office: supervises the Benefits and Program Coordinator and assists with the weekly New Employee Orientation Meeting; schedules new Assistant Attorneys General for the swearing-in and processes the required paperwork with the Secretary of State's Office; supervises the Human Resource Assistant in the processing of time and attendance; and serves as the Worker's Compensation Agent for the Office. This Director also works closely with the Director of HRM on labor relations issues.

#### PERFORMANCE APPRAISAL PROCESS

The Performance Appraisal Process in the Office of the Attorney General was revamped and refined during this Fiscal Year. Specific booklets representing the major groups of job titles were developed to assist managers in conducting performance appraisals. Careful attention was given to goal setting and the success in meeting those goals, as well as the overall contribution to the mission of the Office. New categories were added to address career training, professional ethics and leadership. Employees were also given the opportunity to offer comments and to evaluate their supervisor if desired.

#### MINORITY BAR ASSOCIATION MEMBERSHIPS

In addition to memberships in the Massachusetts and Boston Bar Associations, staff attorneys were offered the opportunity to join one of the many minority bar associations in the local or regional areas. This benefit was extended to further the Office's commitment to meeting the needs of attorneys' professional development, and to encourage involvement with organizations comprised of diverse members and experience.

#### ANTI-DISCRIMINATION & SEXUAL HARASSMENT POLICY TRAINING

The Office continued with its aggressive agenda to train all employees in this important policy, and substantial progress was made during this Fiscal Year. Over 400 employees were trained up to

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date, but trainings continued to be held on a regular basis. The Office reissued the Anti-Discrimination and Sexual Harassment Policy in April, 2001.

### RECRUITMENT

The Office of Attorney General seeks to recruit and retain the most qualified and committed workforce. To do so, it utilizes a number of recruitment tools. All postings are listed on both the Office website (<http://www.ago.state.ma.us/>) and the Commonwealth's Employment Opportunities Website ([http://www.state.ma.us/hrd/employment/commonwealth\\_emp\\_opportunities.htm](http://www.state.ma.us/hrd/employment/commonwealth_emp_opportunities.htm)). Additionally, we notify a number of bar associations of all postings, including the Massachusetts Association of Hispanic Attorneys, the Women's Bar Association, Massachusetts Black Lawyers Association, Massachusetts Lesbian and Gay Bar Association, Massachusetts Black Women Attorneys and Asian American Lawyers Association.

### DIVERSITY RECRUITMENT

The Diversity Committee and the HRM Office sponsored its third annual Diversity Recruitment Reception in June, 2001 to attract and retain employees of diverse backgrounds and experiences. We also informed recent law school graduates of the Office of the Attorney General's Fellowship Program and provided program information for application later in the calendar year.

During Fiscal Year '01, the office-wide Diversity Committee boasted a roster of 35-50 members from all areas of the office, including the Regional sites. Five (5) standing sub-committees (Education & Training; Office Policies & Procedure; Recruitment; Retention; Community Outreach) implemented important initiatives, such as meetings with the minority bar associations and a cultural diversity calendar. The third annual Summer Minority Recruitment Reception was successfully planned as a major project for the committee. Internal reorganization led to sub-committee restructure, streamlined meetings and renewed focus on committee goals. To enhance the Office's relationships with the legal community at large and to broaden minority networking, Co-chairmen attended several seminars and business meetings highlighting workplace diversity.

The Human Resource Management Office included the following staff members: Diana LaRochelle, Director; Joseph Shea; Marie Urciuoli; Joyce Delgado; Sandra Macdonald; James Chu; Luna Bacon; Thomas Kopaczynski; Rose Mary Miller; Meade Munroe; Deborah Ross; Dazlee Vega; and Debra LaCross.

## **EXTERNAL AFFAIRS DIVISION**

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The External Affairs Division of the Executive Bureau is responsive to the public. Its function is to serve as a liaison between the public, interest groups, elected officials, and others with the OAG. External Affairs consists of the Office of Community Partnerships, Intergovernmental Affairs, and the Community Liaison.

### OFFICE OF COMMUNITY PARTNERSHIPS

Attorney General Tom Reilly created the Office of Community Partnerships 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 municipalities of the Commonwealth.

In April of 2001, the Office of Community Partnerships worked with the Massachusetts Municipal Association and the Massachusetts City Solicitors and Town Counsel Association in presenting the Municipal Law Forum. This conference provided local leaders and town officials with a comprehensive update on relevant federal and state legislation, court cases, regulatory matters and administrative decisions as well as offered a unique opportunity to gather information, share perspectives and raise important concerns and questions affecting Massachusetts' 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. This Office works with other bureaus in the office to develop and file legislative proposals, and monitors legislation and budget items relevant to the Office of the Attorney General.

Among the legislative priorities that Attorney General Reilly identified for the Intergovernmental Affairs Office are bills to update the Commonwealth's laws to keep pace with technological changes. High technology provides law enforcement with important new tools for fighting crime, but it also presents new challenges. Attorney General Reilly, through the Intergovernmental Affairs Office, has proposed four separate bills aimed at bringing our laws in line with the high technology

and provide law enforcement officials the tools they need to protect our children from high tech crime.

Additionally, the Intergovernmental Affairs Office acts as the contact for members of the legislature and staff who have questions or need assistance from the Attorney General's Office on behalf of their constituents. In Fiscal Year 01, the Office handled more than 100 written inquiries from members of the state legislature and congressional delegation pertaining to a wide range of matters handled by the Office. Moreover, the Intergovernmental Affairs Office handles dozens of telephone inquiries every week from legislative aides and others.

### COMMUNITY LIAISON

The Community Liaison is responsible for constituent services. The position was created as a resource for written requests, telephone requests, or walk-ins from the community to obtain information. In Fiscal Year 2001, approximately 1,100 telephone requests were fielded and resolved.

The External Affairs Office included the following staff members: Jason Queenin, Director; Laura Marlin; Susan Beer; Nathaneal Wright; Brigid Crowley; Peter Russell; and Daniel Szostkiewicz.

## **INFORMATION TECHNOLOGY DIVISION**

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The Attorney General's Office continues to place a high level of importance on the quality of its technology resources. Additionally, the Agency recognizes the need to maintain current systems and applications. Specific areas of concentration by the Information Technology Division during Fiscal Year 2001 included Internet firewall protection and anti-virus protection for both servers and desktops. Operating systems and application upgrades were also completed, resulting in increased system interoperability and file system compatibility.

There is a demonstrated need to exchange information electronically with other state agencies and the general public. There is also a need to satisfy court-mandated requirements for word processing. Understanding that files and documents produced by the Attorney General's Office need to be as flexible and compatible as possible, the Agency took steps to upgrade its software systems for each of its personal computers.

Electronic messaging along with the ability to transmit documents electronically is now considered a primary method of communication. With full Internet access and e-mail now available to every Agency employee, use of the Attorney General's e-mail system had increased dramatically during the previous year, taxing the servers responsible for the application. To meet the increased demand for service, the Information Technology Division needed to acquire updated, high capacity servers and made this the first equipment priority in Fiscal Year 2001.

Desktop upgrades proceeded with the procurement and installation of more than 100 high-performance personal computers. At the end of Fiscal Year 2001, approximately 90% of the Agency's personal computers had been upgraded since the beginning of this administration. Further improvements in printing quality and speed were made by replacing 10 outdated pieces of equipment. Additional functionality was obtained with the acquisition of several color laser printers.

Mobile computing capabilities continued to play an essential role within the office as well as in the courtroom. Notebook computers with docking stations have replaced desktop computers in the Attorney General's High Technology & Computer Crimes Division, providing these staff members with even more flexibility. Additional portable computing equipment has been purchased for use at Agency-sponsored conferences, seminars and training sessions. The use of multimedia and presentation technology has grown rapidly along with the use of digital photography. Further enhancements were added with the purchase of photo-quality printers.

During Fiscal Year 2001, the Information Technology Division continued to work with members of the High Technology and Computer Crimes Division to acquire additional computer forensics equipment and resources. The Division also worked with the Consumer Complaint and Information Section to select, install and implement the needed equipment and application software for a new complaint tracking system using state of the art equipment and based on open, non-proprietary standards. In addition, Information Technology worked with the Public Charities Division to complete the first phase of a new document imaging system. The new system also utilizes state of the art technology and is based on open, non-proprietary standards.

The Information Technology Division included the following staff members: Paula Durant, Director; Ronald Rossetti; Claudette Clement; Bruce Crosby; Jean Exantus; Christine Heneghan; Robert Keane; Jack Ngan; Amy Oppici; Visakha Samaraweera; Thomas Smith; David Spector; Charles Sullivan; and Lisa Sullivan.

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## **BUDGET OFFICE**

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In FY01, the Budget Office instituted a new system of Monthly Financial Reports that allowed senior staff to access up-to-date information on spending levels. These reports were used to maintain fiscal discipline and to assist senior staff in establishing spending priorities. The value of continually updated information was increasingly important in difficult economic times when managers are called upon to do more with less.

The Office began the process of assuming financial responsibility for the Victim Compensation program. Since the inception of the program, the State Treasury processed all payment vouchers associated with the Victim Compensation program and was responsible for the Financial Status reports while the Office of the Attorney General maintained programmatic control. Because this Office recognized the difficulty in splitting these responsibilities, we worked with the Treasurer's Office and the Fiscal Affairs' Division and in Fiscal Year 01, the state appropriation was transferred to OAG control. This appropriation is in the amount of \$2.2 million.

The Budget Office included the following staff members: Frank Velluto, Kristine Hill, Mary Jane Grace, Gail Sarno, James Creedon, and Penny Michalski.

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## **OPERATIONS DIVISION**

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The Operations Division of the Attorney General's Office main function is to provide stability and support to all parts of the office. In completing Fiscal Year 00's plan to open regional offices as part of the Attorney General's desire to make this Office more accessible to the people of the Commonwealth, one new office was opened in Fiscal Year '01. Full service offices serving the public were opened in Central Massachusetts (Worcester, Fiscal Year '00) and Southeastern Massachusetts (New Bedford, Fiscal Year '01). These two offices, along with the Western MA office in Springfield, have allowed the public to access services faster and more conveniently.

In Fiscal Year '00, the Operations Division improved our data storage and retrieval systems by using Iron Mountain Records Management Incorporated. In order to uniformly archive the data, the Operations Division determined that current record retention policy needed adjustment. Operations, with the assistance of the Office of Legal Counsel, implemented an office-wide training focusing on retaining and archiving records. This training program was launched and completed in Fiscal Year '01 and has since served as a statewide model for other state agencies.

The Operations Division included the following staff members: Eugene Ring, Christy Adams; Michael Ball; Kevin Nolan; William Coughlin; Nestor Morales, Jr.; Stephen Cress; Timothy LeBlanc; Pier Minghetti; David Scafati; Andrew Smith; Dennis Smith; Michael Scenna; and Harold Tafler.

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, Librarian; John Diperri; Lori Dyson; Paula Hartman; Raymond Manigault; Catherine Douglas; Susan Lindsey and Denise McCartin.

## **COMMUNICATIONS OFFICE**

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The Communications Office coordinates all media related matters for the Attorney General's Office. The chief responsibility of the Communications Office is to serve as a centralized public voice for the agency. To that end, the Communications Officers 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](http://www.ago.state.ma.us)) and other public appearances and events.

Addressing that need to improve communication both within the agency and establish protocols for communicating with the public, the Communications Office has implemented policies designed for working with the media, creating publications and brochures and placing information on the Attorney General's Web site.

The Communication Office included the following staff members: Stephen Bilafer, Director; Ann Donlan; Carolyn Flynn; Paul Fleming; Marsha Cohen; Beth Stone; and Elissa Torto.

### WEB SITE

Launched in December of 1999, Attorney General Reilly's Office Web site continued to expand during Fiscal Year 2001. The size of the Web site nearly doubled during Fiscal Year 2001, in terms of both the sheer amount of material available and the increased attention of the public. Between July, 2000 and June, 2001, the number of visitors logging on to the site steadily increased from approximately 30,000 visitors per month to approximately 60,000 visitors per month. That increase can be mainly attributed to the improved ease of accessing information; during Fiscal Year 2001,

many new sections were added to the site, in various areas of consumer protection, workplace rights, charities, environmental, and government issues. In addition, during this Fiscal Year, nearly every current publication of the Attorney General's Office was converted to both PDF and HTML formats and posted on the Web site. This allowed the office to cut down on printing and mailing costs, as many constituents were able to access publications from their home computers. All press releases that are disseminated from this office are accessible on the site, as well as customized directions to all office locations and up-to-date information on employment opportunities and policies.

During Fiscal Year 2001, the Office began working to redesign portions of the site to allow for better visibility, ease of navigation, and accessibility. The anticipated launch date of the revised Web site is the Winter/Spring of 2002.

# BUSINESS AND LABOR PROTECTION BUREAU

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



## **BUSINESS AND LABOR PROTECTION BUREAU**

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The Business and Labor Protection Bureau, a bureau comprised of 100+ lawyers, investigators, and administrative staff, maintained responsibility for policing and prosecuting a variety of business crimes and related civil wrongs. The Bureau consisted of the Fair Labor and Business Practices Division, the Insurance and Unemployment Fraud Division, and the Medicaid Fraud Control Unit. The Bureau's mission this year was 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 mutually participate.

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

In Fiscal Year 2001, the Bureau staff was comprised of a David Nalven, Bureau Chief, Connie McGrane, Deputy Bureau Chief, David Marks, Chief Prosecutor, and Jennifer Ryan, Immigrant Outreach Coordinator.

### **FAIR LABOR & BUSINESS PRACTICES DIVISION**

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#### INTRODUCTION

The Fair Labor and Business Practices Division (FLBP) was responsible for enforcing the Massachusetts wage and hour laws, including the prevailing wage, minimum wage, nonpayment of wages and overtime laws. The Division maintained a telephone hotline, which served as a workplace-law information center for both workers and businesses. FLBP received and investigated numerous complaints through this hotline.

FLBP has also been also charged with enforcing the child labor and workplace safety laws. In addition, FLBP maintained responsibility for those laws concerning adherence to public contracting requirements. To that end, FLBP staffed a public contracts protest unit that investigated allegations of improper public works bidding practices, held hearings, and issued written decisions concerning public construction bid disputes. Another responsibility of this division was that of reviewing and ruling on applications by businesses for waivers from compliance with certain workplace laws.

During Fiscal Year '01, FLBP staff included Dan Field, Chief; John Baker; Jeb Banks; Phil Beattie; Randy Berg; Kyle Beverly; David Bieksha; Patricia Bopp; Jenifer Bosco; Kim Brooks; Cecile Byrne; Ronald Cabezas; Nick Carboni; Jay Clark; Mary Connolly; Susan Decker; Gary Dionisi; Joseph Drzyzga; Mary Dullinger; Patrick Faherty; Robert Galvani; Shirley Garutti; John Gatti; Lory Goldenberg-Tarrow; Paul Gordon; Michael Guarin; Richard Hartigan; Marsha Hunter; William Hurley; Jocelyn Jones; Barbara Kane; Patricia Kelleher; Noreen Kelly; Robert Lamarre; Carolyn Long; Val Mabry; Brian Macera; Jeffrey Mahoney; Anita Maietta; Toni Maloney; Mildred Markham; Katherine Mulligan; Mario Paiva; Joan Parker; Iona Powell-Headley; Anne Powers; Tara Quinlan; Greg Reutlinger; Mario Rosado; Elizabeth Rufo; Jennifer Ryan; Palmer Santucci; Steven Spencer; Bruce Trager; Steve Troiano; Theresa Ukleja; Theresa Vadala; Richard Yorra; and Karla Zarbo.

## **HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES**

### **OVERALL INVESTIGATORY ACTIVITY**

FLBP received and investigated in excess of 4,500 formal complaints this fiscal year. In many instances, FLBP's investigators resolved these complaints informally, often with payment of full restitution or provision of another appropriate remedy to the aggrieved employee. 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. During Fiscal Year 2001, FLBP recovered in excess of \$3.3 million in wages that were owed, but unpaid, to Massachusetts workers, as well as administrative fines, through these efforts. Some of the increase in restitution this year must be credited to institutional changes that firmly took root in the past year, such as improved case management, better allocation of resources and closer staff oversight.

### **PAYMENT OF WAGES ENFORCEMENT**

In November 1998, significant new amendments to the wage and hour laws were enacted, enhancing criminal penalties for violations of certain wage and hour laws, and giving the Attorney General the authority to issue civil citations for such violations. Pursuant to this new legislation, FLBP was also authorized to issue 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, 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. During Fiscal Year 2001, FLBP implemented enforcement using this new legislation, and issued more than 189 civil citations for violations of the payment of wages and prevailing wage statutes, a 40% increase over Fiscal Year '00.

### PREVAILING WAGE ENFORCEMENT

FLBP 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. During Fiscal Year 2001, FLBP investigators conducted over one hundred 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.

### PUBLIC CONTRACT OVERSIGHT

The Attorney General's Office continued to provide a professional and accessible forum for the resolution of public construction bidding disputes. 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 included providing informal advice by telephone to the Commonwealth's awarding authorities and contractors who bid on public works projects. During Fiscal Year 2001, 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 has also served as a significant prevention tool, often delivering the information necessary to prevent (or quickly remedy) a violation of the public bidding laws.

Additionally, the Public Contracts Unit adjudicated public-works bidding disputes, and, when appropriate, investigated allegations of impropriety in connection with public-works project bidding. In the Fiscal Year '01, the Unit wrote decisions in 39 cases.

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 compiled and made available in the Francis X. Bellotti Law Library (of the Attorney General's Office) the written public contracts bid protest decisions issued by FLBP. In addition,

FLBP's staff participated in educational programs that provided the 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.

### CHILD LABOR

The Massachusetts child labor laws were established to protect workers under the age of 18. These workplace laws acknowledge 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, consistent with the child labor laws, and serves the best interests of the minor.

During Fiscal Year '01, 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.

### WORKPLACE SAFETY

FLBP has been charged with investigating reports of fatalities and serious injuries that occur in the workplace. FLBP inspectors have worked in conjunction with the United States Occupational Safety and Health Administration (OSHA), the Massachusetts Department of Public Health's Fatality Assessment and Control Evaluation Program, the State Police Crime Prevention and Control Unit, local police and fire departments, and other federal, state and local agencies.

In addition, FLBP has retained statutory authority to enforce safety standards in municipal and county workplaces. As such, FLBP investigated reports of serious injuries and safety risks that occurred in the public sector. During Fiscal Year '01, inspectors investigated workplace safety issues at a variety of construction sites, service and manufacturing facilities, restaurants, and governmental offices.

## WAIVERS & INDUSTRIAL HOMEWORK

FLBP is charged by statute with the authority to waive certain requirements of the labor laws under certain conditions. During Fiscal Year 01, FLBP processed hundreds of 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.

## SIGNIFICANT CASE SUMMARIES

The following provides an overview of cases undertaken by FLBP during Fiscal Year 2001.

- **Commonwealth v. Zachary Pinnick & ZP Construction** (Norfolk Superior Court) Pinnick, a construction company proprietor, was charged in connection with several types of violations related to various public works projects. Pinnick pleaded guilty to 11 counts of failure to pay contributions to the Division of Employment and Training; 10 counts of nonpayment of wages; four counts for failure to pay overtime; and three counts of submitting false certified payroll records on public construction projects. Pinnick received the maximum sentence for failure to pay unemployment contributions of one year in the House of Corrections, suspended for five years, and was ordered to pay the Commonwealth \$4,865. He was also sentenced to two months in the House of Corrections, suspended for five years, for nonpayment of wage and overtime indictments, and ordered to repay his former employees \$46,890. Pinnick was also debarred for three years from bidding on or working on any future public construction projects, and forfeited his Minority and Women's Business certification for three years. Additionally, Pinnick was ordered to perform 250 hours of community service each year for the next five years.
- **Commonwealth v. Dalton & Sons** (Dedham District Court) Two defendants violated child labor, prevailing wage and workers compensation laws. A minor was found to be working on a 12-story scaffold, which is significantly higher than allowed. In addition, the minor was not paid the prevailing wage for his work, which was being performed on a municipal building. The company also failed to maintain workers' compensation insurance. The defendants pleaded

guilty, and were ordered to pay \$200 in fines, \$8,500 in restitution, and were debarred from public construction for six months.

- **Waste Management - Phases I & II** This national waste hauling company failed to pay hundreds of employees the proper prevailing wage rate for trash pickup in dozens of cities and towns throughout the Commonwealth. An extensive settlement agreement was negotiated and executed. As part of the first phase of the settlement, the company paid \$809,000 in restitution to more than 620 workers.
- **Schlumberger Industries** This company failed to pay the prevailing wage rate for installation of new water meters, incorrectly classifying its plumbers as laborers. The company agreed to pay nearly \$50,000 in restitution, and was fined \$7,500.
- **Hi-Way Safety Systems, Inc.** Hi-Way had a contract with MA Highway Dept., and reported paying its employees \$26/hr, when in actuality, they were paid between \$9 and \$10/hour. The firm paid \$50,000 in restitution, and made a \$20,000 charitable contribution to the Pembroke Youth Association and the Hanover Boys and Girls Club.
- **Commonwealth v. Bruce Phillips and Electrical Energy Services, Inc.** (Middlesex Superior Court) Six indictments, totaling 84 counts, were handed down against this firm for prevailing wage violations and embezzlement. The embezzlement involved approximately \$100,000, earmarked for employees' pensions, from 22 employees who performed electrical work on public works projects. Phillips pleaded guilty, and received three months in the House of Correction, restitution plus interest and a penalty, and was debarred for five years.
- **Kay Wong** (Westborough District Court) This owner of a now-defunct restaurant paid two former workers with paychecks that bounced. Ms. Wong paid full restitution and the judge continued the case without a finding.
- **Regalia Bridal** A bridal wear manufacturer was charged with nonpayment of overtime wages to 27 immigrant employees. The employer attempted to conceal the nonpayment of wages by requiring that these employees, who were working in excess of 40 hours/week sewing bridal gowns, sign in under multiple names. FLBP recovered almost \$5,000 in wages and penalties, providing these employees not only what was due to them, but also the pay that could make the difference in being able to pay for necessities, such as food or rent.

- **Tailwind Technologies** (Woburn District Court) Two owners of a software company admitted to failing to pay an immigrant software engineer approximately \$20,000. Restitution was ordered, and the case continued without finding.
- **King Painting** Multiple complaints were issued by multiple district courts to this chronic violator of prevailing wage laws. A global plea agreement resulted in a sentence of six months probation, debarment from public projects, restitution and a \$10,000 fine.
- **Davis Design Development Corp** A carpentry contractor failed to pay overtime to 39 employees, claiming a seasonal employer exemption. An investigation revealed that work was being performed year round. FLBP recovered over \$20,000 in restitution and penalties.

## OUTREACH

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, was 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 '01, the FLBP hotline received over 68,000 inquiries.

The Immigrant Outreach Project was launched in the past fiscal year, and with the hiring of the Division's first Immigrant Outreach Coordinator, the program has gained much momentum. The Attorney General has long insisted upon fair treatment of immigrants in the workplace, and 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. In the past year, FLBP has made over 100 presentations to immigrant advocacy groups and their constituents. The project also began to receive a higher number of specific complaints of workplace abuse. The program has also begun to make presentations to employer groups in an effort to educate that group with respect to their rights and responsibilities concerning immigrant employees.

Outreach was conducted in other areas, as well. During Fiscal Year 01, 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. During this period,

FLBP also launched a special outreach effort to immigrant workers and their families who, because of language barriers and lack of familiarity with the laws of the Commonwealth, may have been especially vulnerable to mistreatment in the workplace.

FLBP has also sought to educate relevant communities about wage and hour issues through the production and distribution of advisories and other publications. During Fiscal Year '01, with new minimum wage legislation having been enacted, FLBP designed and distributed a new minimum wage and workplace rights poster to 10,000 Massachusetts employers. 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 AGO'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.

### DIVISION STATISTICAL SUMMARY

Restitution Recovered	\$3,362,261
Hotline Calls	68,550
Complaints Filed	4,558
Cases Closed	5,759
Civil Citations Issued	189
Public Contract Dispute Resolutions	41



## **INSURANCE & UNEMPLOYMENT FRAUD DIVISION**

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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.

IUF'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. IUF 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.

IUF has 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, IUF 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. IUF also received complaints and referrals from concerned citizens, private attorneys, and court personnel. The wide range of referrals helped exemplify that IUF's efforts in fighting insurance fraud are appreciated throughout the Commonwealth.

IUF included the following staff members during Fiscal Year '01: Eliot Green, Chief; Dave Andrews; Marty Bowers; Jack Crimmins; John Curseaden; Marty Flood; Rafael Garcia; Hannah Greenwald; Amy Hamel; John Hanrahan; Madeline Leone; Gloria Luk; Catherine McClure; Tim McDonough; Amy Nechtum; Shauna Neuhauser; John O'Leary; Erin Olson; James Paikos; Lena Robinson; Amy Sharff; John Talbot; Amy Uzdavinis; and Bill Weinreb.

### **HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES**

During Fiscal Year '01, IUF reviewed over 175 files referred by the Insurance Fraud Bureau over a period of about two years. The files were either retained for further investigation, or returned to IFB with

an explanation for declining to pursue the referral. In reviewing this large number of files, IUFD eliminated a large backlog of referrals, which has allowed the division to more efficiently focus its efforts. One means of doing this involved working with the IFB to create a new referral form; IUFD then instituted a policy of responding to referrals within 30 days of receipt.

IUFD also continued to emphasize case selection, coordination at the earliest stages with investigatory agencies, such as IFB, and case preparation prior to charging. Although this regimen required substantial investment of resources, IUFD managed to maintain or improve its charging and disposition rates. As a result, Fiscal Year 2001 saw an improvement in the quantity of cases reviewed and disposed of while maintaining quality.

During this past Fiscal Year, IUFD staff met with representatives of the Division of Insurance on a regular basis and established a referral protocol and effective working relationship. As an outcome of these meetings, IUFD developed a program, funded by the Division of Insurance, to coordinate motor vehicle insurance fraud prosecutions with various District Attorneys' offices. In another inter-agency effort, IUFD cooperated with the Social Security Administration to establish a disability fraud investigations program. IUFD also continued to maintain a high level of investigatory coordination with DET.

IUFD created and implemented a statistical tracking procedure during Fiscal Year '01. This procedure has already begun to yield results, providing data on how various courts respond to the cases brought before them. Using this procedure, IUFD also developed a database of precedents, which the division began utilizing in making charging decisions and disposition recommendations. IUFD also fully updated and verified the cases entered into the Case Management System, which has given the division more thorough control over its referral and case inventory.

IUFD's initiatives and hard work resulted in substantial savings to the insurance industry and its customers, and to the Commonwealth's unemployment security fund, not only in the funds that were repaid to the insurers through restitution orders, but also through the reduction in fraud that its vigorous enforcement achieved.

## SIGNIFICANT CASE SUMMARIES

The following are representative cases that were concluded in Fiscal Year 2001:

### THE ELLIS & ELLIS CASES

- **Commonwealth v. James N. Ellis, Jr. & Nicholas Ellis** (Worcester Superior Court)

The most prominent matters in IUFD during Fiscal Year 2001 were the trials of James N. Ellis, Jr., and his brother, Nicholas Ellis, partners in the Worcester family law firm of Ellis & Ellis. The Ellis cases as a whole involved 246 indictments brought against numerous Ellis family members, their clients, consultants, affiliates and other joint ventures. The case tried against James N. Ellis, Jr., alleged that James N. Ellis, Jr. had knowingly submitted a fraudulent claim for worker's compensation insurance on behalf of a client. The central proof of the fraud was that Ellis had previously submitted a claim for the identical injury for the same client, but using the client's alias. The defense argued that the claim was for an aggravation of the injury upon which the first claim was based, and was therefore appropriate for submission; and that because the client's true identity was not material to the claim, the submission under the alias identity did not constitute a fraud. The first trial resulted in a hung jury. Prior to the retrial, both Ellis brothers entered guilty pleas.

Subsequently, James Ellis, Jr., pleaded guilty to 23 felony and misdemeanor counts, and was sentenced to three to five years in state prison, with one year to serve. He was also ordered to pay \$250,000 in restitution and penalties. Nicholas Ellis pleaded guilty on two misdemeanor counts, and was sentenced to 2½ years in the Worcester House of Corrections, with six months to serve and five years probation. Both defendants were required to surrender their bar licenses for at least five years. As a term of their probation, their father, James N. Ellis, Sr., also agreed to retire permanently from the practice of law and close the family law firm.

### OPERATION KODIAK

These cases, referred by the Governor's Auto Theft Task Force, involved an undercover operation in which 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 resulted in

\$58,000 fraudulently paid claims from seven carriers. During Fiscal Year '01, four cases were resolved via guilty pleas:

- **Commonwealth v. Thomas Burton** (Norfolk Superior Court) Burton reported the theft of his 1984 Chevy Blazer from the South Shore Plaza to the Braintree Police on February 15, 1996. In fact, the vehicle had been given away for free, at Burton's request, by Daniel Brunke to undercover Trooper Joe Grant two days earlier. Burton filed a claim with the Holyoke Mutual Insurance Company, which paid \$1,757 for the vehicle. Burton pled guilty to all indictments and was sentenced to six months in the House of Correction, with probation for two years after his release.
- **Commonwealth v. Maria Taverna** (Norfolk Superior Court) Taverna reported the theft of her 1990 Dodge Caravan from a shopping center to the Weymouth Police on March 16, 1998. In fact, the vehicle had been given away for free, at Taverna's request, by Frederick Knight to undercover Trooper Joe Grant four days earlier. Taverna filed a claim with the Hanover Insurance Company, which paid her \$3,175 for the vehicle and \$225 for rental car reimbursement. Taverna pled guilty to four indictments and was sentenced to six months in the House of Correction, suspended for one year, with a \$500 fine. She was also ordered to pay \$3,400 in restitution.
- **Commonwealth v. Emily Wholley** (Norfolk Superior Court) Emily Wholley reported the theft of her 1990 Jeep Cherokee from the South Shore Plaza to the Braintree Police on January 24, 1998. In fact, the vehicle had been given away for free, at Wholley's request, by Frederick Knight to undercover Trooper Joe Grant seven days earlier. Wholley filed a claim with the Commercial Union Insurance Company, which paid her \$6,902 for the vehicle and \$900 for rental car reimbursement. The defendant pled guilty and was sentenced to six months in the House of Correction, suspended for one year, with a \$1,500 fine and a restitution order of \$7,800.
- **Commonwealth v. Frederick Knight** (Norfolk Superior Court) Knight was charged in connection with his daughter Claire's fraudulent motor vehicle theft claim and for his facilitating the disposal of three other vehicles. On June 14, 1996, Claire Knight reported the theft of her 1990 Ford Probe from the Hanover Mall to the Hanover Police. In fact, the vehicle had been given away for free, at Claire's request, by Frederick Knight, her father, to undercover Trooper Joe Grant three days earlier. Claire and Frederick filed a claim with the Trust Insurance Company which paid a total of \$3,791 to Frederick and a lienholder for the vehicle.

On three additional occasions in 1997 and 1998, Fred Knight provided vehicles for free to undercover State Trooper Joe Grant for Grant to conceal or dispose so that the vehicle owner could later report the vehicle stolen to local police and the insurer and reap the insurance benefits. The vehicle owners involved were Michael and Suzanne Gabriel, Emily Wholley, and Maria Taverna.

Knight was also charged with one similar crime in Plymouth County. The defendant pled guilty to all charges in both counties and received a sentence of six months home confinement, three years probation and a \$500 fine.

#### FRAUD BY INSURANCE INSIDERS

- **Commonwealth v. David D. Curtis, Jr.** (Norfolk Superior Court) Curtis was a claims adjuster for the CNA Insurance Company who, along with another man, devised a scheme whereby Curtis' associate set up a "dummy" private investigative company. In his role as a claims adjuster, Curtis would then hire the company for work which did not need to be done, and which was never performed. CNA would then unknowingly pay the "dummy" private investigative company, which would in turn pay Curtis a percentage of what they received from CNA. Curtis pled guilty to corporate bribery, making false entries in corporate books, larceny over \$250, and filing a false tax return, all felonies. He was sentenced to two and one half years in the House of Correction, with 30 days to serve, the balance suspended for four years of probation. He was also ordered to pay \$7,500 in restitution to CNA, \$2,500 in costs of prosecution to the Office of the Attorney General, and \$250 in costs to pay for the mailing of a signed letter to claims adjusters warning of the harsh sanctions for committing this offense.

- **Commonwealth v. Thomas Quesnel** (Northampton District Court) Quesnel is a former Metropolitan Life Insurance Company agent who misappropriated \$7,558.52 in cash surrender checks, which were to be used to purchase new life insurance policies for an elderly South Hadley couple. Quesnel convinced the couple to obtain cash surrender checks for small, old life insurance policies. The couple endorsed the checks and entrusted them to Quesnel to apply to new, larger policies. Quesnel instead cashed the checks and converted the money to his own use. Quesnel pled guilty to six felonies (three counts of larceny over \$250, and single counts of forgery, uttering, and obtaining a signature by false pretenses) and three misdemeanor charges of fraud by an insurance agent. Quesnel was sentenced to two years in the House of Correction, suspended for three years with probation, an order of \$7,558.52 in restitution to MetLife, a

\$2,000 fine and a probationary condition that he not engage in any professional activities relating to or involved with the insurance industry.

- **Commonwealth v. David Noone** (Malden District Court) From 1994 to 1996, the defendant was an insurance agent who carried out a scheme in which he forged the signature of a policy holder on a auto insurance financing application as well as on a Metropolitan Insurance Company policy application. Noone then directed the policy holder to write insurance premium checks payable to him, rather than the insurer. He then converted these monies for his own use. Noone pled guilty to larceny over \$250, and was sentenced to one year in the House of Correction, suspended for two years. He was also ordered to pay a fine of \$1,000.

#### FRAUD BY CLAIMANTS

- **Commonwealth v. Tova Duby Garcia** (Natick District Court) Tova Duby Garcia presented two fraudulent insurance claims against two separate insurance companies for the same insured property, a diamond wedding/engagement ring valued at \$14,956. The defendant pled guilty and received one year in the House of Correction, suspended for one year. The defendant was ordered to pay \$15,461 in restitution with a fine of \$2,500.
- **Commonwealth v. Susan Teehan** (Dedham District Court) An investigation revealed that the defendant submitted five phony claims for workers' compensation, bodily injury and unemployment compensation. She was represented by the same attorney in two of the claims, and treated by one chiropractor for three of the claims, another chiropractor for two of the claims. Both chiropractors denied prior treatment. Additionally, the defendant held six different jobs while collecting workers' compensation. She pled guilty and agreed to cooperate in cases against her lawyer and chiropractors in exchange for two years in the House of Corrections, suspended for five years, and was ordered to pay \$31,740 in restitution. As a condition of probation, the defendant was ordered to wear an electronic bracelet and abide by a curfew.
- **Commonwealth v. Mark A. Stoller** (Clinton District Court) Stoller was standing at a pay phone when his car was hit by another driver. Stoller told the police, hospital personnel, his insurance company and the other driver's insurance company that he was in the car at the time of the accident and that as a result of the accident he was injured. Following a jury trial, the defendant was found guilty of insurance fraud and larceny over \$250 and sentenced to one year in the house of correction, suspended for three years, with \$8,500 in restitution and an additional three years probation.

- **Commonwealth v. Ann Syrko** (Pittsfield District Court) Syrko made statements alleging to be a witness to slip and fall accident that never occurred in order that a friend of hers could collect on a fraudulent insurance claim. Following a jury trial, the defendant was found guilty of attempted larceny and sentenced to one year of probation and given 120 hours of community service.
- **Commonwealth v. Fruto Exavier** (Taunton District Court) Exavier pled guilty to automobile insurance fraud and received to two years in the House of Correction, suspended for two and one half years during which the defendant will be on supervised probation, with 100 hours of community service and restitution in the amount of \$4,850. The defendant also pled guilty to attempted larceny and was sentenced to two years probation, to run consecutively.
- **Commonwealth v. Franck Saintil** (Middlesex Superior Court) Saintil was involved in a series of exaggerated and staged accidents and filed a number of false insurance claims, which either exaggerated or falsified his medical condition and treatment. The defendant was charged with attempted larceny and motor vehicle insurance fraud. The defendant pled guilty and was sentenced to 63 days in the House of Correction, committed, and one year of probation.

#### WORKING WHILE COLLECTING CASES

- **Commonwealth v. Craig McInnis** (Malden District Court) McInnis was working for Controlair Systems while fraudulently collecting unemployment benefits of over \$5600 from DET. The defendant entered a guilty plea and received a sentence of 30 days in the House of Correction, suspended for two years. The defendant was also ordered to pay \$5,660 in restitution.
- **Commonwealth v. Robert Battey** (Cambridge District Court) Battey was collecting unemployment benefits while incarcerated. He collected a total of \$2,422 while in the Middlesex County Jail. Battey pled guilty and was sentenced to eighteen months in the House of Correction, suspended for two years, with \$1,211 in restitution.

#### OUTREACH

IUFD's attorneys, investigators and support staff maintained a high level of numerous outreach efforts in Fiscal Year '01, in addition to the regular meetings with the Insurance Fraud Bureau, Division of

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Employment and Training and the Division of Insurance. Two of IUFD's attorneys gave a presentation on Teen Violence and Dating at the Paul McLaughlin Center; several staff members were also involved with the McLaughlin Center's Youth Empowerment Skills Project. IUFD staff members also gave presentations on internet safety. The Division Chief gave a lecture at an underwriters conference on insurance fraud. One of IUFD's attorneys was selected to participate in the Citizen School Program, a middle school mock-trial program. One of IUFD's AAGs has been serving as an editor of the *Boston Bar Journal*, while another staff member worked with the Boston Bar Association's Children's Outreach Initiative "Great Cases in the Classroom."

### DIVISION STATISTICAL SUMMARY

Referred Complaints	99
Investigations Opened	86
Investigations Closed w/o Prosecution	44
Cases Charged	53
Cases Disposed of	53
Cases Disposed, w/Committed Prison Time	9
Restitution & Fines Recovered	\$383,000

### MEDICAID FRAUD CONTROL UNIT

The Medicaid Fraud Control Unit (MFCU) was established to protect the Massachusetts Medicaid program, which administered the provision of approximately \$5 billion of health care services to 700,000 indigent and disabled recipients in Massachusetts last year. 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.

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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 produced.

Consistent with its mission to protect the Medicaid program on a statewide basis, MFCU used a team approach to both deter and prosecute fraud on the Commonwealth's taxpayers. Through the extensive use of a Special Grand Jury sitting in Boston, as well as its statutory and regulatory discovery authority, MFCU has obtained convictions and recovered funds for the Medicaid program well in excess of its budget.

In Fiscal Year '01, MFCU consisted of approximately 30 full-time members, including a division chief, a chief of investigations, a staff of assistant attorneys general, financial investigators and auditors, pharmacists, nurses, a dental investigator, and administrative staff. MFCU included the following staff members during Fiscal Year '01: Nick Messuri, Chief; Ann Ackil; Kris Barrett; Al Brown; James Caruso; Eileen Casey; Peter Clark; Tanya Clement; John Curley; Steve Devlin; Joe Driscoll; Elaine Duffy; Catherine Fielding; Elizabeth Foley; Marianne Geula; Caryn Gordon; Andree Lebel; Lai Ho Teresa Liu; Steve McCarthy; Anthony Megathlin; Mark Muldoon; Janice Paterna; Bob Patten; Shirley Rokosz; Susanne Snow; Christine Soloperto; and Bernie Vivolo.

### **HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES**

During Fiscal Year 2001, 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 over 100 investigations, obtained 29 indictments, secured convictions against corporate and individual defendants and recovered in excess of \$2.6 million.

In an effort to ensure that some of the most vulnerable patients were not abused, MFCU devoted significant resources to investigating patient abuse and neglect complaints in the Commonwealth's 550+ long-term care facilities. As part of this endeavor, MFCU staff actively participated in the State Working Group on Nursing Home Patient Abuse. This group, comprised of various state and federal agencies, was established to coordinate interagency efforts regarding nursing home abuse, neglect and bankruptcy.

In addition, MFCU investigated physicians and psychiatrists that prescribed controlled substances for non-medical reasons, or not supported by medical diagnosis or necessity. MFCU investigated dentists and durable medical equipment companies for upcoding and unbundling their services. Pharmacy chains and pharmaceutical companies that overcharged the Medicaid program and inflated the costs of prescription drugs were another arena that MFCU delved into. And, in Fiscal Year 2001, MFCU also investigated the relationships between physicians, hospitals, and laboratories to detect illegal referrals, kickbacks and conflicts with patient care.

### SIGNIFICANT CASE SUMMARIES

The following provides an overview of cases undertaken by MFCU during Fiscal Year 2001.

- **Commonwealth v. Theresa Silbaugh & Bernard Singleton** (Hampden Superior Court) Springfield nursing home bookkeeper and her boyfriend were charged with embezzling funds from patients' personal spending accounts. Silbaugh, the bookkeeper, was sentenced to five years probation, 500 hours of community service, and ordered to pay \$10,000 restitution. She is also barred from working with the elderly or in any position that requires the handling of funds. Singleton, the boyfriend, received a six-month suspended sentence, two years probation, and was ordered to pay \$2,000 in restitution and \$685 in fines for his role in accepting and cashing the checks written by Silbaugh.
- **Commonwealth v. Mohammad Sadatrafi** (Suffolk Superior Court) The defendant, a dentist, billed over one hundred services relating to 41 patients that were never administered, and altered patient files to correspond to the fraudulent bills. The defendant pleaded guilty to Medicaid False Claims, and received a six-month committed sentence, and was ordered to pay \$135,000 restitution.
- **Commonwealth v. Azam Sadatrafi** (Suffolk Superior Court) The defendant, a pediatric dentist in practice with her brother, was charged with overbilling and upcoding, the practice of performing a procedure, and billing it as a different, more expensive procedure. Azam Sadatrafi pleaded guilty and was sentenced to six months in the House of Corrections. A concurrent civil complaint was filed, which resulted in a \$45,000 settlement.
- **Commonwealth v. Robert Picard** (Hampden Superior Court) Picard, a pharmacist, submitted 395 fabricated invoices for Medicaid reimbursement, illicitly obtaining \$8,800 in

Medicaid funds for prescriptions that were never actually submitted or filled. Picard used the names of 12 Medicaid recipients who were current or former customers of the pharmacy in perpetrating this scheme. He was sentenced to one year in the House of Corrections, with six months to be served in home confinement, plus restitution and a \$5,000 fine.

- **Commonwealth v. Center for Health and Human Services** (Federal District Court)

This non-profit provider of mental health counseling, substance abuse treatment, and other health services in Southeastern Massachusetts, pled guilty in connection to a scheme to charge both Medicaid and Medicare for the same services.

Working with the United States Attorney's Office, the Massachusetts Attorney General's Medicaid Fraud Control Unit reached an agreement that placed the New Bedford based company on four years probation and ordered its compliance with the terms of a civil settlement agreement and corporate integrity agreement. The company also agreed to pay a \$500,000 civil settlement to the United States and Massachusetts for the fraudulent claims submitted to the Medicare and Medicaid programs and to state contracts funding substance abuse and mental health counseling services.

- **Commonwealth v. Jody Lynn Gaumond** (Lowell District Court) A former bookkeeper at a Tewksbury nursing home admitted to stealing money from a 93-year-old resident's personal allowance account. Gaumond, as bookkeeper, was in complete control of the residents' Personal Needs Account, which contained the nursing home residents' personal allowance monies. The Attorney General's investigation revealed that sometime in 1997, she began manipulating various nursing home financial records. Gaumond pleaded guilty and was sentenced to one year in the House of Correction, suspended for two years, and was ordered to remain on supervised probation for the two-year period. She was also ordered to pay restitution and criminal fines.

#### CIVIL ENFORCEMENT ACTIONS

- **Commonwealth v. Franvale Nursing Home** A national health care corporation with headquarters in Peabody, agreed to settle allegations that its subsidiary neglected their elderly and disabled residents. The corporation also agreed to pay \$660,000 to settle allegations that it improperly billed the Medicaid program for skilled nursing services that it did not provide.

Beginning in October of 1996, nursing home experts, retained by the Medicaid Fraud Control Unit, found nursing staffing levels too low to meet the basic health or safety needs of the residents leading to conditions of neglect. The inadequate staffing led to high rates of medication errors, inadequate supervision to prevent accidents, failure to ensure patients received adequate fluids and nutrition, and lack of proper repositioning to prevent skin sores to hundreds of residents. As a result of these repeated failures to meet required standards of health, numerous patients suffered harm or were placed in situations that increased their risk of harm.

Medicaid was paying the nursing home an average of \$227,000 per month in skilled nursing services for approximately 80 Medicaid-covered patients. The Medicaid Fraud Control Unit conducted a two-year investigation of the nursing home and its corporate parent office and found that the nursing home was paid hundreds of thousands of dollars by the state's Medicaid program for long-term care services that it knew to be inadequate.

In early January 1997, a 90-year-old woman suffering from Alzheimer's disease fell down a stairway at the facility sustaining life threatening injuries. During an investigation of the incident by the Department of Public Health (DPH), it was discovered that she had fallen at least 16 times before, sustaining serious injuries on two occasions. Not only did the facility fail to prevent these repeated falls, but it also failed to report the incidents to the Department of Public Health as required by state law. Some other examples of the neglect which occurred at the facility during this period include: (1) A 96-year-old man with end-stage pulmonary disease received 15 times the ordered dose of morphine which put him at great risk for respiratory failure; (2) A 50-year-old woman with a neurological disorder suffered repeated injuries from frequent falls due to inadequate staffing levels and a failure to provide needed preventive measures and (3) An 81-year-old Alzheimer's patient suffered injuries as the result of falling, as well as severe dehydration due to inadequate nursing supervision and care planning to meet his needs.

The parent corporation, Pioneer Health Care, in a written agreement signed by its CEO, agreed to pay \$660,000 in restitution, damages and costs to the Commonwealth of Massachusetts, to submit a corporate compliance plan, and to submit to the Attorney General's Office for approval any plans to operate a health care facility in Massachusetts during the next five years.

- **Commonwealth v. Lincare Inc** A medical equipment company that provided durable medical products to the Commonwealth's Medicaid program agreed to pay \$127,000 to settle allegations of billing violations. The agreement resolved charges that the company billed the Medicaid program for services it could not substantiate.

Lincare allegedly billed the Medicaid program for patients covered by Medicare and, further, did not have the proper documentation for the goods and services that it purportedly provided to recipients. A MFCU investigation turned up unsigned and misleading delivery slips and discrepancies between the number of items billed and the number of items actually delivered. In some instances, the company was unable to produce the physician prescriptions that would have shown the products were medically necessary.

- **Commonwealth v. Pioneer Development Services, Inc.** A child services provider and the facility's executive director agreed to return more than \$105,000 to the Department of Public Health (DPH) for Medicaid-related services and to pay \$10,000 in additional penalties. The settlement resolved a lawsuit brought by MFCU, which alleged that the facility overcharged the state for early intervention services. The provider allegedly charged Medicaid for services provided to children in group settings despite having already received payment from the Division of Medical Assistance or other third party payors.

In addition to reimbursing the Department of Public Health and paying \$10,000 to the Attorney General's Office for investigative costs, the provider and its executive director agreed to appoint a corporate integrity officer whose duties will include the review of all contracts between the provider and any governmental entity for compliance with all regulations, codes and statutes.

- **Commonwealth v. Center for Living and Working, Inc.** This independent living center agreed to reimburse the state's Medicaid program more than \$300,000 in a civil settlement reached by the Medicaid Fraud Control Unit. The settlement concluded a nine-month investigation conducted by MFCU into the Medicaid-billing practices of the provider, a non-profit corporation with offices in two Worcester locations.

The investigation focused on the provider's acceptance of a \$322,254 pre-payment from the Medicaid program in 1990 for personal-care attendant services. The Medicaid program neglected to post the advance payment but the provider kept the money and never notified Medicaid of the mistake. The provider agreed to repay the Medicaid program the entire \$322,254.

The independent living center has been a provider of these services since the inception of a personal-care attendant program in 1983 that provided caregivers for chronically disabled Medicaid recipients, permitting them to remain in the community and out of institutional housing. Personal care attendants help disabled, often wheelchair-bound, Medicaid recipients bathe, prepare meals, run errands, shop and with light housekeeping. The types of services provided

by personal care attendants do not overlap with medical treatments, which are usually administered by visiting nurses and home health aides and are reimbursed separately by Medicaid.

## **OUTREACH**

The important work done by MFCU does not end with investigating and prosecuting cases of nursing home abuse and fiscal abuse of the Medicaid system. Outreach and education initiatives, including speaking engagements and trainings are an integral component of high level of efficiency exemplified by the MA MFCU.

During Fiscal Year '01, MFCU presented a three-session training program for over 40 new Department of Public Health/DHCQ nursing home patient abuse and neglect investigators. A fourth session has been planned. These training sessions focused on innovative prosecutorial strategies devised to ensure that those would harm among the most vulnerable of populations are held fully accountable for their actions. Funding for this important program was appropriated in response to MFCU's conviction of Stacey Arruda for nursing home patient abuse. Trainings such as these reflect MA MFCU's commitment to protect the vulnerable populations in nursing homes.

MFCU staff also made presentations to the MBA Health Law Section, discussing the Stark Regulation and self-referral violations and to MCLE, regarding health and hospital law. MFCU staff also addressed the MA Nursing Home Administrators, regarding the benefits of a complete internal investigation.

Two of the MA MFCU assistant attorneys general attended the National Association of Medicaid Fraud Control Unit's annual conference, where they had been invited to make a presentation. The presentation regarded the successful prosecution of the Franvale Nursing Home case, and addressed corporate neglect investigations and prosecutions. With representatives from MFCUs nationwide, this presentation made a great impact on ensuring that crimes against nursing home populations would be pursued using thorough, well-researched and innovative means.

## **DIVISION STATISTICAL SUMMARY**

MFCU investigates both health care fraud and patient abuse cases. In Fiscal Year '01, MFCU investigated over 550 instances of possible health care fraud, and over 380 allegations of patient abuse.

Of these numerous cases investigated, over 150 were formally opened as cases. The past Fiscal Year saw 15 civil indictments handed down and 14 criminal indictments, in addition to seven criminal dispositions. The restitution recovered by MFCU's investigators and attorneys on behalf of the Commonwealth's taxpayers was in excess of \$2.6 million.

# COMMUNITY-BASED JUSTICE BUREAU

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VICTIM COMPENSATION AND ASSISTANCE DIVISION  
SAFE NEIGHBORHOOD INITIATIVE DIVISION



## **COMMUNITY-BASED JUSTICE BUREAU**

The mission of the Community-Based Justice Bureau (CBJB) is to develop strategies, structure policies and offer recommendations that prevent crime and promote the safety, health and welfare of Massachusetts residents and those who live and work in the Commonwealth. The Bureau focuses particular attention on the needs of children, crime victims and victims of domestic violence, and reflects the community-based approach of Attorney General Reilly. The Bureau also administers the Victim Compensation and Assistance Division and the Safe Neighborhood Initiative Division.

The Bureau develops and coordinates initiatives through training and education, publications and guidelines, programs, community outreach and legislation. Working closely with law enforcement, state and local agencies and community programs, CBJB concentrates its efforts in the areas of child protection, including juvenile justice, education and school safety, family violence, community safety, victim rights, and criminal justice policy. CBJB advises Attorney General Tom Reilly on policy and legislative matters in these areas.

During Fiscal Year '01, the Bureau included the following staff members: Beth Merachnik, Chief; Barbara Berenson; Michelle Booth; Jean Fanning; Elisabeth Medvedow; Kristen Palma; Emily Paradise; Christina Ruccio, and Maria Vega.

### **HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES**

#### **CHILD PROTECTION**

- **Children's Protection Project** Attorney General Tom Reilly's Children's Protection Project reflects his commitment to addressing the needs of the children of the Commonwealth. The initiative, which draws on the expertise of staff in all bureaus and in all regional offices, is housed in the Community-Based Justice Bureau. This cross-bureau initiative addresses issues concerning children, including violence prevention strategies, health care, legislation, education, juvenile justice and gang violence, child labor, tobacco prevention efforts, gun safety, and other topics that impact children. In addition, the Children's Protection Project (CPP) serves as an avenue for bureaus

within the Attorney General's Office to focus their resources and consider the issues that affect children.

- During the first half of Fiscal Year 2001, Bureau staff led a legislative initiative undertaken by the Children's Protection Project. According to the plan and schedule devised by CBJB staff, CPP members met in legislative subcommittees to review current statutes and pending bills and to recommend new legislative initiatives to Attorney General Tom Reilly. The subcommittees drafted legislative bills for the Attorney General's legislative package filed on December 6, 2000. Among other topics, the initiatives addressed issues of child abuse, child enticement, child pornography, children's safety and terroristic threats.
- During the last half of the Fiscal Year, CPP was restructured, with the creation of a Steering Committee with representation from the entire office. New subcommittees were formed and included: Legislation, Communication and Outreach, Education and Training, Community Service and New Initiatives. An office-wide information session/open enrollment period was completed during the last quarter and approximately 60 OAG staff members joined a CPP subcommittee.
- **Toy Drive** In December 2000, CPP sponsored a highly successful toy drive which provided approximately 300 toys to children for holiday celebrations at the Colonel Daniel Marr Boys & Girls Club and the Bowdoin Street Health Center in Dorchester. Staff in the regional offices also collected toys for local distribution.
- **Youth Empowerment Skills (YES) Project** The YES Project, funded by a Byrne Memorial Grant awarded by the Executive Office of Public Safety (EOPS) and matching funds from the Office of the Attorney General, was established in October 2000 in response to a need for after-school and violence prevention programming identified by the Dorchester Safe Neighborhood Initiative. The project is hosted by, and was created in partnership with, the Daniel Marr Boys and Girls Club of Dorchester. The goal of the YES Project is to provide extensive training and educational enrichment opportunities to staff and youth at the Paul R. McLaughlin Youth Center. Through the YES Project, Attorney General Tom Reilly seeks not only to provide teens with supervised, after-school activity but also to offer at-risk youth a meaningful life skills education that helps them to avoid risky behavior which may lead to school failure, substance abuse, involvement in the criminal justice system, and victimization by crime.
- During this Fiscal Year, a YES Project Manager was hired to develop and implement the YES Project. Early on, the Project Manager organized an OAG staff meeting to present volunteer opportunities for the YES Project, and also conducted recruitment at the Suffolk County District

Attorney's Office. The Project Manager, along with other CBJB staff, planned an opening reception for the YES Project which included a tour of the facility. The Project Manager also undertook the development and implementation of the curriculum which included, among other things, a weekly tutoring program, a ten-week civil rights training curriculum, a week-long peer mediation training, and workshops on topics such as teen dating violence and Internet safety.

- Bureau staff completed and submitted the Year 2 YES Project grant application to EOPS and secured \$60,000 in funding.
- Artwork created by the youth at the Paul McLaughlin Youth Center was used in a new victim compensation poster. The posters were displayed in the lobby of the McCormack State Office building at One Ashburton Place in recognition of Victim Rights Week, April 22-28, 2001.
- **Prevention Resource Guide** Bureau staff developed and disseminated Volume II of the Prevention Resource Guide, which describes over 100 school, after-school and community-based programs addressing school safety, child protection, conflict resolution, dating violence prevention, substance abuse prevention, peer leadership, violence prevention, truancy, and gang prevention.
- **CPP Seminar** CPP sponsored a seminar for OAG staff, presented by the Department of Public Health, on The Report on Pregnancy-Associated Deaths in Massachusetts.
- **Juvenile Firesetters** A Bureau member attended meetings of the Juvenile Firesetters Roundtable convened by the Middlesex County District Attorney's Office and the Office of the State Fire Marshall at the Executive Office of Public Safety. The Roundtable engages in ongoing dialogue concerning the special concerns raised by juvenile firesetters.
- **Child Abandonment** Bureau staff attended the Baby Abandonment Symposium in Washington, DC, sponsored by the Child Welfare League of America. Staff researched the state of the law regarding baby abandonment and the policies underlying baby abandonment legislation.
- **Citizens Schools** Bureau staff spearheaded Attorney General Reilly's Office participation in the Citizen Schools mock trial apprenticeship program. Staff organized formation of an OAG Team for students from the Wheatley Middle School in Roxbury. Mock trials were held in December 2000 and May 2001, with several OAG staff serving as jurors.
- **MDAA Juvenile Justice Subcommittee** A Bureau attorney participated in monthly meetings of the Massachusetts District Attorneys Association Juvenile Justice Subcommittee.

- **Norfolk County District Attorney's Children's Advocacy Center Advisory Board** A Bureau member participated in meetings of the Norfolk County District Attorney's Children's Advocacy Center Advisory Board.
- **Statewide Child Fatality Review Team** A Bureau member participated in meetings of the Statewide Child Fatality Review Team, convened to review child deaths.

## DOMESTIC VIOLENCE

- **Building Bridges of Support for Mothers who are Victims of Domestic Violence** Fiscal Year 2001 saw the successful continuation of the Violence Against Women Act (VAWA) grant-funded Building Bridges of Support for Mothers who are Victims of Domestic Violence Project. Under the grant, CBJB staff developed and implemented a training program for prosecutors, victim witness advocates, advocates from battered women's programs and police officers on the special needs of battered women who have children. In the previous Fiscal Year, CBJB staff began developing the initiative as a collaborative project and utilized a multi-disciplinary steering committee to design training activities. The steering committee, comprised of members of CBJB, the Victim Compensation and Assistance Division, the Child Witness to Violence Project at Boston Medical Center, the Violence Against Women Training and Policy Institute of the Massachusetts District Attorneys Association, the Norfolk County District Attorney's Office, the Suffolk County District Attorney's Office, the Domestic Violence Unit of the Massachusetts Department of Social Services, Jane Doe, Inc. and the Medford Police Department, played a critical role in identifying training topic areas and speakers.

The training, *Building Bridges of Support for Mothers who are Victims of Violence*, was divided into two stages. Phase I consisted of a one day regional training, conducted in Plymouth and in Northampton, for assistant district attorneys and victim witness advocates and covered, among other topics, trauma, the victim's experience in the criminal justice system, the effects of domestic violence on children, criminal prosecution and the role of public agencies. Phase I was completed in June 2001. Phase II, scheduled for September 2001, will include a one day regional training program in both Springfield and Newton for police officers and advocates from battered women's programs. Upon completion of the training component, a domestic violence resource manual will be organized and distributed to district attorney's offices and domestic violence victim witness advocates.

- **Teen Dating Violence** CBJB staff wrote and published *Teen Dating Violence & Restraining Orders: The Law and Safety Planning*, a brochure answering questions for teens on dating violence, restraining orders and the court process, and safety planning. The brochures were distributed to prosecutors, educators, libraries, YMCAs and Boys and Girls Clubs. An additional 10,000 brochures were distributed in response to requests from the community and state agencies. Staff also consulted on a teen dating violence videotape developed by the Department of Education.
- **Statewide Prosecutors and Advocates Domestic Violence Conference** CBJB staff played an integral role in planning the Massachusetts District Attorneys Association's Sixth Annual Domestic Violence Conference, in May 2001. Staff members, in collaboration with Criminal Bureau staff, developed programs for the conference and participated in a panel presentation titled Cybercrime.
- **Governor's Commission on Domestic Violence** Bureau staff attended and participated in meetings of the Governor's Commission on Domestic Violence.
- **MDAA Meetings** A bureau attorney participated in monthly meetings of the Massachusetts District Attorneys Association Domestic Violence Subcommittee.
- **Employers Against Domestic Violence (EADV)** Bureau members attended an EADV conference and EADV meetings. During the year, Bureau staff reviewed the AGO's Human Resource Policy and Domestic Violence and Victim Compensation staff presented on issues related to the victim compensation program.
- **Corporate Citizenship Initiative Conference** Bureau staff participated in planning the Corporate Citizenship Initiative Conference sponsored by the Family Violence Prevention Fund to provide employers across the state with information about domestic violence workplace policy and training programs.

#### SCHOOL SAFETY

- **Safe Schools Newsletter** Bureau staff produced and distributed the Safe Schools Newsletter to school administrators, police chiefs and District Attorneys throughout the state. Topics included

hate and harassment, civil rights, high tech and computer crimes, environmental health and safety in schools, and legal updates and legislation concerning issues applicable to schools.

- **MATS (Multi-Agency Task Force)** Bureau members participated in MATS team effort, along with Criminal Bureau staff, to address environmental health and safety issues in public schools in the Commonwealth. Staff worked to develop potential statewide training on issues of environmental concern for schools.

#### INTERNET SAFETY

- Bureau staff continued to respond to requests for school trainings on Internet safety.

#### SUBSTANCE ABUSE

- **Attorney General's Statewide College and University Coalition on Underage and Problem Drinking** During the 2001 Fiscal Year, CBJB staff continued to lead the coalition on underage and problem drinking. The Coalition, comprised of representatives from approximately 25 colleges and universities throughout the state, focused on developing creative solutions to the problem of underage and binge drinking on college and university campuses. The objective of the Coalition was to develop a cooperative agreement committing the colleges and universities to undertake specific prevention, intervention and enforcement efforts concerning alcohol use and abuse on campus. The Coalition continued its work on drafting a cooperative agreement and the agreement was presented to the Coalition. The Coalition met regularly at the College of the Holy Cross in Worcester.
- **Governor's Advisory Council on Substance Abuse** A Bureau member attended monthly meetings of the Governor's Advisory Council on Substance Abuse.
- **Mothers Against Drunk Driving** Bureau staff participated in Mothers Against Drunk Driving public policy meetings and advised on developing legislation to strengthen laws on motor vehicle homicide, repeat offenders, and implied consent.
- **Emerging Drug Task Force** A Bureau member participated in the Department of Public Health's Emerging Drug Task Force.

### HATE CRIMES

- **Attorney General's Hate Crimes Task Force** CBJB staff actively participated in the Attorney General's Hate Crimes Task Force. Initiatives included developing and implementing a series of proposals focusing on education and training, publications and community involvement. One particular proposal consisted of model documents intended for use by schools, including model memorandum of understanding, a discipline code and protocol. CBJB staff served as co-chair of the Subcommittee on Training, Education and Prevention.
- **Massachusetts Hate Crimes Training Team** A CBJB staff person served as a member of this U.S. Department of Justice Initiative. The CBJB representative, as part of the team, conducted hate crimes training for local area police departments.

### SPORTS IN VIOLENCE PROJECT

- **Massachusetts Alliance for the Promotion of Sportsmanship** CBJB collaborated with the Criminal Bureau in establishing the Massachusetts Alliance for the Promotion of Sportsmanship (MAPS), co-convened by AG Reilly and Suffolk County District Attorney Ralph Martin. Established in response to several well-publicized incidents of sports violence, MAPS seeks to advance collaborative initiatives in an effort to generate a culture in Massachusetts that fosters healthy attitudes and responsible conduct by athletes, coaches, officials and spectators of all ages. MAPS membership includes law enforcement, professional sports teams, college athletes and high school sports programs.

### LEGISLATION

- **Legislative Activity** Bureau staff members drafted, reviewed and commented upon legislative proposals. Some examples include:

- drafting, developing and completing legislative proposals for the Children’s Protection Project, filed on December 6, 2000, as part of Attorney General Tom Reilly’s legislative package;
  - drafting testimony in support of pending legislative bills, including those on child enticement, assault and battery on a child, the victim compensation statute and the Dodge bill, which would allow judges to impose pre-trial conditions on defendants pursuant to the general bail statute.
  - recommending amendments to pending legislative proposals concerning the victim compensation statute and enactment of a criminal profits bill; and
  - reviewing MCAS and other school-related legislation.
- **Employers Against Domestic Violence (EADV) Employment Law Legislative Subcommittee** A Bureau attorney participated in meetings of the EADV Employment Law Legislative Subcommittee. The Subcommittee drafted a legislative proposal filed on December 6, 2000.
  - **MDAA Meetings** A Bureau attorney participated in monthly meetings of the Massachusetts District Attorneys Association Legislative Subcommittee to review and prioritize pending or proposed criminal justice legislation.

## SIGNIFICANT CASES & COURT ACTIVITY

### AMICUS BRIEFS

- **Commonwealth v. Milo M.** A Bureau member drafted an amicus curiae brief on the issue of what constitutes a “threat,” submitted on behalf of Attorney General Tom Reilly’s Office in a case before the Supreme Judicial Court. The SJC’s ruling upheld the Juvenile Court’s decision (supported by the OAG’s brief) that a juvenile’s drawing that depicted him shooting his teacher constituted a threat.
- **Commonwealth v. Liang** A Bureau member drafted an amicus curiae brief addressing discovery of the notes of a victim witness advocate, submitted on behalf of Attorney General



Tom Reilly's Office in a case before the Supreme Judicial Court. The SJC ruled that the advocate's notes were protected by the work-product privilege, which was the position supported by the OAG. Assistance on the brief was provided by the Massachusetts Office for Victim Assistance.

- **Commonwealth v. Finase** A Bureau member prepared an amicus curiae brief, to be filed in July 2001, arguing that a "no contact" order issued under the c. 209A restraining order law included within it, as a component part, a "stay order." The Supreme Judicial Court agreed, stating that staying away is the most fundamental and important form of not contacting another person.
- **Commonwealth v. Damian D., A Juvenile** A Bureau member and a member of the Criminal Bureau drafted an amicus curiae brief asking the Supreme Judicial Court to rule that school searches are lawful so long as they are reasonable under all the circumstances. The SJC did not reach that issue in its opinion.

## OUTREACH & EDUCATION INITIATIVES & TRAINING

### INTERNET SAFETY

Attorney General Tom Reilly has made Internet safety one of his top priorities, with Bureaus throughout the Office focusing on the issue.

- **Webcast for Internet Safety** In June 2001, Attorney General Tom Reilly conducted an Internet webcast, *Internet Safety: Tips from Kids Who Know*, at the Fuller Middle School in Framingham. The event was also broadcast via satellite to schools across Massachusetts, and reached over 20,000 students across the state, as well as students from Florida and California. The highly successful webcast was the result of a proposal developed by members of CBJB and the Criminal, Executive and Public Protection Bureaus.
- **School Trainings** CBJB staff, in conjunction with staff of the Criminal Bureau and the regional offices, conducted trainings on Internet safety throughout the Commonwealth. Among them were presentations at the Paul McLaughlin Youth Center (for staff and students), the Memorial Middle School in Medway (for parents), the Williston School in Easthampton (for parents), and at a

conference of five northern and central Massachusetts junior high schools (for approximately 200 students).

- **Safe Schools Summit** CBJB staff planned and presented a workshop at the Safe Schools Summit sponsored by the Middlesex County District Attorney's Office. The presentation addressed the Internet and school discipline.
- A Bureau member served as a panelist at Springfield Police Department's *Safe Schools, Healthy Students Conference* on Internet issues.

#### SAFE SCHOOLS/SCHOOL VIOLENCE

- Bureau staff presented *Guidelines for School Crisis Management Plan* to the Massachusetts Secondary School Administrators Association, to Bromfield High School faculty members in Harvard and, with staff from the Worcester office, at an in-service training for faculty at the Julie Country Day School in Leominster.
- A CBJB member, along with Worcester regional office staff, conducted trainings for several student groups on diversity and tolerance, and bullying and harassment.
- Bureau staff, along with staff of the Criminal and Public Protection Bureaus, planned the Massachusetts Healthy Schools Council Meeting for May 4, 2001, hosted by the OAG. The Healthy Schools Council, comprised of representatives from a wide range of state agencies involved in environmental issues, provides information and training to school districts on issues of environmental health and safety in the schools.

#### HATE CRIMES

- **Protecting Students from Hate Crimes and Harassment Training Series** CBJB staff, in collaboration with the Civil Rights Division, developed promotional materials and substantive content for a training series titled, *A Prerequisite for Safe Schools: Protecting Students from Harassment and Hate Crimes*. The first regional training was held in November 2000 in Northampton and the second in February 2001 in Framingham. Staff developed and facilitated workshops on such topics as: establishing a comprehensive civil rights program, identifying and responding to harassment

and hate crimes, fostering a school climate that appreciates diversity, and creating successful partnerships between schools, law enforcement and the community. Third and fourth regional conferences are planned for FY 2002.

- The CBJB member of the Hate Crimes Training Team conducted hate crimes training for law enforcement officials.
- A CBJB member, along with the Worcester regional office staff, conducted trainings for several student and teacher groups on diversity and tolerance, and bullying and harassment.
- CBJB and regional office staff presented two workshops at the Peacemakers Summit at Hampshire College: *Recognizing and Preventing Bullying* and *Harassment and Hate Crimes*.

### DOMESTIC VIOLENCE

- Bureau staff presented on domestic violence and confidentiality issues for Violence Against Women (VAWA) trainings for grantees, law enforcement officials and civilian advocates.
- CBJB staff spoke on domestic violence and the criminal justice process to various groups, including the Governors Commission/Domestic Violence conference, Project Tikva/Family Law Attorneys, Harvard Law School students, the Jewish Family and Children's Services Board, Independence House in Hyannis, and medical and public health students at Boston University.
- Bureau members and regional office staff conducted trainings on teen dating violence for McLaughlin Youth Center staff and for public school students.

### IMMIGRATION

- Bureau staff assisted the Worcester regional office and the Immigrant Outreach Project of the Business and Labor Protection Bureau in developing a community outreach plan for Central Massachusetts. *Educating, Empowering and Protecting: A Symposium on Immigrant Issues in Central Massachusetts* was held on May 31, 2001. The program's aim was to foster greater collaboration among agencies serving immigrant populations in Western Massachusetts. The event included workshops on workers' rights, family and cultural considerations, and discrimination in housing, education and the workplace. Bureau staff presented at the symposium on family issues.

### CRISIS RESPONSE TRAINING

- Bureau staff served as a member of the Cambridge Health Alliance Community Crisis Response Team, which provides crisis response in the aftermath of trauma to communities in crisis.

### INTERNAL WORKING GROUPS

Attorney General Tom Reilly places a high priority on creating a strong, cohesive workforce. In an effort to eliminate barriers and encourage collaboration among the several bureaus and divisions within the Office, the Attorney General created a number of internal working groups. CBJB staff participated in several of those groups, among them:

- A Bureau member participated in the Interoffice Gun Task Force.
- CBJB staff facilitated Anti-Discrimination/Sexual Harassment trainings.
- Bureau staff directed the Diversity Committee, Lecture Series and Mentor Program.
- A Bureau member coordinated and facilitated the OAG School Violence Task Force.
- CBJB staff participated in the Racial Profiling Working Group.

### PUBLICATIONS

- ***Law Enforcement Newsletter*** A staff attorney produced the Winter 2000 - 2001 edition of the *Law Enforcement Newsletter*, which was distributed to approximately 1,500 law enforcement officers, prosecutors and others in the law enforcement community. Topics addressed matters of interest to the law enforcement community including, among other things, newly enacted laws, case law updates, domestic violence, victim compensation, and a high technology and computer crimes update. A Bureau attorney also drafted the Domestic Violence Update for the Winter 2000 - 2001 edition of the *Law Enforcement Newsletter*.
- ***Safe Schools Newsletter*** Staff drafted articles for and coordinated development of the January 2001 edition of the *Safe Schools Newsletter*. The newsletter included articles on stemming hate-

motivated violence in the schools, protecting students against harassment based on disability, and recent legislation and case law. The newsletter was distributed to an audience of over three thousand, including school administrators (public and private), police chiefs and District Attorneys.

- ***Teen Dating Violence & Restraining Orders: The Law and Safety Planning*** CBJB staff wrote and published this brochure answering questions for teens on dating violence, restraining orders and the court process, and safety planning. The brochures were distributed to prosecutors, educators, libraries, YMCAs and Boys and Girls Clubs. An additional 10,000 brochures were distributed in response to requests from the community and state agencies.
- ***Children's Protection Project Prevention Resource Guide*** In the summer/fall of 1999, CBJB staff surveyed Massachusetts school superintendents, principals and police chiefs in an effort to gather information for the *Prevention Resource Guide*, which would address local programs for youth. The *Prevention Resource Guide* offers a brief description of over 100 school, after-school and community-based programs, including initiatives addressing school safety, child protection, conflict resolution, dating violence prevention, substance abuse prevention, peer leadership, violence prevention, truancy, and gang prevention. The *Resource Guide* also specifies the program location, contact person and telephone number. In the spring of 2000, Attorney General Tom Reilly distributed the *Prevention Resource Guide, Volume I*, to school superintendents and police chiefs across Massachusetts.

In the last quarter of Fiscal Year 2000, the Bureau initiated its outreach to schools and police departments in anticipation of Volume II of the *Prevention Resource Guide*. The *Prevention Resource Guide, Volume II*, including updated information and additional entries, was completed and distributed in April 2001.

- ***Employers Against Domestic Violence Newsletter*** Staff attorney drafted the Legal Update for the *Employers Against Domestic Violence Newsletter*, covering recent case law and legislation addressing issues of victim confidentiality, abuse prevention orders, firearms and stalking.
- ***The Internet, Your Child, And You: What Every Parent Should Know and Internet Safety: Advice from Kids Who Have Faced Danger Online*** Bureau staff continued to distribute copies of parent and student guides.

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## **VICTIM COMPENSATION & ASSISTANCE DIVISION**

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The Victim Compensation and Assistance Division provides financial compensation, referrals and other assistance to victims of violent crime. Most significantly, it assists qualifying victims and their families in paying for out-of-pocket medical expenses, lost wages, funeral and burial and other crime-related expenses. Since 1994, the Division has assumed legal and administrative responsibility for receiving, investigating and determining all compensation claims in accordance with the requirements of G.L.c. 258C. Previously, compensation claims were determined through a litigation-based process in the district courts. In addition, during this Fiscal Year, the Office of the Attorney General assumed responsibility for the payment of claims, taking over that responsibility from the State Treasurer's Office.

### **HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES**

#### **CLAIMS ACTIVITY**

In Fiscal Year 2001, the Victim Compensation and Assistance Division undertook efforts to increase public awareness of the program through training, publications and new outreach materials. The Division received 1,509 new claims during the Fiscal Year.

Under G.L.c. 258C, claimants who are not satisfied with decisions made on their claims, either to award or deny compensation, have the opportunity to request an administrative and/or judicial reconsideration of their claim. In Fiscal Year 2001, 39 claimants, approximately 2.5% of all claimants, requested administrative review. Thirty-one of those claims were reviewed and decisions were affirmed. The remaining eight were modified or reversed. Seven claimants requested judicial review.

The number of homicide claims increased from 140 last year to 194 this year.

#### **EXPENDITURES**

In Fiscal Year 2001, the Commonwealth awarded over \$3,000,000 in compensation claims to crime victims, with roughly \$1,903,000 coming from state funds and the remainder coming from federal funds. This marks an approximate nine percent increase from last year. FY 2001 represented the sixth consecutive year that the Division had adequate funding to support its expenditures.

### PROGRAM EVALUATION

An applicant survey is sent to each claimant with decisional letters. The Division received 440 completed surveys from claimants. Surveys were overwhelmingly positive, with more than 86% of claimants agreeing or strongly agreeing that applications are easy to complete and letters easy to understand, that victim compensation staff treated them with courtesy and respect, that their questions were answered, and that they were satisfied with the decision on their claim and the amount of time it took for processing.

### FEDERAL REPORTING REQUIREMENTS

The Division submitted its annual Certification Report and Quarterly Reports to the Office for Victims of Crime during Fiscal Year 2001. An effort to centralize reporting requirements between the Office of the Attorney General and the State Treasurer's Office was successfully completed, which transferred responsibility for the payment of claims from the State Treasurer's Office to the Office of the Attorney General.

### LEGISLATIVE ACTIVITY

Division staff testified at the State House before the Judiciary Committee in support of a bill to amend the Victim Compensation Law, filed jointly by the Office of the Attorney General and the Massachusetts Office for Victim Assistance (MOVA). The bill would expand certain benefits under G.L.c. 258C and assist crime victims to pay for the most frequently requested crime-related costs. The AGO continues to seek passage of this bill. In addition, staff participated in MOVA's Legislative Subcommittee.

### GRANT ACTIVITY

The Division applied for and received an annual grant for Fiscal Year 2001 from the Department of Justice through the Victims of Crime Act (VOCA) in the amount of \$892,000. These funds are used to supplement state payments of awards made directly to crime victims. A small portion of the grant is used for program administration.

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## **OUTREACH & EDUCATION INITIATIVES & TRAININGS**

Outreach and training about the program and its benefits remained a primary focus for Fiscal Year 2001, and was extensive. Victim compensation training was provided to:

- Lowell Rape Crisis Center, Battered Women's Resources, New Bedford Women's Center, Boston Area Rape Crisis Center, and North Shore Rape Crisis Center;
- Southeast Asian Families Against Domestic Violence, Elizabeth Stone House, Wayside Youth and Family Support Network in Milford, Elizabeth Freeman Center, Women's Protective Services, and Employers Against Domestic Violence;
- Massachusetts Office for Victim Assistance (MOVA) staff, MOVA's Victims of Crime Act (VOCA) recipients and SAFEPLAN advocates, and MOVA's homicide training for victim witness advocates in the Norfolk County District Attorney's Office;
- Partners Health Care, the Boston Area Sexual Assault Coalition at Massachusetts General Hospital, the Trauma Center in Brookline, and victim service providers at the Massachusetts Medical Society;
- Paul McLaughlin Youth Center staff; Haverhill Department of Social Services, Kid's Place in Pittsfield, Worcester Youth Guidance Center, and Brockton Family and Community Resources;
- Berkshire and Worcester District Attorney's Offices and the Milford Court Clerk's Office; and
- AGO Elder Hotline staff.

Division staff also developed and executed four individual training sessions on Advanced Victim Compensation Training for Advocates, for representatives from the Cape and Islands, Essex, Middlesex, Northwestern, Suffolk and Worcester District Attorneys' Offices, the US Attorney's Office, the Department of Correction, the Criminal History Systems Board, the Parole Board, the Department of Social Services and the AGO Criminal Bureau.

In addition, Division members attended the National Organization of Victim Assistance (NOVA) Conference held in Florida and the National Organization of Crime Victim Compensation Boards Conference in San Francisco.



Division staff also wrote articles on victim compensation for the Victims Rights Law Center's manual for pro bono attorneys and the Boston Area Rape Crisis Training Manual For Attorneys. Staff also presented testimony at a hearing held by the Governor's Commission on Domestic Violence on the economic stability of domestic violence victims.

Division members developed a new victim compensation poster with artwork created by youth at the Paul McLaughlin Youth Center. The posters were distributed in April 2001 to coincide with Violence Prevention Month and Victim Rights Week. In addition, the posters were displayed in the lobby of One Ashburton Place from April 22 - 28, 2001, in recognition of Victim Rights Week.

### **SIGNIFICANT CASE SUMMARIES & COURT ACTIVITY**

During Fiscal Year 2001, seven cases proceeded to the judicial review stage. In six of the cases, the trial court upheld the Division's decision. In the seventh, the Division withdrew its opposition to the appeal and paid the claim.

The Victim Compensation and Assistance Division included the following staff members: Cheryl Watson, Director; Sandra Clark; Diane Pepe Deangelis; Gael Decologero; Yvonne Lamoureux; Frank Perry; Priscilla Russell; James Sinagra; and Jennifer Wilson.

### **SAFE NEIGHBORHOOD INITIATIVE DIVISION**

In recognition of its focus on revitalizing urban centers and empowering communities, the Safe Neighborhood Initiative (SNI) moved from the Criminal Bureau to the Community-Based Justice Bureau in August 1999. Established initially in February 1993 by the Attorney General's Office, the Suffolk County District Attorney's Office, the Mayor's Office of the City of Boston and the Boston Police Department, the first SNI program, in Dorchester, celebrated its eighth anniversary this year. Over the course of the past eight years, the Office of the Attorney General has dedicated the services of Assistant Attorneys General and community liaisons to SNI communities across the Commonwealth. Successful SNI models have been established in Grove Hall, Brockton, Taunton and the Turner Falls Village of Montague, with prosecutors located in Dorchester, Grove Hall, Brockton, and Montague.

The SNI has developed into an effective coalition, among community residents, state and local government officials, law enforcement personnel and human service providers, to solve a variety of

community problems. Through SNI, communities and law enforcement work together to improve the quality of life for community residents throughout the Commonwealth. Based on the premise that no single group can solve all the problems faced by urban neighborhoods, the SNI model works to stem violence and improve the quality of life by developing multi-disciplinary approaches to community issues.

Since those who live in a community are most familiar with its problems and ways to address them, residents are vital members of SNI partnerships. Each SNI has a different approach to problems -- some are law enforcement driven while others are community driven, but all of the programs are infused with the three core principles: neighborhood revitalization, coordinated law enforcement and prevention, and intervention and treatment.

## **HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES**

### **SNI JOBS FOR YOUTH PROGRAM**

One of the major 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 to employing more than 100 young people in nine communities throughout the state. The JOBS FOR YOUTH sites offer job opportunities throughout the year, and are not limited to summer employment. There are JOBS FOR YOUTH programs at the following sites:

- **Boston** Eight youth from SNI target areas in Grove Hall, Fields Corner and Uphams Corner were employed through the City of Boston's Community Centers (BCC) program during this Fiscal Year. Partnering with local businesses and agencies, BCC placed young people in a variety of capacities, allowing them to learn skills including entrepreneurship, leadership and civic duty. The goal is to provide employment opportunities, hands-on training, safe havens and adult support. Placements included local community centers, private businesses and neighborhood social services agencies.
- **Holyoke** Holyoke's JOBS FOR YOUTH program is administered by the Holyoke Youth Alliance, which serves youth from low-income neighborhoods, particularly in downtown Holyoke. This program reinforces literacy skills, education and responsible work behavior and placed ten youth ages 14-18 during the year. Youth assisted as readers and mentors, and read to young children at sites including youth centers, family shelters, YMCAs and day care centers.

- **Worcester** The JOBS FOR YOUTH program in Worcester, run by the YMCA of Greater Worcester, serves at-risk youth in the Worcester area. Sixty youth, ages 14-18, participated during the year and were employed as computer tech assistants, office assistants, camp counselors and peer leaders. The participants also completed a 36-hour employment training program and performed 100 hours of volunteer work.
- **Brockton** The Old Colony YMCA in Brockton just completed its fifth year of JOBS FOR YOUTH funding. 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 program employed 13 teens ages 14-17 in local after-school community centers and day care centers.
- **Lynn** Lynn's program is administered by the Community Minority Cultural Center and serves disadvantaged and at-risk youth. During this Fiscal Year, the program employed seven teens who worked in various positions, including after-school programs and community arts programs.
- **Taunton** Eleven youth ages 17-19 were placed through the Taunton Department of Human Services during this Fiscal Year. The youth were assigned to various city agencies, including the Taunton Public Schools, Taunton Public Library, and Head Start. The program's goal is to provide employment and educational opportunities to youth for skill-building and future employment capability.
- **Springfield** The Springfield SNI JOBS FOR YOUTH program is administered through the Springfield Southwest Community Health Center and serves youth from low-income families. Fifteen youth ages 13-18 participated this Fiscal Year. The program provides youth with opportunities to increase their employability, self-esteem, and knowledge and skills in the area of health promotion. The youth were employed as peer health educators. Youth participated in delivering health education information, including violence prevention, to other youth at local community centers, the Salvation Army and other social service agencies.
- **New Bedford** Nineteen at-risk youth in 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 youth to become employed or 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 sixth year of funding for the Chelsea JOBS FOR YOUTH program. The City of Chelsea administered the program and provided positions for four Chelsea teens at several area businesses and city agencies, including Chelsea City Hall, Chelsea Public Library, and Chelsea Cable TV. In addition to employment, the program offered opportunities for recreational team building and for helping the youth develop skills to choose challenging careers.

### DORCHESTER SNI

The Dorchester SNI continued to focus on issues that have consistently plagued the area -- truancy, youth violence, and a lack of job opportunities and training. The Boston Police Department targeted truancy while other subcontracted programs provided opportunities for young people to effectively use the time when they are not in school by offering recreation, educational and job training programs. Additionally, community workers were actively involved with the Cape Verdean and Vietnamese communities, working to assess and address their needs. Through the work of a Cape Verdean youth outreach worker, funded by SNI and contracted through the Bowdoin Street Health Center, the SNI has been able to address issues facing Cape Verdean youth. Issues of violence, family, education, health and job opportunities are regularly addressed in the Cape Verdean youth groups which meet weekly. The Dorchester SNI has also created a strong network of support for other emerging immigrant groups, children who witness violence, and the local business community. During the past Fiscal Year, the SNI has begun to establish a working relationship with VIET AID, a community-based organization serving the Vietnamese community in Dorchester. The Assistant Attorney General assigned to Dorchester is helping to educate VIET AID representatives on the criminal justice system in order to explain the court process and encourage participation by the Vietnamese community.

The Dorchester SNI Advisory Council continued to meet regularly to identify the most pressing needs of the Dorchester SNI community. The Office of the Attorney General, through a grant from the Executive Office of Public Safety, completed its seventh year of funding for subcontracted programs in the Dorchester SNI, offering assistance to law enforcement efforts as well as enrichment, educational and recreational programming for children, youth and adults. Offered through direct service providers in the community, programming includes youth safe haven activities at the Dorchester Youth Collaborative, education and training programs for local small business owners, police training, and clinical assistance for children who witness violence.

- **Attorney General's SNI Community Reentry Project** During this past Fiscal Year, the Dorchester SNI was designated as one of two funding recipients for the Attorney General's SNI

Community Reentry Project. The project, developed by the SNI Division and awarded funding from the Executive Office of Public Safety, will provide case management services to young adults, ages 17-24, returning to the Bowdoin Street/Geneva Avenue area from commitment to the Suffolk County House of Correction. The case manager will establish contact with returning adults prior to their release and assist them in accessing community programs, services and employment opportunities.

- **Youth to Work Project** During Fiscal Year 2001, the Dorchester SNI developed and implemented the Youth to Work Project. Funding for the project was provided through the OAG SNI legislative/budget funds. The program was developed in collaboration with the Dorchester Community Health Initiative partner agencies and administered by the Bowdoin Street Health Center. Housed at the Paul McLaughlin Youth Center, the project focused on developing job readiness skills in a group of 16-22 year olds and arranged for six week internships.
- **African Dance and Art Collaborative** The Dorchester SNI also agreed to fund a new program administered by the Bowdoin Street Health Center. The African Dance and Art Collaborative provided youth ages 9-14 with after-school activities at the St. Peter's School in Dorchester.
- **Dorchester SNI Youth Working Group** Division staff facilitated meetings of the Dorchester SNI Youth Working Group. The group meets regularly to discuss the available resources for youth within the SNI target area and ways of improving collaboration among SNI youth agencies.

#### GROVE HALL SNI

During the state Fiscal Year 2001, the Grove Hall Safe Neighborhood Initiative received \$225,000 for its fifth year of funding from the Department of Justice, Executive Office for Weed and Seed. The money funded several community-based programs which helped address the needs and concerns identified by the community. In addition, the Grove Hall SNI/Weed & Seed Coordinating Council Members began work on the Weed & Seed Re-Designation Application due in Fiscal Year 2002.

- **Weed and Seed Grant** This year, as a part of the Weed and Seed grant, the Grove Hall SNI funded several programs through both Seed mini-grants and Special Emphasis Initiative funds. Seed mini-grants were awarded to the Roxbury Multi-Service Center's SENIORS Program, Quincy-Geneva Housing Corporation's Diversity and Understanding Camp for Kids and the Creative After-School and Summer Program, Women of Color AIDS Council, We're Educators

- A Touch of Class, Grove Hall Residents' Association's Youth Development and Early Intervention Program, and the Youth Substance Abuse Task Force. Special Emphasis Initiative funds were awarded to the GIRLS on the Move! Program and Roxbury Multi-Service Center's Teens Networking Teens and Community Programs Against Sexual Assault.

- **Attorney General's SNI Community Reentry Project** During this past Fiscal Year, the Grove Hall SNI was designated as one of two funding recipients for the Attorney General's SNI Community Reentry Project. The project, developed by the SNI Division, and awarded funding from the Executive Office of Public Safety, will provide enhanced case management services for juveniles, ages 14-21, returning to the Grove Hall neighborhood following commitment to the Department of Youth Services. The case manager will establish contact with juveniles prior to the end of their commitment and assist them in accessing community programs, services and employment opportunities.
- **Grove Hall SNI Senior Information Fair** This year, the Senior Empowerment Initiative held its second annual Senior Information Fair. This day-long event featured information and services for seniors in the Grove Hall Community. Over 150 seniors and their families attended the program.
- **Legislative Breakfast** The Grove Hall SNI held a legislative breakfast at the Roxbury Multi-Service Center. The goal of the breakfast was to showcase the achievements of the SNI and to urge local legislators to support the development and continuation of SNI collaboratives statewide.

## SIGNIFICANT CASE SUMMARIES & COURT ACTIVITY

**SNI Community Prosecution** SNI's Community Prosecution Program is critical to its coordinated law enforcement component. SNI lawyers at the Superior and District Court levels continued to serve in non-traditional roles, acting as prosecutors and working with the community. SNI prosecutors attended community meetings, participated in special events, and responded to inquiries from law enforcement, residents, and social service agencies. As a result of their direct community involvement, the SNI lawyers were able to determine which issues were of most importance to the neighborhood and how resources from Attorney General Tom Reilly's office could best be used to address those concerns. In addition, the assigned Assistant Attorneys General developed joint initiatives with other law enforcement agencies, and utilized sentencing and probation options so as not only to punish offenders but also to rehabilitate them. SNI prosecutors also worked closely with federal law enforcement authorities for enhanced federal prosecutions.

DORCHESTER

The Assistant Attorney General assigned to Dorchester prosecuted major felonies in Superior Court, consisting primarily of repeat drug offenders, large-scale drug seizures, armed robberies, armed career criminals and firearm offenses. Some examples include:

- **Commonwealth v. Trenny Parker** Following a jury trial, the defendant was convicted of assault and battery with a dangerous weapon and assault and acquitted of armed home invasion. The defendant was sentenced to two to three years committed at MCI Cedar Junction. The defendant also had a parole violation from California for shooting and burglary and upon completing his sentence here, will be extradited to California to complete that sentence.
- **Commonwealth v. William Ragland** The defendant was charged as an armed career criminal for possession of a high-capacity firearm ammunition feeding device. The defendant was convicted and sentenced to two consecutive sentences totaling approximately 20-25 years.
- **Commonwealth v. Vincent Sahedo** The defendant was seen in an area of reported shots fired. When the police approached, they pat-frisked him and seized a loaded 9mm handgun. The defendant pled guilty and was sentenced to one year in the House of Correction.

**Community Involvement** In addition to prosecutorial responsibilities, the Assistant Attorney General assigned to Dorchester attended monthly SNI Advisory Council meetings, met regularly with the Detective staff from Area C-11, and assisted probation officers in presenting evidence at probation surrender hearings.

GROVE HALL

The Assistant Attorneys General assigned to Grove Hall as part of the SNI team prosecuted cases in Suffolk Superior Court and Roxbury District Court. The Superior Court caseload included drug trafficking, carjacking, armed robbery, kidnapping, and firearm offenses. The SNI Assistant Attorney General successfully prosecuted several Superior Court cases. Some examples include:

- In two separate cases against defendant Corneal Miller, Miller pled guilty to armed robbery and received a state prison sentence of one year to one year and a day. Miller also pled guilty to distribution of class B, receiving a sentence of one year to one year and a day in state prison

and pled guilty to distribution of class B in a school zone and was sentenced to two years to two years and a day from and after.

- **Commonwealth v. Thomas Brent** The defendant, following a traffic stop, fled the scene striking an officer. Following a change of plea, the defendant was sentenced to two and one-half years in the House of Correction, with 18 months to serve and the balance suspended for three years.

**Community Involvement** The SNI AAG regularly attended all Grove Hall SNI community and Coordinating Council meetings and maintained direct community contact.

### BROCKTON

The Assistant Attorney General assigned to Brockton continued to focus on serious felonies, including major drug trafficking offenses, rape, armed assault with intent to murder, burglary and firearm violations. The AAG worked extensively with the Massachusetts State Police Crime Prevention and Control Unit (CPAC) assigned to the Plymouth County District Attorney's Office to investigate and prosecute major drug trafficking cases. Case highlights included:

- **Commonwealth v. Marc Marshall** The defendant sold 1/8 ounce quantities of powdered cocaine to undercover police on five separate occasions within one thousand feet of a school zone. The defendant pled guilty and was sentenced to a mandatory three years in the House of Correction.
- **Commonwealth v. Eric Williams** Following a jury trial, the defendant was found guilty of being a felon in possession of a firearm, assault by means of a dangerous weapon, assault and battery by means of a dangerous weapon (pistol whipping), and assault and battery. The defendant was sentenced to ten years to ten years and a day on the firearm charge and to concurrent time on the other charges. All of the sentences were run from and after sentences that the defendant received on a parole violation and probation surrender that occurred as a result of the new jury verdict.

**Community Involvement** The AAG attended and reported on case activity at all SNI Advisory Council meetings. The AAG also regularly attended all Brockton Weed & Seed Coordinating Council meetings.



## MONTAGUE

Attorney General Tom Reilly recognizes that issues of crime and neighborhood revitalization are not confined to the largest urban centers. Cities and towns across the Commonwealth confront similar issues regarding community disintegration and each location raises concerns particular to that region. The Montague SNI illustrates how the Attorney General is addressing these issues in Western Massachusetts. The SNI Assistant Attorney General assigned to Montague handled criminal prosecutions from Turner Falls in the Greenfield District Court, including narcotics and domestic violence violations. The AAG also worked closely with the local police department to target repeat offenders as well as quality-of-life prosecutions.

- **Commonwealth v. Wilfredo Oyola** In this case, the defendant pled guilty to breaking and entering (reduced from a home invasion), assault and battery, and assault and battery by means of a dangerous weapon. He was sentenced to one year in the House of Correction with six months to serve followed by a six-month house arrest with monitored alcohol and drug screening.

The SNI AAG also attended a series of community “town” meetings called Reinventing Justice. These meetings were designed to discuss topics of concern to the community, mostly centering around youth violence. The attendees included juvenile court judges, private attorneys, and human service providers. In addition, the AAG assisted the Northwestern District Attorney’s Office in securing police participation in the DA’s Domestic Violence Intervention Program. The program trained officers responding to domestic violence reports to contact a domestic violence counselor for follow-up with the victim.

## TAUNTON

**Community Involvement** The Taunton SNI continued to focus on law enforcement and crime prevention. The Taunton SNI partners include a broad base of representatives, among them, law enforcement, prosecutors, probation officers, health professionals and direct service providers. The City of Taunton continued to play a major role in coordinating the efforts of the Taunton SNI partners. Representatives from Attorney General Tom Reilly’s office regularly attended SNI Advisory Council Meetings in Taunton and assisted the Taunton SNI in programmatic resources, including the Attorney General’s JOBS FOR YOUTH program, which hired, trained and employed Taunton youth. The Taunton SNI held an award luncheon for its OAG JOBS FOR YOUTH participants, recognizing the successful completion of their internships.

The OAG also continued to work closely with members of the Taunton SNI on an abandoned property initiative. As part of the initiative, a single-family home was placed into receivership for rehabilitation of the property.

### COMMUNITY POLICING

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

Joint investigations with federal agencies were also a part of the SNI's coordinated law enforcement component. The Boston Police Department, Area B2, utilized the combined resources of state and federal agencies including the state police, the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco and Firearms to target the most serious offenders or high level drug distribution participants in the Grove Hall neighborhood.

### NEIGHBORHOOD REVITALIZATION

**Abandoned Property Project** A major component of Attorney General Tom Reilly's urban focus is to promote neighborhood revitalization. The Abandoned Property project targets the revitalization of urban areas where the housing stock is often left abandoned or in a state of disrepair. The project seeks to use a receivership statute to undertake and oversee rehabilitation of residential properties with persistent, unremedied code violations which are frequently used for illicit activities, such as drug dealing or prostitution. The legislation was originally intended to permit tenants and other occupants of residential properties to seek the appointment of a receiver who would have the independent authority to authorize repairs, after notice and an opportunity to cure was provided to the landlord and creditors of record. The most significant features of the statute are twofold: 1) it provides a limited scope of receivership liability related solely to the work actually undertaken at the property; and 2) the costs and expenses incurred by the receiver become a priority lien, recoverable against both the landlord and the property prior to any pre-existing liabilities other than outstanding real estate taxes. This project has been implemented throughout the state, in

Dorchester, New Bedford, Roxbury (Grove Hall), Worcester, Orange, Chelsea, Montague, Taunton, Springfield, Brockton and Melrose. Individuals from throughout the Office of the Attorney General participated in these efforts in various cities and towns. Teams consisting of Assistant Attorneys General, civil investigators, paralegals and staff were assigned to specific communities in order to become familiar with local officials, neighborhood residents and the housing stock.

## CONCLUSION

The Safe Neighborhood Initiative is an example of the importance of collaboration among government officials, law enforcement and community representatives. The SNI works to address the issues of crime, crime prevention and treatment, and neighborhood revitalization in communities across the state. These partnerships have helped improve the quality of life for all residents of the Commonwealth.

The Safe Neighborhood Initiative included the following staff members: Marcia Jackson, Chief; Linda DelCastilho; Katherine Hatch; Glenn MacKinlay; Sandra McCroom; Lenell Silva; Ina Tall; and Neil Tassel.

# CRIMINAL BUREAU

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APPEALS DIVISION

HIGH TECH AND COMPUTER CRIME DIVISION

PUBLIC INTEGRITY DIVISION

VICTIM /WITNESS ASSISTANCE DIVISION

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

ECONOMIC CRIME DIVISION

ENVIRONMENTAL CRIMES STRIKE FORCE

FINANCIAL INVESTIGATION DIVISION

## **CRIMINAL BUREAU**

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The primary mission of the Criminal Bureau is to prosecute violations of state criminal laws resulting in or involving significant economic loss or injury; harm to the environment; misconduct by public employees or elected officials; crimes against public agencies; organized crime; drug trafficking; crimes involving computers and other forms of technology; and cross-jurisdictional criminal organizations. The Criminal Bureau also prosecutes criminal cases referred to it by District Attorneys' offices and cases which further priorities of the Attorney General, such as crimes against children, the elderly and other particularly vulnerable groups.

The majority of cases prosecuted by the Criminal Bureau result from investigations conducted by police officers and investigators assigned to the Criminal Bureau. During Fiscal Year 2001, twenty-seven State Police Officers, four officers of the Environmental Police, and eight civilian criminal investigators were assigned to the Criminal Bureau. Additionally, in some instances, law enforcement officers from other local, state, and federal agencies participated in investigations conducted by the Criminal Bureau.

Another mission of the Criminal Bureau is to promote effective law enforcement and criminal justice in the state. The Criminal Bureau accomplishes this mission by maintaining partnerships with the Massachusetts District Attorneys Association, the Massachusetts Chiefs of Police Association, the Executive Office of Public Safety, and other law enforcement agencies and associations; developing criminal justice policy; proposing legislation; and participating in training programs for prosecutors, police officers, judges and others involved in the criminal justice system.

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 officials who are sued in the performance of their duties.

During Fiscal Year 2001, the Criminal Bureau received more than 1,500 inquiries and complaints from citizens, and reviewed 138 rendition and extradition requests forwarded to it by the Executive Office of the Governor.

The Criminal Bureau executive staff in Fiscal Year '01 were the following: Gerard T. Leone, Jr., Chief; Kurt N. Schwartz; Jennifer Austin; Nancy Bloomberg; Sandra Ciancarelli; Sabrina Davis; Pamela Hunt; Rhonda Matthews; James O'Brien; Joanne Quigley; and Nancy Tavilla.

The Criminal Bureau is organized into the following nine divisions, each of which reflects an area of specialization and expertise: Appeals, High Tech and Computer Crime, Public Integrity, Victim/Witness Assistance, Special Investigations and Narcotics, Economic Crime, Environmental Crime Strike Force, Financial Investigations, and Criminal Investigations.

Assistant Attorney General Mary A. Phillips served as the Criminal Bureau's Grand Jury Coordinator during Fiscal Year 2001, and Assistant Attorney General James O'Brien developed and coordinated criminal justice initiatives, reviewed and drafted legislation affecting the criminal justice system, and coordinated training programs for Bureau staff.

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## **APPEALS DIVISION**

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The Appeals Division handles a wide variety of criminal, federal habeas corpus, state habeas corpus and other civil cases which impact criminal prosecutions and the criminal justice system. The Division's caseload includes appeals and post-convictions matters in criminal cases prosecuted at the trial level by the Attorney General's Criminal Bureau and from convictions of criminal contempt throughout the Commonwealth; all habeas corpus petitions filed in federal court that challenge Massachusetts convictions, parole surrenders, civil commitments and renditions, and appeals in the First Circuit Court of Appeals from the denial or granting of habeas corpus relief. The Division also engages in civil litigation defending judges, clerks, probation officers and other court personnel, District Attorneys, Assistant District Attorneys and other prosecutorial personnel sued civilly in state or federal court for actions taken during the criminal justice process. The 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 Commission of Probation and handle appeals and federal court litigation concerning the Parole Board.

In addition to their case work, Division attorneys participate in and present training programs both for the Criminal Bureau and office-wide, 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 the 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 Appeals Division included the following staff members: William J. Meade, Chief; James J. Arguin; Annette C. Benedetto; Eva M. Badway; Tom Dee; Elizabeth Frumkin; Maureen Giacoppo; Cathryn A. Neaves; Catherine E. Sullivan; and Linda Wagner.

### CASE HIGHLIGHTS

- **Kenneth P. Phoenix v. Matesanz** (First Circuit) Appeal after remand from the denial of a federal habeas corpus petition challenging petitioner's 1991 Hampden County first degree murder conviction on the ground of ineffective assistance of counsel. On December 1, 2000, the First Circuit affirmed the denial of habeas corpus relief.
- **Kevin Lynch, et al. v. Sheila Hubbard** (First Circuit) Appeal from the dismissal of a § 1983 suit against the parole board claiming the parole statute was vague, and that plaintiffs' due process rights were violated where the victim's families were permitted to appear at the hearings, and their families were not. On December 8, 2000, the First Circuit affirmed the dismissal of the complaint.
- **Gary R. Donaghy v. Sheila Hubbard** (First Circuit) Appeal from dismissal of a criminal defendant's § 1983 suit alleging that the parole board violated his rights to due process and equal protection where the "full board" did not participate at his parole hearing. On December 8, 2000, the First Circuit affirmed the dismissal of the complaint.
- **Reese Williams v. James Matesanz** (First Circuit) Federal habeas corpus petition challenging a 1973 Middlesex first-degree murder conviction challenging jury instruction on reasonable doubt. On October 25, 2000, the First Circuit affirmed the district court's denial of the petition.
- **Bernardo Hurtado v. John Tucker** (First Circuit) Appeal from a judgment granting a writ of habeas corpus which challenged an Essex County conviction for cocaine trafficking claiming insufficient evidence and ineffective assistance of counsel. On March 29, 2001, the First Circuit reversed the decision of the district court and entered an order that denied the writ.
- **Commonwealth v. Arrighi & Borino** (Superior Court) Motions to dismiss the indictments of two defendants charged with aiding in the concealment of \$1.6 million stolen from the Massachusetts Treasury as time-barred and insufficient as a matter of law. On March 19, 2001, the Superior Court denied the motions.

- **Commonwealth v. Bonnie DiToro** (Appeals Court) Appeal from a conviction for cocaine trafficking prosecuted by the Attorney General's Office. On March 22, 2001, the defendant's conviction was affirmed by the Appeals Court.
- **Ronald Johnson v. Paul Norton** (First Circuit) Appeal from a judgment granting a federal habeas corpus petition challenging Middlesex County convictions relating to a drive-by shooting on the basis that the petitioner was incompetent to proceed to trial as a result of a head injury. On May 11, 2001, the First Circuit issued affirmed the district court judgment to issue the writ.
- **Duncan v. Walker** (United States Supreme Court) Massachusetts wrote an amicus brief (joined by 19 states) in support of the State of New York's appeal from the decision of the Second Circuit relative to the tolling effect of a previously filed federal habeas corpus petition. On June 18, 2001, the Supreme Court reversed the Second Circuit's decision.

### STATISTICAL SUMMARY

The Appeals Division filed approximately 75 appellate briefs during the year in the United States Supreme Court, Court of Appeals for the First Circuit, Supreme Judicial Court and Massachusetts Appeals Court. The Division filed 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 following chart summarizes the cases handled by the Appeals Division during Fiscal Year 2001.

CASE TYPE	CASES OPENED	CASES DISPOSED	TOTAL CASES HANDLED
Federal Habeas	139	78	324
Federal Civil	112	14	42
State Civil	29	21	80
State Habeas	26	14	29
Criminal	33	16	60



<b>CASE TYPE</b>	<b>CASES OPENED</b>	<b>CASES DISPOSED</b>	<b>TOTAL CASES HANDLED</b>
211 § 3 and Other Single Justice Cases	14	11	24
<b>TOTALS</b>	<b>263</b>	<b>154</b>	<b>559</b>

### NON-CASE HIGHLIGHTS

During Fiscal year 2001, members of the Division were involved in community activities and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- The Lawyer's Committee for Civil Rights Board of Directors.
- The Massachusetts Bar Association, Judicial Administration Task Force, Project Advisory Group.
- Supreme Court Fellowship at National Association of Attorneys General.
- Massachusetts District Attorneys Association Conference.
- Quarterly Commonwealth Appellate Attorneys Action Project.
- Lecturer and Clinical Coordinator at Harvard Law School.
- Ad Hoc Panel on the improvement of Supreme Judicial Court Single Justice Practice.
- Articles Editor, Massachusetts Law Review.
- Co-Chair of AGO's Diversity Committee.
- Rendition point person for Criminal Bureau.

## **HIGH TECH & COMPUTER CRIME DIVISION**

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The mission of the High Tech and Computer Crime Division (HTCC) is to provide high tech law enforcement expertise to the Commonwealth. In doing so, we serve three constituencies:

1. The individual citizens of the Commonwealth, particularly the children, who are increasingly communicating, buying and selling, and just passing time on the Internet;
2. The businesses and universities of the Commonwealth who drive our knowledge-based economy and who are dependent on computers and the Internet; and
3. Other law enforcement agencies (as well as other divisions within the Office of the Attorney General) which rely on our expertise to support them in the full range of crimes that they investigate and prosecute, from homicide to narcotics trafficking.

We serve these three constituencies in three interrelated ways:

1. Investigation and prosecution of cases in which computers or the Internet play a crucial role;
2. Investigative, legal and computer forensics support to other law enforcement agencies; and
3. Education, outreach and policy development.

The HTCC handles a wide variety of cases in which computer technology or the Internet play a crucial role. The two areas of focus are preserving the integrity of the Commonwealth's knowledge based economy and protecting the well being of our children. The first category of cases includes intrusions to computer systems, related extortion attempts, theft of trade secrets and other intellectual property, such as trademarks and domain names, and the most egregious attempts to undermine the nascent Internet economy by defrauding consumers. The second category includes targeting child sexual predators on the Internet, dissemination and possession of child pornography and Internet threats to public institutions, such as schools.

HTCC included the following staff members: John Grossman, Chief; Jennifer Austin; Trooper Steve Fennessy; Investigator Eric Lundberg; Trooper David McSweeney; Trooper Matthew Murphy; Sergeant Dermot Quinn; and Julie Ross.

## CASE HIGHLIGHTS

- **Commonwealth v. Christian Hunold** (Middlesex Superior Court) Hunold, a Missouri resident, used the Internet to disguise himself as a student at Townsend's Hawthorne Brook Middle School. He thereafter sent the students of that school child pornography and created a Web site that contained apparently credible threats to blow up the school and a "hit list" naming specific students and teachers. The hit list threatened to send those named "home with more holes than they came to school with." As a result of a joint effort between Massachusetts and Missouri law enforcement authorities, Hunold pled guilty and served jail sentences in both jurisdictions. In Massachusetts, Hunold pled guilty to dissemination of matter harmful to minors, threats to commit a crime, assault, disturbing a school and disorderly conduct and was sentenced to serve one year consecutive to his four-month Missouri jail term in the Middlesex County House of Corrections with another year's sentence suspended for five years.
- **Commonwealth v. Christopher DeHaven** (Middlesex Superior Court) Christopher DeHaven solicited sex from three Belmont teenagers whom he met on the Internet and sent them various sexually graphic images. After his activity was discovered, an undercover Massachusetts State Trooper assumed the on-line identity of the girls and arranged to meet DeHaven. DeHaven was arrested when he arrived in South Station on a train from Philadelphia on his way – he thought – to meet his victims at a local hotel. DeHaven pled guilty to disseminating harmful matter to minors and was sentenced to two and one half years in the House of Corrections with six months to serve and was extradited to Pennsylvania to face child pornography charges that came to light as a result of HTCC's investigation. He subsequently pled guilty in Pennsylvania and received a state prison sentence there.
- **Commonwealth v. Sean Emmett & Robert Emmett** (East Boston District Court) These defendants, a father and son, were arrested after allegedly selling an undercover trooper a sophisticated computer server stolen from a Massachusetts high tech business. The server contained valuable intellectual property belonging to the victim business. Both the server bought by the undercover officer and another were recovered, and a forensic analysis revealed that the intellectual property had not been compromised. The defendants currently face charges of receiving stolen property.
- **Comonwealth v. A Juvenile** (Cambridge Juvenile Court) In March 2000, an unknown hacker penetrated an Air Force Computer at Wright-Patterson Air Force Base in Illinois. The hacker gained access to the computer by first compromising a United States Department of

Transportation computer in Cambridge, Massachusetts. An investigation by federal authorities showed that the perpetrator was a 13-year-old Connecticut boy. Because of the defendant's youth, HTCC was asked to handle the case and sought charges in juvenile court for four counts of unauthorized access to computer systems, and one count each of operating an illegal wiretap and malicious destruction of property. The defendant admitted to all charges and was sentenced to two years of pretrial probation and to pay restitution of \$5,000 to the Air Force.

### STATISTICAL SUMMARY

The following chart summarizes the case referrals that HTCC screened for possible investigation and prosecution during Fiscal Year 2001 and the number of those referrals that matured into formal investigations.

<b>CASE DESCRIPTION</b>	<b>NUMBER OF CASES SCREENED</b>	<b>NUMBER OF CASES INVESTIGATED</b>
Theft of Trade Secrets and Other Intellectual Property	15	5
Computer Intrusions	20	9
Consumer Fraud	257	11
Child Exploitation	26	14
Threats/Cyberstalking	29	12
Other	8	3
<b>Total</b>	<b>355</b>	<b>54</b>

Notably, HTCC received an extraordinarily high number of consumer fraud complaints; this in part reflects the severity of the problem and in part the success of the Internet Fraud Complaint Center ("IFCC"), a joint project of the National White Collar Crime Center (of which the Attorney General's Office is a member) and the FBI to consolidate all such complaints in one database. IFCC refers to HTCC every complaint that either concerns a Massachusetts target or is received from a Massachusetts victim. HTCC

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. The remaining IFCC cases are referred for review by the Public Protection Bureau's Consumer Protection Division. Another important trend is the growth over the course of the year in the number of referrals involving complex technical issues, such as computer intrusions; this, we believe, is the direct result of the growing reputation of HTCC within the business community and law enforcement.

During Fiscal Year 2001, HTCC charged 10 individuals with various crimes, including unauthorized access (computer hacking), threats to commit a crime, unlawfully intercepting wire communications and dissemination of child pornography. Seven individuals or corporations pled guilty or otherwise admitted to sufficient facts in Superior, District and Juvenile courts across the Commonwealth, including one 13-year-old hacker who pled guilty and agreed to serve two years of pre-trial probation.<sup>1</sup> Additionally, HTCC prosecutors tried two narcotics cases and obtained guilty pleas in one other narcotics case.

### **NON-CASE HIGHLIGHTS**

In addition to the cases that we investigated and prosecuted within HTCC, the Division assisted other Divisions within the Attorney General's Office and District Attorney's Offices in over 45 separate matters. In some cases, this assistance consisted of legal advice and reviewing search warrants; in others, it was performing computer forensics. Notably, the expertise of the HTCC has been sought throughout the Commonwealth in several of the most high profile cases of the last year. For instance, HTCC analyzed all of the computers seized in the successful prosecution by the Norfolk County District Attorney's Office of Dr. Dirk Greineder for the murder of his wife. HTCC played a similar role for the Middlesex County District Attorney's office in the case stemming from multiple homicides allegedly committed at Wakefield's Edgewater Technologies by Michael McDermott. HTCC also worked with the Essex County District Attorney's Office in preparing the case against Christopher Reardon for allegedly sexually assaulting over 15 children.

Finally, HTCC devoted a substantial amount of energy and resources to training and outreach. 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 that law enforcement has the capacity to respond.

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<sup>1</sup> Some of the cases charged this year remain pending; just as some of the cases resolved this year were charged previously.

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

- A live Webcast to over 100 Massachusetts middle schools that was designed to be a tool to teach safe Internet usage.
- Participation in a number of law enforcement training conferences, including the Massachusetts District Attorneys' Association annual meeting.
- A three-day seminar sponsored by the Massachusetts Internet Crimes Against Children Task Force.
- The Annual meeting of the New England Chiefs of Police.
- A presentation at the American Society for Industrial Security's Cybercrime conference in Washington D.C.
- The National Association of Attorneys General Second Annual Internet Summit at Harvard Law School.

## **PUBLIC INTEGRITY DIVISION**

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The primary mission of the Public Integrity Division is to investigate and prosecute crimes committed by and against public employees that compromise the public's confidence in the government or harm public agencies. In Fiscal Year 2001, prosecutions included crimes committed against state and local public agencies and government-funded organizations as well as crimes committed by government employees, agents, and contractors.

Members of the Public Integrity Division investigate cases with the assistance of Massachusetts State Police troopers and forensic financial investigators assigned to the Criminal Bureau. In addition, Division attorneys often work with local police departments, other State Police officers, federal law enforcement officials, and investigators assigned to other government agencies.

The Public Integrity Division maintains close working relationships with other state and federal agencies involved in either investigating crimes by and against public employees and agencies, or enforcing laws concerning the conduct of public employees and agencies. These agencies include the State Ethics Commission, the Department of Revenue, the Office of the State Auditor, the Office of the Inspector General, the United States Attorney's Office, the Federal Bureau of Investigation, the United States

Department of Transportation, the United States Postal Inspection Service, local District Attorneys' Offices, various retirement boards, local town counsels and City Solicitor's Offices.

The Public Integrity Division included the following staff members: Pamela Wechsler, Chief; Eugenia Carris; Sandra Ciancarelli; James O'Connell; Francis Russo; Kimberly West; and Nancy Rojas.

## CASE HIGHLIGHTS

- **Commonwealth v. Nathaniel St. Surin, George Barros, Walid Mobarak and Louis DesRoche** (Suffolk Superior Court) Louis DesRoche, George Barros, Walid Mobarak and Nathaniel St. Surin, all of whom were members of the Boston Police Department's Hackney Unit, were prosecuted for bribery and filing false government reports. DesRoche was a Boston Police Sergeant who accepted bribes in the form of cash and gift certificates in exchange for the issuance of taxi licenses to unqualified individuals. Barros, Mobarak and St. Surin were middlemen who collected and delivered bribes to Hackney Unit employees in exchange for the licenses. DesRoche and Barros admitted to accepting illegal gratuities and were sentenced to a one year continuance without a finding and court costs. Mobarak pled guilty to bribery and was sentenced to two years probation. St. Surin pled guilty to 5 counts of bribery and was sentenced to 30 days home confinement and 3 years probation. This case -- which stemmed from wide-spread corruption within the Boston Police Department's Hackney Unit -- was prosecuted in conjunction with Boston police detectives, Federal Bureau Of Investigation agents and United States Attorney's Office prosecutors.
- **Commonwealth v. Trina Woods, Michael Wilcox, Doreen Hoey and Charles Belim** (Suffolk Superior Court) Trina Woods, Michael Wilcox, Doreen Hoey and Charles Belim were part of an organized check kiting scheme that spanned three counties and stole approximately \$100,000. The defendants preyed on elderly women in grocery stores. One defendant would distract a shopper while the other lifted her wallet from her pocketbook. They then used victims' blank checks to empty out their bank accounts. All four defendants pled guilty to multiple counts of larceny, receiving stolen property, uttering and forgery. Woods and Hoey were sentenced to 2 ½ years to 2 ½ years and one day in state prison and 3 years probation from and after. Wilcox and Belim were sentenced to 3 years to 3 years in one day in State Prison with 3 years probation from and after.

- **Commonwealth v. Herbert Bacchus & Lakesha Richardson** (Suffolk Superior Court) Herbert Bacchus was a courier for the Massachusetts Department of Public Health and Lakesha Richardson was his girlfriend. They stole over \$22,000 of state money that was intended for low-income health care recipients. Both pled guilty to larceny, uttering and forgery. Bacchus was sentenced to 2 years in the House of Corrections, 1 year to serve and the balance suspended for 2 years probation. Richardson was sentenced to 2 years in the House of Corrections, 60 days to serve and the balance suspended for 2 years probation. Both defendants were ordered to pay \$22,000 joint and severable.
- **Commonwealth v. Mike Vitkauskas & Ronald Gagnon** (Salem Superior Court) Mike Vitkauskas and Ronald Gagnon were employed by the state to administer funds intended to be used by low-income homeowners who wanted to de-lead their homes. They perpetrated a kickback scheme in which they funneled over \$1 million dollars in state-funded loans designated for de-leading and home improvement to five de-leading contractors who in turn paid over \$90,000 to the defendants. Vitkauskas pled guilty to commercial bribery and corporate books false entries and was sentenced to 5 years probation and 6 months in a residential treatment program. Gagnon pled guilty to conspiracy to commit commercial bribery and was sentenced to 2 years probation, 125 hours of community service and a \$5,000 fine.
- **Commonwealth v. Eileen Stocker** (Suffolk Superior Court) Eileen Stocker entered local elementary school classrooms during the daytime and stole wallets from teachers' desks. She then withdrew money from ATMs, cashed stolen checks, and charged items on the stolen credit cards. She pled guilty to forgery, uttering, larceny and identity theft, and was sentenced to 5 years probation and \$5,000 restitution.
- **Commonwealth v. Percy Wayne Martin** (Suffolk Superior Court) Percy Wayne Martin stole the identities of 15 people, all named Martin, and used their credit to steal over \$75,000 in goods and services. He was charged with multiple counts of larceny, identity fraud, forgery, uttering and bank fraud. Martin thereafter fled to South Carolina where he was arrested and returned to Massachusetts for prosecution.
- **Commonwealth v. David Netti** (Berkshire Superior Court) David Netti worked for several years filling prescriptions at local pharmacies without having graduated from a pharmacy college or having obtained the state mandated pharmacist's license. Netti pled guilty to charges of dispensing controlled substances without a license, forgery and uttering. He was sentenced to one year in the House of Corrections with 90 days to serve and the balance suspended for two years.



- **Commonwealth v. Jeanna Monterio** (Barnstable District Court) Jeanna Monterio was an employee of the Barnstable Superior Court Probation Department who stole over \$8,000 of probation funds. She pled guilty to Larceny and was sentenced to 2 years probation, with the requirement that she have no direct dealings with any monies or finances, and \$8,018 restitution.
- **Commonwealth v. Fatjon Jorgo** (Boston Municipal Court) Fatjon Jorgo attempted to bribe an undercover Massachusetts State Police trooper who posed as a Division of Registration employee in order to obtain a cosmetology license. Jorgo admitted to sufficient facts to attempting to commit bribery. The matter was continued without a finding for one year along and Jorgo was required to pay \$1,000 court costs.
- **Commonwealth v. John Mikalauskis** (South Boston District Court) John Mikalauskis was a clerk in the South Boston District Court's probation department. He admitted to sufficient facts to stealing over \$3,000 from the probation department. The matter was continued without a finding for one year and he was ordered to pay \$3,035 in restitution, and complete 100 hours of community service.

### STATISTICAL SUMMARY

During Fiscal Year 2001, the Public Integrity Division reviewed 135 new allegations of criminal conduct and disposed of 156 cases (some of which were received in prior Fiscal Years). In addition, 27 defendants were indicted and 28 cases resulted in guilty pleas. Of the 28 pleas, 16 were prosecuted in Superior Courts and 12 were prosecuted in District Courts. There was one Superior Court trial. Crimes investigated and prosecuted by the Public Integrity Division included: Perjury, Tax Evasion, Larceny, Bribery, Accepting Unlawful Gratuities, Identity Fraud, Conspiracy, Procurement Fraud, and Embezzlement.

### NON-CASE HIGHLIGHTS

During Fiscal Year 2001, members of the Division were involved in community activities and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- The Boston Bar Association Educational Panel: "Doing Business With the Government."
- MCLE Superior Court forum.

- MCLE trial advocacy seminar.
- MCLE trial advocacy training.
- The National District Attorneys Association conference on White Collar Crime Prosecutions.
- National Advocacy Center seminar on Public Corruption Prosecutions.
- DNA and the Criminal Justice System conference at Harvard's Kennedy School of Government.
- Harvard Law School mock trial advisor.
- The Belmont Middle School Gun Prevention Mock Trial competition.
- Lecture to the Plymouth County District Attorney's Office.
- The Office of the Attorney General, Child Protection Project.

## **VICTIM/WITNESS ASSISTANCE DIVISION**

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The Victim/Witness Assistance Division 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). A third Victim/Witness Advocate position was added to the Criminal Bureau in Fiscal Year 2001 due to the high volume of cases requiring victim/witness assistance. Advocates in the Criminal Bureau provide victim advocacy and witness management services to all of the Bureau's divisions: 1) Appellate; 2) Criminal Investigations; 3) Economic Crime; 4) Environmental Crimes Strike Force; 5) Financial Investigations; 6) High Tech and Computer Crime; 7) Public Integrity; and 8) Special Investigations and Narcotics. Advocates are occasionally assigned to prosecutions in other bureaus of the office when the need for victim/witness services is identified by the Assistant Attorney General. The nature of these cases varies depending on the referral source. Categories include Medicaid fraud, patient abuse, home repair fraud and insurance fraud. Advocates also provide victim/witness coverage on conflict cases referred to the Office of the Attorney General by the eleven 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.

The Division included the following staff members: Kathleen Morrissey, Director; Helena Dunn; and Kelly Payne.

## CASE HIGHLIGHTS

Five cases of particular note illustrate work in priority areas set by Attorney General Tom Reilly: (1) high tech and computer crime; (2) elders and fraud; (3) community partnerships; (4) consumers and identity fraud; and (5) the environment and public safety.

- **Commonwealth v. Christopher Dehaven** (High Tech & Computer Crime Division)

Christopher Dehaven, a Pennsylvania man, met two Belmont girls online and then traveled to Massachusetts with the alleged intent of having sex with them. The defendant pled guilty to one count of Dissemination of Material Harmful to a Minor in Middlesex Superior Court and was sentenced to two and one-half years in the House of Corrections, six months and two days to be served, the balance to be suspended for two years with eight probationary conditions, including no access to internet and sex offender evaluation and treatment to be supervised by the Probation Department.

The Dehaven case raised significant victim/witness issues. The victims' parents had heightened anxiety because the defendant was transported from his home state of Pennsylvania to Massachusetts in furtherance of our prosecution. In addition, because the victims had only "met" Dehaven online, they did not feel comfortable attending the guilty plea and sentencing (typically a point of closure for victims). None of the victims chose to do victim impact statements; one parent read a statement in court while another parent watched in silence. The Division's work on this case included crisis intervention relating to press coverage and the defendant's whereabouts; participation in trial preparation at the victims' homes; ongoing notification of the victims and their families of the case status; and attendance at the guilty plea with the victims' parents.

- **Commonwealth v. Douglas Schwartz** (Economic Crime Division). The defendant pled guilty to six criminal charges arising out of his fraudulent activities with funds in the account of the late Harriet Maxant. The charges were: larceny over \$250; forgery; obtaining signatures by

false pretense; securities fraud; transacting business beyond the scope of his securities license; and uttering a forged instrument. The defendant was sentenced to a two-year term of supervised probation, restitution in the amount of \$53,568.32 and 100 hours of community service.

The Schwartz case involved an elderly victim who required special services from the Division. The Division began working with the victim in 1998, together with other members of the prosecution team, to aid in the assessment of the elder's legal competency. Thereafter, the Division provided ongoing case notification to the victim's three adult children; participated in trial preparation sessions with witnesses; provided information and assistance with respect to victim impact statements; and provided support and assistance to the family at the guilty plea. One of the victim's adult daughters was an individual with mental retardation. The Division obtained transportation and accommodations so that she was able to come to court on the day of the plea with her family. The Division's attention to this case was recognized by the victim's family at the conclusion of the case.

- **Commonwealth v. Matthew McDonough** (Conflict Case Referred by Suffolk District Attorney's Office) Matthew McDonagh pleaded guilty to one count of assault and battery and was sentenced to two years in the House of Corrections, eighteen months to be served and the balance (6 months) to be suspended for three years with probationary conditions including a stay-away order from the victim, his family and the establishment at which the crime occurred.

The Division worked with the prosecution team to provide coverage and notification to the victim. In furtherance of our efforts, the Division conducted many telephone conversations with the victim and the victim's family to determine the victim's needs as a result of extensive injuries caused by the crime. In addition, the Division met with the victim and the victim's brother to assist the victim in the completion of the Victim Compensation Application and the CORI certification process.

- **Commonwealth v. Kerrin Alfonso** (Economic Crime Division) Kerrin Alfonso pleaded guilty to ten counts of forgery, three counts of larceny over \$250, and three counts of identity fraud. The defendant was sentenced to state prison to be served at M.C.I. Framingham for a term of not less than three years and not to exceed five years, five years' probation to commence after the state prison sentence has been served, and restitution of up to \$1,000 per victim.

This case was significant in that the defendant has a national reputation as the "Queen of Identity Fraud." The Division provided both victim advocacy and witness management to the six victims

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identified by this Office. One victim, in particular, was assessed to be in need of victim advocacy as she was the mother of a homicide victim in an unrelated case. The Division worked with the prosecution team to reach out to these victims, participated in victim interviews, kept the victims apprised of case status and also assisted these victims in completing the Victim Impact Statements and the CORI certification applications. In addition, the Division maintained close ties for notification purposes to the other government agencies involved in this case: the Boston Police Department, the Woburn Police Department and the Secret Service Boston Office.

- **Commonwealth v. Elias Dow** (Environmental Crimes Strike Force) Elias Dow admitted to sufficient facts necessary to warrant a finding of guilty in Dedham District Court on two charges arising from his failure to label and illegal disposal of infectious medical waste which had been generated at his medical lab.

The defendant was placed on supervised probation for a period of six years, during which time the operation and maintenance of his lab would be closely tracked, and was ordered to pay \$6,000 to the Northeast Environmental Enforcement Project, an organization which provides education and training to environmental inspectors, investigators, and prosecutors throughout the northeastern United States and southeastern Canada.

The Dow case is significant from a victim/witness perspective. It is one of a growing number of environmental cases requiring victim/witness services. The primary victim in this case -- the janitor -- was unwittingly exposed to free-flowing blood and became quite symptomatic after the incident. As a result of the exposure, the victim underwent HIV testing for a period of two years and required individual psychotherapy. The victim also began to develop cardiac symptoms and angina. Indeed, during a trial preparation session, the victim had an angina attack while he was recalling his HIV testing. In order to assist the primary victim through these incidents, the Division provided victim advocacy-crisis intervention and ongoing case notification. In addition, the Division provided witness management services to a dozen Commonwealth witnesses, including two collateral agencies, the Department of Public Health and the Brookline Board of Health.

## STATISTICAL SUMMARY

Fiscal Year 2001 ushered in a banner year for the Victim/Witness Assistance Division which responded to significant challenges to provide services to a high volume of victims and witnesses. Victim advocacy

and witness management services were provided by the victim/witness advocates in 84 cases across the Commonwealth. The referral sources for these cases is as follows:

<b>REFERRAL SOURCE</b>	<b>NUMBER OF CASES</b>
Economic Crime Division	29
High Tech & Computer Crime Division	16
Public Integrity Division	13
Environmental Crimes Strike Force	10
Special Investigations & Narcotics Division	3
Appeals Division	3
Public Protection Bureau, Chief Prosecutor's Office	1
Business Labor & Protection Bureau, Medicaid Fraud Control Unit	1
Public Protection Bureau, Civil Rights Division	1
Conflict Cases	7
<b>TOTAL</b>	<b>84</b>

### **NON-CASE HIGHLIGHTS**

During Fiscal Year 2001, members of the Division were involved in community activities and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- Ongoing consultation to prosecutors, investigators and state troopers by screening and responding to duty calls and correspondence on 51 occasions from the public when victim/witness issues were identified.
- Attending 17 educational conferences across the Commonwealth relating to victim/witness issues.

- Conducting trainings related to the implementation of the Victim Rights Law and the role of Victim/Witness Assistance Division to: the Massachusetts Office for Victim Assistance; new statewide Advocates and Victim of Crime Act (“VOCA”) program grantees; the Criminal Bureau staff; and the Criminal Bureau summer interns.
- Participating in a presentation entitled, “Internet Crime and Safety” at the Paul McLaughlin Youth Center and providing training to the children at the Center on teen-dating violence and conflict resolution.
- Participating in statewide working groups on the state of the state of victim rights and services; protecting victim/witness advocate notes; financial crime victims; and building bridges of support for moms.
- The Citizens for Schools mock trial at the Moakley Federal courthouse.
- Co-authoring: Victim-Witness Specialist, United States Attorney’s Office, “Working with Victims of Fraud,” Victim Impact, Volume 2, No. 2, Spring, 2001.
- Completing the Elder Strike Force Training Program and qualifying as an Elder Law Advocate.
- Attending the NAAG Eastern Region Telemarketing Fraud Enforcement Training.
- Attending bi-monthly meetings of the Victim and Witness Assistance Board which oversees the implementation of victim rights across the Commonwealth.
- Attending the Annual Victim Rights Conference in April, 2001 chaired by Attorney General Tom Reilly and the Massachusetts Office for Victim Assistance (MOVA).
- Member of the Massachusetts District Attorneys Association’s Domestic Violence Subgroup and the Boston Area Sexual Assault Coalition, a hospital-based forensic network.

## **SPECIAL INVESTIGATIONS & NARCOTICS DIVISION**

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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. Funds recovered by the Unit are disbursed 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 2001 were the following: armed robbery, narcotics trafficking and related offenses, gaming, extortion and loansharking, firearms trafficking, possession of large capacity weapons and related firearms offenses, armed career criminal violations, larceny of motor vehicles, larceny of high-tech hardware and software, identification fraud, check counterfeiting, counterfeit currency possession, unlawful production of fraudulent Massachusetts drivers licenses, habitual criminal offenders, and a variety of conflict cases from District Attorneys' Offices across the state, including motor vehicular homicide.

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 United States Customs Service, the Department of Corrections, District Attorney's 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, counterfeit check and identification producers, organized larceny rings, and firearm traffickers.

A significant tool that the Division utilized to penetrate and dismantle complex illegal enterprises during Fiscal Year 2001 was electronic surveillance. Over the past year, troopers assigned to this Division have on numerous occasions equipped themselves with electronic body wires, pursuant to so-called *Blood* warrants, to intercept and record criminal conversations with unsuspecting targets. Additionally, from July 2000 through June 2001, the SI&N Division executed 35 court-authorized wiretap warrants. These warrants authorized law enforcement officers to intercept, monitor, and record criminal communications occurring over several cellular and residential telephones. On one occasion, prosecutors and troopers assigned to the Division received court permission to install an electronic "bug" inside a key location used by members of an organized crime family. These electronic surveillance measures, coupled with traditional investigative techniques, have proven invaluable in securing the convictions of individuals with ties to a



variety of sophisticated criminal enterprises. Because of their considerable expertise in this area, attorneys in the Division are frequently asked to advise police officers and fellow prosecutors in the law of search and seizure and electronic surveillance.

During Fiscal Year 2001, 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, Division attorneys provided advice and assistance to attorneys and police officers across the state in rendition matters. In addition, the Division fielded public record inquiries directed to the Division on matters concerning the Criminal Offender Records Information (CORI) Act. .

The SI&N Division included the following staff members: William F. Bloomer, Chief; Alope Chakravarty; Carole Conley; Joanna Kennefick; Alexandra Moffatt; Eileen O'Brien; Peter Paulousky; Mary P. Phillips; Matthew Shea (Western Massachusetts Division); and Karen Wells. Approximately ten Massachusetts State Troopers are assigned to the SI&N Division within the Attorney General's Office. During Fiscal Year 2001, that unit was under the direction of Captain Mark Delaney. Lieutenants Stephen and Francis Matthews, with Sergeants Richard Prior and Thomas Coffey, formed the central core of the remaining command structure for SI&N troopers.

### CASE HIGHLIGHTS

- **Commonwealth v. Scott Sanders** (Middlesex Superior Court); **Commonwealth v. James Hayes** (Middlesex Superior Court); **Commonwealth v. Donald Smoot** (Middlesex Superior Court); **Commonwealth v. Anthony Cardillo** (Middlesex Superior Court); **Commonwealth v. Cynthia Hughes** (Middlesex Superior Court), **Commonwealth v. Byron Vorgeas** (Middlesex Superior Court); **Commonwealth v. Patrick J. McGonagle** (Middlesex Superior Court); **Commonwealth v. Christian J. Petrillo** (Middlesex Superior Court); **Commonwealth v. Daniel Mosher** (Middlesex Superior Court); **Commonwealth v. Michelle Collette** (Norfolk Superior Court); **Commonwealth v. Philip P. Shaheen** (Norfolk Superior Court); **Commonwealth v. James Masciulli** (Suffolk Superior Court); **Commonwealth v. Joseph Rosatto** (Suffolk Superior Court); **Commonwealth v. Christian Kelley** (Suffolk Superior Court); **Commonwealth v. David Kelley** (Suffolk Superior Court); **Commonwealth v. Gerardo Fabrizio** (Lynn District Court); **Commonwealth v. Nicola Fabrizio** (Lynn District Court); **Commonwealth v. Alfonso Velasquez-Londono** (warrant) During Fiscal Year 2001, troopers and prosecutors assigned to the SI&N Division conducted a wiretap investigation into three separate but overlapping drug distribution rings

operating in the Greater Boston area. From July 10, 2000 through August 15, 2000, investigators monitored eight different telephones and two paging devices and intercepted hundreds of communications relating to the importation and resale of large quantities of OxyContin /oxycodone pills, kilogram quantities of cocaine, hundreds of pounds of marijuana, and designer “ecstasy” pills. On August 16, 2000, in a coordinated effort involving more than 150 officers from state, federal, and local police departments, 28 search warrants were executed at residences in four different counties. Police seized over 5 kilograms of cocaine, more than 3,500 OxyContin /oxycodone and MDMA (ecstasy) pills, 30 pounds of marijuana, handguns, approximately \$400,000 in drug money, and one dozen luxury motor vehicles. Sixteen people were arrested and charged with offenses ranging from trafficking in an opium derivative (oxycodone) and cocaine to distribution of MDMA and conspiracy. Five of those individuals have already pleaded guilty to felony criminal charges.

- **Commonwealth v. Frederick Simone** (Middlesex Superior Court); **Commonwealth v. Vincent Gioacchini** (Suffolk Superior Court) Over the course of fifteen weeks during Fiscal Year 2001, prosecutors from this Division assisted the State Police Special Services Unit and the Federal Bureau of Investigation in conducting a court-authorized wiretap of two telephones belonging to an alleged longtime soldier of La Cosa Nostra (LCN) as well as implanting and monitoring an electronic recording device in a key location utilized by LCN members. The intelligence garnered from this electronic surveillance, coupled with traditional investigative techniques, led to the issuance of 13 search warrants for locations that crossed county lines. On December 7, 2000, state police and federal agents executed these warrants and seized three handguns, hollow point ammunition, holsters, gaming records, and cash. Frederick Simone and Vincent Gioacchini were arrested and charged with being Armed Career Criminals. Simone presently faces a mandatory ten years in state prison, while Gioacchini’s possible incarceration is a mandatory fifteen years under the Armed Career Criminal Act.

- **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 sizeable 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. On October 2, 2000, 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 target of the investigation and six others were arrested. Four additional individuals were indicted following a grand jury investigation. To date, eight of the eleven defendants have pleaded guilty to a variety of offenses ranging from conspiracy to distribution of controlled substances. The remaining three defendants are the subjects of arrest warrants issued by the court. This investigation exemplified the successful cooperative efforts of three separate law enforcement entities working together with one prosecuting entity to attain one goal.

- **Commonwealth v. Timothy Ross** (Essex Superior Court); **Commonwealth v. Tu An Ngyuen** (Suffolk Superior Court) These separate cases are set forth together because both involve undercover troopers who placed their lives at risk by purchasing operable firearms from individuals on the street. In the first instance, an undercover trooper bought a "Tec 9" mm semi-automatic pistol equipped with a 32 round magazine and loaded with 24 live rounds of ammunition. After this hand-to-hand sale, Ross was arrested. After further investigation by Division staff, he later pleaded guilty to charges of selling a large capacity weapon and feeding device as well as one count of being an armed career criminal. Ross was ultimately sentenced to six to eight years in state prison. In the second case, Ngyuen transferred three handguns -- one Raven .25 caliber semi automatic and two 9 mm pistols -- to an undercover trooper. Conversations between Ngyuen and the undercover officer were recorded by means of a body wire pursuant to so-called *Blood* warrants. During these conversations, Ngyuen among other things bragged about his ability to gain access to several different types of large capacity weapons. He was later charged with firearms trafficking and faces trial in 2002.

- **Commonwealth v. Frank Gottschalk** (Woburn District Court); **Commonwealth v. Diane Gottschalk** (Woburn District Court) These cases illustrate the "typical" work done on a daily basis by investigators and prosecutors assigned to the SI&N Division. In the Fall of 2000, state police received information that the Gottschalks were selling heroin a short distance from an elementary school in Winchester. Troopers quickly initiated an investigation that ultimately led to the issuance of a search warrant for the Gottschalks' residence and the seizure of heroin and distribution paraphernalia from that location. The Gottschalks were arrested, and

based upon the strength of the case against them both defendants pleaded guilty shortly thereafter to drug charges. Diane Gottschalk in particular admitted to selling heroin within a school zone and received a mandatory two years in jail for her actions. After the Gottschalks' arrests, school officials publicly praised the work of investigators and prosecutors in the Attorney General's Office.

- **Commonwealth v. Dale McBride** (Somerville District Court); **Commonwealth v. Mary Franklin Rose** (Somerville and Lowell District Courts); **Commonwealth v. Jody Smith** (Somerville District Court) The Somerville Police Department sought the assistance of prosecutors in the SI&N Division in prosecuting the defendants, who were tied to gang members in Boston's Mattapan section, for cashing counterfeit checks in amounts of approximately \$490 (checks under \$500 do not require the approval of a bank manager to be cashed). This criminal activity is presently an escalating problem that is costing banks and their customers millions of dollars per year. Following issuance of criminal complaints, the defendants were convicted of larceny and uttering forged instruments and sentenced to the house of correction. As a condition of probation upon their release, the defendants were ordered to pay thousands of dollars in restitution and to perform community service.

- **Commonwealth v. Maryann Tedesco** (Woburn District Court) On November 8, 1999, Tedesco was operating her vehicle on Route 93 in Wilmington at approximately 9:00 pm, speeding, and weaving over the marked lanes, despite normal road conditions, when she eventually lost control of her vehicle, which went barreling into the median strip guard rail and into the fast lane of traffic, causing a five-car pile up. Pinkesh Bhatt's vehicle slammed into Tedesco's, and another vehicle smashed into Bhatt's vehicle as it was spinning along with Tedesco's. Bhatt died a day and a half later. Investigation revealed that Tedesco negligently operated her car by weaving inexplicably and by speeding, leading to her loss of control of her vehicle. In September 2000, Maryann Tedesco admitted to sufficient facts to a charge of motor vehicular homicide. Tedesco was placed on probation for four years, lost her license to operate a motor vehicle, and was ordered to perform 100 hours of community service and to issue a written apology to the victim's surviving family members.

## STATISTICAL SUMMARY

From July 1, 2000 through June 30, 2001, State Police assigned to the SI&N Division made approximately 65 felony arrests. Prosecutors in the Division in turn successfully disposed of 90 pending

cases in the Massachusetts Superior and District Courts (some of which were initiated in prior Fiscal Years) while initiating approximately 110 new cases in those same courts. Of the number of drug cases investigated by the Division in Fiscal Year 2001, about one-third 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.

From July 1, 2000 through June 30, 2001, State Police assigned to the SI&N Division seized 16 guns ranging from an Intratec 9 mm semi-automatic firearm to several handguns with obliterated serial numbers. Based upon these seizures as well as undercover purchases of weapons, prosecutors in the SI&N Division charged 9 individuals with a variety of firearms offenses, including armed career criminal violations, possession of large capacity weapons, and receiving firearms with obliterated serial numbers.

During Fiscal Year 2001, the Asset Forfeiture Unit initiated approximately 28 new civil forfeiture actions and concluded 18 actions involving money, cars, a boat, motorcycles and jewelry. In addition, the Asset Forfeiture Unit successfully concluded several pending civil forfeiture actions from prior Fiscal Years involving a number of automobiles used to facilitate the distribution of narcotics including one 1996 Green Camry, one Mercury Cougar, one 1998 Dodge Ram and one 1993 Jaguar XJS. Also, the Asset Forfeiture Unit concluded a civil forfeiture action regarding one 1998 Sea Ray Boat which was sold at auction. Lastly, the Asset Forfeiture Unit was meritorious in a summary judgment motion filed against a 1997 Toyota 4-Runner which had been used to transport a large quantity of cocaine.

At any given time, the Division generally has in excess of 105 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.

### **NON-CASE HIGHLIGHTS**

Assistant Attorneys General assigned to SI&N Division continue to provide service and assistance both in and out of the Office that exceed the scope of traditional prosecutorial responsibilities. During Fiscal Year 2001, members of the Division were involved in community activities and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- National Association of Attorneys General, *Telemarketing Fraud Trial Practice Academy*.
- Boston Bar Association, round table discussion on “Youth Crime/ Gang Crime in Boston.”
- Attorney General’s Racial Profiling Working Group.
- Attorney General’s Subcommittee on Juvenile Justice.
- Drug Enforcement Administration Training, *The Law of One-Party Consent Interceptions in Massachusetts*.
- Attorney General’s Ballot Initiative Petition Certification Group.
- Massachusetts Attorney General’s Office In-House Training, *Search and Seizure 101*.
- Suffolk University Panel on “Firearms: First Monday in October.”
- Attorney General’s Subcommittees on Gang Violence and Child Abuse.
- Citizen’s School Mock Trial Program.

## ECONOMIC CRIME DIVISION

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The Economic Crime Division investigates and prosecutes all types of private sector, white collar and economic crime in state courts across the Commonwealth. The Division is charged with stemming the serious and egregious effects of private sector white collar offenders within the state through both proactive prevention and aggressive prosecution. The cases handled by the Division may vary in size – from the \$50,000 theft from a single elderly victim to the multi-million dollar theft from a large corporation. The goal of the Division is not only to indict and convict guilty felons but also to assist the public and private sector in creating systemic change in order to prevent fraud.

The Economic Crime Division consists of a specialized team of criminal prosecutors and one legal secretary. The Division has expertise in the following areas of criminal law: (1) fiduciary embezzlement, (2) complex financial organizational frauds, (3) securities violations, and (4) tax offenses. Each of these broad areas of financial crimes victimize both vulnerable individuals and large corporations.

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

The Division continues to work closely with such offices and agencies as the Board of Bar Overseers, the Client Security Board, the Criminal Investigations Bureau of the Department of Revenue, the F.D.I.C., the Secretary of the Commonwealth, the United States Attorney's Office, and District Attorneys' Offices across the state.

The members of the Economic Crime Division during part or all of the Fiscal Year consisted of the following: Carol Starkey, Chief; Lori Balboni; Mark Mulligan; Molly Parks; Steven Prunier; Mary Ruppert; and Olivia Blanchette, the Division secretary.

### CASE HIGHLIGHTS

- **Commonwealth v. Jack Trischitta, Robert E. Foley, Scot Butcher, Thomas Ciliberto, Martin Robins, Richard C. Arrighi and Ronald A. Borini** (Suffolk Superior Court) Last Fiscal Year, a Special Suffolk County Grand Jury returned 30 indictments against seven people alleging eight different criminal schemes involving thefts from the Treasurer's Office between May 1992 and February 1998. The total amount of money stolen as a result of these alleged schemes was approximately \$9.4 million dollars – the largest theft of state funds in the history of the Commonwealth. During this Fiscal Year, two of the inside cooperating witnesses, the former Deputy Treasurer, Robert Foley, and the former Supervisor of the Unpaid Check Fund, John Trischitta, pleaded guilty in Suffolk Superior Court, agreeing to stay their sentencing until after they testified at the trial of the remaining defendants, which was scheduled for early in Fiscal Year 2002.
- **Commonwealth v. Shin Wong and China Wok** (Suffolk Superior Court) The defendant was the owner of a restaurant, China Wok, and substantially understated its sales to avoid paying taxes, and created a false second set of register tapes to thwart the Department of Revenue's review. The charges alleged that there was a \$450,000 understatement of sales resulting in a tax due of approximately \$22,500. Indictments included multiple counts of filing false meals tax returns, aiding and assisting in the preparation of false meals tax returns and failure to file meals tax returns. The defendant and the company pleaded guilty. Shiu Wong was sentenced to a \$10,000 fine with conditions of probation to include cooperating with Department of revenue in a civil assessment, and the timely filing of all tax returns for which the defendant was responsible during the probation period. China Wok was sentenced to \$10,000 fine.

- **Commonwealth v. James Toth** (Suffolk Superior Court) Toth was charged with fraudulently claiming he was a New Hampshire resident beginning in 1990, while living in Massachusetts. The tax loss to Massachusetts for the calendar years 1993 through 1996 was \$6,705. Charges included multiple counts of failure to file income tax returns. After pleading guilty, the defendant was sentenced to a \$4,000 fine and a 1 year jail sentence, suspended for 2 years, with a fine totaling \$12,000. Conditions of probation included (1) 150 hours of community service; (2) Filing all future tax returns as they become due; and (3) cooperating with the Department of Revenue in the payment of past taxes.
- **Commonwealth v. Vincent Stolo** (Middlesex Superior Court) Vincent Stolo, the President of the market research firm Fieldwork Inc., stole \$1,408,660.93 through seven different schemes perpetrated through his company. The charges included larceny over \$250, false entries in corporate books, fraudulent use of corporate credit, and filing a false report to police officers. After pleading guilty, the defendant was sentenced to 2 ½ years in the House of Correction, in addition to a sentence of 5 years probation, to be commenced from and after his incarceration, with the following conditions of probation: (1) attend gamblers anonymous on monthly basis; (2) pay full restitution of \$1,037,627.63, the monthly amount to be determined by probation after service of incarceration.
- **Commonwealth v. Robert E. Lockwood, 33 Dunster Street, Inc., Employment Leasing, Inc./Liquidators Corporation and National Communications, Inc.** (Suffolk Superior Court) Robert Lockwood was a Beverly Farms businessman who failed to pay over \$6,000,000 dollars in taxable meals and wages that were paid to employees, amounting to over \$300,000 in tax liability owed to the Commonwealth. The foregoing crimes were perpetrated through his corporations 33 Dunster Street, Inc., Employment Leasing, Inc./Liquidators Corporation and National Communications, Inc. The defendant was indicted on charges of willful attempt to evade and defeat withholding taxes, willful failure to account for and pay over withholding taxes, willful failure to account for and pay over meals taxes, willful filing of false excise tax returns, aiding and assisting in the willful filing of false withholding tax returns, willful failure to file state income tax returns and failure to file excise tax returns. The defendant was also charged by the United States Attorney Office on related charges. As part of a global resolution, on the state charges, the defendant was sentenced to 1 year House of Correction, suspended for 2 years, and ordered to pay a total of \$95,000 in fines, \$47,500 paid to the Commonwealth forthwith at the sentencing. The willful attempt to evade and defeat withholding taxes charge and the charges against 33 Dunster Street were nolle prossed upon the defendant's state court sentencing.



- **Commonwealth v. Charles Christy** (Worcester Superior Court) The defendant was a disbarred attorney who embezzled over \$100,000 which he was supposed to hold in escrow for a client. The target's counsel acknowledged to Bar Counsel that unspecified additional clients were owed money, and the defendant's former partner told Bar Counsel that the defendant admitted having stolen clients' funds for years. The defendant was indicted on multiple counts of larceny over \$250. The defendant was sentenced to two years in the House of Correction, suspended for 5 years, with conditions of probation that included 90 days home confinement, and \$15,000 restitution.
- **Commonwealth v. Douglas Schwartz** (Middlesex Superior Court) Douglas Schwartz, a registered representative of a Royal alliance Broker/Dealer firm, was charged with stealing joint owner interests in corporate stock from an elderly victim by forging securities documents, exceeding the scope of his trading license, and fraudulently influencing an elderly woman to sell approximately \$150,000 in securities. The proceeds of the stock sale were used to fund a fraudulent 20-year mortgage loan to the target's wife. The charges included larceny over \$250, forgery, obtaining signatures by false pretense, securities fraud, engagement in activity outside of his license, and uttering forged documents. The defendant pleaded guilty and was sentenced to two years probation with \$53,586.32 restitution, plus 100 hours community service.
- **Commonwealth v. Frank S. Ardagna** (Suffolk Superior Court) The defendant, the Chief Financial Officer of New England Shelter for Homeless Veterans, embezzled over \$60,000 from the shelter's accounts for his personal use and forged documents to conceal his embezzlement. The charges included larceny over \$250 and forgery. The defendant was sentenced to 4 years in the House of Correction, from and after 5 years probation. Conditions of probation included \$50,000 restitution and employment restrictions.
- **Commonwealth v. Sean C. Murphy, Byron Worth & Sylvia Murphy** (Middlesex, Essex and Suffolk Superior Courts) Sean Murphy and Byron Worth, inmates at the correctional facility of MCI-Shirley, together with Murphy's mother, Sylvia Murphy, were indicted on charges of attempted larceny and conspiracy for the submission of false claims of sexual abuse to the Archdiocese of Boston. The defendants were charged with multiple counts of attempted larceny over \$250 and conspiracy to commit larceny. However, due to defendant, Sylvia Murphy's death during the pendency of the charges, the Commonwealth nolle prossed the indictments of larceny over \$250 and conspiracy to commit larceny against the defendant Sylvia Murphy. The co-defendants' charges remain outstanding.

- **Commonwealth v. Isaac Belbel** (Suffolk Superior Court) The defendant filed false Massachusetts Income Tax Returns for the calendar years 1997, 1998 and 1999, in order to obtain false refunds from Department of Revenue. Belbel obtained false refunds in the amounts of \$7,981 and \$8,263 for the calendar years 1997 and 1998. For the calendar year 1999, Belbel filed a tax return requesting approximately \$16,000 from the Department of Revenue. The defendant pled guilty to all counts and was sentenced to 1 year in the House of Corrections, suspended for 5 years, 300 hours community service, and ordered to pay a \$10,000 fine and surfine.
- **Commonwealth v. Pamela Lozon** (Suffolk Superior Court) The defendant was charged with embezzling approximately \$100,000 of funds from the Boston Neurological Foundation as the former Financial Manager. During her employment, the defendant wrote checks to herself, allegedly for reimbursement of expenses, and used the Foundation's funds to pay for personal purchases and expenses, including the payment of her family's American Express card, and a boat loan for her son. The defendant was charged with larceny over \$250 and making false entries in corporate books. The defendant was found guilty and sentenced to full restitution in the amount of \$84,874.90 paid on the date of sentencing, followed by 3 Years probation with monthly in-person reporting and bi-weekly telephone reporting and 200 hours of community service.
- **Commonwealth v. Leo Burns and Thomas J. Ribaga** (Barnstable, Middlesex, Plymouth Superior Courts) Co-defendants Burns and Ribaga ran a financial services business called Pilgrim Financial Group, Inc. They solicited funds from mostly elderly clients purportedly to invest them, and instead used the money to defray business and personal expenses. The defendants were indicted on charges including larceny over \$250, unlawful offer/sale of securities, and fraudulent offer or sale of securities.
- **Commonwealth v. Zachary Hildreth** (Suffolk Superior Court) The defendant targeted the South End community and stole money from multiple victims through the issuance of false promissory notes in return for loans to his alleged computer company for over \$70,000. The defendant was indicted on charges including larceny over \$250 and securities fraud.
- **Commonwealth v. Ziad F. Shahin** (Essex Superior Court) The defendant fraudulently transferred an annuity investment from the Great American Life Insurance Company on behalf of the victim to a fish company for his own personal benefit. The defendant was indicted on charges including larceny over \$250 and securities fraud.

- **Commonwealth v. Stephen C. Holt** (Suffolk Superior Court) The defendant was the controller for Sara Campbell, Ltd., a clothing designer firm, and the ex-brother-in-law of the principal, Sara Campbell. He embezzled in excess of \$2 million from 1995 through 1998, in part through spending the money on day trading. The defendant was indicted on charges including larceny over \$250, false entry in corporate books and omitting true entries in corporate books.
- **Commonwealth v. William Previti** (Suffolk Superior Court) The defendant was the owner of retail fitness equipment business that collected 5% sales tax from retail customers on approximately \$2 million in sales over a four-year period. No returns were filed, and no taxes were paid. The defendant was indicted on charges, including multiple counts of willful failure to account for and pay sales tax. The defendant was charged with failure to account for and pay sales tax. Upon a written plea agreement, the defendant was sentenced to 2 years in the House of Correction, suspended for 5 years, with 5 years probation. The conditions of probation included: (1) 9 Months home confinement monitored by electronic bracelet, costs to be paid by defendant; (2) a \$40,000 fine, \$20,000 of which to be paid at sentencing, and \$20,000 of which to be paid over the probationary period; and (3) the defendant is to file all past due tax returns.
- **Commonwealth v. Yovette Mumford** (Suffolk Superior Court) The defendant owned American Electrical Corporation (“AEC”), which was an electrical inspection contractor for the Central Artery & Tunnel project. AEC failed to file withholding tax returns, and in addition, submitted false documentation for an audit of payments made to the company. The defendant was indicted on charges, including procurement fraud, failure to account for and pay over withholding taxes, and failure to file withholding tax returns.
- **Commonwealth v. James A. Kendrick** (Chelsea District Court) The defendant was a home improvement contractor who committed welfare fraud and stole money from an elderly victim. The defendant was indicted on charges, including larceny over \$250 and welfare fraud.
- **Commonwealth v. Shirley Hoak** (Brighton, Cambridge and Middlesex Superior Courts) The defendant was an attorney who converted funds entrusted to her by more than ten clients. The Defendant was indicted on charges of larceny over \$250 and larceny over \$250 from a person sixty years or older. The charges stem from over \$280,000 entrusted by an elderly man to be placed in a trust and invested, and \$95,000 entrusted by a Milton man to pay back taxes, penalties and interest.

## STATISTICAL SUMMARY

The following chart summarizes the categories of cases handled during Fiscal Year 2001.

<b>CRIME</b>	<b>COURT</b>	<b>INDICTMENTS</b>
False Entries In Corporate Book	Suffolk Superior	1
False Entries In Corporate Records	Suffolk Superior	1
Withholding Tax Violations	Suffolk Superior	1
Failure to File Withholding Tax Returns	Suffolk Superior	1
Fraudulent Offer or Sale of a Security	Middlesex Superior	2
Larceny Over \$250	Barnstable Superior	2
	Brighton District	1
	Cambridge Superior	1
	Chelsea District	1
	Essex Superior	1
	Middlesex Superior	3
	Plymouth Superior	3
	Suffolk Superior	3
	Suffolk Superior	3
False Income Tax Returns	Suffolk Superior	2
Omitting True Entry in Corporate Book	Suffolk Superior	1
Securities Fraud	Suffolk Superior	2

<b>CRIME</b>	<b>COURT</b>	<b>INDICTMENTS</b>
Unlawful Offer/Sale of Security	Barnstable Superior	2
Welfare Fraud	Chelsea District	1
Sales Tax Violations	Suffolk Superior	1

The following chart summarizes case dispositions during Fiscal Year 2001.

<b>CASE DISPOSITIONS</b>	<b>COURT</b>	<b>TOTAL CASES</b>
Attempt Larceny Over \$250	Suffolk Superior	1
Conflict of Interest	Suffolk Superior	1
Conspiracy to Commit Bribery	Suffolk Superior	1
Conspiracy to Commit Larceny	Suffolk Superior	1
Conspiracy to Commit Larceny from the Treasury	Suffolk Superior	1
Embezzlement by a Treasury	Suffolk Superior	1
Engagement in Activities Outside License	Middlesex Superior	1
Failure to Account for and Pay Over Sales Tax	Suffolk Superior	1
Forgery	Middlesex Superior	1
Identity Fraud	Middlesex Superior	1
Larceny Over \$250	Essex Superior	1
	Middlesex Superior	3
	Suffolk Superior	3

<b>CASE DISPOSITIONS</b>	<b>COURT</b>	<b>TOTAL CASES</b>
Making and Subscribing False Income Tax Returns	Suffolk Superior	1
Making False Entries in Corporate Books	Suffolk Superior	1
Obtaining Credit by False Pretense	Essex Superior	1
	Middlesex Superior	1
Obtaining Property Over \$250 by False Pretense	Essex Superior	1
Securities Fraud	Middlesex Superior	1
Uttering Fraudulent Checks	Essex Superior	1
Uttering Forged Documents	Middlesex Superior	1
Willful Filing of False Income Tax Return	Suffolk Superior	1
Willful Failure to Timely File Income Tax Returns	Suffolk Superior	1

### **NON-CASE HIGHLIGHTS**

During Fiscal Year 2001, members of the Division were involved in community activities. Members served on various legal committees and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- The Massachusetts Bar Association's Criminal Justice Section Council
- The Boston Bar Association, Criminal Law Section Steering Committee
- Speaker for the Elder Strike Force on the topic, "Overview of Topics of Identity Fraud"

- Speaker at the Plymouth District Attorney’s Office on the topic, “Giving an Effective Closing Argument”
- Panelist Speaker at the New England Chapter of the High Technology Investigation Association on the topic, “The Investigation of Complex Economic Crimes”
- Panelist Speaker at the Heritage Green on the topic, “Elder Financial Abuse”
- Speaker at Brighton High School on the topic, “BBA Brighton High School to Kill a Mockingbird”
- Panelist Speaker at the Arlington Elder Conference on the topic, “Identity Theft”
- Panelist Speaker at the Association of Certified Fraud Examiners on the topic, “Investigation of Complex Economic Crimes”
- Speaker for the Boy Scout Troop 1775, on the topic of “Constitutional Law”
- Panelist Speaker for The MCLE Cybercrime and Corporate Fraud on the topic, “Rights and Remedies”

## **ENVIRONMENTAL CRIMES STRIKE FORCE**

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The Massachusetts Environmental Crimes Strike Force (ECSF) is a unique interagency enforcement tool used in the investigation and prosecution of violations of the Commonwealth’s environmental laws. Through the cooperation of the Attorney General, the Secretary of Environmental Affairs, the Department of Environmental Protection (DEP) and the Department of Fisheries, Wildlife and Environmental Law Enforcement, the ECSF brings attorney, technical and police resources under a single umbrella. The ECSF 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. The types of cases prosecuted by the ECSF include illegal treatment and disposal of hazardous waste; water pollution; failure to notify of hazardous material releases; air pollution cases resulting from burning of wastes and illegal removal of asbestos; and illegal dumping of, among other things, abandoned drums and tire piles.

The staff of the ECSF Division is comprised of three prosecutors, one secretary and four environmental police officers from the Department of Fisheries, Wildlife and Environmental Law Enforcement. DEP scientists and engineers working out of the DEP’s Boston office, as well as its four regional offices located

in Wilmington, Worcester, Springfield and Lakeville, make up the ECSF technical staff. These scientists span the gamut of environmental specialties and programs (e.g., air, water, wetlands).

Fiscal Year 2001 was a year of transition for the Environmental Crimes Strike Force Division. Assistant Attorney General Michael Dingle left the Strike Force in April 2000 and Assistant Attorney General Martin Levin left in July. Trooper John Lapan, the last state police officer assigned to the Strike Force, was reassigned out of the Attorney General's Office in October 2000 and Assistant Attorney General Pamela Talbot left in June of 2001. Secretary Brenda Toland left in November 2000. Assistant Attorney General Paul J. Molloy was appointed Chief of the Strike Force in September 2000 and Assistant Attorney General Nick Kosiavelon was assigned to the division in October 2000. Secretary Jenny Prokopovich joined the Strike Force in January 2001.

During Fiscal Year 2001, the Environmental Crimes Strike Force took a leading role in a cross-bureau, inter-agency Asbestos Initiative with the DEP, the Environmental Protection Division, and the Division of Occupational Safety to stem the tide of illegal removal and disposal of asbestos.

At the close of Fiscal Year 2001, the Environmental Crimes Strike Force was staffed by two Assistant Attorneys General, Paul J. Molloy and Nick Kosiavelon, by four members of the Environmental Police, Lt. Gail Larson, Sgt. Michael Sweeney, Officer Patrick Haley, Officer Michael Moore and secretary Jenny Prokopovich.

### CASE HIGHLIGHTS

Highlights of cases handled by the Environmental Crimes Strike Force in Fiscal Year 2001 include:

- **Commonwealth v. Frank Sigsbury/Modern Aluminum** (Berkshire Superior Court) Modern Aluminum illegally treated hazardous waste resulting in the deaths of two employees. Frank Sigsbury, the owner, pled guilty to three felony counts of violating the Massachusetts Hazardous Waste Management Act and was sentenced to one year in the House of Corrections, suspended, placed on probation for two years, the first three months of which to be served on home confinement, monitored with an ankle bracelet. The defendant was fined \$140,000. A condition of probation required that Sigsbury cease having any further involvement in the management of Modern Aluminum.
- **Commonwealth v. Elite Chemicals** (Suffolk Superior Court) Elite Chemicals discharged hydrochloric acid and caustic sodium hydroxide waste into the Springfield sewer system.



Agreed upon civil pleadings were filed in Suffolk Superior Court. Elite paid a civil penalty of \$425,000 and an additional \$110,000 to fund a watershed protection plan for the Connecticut River Basin.

- **Commonwealth v. William Spear** (Newburyport District Court) William Spear was charged with illegally disposing of two tractor trailer trucks loaded with drums of hazardous waste by abandoning them at a farm in Salisbury. The defendant was charged in District Court with four counts of violating the Massachusetts Hazardous Waste Management Act.
- **Commonwealth v. Elias Dow, M.D.** (Dedham District Court) Elias Dow illegally disposed of infectious medical waste resulting in exposure to janitors. The defendant admitted to sufficient facts necessary to warrant a finding of guilty in Dedham District Court on two charges arising from his failure to label and illegal disposal of infectious medical waste which had been generated at his medical lab. The defendant was placed on supervised probation for a period of six years, during which time the operation and maintenance of his lab will be closely tracked, and was ordered to pay \$6,000 to the Northeast Environmental Enforcement Project, an organization which provides education and training to environmental inspectors, investigators, and prosecutors throughout the northeastern United States and southeastern Canada.
- **Commonwealth v. Markings, Inc.** (Plymouth District Court) Markings, Inc., is a corporation that paints lines on parking lots and roadways throughout New England. On October 28, 1999, Department of Environmental protection (DEP) inspectors responded to a complaint that the company was burning paint behind the companies Pembroke, Mass. facility. During the inspection, DEP observed open vats of burning paint behind the Pembroke facility. Markings, Inc. pled guilty to illegally disposing of hazardous waste (paint waste) by open burning. The Court imposed a \$15,000 fine imposed.
- **Commonwealth v. Belz Enterprises, Inc.** (Suffolk Superior Court) Belz illegally removed and disposed of asbestos containing waste during renovations of a Holiday Inn in Randolph. Agreed upon civil pleadings were filed in Suffolk Superior Court. In addition, Belz paid a \$100,000 civil fine.

Five individuals in four different counties were indicted in Superior Court for the illegal removal and disposal of asbestos containing materials. An additional three individuals were convicted in District Court.

- **Commonwealth v. Andrew Jones** Andrew Jones hired a tenant to illegally remove and dispose of asbestos insulation from a three-unit rental property owned by Jones in Greenfield, Massachusetts. Jones pleaded guilty to one count of violating the Massachusetts Clean Air Act and was sentenced to one year in the House of Corrections, suspended during two years of probation, subject to the payment of a \$7,500 fine.
- **Commonwealth v. James Keeley and Commonwealth v. Robert Rocha** The defendants illegally removed asbestos from a Needham residential property and a Dedham elementary school that resulted in contamination of both properties. The defendants pled guilty to four counts of violating the Massachusetts Clean Air Act. James Keeley was sentenced to two years of probation and ordered to pay \$10,000 restitution. Robert Rocha was sentenced to two years probation and ordered to serve 200 hours of community service.
- **Commonwealth v. Stephen Faulkner** The defendant was charged with violations of the Massachusetts Clean Air Act, for failure to comply with asbestos regulations and violation of the Massachusetts Solid Waste Management Act, for the illegal disposal of asbestos waste. The defendant, a formerly licensed asbestos supervisor, admitted to sufficient facts to warrant a finding of guilty to violating the Clean Air Act and the Massachusetts Solid Waste Management Act. Judge John J. Curran, Jr. found Faulkner guilty of the illegal removal and disposal of the asbestos and placed the defendant on probation for one year and ordered him to pay a \$1,000 fine.
- **Commonwealth v. Kevin Holland** The defendant was charged with violations of the Massachusetts Clean Air Act for failure to comply with asbestos removal regulations, violation of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act and larceny by false pretenses over \$250. The defendant pled guilty to all counts and was sentenced to one year in the House of Correction, suspended, two years probation, \$20,000 restitution and ordered to comply with all asbestos regulations. The larceny by false pretense charge was dismissed.

### STATISTICAL SUMMARY

During Fiscal Year 2001, the Environmental Crimes Strike Force opened 31 investigations and closed 30 (some of which were opened in prior Fiscal Years). During the Fiscal Year, five individuals were indicted in Superior Court, three individuals and one corporation were charged in District Court and seven

cases resulted in guilty pleas. Of the seven pleas, two were taken in Superior Courts and five were taken in District Courts. In addition, two corporations entered into civil consent judgments in Superior Court.

During Fiscal Year 2001, dispositions of cases prosecuted by the Environmental Crimes Strike Force resulted in civil and criminal fines and restitution in excess of eight hundred thousand dollars.

### **NON-CASE HIGHLIGHTS**

During Fiscal year 2001, members of the ECSF were involved in community activities and both attended and taught training classes inside and outside the Office of the Attorney General, including:

- Conducting investigative training seminars for DEP Investigators.
- Conducting environmental crime trainings for the Criminal Justice Training Council and a number of municipal police training academies.
- Coordinating a cross-bureau, inter-agency Asbestos Initiative with the Environmental Protection Division, the Department of Environmental Protection and the Division of Occupational Safety to stem the tide of illegal removal and disposal of asbestos containing waste.
- Attendance at monthly meetings of the Central Artery/Tunnel Environmental Oversight Committee, which oversees environmental compliance of the CA/T project, as the Attorney General's representative.
- Attendance at monthly meetings of the Multi-Agency Task Force on Schools.
- Formulation of the Healthy Schools Council, in conjunction with the Executive Office of Environmental Affairs, the Division of Occupational Safety and the Department of Environmental Protection.
- Service as the Office of Attorney General's representative at a number of conferences and trainings sponsored by the Northeast Environmental Enforcement Project.

### **FINANCIAL INVESTIGATION DIVISION**

The Financial Investigation Division provides the Criminal Bureau with eight experienced civilian investigative professionals who investigate and assist in the prosecution of white-collar criminal cases.

These investigations include larceny, public corruption, campaign finance violations, securities fraud, tax fraud and all other white collar frauds which are referred to the Division. The investigators bring to the Division many years of experience from investigating cases in local, state and federal government as well as private sector venues.

Investigators assigned to the Financial Investigation 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 throughout the investigation with Criminal Bureau prosecutors and Massachusetts State Police assigned to the Bureau's Criminal Investigation Division. Investigators may also work on a case-by-case basis with investigative or audit personnel from referring agencies such as the Securities Division of the Secretary of State's Office, Board of Bar Overseers, Criminal Investigations Bureau of the Department of Revenue, and the Office of the State Auditor.

As part of the investigation and prosecution team, Division investigators assist in the design and implementation of an investigative plan for each investigation. Criminal Bureau investigations 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 testimony before grand juries and in trial settings. 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 Economic Crime Division. The Division works closely with the Economic Crime Division Chief during the screening process and then with the assigned AAG when a matter has been accepted for formal investigation. The other major sources of investigative assignments for the Division included the Public Integrity Division and the Bureau's High Tech and Computer Crime Division. Since the Division's formation in 1995, it has also performed investigative assignments for the Bureau's Environmental Crimes Strike Force and the Appellate Division.

During Fiscal Year 2001, the Division also committed investigative resources to the Special Investigations & Narcotics Division and to the Bureau's investigation of the Central Artery Third Harbor Tunnel Project. With respect to the former, the Division provided individual and corporate financial profile information for the state police in support of an undercover operation. With respect to the latter, Division members provided analytical and organizational support to the Bureau's Central Artery Third Harbor Tunnel investigation.

This Fiscal Year, the Division was comprised of three Certified Fraud Examiners and five investigators with backgrounds from the banking industry, insurance industry, a private investigative firm and the Middlesex County District Attorney's Office. During the Fiscal Year, the Division included the following staff members: Paul Stewart, Director; David Baker; Bill Frugoli; Jen Hollingsworth; Brendan Kelleher; Jim McFadden; Jon Murphy; and Sallyann Nelligan.

### CASE HIGHLIGHTS

- **Commonwealth v. Arrighi et al.** (Economic Crime Division) Last Fiscal Year, approximately one-third of the Division's investigative resources were devoted to assisting in the Treasury investigation, which involved the theft of approximately \$9,500,000 from the Treasury of the Commonwealth. The Treasury case was scheduled for trial early in Fiscal Year 2002 and accordingly, substantial investigative resources were devoted to this case during the 2001 Fiscal Year. During the prior Fiscal Year, many members of the Division assisted and/or conducted a significant number of the pre-indictment interviews. Given the complex nature of the case, many members of the Division assisted and/or conducted a significant number of post-indictment interviews during the current Fiscal Year. Last Fiscal Year, the Division created a database of financial transactions seminal to the Treasury prosecution. During the present Fiscal Year, the Division devoted substantial resources to create summary charts based on that financial transactions database.

- **Commonwealth v. Ziad Shahin** (Economic Crime Division) The Division has devoted substantial resources in furtherance of the prosecution of Ziad Shahin. Shahin fraudulently transferred an annuity investment from the Great American Life Insurance Company on behalf of the victim to a fish company for his own personal benefit and was indicted on charges including larceny over \$250 and securities fraud. This case was scheduled for trial early in Fiscal Year 2002 and the Division devoted substantial resources in furtherance of the preparation for that trial. Among other services rendered by the Division was the preparation of the Commonwealth's summary witness at trial, which was a member of the Division.

Following is a list of some of the other matters investigated by Division members during the Fiscal Year which resulted in indictments. As with the previously referenced matters, the Division requesting Financial Investigation Division involvement is listed parenthetically and more specific information about each of these matters can be found by referring to the referenced Division's section in the Bureau's report.

- *Commonwealth v. Stephen Holt* (Economic Crime Division).
- *Commonwealth v. Percy W. Martin* (Public Integrity Division).
- *Commonwealth v. Pamela Lozon* (Economic Crime Division).
- *Commonwealth v. Zachary Hildreth* (Economic Crime Division) .
- *Commonwealth v. Yovette Mumford* (Economic Crime Division).
- *Commonwealth v. Shirley Hoak* (Economic Crime Division).

### **NON-CASE HIGHLIGHTS**

In addition to the investigative tasks, the Division also performs many administrative duties for the Bureau with respect to cars, seized evidence, and other such matters. The Division is responsible for the assignment, maintenance and reporting on the usage of all Bureau cars. The Division also 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, Division staff members prepare an accounting of all forfeited funds of the Special Investigations & Narcotics Division which are disbursed in accordance with the Commonwealth's forfeiture laws. The accounting system is designed as a management tool for the Bureau.

The Division is also working with state police command to assist with background and warrant checks. For the upcoming Fiscal Year the Division is planning to move one staff member into an administrative investigator position whose duties will encompass all the tasks associated with seized evidence, forfeited funds, background checks, warrant checks and NCIC inquiries.

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

### **OUTREACH**

The staff is also an integral part of the Bureau's outreach to referral agencies. We maintain contact with the Chief Investigator at the Criminal Investigations Bureau of the Department of Revenue and the Senior

Financial Investigator at the Board of Bar Overseers, to update them monthly on the status of all referrals from their respective agencies to the Bureau. Our outreach efforts are designed to complement those of the Chief of the Economic Crime Division.

### TRAINING

Division members have prepared and taught training sessions to their colleagues (the Attorney General's Institute), personnel from outside referral agencies and also to groups such as, The Arson Investigators Association, Massachusetts Society of Certified Public Accountants, The Southeastern Massachusetts Fraud Investigators Association, Suffolk University, The Check Fraud Clearinghouse, The Boston Chapter of the International Association of Certified Fraud Examiners and local school districts.

Presentations included:

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

The Division was also fortunate enough this Fiscal Year to send one staffer to a two-week training on Financial Crimes offered at the Federal Law Enforcement Training Center in Glynco, Georgia.

### INTERN PROGRAM

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

# GOVERNMENT BUREAU

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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 2001 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 2001, several attorneys were assigned permanently to work 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 is also responsible for the legal review of all newly enacted town by-laws; the preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties; and the review of proposed statewide initiative and referendum questions under amendment article 48 of the Massachusetts Constitution to determine whether such questions are of the type that may lawfully appear on the ballot.

The Trial Division defends suits seeking damages or other relief for alleged wrongful acts of government officials or employees, particularly 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 2001, the Government Bureau executive staff included the following staff members: Stephanie Lovell, Chief; Sherrie Costa; Peter Sacks; and Ernest Sarason.

### 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 2001 to protect the public interest and the interests of its state agency clients. Highlights of this affirmative litigation were as follows:

- **Commonwealth v. Phillips** (Suffolk Superior Court). The Attorney General had filed suit in fiscal 2000 on behalf of the Teachers Retirement Board, seeking to recover over \$800,000 of unearned pension benefits from a retired teacher who had been mistakenly paid those benefits between 1990 and 1999. The court appointed a receiver to prevent the concealment or transfer of the assets of the teacher and her husband, and the court entered a consent judgment and execution against the defendants for nearly \$1 million
- **Waskiewicz v. Processed Food Products Embargoed at 209 Mystic Avenue, Medford** (Somerville District Court). The Attorney General, on behalf of the Department of Public Health, had filed a "petition for libel of condemnation" in fiscal 2000, seeking permission to destroy adulterated frozen ravioli and other food products prepared by a company that had allegedly been operating under unsanitary conditions, including using equipment contaminated by rodent infestation. After the company voluntarily agreed to destroy all food products previously embargoed by the Department of Public Health, the court entered a consent judgment under which the company agreed to cooperate fully with the Department.
- **Ford v. Herson** (Middlesex Superior Court). On behalf of the State Retirement Board, the Attorney General moved to intervene in a medical malpractice case brought by a former capitol police officer who alleged that he had been forced to retire after being mis-diagnosed with angina. The Board seeks to recover approximately \$400,000 in disability retirement benefits paid to the plaintiff over the past twenty years, if the plaintiff recovers lost wages as a result of any malpractice.

- **Commissioner of Veterans' Services v. Town of Lexington** (Suffolk Superior Court). The Attorney General filed suit to compel the Town to appoint a full-time veterans' agent or join a veterans' services district as required by state law.
- **Secretary of the Commonwealth v. AFSCME Council 93** (Suffolk Superior Court). The Attorney General filed suit to vacate an arbitrator's decision to place a former employee of the Essex County Commissioners' Office in a position with the Essex Registry of Deeds.
- **Secretary of the Commonwealth v. Election Commissioners of the City of Boston** (Suffolk Superior Court). On behalf of the Secretary, the Attorney General sought to require Boston election officials to re-examine the voting machines used in the City of Boston at the November 7, 2000, state election, in order to properly record and transmit to the Secretary the correct numbers of "yes" and "no" votes on the eight statewide ballot questions, as well as on two non-binding public policy questions that appeared on the ballot in portions of the City. Incorrect results had initially been recorded in at least fifty precincts throughout the City. The City cooperated in the litigation and the court ordered reexamination of all voting machines. Although vote tallies were changed, the ultimate result did not change on any ballot question.
- **Ruthardt v. United States** (U.S. District Court). The Attorney General, on behalf of the Commissioner of Insurance acting as receiver of a liquidated insurance company, American Mutual, sought declarations that (1) claims by the United States against the estate were subject to the bar date for claims established by the Massachusetts Supreme Judicial Court; and (2) the Commonwealth may distribute assets to the state insurance guaranty funds as assignees of policyholders before paying non-policyholder claims of the United States.
- **Public Petroleum, Inc. v. J.P. Noonan** (Plymouth Superior Court). The Attorney General intervened on behalf of the Underground Storage Tank Board and the Underground Storage Tank Petroleum Product Cleanup Fund, seeking to recoup more than \$100,000 in reimbursement the Fund had paid the plaintiff for the cost of cleaning up a gasoline spill at its station in Seekonk. The Fund also sought a declaration that it was entitled to a set-off against future claims by the plaintiff against the Fund.
- **Lalli v. Bishay** (Suffolk Superior Court). The Attorney General, on behalf of the state Commissioner of Public Safety, joined by the Town of Brookline, obtained

preliminary and then permanent injunctions against the operation of dangerous elevators in a Brookline warehouse. Prior to the injunctions, the elevators had been operated in violation of shut-down notices issued by a Department of Public Safety elevator inspector.

- **Commonwealth v. Bernhard** (Suffolk Superior Court). On behalf of the Secretary of the Commonwealth, the Attorney General obtained an injunction against the operators of a “Vote-Auction.com” Internet website prior to the November 2000 presidential election. This website had offered to sell to the highest bidder the votes of more than 700 Massachusetts citizens. By the middle of October, the leading bidder had offered a total of \$4,000 for these votes.
- **Commonwealth v. National Association of Government Employees** (Suffolk Superior Court). On behalf of the Office of Campaign and Political Finance, the Attorney General filed suit against a political action committee that had failed to pay \$30,000 it had previously agreed to pay to settle claims of alleged violations of campaign finance laws.

Government Bureau attorneys also litigated numerous 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 permitting 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**

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The Administrative Law Division has three principal functions: (1) to defend lawsuits against state officials and agencies concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) to review all newly enacted town by-laws; and (3) 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 2001, significant events occurred in each of these areas.

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During fiscal 2001, the Administrative Law Division included the following staff members: Judith Yogman, Chief; Deborah Anderson; Lydia Badolato; Dena Barisano; Thomas Barnico; John Bowman; Betsy Broadman; Romeo Camba; Judith Cassino; Julie Collins; Pierce Cray; Edward DeAngelo; Maureen Desmond; Wanda Devereaux; Portia Hall; Daniel Hammond; John Hitt; Quinette Littleton; Bernadette Lovell; Maria Makredes; Marianne Meacham; Pauline O'Brien; Susan Paulson; Anthony Penski; Eva Poole; Christopher Quaye; Robert Quinan; William Reynolds; Juliana Rice; Robert Ritchie; Cynthia Rothaupt; Adam Simms; Ginny Sinkel; Amy Spector; Steven Thomas; Hung Tran; Peter Wechsler; Richard Weitzel; and Jane Willoughby.

### DEFENSIVE LITIGATION

The Division litigated cases in a wide range of subject areas in fiscal 2001. Summaries of appellate and federal district court cases from some of the more significant areas are set forth below.

In the disability discrimination area, notable cases litigated during fiscal 2001 included the following:

- **Currie v. Group Insurance Commission** (U.S. District Court). The court held that the state employees' long-term insurance disability plan, which allows benefits beyond one year for mentally disabled individuals only if they are hospitalized, does not violate the Equal Protection Clause, the Due Process Clause, or the Americans with Disabilities Act.
- **Disability Law Center v. Riel** (U.S. District Court). The court allowed a mental health advocacy organization to access records kept at a state mental health facility in order to investigate allegations of abuse by the facility's employees.
- **Rolland v. Cellucci** (U.S. District Court). The court approved a settlement agreement in a Medicaid/ADA class action suit brought on behalf of mentally retarded nursing home patients against various state officials.

Notable cases litigated during fiscal 2001 involving children and families included the following:

- **Paternity of Cheryl** (Supreme Judicial Court). The court held that a father could not move to set aside a judgment of paternity when, more than five years after he voluntarily acknowledged paternity, genetic tests established that he was not the child's father.
- **Adoption of Marc** (Appeals Court). The court affirmed a trial court decree dispensing with the need for parental consent to the adoption of a child, holding that a mother was not entitled to an evidentiary hearing on her motion for relief from the decree.
- **Adoption of Keefe** (Appeals Court). The court affirmed a trial court decree dispensing with the need for parental consent to the adoption of a child who was a victim of Munchausen Syndrome, in which the child's parent deliberately sought attention by inducing or causing illnesses in the child.
- **Adoption of Arnold** (Appeals Court). The court affirmed a trial court decree dispensing with the need for parental consent to the adoption of a child, rejecting the father's arguments that the Department of Social Services did not meet the heightened burden of proof required by the Indian Child Welfare Act and that the trial court erroneously allowed into evidence children's hearsay statements of sexual abuse.
- **Adoption of Serge** (Appeals Court). The court affirmed a trial court decree dispensing with the need for parental consent to the adoption of a child, holding that a mother's prior history of drug and alcohol addiction supported a finding of parental unfitness, that the child's close attachment to his foster family further showed that adoption would be in his best interest, and that the Department of Social Services made sufficient efforts to assist the child's mother in attempts at reunification.

Division attorneys also handled a substantial number of tax cases in the state appellate courts, including the following:

- **Commissioner of Revenue v. Jafra Cosmetics, Inc.** (Supreme Judicial Court). The court held that a taxpayer's salespeople were "representatives" within the meaning of a statute imposing sales and use tax liability on out-of-state vendors with representatives in the Commonwealth.
- **Fox v. Commissioner of Revenue** (Supreme Judicial Court). The court reversed, in part, the Appellate Tax Board's determination that a taxpayer was personally responsible for payment of sales taxes owed by two companies.

- **Truck Renting and Leasing Ass'n v. Commissioner of Revenue** (Supreme Judicial Court). The court upheld the constitutionality of a corporate excise tax on a foreign corporation that leased vehicles to persons who operate them in Massachusetts.
- **Town of Boylston v. Commissioner of Revenue** (Supreme Judicial Court). The court held that land under reservoir water could not be valued for purposes of computing payments in lieu of taxes due to the town of Boylston, and that the valuation methodologies for non-reservoir land within the watershed were not arbitrary and capricious.
- **Horvitz v. Commissioner of Revenue** (Appeals Court). The court vacated and remanded the Appellate Tax Board's denial of a taxpayer's claim for abatement of personal income tax, on the ground that the Board improperly assigned to the taxpayer the burden of proof on the issue of change of domicile.
- **Deveau v. Commissioner of Revenue** (Appeals Court). The court reversed, as unsupported by substantial evidence and incorrect as a matter of law, the Appellate Tax Board's decision that certain taxpayers were engaged in a trade or business in the Commonwealth.

Division attorneys handled several retirement cases resulting in reported decisions during fiscal 2001, including the following:

- **MacLean v. State Board of Retirement** (Supreme Judicial Court). The court held that a former government employee automatically forfeited his pension based on convictions for violations of the state's conflict-of-interest law.
- **Hosking v. Contributory Retirement Appeals Board** (Appeals Court). The court held that the plaintiff was not entitled to participate in the Massachusetts Turnpike Authority's early retirement program while also collecting worker's compensation benefits, because he was not on the active payroll of the authority at the time.
- **Flanagan v. Contributory Retirement Appeals Board** (Appeals Court). The court held that the State Board of Retirement had statutory authority to set off money that the pensioner earned from county employment against future retirement benefits.

- **Kaplan v. Contributory Retirement Appeals Board** (Appeals Court). The court held that the plaintiff was not entitled to a retirement allowance because he was terminated.
- **State Police for Automatic Retirement Association v. DiFava** (U.S. District Court). The court dismissed plaintiff's attempt to reimpose the mandatory retirement age for State Police, which had been struck down in an earlier case.

Division attorneys were also involved in other types of payment-of-benefits cases, including the following:

- **DaLuz v. Department of Correction** (Supreme Judicial Court). Although the court opined that assault pay benefits were computed incorrectly, it ruled that claim preclusion barred a challenge to the calculation of these benefits.
- **Lebow v. Commissioner of the Division of Medical Assistance** (Supreme Judicial Court). The court held that the plaintiff was ineligible for Medicaid reimbursement because she had sufficient available resources as a beneficiary of a trust.
- **Guerriero v. Commissioner of the Division of Medical Assistance** (Supreme Judicial Court). The court held that a beneficiary of an irrevocable trust who executed a complete waiver of all beneficial interest in the trust deprived the trustee of discretionary power to disperse trust assets to the beneficiary and, therefore, such trust assets could not be considered as "available" to the beneficiary for purposes of determining her financial eligibility for Medicaid benefits.
- **Doyle v. Department of Industrial Accidents** (Appeals Court). The court dismissed the plaintiff's claim that he was deprived of vocational-rehabilitation benefits without due process, finding that the plaintiff had no property interest in receiving such benefits and that, even if he did, the procedures afforded were constitutionally sufficient.

In fiscal year 2001, as in prior years, most of the cases handled by Division attorneys involved review of state agency decisions under G.L. c. 30A, the State Administrative Procedure Act, or G.L. c. 249 § 4, the certiorari statute. Appellate decisions in such cases included the following:

- **Town of Hingham v. Department of Telecommunications and Energy** (Supreme Judicial Court). The court affirmed DTE's decision approving a water company's request to increase rates in order to pay for a new plant.



- **Lincoln v. Personnel Administrator** (Supreme Judicial Court). The court held that plaintiffs' challenge to a firefighter examination was barred for failing to exhaust administrative remedies.
- **AT&T v. Automatic Sprinkler Appeals Board** (Appeals Court). The court affirmed the Automatic Sprinkler Appeals Board's decision requiring AT&T to install sprinklers in rooms of telephone company buildings not containing telephone equipment.
- **BAA Massachusetts, Inc. v. Alcoholic Beverages Control Commission** (Appeals Court). The court affirmed the Commission's decision to suspend a trucking company's permit to transport alcoholic beverages within Massachusetts and to revoke the seller's package store license, while reversing the Commission's sanction against the common carrier that had transported the alcoholic beverages to the Massachusetts carrier.
- **Lewis v. Committee for Public Counsel Services** (Appeals Court). The court affirmed a decision of the Committee for Public Counsel Services that attorneys had overbilled for their services in representing indigent clients.

Division attorneys handled a number of cases during the past fiscal year that challenged the validity of state statutes and regulations. Significant decisions in such cases included the following:

- **Roe v. Attorney General** (Supreme Judicial Court). The court upheld the constitutionality of a statute requiring sex offenders to mail personal information to the Sex Offender Registry Board before receiving a hearing on their present dangerousness.
- **Crown Electrical Supply Co. v. State Office for Minority and Women's Business Assistance** (Appeals Court). The court upheld the denial of plaintiff's application for certification as a women-owned business, for failing to comply with SOMWBA's regulations, and held that SOMWBA had the authority to promulgate those regulations. Although the court upheld the validity of SOMWBA's regulation requiring women-owned businesses to be "independent," it invalidated another regulation requiring women owners to make sufficient "investment" in their companies.
- **Consolidated Cigar Corp. v. Reilly** (U.S. Court of Appeals for the First Circuit). The court upheld the validity of the Attorney General's regulations limiting the areas in which tobacco manufacturers can advertise their products.

- **Phillip Morris, Inc. v. Reilly** (U.S. District Court). The court declared the state's tobacco ingredient disclosure statute unconstitutional.
- **McGuire v. Reilly** (U. S. District Court). The court enjoined the enforcement of the Massachusetts reproductive health facility buffer zone statute, finding that it violated the plaintiff's rights to free speech and equal protection.
- **Comfort v. Lynn School Committee** (U.S. District Court). The court dismissed claims against the Commonwealth, a defendant intervenor for purposes of defending the Racial Imbalance Law, on Eleventh Amendment and other procedural grounds.

Division attorneys handled several appellate cases involving election issues during fiscal 2001:

- **Robinson v. State Ballot Law Commission** (Supreme Judicial Court). The court held that nomination papers that were copied with the back side upside down did not violate the statutory "exact copy" requirement.
- **Mazzone v. Attorney General** (Supreme Judicial Court). The court held that the Attorney General properly certified an initiative petition concerning asset forfeiture and drug treatment as not excluded from the initiative process.

During fiscal 2001, the Administrative Law Division opened 1,011 cases and closed 536 cases. At the close of the fiscal year, 1,890 cases were pending in the Division. Cases handled by Division attorneys resulted in 21 reported decisions of the Supreme Judicial Court, 16 reported decisions of the Massachusetts Appeals Court, 1 reported decision of the United States Court of Appeals for the First Circuit, and 8 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).

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.

The most prevalent subjects of local regulation during fiscal 2001 were by-laws regulating telecommunications facilities, wetlands, open space, agricultural uses and structures, and sexually-oriented businesses.

Going beyond what is required by statute, Attorney General Tom Reilly has chosen to extend the services and resources of his Municipal Law Unit by providing, where time permits, voluntary informal review of proposed town by-law amendments, and—even though not subject to mandatory legal review by the Attorney General—proposed city ordinances. During fiscal 2001, the Unit experienced a marked 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 2001, the Unit experienced an increase in the number of cases in litigation in which municipal law issues are involved. Even where the Attorney General has initially elected not to intervene or otherwise participate in such cases, the Unit monitors developments so that the Attorney General may become involved if warranted by developments in the case. At the close of fiscal 2001, Unit attorneys were monitoring approximately 50 such matters, an increase of about 10 cases from the previous year.

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. During fiscal 2001, Chapter 299 of the Acts of 2000 was first used to save a zoning article, submitted to the Unit for approval, in which the planning board hearing notice was deficient. The authority conferred by Chapter 299 was exercised in over 20 instances, and in all instances no objection was filed

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to the Attorney General's waiver of minor procedural deficiencies, thus allowing the Unit to approve amendments that would have otherwise had to be disapproved.

The Guidebook for Town Clerks and Planning Boards was revised several times during this fiscal year, as were the forms required for the submission of by-laws. Unit personnel attended the Massachusetts Town Clerks' Conventions to hold classes and to present and explain the changes in the forms used for submitting the by-law packets. The Unit also participated in the First Annual Municipal Law Update Conference. The Director of the Municipal Law Unit participated in several International Municipal Law Association Conferences throughout the year, as well as the Massachusetts City Solicitors and Town Counsel Association's monthly seminars. The Director spoke at the Massachusetts Association of Planning Directors' Conference, the Massachusetts Association of Conservation Commissions Annual Meeting, a New Jersey State League of Municipalities meeting, and a convention of the Massachusetts Municipal Association. He wrote articles for the Massachusetts Municipal Association's *Beacon* and *Advocate* magazines and for Massachusetts Continuing Legal Education (MCLE) as well as being a member of the MCLE faculty. The Unit's Town By-law Coordinator wrote a number of articles for the Massachusetts Town Clerks' Association monthly newsletter, *The Public Recorder*, and was a panel speaker at Western New England College School of Law in "Careers in Government and Public Interest Law."

During fiscal 2001, the Municipal Law Unit reviewed 571 general by-laws, of which 518 (90.7%) were approved, 16 (2.8%) were approved with partial deletion, 10 (1.8%) were disapproved, and 27 (4.7%) were returned with a finding that no action by the Attorney General was required by state law. The Unit reviewed 623 zoning by-laws, of which 561 (90.0%) were approved, 25 (4.0%) were approved with partial deletion, 36 (5.8%) were disapproved, and 1 (.2%) was returned with a finding that no action by the Attorney General was required by state law. The Unit reviewed 141 zoning map amendments, of which 137 (97.2%) were approved, and 4 (2.8%) were disapproved. The Unit reviewed 6 historic district by-laws, all of which were approved. Finally, the Unit reviewed 11 charter amendments, which were all found to be consistent with state law. The Unit met all review deadlines, so that in no instance was a submission constructively approved for failure to act within the period prescribed by state law.

During fiscal 2001, the Municipal Law Unit included the following staff members: Robert Ritchie, Director; Sandra Giordano; and Kelli Lawrence.

## OPINIONS

The Attorney General is authorized by G.L. c. 12, §§ 3, 6 and 9, to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and committees of the Legislature. Formal, published opinions are given primarily to the heads of state agencies and departments. In limited circumstances, less formal legal advice and consultation is also available from the Opinions Coordinator, as is information about the informal consultation process. The questions considered in legal opinions must have an immediate concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions which ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation. Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the Attorney General, the secretary then makes or approves the opinion request.

During fiscal 2001, the Attorney General issued three formal opinions, copies of which are included at the end of this report. (See Appendix, following p. 223.) An opinion issued to the Secretary of Public Safety addressed the scope of enforcement authority vested in the Office of the State Fire Marshal under the Commonwealth's comprehensive fire safety code as pertaining to state-owned and state authority-owned buildings. An opinion issued to the Commissioner of Public Health addressed whether local boards of health have jurisdiction to enforce the provisions of the State Sanitary Code against state-owned facilities. An opinion issued to the Executive Director of the Public Employee Retirement Administration Commission (PERAC) addressed the proper scope of PERAC's field examinations of the Pension Reserves Investment Management ("PRIM") Board.

During the same time period, the Attorney General issued 47 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.

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## TRIAL DIVISION

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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. If the case goes to trial, the Trial Division aggressively defends the Commonwealth and its employees, resulting in millions of dollars in savings to the Commonwealth each year.

During fiscal 2001, the Trial Division included the following staff members: David Kerrigan, Chief; Rosemary Connolly; Dorothy Anderson; Steven Baddour; Jason Barshak; Mary Elizabeth Basile; Matthew Berge; Crispin Birnbaum; John Bowen; Ranjana (Chand) Burke; Stephen Clark; Karen Craffey; William Daggett; Irene Del Bono; Stephen Dick; Thomas DiGangi; Kristen Dionisi; Kristen Donald; Anne Edwards; Janet Elwell; Lisa Fauth; Susan Gaeta; Norine Gannon; Michelle Kaczynski; Angela Lee; Jennifer Lespinasse; Lucinda Macdonald; Howard Meshnick; Daniel Mulhern; Holly Parks; Maite Parsi; Frances Riggio; Beverly Roby; Eric Seyfert; A. Thomas Smith; Mark Sutliff; James Sweeney; Marini Torres-Benson; Antonette Traniello; Teresa Walsh; Doris White; Jonathan White; and Charles Wyzanski.

### TORTS

Most of the trials conducted by members of the Trial Division involve claims that the Commonwealth breached a duty of care owed to a member of the public, resulting in personal injury or property damage. The following are some of the tort cases tried by the Division during fiscal 2001:

- **Brown v. Roxbury Community College** (Suffolk Superior Court). Plaintiff sought damages based on a fall due to alleged negligent maintenance of stairs at the college. The defense was that plaintiff had failed to show the College had been negligent in any fashion. After trial, the jury returned a verdict for the defense.
- **Austin v. LeRoy** (Middlesex Superior Court). A former employee of the Fernald State School brought this action against a co-worker, alleging defamation and intentional infliction of emotional distress. The co-worker had reported seeing the plaintiff push a client, causing the client to fracture his knee, and the co-worker reported the incident in accordance with his

obligation as a “mandated reporter” under G.L. c. 19C. The plaintiff claimed that the co-worker lied about the incident to retaliate for the plaintiff’s having spurned the co-worker’s sexual advances. After trial, the jury returned a verdict in the defendant’s favor, finding that the defendant was a “mandated reporter” who had “reasonable cause to believe that the client suffered an injury as a result of abuse.”

- **Andrutis v. State Police** (Plymouth Superior Court). An elderly couple was badly injured when a state police trooper hit the back of their car. The trooper claimed that he was hit from behind by a third car, which no one else saw. The couple sued the State Police and the trooper individually. The State Police’s defense was that the trooper was not acting in the scope of his employment at the time of the accident, as he was in his own car and was driving home after his shift had ended. After trial, the jury found the State Police not liable, agreeing that the trooper was not acting in the scope of his employment at the time of the accident.
- **Pantojas v. Commonwealth** (Essex Superior Court). The plaintiff sued after a slip-and-fall in the shower at the Geiler Memorial Pool in Lawrence. The defense was that the plaintiff had not shown that the Department of Environmental Management had committed any negligent act and that the plaintiff had not paid any fee to use the pool, so that the recreational use statute barred his claim. After trial, the court directed a verdict for the Commonwealth when the jury found that the plaintiff did not pay a fee to use the pool.
- **Hogan v. State Police** (Suffolk Superior Court). Plaintiff was injured when she struck the rear end of a Massachusetts Turnpike vehicle being driven by a state trooper. Plaintiff alleged that a co-defendant had parked in a negligent manner after breaking down on the Turnpike, causing the accident when the trooper began assisting the broken-down vehicle. The jury found that the trooper was negligent, but that such negligence was not the substantial cause of the accident. The plaintiff moved for a new trial and the court granted the motion; a retrial is scheduled.
- **O’Connor v. Department of Social Services** (Worcester Superior Court). Plaintiffs brought what amounted to a “wrongful adoption” case, alleging that DSS had failed to inform them of past problems experienced by an adopted girl. The defense was that plaintiffs had been informed of all relevant past experiences. After a bench trial, the court entered judgment for DSS on all counts.
- **Pacheco v. Commonwealth** (Suffolk Superior Court). Plaintiff sought damages for a broken arm suffered after falling off a rope swing on a tree at the Horseneck Beach

campground. The defense was that the swing had not been installed by the Commonwealth and that the tree was located in a protected area. After trial, the jury returned a verdict for the Commonwealth.

Many tort cases are also resolved through other means, including settlement and dispositive motions. The following are examples of such cases during fiscal 2001:

- **Brown v. Commonwealth** (Essex Superior Court). Plaintiff was injured when a bench on which she was sitting outside a Boston Housing Court courtroom collapsed without warning. Plaintiff sought \$75,000; the case was mediated and settled for \$10,000.
- **Lesko v. Department of Social Services** (Suffolk Superior Court). This negligence action was brought after DSS placed infant twins in foster care on Cape Cod and one of the twins died in a fire at the foster home. DSS acknowledged liability, and a settlement of \$90,000 was negotiated.
- **Hedberg v. Board of Registration of Professional Engineers** (Orleans District Court). Plaintiff claimed that he had been harmed by the Board's failure to take action against an engineer. The court dismissed the action on the Board's motion asserting that the district court lacked subject matter jurisdiction over the Board, that plaintiff had failed to meet the presentment requirements of the state Tort Claims Act, and that the Act barred suits against the Board arising out of its discretionary functions.
- **Desjardins v. Commonwealth** (Barnstable Superior Court). This wrongful death case was brought by the estate of a woman who died in a car accident, allegedly due to accumulated ice and snow, on Route 6 on Cape Cod. The Commonwealth moved for summary judgment on the basis that the decision concerning when to plow the roads is necessarily a discretionary one, and therefore the Commonwealth was immune from liability for such conduct under the Tort Claims Act. The court agreed and entered judgment for the Commonwealth.
- **Jordan v. Commonwealth** (Plymouth Superior Court). After hitting a snow plow during a snowstorm and sustaining injuries, plaintiff brought this action against the Massachusetts Highway Department and the plowing contractor. Plaintiff argued that MHD was liable because it did not station a warning truck behind the plow. The claim was dismissed on MHD's motion asserting immunity under the Tort Claims Act on the



grounds that MHD's actions were not the original cause of the accident and, because they involved discretionary functions, could not be the basis for liability.

- **Rodriguez v. Commonwealth** (Suffolk Superior Court). The Department of Social Services was providing services for a family when the biological mother, who had legal and physical custody, left her infant son in the care of a mentally retarded neighbor. While in the neighbor's care, the son drowned. Plaintiff alleged that DSS was negligent in failing to remove the child from the mother's custody, failing to protect the child, and failing to prevent the child from being left in the care of an incompetent babysitter. The Commonwealth sought and obtained summary judgment based on the immunity provided by the Tort Claims Act for cases in which the Commonwealth was not the original cause of the injuries in question.

#### REAL ESTATE

The Division's real estate cases consist primarily of eminent domain disputes, in which persons whose land has been taken by the Commonwealth for a public purpose seek additional compensation for the taking. Unlike tort 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 may amount to millions of dollars. The following are highlights of the real estate cases resolved during fiscal 2001:

- **Engdahl v. Commonwealth** (Plymouth Superior Court). This case involved a partial taking in fee of half an acre in Plymouth as part of the Route 44 project. The plaintiff sought over \$1 million in damages, while the Commonwealth's pro tanto payment was \$35,000. After trial, the jury awarded the plaintiff \$29,000, saving the Commonwealth hundreds of thousands of dollars.
- **Laham v. Commonwealth** (Norfolk Superior Court). This case involved a taking of land along Route One in Wrentham. Plaintiff sought \$700,000, but after trial, based on the testimony of the Commonwealth's appraiser and engineer, the jury found the plaintiff entitled to only \$243,000, an amount less than the pro tanto that had already been paid.
- **Frontage Development Corporation v. Commonwealth** (Suffolk Superior Court). This case involved a taking of one acre of plaintiff's land in South Boston for the Central Artery project. The plaintiff sought \$7,800,000 in damages, while the Commonwealth's appraiser

testified to damages of \$790,000. After trial, the jury awarded \$797,000, saving the Commonwealth millions of dollars.

- **Cumberland Farms, Inc. v. Massachusetts Highway Department** (Plymouth Superior Court). This case arose out of Mass Highway's efforts to widen a road, allegedly requiring a convenience store and gas station structure to be demolished and rebuilt. Plaintiff's expert opined that damages totaled \$415,500, but after a day and one-half of trial, the case settled for \$160,000, or one-third of the amount plaintiff sought.
- **In re: Scituate Property** (Land Court). A petitioner in a land registration case discovered the potential escheat interest of the Commonwealth in a six acre parcel of land located in Scituate. The petitioner agreed to pay \$65,000 to the Commonwealth to settle the potential claim.

## CONTRACTS

The Division defends the Commonwealth and its agencies in a variety of contract actions, consisting primarily of construction disputes, breach of lease cases, and bid protests. These cases often involve interpretation of a complicated statutory framework for public contracts, as well as complex bidding regulations. As with real estate cases, there is no statutory cap on the potential liability of the Commonwealth, so the Commonwealth's exposure can be quite large in any given case. The following are highlights of the contract cases resolved during fiscal 2001:

- **FAMM v. Massachusetts Highway Department** (Middlesex Superior Court). FAMM subcontracted to provide steel for a Central Artery-related building in South Boston. FAMM sued the general contractor for almost \$1 million, and the general contractor sought to "pass through" the claim to Mass Highway. The court granted summary judgment for Mass Highway on the ground that the parties had entered into an accord and satisfaction.
- **Commonwealth v. Smith** (Appeals Court). The Commonwealth sought indemnification for environmental cleanup costs on land taken for the Central Artery/Tunnel project, but the trial court entered summary judgment for the defendant. On the Commonwealth's appeal, the Appeals Court overturned the Superior Court's decision, finding that the Commonwealth was entitled to show whether the defendants are responsible for the contamination on the property.

- **Health Card Exchange, Inc. v. Middlesex Hospital** (Appeals Court). Plaintiff appealed a Superior Court decision dismissing plaintiff's claim for \$66,264 for computer services provided to the Middlesex County Hospital in 1995. The Appeals Court affirmed, agreeing with the defense's argument that the statutory requirement of a written contract applied and had not been satisfied.
- **Atlas Elevator Services, Inc. v. Department of Mental Health** (Suffolk Superior Court). The plaintiff, a losing bidder for an elevator repair and maintenance contract for Worcester State Hospital, sought a preliminary injunction and other relief prohibiting the awarding of the contract. Although plaintiff was the lowest bidder, the Department of Mental Health had rejected plaintiff's bid for failure to meet specifications requiring a certain number of certified elevator repairmen. The court denied the plaintiff's efforts to enjoin award of the contract.
- **Allied Weatherproofing Co. v. Metropolitan District Commission** (Suffolk Superior Court). Plaintiff sought a preliminary injunction and declaratory relief as a result of the MDC's decision to seek bids on a swimming pool filter system as a "public work" project under G.L. c. 30, § 39M, instead of as a "public building" project under G.L. 149, § 44. Plaintiff challenged the legality of the bidding process and sought an order enjoining the MDC from awarding any contracts until this case was resolved. The court denied the requested relief.

#### EMPLOYMENT, CIVIL RIGHTS, AND OTHER CASES

The Division handled numerous employment, civil rights, and miscellaneous cases during the course of the year. Significant employment cases included the following:

- **Lamanque v. Department of Employment & Training** (U.S. District Court). Plaintiff claimed that DET had terminated her employment in retaliation for her speaking out on the issue of handicap accessibility when the DET moved its office from Edgartown to Oak Bluffs in 1992. After trial, the jury found for the plaintiff against two of the five individual defendants, awarding \$17,500 in damages. Subsequently, however, the court granted DET's motion for judgment as a matter of law on the basis of qualified immunity, and judgment entered for all defendants on all counts.

- **Messac v. Department of Mental Retardation** (U.S. District Court). Plaintiff claimed that she was the victim of race discrimination at the Fernald School. Initially she alleged that she was disciplined more harshly than white employees. During trial, however, the court allowed her to expand her case to include a racially hostile work environment claim. The jury found for DMR on her disparate treatment claim but awarded plaintiff \$35,000 on her hostile work environment claim; DMR has appealed.
- **Branco v. Department of Revenue** (U.S. District Court). The court granted DOR's motion for summary judgment based on plaintiff's failure to exhaust administrative remedies, a prerequisite to a Title VII employment discrimination claim.

The Division handled a number of civil rights cases during fiscal 2001, including the following:

- **Spinal Corrective, Inc. v. Steingisser** (Middlesex Superior Court). Plaintiff claimed that the former chairman of the state Board of Registration of Chiropractors, in collusion with two insurance companies, tricked the other board members into adopting a policy that made plaintiff's computer diagnostic program unsaleable and caused plaintiff to lose millions of dollars. After trial, a verdict was directed for all defendants, and plaintiff was ordered to pay more than \$90,000 to the defendants.
- **Wilson v. McClure** (U.S. District Court). A Pennsylvania boxing promoter sued the members of the state Boxing Commission for allegedly canceling his fight shows on the basis of his race. The defense was that the Commission applied its regulations in a non-discriminatory manner. After trial, a jury rendered a verdict totaling \$160,000 in damages against two of the defendants, along with attorney's fees. While an appeal was pending, the case settled.
- **Turner v. Lemuel Shattuck Hospital** (U. S. District Court). Plaintiff, a patient at the Boston Detox unit, was told to leave the program and responded by damaging a lounge area. He claimed that the campus police officers, who then arrested him, treated him roughly. The plaintiff brought federal civil rights and negligence claims. On the defendants' motion, the court dismissed the case.
- **Sidell-Maheras v. Commonwealth** (Suffolk Superior Court). The court granted judgment for three Department of Social Services employees on the plaintiff foster parents' state civil rights act and intentional tort claims. The judge found that plaintiffs did not have any legally protected interest in continuing to be foster parents and that the

defendants did not violate plaintiffs' rights by making various decisions about the foster home, including closing it to new placements.

- **Lameire v. Machado** (U.S. District Court). Plaintiff alleged that the Bristol County Commissioners, the Sheriff, and other officers of the Bristol County Superior Court were deliberately indifferent to plaintiff's history of suicide attempts, failed to prevent the plaintiff from attempting suicide, and failed to provide adequate medical assistance thereafter. The court granted defendants' motion for summary judgment on grounds of qualified immunity.

The Trial Division opened 246 new tort cases in fiscal year 2001 and closed 139; at the close of the fiscal year, 835 such cases were pending. The Division opened 192 real estate cases and closed 22 during fiscal year 2001; at the close of the fiscal year, 451 such cases were pending. The Division opened 25 contract cases and closed 18 during fiscal year 2001; at the close of the fiscal year, 140 such cases were pending. The Division opened 172 new employment, civil rights, and other miscellaneous cases in fiscal year 2001 and closed 73; at the close of the fiscal year, 265 such cases were pending.

# PUBLIC PROTECTION BUREAU

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CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION  
CONSUMER PROTECTION AND ANTITRUST DIVISION  
ENVIRONMENTAL PROTECTION DIVISION  
INVESTIGATIONS DIVISION  
DIVISION OF PUBLIC CHARITIES  
REGULATED INDUSTRIES DIVISION

## **PUBLIC PROTECTION BUREAU**

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The Public Protection Bureau manages and oversees civil and criminal affirmative litigation on behalf of the Commonwealth and its citizens; the development of policy, legislative and regulatory proposals; and personnel for six divisions: Civil Rights and Civil Liberties, Consumer Protection and Antitrust, Environmental Protection, Investigation, Public Charities and Regulated Industries. In addition, the Bureau has an office of the Chief Prosecutor, which brings criminal actions in appropriate cases. The divisions and the chief prosecutor's office also conduct investigations and publish reports in areas of interest arising out of their activities. The Bureau also includes the Consumer Complaint and Information Section and oversees the Local Consumer Aid Fund, which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

Bureau personnel also coordinate and staff Attorney General Tom Reilly's Student Conflict Resolution Experts (SCORE) Program, a nationally-recognized peer mediation program created to reduce violence in schools and foster safer learning environments for students. The SCORE program provides grants for the development of school mediation programs using trained student mediators to resolve violent and potentially violent conflicts among their peers. The SCORE program forges partnerships between educators and mediators to establish quality student-centered mediation programs in the Commonwealth's schools to prevent disputes from escalating into violence. In addition, Bureau staff oversee a Conflict Intervention Team (CIT) of specially trained community mediators, who mobilize on a moment's notice to provide emergency mediation service to schools in crisis or on the verge of crisis.

The Bureau oversees Attorney General Tom Reilly's Community Benefits Guidelines for both hospitals and HMOs. This initiative is staffed by members of the Regulated Industries Division, the Consumer Protection and Antitrust Division and the Public Charities Division. Members of the Consumer Protection and Antitrust Division and the Public Charities Division oversee reporting under the Hospital Guidelines. A member of the Regulated Industries Division oversees both reporting under the HMO Guidelines and the Attorney General's Community Benefits Advisory Task Force, convened for the purpose of advancing the goals of the Community Benefits Guidelines.

The Bureau also has an internal task force of Elder Law Advocates comprised of Assistant Attorneys General and office Investigators in areas of elder law, including long term care issues, protective services, financial exploitation of elders, and home health care services. These advocates work in conjunction with the Elder Hotline to address specific elder protection concerns.

The Public Protection Bureau included the following staff members: Alice Moore, Chief; David Beck; William Porter; Linda Tomaselli; Howard Wise; Isabel Silva; Thomas Ulfelder; and Rose Ursino.

## **CIVIL RIGHTS & CIVIL LIBERTIES DIVISION**

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### ENFORCEMENT OF THE MASSACHUSETTS CIVIL RIGHTS ACT

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

### GENDER BIAS

The Division works to protect women from hate-motivated violence in dating or social relationships. The Division prevailed in its first landmark MCRA case involving allegations of civil rights violations on the basis of gender in 1994.

### RACIAL, NATIONAL ORIGIN, & RELIGIOUS BIAS

The Division addresses and responds to violence motivated by bias against a victim's race, national origin or religion.

- **Commonwealth v. Jason Nasser** On February 21, 2001, the Hampden Superior Court approved a consent agreement for injunctive relief until Nasser's twenty-fifth birthday, July 14, 2010, to resolve allegations that this student, affiliated with members of an alleged white supremacist group at Monson High School, placed a threatening, racist note in the school locker of a 12-year-old female black student. (Gordon, Healy)



### ANTI-GAY BIAS

The Division is committed to combating hate crimes directed at individuals based on their actual or perceived sexual orientation.

- **Commonwealth v. Jasmine Albelo, Gisele Albelo, Luis Campos, Jr., & Estaban Dominguez** (Putnam High School in Springfield) The Division obtained a preliminary injunction from Hampden Superior Court on August 22, 2000, against four teenagers for bias motivated assault against a lesbian high school student. After a status conference held on September 19, 2000, the defendants agreed to execute seven year consent judgments, at conclusion of pending criminal cases. The court ordered injunctions remained in effect during the pendency of criminal matters. (Gordon, Cole, Healy)

### CIVIL RIGHTS IN THE SCHOOLS

The Division focuses on ensuring the civil rights of students attending schools in the Commonwealth. The Division provided educational trainings to students, teachers and administrators on hate crimes and discrimination as well as sexual, racial, national origin, and religious harassment in the schools, including training programs to school administrators and teachers on their liability for failure to properly respond to hate crime and harassment incidents in the schools. Programs also included how to create comprehensive civil rights protection programs for students in middle and high schools and responding effectively to hate crimes on college and university campuses.

- **Attorney General Sponsored Civil Rights in Schools Training Program** The Division organized and presented training conferences on November 9, 2000 in Northampton, Massachusetts (for school district teams in the four Western Massachusetts counties) and on February 8, 2001 in Newton (for 26 school districts in Suffolk, Middlesex and Essex County school districts) titled, *A Prerequisite for Safe Schools: Protecting Students from Harassment and Hate Crimes*. The division designed the program so that school officials throughout Massachusetts could learn to use the publication *Protecting Students from Harassment and Hate Crime - A Guide For Schools*, jointly developed by NAAG's Civil Rights Working Group and OCR, effectively. (Cole, Berenson, Booth, Grant)
- **Office of Civil Rights, Department of Education, Trainings** On September 22, 2000, the division chief served as co-presenter at an OCR sponsored conference for all the southern states titled *Access to a Quality Education: The Civil Right of the 21st Century*. He also trained the

Department of Education's Office of Civil Rights staff members in New England (January 30, 2001) and Atlanta (February 21, 2001) on how schools can effectively identify and address harassment in schools. (Cole)

- **NAAG Sponsored Civil Rights in Schools Train-the-Trainer Conference** Based on a division proposal, NAAG sought grant money from the United States Department of Justice to train state attorneys general offices on practical tools for providing civil rights training and technical assistance to school officials in their states. (Cole)

### THE MASSACHUSETTS HATE CRIMES TASK FORCE

Since its inception, the Massachusetts Hate Crimes Task Force has helped law enforcement officials to more effectively coordinate enforcement activities and share information and expertise on combating and prosecuting hate crimes in the Commonwealth. The Task Force is now comprised of over one hundred law enforcement officers and prosecutors, community leaders, civil rights advocates, human rights commission leaders, victim assistance professionals, hate crime researchers, civil rights trainers, educators, school diversity/tolerance curriculum specialists and others who have been working on hate crime related issues locally, statewide or nationally. On September 12, 2000, the Task Force met to discuss final drafts of its statewide action plan and organized working groups to implement specific Task Force proposals from the action plan.

## OUTREACH, EDUCATION & TRAINING EFFORTS

The Division has collaborated with other governmental and non-governmental agencies and organizations to respond effectively to hate crimes in the Commonwealth. Division staff have actively engaged in efforts to address hate crimes through outreach to, and the training and education of law enforcement, civil rights organizations and members of various communities in Massachusetts on hate crime identification, response, investigation, and prevention.

During this year, division staff participated in a multi-departmental hate crime training for various police departments, a hate crime training sponsored by the Norfolk District Attorney's Office, hate crime training for state police officers, a presentation on civil rights issues to students and administrators at Wheaton College, and an in-service training on hate crimes for the Springfield Police Academy. Members of the division also participated in the Greater Boston Civil Rights Coalition; the Charlestown Task Force; Boston

National Voices, a coalition of civil rights groups addressing hate crimes and bias incidents); and ADL's "No Place for Hate" Initiative.

### CIVIL RIGHTS & POLICE

In a collaborative effort to promote civil rights, assist police departments and provide departments with technical assistance, the Division offers and provides 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 investigates allegations of police misconduct. Police departments also regularly consult with the Division for assistance on internal civil rights investigations. The Division has closely worked with departments to ensure that appropriate remedial steps are taken when credible evidence is found which substantiates civil rights complaints.

- **Racial Profiling** The Division has played an increasingly important role in addressing concerns of improper and illegal motor vehicle stops and street encounters including, but not limited to racial profiling. This is an issue where law enforcement nationally as well as in the Commonwealth is increasingly being requested to play an affirmative role. Members of the division helped organize, in conjunction with advice from law enforcement leaders, the Attorney General's Working Group on Racial Profiling to develop uniform approach to address racial profiling. This Working Group, composed of law enforcement leaders and community activists, held its first meeting in April, 2001. Members of the division also participated in the Executive Office of Public Safety Working Group on Racial Profiling and in the Massachusetts Minority Police Officers' Association racial profiling conference. (Leone, Cole, Moore, Merachnik, Medvedow, Patino)

### HOUSING DISCRIMINATION

The Division enforces the state's fair housing laws which prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, marital status, source of income (receipt of housing subsidy), age or disability.

Through training programs and prosecuting housing discrimination cases, the Division works to modify landlord and realtor practices, to educate tenants about the right to fair treatment in the housing market and to increase the availability of safe, affordable housing for families with young children.

- **Commonwealth v. Everett Housing Authority** On August 24, 2000, the Middlesex Superior Court approved the settlement of this housing discrimination case based on disability filed on August 27, 1998, in which the defendant denied the complainant the right to keep her companion animal. The settlement required the EHA to modify its reasonable accommodation policies and ensure that companion animals are allowed as a reasonable accommodation. (Rodriguez)
- **Commonwealth v. Investments Limited** The settlement reached in this housing case based on allegations of discrimination on the basis of national origin and ancestry, included \$4,400 for complainants and a three-year injunction by consent. (Gilfix)
- **Commonwealth & Katherine MacGregor v. Baruch Corey** A final judgment was entered on September 18, 2000, in this housing discrimination case filed in Middlesex Superior Court on December 5, 1997, based on Section 8, family status and a violation of the lead paint statute. The complainant received damages of \$10,000; the court ordered broad injunctive relief, including inspection and de-leading of units; and the defendants agreed to host a training seminar for real estate agents and landlords on fair housing laws. (Terrell, Ward)
- **Commonwealth v. Trinity Housing Associates, et al.** A Final Judgment was entered on August 24, 2000, in this case filed on November 16, 1998, against the owner, management company, and a limited partner that owns the subsidized housing complex, Trinity Village, for allegedly failing to make reasonable accommodation for an applicant's mental/emotional disability. The case settled for \$5,000, with injunctive relief. (Terrell, Ward)
- **Comm. v. Michael & Alice Gulbankian** On February 7, 2001, the court entered final judgment by consent providing for permanent prohibitory injunctive relief and affirmative injunctive relief for period of five years. In addition, the complainant and defendants entered into a separate agreement for a monetary settlement of an undisclosed amount. (Correa)

#### EMPLOYMENT DISCRIMINATION

Since 1996, the Employment Discrimination Project has focused its efforts on addressing allegations of systemic employment discrimination practices in the Commonwealth. The Project investigates allegations of discrimination or harassment (race, sex, ethnicity, national origin, age, sexual orientation) in order to determine whether a particular employer or industry is engaged in a pattern and practice of discrimination,

affecting substantial numbers of Massachusetts employees. Members of the division also participated in employment related education, training and outreach efforts.

- **Massachusetts Bay Transportation Authority** In February, 1997, the Division entered into an historic, court enforceable agreement with the MBTA and twenty-six of twenty-seven of its labor unions to end years of alleged violations of state and federal fair employment laws and to protect employees from future discrimination, harassment and retaliatory conduct. The comprehensive agreement mandated significant changes in policies and practices at the MBTA, and required new systems to govern the identification, investigation, monitoring and response to allegations of discrimination, harassment and retaliation at the MBTA. The Division continued its extensive and ongoing monitoring of the MBTA's compliance with the Agreement, responded to complaints from MBTA employees, engaged in special reviews to determine if there was compliance with particular provisions of the Agreement, and investigated possible breaches. (Cole, Ziehl, Correa)

- **Commonwealth v. Bull HN Information Systems, Inc.** (United States District Court) The Division's Employment Discrimination Project, along with the Equal Employment Opportunity Commission (EEOC), continued to actively litigate the age discrimination issues in Commonwealth v. Bull HN Information Systems, Inc., filed in Fiscal Year 1997, in the United States District Court. This precedent-setting age discrimination in employment case alleged that Bull HN, a large electronics company, violated the federal Older Workers' Benefits Protection Act ("OWBPA") and the federal Age Discrimination in Employment Act ("ADEA"), when laying off its workers aged forty and older. (Ziehl, Cole)

- **Commonwealth v. Bull HN Information Systems, Inc.** (Massachusetts Commission Against Discrimination) The Division continued to monitor compliance with the settlement agreement executed by the parties and approved by the Massachusetts Commission Against Discrimination in January 1999, involving a challenge to Bull HN's employment practices under state law. Under the settlement agreement, Bull HN agreed to establish or revise policies and procedures to ensure the protection of their employees from age discrimination. The Agreement remains in effect for four years, and policies and procedures for five years. (Ziehl, Cole)

#### EDUCATIONAL EQUITY

- **Comfort v. Lynn School Committee, et al.** The division, with the Administrative Law Division, continued to actively litigate this case, in which the Commonwealth joined the Lynn

School Committee to defend the constitutionality of the state's Racial Imbalance Law and the City of Lynn's school choice plan. (Cole, Yogman, Hitt)

- **Bollen v. Lynn School Department** On March 23, 2001, six new plaintiffs served a complaint and Motion for Preliminary Injunction on new state defendants, seeking a court order assigning four of six plaintiffs' children to school of their choice. The case raises the same issues and is companion case to Comfort v. Lynn School Committee. (Cole, Yogman, Terrell, Bowman, Chand)

### REPRODUCTIVE CHOICE

The Division works to safeguard the right to reproductive choice, including outreach to police departments in jurisdictions containing a free-standing reproductive health care clinic to offer training on the buffer zone law, G.L. 266, § 120½.

- **McGuire v. Reilly** The division defended against this complaint filed in federal district court challenging the constitutionality of the state buffer zone law, G.L. 266, § 120½. Although the District Court (Harrington, J.) ruled on November 20, 2000, to enjoin the statute pending a hearing on the merits, the division appealed the ruling and the First Circuit Court of Appeals issued a stay of the District Court's order on December 20, 2000. The division then filed its appellate brief (January 22, 2001) and reply brief (March 7, 2001) with the Court of Appeals. (Correa, Simms, Frumkin)

### PUBLIC ACCOMMODATIONS

The Division enforces 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** On July 10, 2000, the Division asked the Superior Court to hold Haverhill Country Club in contempt for violating the court's January, 2000, injunction ordering the Club to cease discriminating against its female members and to rewrite its bylaws and policies so that women would not be discriminated against in rights, benefits, services or privileges at the Club. The court ordered a limited evidentiary hearing on the contempt charge with respect to the Club's provision of equal opportunities for women to golf during men only tournaments. On March 7, 2001, the court found the Club in contempt for

denying women equal access and for not allowing women members to bring a guest twice in any month that male members are allowed to do because of the male members participation in male only tournaments. The Court ordered the Club to correct this violation of its injunction.

(Rodriguez, Szafarowicz)

- **The Children's Place** After an investigation with the MCAD of this national children's clothing store chain (with approximately 15 stores throughout the state) for public accommodations violations, employment discrimination and unfair trade practices arising from racially discriminatory customer and employment practices, the division entered a consent decree with the company on December 23, 2000. The decree contained remedies that will result in immediate culture change in all Massachusetts Children's Place retail outlets, and the company agreed to pay \$100,000 for an independent audit of customer service and employee complaint procedures, hiring and promotion practices, training, and policies and procedures related to race discrimination and to donate \$50,000 worth of clothing to Boys & Girls Clubs throughout the state. The division continued to monitor the implementation of the consent decree. (Ziehl, Terrell, Dale)

## DISABILITY RIGHTS

The Disability Rights Project of the Civil Rights Division makes extensive efforts to protect the rights of individuals with disabilities throughout the Commonwealth, including litigation, assistance for individuals, training, publications (*Commonly Asked Questions: Employment Rights of Individuals with Disabilities and Fair Housing Rights of Individuals with Disabilities*), and speaking engagements.

- **Ensuring Equal Access to Private Businesses** In its ongoing effort to make retail and department stores more accessible for customers with disabilities, the Disability Rights Project (Rodriguez, Tufts), in coordination with the Massachusetts Office on Disabilities, surveyed twenty-one CVS stores in Massachusetts, documenting violations of turning radius and aisle width requirements. The Disability Rights Project entered an Assurance of Discontinuance with CVS Stores to remedy the violations in April, 2001.
- **Access to Schools for People with Disabilities** The Disability Rights Project also drafted an advisory explaining the requirements of the Americans with Disabilities Act for access for individuals with disabilities in the design and construction of new schools. The Project director met with the Department of Education to discuss current school construction projects and protocols to ensure access compliance in any new schools that may be constructed.

- **Website Forum** The Disability Rights Project organized a successful forum in June, 2001, at Suffolk Law School to address Web site accessibility for persons with disabilities. (Tufts, Rodriguez)

### CIVIL RIGHTS INITIATIVES WITH THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

The Division Chief continues to serve as national Chair of the National Association of Attorneys General's ("NAAG") Civil Rights Working Group consisting of representatives of state Attorneys General offices from throughout the country working to enhance the cooperative relationship between the states and the U.S. Department of Justice in civil rights enforcement.

Division staff continued to participate in the Working Group's task forces to formulate and implement joint enforcement initiatives in five substantial areas: bias-related crimes (Cole); housing discrimination (Terrell, Patino); mortgage lending discrimination (Cole, Kogut); discrimination in public accommodations based on disabilities (Rodriguez); and employment discrimination (Ziehl).

Members of the Civil Rights & Civil Liberties Division included Richard Cole, Chief, Patricia Correa; Suzanne Glick Gilfix; Richard Gordon; Jennifer Keating; Caroline Lukasiewicz; Jacinta Ma; Maria MacKenzie; Brian Monahan; M. Julie Patino; Anthony Rodriguez; Louisa Terrell; Susan Tufts; Amanda Ward; and Catherine Ziehl.

## **CONSUMER PROTECTION & ANTITRUST DIVISION**

The Consumer Protection and Antitrust Division is an educational resource for consumers and businesses in the Commonwealth, and a strong defender of consumer rights. The Division, through the Consumer Complaint and Information Section and the Attorney General's grant-funded networks of nineteen Local Consumer Programs and eight Face-to-Face Mediation programs, resolves thousands of consumer complaints each year. In cases where mediation is unsuccessful, or where a pattern of unfair or deceptive acts or practices is revealed, the Division takes legal action on behalf of consumers who have been adversely affected by this unlawful conduct. The Division also studies trends in the marketplace in consumer protection and competition, files cases involving statewide or nationwide practices that affect Massachusetts consumers, and proposes legislation and promulgates consumer protection regulations to address unfair or deceptive business conduct.



## SIGNIFICANT CASE SUMMARIES

- **Commonwealth v. Toysmart** (United States Bankruptcy Court for the Eastern District of Massachusetts) Toysmart, an internet retailer located in Massachusetts, filed for protection and then liquidation in United States Bankruptcy court. One of the company's major assets, offered for sale by the trustee, was the customer data gathered as consumers placed orders on the Toysmart Web site. Toysmart had represented to consumers in the privacy notice posted on its Web site that the company considered their information confidential, and promised that this data would not be given or sold to anyone outside the company. In spite of this announced policy, Toysmart determined to sell this data as a way of raising money for its creditors. Massachusetts headed a national effort on behalf of nearly every state to file objections to Toysmart's motions to sell its customer data, and negotiated a settlement that required BVIG, a division of Disney, to pay Toysmart to destroy the list of customer information.
- **Commonwealth v. First Alliance Mortgage Company** (Suffolk Superior Court; United States Bankruptcy Court, California) The Commonwealth initially filed its case against this sub-prime lender in Suffolk Superior court in 1998. The Commonwealth alleged that First Alliance engaged in unfair or deceptive practices in the granting of mortgage loans, including charging consumers excessive fees and "points" in mortgage re-financings. The Attorney General obtained a preliminary injunction against the company, which caused it to cease doing business in Massachusetts. A number of other states brought cases with similar allegations, and in 2000, First Alliance filed for bankruptcy protection in United States Bankruptcy Court in California. The Attorney General continued to prosecute his case against First Alliance, seeking restitution for Massachusetts consumers and penalties against the company.
- **Commonwealth v. Dean's Furniture** (Suffolk Superior Court) Dean's Furniture held a "removal" or store closing sale at one of its Massachusetts locations, employing Planned Furniture Promotions, an out-of-state "liquidator" to conduct the sale. The Commonwealth sued Deans and Planned Furniture Promotions, alleging that prices were inflated so that they could be artificially reduced for the sale, and that merchandise was brought in simply for the sale, in violation of state law. The Commonwealth obtained a Preliminary Injunction, shutting down the illegal sale, and prosecuted its lawsuit seeking restitution for consumers, civil penalties, attorneys' fees and costs of investigating and prosecuting the action.
- **Commonwealth v. Allied Lighting** (Suffolk Superior Court) This matter was originally filed in Bristol Superior Court, and the defendant removed to Federal District Court, where

CPAD attorneys successfully argued for remand back to state court. The case was then moved to Suffolk Superior Court. The Commonwealth alleged violations of the Consumer Protection Act, G.L. c.93A against this telemarketer for deceptive practices in the sale of its office products, fluorescent light bulbs sold at up to 20 times their normal retail price. The Commonwealth alleged that Allied solicited low level employees in target companies with deceptive sales pitches, and when companies detected the unfair or deceptive overpricing in reviewing invoices, would either refuse return of the bulbs, or would charge excessive “restocking” fees ranging from 25-50% of the shipment price.

- **Commonwealth v. Microsoft** (D.C. Circuit Court) In this multi-state case initiated by Massachusetts and Texas against this software company for alleged violation of antitrust laws, including the Sherman Act, the D.C. Circuit unanimously found that Microsoft had violated the antitrust laws by abusing its monopoly power. The court also noted that the remedy needed in this matter should be one that restores competition and prevents a reoccurrence of Microsoft’s abusive practices.
- **Contact Lens Litigation** The Commonwealth, along with thirty other states and a private consumer class, brought an antitrust action against a number of contact lens manufacturers and the American Optometric Association. The lawsuits alleged that retail prices of disposable contact lenses were too high because the defendant manufacturers agreed with the American Optometric Association, in violation of the antitrust laws, that lenses would be available only from eye care professionals, retail optical stores and mass merchandisers, rather than from mail order companies and pharmacies. Under the terms of the settlement, consumers who bought replacement contact lenses from Johnson & Johnson, Bausch and Lomb or CIBA Vision since January 1, 1988 were eligible to receive rebates.
- **Commonwealth v. Mylan** (U.S. District Court, Washington, D.C.) Attorney General Reilly joined 50 other attorneys general and the Federal Trade Commission in finalizing a national \$100 million settlement with pharmaceutical company Mylan Laboratories of Pittsburgh, which had been accused by the settling Attorneys General and FTC of leading a price-fixing and monopolization scheme that increased the cost of two drugs used to treat Alzheimer’s disease and other ailments by more than two thousand percent. The company also agreed to include restrictions in future agreements with suppliers to restore a competitive balance in the pharmaceutical market, to reimburse state health care programs damaged by the price increases and to reimburse the states for legal and investigative costs. Still pending was a plan to provide restitution to consumers nationwide.

- **Commonwealth v. Sitalab** (Suffolk Superior Court) Attorneys from the Consumer Protection and Antitrust Division and Environmental Protection Division, along with the Department of Environmental Protection filed suit against this New Hampshire company for allegedly unfair and deceptive advertising in its sale of test kits and laboratory services to perform soil and water analysis to determine the presence of petroleum compounds. The suit alleged that Sitalab displayed “references” on its Web site, from corporations, universities and environmental agencies which purported to support their product. The Commonwealth alleged that its investigation revealed that the majority of “references” neither used nor supported the product. The company agreed to pay a \$5000 civil penalty for its use of the allegedly deceptive advertising.
- **Commonwealth v. Shirley Manor, Inc. D/b/a Greenwood Terrace Nursing Home** (Suffolk Superior Court) The Attorney General filed a petition for a temporary receiver on behalf of the Department of Public Health to operate the nursing home in Brockton, alleging jeopardy to patient care. A receiver was appointed, and the residents were transferred. The defendants filed for bankruptcy protection, and were defaulted for failure to answer the Complaint. The Commonwealth obtained a judgment for penalties and costs in the sum of \$1,089,623.
- **Commonwealth v. Horizon/Greenery Facilities** (Suffolk Superior Court) The Commonwealth commenced suit in 1998 against the defendants, alleging unfair and deceptive practices including the failure to provide adequate nursing care to brain-injured residents of certain nursing home facilities. The Commonwealth continued to strongly litigate this matter throughout this Fiscal Year.
- **Commonwealth v. Cape Canaveral Cruise Line Tour & Travel, Inc., and Promotional Travel, Inc.** (Suffolk Superior Court) The Commonwealth settled with these two Florida based travel companies, who allegedly misled consumers while marketing their Florida vacation and Bahamas cruise packages. The settlements entitled consumers who purchased a travel package from either company since January 1997, and who had not yet taken their trip to a refund. The Attorney General’s settlement was part of a multi-state action taken by fourteen states, alleging that the companies misrepresented that their trips were a “free trip,” won by the consumer at trade or similar events, without disclosing that the trips involved taking part in a time-share tour and sales presentation, excluded airfare, and cost the consumer \$300 to \$400.

- **Tobacco** (United States Supreme Court) In light of the Supreme Court's finding that certain of the Attorney General's regulations restricting tobacco advertising near schools and playgrounds were pre-empted by federal law, Attorney General Tom Reilly vowed to continue the fight to protect children by asking Congress to change the Federal Cigarette Labeling and Advertising law.
- **Guns** Division attorneys engaged in a wide-ranging enforcement investigation to ensure compliance with the Attorney General's handgun regulations. In the investigation, the Attorney General's office inspected records and conducted undercover buys of handguns in an effort to review gun dealership practices. The investigation revealed that most dealers doing business in Massachusetts are complying with the safety regulations. Three gun dealers, Dave's Sporting Goods in Pittsfield, Jurek Brothers in Greenfield, and Seasons Firearms in Woburn, without admitting any wrongdoing, entered into agreements with the Attorney General's office, filed in Suffolk Superior Court. The agreements required the three gun dealers not to sell some semi-automatic weapons manufactured on or after October 21, 1998, without first obtaining a written certification from the manufacturer or wholesaler that the gun complies with the Attorney General's regulations.
- **Nine West** (U.S. District Court, N.Y.) This matter was a multi-state investigation of this women's shoe company for alleged antitrust violations, including an unlawful agreement to fix, maintain or stabilize resale prices of Nine West products resulted in a settlement agreement with *cy pres* restitution of \$30.5 million for use in the participating states. This agreement resulted in the payment of approximately \$720,000 to programs benefiting women in Massachusetts.
- **Publisher's Clearing House** (Suffolk Superior Court) The Commonwealth, along with several other states, took part in a multi-state investigation of this national magazine vendor for its allegedly deceptive practices in offering consumers millions of dollars in prizes for their sweepstakes entries. The states alleged that mailings and other advertising by PCH did not clearly inform consumers that their chances of winning were not increased by ordering magazines, and that consumers were misled by "prize announcements" directed to them into purchasing additional magazines. After settling with a number of states, PCH refused to accede to additional demands by the non-settling states, but finally entered into an Assurance of Voluntary Compliance that resulted in extensive injunctive relief and \$19 million in consumer restitution, with approximately \$800,000 for Massachusetts consumers.

## OUTREACH & EDUCATION EFFORTS

- **Manufactured Housing** The Division published *The Attorney General's Guide to Manufactured Housing Community Law*, and continued to train local officials, consumers, and in-house staff in the manufactured housing law and model rules, and continued to distribute the Manufactured Housing Community Guide throughout the state. Regional conferences were held for local officials, and CPAD attorneys and paralegals attended the community owner's trade association meeting to discuss the Guide and the benefits to the communities of adopting the Model Rules.
- **Elder Issues** CPAD attorneys addressed the Department of Justice's national conference on Elder Victimization, speaking on the use of consumer protection laws to protect elders against nursing home abuse. CPAD also continued to focus educational efforts on home improvement contractor issues, telemarketing fraud and financial exploitation at local presentations to elders throughout the state.
- **Guns** CPAD attorneys spoke at a forum at Suffolk Law school on gun issues, taught a class at the New England School of Law regarding the gun regulations, and published an article in the Yale Journal on Regulation regarding use of state unfair or deceptive acts or practices statutes to address product safety issues.
- **Children's Issues** Mediation services staff collaborated with the Civil Rights Division and the Community Based Justice Bureau to develop Hate Crimes Training for schools. CPAD attorneys planned and presented a seminar for teens on consumer protection issues, including telemarketing scams, obtaining and managing credit, obtaining cellular phone service, and a discussion of tobacco advertising.
- **Consumer Credit Issues/Predatory Lending** CPAD attorneys planned and conducted a conference on predatory lending with the National Consumer Law Center, educating lawyers across the state on the issues they should look for in approaching such cases. CPAD attorneys also gave a presentation on predatory lending at a meeting held by the Boston Community Development Corporation and Housing Advocates meeting on predatory lending.
- **Privacy** CPAD attorneys planned and conducted a training for consumer professionals in coordination with the Federal Reserve Bank for National Consumer Protection Week on the issue of privacy, Regulation P and the Gramm-Leach-Bliley law.

- **Internet** CPAD attorneys worked on planning and presenting a conference at Harvard Law School with the National Association of Attorneys General on new and emerging internet law and enforcement. CPAD attorneys also conducted an Identity Fraud consumer education initiative with the Massachusetts Bankers Association, and published a brochure entitled Attorney General's Consumer Guide to the Internet, as well as addressing a number of consumer groups on issues related to high tech fraud over the internet.

## **MEDIATION SERVICES DIVISION**

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### STUDENT CONFLICT RESOLUTION EXPERTS

The Student Conflict Resolution Experts program (SCORE) is a school-based program, founded in 1989, that uses trained student mediators to resolve violent and potentially violent conflict among peers.

In Fiscal Year 2001, the Attorney General awarded \$430,000 to twenty-five schools across Massachusetts. Among the communities participating in the SCORE program were Boston, Dartmouth, Fall River, Greenfield, Holyoke, Lowell, Lynn, Malden, Medford, Quincy, Pittsfield, Somerville, Springfield, Taunton, Wakefield (located in a regional high school which serves twelve communities north of Boston), and Worcester. Student mediators in SCORE programs mediated 2,652 conflicts involving 6,501 youth; in 97% of the cases 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.

In addition to the financial awards, Division staff maintained close contact with participating schools through grant monitoring activities and by proffering technical assistance. Division staff frequently served as training faculty for student mediator training sessions and they also provided advanced training and support for adult mediation program coordinators.

### CONFLICT INTERVENTION TEAM

The Conflict Intervention Team (CIT), led by the Attorney General's Office, 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. Although there were no instances this year when the CIT was dispatched to a

Massachusetts school, MSD staff consulted with eight schools in Massachusetts about the possible application of CIT to incidents of serious violence and intolerance. Of these eight schools, seven were high schools, one was a middle school, three were located in the Boston area, one in southeastern Massachusetts, one in Central Massachusetts, and three in western Massachusetts. In all eight consultations, school officials indicated that the conflicts were isolated in nature and did not require the services of CIT.

Division staff also participated in efforts to promote and replicate the CIT model. In September of 2000, Division staff, in collaboration with representatives of the Massachusetts Department of Education and the Holyoke Public Schools, presented *Conflict Intervention Teams: An Effective Response to Large-Scale Racial Conflict in Schools*, a workshop at the Society of Professionals in Dispute Resolution conference in Albuquerque, New Mexico. In October, 2000, MSD staff traveled to Salt Lake City, Utah to provide a CIT replication training to community mediators in that community. This training, a component of the CIT work plan funded by a grant from the Hewlett Foundation, was a resounding success and resulted in the establishment of the first CIT program in the State of Utah.

#### FACE-TO-FACE MEDIATION PROGRAM

The Face-to-Face 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 2001, the Attorney General awarded grants, totaling \$315,000, to nine community mediation programs across Massachusetts, including programs in Brockton, Fitchburg, Greenfield, Haverhill, Hyannis, Lowell, Somerville, Springfield, and Worcester.

This \$315,000 investment in mediation resulted in the return of \$1,130,112.30 in cash and \$179,321.25 in non-cash value to Massachusetts consumers. The nine community programs mediated 2,383 disputes involving auto repairs, home improvement, landlord/tenant issues, debt collection, and broken contracts.

Division staff also maintained close contact with participating programs through grant monitoring activities and technical assistance. Throughout the Fiscal Year, Division staff frequently 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.

## OUTREACH & TRAINING

Mediation Services staff participated in a wide range of outreach and training events concerning the application of mediation as a means to prevent violence in schools and communities:

- November, 2000 - Conflict Intervention Team presentation at the Vocational Teachers Association of Connecticut annual conference.
- November 2000 and February 2001 - *A Prerequisite for Safe Schools: Protecting Students from Hate and Harassment and Hate Crimes*, two in a series of statewide conferences designed for teachers, school administrators, and law enforcement professionals. Over 350 people attended these two conferences, the result of cross-bureau collaboration between the Public Protection Bureau and the Community-Based Justice Bureau.
- January 2001- Orientation to community mediation in Massachusetts for the Board of Directors of the North Central Court Services, Inc., in Fitchburg.
- March 2001 - Workshop about hate crimes and harassment for students and staff at South Hadley High School (in coordination with the Attorney General's Western Massachusetts Office).
- April 2001- *How Community Mediation Centers Prevent Violence*, a workshop at the Massachusetts Violence Prevention Task Force's fourth annual statewide conference.
- May 2001 - *Mediation Resources for School Counselors*, a workshop at the Massachusetts School Counselors annual conference.
- June 2001 - *2001 Peacemakers' Summit* at Hampshire College. 750 student mediators from schools across Massachusetts attended this conference that Division staff helped plan.

The Consumer Protection and Antitrust Division included Freda Fishman, Chief; Darla Ansell; Chris Arabia; Michael Atleson; Steve Bandar; DeShanta Bailey; John Botte; Andrea Breton; Jesse Caplan; Jack Christin; Arlie Costine-Scott; James D'Amour; Linda Danovitch; Janis DiLoreto; Jessica Ewan; Mary Freeley; Jennifer Galante; Brian Goodwin; Kathy Grant; Michael Hearn; Michael Hering; Muriel Hervey; Stephanie Kahn; Glenn Kaplan; Mark Kmetz; Pam Kogut; Brenda King; Anne Lebowitz; Ronnie Lee; Carmen Leon; Steve Lilly-Weber; Betty Maguire; Kat Margaris; Mary Marshall; Lois Martin; Jennifer McDonald; Marianne Meacham; Laura Michalski; David Monahan; Rory Neal; Mariann Nicoletti; Margaret O'Brien; Mark O'Connor; Donna Palermino; Astrid Panameno; Julie



Papernik; Dan Reynolds; Lisa Reynolds; Judy Risch; Jessica Roberts; Betsy Sawyer; Lisa Senay; Patricia Siefer; Darlene Skog; Lorraine Smith; Michelle Stone; Christine Sullivan; Diane Szafarowicz; Erika Tarantal; James Tremble; Susan Ulrich; Joanne Wamness; Sandra Washburn; Judy Whiting; Geoffrey Why; Brent Williams; Chi Chi Wu; and Hermen Yee.

## **ENVIRONMENTAL PROTECTION DIVISION**

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The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive Office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, hazardous and solid waste. EPD also plays a key role under the Clean State Initiative to ensure that the Commonwealth's own agencies abide by state and federal environmental agencies, and in doing so the Division may bring enforcement actions against those agencies in court where the Attorney General, in his enforcement discretion, deems action necessary. Based on the Attorney General's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in state and federal litigation, and participates in administrative proceedings before federal agencies on significant environmental issues. EPD defends lawsuits challenging the actions of state environmental agencies and the legality of state environmental laws.

During Fiscal Year 2001, EPD handled enforcement proceedings leading to judgments requiring payments to the Commonwealth of \$3,391,982.28. These figures are for penalties, cost recovery, and other payments awarded in fiscal 2001, whether or not actually paid in fiscal 2001. In Fiscal Year 2001, EPD received actual payments totaling \$3,559,380.37 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.

### **AIR POLLUTION**

- **State Air Pollution Laws & Regulations** EPD was active in enforcing state laws regarding pollution resulting from the operation and fueling of automobiles. Massachusetts is one of the few states that has taken advantage of Section 177 of the federal Clean Air Act, a provision that allows states to adopt California's stringent vehicle emission standards. EPD filed enforcement actions against several automobile dealerships (128 Sales, Baystate Motors and RJ Foley, Inc.) designed to enforce these low emission standards.

EPD was also active in enforcing and defending a challenge by three industry associations to the Massachusetts' Stage II Vapor Recovery Standards. Stage II vapor recovery systems are used to 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 addition, a number of these substances (e.g. benzene, toluene) are toxic. At the same time, EPD initiated negotiations with Mobil Oil Corporation over alleged violations of the Stage II Vapor Recovery Standards at dozens of Mobil stations across the State.

EPD defended Massachusetts' stringent standards for mercury emissions from municipal waste combustors in a case filed by the waste combustor industry led by Integrated Waste Services Association. Through extensive negotiations, EPD was able to reach an agreement with industry settling the case. Under the agreement, DEP's standards for mercury emissions remain in effect, but DEP must reopen rulemaking to propose changes to the final rule it issued implementing the standards.

The Attorney General also supported DEP's adoption of standards to reduce emissions of SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> from six Massachusetts oil and coal plants whose emissions are currently "grandfathered" under federal and state law. On March 27, 2001, the Attorney General formally urged Governor Cellucci to promulgate DEP's final regulations, an action taken by Acting Governor Swift soon after she took office several months later.

- **National & Regional Air Pollution Issues** EPD continued to play a major role in national and regional air pollution issues. The most important national air pollution issue litigated this year concerned industry's challenge to EPA's revised standards for ozone and particulate matter, promulgated in 1997. Massachusetts was one of two states (the other was New Jersey) to intervene on behalf of EPA in litigation before the U.S. Supreme Court to defend these standards. On February 27, 2001, the United States Supreme Court rejected, by 9 - 0, industry's argument that EPA's authority to issue new standards exceeded the agency's power under the Constitution. The High Court also rejected industry's argument that EPA must temper its protection of public health by taking into consideration, at the standard-setting stage, the costs of implementing the standards. Following this win at the Supreme Court, Massachusetts continued to defend the standards before the United States Court of Appeals for the District of Columbia Circuit following the remand of the case. The proceeding before the U.S. Supreme Court concerned a constitutional challenge to the standards; the issues before the D.C. Circuit concerned industry's argument that the standards are arbitrary and capricious under the federal Administrative Procedure Act.

EPD was instrumental in obtaining a court ruling that should reduce emissions from Midwestern and Southern power plants that contribute pollution to the State airshed. In *American Power Co. v. U.S. EPA* (“Section 126 litigation”), 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 upon 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.

In *State of Michigan v. U.S. EPA* (the “NO<sub>x</sub> SIP Call” litigation), a case related to the Section 126 petition litigation, Massachusetts intervened to defend EPA’s decision to require twenty-two states to amend their air state implementation plans (SIPs) to include mandatory reductions in NO<sub>x</sub> from in-state power plants. In early March, the Supreme Court let stand the decision of the US Court of Appeals for the District of Columbia Circuit upholding EPA’s “NO<sub>x</sub> SIP Call Rule.” That rule, which EPA adopted in 1998, required 22 Eastern States and the District of Columbia to reduce emissions of nitrogen oxides (NO<sub>x</sub>) within their borders, so as to reduce the movement (“transport”) of NO<sub>x</sub> to downwind areas, primarily in the Northeastern States. On June 8, 2001, in an appeal from EPA’s “Technical Amendments” to the Rule, industry persuaded the D.C. Circuit to hear challenges to the growth factors used in the SIP Call, even though these same claims could and should have been raised in the main case. The result was a court decision requiring EPA to justify the growth factors used in calculating state-by-state emission factors.

Also on the national stage, EPD maintained its role as one of the leading states in a multi-state and EPA enforcement action against 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 2001, discovery in *American Electric Power* continued. In the meantime, in May 2001, President Bush issued his National Energy Policy which called for a 90 day moratorium on the Justice Department’s litigation efforts in NSR enforcement cases and for EPA to review its own interpretation of NSR. On June 17, 2001, EPA held a hearing in Boston on its interpretation of the NSR requirement. At this hearing, Attorney General Reilly testified in support of EPA’s current interpretation of NSR.

Also related to federal clean air act standards, EPD continued to press Massachusetts’ interest in protective standards for sulfur dioxide (SO<sub>2</sub>). In 1999, Attorney General Reilly, together with Attorney Generals of other northeastern states, petitioned EPA to issue secondary

standards for SO<sub>2</sub> under the federal Clean Air Act. As opposed to primary standards that protect public health (such as the ozone and particulate NAAQs), secondary standards protect public “welfare” such as the ecosystem. In the petition, Massachusetts argued that EPA should establish secondary standards that reduce acid rain. During Fiscal Year 2001, EPD sent EPA a follow-up letter in further support of the State’s petition. The purpose of the follow-up letter was to bring to EPA’s attention the recent peer-reviewed scientific study on acid rain showing that acid rain levels continue to be high in the northeast and hence demonstrating that secondary standards for SO<sub>2</sub> are needed to bring about the recovery of acidified lakes and streams.

One of the Clinton Administration’s last major environmental actions was to issue regulations to reduce heavy-duty engine and vehicle pollution. The rule regulates NO<sub>x</sub> emissions from diesel engines at 0.2 g/bhp-hr and particulate matter at .01 g/bhp-hr. These standards will reduce NO<sub>x</sub> and PM by 95 percent respectively in heavy-duty engines and vehicles. Several industry organizations challenged EPA’s Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (65 Fed. Reg. 35429) in the D.C. Circuit, including the Engine Manufacturers Assn, the American Petroleum Institute, and the National Petrochemical & Refiners Assn. Because of the significance of diesel emissions in degrading the air quality of many Massachusetts neighborhoods, EPD intervened in support of EPA’s rule in the U.S. Court of Appeals for the D.C. Circuit.

## ENERGY

Promotion of energy conservation and the increased use of renewable power is a time-tested means of reducing energy demand, reducing rates, reducing pollution and creating jobs. In mid-March the EPD Acting Chief testified before the Joint Energy Committee in support of a House bill to continue, for another five years, the current funding levels for energy conservation programs in Massachusetts. This legislation was later passed. In June 2001, EPD staff testified before the U.S. Department of Energy on DOE’s programs for energy efficiency and renewable power. Throughout 2001, EPD sought opportunities to emphasize the importance of energy conservation and use of renewable power to address potential power shortages and pollution problems from power generation.

## CREATING LIVABLE COMMUNITIES THAT ARE ENVIRONMENTALLY AND ECONOMICALLY ROBUST

- **Lead Paint** Massachusetts has a high rate of lead poisoning among children which is due, at least in part, to their 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 deleading or interim control of lead hazards existing in homes built before 1978 where children under six are living. Owners are also required to notify tenants that a property has not been delead, regardless of whether a child under the age of six is living in the home.

During Fiscal Year 2001, Massachusetts initiated 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 were part of a larger Public Protection Bureau initiative which will potentially include civil rights actions against landlords who seek to evade by 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** EPD participated in numerous initiatives to promote environmental health and safety concerns in Massachusetts' public schools, especially as it relates to indoor air quality. In May 2001, Attorney General Tom Reilly hosted the second meeting of the Healthy Schools Council where he has been a consistent advocate of schools adopting Environmental Management Systems to address their environmental compliance issues on an on-going basis.

Attorney General Reilly also filed written testimony in support of the Department of Public Health's legislative efforts to create an Office of Indoor Air Quality and to obtain authority to address indoor air quality problems in schools through regulations and other measures.

## 21E ENFORCEMENT / HAZARDOUS & SOLID WASTE DISPOSAL SITE CLEAN UP

- **Cost-Recovery Actions** Under G.L. c. 21E, the Attorney General is charged with the responsibility of recovering Commonwealth funds 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 to clean up the contamination. This saves the Commonwealth money upfront and results in the efficient administration of site cleanups.

Fiscal Year 2001 saw the settlement of a major 21E cost-recovery matter involving Wellesley College. This matter, which was ultimately resolved through mediation, concerned extensive contamination of the upland portion of the Wellesley College campus, including portions of the shoreline of Lake Waban, a Great Pond, by the operation of a now-defunct paint shop. Under the terms of the settlement, Wellesley College agreed to pay the costs of removing the contamination from the upland portion of the site (estimated at approximately \$28 – 30 million) and the Commonwealth agreed to contribute \$1.4 million to the cleanup of the shoreline area.

In another major 21E action, SAK Recycling (also known as the “Boston Junk” case), EPD sought recovery, from Boston Edison, of monies spent by DEP to cleanup the site of the Boston Convention Center. In this case, EPD worked closely with the Boston Municipal Convention Center Authority, a co-plaintiff in the case.

The Commonwealth also initiated settlement negotiations with the City of Holyoke and the City of Holyoke’s Electric Department and the Holyoke Water and Power Co. relative to the City’s contribution to the costs of cleaning up contamination of a Holyoke river.

EPD also pursued recovery of costs spent by the state many years ago 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 \$8 million, with interest. EPA preliminarily determined that ferric ferrocyanide is a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, the federal hazardous waste cleanup law upon which Massachusetts’ Chapter 21E is based. If finalized, this determination would entitle Massachusetts to the \$8 million currently sitting in escrow, actually releasing the money may require additional litigation.

In a cost-recovery action involving 229 Main St. Limited Partnership, at issue is the State’s authority to place a lien on property owned by a bankrupt defendant. After the Attorney General prevailed in the United States District Court, 229 filed an appeal to the First Circuit.

A major multimedia enforcement case resolved this year concerned the Norwood Commerce Center. In this case, EPD reached an agreement with the owners of an industrial complex that they clean up the site

(at an estimated cost of \$1 million), pay the Commonwealth \$360,000 in penalties, and contribute \$175,000 into an escrow account to be used for future cleanup actions if later deemed necessary.

## 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. One of the liability reforms 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.

Applications for a Brownfield Covenant are assessed according to the benefits they create for local communities and the Commonwealth by: 1) creating new, permanent jobs; 2) resulting in affordable housing benefits; 3) preserving historic buildings; 4) creating or revitalizing open space; and/or 5) providing some other public benefit to the community in which the site is located.

EPD also designed a number of programs to overcome some of the remaining challenges redevelopment efforts face by allocating funds appropriated by the Legislature to address three critical needs: 1) identification and creation of Brownfields Covenant opportunities for those projects for which a Covenant is needed to bring to fruition a redevelopment proposal that will realize significant Public Benefits; 2) provision of efficient and effective administrative and technical support for the program within the Office of Attorney General; and 3) provision of financial assistance to non-profit and public entities qualifying for Brownfields Covenants.

- **Brownfields Covenants Issued** By the end of Fiscal Year 2001, EPD’s Brownfields Unit had negotiated and executed four Brownfields Covenants. In all, these Covenants will create approximately 520 new, permanent jobs and provide a variety of public benefits.
- **Fitchburg Redevelopment Authority** (Fitchburg) The covenant involved the redevelopment of General Electric’s former plant, a site contains approximately 14 acres and includes nearly 300,000 square feet of commercial space in downtown Fitchburg. Fitchburg Redevelopment Authority (“FRA”) intends to divide the property into industrial and office components to permit the sale of portions of the property either to larger users or to lease the property to smaller tenants. FRA hopes to bring more than 400 new jobs to the city.

- **Fulton Street Redevelopment** (Newburyport) Under this covenant, a private developer, Fulton Street Realty Trust (“FSRT”), agreed to clean up a former electroplating facility in a residential area in the City of Newburyport. The M&V Electroplating Company operated the plant from the 1950’s until 1995, when the company went into bankruptcy. The site had since been abandoned, trash-strewn and vandalized, and maintained a stigma of urban decay and economic decline for nearby residents. The developer plans to clean up and redevelop the 38,000 square foot parcel and construct eight residential condominium units in three separate buildings that are consistent with the style and character of the surrounding neighborhood. This project will provide the following significant public benefits: demolition and removal of the current deteriorated industrial building, cleanup of a disposal site, construction of residential units in accordance with a City of Newburyport Special Permit, installation of a new sewer line, granite curbing and a sidewalk and even a fire hydrant. In addition, at the time of acquisition of the property, the City of Newburyport will be paid back real estate taxes, back sewer fees and fines.
- **Lowell Regional Transit Authority** (Lowell) In return for a Brownfields Covenant, the Lowell Regional Transit Authority (“LRTA”) will reuse the 6.5-acre parcel, including 70,000 square feet of office and manufacturing space, as its bus maintenance and operations center as part of its plan to upgrade Gallagher Intermodal Transportation Center in Lowell. LRTA intends to bring a total of approximately 120 new jobs to Lowell that would generate more than \$3.8 million a year in new payroll dollars.
- **UAE Power Corp.** (Lowell) In a Covenant executed in April 2001, UAE Power Corp., an independent utility provider, agreed to expand operations onto 4-acre site and construct state-of-the-art power generating facility in heavily industrial area of Lowell. UAE Power Corp. will cleanup and redevelop a 4-acre parcel in a highly industrial area of Lowell. UAE Power, which operates a power generating facility abutting this parcel, intends to expand its operations and construct a state-of-the-art power generating facility through the addition of very efficient gas turbines to create a source of peak power.
- **Proposed Brownfields Covenants** During Fiscal Year 2001, EPD received several other Brownfields Covenant Applications which present a host of potential additional public benefits. Prospective developers have approached the Attorney General with proposed projects that, collectively, would create over 2,500 jobs across the Commonwealth, 2 million square feet of commercial space, and 100 additional housing units, including significant affordable housing and open space opportunities. These applications are under review.



PROTECTING CONSUMERS FROMEXPOSURE TO ASBESTOS, TOXICS & PESTICIDES

Massachusetts has a longstanding commitment to reducing human exposure to harmful toxics and pesticides. During Fiscal Year 2001, Massachusetts joined other states in a lawsuit against EPA in the D.C. Circuit for unreasonably delaying its response to a petition submitted by Massachusetts and other states requesting EPA introduce regulations requiring pesticide manufacturers list the so-called “inert” ingredients on pesticides product labels. Such ingredients can be harmful, even if technically inert.

Attorney General Reilly also undertook a major 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. This initiative resulted in several criminal convictions obtained by the Attorney General’s Environmental Crimes Division against unlicensed asbestos contractors. EPD commenced suit against several companies for violations of asbestos related regulations and posted, on the Attorney General’s Web site, an asbestos advisory for homeowners and the public.

NATURAL RESOURCE RECOVERY, PROTECTION & PRESERVATION

- **Massachusetts Environmental Policy Act** One of the more major matters involving the Massachusetts Environmental Policy Act (MEPA) is recent years concerned a 1976 state court injunction, issued under MEPA, enjoining Massport from constructing an additional runway at Logan Airport. When the Executive Office of Environmental Affairs finally certified as complete the environmental impact report for the proposed new runway and other airport improvements, Massport filed its long awaited motion for relief from 1976 injunctions prohibiting construction of new runways. EPD defended the Executive Office of Environmental Affairs in a suit filed by Massport to remove the injunction.

In another MEPA case, *Smith, et al. v. DEP, Newbury and Newburyport*, EPD defended DEP in a suit brought by citizens on Plum Island who say the defendants are violating MEPA by entering binding commitments to bring water and sewer to the island before completing the required MEPA environmental reviews.

- **Protection of Endangered Species & Plants** In *WRT v. DFW*, EPD defended the actions of the Department of Fisheries and Wildlife (DFW) implementing 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 alteration under MESA, as well its authority to certify vernal pools.

### THE CLEAN STATE INITIATIVE

A top priority and responsibility of the Attorney General is compliance, by all state agencies and authorities, with the laws and regulations of the Commonwealth. This is especially important in the environmental area where state agencies and authorities have significant environmental impacts. During Fiscal Year 2001, the Attorney General sought to improve state performance and, at the same time avoid costly litigation against or protracted negotiations with, state agencies by having state agencies police their own environmental compliance. The Attorney General proposed two bills, which would expand the Attorney General's authority to seek agency compliance with environmental laws and would require the Department of Administration and Finance to prepare procedures for agencies to perform environmental management systems to track compliance and the environmental impacts of their operations.

Members of the Environmental Protection Division included James Milkey, Chief; Kirsten Engel, Acting Chief; William Pardee; James Farrell; Frederick Augenstern; Freda Boden; Edward Bohlen; Matthew Brock; Nicole Clark; Mary Connolly; Carolyn Edwards; Dana Gershengorn; I. Andrew Goldberg; Nancy (Betsy) Harper; Carol Iancu; Matthew Ireland; Eleanor Johnson; Siu Tip Lam; Andrew Latimer; Christine Peluso; and Danah Tench.

## **INVESTIGATIONS DIVISION**

The Investigations Division, formerly known as the Civil Investigation 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.

In Fiscal Year 2001, the Division initiated 396 investigations in the following major areas:

### CONSUMER PROTECTION & ANTITRUST

Investigators continued to assist the office in bringing 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.

- **Baker & Taylor** (Overcharging) Investigation into allegations that Baker and Taylor was misclassifying books purchased by libraries, governments and schools to avoid giving discounts on these books. Multi-state and federal actions were brought against this company. The company ultimately agreed to pay more than \$15.5 million in settlements; \$750,000 was paid to the Commonwealth. (Cascarano, Hollingsworth)
- **Allied Lighting** (Telemarketing) Investigation into company allegedly shipping unwanted and overpriced light bulbs to businesses across the country along with exorbitant invoices. (Dale, Cascarano)
- **Gun Enforcement** Enforcement investigation regarding compliance of handgun safety regulations that took effect April 3, 2000. (Russo)
- **Publisher's Clearinghouse** (Sweepstakes) Investigation and location of Massachusetts victims in this multi-state settlement involving deceptive mailing practices. Massachusetts received approximately \$800,000 in restitution money. (Ward, Russo, Connolly)

### CIVIL RIGHTS & CIVIL LIBERTIES

The Division investigated hate crimes, allegations of police misconduct and other violations of the Massachusetts Civil Rights Act. Investigations were also conducted into allegations of discriminatory housing and employment practices, as well as investigations to determine compliance with the rules and regulations established by the Americans with Disabilities Act and the Architectural Access Board. The Division also participated in a retail sting involving allegations of racial profiling.

- **Children’s Place** (Racial Profiling) Undercover investigation into racial profiling by this national retail chain. (Dale, ID Staff, AG Staff)
- **CVS** (Disabilities Violations) Undercover investigation into alleged violations of state and federal disability access laws. (Cascarano)

### ENVIRONMENTAL PROTECTION

The Division’s role in EPD cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean-up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated and analyzed financial documents and prepared ability to pay analyses.

- **Three M Homes** (Contamination) Financial investigation into assets of trailer home park owners found in civil contempt for failing to pump a septic system on a regular basis and having sewer and drinking water problems. (Cederholm)

### 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.

- **Project Imagine** (Raffles) Financial Investigation into this charity raffled home in Dartmouth that was in approximately \$900,000 worth of secured and unsecured debt. (Cederholm, Cascarano, Ward)
- **Commonwealth Alliance** (Deceptive Solicitations) Investigation into deceptive solicitations on behalf of homeless veterans by this Worcester telemarketing company. (Cascarano, Hollingsworth)

### REGULATED INDUSTRIES

Investigators continued to work with attorneys in the Regulated Industries 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. Other cases investigated included unlawful sales practices also known as “churning,” and the sale of fraudulent or costly life and health insurance policies.

- **Massachusetts Lobstermen’s Association** (Unlicensed Health Insurance) Location and confirmation of consumers owed restitution by this unlicensed health plan as well as reimbursing providers with unpaid claims. (Ward, Russo)

### BUREAU PROSECUTOR

Investigators worked with the Bureau Prosecutor on numerous cases which resulted in indictments and convictions against individuals for violations of the Commonwealth’s criminal laws. Cases included larceny against the elderly and vulnerable by home improvement contractors and a travel agent; unlicensed practice of medical professions; telemarketing fraud and illegal charitable fundraisers.

### GOVERNMENT BUREAU

- **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 which occurred 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.

### COMMUNITY-BASED JUSTICE BUREAU

- **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 of the buildings, and, in some instances, assisted in inspecting properties scheduled for renovation. During the Fiscal Year, properties were researched in Taunton, Worcester Lawrence and Brockton.

### STATISTICAL SUMMARY

The Division opened 396 investigations in Fiscal Year 2001, with 342 investigations ongoing as of June 30, 2001.

<b>DIVISION/BUREAU</b>	<b>OPENED DURING FY '01</b>	<b>ON GOING AS OF 6/30/01</b>
Consumer Protection/Antitrust	38	68
Civil Rights	13	27
Public Charities	6	9
Regulated Industries	4	7
PPB - PPB Criminal	5	8
Government	0	4
Environmental Protection	11	14
Trial	319	205
<b>TOTAL</b>	<b>396</b>	<b>342</b>

The Investigation Division included Karen Ortolino, Director; Kelly Burns; Kerri Burrige; Monique Cascarano; Mayra Connolly; Amy Cederholm; Quinton Dale; Todd Davis; Ashley Dizel; Eric Funk; Jennifer Hollingsworth; Jim Hoog; Matthew McMahon; Karen Leary; Brian Lelio; Brian O'Connell; Lou Russo; and Nancy Ward.

### DIVISION OF PUBLIC CHARITIES

The Attorney General represents the public interest in the proper solicitation and use of charitable funds and is authorized to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c.12, § 8.

The Division of Public Charities was established to carry out the Attorney General's responsibilities in this area.

More than 30,000 charities are registered with the Division, as well as over 300 professional fundraisers presently soliciting donations on behalf of charities in Massachusetts. A public charity is an entity which is non-profit, whose purpose is charitable, and which benefits a portion of the public; in addition to philanthropic organizations, examples of public charities include nonprofit hospitals, schools, social service providers, and cultural organizations. As well as registering and obtaining financial reporting by charities and fundraisers, the Attorney General is the defendant in all proceedings brought to wind up the affairs of a public charity or to change the terms of a charitable trust.

Perhaps the most prominent work the Division performed in this year was in the health care area. Consistent with the Office's considerable interest in resolving problems related to the delivery of health care, the Division has reviewed and monitored the actions of a number of the significant non-profit healthcare institutions that are public charities in Massachusetts, including both hospitals and insurers. The Division engages in these corporate governance and oversight initiatives to ensure that the governing boards of these institutions have carried out their fiduciary duties of due care and loyalty.

More generally, and beyond the enforcement of laws relating to the governance of charities and those requiring annual reporting by public charities operating in the Commonwealth, the Division focused its activities this year in two primary areas: 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 due to their tax-exempt status and assuming certain obligations as well. As a result, the Division was involved in a number of initiatives intended to strengthen the charitable sector. These efforts included holding a public conference designed to educate directors and officers of charities; issuing the Division's annual report on charitable fundraising published during the fall charitable giving season, and working with the Boston Bar Association on legislation that would revise the non-profit corporation statute.

#### HEALTH CARE INITIATIVES

The Division was involved in a variety of efforts to analyze and stabilize the healthcare sector. For example, the Division spent considerable time and effort in investigating and monitoring the financial and operating condition of a large eastern Massachusetts health care system. Division staff reviewed a large

volume of documents, met with representatives of the system, and worked with experts hired by the Office to assess, on a regular basis, whether the board and officers of the healthcare system were turning around the hospital's operation.

- **Springfield Review** The Division worked with others throughout the Office in an investigation of the Springfield health care market required by the Legislature. The Legislature directed that the Office consider whether charitable assets were properly used in the Springfield area in connection with questions around access to healthcare. Although the final report of the Office was scheduled for release in the fall of 2001 (in Fiscal Year 2002), the intense work and analysis that went into the report began in Fiscal Year 2001. The Division ultimately concluded that it found no violations of charities law in various transactions reviewed in the Springfield market. (Cardone, Soris)
- **G.L. c. 180, § 8A(d) reviews** Another area that required extensive efforts by the Division was in the review of health care transactions. Under the recently enacted G.L. c. 180, § 8A(d), the Legislature required the Office to review an expanded range of healthcare transactions between non-profit hospitals and HMO's and other for-profit institutions. The Division began reviewing transactions under this statute in Fiscal Year 2001 and also began the process of establishing written guidelines to provide charities and the public with clarity as to how the statute will be implemented. The Division reviewed various transactions concerning two hospitals that faced potential closure, **Malden Hospital** and **Whidden Hospital** in Everett. The Division ultimately determined for a variety of reasons that those transactions did not require a full investigation under § 8A(d), although the sale of the real estate owned by Malden Hospital will ultimately require a review under the statute. (Soris)
- **Harvard Pilgrim Health Care** Division personnel continued to deal with issues arising out of the Harvard Pilgrim Health Care receivership. The Division worked with Harvard Pilgrim over a variety of issues, including governance and engaging an independent health care analyst. (Soris, Carriker)
- **Kimball Farms Continuing Care Retirement Community** (part of Berkshire Healthcare System) The Division reviewed a transaction involving the Kimball Farms retirement community and nursing home. Certain residents of Kimball Farms raised questions as to the propriety of certain aspects of a transaction that involved financing by Kimball Farms of renovations to the retirement community facility as well as to a nearby nursing home. The renovations will mean that a large number of beds in the Kimball Farms nursing home will disappear and residents will move to the nearby nursing home. The Division reviewed the transaction and determined that there were no charities violations. (Soris)



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## 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 provides for reforms in how charities will operate. In other cases, the Division brought enforcement actions in court after investigations. This year, the most significant of such matters included:

- **Greater Lynn Mental Health & Retardation Center, Inc.** The Division continued its oversight of actions by the Greater Lynn Mental Health & Retardation Association, Inc. ("Greater Lynn"). Greater Lynn operates a variety of mental health and retardation programs, including programs under contract to various state agencies, and, with revenues of approximately \$30 million, is a major provider on the North Shore. After receiving information that raised the possibility of a misapplication of charitable funds, Division attorneys met with the Board and negotiated an agreement for Greater Lynn to hire a management advisor to review its operations and advise the charity and the Division about necessary reforms, potential funding, and operational reforms at the charity, and to investigate other potential problems within Greater Lynn. The Division then oversaw the operation of the charity and worked with the management advisor to ensure the charity was properly run. In addition, the Division participated in discussions concerning Greater Lynn's selection of a new CEO, followed by the selection of a number of new members of the board of directors. (Carriker)
- **Chinese Consolidated Benevolent Association** The Division conducted a fiduciary duty investigation into the operations of CCBA, a large Chinatown charity, focusing on the organization's lack of financial accountability and a large donor-restricted gift that CCBA may not have used consistent with the donor's intent that it go toward affordable housing purposes. After filing a complaint seeking a receivership, the Division entered into an agreed-upon preliminary injunction providing that the charity had to complete certain activities by specified dates. When CCBA did not meet certain conditions specified in the preliminary injunction on time, the Division requested that the Court order that CCBA hire an interim CEO acceptable to the Division to take operational control of the charity. The Superior Court entered such an order. In time, CCBA hired a CEO acceptable to the Division, with his first mission to bring order and stability to CCBA's financial situation, including its accounting and reporting to the Division. (Rosenberg)

- **Bright Star Daycare Center** Parents and faculty members involved with this daycare center became quite concerned about the fact that the two corporate members of the daycare center, the Hallmark Health System and the Malden YMCA, had received substantial contributions from Bright Star and had, arguably, engaged in other activities contrary to the interests of the daycare center. The Division investigated the situation, met with all parties, and negotiated an agreement that provided for a restoration of funds to the daycare center and for reforms in the way that the daycare center operated. (Soris)

### FOR-PROFIT ACQUISITIONS

The Public Charities 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 charitable assets are to be transferred to a for-profit, it must be for fair value, the transaction must be necessary and in the best interest of the charity, and the charity board must have acted carefully and in a manner uninfluenced by conflict of interest.

During the year, the Division began investigating a proposal by the Delta Dental insurer to establish a for-profit subsidiary.

### 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 reviews correspondence and documents provided to us about transactions involving charities.

- **Bradford College** The College closed following the conclusion of the spring semester in 2000. The Division discussed and resolved a variety of issues concerning the College’s handling of restricted funds. In addition, the Division met with College representatives and others to deal with on-going issues related to the disposition of the College’s assets in the face of substantial debts owed by the College. (Rosenberg)

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## 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.

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## 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.

- **Commonwealth v. Baystate Assistance Programs et al.** (Suffolk Superior Court) In December, 1998 the Attorney General filed a fundraising fraud action against these professional fundraisers, charities and their officers for allegedly misleading donors to believe that their contributions would provide housing for homeless veterans or would benefit homeless shelters and veteran outreach centers, when almost none of the more than \$5 million raised went to help homeless veterans.

Following settlement negotiations, the court approved a consent judgment distributing approximately \$440,000 to several veterans shelters and barring further solicitation activity by a defendant charity, a defendant fundraising entity, and the individuals who operated them. Previously, the Division had obtained a consent judgment against a charity defendant that provided for the distribution of \$55,000 to veterans shelters, so that the Division obtained close to \$500,000 for twelve homeless veterans shelters in settling this case (Maslow-Armand, Sarason, Baddour).

- **Commonwealth v. Project Imagine** (Bristol Superior Court) Project Imagine, a small charity located in the New Bedford area, conducted a raffle of an expensive house as a means of raising funds. The Division investigated and determined that Project Imagine had incurred debts of over \$900,000, including two substantial mortgages on the property, while receiving something more than \$400,000 from ticket sales. As a result, it became clear that Project

Imagine could not convey to the raffle winner the house without mortgages, so that the raffle constituted a deceptive solicitation. The Division went to court and obtained a preliminary injunction to halt the raffle. The charity never functioned after that point and never put together a plan to proceed with the raffle. One of the mortgage-holding banks foreclosed on the house and sold it at auction. The Division did uncover approximately \$100,000 in an account from Internet sales of raffle tickets and directed a return of a very high percentage of those funds to ticket purchasers. (Antonucci)

- **American Children’s Safety Source** The Division filed a Civil Investigative Demand against a nationwide charity that hired people to solicit donations door to door from Massachusetts businesses, as well as to solicit funds in business parking lots. Division personnel took a number of depositions of officials of American Childrens’ Safety Source and obtained a large volume of documents. (Maslow-Armand, Green)
- **Commonwealth v. Action Programs, Inc. et al.** (Suffolk Superior Court) The Division filed an enforcement against eight fundraising companies that failed to file with the Division certain required financial records and accountings for funds raised in the previous year. (Maslow-Armand)
- **New England Kids Network** The Division began investigating a local for-profit company that used a charity-sounding name and a set of apparently misleading representations to induce individuals to donate their used cars to the company. (Cardone, Maslow-Armand)

## 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 handled a large volume of cases in this area involving such matters as proposed allowance of accounts, will compromises, sale of real estate, change of purposes or beneficiaries of charitable trusts and bequests, amendment of charitable trusts to meet IRS requirements, and termination of charitable trusts under G.L. c.203, § 25. For example:

- **Wills, Trusts, and Other Probate Statistics** During Fiscal Year 2001, the Division received and reviewed 925 new wills, and received and reviewed 913 interim accounts for executors and

trustees, as well as 612 final accounts. In addition, the Division received, reviewed, and assented to 59 petitions for license to sell real estate and received and reviewed and 749 miscellaneous complaints and filings.

During the reporting year, the Division assented to 80 final judgments dissolving charitable corporations pursuant to §11A.

### SIGNIFICANT DIVISION INITIATIVES

- **Technology and Public Access** The Division, working with others in the Office, created a Charities Web page that will provide considerable information to charities and members of the public. All of the brochures and materials that the Division provides appear on the Web site.

In another step both toward giving the public more access to Division public records and toward electronic registration with the Division by charities, the Division began planning a document imaging program. The program will involve scanning of documents filed with the Division so that Division personnel can review them on computer. Once the system is up and running, the Division will provide access for the public to the scanned documents.

- **Public Education** 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, the Director of the Division and other Assistant Attorneys General in the Division spoke to numerous charitable groups, served on several continuing professional education panels and national educational conference panels, and contributed to educational publications. The Division also sponsored a very successful conference for board members and officials of charitable, non-profit organizations.

In November 2000, the Division conducted a “Giving Season” public education campaign. Carried out in conjunction with the Better Business Bureau and the American Association Of Retired Persons Of Massachusetts, this education campaign is part of long-term effort to inform individuals and businesses about the donating process and how to make sure that their contributions are put to the best possible use. Among other things, the “Giving Season” public education campaign featured the annual *Attorney General’s Report On Telemarketing For Charity*. The report provides general information about professional fundraisers and their statutory reporting obligations and specific information about the campaigns conducted in calendar year 1999.

- **Non-Profit Corporation Legislation** The Division actively participated on a Boston Bar Association special task force to revise the non-profit corporation statute, G.L. c. 180, including three subgroups established to address charity-specific issues: (a) a multi-tier subgroup addressed issues of charitable fiduciary obligations in affiliated corporate systems; (b) a charitable assets subgroup addressed mergers and how to streamline procedures for statutory dissolution of charities; and (c) a charity.

## DIVISION ADMINISTRATION & STATISTICS

Enforcement of laws requiring accountability by public charities is central to Division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the Division and all registered charities must submit annual financial reports. The registrations and financial reports are public records and public viewing files are maintained. The Division responded to over 1,144 requests to view files in the past Fiscal Year and, in response, approximately 2,749 files were pulled.

- **Charitable Organizations: Registration and Enforcement** From July 1, 2000 through June 30, 2001, the Division processed approximately 30,900 annual financial reports and collected \$1,564,874 in annual filing fees. These funds go directly to the Commonwealth's General Fund. As part of an ongoing compliance program, Division staff contacted charities whose annual filings were deficient or delinquent to rectify filing deficiencies.
- **Issuance of Certificates to Charities Who Fundraise** Under G.L. c. 68, § 19, every charitable organization which intends to solicit funds from the public, except religious organizations, must apply to the Division for a solicitation certificate before engaging in fundraising. Upon receipt, the Division reviews certificate applications for compliance with statutory requirements. Unless there is a deficiency in the application, all certificates are issued within a 10-day statutory period.
- **Registration of Professional Solicitors & Fund Raising Counsel** Under §§22 and 24 of G.L. c.68, all persons acting as professional solicitors, professional fundraising counsel, or commercial co-venturers in conjunction with soliciting charitable organizations must register annually with the Division. Solicitors and commercial co-venturers must also file a surety bond in the amount of \$10,000.00. All fundraisers must also file with the Division a copy of each fundraising contract which they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

During the Fiscal Year ending June 30, 2001, a total of 303 registrations were received and approved, resulting in \$62,450 in fees to the Commonwealth. Registrations were received from 95 solicitors, 157 fund-raising counsel, and 51 commercial co-venturers.

#### MONEY RECOVERED FOR THE COMMONWEALTH TREASURY

Charitable and Fundraiser Registration Fees	\$ 1,627,324
Other fees, requests for copies, requests for computer information (approximate)	\$3,287
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<b>TOTAL</b>	<b>\$ 1,630,611</b>

The Public Charities Division included the following staff members: Jamie Katz, Chief; Eric Carriker; Johanna Soris; Deirdre Rosenberg; Laura Maslow-Armand; Sandra Cardone; Marion Antonucci; Matthew Jervinis; Karen Calhoun; Caitlin Calder; Kevin Fennessey; Daniel Ferullo; Cathy Hoffman; Tina Williams; Kathleen O'Connell; Beth McGillicuddy; Ann Giroux; Ann Higgins; Patricia Clifton; and Richard Reuss.

### REGULATED INDUSTRIES DIVISION

The Regulated Industries Division represents consumer interests with respect to two industries: insurance and public utilities. The Division's work is carried on before state and federal courts as well as administrative regulatory bodies such as the Massachusetts Department of Telecommunications and Energy (DTE or Department), the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), and the Massachusetts Division of Insurance (DOI). In many of these matters, particularly public utility rate cases, the Division is the only active participant advocating on behalf of Massachusetts consumers.

#### INSURANCE

The Regulated Industries Division's representation of consumer interests in insurance matters is divided into ratemaking cases and enforcement of the consumer protection laws, G.L. c. 93A and c. 176D. In its ratemaking work, the Division intervenes in both automobile and health insurance rate setting proceedings.

In its consumer protection function, the Division protects Massachusetts citizens from unfair sales and claims practices. The Division receives many consumer questions and complaints through the Division's insurance hotline for consumers, direct mail and telephone communications. The Division obtains both restitution and injunctive relief for insurance consumers through mediation, negotiation and, if necessary, litigation. Finally, the Division engages in non-case related work to advance insurance consumer interests, including legislative, regulatory, educational, and other outreach activities. The Division also operates AGELDER, a toll free hotline to aid seniors and their families on elder related issues.

## RATE CASES

### Automobile

- **2001 Automobile Insurance** Proceedings concerning the 2001 automobile insurance rate began on April 26, 2000 with notice of the annual hearing called by the Commissioner to determine whether it was necessary that the rates for 2001 be fixed and established in accordance with G.L. c. 175, § 113B. The Division participated in the hearings and testified, on June 1, 2000, that any return to competition should include a subsidization and cost-sharing mechanism to protect policyholders in urban areas from rate shock. The Commissioner ruled that she would fix and establish rates for 2001.

On July 7, 2000, the Automobile Insurers Bureau ("AIB"), on behalf of the automobile insurance industry, filed with the Division of Insurance its recommendation concerning the underwriting profit component of 2001 private passenger automobile insurance rates. On July 14, 2000, AIB filed with the Division of Insurance its recommendation concerning the cost containment and fraudulent claims payments component of 2001 private passenger automobile insurance rates. On August 11, 2000, AIB filed with the Division of Insurance its recommendation concerning the main rate for 2001 private passenger automobile insurance rates. AIB requested an increase of 2.5 % increase over the 1999 rates. If approved, these requests would have been equivalent to an average increase in auto insurance premiums for Massachusetts drivers of \$25 per car or \$234 million overall.

On behalf of Massachusetts consumers, the Division challenged the increase requested by the industry and numerous portions of the insurers' filings and recommended a rate reduction of 10%. In December, 2000, the Commissioner issued a decision fixing and establishing an average rate which was approximately 8.3% lower than the equivalent 1999 rate or 10.8%



lower than the industry's requested increase. The Division's intervention resulted in savings to Massachusetts consumers of \$324 million or an average of \$100 per car.

- **OEM Proceeding** The insurers proposed an endorsement to the automobile policy providing coverage for original equipment manufactured parts, to cost approximately 13% of collision and comprehensive coverage rates. The Commissioner adopted the Division's recommendation of a 5% collision and 1% comprehensive rate.
- **Premier Managed Care Endorsement** Premier, a subsidiary of Travelers Insurance Co. and one of the 10 largest insurers in Massachusetts, filed an endorsement giving policyholders a reduction of approved rates on certain portion of the premium if they agreed to use their HMO or Premiers PPO network of providers. The Division supported the endorsement, and it was approved by the Commissioner.

### Homeowners

- **In re 2001 Rate Filings for Property Insured by the Massachusetts Property Insurance Underwriting Association** In 2000, the Massachusetts Property Insurance Underwriting Association ("FAIR") submitted filings to the Division of Insurance for increases in their Homeowners product and their Dwelling and Fire product. The Division participated in the hearings and the case was settled by stipulation which increased overall rates for Dwelling Fire and Extended Coverage insurance by 1.2% and decreased overall rates for Homeowners Multi-Peril insurance by -0.51%, saving consumers \$125,119. (Division of Insurance)

### Medicare Supplement

- **Bankers Life 2002 Medicare Supplement Rate Proceeding at DOI** Bankers Life and Casualty Co., the second largest Medicare supplement insurer in Massachusetts, sought rate increases of between 18% and 56% on its plans. The Division participated in the administrative hearings before the Division of Insurance; the case was settled by stipulation which increased overall rates by between 13% to 30%, saving consumers \$5,858,285 over an 18 month period.
- **Hartford Life Insurance Co. Medicare Supplement Rate Proceeding at DOI** Hartford sought rate increases of 59% on its drug plan and 44% on its core plan. The Division participated in the hearings and the case was settled by stipulation which increased overall rates by between 19.5% in its drug plan and 44% (\$8.00 per month for 74 core participants in the Commonwealth), saving consumers \$1,347,583 per year

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### CONSUMER PROTECTION/ENFORCEMENT

The Division also engaged in non-rate case related insurance work during Fiscal Year 2001 that involved consumer protection issues and/or enforcement of the Commonwealth's insurance laws, including:

- **In re Metropolitan Property & Casualty Insurance Co.** (Suffolk Superior Court) The Division oversaw refund by Metropolitan of nearly \$2 million to policyholders who had not been given credit for their passive restraint discounts.

- **InsWeb Corporation, Amica Mutual Insurance Co. Commerce Insurance Group** The Division investigated and sent notice letters to each of these companies regarding possible violations of G.L. c. 93A, 175 & 176D in providing auto insurance quotes by participating insurers on the InsWeb Internet site.

- **Massachusetts v. Union Security Life Insurance Company** In December, 2000, the Division filed a consent judgment in which the Union Security Life Insurance Company agreed to resolve allegations that it had violated G.L. c. 175, § 117C, by charging too much for a credit insurance product called "CreditShield" (a form of credit insurance which pays the minimum balance due if a covered consumer becomes disabled or will pay the entire account balance if a covered consumer dies). The Division alleged that Union Security charged credit-insurance premiums that were unreasonable in relation to the benefits provided because the premiums violated both the minimum loss ratio test and the standard case rating procedure defined by c. 175, § 117C.

As part of the consent judgment, Union Security provided more than \$1,000,000 in refunds to Massachusetts consumers, reduced its total premiums starting in 2001 by several hundred thousand dollars per year in accordance with c. 175, § 117C, and agreed to provide \$604,000 in additional rate reductions, below the rate required by c. 175, § 117C, during 2001 and 2002.

### PRIVACY

The Division has taken an active role in educating consumers and the insurance industry about the privacy protections provided by a federal law enacted in 1999 called the Gramm-Leach-Bliley Act (GLBA). Under GLBA, all financial institutions, including every insurance company, bank, credit card company, and tax or financial advisors, must provide their customers with annual privacy notice that: (1) describes how it

handles personal nonpublic information; and (2) explains how a customer can take action to limit the disclosure of their personal information to others.

- **Consumer Education; GLBA Guide** To help explain this new federal privacy law to consumers, the Division published a consumer guide, *Important Privacy Rights & Protections*, explaining GLBA and the rights of consumers to take action to limit the disclosure of their personal information by electing to “Opt-Out” of future disclosures. The guide has been distributed through the Attorney General’s regional offices and through local consumer groups.
- **Business Education; GLBA Conference** On May 4, 2001, The Division sponsored an educational program for the insurance industry and other financial institutions to explain the obligations those entities have under GLBA. The Federal Trade Commission Northeast Region, the Office of Consumer Affairs and Business Regulation, and the Better Business Bureau co-sponsored the program. Members of the Division explained the application of GLBA to the insurance industry and moderated a panel discussion by representatives from financial institutions.

## HEALTH CARE COVERAGE

### EMPLOYERS FAILURE TO REMIT HEALTH INSURANCE PREMIUMS

The Division investigates complaints against employers who allow their group health plans to lapse because of their failure to remit health insurance premiums or their failure to provide sufficient funds to cover their employees’ health costs.

- **Investigations** The Division investigated 42 employers during this Fiscal Year. With the exception of disputes between a single employee and the employer, most complaints related to self-insured plans.
- **Violations of 940 CMR 9.00** The Attorney General’s regulation, 940 CMR 9.00, requires insurers to pay claims until they have notified employees directly of any termination of coverage. The Division learned through various consumer complaints that Aetna US Healthcare was denying coverage to groups that were terminated due to non-payment of premium by the employer/group sponsor and terminating groups retroactively for periods longer than the 60 day maximum allowed by the regulation. The Division was in the process of negotiating a resolution, in the form of an Assurance of Discontinuance, with Aetna at the end of the Fiscal Year.

- **Bankruptcy Interventions** The Division continued to vigorously litigate issues arising from the reorganization under chapter 11 of the bankruptcy code of Boston Regional Medical Center (BRMC). Prior to the bankruptcy, BRMC had deducted a portion of the health insurance premiums from the employees' pay checks for approximately two months, but had failed to remit those payments to the appropriate carriers. This resulted in unpaid medical bills for Fallon Health Care participants (approximately 240 employees) in the amount of \$200,000.

### HEALTH CARE LITIGATION

- **Commonwealth v. Fallon Community Health Plan** The Division investigated consumer complaints against Fallon Community Health Plan in connection with Fallon's precipitous termination of its contract with Deaconess-Nashoba Hospital. The Division then reached a settlement with Fallon in which it agreed to a consent judgment and injunction requiring timely notice in future cases where relationships between Primary Care Providers and their patients are jeopardized by termination of hospital contracts.
- **Commonwealth v. Poitras et al.** (Suffolk County Superior Court) The Division settled a longstanding case involving a failed health plan offered by Massachusetts Lobstermen's Association. The settlement required the Massachusetts Lobstermen's Association to pay \$595,000 for unreimbursed medical expenses of its policyholders.
- **Commonwealth v. Healthcare Value Management** (Suffolk County Superior Court) The Division entered into consent decree with Health Care Value Management, Inc. (HCVI), a provider of the PPO network to a fraudulent insurance company, Fraternal Insurance Group (operating under the AmeriMed name). The Division had previously obtained a \$1.8 million judgment against Fraternal Insurance Group to cover approximately \$800,000 in claims, premiums, and penalties, but had been unable to collect on the judgment. HCVI agreed to reimburse all consumers for payments that should have been made by Fraternal Insurance Group, and to make a payment that could be as high as \$25,000 to the Attorney General's local consumer aid fund.
- **CIGNA Health Care** CIGNA Health Care (CIGNA) was the third party administrator for the self insured employee benefit plan for a group of nursing homes owned by the Lenox corporation, which filed for bankruptcy in 1999. The Division received a complaint from a consumer who had undergone a bone marrow transplant that was "pre-approved" by CIGNA for a period of six months. During the six month period, however, Lenox had failed to pay any

administrative fees or premiums to CIGNA (CIGNA was also the re-insurer for the Lenox plan); as a result, CIGNA denied all medical services incurred by Lenox employees, including the services incurred by the consumer in connection with the bone marrow transplant and chemotherapy treatments. The Division took an active role in investigating this matter, alleging that CIGNA's pre-approval of the services and later denial of payment for those services when incurred was an unfair and deceptive act or practice under G.L. c. 93A. The Division negotiated a resolution in which CIGNA paid, in October, 2000, approximately \$102,000 to the providers to cover the services incurred by the consumer.

### HEALTH CARE COVERAGE

The Division undertook a variety of initiatives in the areas of health insurance coverage and managed care.

- **Harvard Pilgrim Health Care Receivership** The Division continued to work with the Public Charities Division to analyze HPHC, and the services it provides, post receivership.
- **Student Health Plans** The Division entered into consent decrees with the four largest insurers of student health plans in Massachusetts; Boston Mutual Insurance Co., Mutual of Omaha Insurance Co., Continental Assurance Co. (CNA), and Chickering Group. The companies agreed to correct the materials and administration practices to provide that pre-existing conditions are covered under the same terms as any other accidents or illnesses where the insured had prior comparable coverage and to provide a dollar limitation in coverage for pre-existing conditions that is not less than the dollar limitation for coverage of accidents and illnesses during the policy period; and to eliminate any waiting period for. The companies also agreed to pay all claims previously denied on the basis of a pre-existing condition limitation and contributed \$13,500 to the Attorney General's Local Consumer Aid Fund.
- **Continuation Coverage After Divorce** A member of the Division participated in a working group made up of various health care advocates to provide education to *pro se* divorce litigants on their rights to continuing coverage in the event of divorce. The group is preparing a brochure to be distributed to all divorce litigants through the probate court.

### COMMUNITY BENEFITS

A member of the Division oversees the Attorney General's Hospital and HMO Community Benefits Guidelines. During the 2000-2001 Fiscal Year, the Division member provided guidance to the hospitals and HMOs in their completion of their annual community benefits reports and analyzed those reports.

A member of the Division also oversees the Attorney General's Advisory Task Force on Hospital and HMO Community Benefits, which was convened in June 1998 for the purpose of advancing the goals of the Community Benefits Guidelines. This Task Force includes representatives of hospitals, HMOs, community health advocacy groups and relevant state agencies, and is organized into several working groups that focus on the key elements of community benefits including needs assessment, program evaluation and community participation.

The working group on reporting issues completed and released a first draft of new reporting guidelines, and conducted an informal public comment process. This included focus groups of hospitals, HMOs and community groups, and a review of written comments received from stakeholders. Another working group made progress designing and planning a series of regional community forums around the state on community benefits.

### LONG-TERM CARE INSURANCE

The Division continued its work to examine problems faced by elders in financing nursing home and other long-term care services, including responding to consumer inquiries regarding long-term care insurance and making presentations to groups of agents and consumers concerning long-term care insurance.

- **Long-Term Care Insurance Regulation** The Massachusetts Long-Term Care Insurance Regulations, 211 CMR 65 et seq., are intended, in part, to increase public understanding and comparison of long-term care policies. The Division played a lead role in developing *Your Options For Financing Long-Term Care: A Massachusetts Guide*, a comprehensive consumer guide to long-term care financing that the new regulation requires long-term care carriers and their agents to provide to consumers at the start of the sales process; members of the Division monitored industry compliance with the revised long-term care insurance regulation; and the Division began a survey of all non-group long-term care insurance carriers who do business in Massachusetts concerning their experience in working with the regulations, their use of required disclosure forms, as well as their experiences with the agent training and marketing provisions of the regulations.

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## LIFE INSURANCE LITIGATION

During the past two years, the Division has continued to devote a considerable amount of time and resources to cases involving allegations of deceptive sales practices in the life insurance industry. These deceptive sales practices generally involve three forms of sales misrepresentation: (1) *vanishing premium sales* in which the total amount of premiums, or the total number of annual premiums, required to pay for a policy are misrepresented; (2) *replacement sales* (also called “churning” or “twisting”) in which the impact of using value from a prior existing policy to pay for a new policy is misrepresented; and (3) *retirement or investment sales* in which an insurance product is misrepresented as an investment or retirement plan. The Division has continued to monitor the remediation plan in the Prudential and John Hancock consent decrees; entered into consent judgments to provide global relief with two additional life insurance companies, Metropolitan Life Insurance Company and New England Life; and mediated cases on behalf of individual consumers with 52 different companies recovering more than \$1,000,000 for those individual consumers.

- **Prudential Insurance Company of America** SUCV #1997-3070-E The Division continued to monitor the Alternative Dispute Resolution (“ADR”) process detailed in our Consent Judgment against Prudential and in a related national class action settlement, *In re: The Prudential Ins. Co. Of Am. Sales Practices Litig.*, 962 F.Supp. 450 (D.N.J. 1997), *aff’d*, 148 F. 3d 283 (3<sup>rd</sup> Cir. 1998), *cert. denied*, 142 L Ed 2d 789 (1999). The Division continued to participate in the Regulatory Oversight Group comprised of the states regulators to ensure the fairness of the remediation process. The Division worked with the Massachusetts Division of Insurance and counsel for the national class action on a plan approved by Judge Wolin to distribute \$136,000,000 to class members nationwide as an additional remediation amount as required by the national settlement. The estimated total relief provided to class members nationwide is estimated at nearly three billion dollars.
- **John Hancock Mutual Life Insurance Company** SUCV #1998-1542-G The Division continued to monitor the Alternative Dispute Resolution Process detailed in our Consent Judgment against John Hancock and in a related national class action settlement, *Duhaime v. John Hancock Life Ins. Co.*, 177 FRD 54 (D.Mass. 1997). The judgment provided relief to approximately 250,000 Massachusetts policyholders. The Division continued to operate a consumer hotline to assist policyholders in the Alternative Dispute Resolution Process; and to meet with defendants and plaintiffs’ counsel in order to ensure compliance with the letter and spirit of the settlement.

- **Massachusetts v. Metropolitan Life Insurance Company** SUCV #2000-02516-A

In June of 2000, the Division filed a consent judgment in which Metropolitan Life Insurance Company (“MetLife”) agreed to resolve alleged deceptive sales practices by providing global relief to Massachusetts consumers who purchased certain insurance products from MetLife between 1982 and 1997. As part of the consent judgment, the Attorney General required substantive improvements to a national class-action settlement and that settlement was approved as amended by the Attorney General. *In re: Metropolitan Life Insurance Company Sales Practices Litigation*, Misc. Docket No. 96-179, MDL No. 1091 (W. D. Pa. July 26, 2000). The national class action involved roughly seven million class members and the total relief to class members nationwide has been estimated at one billion dollars.

In addition to providing global relief through an improved relief structure, the Attorney General instituted an outreach and assistance program, funded by MetLife, to aid approximately 250,000 individual class members in Massachusetts. The Division sent informative guides about the settlement to class members, issued public service announcements, and established a toll-free telephone hotline to answer individual questions from class members. The Division received more than 18,000 calls about the MetLife settlement.

As a result of the Attorney General’s outreach program in the MetLife case, individual relief claims were submitted by roughly 1.95% of class members nationwide and by roughly 4.8% of class members in Massachusetts – approximately 5,000 Massachusetts class members filed individual claims because of the Attorney General’s outreach. With average individual claim relief at \$3,266, the Attorney General’s outreach provided those 5,000 Massachusetts class members with some \$16,000,000. Total relief to Massachusetts residents from the MetLife case was approximately \$33,000,000.

- **Massachusetts v. New England Mutual Life Insurance Company** SUCV

#2001-00146-F In January of 2001, the Division filed a consent judgment in which New England Life Insurance Company (“NE Life”) agreed to resolve alleged deceptive sales practices by providing global relief to Massachusetts consumers who purchased certain insurance products from NE Life between 1983 and 1996. The judgment provided relief to approximately 50,000 current and former NE Life policyholders in Massachusetts, and required substantive improvements to a national class-action settlement, which was approved as amended by the Attorney General. *In re: New England Mutual Life Insurance Sales Practice Litigation*, MDL 1105-REK, Civil Action Number 1:96-11543-REK (D. Mass.).



The Division also instituted an outreach and assistance program, funded by NE Life, to aid individual class members in Massachusetts, including sending informative guides about the settlement, public service announcements, and a toll-free telephone hotline to answer individual questions from class members.

### CONSUMER ASSISTANCE

- **Insurance Hotline & Mediation Program** The Division's four full-time mediators answer the questions of Insurance Hotline callers, provide information and referrals and, when appropriate, mail consumer complaint forms to callers. In Fiscal Year 2001, 8,114 people, an average of 676 each month, called the Insurance Hotline to ask questions and seek help with insurance problems. More than 50% of the callers were concerned about health insurance issues. Other Hotline calls included questions about auto insurance, life insurance, disability insurance, travel insurance, credit insurance and possible insurance scams.

The Insurance Hotline received more than 1,300 calls in October, when Partners Health Care and Tufts Health Plan were engaged in a contract dispute. Most of the callers were Tufts members who were worried that they would lose access to their Partners physicians and hospitals; some callers were concerned that scheduled surgical procedures would be cancelled. Hotline staff provided information and reassurance to callers during the period before Partners and Tufts reached a contract agreement.

The Division opened 1,397 consumer complaint files. 626 of the new complaints, 45% of the total, involved health insurance. The Division closed 1,497 consumer complaint files, recovering \$2,177,490 for consumers.

In Fiscal Year 2001, twenty-one undergraduate students from eleven colleges and universities received training to mediate consumer complaints. More than half of the interns received academic credit for their work. During the summer and academic year, interns volunteered more than 3,000 hours in the mediation program.

- **AG Elder** The Attorney General's Elder Hotline (1-888-AG-ELDER), a statewide toll-free hotline, handled over 7,650 calls from elders and their families, and opened 2,594 complaints/queries. The hotline provides information, mediation services, and referrals for senior citizens and their families on a wide range of elder issues. Mediation activities benefited elders in the amount of \$88,421.

Most complaints, 458, were against businesses, including auto dealerships, retail stores and banks. The second largest category of complaints, totaling 258, included telemarketing and mail related matters such as mail order business, sweepstakes and lottery offers and complaints related to telemarketers. AGElder registered 240 complaints about insurance issues, including prescription drug coverage; 197 complaints related to utility issues, chiefly telephone services; 178 complaints against home improvement contractors; 162 credit and debt issues; 144 complaints against health care businesses and health care workers and 138 complaints of financial exploitation of elders.

- **Training** The Hotline has continued to invest time and effort into ensuring that the volunteers who handle the calls are well informed about the issues that are being brought to the Office through the Hotline. Not only does the Hotline serve as a screening center for elder related calls but it also mediates a majority of the complaints that it receives. Much of this work is done by volunteers who generally donate one day each week to the Hotline. To help ensure that the quality of information and help that is provided to is of a consistent quality, the Hotline has continued to offer mandatory monthly trainings to volunteers and staff. These trainings provide an opportunity to review Office policy and to gain knowledge in specific areas. During the past year the trainings included: Prescription Drug Coverage Options; Long Term Care; Common Referrals; Medicare, Medicare HMOS, Home Health Care and The Medicare Advocacy Program; TRIAD; Assisted Living; Guardianship, Health Care Proxy, POA, Victim Compensation and Mediation.
- **Outreach Activities** The Hotline has become an increasingly visible presence in the community, chiefly through community outreach at senior centers, Visiting Nurses Associations, and legal clinics. During this past Fiscal Year AG Elder staff provided information about the Office and about consumer fraud and protection at fifteen different events.

#### OTHER ACTIVITIES

- **Amicus Brief in *Patriarca v. Center for Living and Working*** The Division, along with members of the Public Charities Division and of the Civil Rights and Civil Liberties Division, authored an amicus brief for the Appeals Court addressing the scope of Rule 4.2 of the Massachusetts Rules of Professional Conduct. The Supreme Judicial Court took direct appellate review of the case. (Hershman)
- **21E Homeowner Funding Work Group** The Division participated in a work group, composed of representatives from a number of interested constituencies, including homeowners, the home heating oil industry, the Department of Environmental Protection, real estate brokers, banks,

commercial and industrial interests, licensed site professionals, and attorneys, considering the problem of contamination of residential properties by releases of home heating oil. The work group was drafting a “white paper” containing a proposed solution to the problem of funding cleanups of such releases on residential properties. (Hershman)

- **Elder Conferences** The Division organized the first of several state-wide conferences on Elder Fraud and Abuse to address such topics as telemarketing, identity and home improvement fraud, and personal safety. The conference, held in Arlington on November 9, 2000, was a collaborative effort with the Arlington Council on Aging, the Middlesex County District Attorney’s Office, and Minuteman Protective Services. More than 130 elders, elder providers and law enforcement professionals attended the free, half-day event. (Meister)

#### ESTIMATED SAVINGS TO CONSUMERS

Auto Rate Case	\$324,000,000
Medigap Insurance Rate Cases	\$7,205,868
FAIR Rate Case	\$125,119
Consumer Hotline	\$2,177,490
Miscellaneous Mediation	\$1,200,000
AGELDER Mediation	\$88,422
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<b>TOTAL</b>	<b>\$334,796,899</b>

#### UTILITIES

The Division devoted most of its work on utilities this year to advocacy of consumer interests in connection with the implementation of the dramatic changes underway in the telephone, electric and gas utility industries. The implementation of the 1997 Electric Restructuring Act (St.1997, c. 164) continued with proceedings on the annual transition cost reconciliation filings, generating unit sales and refinancing of stranded costs. Utility mergers also occurred as a result of the continued consolidation of the electric and

gas industry. Work continued among interested parties to make enhance competitive electric markets and the further progress was made at expanding the range of activities in which competition could occur in the telecommunications industry. The Division was an active participant each of these developments. Not only did the Division continue its traditional role of protecting customers from rate increases, but it advocated new structures and rules to maximize the consumer benefits from the move to a more competitive regulatory approach. The Division continues to protect the interests of small residential and business customers during the transition to new regulatory frameworks. Most of this work occurred in case-specific adjudications.

### SIGNIFICANT CASE SUMMARIES

- **BEC Energy-ComElectric DTE 99-19 NSTAR Merger** On February 1, 1999, Boston Edison Company (“Boston Edison” or “BECo”) and Commonwealth Energy Systems filed with the Department a joint petition for approval pursuant to G. L. c. 164, § 94 of a rate plan related to the planned merger of the companies to create a new company, NSTAR. The Division intervened in the merger proceeding to protect customer interests.

Boston Edison was engaged in the generation, transmission and distribution of electricity to approximately 633,000 retail residential, commercial and industrial customers over an area of 590 square miles in forty communities. Commonwealth Energy System, was composed of twenty subsidiaries including Canal Electric Company, a wholly-owned generation company; Commonwealth Electric Company, an electric distribution company which serves approximately 327,000 retail customers in southeastern Massachusetts, including Cape Cod and Martha’s Vineyard; Cambridge Electric Light Company, an electric distribution company which serves approximately 45,900 customers in the City of Cambridge; and Commonwealth Gas Company which provides local gas distribution service to approximately 239,000 retail customers in eastern Massachusetts.

The Companies proposed a merger rate plan that would: 1) freeze distribution base rates for all four utility operating companies for four years; 2) allow recovery of merger-related acquisition costs from customers over forty years; 4) increase the rates of Cambridge and Commonwealth for certain unrecovered conservation and demand-side management costs, and, 3) institute a service quality plan.

As part of its proposal, the Companies sought Department approval to charge customers \$34.1 million a year during the first six years after the merger (\$20.6 million for the acquisition premium

(\$824 million amortized over forty years) and \$13.5 million in costs to merge (\$135 million amortized over ten years)). Over the next thirty years, customers would be charged \$20.6 million a year for the acquisition premium. The Companies estimated net savings during the first ten years following the merger of \$532 million.

Although the Division opposed the recovery of merger costs from customers without their receiving some part of the expected savings, the Department approved the merger rate plan. On August 18, 1999, the Attorney General appealed the decision of the Department approving the transaction, challenging the standards used by the Department to assign the merger costs and acquisition premium to customers, and seeking a calculation of just and reasonable rates. By the close of the Fiscal Year, the Department had not yet filed notice of assembly of the record.

#### ELECTRIC MATTERS

- **Transition Charge Reconciliation Filings** Under the Electric Industry Restructuring Act of 1997, the state's electric utilities are allowed to recover generation-related costs "stranded" by the move toward competition. (Stranded costs are generation-related assets, investments, and obligations which are unrecoverable in a competitive generation market). The Act requires that the utilities make an annual filing reconciling amounts collected from customers with the unrecovered balance of these costs. The Division reviews these filings, conducts discovery and participates in hearings before the Department concerning these reconciliations. This year the Division participated in five Department reviews of electric utility stranded cost recovery to ensure that costs not authorized by the Act are not recovered from customers and legitimate costs are mitigated to the maximum extent possible (Boston Edison Company, D.T.E. 99-107; Boston Edison Company, D.T.E. 00-82; Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 00-83; Fitchburg Gas & Electric Light Company, D.T.E. 00-107; Western Massachusetts Electric Company, D.T.E. 00-33).
- **Pilgrim Nuclear Power Plant Performance** Boston Edison Company, D.T.E. 96-1A-1 / 97-1A-1 / 98-1A The Division entered into settlement negotiations with the Company and was able to reach a settlement resolving most of the issues in these proceedings (which had been docketed to review the Company's actual performance results relating to fuel procurement and use) concerning the performance of Boston Edison's Pilgrim nuclear power plant during 1995-98. The settlement agreement required the Company to return \$2.5 million to its customers

through a special credit against the transition costs it will otherwise recover from customers. The Department approved this settlement in August 2000.

- **Securitization/Refinancing of Stranded Costs** Western Massachusetts Electric Company, D.T.E. 00-40 Western Massachusetts Electric Company filed an application for approval of rate reduction bonds pursuant to G.L. c. 164, §1H(b). The Company initially proposed to securitize approximately \$261 million of transition costs. Securitization is a method for a company to refinance transition costs. After evidentiary hearings, but prior to a Department decision, the Company and the Division reached a settlement under which Western Mass could issue approximately \$155 million of rate reduction bonds. The agreement allowed the Company to refinance transition costs associated with the Company's unrecovered Millstone 2 and Millstone 3 plant balances and the buy down payment of the Springfield Resource Recovery Facility Power Purchase Agreement and the MASSPOWER buyout payment. The Company was able to reduce the carrying charge on these assets from 12.63 percent to approximately 7.97 percent, saving customers an estimated \$32 million.

- **Sale of the Millstone Nuclear Power Plants** Western Massachusetts Electric Company, New England Power Company and Fitchburg Gas and Electric Light Company, D.T.E. 00-68 Western Massachusetts Electric Company, New England Power Company and Fitchburg Gas and Electric Light Company petitioned the Department for approval of the sale of their interests in Millstone nuclear generating units 1, 2 and 3 to Dominion Resources, Inc. The Electric Industry Restructuring Act requires the utilities to divest their generation assets. Millstone Units 2 and 3 are operational 875 MW and 1,154 MW nuclear power units, respectively. Millstone Unit 1 has been permanently shut down and is in the process of being decommissioned. The Division intervened in this proceeding, conducted discovery and attended evidentiary hearings. The Division was concerned about Western Massachusetts Electric Company's monetary responsibility with respect to the decommissioning trust funds for Millstone 1, 2, and 3. Each owner of each Millstone unit has contributed a specific amount toward decommissioning costs and that amount is placed into a trust fund to ensure that there are sufficient monies available to decommission the plant at the end of its useful life. Western Massachusetts Electric Company's decommissioning responsibility was limited to its ownership share or 19 percent. As a result of the hearings it was determined that Western Massachusetts Electric Company had overpaid and contributed funds to the trust in excess of its 19 percent ownership share. The Division and the Company reached a settlement that provided that the Company would credit its customers for the overpayment in the amount of roughly \$19 million. The Department approved the settlement.

- **Installed Capacity Deficiency Charge** ISO New England, Inc., FERC Docket EL00-62-005 The Division intervened in a Federal Energy Regulatory Commission (“FERC”) proceeding involving the New England Power Pool (“NEPOOL”) Installed Capacity (“ICAP”) deficiency charge (the ICAP requirement mandates that each NEPOOL member has sufficient electric generating capacity under its ownership or control to meet its load and reserve obligations; if it fails to do so, it is charged the ICAP deficiency charge).

On July 28, 2000, the ISO- New England made a FERC mandated filing proposing an ICAP deficiency charge of \$0.17 per kW-month (the average clearing price of the ICAP auction market in 1999). Various generation-related parties filed protests. On December 15, 2000, FERC summarily rejected the ISO’s \$0.17 per kW-month filing, stated that the ICAP deficiency charge should be related to the actual harm created by ICAP deficiencies and that the proposed penalty for failing to meet NEPOOL’s ICAP requirement “must be something more than a token payment of \$0.17.” It then ordered the implementation of an \$8.75/kW-month ICAP deficiency charge.

After a series of meetings among various utilities, generators and regulators on this issue failed to reach agreement, the Division, the Maine Public Commission, the Vermont Department of Public Service, Bangor Hydro-Electric Company, Central Maine Power Company, and National Grid USA (Massachusetts Electric Company) appealed the FERC decision to the United States Court of Appeals for the First Circuit. On June 8, 2001, the Court reversed and remanded the FERC decision, holding that FERC failed to provide some explanation as to why it imposed the \$8.75 charge. On remand the FERC decided a charge of \$3.95 was more appropriate, saving customers millions of dollars in energy costs.

- **Fitchburg Gas & Electric Light Company** D.T.E. 99-118 On December 29, 1999, the Attorney General filed a complaint, pursuant to G.L. c. 164, §93, asking the Department to open an investigation into Fitchburg’s distribution rates. The Division alleged that the Company’s distribution rates for calendar year 1999 were excessive and should be lowered. The Department conducted hearings in May and June 2001. By the close of the Fiscal Year, the parties were still in the briefing stages of the proceeding.

- **Market Power** NSTAR v. Sithe and PG&E, Docket No. EL01-79-000 NSTAR filed a complaint at the Federal Energy Regulatory Commission (“FERC”) against Sithe and PG&E contesting market-based rate authority for their energy sales on the grounds that they are generators who possess market power in the North Eastern Massachusetts Area (“NEMA”). NSTAR asked FERC to rescind the authority of Sithe and PG&E to charge market-based rates

during periods of transmission congestion in NEMA and to require them to divest resources in NEMA to create a workable competitive market for generation and to refund over-collections. The Division intervened in this proceeding and requested that FERC open an investigation into wholesale electric rates paid by Massachusetts consumers in the NEMA. The Division also requested that FERC determine the amount of a refund, if any, due to Massachusetts consumers. FERC has yet to act on this complaint.

- **Regional Transmission Organizations** FERC RTO1-86-000 On January 16, 2001, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company and ISO New England Inc., (ISO-NE), filed a request with FERC that it combine New England, New York, New Jersey, Pennsylvania and Maryland into one regional market administered by one Regional Transmission Organization (“RTO”).

The Division intervened in the proceeding and filed comments, urging FERC to address important consumer concerns such as governance, transmission planning, and market monitoring prior to the formation of the proposed RTO. The Division also stated that any potential efficiencies that may result because of the federalization of wholesale electricity markets must not be gained at the expense of cost and reliability for Massachusetts consumers. Due to concerns expressed by the many participants in this case, and in part due to the Enron collapse and the California crisis, FERC slowed down the whole process, and was considering a different proposal to combine only New York and New England into one RTO.

#### GAS MATTERS

- **Eastern Enterprises-Colonial Gas Company** D.T.E. 98-128 On December 24, 1998, Eastern Enterprises (“Eastern”) and Colonial Gas Company (“Colonial”) filed with the Department a petition for a merger between Eastern and Colonial and a rate plan for Colonial (“Rate Plan”) pursuant to G.L. c. 164, § 94. Colonial is a natural gas local distribution company, serving approximately 152,000 customers in 24 municipalities (Lowell and the surrounding towns and on Cape Cod). Eastern Enterprises is the parent company of Boston Gas Company and Essex County Gas Company which together serve approximately 580,000 customers in Massachusetts. Under the Rate Plan proposal, Eastern proposed a ten-year “rate freeze,” meaning that base rates would not be increased for ten years, during which Eastern would collect \$15.3 million per year of merger related costs through charges to Colonial’s



customers. Over the succeeding thirty years, Colonial's customers would be required to pay \$12.3 million per year.

Over the Division's objection, the Department approved the merger. The Attorney General appealed the decision to the Supreme Judicial Court, challenging the standards the Department used to assign the merger costs and acquisition premium to customers, and seeking a calculation of just and reasonable rates. By the close of the Fiscal Year the Department had not yet filed notice of assembly of the record.

- **Fitchburg Gas & Electric Light Company** DTE 99-66-B On November 1, 1999, the Department opened an investigation into the Attorney General's allegation that Fitchburg had double-collected interest on gas inventories since 1987. After evidentiary hearings beginning in March 2000, the Department issued a decision on May 31, 2001 concluding that Fitchburg had doubled charged customers interest on gas inventory costs over a 12-year period in an amount equaling \$675,000. The Department ordered the Company to refund of the over-collections to consumers with interest, a total refund of \$1.5 million. The Company filed a notice of appeal to the Massachusetts Supreme Judicial Court. While the appeal is pending, the Company has commenced the Department ordered refunds. The Administrative Law Division is defending the Department against the Company's appeal.

#### TELEPHONE MATTERS

- **Local Competition - Verizon's 271 Application to Enter the Long Distance Market** In September 2000 and January 2001, the Division participated in the Department's and the FCC's examinations of Verizon's application under Section 271 of the 1996 Telecommunications Act to offer in-region long distance service in Massachusetts. The Division opposed the application on the grounds that Verizon's "Unbundled Network Element" ("UNE") prices were too high to promote local competition and were not based on Massachusetts-specific costs, and that Verizon had not complied with the Act's 14-point local market competitive checklist or shown that its entry into the long distance market was in the public interest.

The Department and FCC approved Verizon's application. The Division appealed the FCC's decision to the DC Circuit Court of Appeals on May 11, 2001, asserting that the FCC acted arbitrarily, capriciously, and contrary to law in approving Verizon's Section 271 application. The Division appealed the FCC decision on three grounds: (1) the FCC should have considered

evidence that the prices Verizon charged its competitors to lease its UNE services created a “price squeeze” which precluded profitable competitive entry by competitors; (2) the FCC erroneously concluded that Verizon’s UNE switching rates did not exceed their costs; and (3) the FCC failed to consider evidence that Verizon had not satisfied its Section 271 obligations to resell DSL service to competitors. The appeal was pending at the end of the Fiscal Year.

- **Wholesale Competition** Unbundled Network Elements D.T.E. 01-20 As part of a five-year cycle, the Department opened its investigation on January 12, 2001 into Verizon’s “Unbundled Network Element” (“UNE”) prices, the prices that Verizon charges its competitors to lease parts of its network so that they can provide local telephone service. The Division intervened in the docket and participated filed comments on Verizon’s proposal. No further action was taken and hearings were scheduled for the next Fiscal Year.

- **Wireless Multistate Inquiry** The Division joined a 24-state investigation into the billing and advertising practices of Verizon Wireless (formerly Bell Atlantic Mobile), Cingular Wireless (formerly Cellular One, now part of Southwestern Bell Wireless), and Sprint PCS. On March 21, 2001, twenty-two Attorneys General sent inquiry letters to the carriers (two more states later joined the group) based upon consumer complaints about their advertising practices and related matters. Representatives from the carriers responded to the letters, and the states began exploring the issues.

- **Verizon’s Fifth Price Cap Compliance Filing** DTE 99-102 Residential Retail Rates In 1995, the Department ordered Verizon (then NYNEX) to file six annual compliance filings to show its adherence to the Department’s 1995 Price Cap Order’s pricing rules. On November 17, 1999, Verizon, then Bell Atlantic, filed its fifth annual price cap filing with the DTE, and included a reduction in the productivity adjustment factor to recover past penalties. The Division challenged the method used by the Company to calculate penalty charges that were incurred in 1995 and 1996. On August 3, 2000, the DTE issued its order, agreeing with the Division’s position and ordering the Company to refund nearly \$21 million to ratepayers beyond that which was mandated under the price cap rules.

- **Verizon’s Alternative Regulation Plan** DTE 01-31 Alternative Rate Regulation On February 27, 2001, the Department opened an investigation into Verizon’s retail intrastate telecommunications services for Massachusetts, and conducted four public hearings on Verizon’s proposed plan to deregulate residential and business retail prices across Massachusetts. As part of the Division’s involvement, the Division attended public hearings, procedural conferences, issued discovery, filed comments on the scope of the Department’s

investigation. On June 21, 2001, the DTE split the investigation into two phases. Phase I will examine whether there was sufficient competition to deregulate any of Verizon's retail services, and Phase II will look to see what alternative regulation plan would be appropriate for those services that should remain regulated.

### OUTREACH EFFORTS

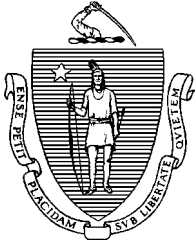
- **Enhanced Outreach Initiative** D.P.U. 90-3C, D.P.U. 91-80 As a result of a settlement between the Division and Commonwealth Electric Company over the operation of the Pilgrim Nuclear Power Plant, the Company agreed to make refunds to customers by starting a demonstration program designed to provide qualified low-income customers of Commonwealth Electric with: (i) a stipend to assist in paying overdue electric bills; (ii) energy efficiency services; and (iii) budget counseling. The \$1,317,000 Enhanced Outreach program was designed to increase participation in energy efficiency programs and to aid Commonwealth Electric customers who may be experiencing an immediate need for financial assistance with overdue electric bills. In order to receive a stipend, a participant must first complete the energy efficiency program and budget counseling services. Designated social service agencies in Commonwealth Electric's service territory will administer the Program. The Department approved the program and implementation is scheduled for the next Fiscal Year.

The Utilities Section of the Regulated Industries Division included George Dean, Chief; Joanna Connolly; Joseph Rogers; Stacey Book; Wilner Borgella; Matthew Buehler; Victoria Carter; Michelle Cataldo; Alexander Cochis; Norman D'Amours; Gerald D'Avolio, Jr.; Judith DePontbriand; Barbara Fain; Mary Flohr; Maureen Forbes; Lydia Froese; Stacey Gotham; John Grugan; Hilary Hershman; Veronica Kane; Patricia Kelley; Judith Laster; Leo Lawless; Peter Leight; Pamela Meister; Susan Melucci; Trevor Murray; Timothy Newhard; Thomas O'Brien; Doe Pichard; David Publow; Karlen Reed; Danielle Solod; Anthony Taylor; and Rachel Weiner.

# APPENDIX

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## ATTORNEY GENERAL'S FORMAL OPINIONS



THOMAS F. REILLY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1698

No. 00/01-1

October 30, 2000

Jane Perlov, Secretary  
Executive Office of Public Safety  
One Ashburton Place  
Boston, Massachusetts 02108

Dear Secretary Perlov:

You have requested my opinion on the scope of enforcement authority vested in the Office of the State Fire Marshal under the Commonwealth's comprehensive fire safety code as pertaining to state-owned and state authority-owned buildings. Specifically, you have asked whether the provisions of G.L. c. 148 and 527 C.M.R. §§ 1.00 *et seq.* apply to state-owned or state authority-owned buildings and, if so, whether the Marshal is responsible for enforcing the fire safety code in such buildings. You also pose a related third question of whether, if the provisions do so apply, and if the Marshal is responsible for enforcement thereof, the Marshal may delegate responsibility for such enforcement to local fire chiefs. Consistent with the unequivocal conclusion reached by former Attorney General George Fingold in a May 25, 1955, opinion given to the then Commissioner of Public Safety, 1955 Op. Att'y Gen., Rep. A.G., P.D. No. 12 at 100 (1955), and for the reasons discussed below, it is my opinion that the Commonwealth is not bound by the relevant statutes and regulations and that, therefore, such provisions cannot be enforced as against the Commonwealth. The question of state authorities is not susceptible to a categorical answer, as discussed further below.

Under G.L. c. 22D, § 4, as well as various provisions contained in G.L. c. 148, including §§ 9, 10 and 28, the Board of Fire Prevention Regulations (the "Board") is authorized to enact regulations relative to fire prevention. Pursuant to that authority, the Board has enacted a comprehensive set of regulations codified in 527 C.M.R. §§ 1.00 *et seq.*, and commonly referred to as the State Fire Code

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(the “Fire Code”). These authorizing statutes, unlike some other regulatory authorizations such as G.L. c. 143, §§ 2A, 3A, 93, 94, and 95 (authorizing the establishment of a state-wide building code and discussed in greater detail below), do not specifically indicate that regulations promulgated thereunder may be made applicable to state-owned buildings. Under G.L. c. 148, § 4, the Marshal, local fire chiefs, and their designees have the authority to enter “any building or other premises” in the performance of the duties imposed by the Fire Code or in furtherance of the purpose of any provision of the Code or statutes relating to fire prevention.

A long line of opinions issued by my predecessors has taken the position that, absent an explicit legislative directive to the contrary, the Commonwealth and its agencies are immune from proscriptions set forth in statutes enacted by the Legislature in the exercise of its police powers. 1941 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 118 (1941) (regulations pertaining to safety devices for hot water tanks do “not apply to buildings owned and used by the Commonwealth”); see also 1942 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 88 (1942) (statute authorizing land takings by county commissioners cannot be used to take land held by the Commonwealth as a state forest); 1935 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 38 (1935) (state-owned buildings not subject to general laws relating to the licensing of plumbers); 1933 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 38 (1933) (no state license required in order for a prisoner to operate a steam shovel at a state prison colony); 1932 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 86 (1932) (statute requiring local plumbing and wiring licenses does not pertain to work done on state-owned buildings). This rule is closely related to the rule that the Commonwealth cannot be sued in its own courts except in strict accordance with statute. In that context also, “[t]he rules of construction governing statutory waivers of sovereign immunity are stringent. . . . Consent to suit must be expressed by the terms of a statute, or appear by necessary implication from them.” *Woodbridge v. Worcester State Hospital*, 384 Mass. 38, 42 (1981). *Accord C & M Construction Co. v. Commonwealth*, 396 Mass. 390, 392 (1985). Under G.L. c. 148, § 30, which authorizes judicial enforcement of the Fire Code, there is no express or implied waiver of the Commonwealth’s immunity to suit.<sup>1</sup>

Moreover, I note that many sections of G.L. c. 148 refer to “persons” being subject thereto. See e.g., G.L. c. 148, § 9 (“Such rules and regulations shall require persons keeping, storing, using . . .

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<sup>1</sup> It is unsettled in the Commonwealth whether sovereign immunity would apply when one state entity sought to bring enforcement proceedings against another. Accordingly, I do not base my conclusions on the doctrine of sovereign immunity *per se* but on an examination of the relevant statutes to see if they authorize application of the Fire Code to the Commonwealth with the clarity that one would expect had the Legislature intended such a result.

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explosives to make reports to the department. . . .”); G.L. c. 148, § 31 (“Any person aggrieved by an act, rule, order or decision of the head of a fire department . . . may appeal to the marshal, who shall make all necessary and proper orders thereon. . . .”). The Commonwealth and its agencies are not usually deemed to be encompassed by general terms such as “person.” *Sarvis v. Boston Safe Deposit & Trust Co.*, 47 Mass. App. Ct. 86, 96 n. 10 (1999). For this reason, statutes applying to “persons” do not subject government entities to liability. See, e.g., *Perez v. Boston Housing Authority*, 368 Mass. 333, 339 (1975)(enforcement action under the state sanitary code could not be maintained against the Commonwealth and its Commissioner of Community Affairs because the Commonwealth is not an “individual, trust or corporation, partnership, association, or other person” under the provisions of G.L. c. 111, § 127N); *Fran’s Lunch, Inc. v. Alcoholic Beverages Control Commission*, 45 Mass. App. Ct. 663, 665 (1998)(local police and ABCC were not “persons” within the meaning of statute criminalizing minor’s purchase of alcohol for use of another “person”; minor’s participation in police/ABCC sting operation thus did not violate law); *Kilbane v. Secretary of Human Services*, 14 Mass. App. Ct. 286, 287-88 (1982)(affirming dismissal of action against Secretary of Human Services because Commonwealth is not a “person” within the meaning of G.L. c. 266, § 91, which deals with false advertising).

Absent express statutory language, there is also a well established presumption against interpreting a statute in a manner that delegates to municipalities any authority to regulate the Commonwealth. This presumption is traced back to the seminal case of *Teasdale v. Newell & Snowling Construction Co.*, 192 Mass. 440 (1906). In that case, the City of Quincy Board of Health attempted to bar a state contractor from establishing a temporary stable to be used during its work on a project to create park land because the contractor had not obtained a stable license from the Board as required by statute.<sup>2</sup> The effort failed because “[i]t is not to be presumed that the Legislature intended to give to the local licensing board the authority to thwart the reasonably necessary efforts of the park commissioners to perform their duty as agents of the State.” *Id.* at 443.

Later, in *Medford v. Marinucci Bros.*, 344 Mass. 50, 54 (1962), the City sought “to use its delegated powers,” i.e., its zoning by-laws and building code, to block a contractor and railroad from transporting fill to land owned by the Commonwealth (there to be stored temporarily for use in building

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<sup>2</sup> The statute, R.L. c. 102, § 69, read: “No person shall erect, occupy or use for a stable any building in a city whose population exceeds twenty-five thousand unless such use is licensed by the board of health of said city, and, in such case, only to the extent so licensed.”

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a bridge across the Mystic River), alleging violations of its zoning ordinances and its building code. Following Teasdale, opinions of the Attorney General,<sup>3</sup> and the rule generally followed in other jurisdictions, the Court concluded that “[t]he [local] ordinance could not control action by the Commonwealth or by its agents. . . .” 344 Mass. at 54;<sup>4</sup> see also 1980/81 Op. Att’y Gen. No. 16, Rep. A.G., P.D. No. 12 at 143 (1981) (Department of Environmental Management was not authorized to enter into contract to acquire land from Mashpee, under which the Department would agree that rules governing use of land would conform to town’s present and future rules, regulations and by-laws, because Department could not know whether future rules of the town would be consistent with Department’s mandate).

Although the Legislature may elect to waive the Commonwealth’s exemption from regulation in particular instances, such a waiver is not to be presumed or inferred, but must be made explicit. In *Inspector of Buildings of Salem v. Salem State College*, 28 Mass. App. Ct. 92 (1989), for example, the Appeals Court concluded that a provision of G.L. c. 40A, § 3, by which religious or educational uses on public land are subject to bulk and height restrictions imposed by zoning ordinances, applies to private religious or educational uses on public land, and not to public buildings, such as those of the state college. Referring to prior Supreme Judicial Court decisions such as *Teasdale* and *Medford v. Marinucci Bros.*, the Court said: “All those cases assert the supremacy of the State over local land use regulation in connection with State construction projects, unless the Legislature has made express provision to the contrary.” *Id.* at 97. The Court concluded that, measured against this standard, “[c]ertainly the language of § 3 does not amount to the express and unmistakable suspension of the usual State supremacy which the *Teasdale*, *Marinucci*, and *County Commissioners*<sup>5</sup> cases require.” *Id.*

An example of the Legislature’s explicit waiver of the Commonwealth’s exemption from regulation is found in G.L. c. 143, the statute that authorizes the promulgation and enforcement of a

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<sup>3</sup> The Court cited the following opinions: 1958 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 60 (1958) (Boston’s superintendent of wires does not have jurisdiction over wiring in state armory); 1958 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 65 (1958) (municipal inspector of wiring does not have jurisdiction over installation of wiring in and on property of the Commonwealth); 1949 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 29 (1949) (Public Works may erect building for storage of road equipment notwithstanding town’s zoning by-laws); 1942 Op. Att’y Gen., Rep. A.G., P.D. No. 12 at 73 (1942) (Department of Conservation not bound to comply with local ordinances in operation of parks and forests).

<sup>4</sup> Indeed, the Court thought the principle so firm that it held inapplicable a provision of the contract between the Commonwealth and the contractor requiring compliance with municipal ordinances.

<sup>5</sup> Referring to *County Commissioners of Bristol v. Conservation Commission of Dartmouth*, 380 Mass. 706 (1980), in which the Supreme Judicial Court held that a proposal to build a new Bristol County jail was not subject to the Town of Dartmouth’s zoning by-laws.

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state-wide building code. Section 2A of G.L. c. 143 indicates that “[t]he provisions of [G.L. c. 143] relative to the safety of persons in buildings shall apply to buildings and structures, other than the state house, owned, operated or controlled by the commonwealth, and to buildings and structures owned, operated or controlled by any department, board or commission of the commonwealth, or by any of its political subdivisions, in the same manner and to the same extent as such provisions apply to privately owned or controlled buildings occupied, used or maintained for similar purposes.” Chapter 143 further vests inspectors in the Division of Inspections of the Department of Public Safety with authority to enforce the state building code as to buildings “owned by the commonwealth or any departments, commissions, agencies or authorities of the commonwealth.” G.L. c. 143, § 3A. Similarly, in the context of the state-wide regulation of the siting of solid waste disposal facilities, the Legislature chose to use explicit language to indicate that the procedures regarding the Department of Environmental Protection’s oversight of the location and operation of such facilities are applicable to facilities “owned or operated by an agency of the commonwealth.” G.L. c. 111, § 150A; see also G.L. c. 22, § 13A (subjecting “public buildings,” defined to include buildings constructed by the Commonwealth, to regulations of the Architectural Access Board).

Furthermore, even in the fire prevention arena, the Legislature has taken great care to be explicit in subjecting state-owned buildings to statutory requirements and proscriptions. In particular, the Legislature adopted a special provision to make G.L. c. 148, § 26A½, regarding the retrofitting of existing buildings for sprinklers, applicable to buildings and structures owned by the Commonwealth. St. 1993, c. 151, § 124 (“Notwithstanding the provisions of any general or special law to the contrary, the entire gross square footage of any building or structure owned by the commonwealth and subject to the provisions of section twenty-six A½ of chapter one hundred and forty-eight of the General Laws shall comply with the provisions of said section twenty-six A½ not later than March thirtieth, nineteen hundred and ninety-seven.”). A time-tested maxim of statutory construction is that “[a] statutory expression of one thing is an implied exclusion of other things omitted from the statute.” *Glorioso v. Retirement Board of Wellesley*, 401 Mass. 648, 650 (1988). In other words, if the Legislature intends to make the Commonwealth subject to any provision contained in G.L. c. 148, it knows exactly how to accomplish this result. See *Commonwealth v. Dodge*, 428 Mass. 860, 865 (1999) (“[W]here the Legislature has employed specific language in one [section of an act], but not in another, the language should not be implied where it is not present.”) (internal quotation omitted). Each of the factors stated above supports the conclusion that the provisions of the Fire Code do not apply to state-owned buildings.

You have also asked whether the provisions of the Fire Code apply to “state authority-owned buildings.” With respect to the term “state authority,” I understand you to mean “authorities established

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to perform vital government functions for usually large geographical areas,” such as the Massachusetts Bay Transportation Authority, the Massachusetts Turnpike Authority, and the Massachusetts Port Authority, as opposed to the “category of authorities” consisting “of those which are directly established by local governing bodies or officers pursuant to enabling legislation,” such as local housing authorities and local redevelopment authorities. See 1978/79 Op. Att’y Gen. No. 30, Rep. A.G., P.D. No. 12 at 164 (1979), at 165-166. Authorities which “by definition” have “expansive geographical jurisdiction or scope of functions, or both,” and “whose services and functions are of vital interest to the Commonwealth as a whole,” *Id.* at 166, are often considered to be public agencies, at least for purpose of construing and applying particular statutes. See e.g., *Department of Community Affairs v. Massachusetts State College Building Authority*, 378 Mass. 418, 426 (1979)(public character of college building authority require it to be included within the definition of public agency as the term appears in G.L. c. 79A); *Massachusetts Turnpike Authority v. Commonwealth*, 347 Mass. 524, 529 (1964)(statute relieving Commonwealth from payment of damages for taking public land for highway purposes applies to land owned by Turnpike Authority). Notwithstanding this general proposition, state authorities are creatures of individual legislative enactments and, accordingly, the specific organic statute should be reviewed to determine whether or not the Code may be applicable to a particular authority. See e.g., G.L. c. 81A, § 1 (Massachusetts Turnpike Authority “shall not be subject to the supervision and regulation of [the Executive Office of Transportation and Construction] or any other department, commission, board, bureau or agency except as specifically provided in any general or special law to the contrary.”); G.L. c. 161A, § 3(I)(exempting the Massachusetts Bay Transportation Authority, in providing mass transportation service, from jurisdiction and control of the Department of Public Utilities except as to safety of equipment and operations); St. 1956, c. 465, § 2 (Massachusetts Port Authority not subject to supervision or regulation of any state agency except as expressly provided in act creating the Authority).

Finally, you have asked whether, if the provisions of the Fire Code do apply to buildings owned by the Commonwealth or state authorities, the Marshal is responsible for enforcing the Code on those buildings and, if so, may such enforcement authority be delegated to local fire chiefs. Because I have opined that the Fire Code does not apply to state-owned buildings, this question does not require an answer as to such buildings. With respect to buildings owned by state authorities, the answer may once again turn on the wording of the provisions of a particular authority’s organic statute, and, therefore, I can offer no categorical answer here.

In sum, based upon my review of the relevant provisions of G.L. c. 148, I conclude that the provisions of the State Fire Code are not applicable to buildings owned by the Commonwealth, and that such provisions may or may not be applicable to buildings owned by particular state authorities,

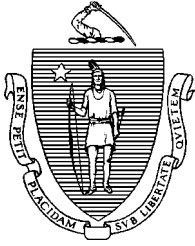
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depending upon the specific organic statute. I recognize, of course, the critical importance of ensuring that such buildings are safe both for employees and members of the public. Nothing in my opinion bars the officials controlling those buildings from voluntary compliance with the Fire Code. You and the Marshal may also wish to consider whether to propose legislation making the Code apply to such buildings and giving enforcement authority to the Marshal.

Sincerely,

Thomas F. Reilly

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THOMAS F. REILLY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1698

No. 00/01-2

April 25, 2001

Howard W. Koh, MD, MPH  
Commissioner  
Department of Public Health  
250 Washington Street  
Boston, MA 02108-4619

Dear Commissioner Koh:

You have requested an opinion on whether local boards of health have jurisdiction to enforce the provisions of the State Sanitary Code against state-owned facilities, indicating that your request was prompted by local boards' efforts to inspect swimming pools located at facilities of the University of Massachusetts. Consistent with the conclusions reached in a long line of Attorney General opinions, including one issued to the Secretary of Public Safety on October 30, 2000, I conclude that the Commonwealth and its agencies are exempt from G.L. c. 111, § 127A, the statute authorizing the Department of Public Health to promulgate the Sanitary Code, and that local boards of health do not possess enforcement authority over property owned by the University of Massachusetts with respect to the provisions of the Sanitary Code. I recognize, of course, the importance of ensuring that facilities owned by the Commonwealth or its agencies are maintained in a manner that protects the health and well-being of the public. Nothing in my conclusion would prevent the officials in control of such facilities from voluntarily complying with the provisions of the Sanitary Code. In addition, given that my conclusion is based upon the language of the relevant statute, you may wish to consider whether to propose legislation expressly making the Sanitary Code applicable to such facilities.

In reviewing G.L. c. 75, the enabling statute for the University of Massachusetts, the Supreme Judicial Court has concluded that the University is "an agency of the Commonwealth." *McNamara v.*

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Honeyman, 406 Mass. 43, 47 (1989); see also *Robinson v. Commonwealth*, 32 Mass. App. Ct. 6, 9 (1992).<sup>1</sup> The University’s enabling statute provides that the University’s Board of Trustees, in exercising its statutory authority, “shall not in the management of the affairs of the university be subject to, or superseded by, any other state agency, board, bureau, commission, department or officer,” with certain exceptions not relevant hereto. G.L. c. 75, § 1; see 1972/73 Op. Att’y Gen. No. 2, Rep. A.G., P.D. No. 12 at 42-44 (1972) (discussing the broad scope of the Board of Trustees’ statutory authority under G.L. c. 75); see also St. 1960, c. 773, § 2 (containing similar provision for University of Massachusetts Building Authority).

In relevant part, G.L. c. 111, § 127A, provides that the Department of Public Health “shall adopt, and may from time to time amend, public health regulations to be known as the state sanitary code,” which code “shall deal with matters affecting the health and well-being of the public in the commonwealth in subjects over which the department takes cognizance and responsibility.” *Id.* Local boards of health “shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any such local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator.” *Id.*

As noted above, several prior Attorney General opinions conclude that, absent a clear legislative directive to the contrary, the Commonwealth is to be considered exempt from a generally applicable regulation promulgated under the authority of statutes enacted by the Legislature in the exercise of its police powers. See 2000 Op. Att’y Gen. No. 1 (Oct.30, 2000) (concluding that the State Fire Code promulgated under G.L. c. 148 does not apply to state-owned buildings) and opinions cited therein.<sup>2</sup> This rule is closely related to the rule that the Commonwealth cannot be sued in its own courts except in strict accordance with statute. In that context also, “[t]he rules of construction governing statutory waivers of sovereign immunity are stringent. . . . Consent to suit must be expressed

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<sup>1</sup> Similarly, to the extent that the University of Massachusetts Building Authority retains any control over the University’s facilities, I note that the Authority was constituted by the Legislature as “a public instrumentality and the exercise by the Authority of the powers conferred by [its enabling legislation] shall be deemed and held to be the performance of an essential governmental function.” St. 1960, c. 773, § 2; see also *Department of Community Affairs v. Massachusetts State College Building Authority*, 378 Mass. 418, 426 (1979) (public character of College Building Authority requires inclusion within definition of term “public agency” under G.L. c. 79A).

<sup>2</sup> This principle does not apply to municipalities. See, e.g., 1965/66 Op. Att’y Gen. No. 12, Rep. A.G., P.D. No. 12 at 361 (1966) (concluding that State Sanitary Code applies to public school cafeterias, where neither the statute nor the Code exempts schools or cafeterias).

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by the terms of a statute, or appear by necessary implication from them.” *Woodbridge v. Worcester State Hospital*, 384 Mass. 38, 42 (1981); accord *C & M Construction Co. v. Commonwealth*, 396 Mass. 390, 392 (1985); see also *Onofrio v. Department of Mental Health*, 411 Mass. 657, 659 (1992) (holding statute that waives public employers’ exemption from liability, bars prejudgment interest, and is silent on post-judgment interest does not permit award of post-judgment interest by necessary implication, given that such interest is not an element of damages).

As with the doctrine of sovereign immunity, although the Legislature may elect to waive the Commonwealth’s exemption from regulation in particular instances, such a waiver is not to be presumed or inferred, but must be explicit. See, e.g., *Perez v. Boston Housing Authority*, 368 Mass. 333, 338, 340 (1975) (concluding that “the Legislature did not intend to establish liability on the part of the Commonwealth or its departments” in enacting G.L. c. 111, § 127N, the statute authorizing tenants of public housing to bring actions to enforce the Sanitary Code, after finding that the terms of the statute “are plainly inappropriate to identify the State or any of its agencies”); *Inspector of Buildings of Salem v. Salem State College*, 28 Mass. App. Ct. 92, 97 (1989) (concluding that the language of G.L. c. 40A, § 3, the State Zoning Act, does not amount to the “express and unmistakable suspension” which would be required to find an express waiver of the usual State supremacy over land use regulation).

There is no express statement in G.L. c. 111, § 127A, indicating that the Commonwealth is subject to the provisions of any regulations adopted pursuant thereto.<sup>3</sup> By contrast to this provision, two other provisions of G.L. c. 111 contain express waivers of the Commonwealth’s exemption from regulation, as discussed below. Thus, if the Legislature intends to make the Commonwealth subject to any provision of G.L. c. 111, it knows exactly how to do so. See *Commonwealth v. Dodge*, 428 Mass. 860, 865 (1999) (“[W]here the Legislature has employed specific language in one [section of an act], but not in another, the language should not be implied where it is not present.”) (internal quotation omitted).

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<sup>3</sup> I recognize that Chapter V of the State Sanitary Code, 105 C.M.R. § 435.00 et seq., by which the Department of Public Health established minimum standards for swimming pools, provides that no person shall operate or maintain a swimming pool without obtaining a permit from the Board of Health on a form prescribed by the Commissioner of Public Health, and defines the term “person” to include “a city, town, county, or other governmental unit.” 105 C.M.R. §§ 435.01; id., § 435.21. However, even if the Department had expressly included the Commonwealth and its agencies within this definition, the limits to the scope of the Department’s authority in such matters are set by the enabling statute, G.L. c. 111, § 127A.

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In marked contrast to Section 127A, Section 142E of G.L. c. 111 contains an express waiver of the Commonwealth's exemption from public health regulation. In *Perez v. Boston Housing Authority*, 368 Mass. at 338-39, the Supreme Judicial Court compared Sections 142E and 127N of G.L. c. 111. With reference to air pollution control regulations promulgated pursuant to Section 142E of the statute, the Court stated that "when the Legislature did in fact determine to apply public health regulations, enacted pursuant to G.L. c. 111, to State agencies as well as other entities, it expanded the coverage . . . to include '[a]ll departments, agencies, commissions, authorities and political subdivisions.'" *Id.* at 338-39. By its terms, Section 142E creates a regulatory scheme that "is universally applicable to private and public entities." *City of Boston v. Massachusetts Port Authority*, 364 Mass. 639, 658 (1974). The air pollution control regulations are thus "enforceable against public bodies to the same extent that they are enforceable against individuals and private businesses." *Id.* at 653.<sup>4</sup>

Similarly, Section 150A of G.L. c. 111 contains an express waiver of the Commonwealth's exemption from regulation. In the context of the state-wide regulation of the siting of solid waste disposal facilities, the Legislature specified that the procedures regarding the Department of Environmental Protection's oversight of the location and operation of such facilities are applicable to facilities "owned or operated by an agency of the commonwealth." G.L. c. 111, § 150A. In like manner, G.L. c. 143, the statute that authorizes the promulgation and enforcement of a state-wide building code, contains an explicit waiver of the Commonwealth's exemption from regulation. In particular, Chapter 143 states that its provisions

relative to the safety of persons in buildings shall apply to buildings and structures, other than the state house, owned, operated or controlled by the commonwealth, and to buildings and structures owned, operated or controlled by any department, board or commission of the commonwealth, or by any of its political subdivisions, in the same manner and to the same extent as such provisions apply to privately owned or controlled buildings occupied, used or maintained for similar purposes.

G.L. c. 143, § 2A. By contrast to such provisions, G.L. c. 111, § 127A, the statute by which the Department of Public Health promulgated the Sanitary Code, contains no such express waiver of the Commonwealth's exemption from regulation.

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<sup>4</sup> In particular, such regulations apply to the Port Authority given that the statute expressly includes authorities within its terms. *Id.* at 653, 657.

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Furthermore, the well established presumption against delegation to municipalities of any authority to regulate the Commonwealth supports this conclusion, given that G.L. c. 111, § 127A, vests local boards of health with primary enforcement of the Sanitary Code. This presumption is traced back to the seminal case of *Teasdale v. Newell & Snowling Construction Co.*, 192 Mass. 440 (1906), in which the City of Quincy Board of Health attempted to bar a state contractor from establishing a temporary stable to be used during its work on a project to create parkland because the contractor had not obtained a stable license from the Board as was assertedly required by statute. That effort failed because “[i]t is not to be presumed that the Legislature intended to give to the local licensing board the authority to thwart the reasonably necessary efforts of the park commissioners to perform their duty as agents of the State.” *Id.* at 443.

By contrast to G.L. c. 111, § 127A, which vests primary enforcement of the Sanitary Code with local boards of health, several statutory provisions with an express waiver of the Commonwealth’s exemption from regulations provide for enforcement of the regulations by the relevant state agency as to state-owned property, while providing for local enforcement as to all other property, so as to avoid the potential for local interference with state work. For example, G.L. c. 143 vests inspectors in the Division of Inspections of the Department of Public Safety with authority to enforce the state building code as to buildings “owned by the commonwealth or any departments, commissions, agencies or authorities of the commonwealth,” while the statute vests local inspectors with authority to enforce the code as to all other buildings. G.L. c. 143, § 3A. Similarly, Section 150A of G.L. c. 111 vests the Department of Public Health with authority to determine whether to assign as a site for a solid waste disposal facility a place owned or operated by an agency of the Commonwealth, while the statute vests local boards of health with authority to make such determinations for any other place. *Id.*

Local boards of health have primary responsibility for enforcing the Sanitary Code under G.L. c. 111, § 127A. The potential for local interference with state work is one of the grounds on which Massachusetts courts have found the Commonwealth and its agencies to be exempt from proscriptions set forth in a generally applicable statute enacted by the Legislature in the exercise of its police powers, absent explicit legislative directive to the contrary. See, e.g., *Inspector of Buildings of Salem v. Salem State College*, 28 Mass. App. Ct. at 97. It is significant in this regard that the University’s enabling statute prevents interference with the Board of Trustees, in exercising its statutory authority to manage the University’s affairs, from being “subject to, or superseded by,” state agencies or departments.”

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G.L. c. 75, § 1. In light of that provision, it would be anomalous to suppose that the Legislature intended to subject the University to local supervision, absent explicit language to that effect.<sup>5</sup>

Accordingly, I conclude that facilities located on property owned by the University of Massachusetts are not subject to the Sanitary Code, and that the local boards of health therefore lack authority to enforce the provisions of the Code against such property. As mentioned above, the officials in control of such facilities may elect to comply voluntarily with the provisions of the Sanitary Code, and you may wish to consider whether to propose legislation expressly making the Sanitary Code applicable to such facilities.

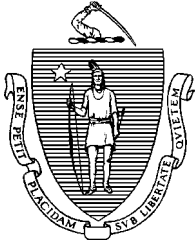
Sincerely,

Thomas F. Reilly

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<sup>5</sup> I am aware of an order issued in December of 1983 by the Hampshire Superior Court in *Trejo v. Penza* (C.A. No. 16871), an action brought by a student of the University of Massachusetts against the local housing inspector, seeking an order compelling an inspection of the student's apartment on campus. After the court denied the student's request for class certification, the court entered a one-page order on the student's motion for summary judgment, declaring that the local board of health is obligated to inspect dwellings located within the Town, upon request, including dwelling units owned or controlled by the University. Neither the University or the Department of Public Health were parties to the case, and no appeal was taken from the court's decision. In addition, the order does not address the issues raised herein. For these reasons, it is my opinion that the order is not controlling here.

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THOMAS F. REILLY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1698

No. 00-01/3  
May 29, 2001

Joseph E. Connarton  
Executive Director  
Public Employee Retirement Administration Commission  
5 Middlesex Avenue, 3rd Floor  
Somerville, MA 02145

Dear Mr. Connarton:

You have requested an opinion regarding the proper scope of field examinations conducted of the Pension Reserves Investment Management (“PRIM”) Board by the Public Employee Retirement Administration Commission (“PERAC”) pursuant to G.L. c. 32, § 21(1)(a) (2000 ed.). In the first two field examinations, covering the period from 1988 through 1993, PERAC reviewed the PRIM Board’s financial condition. You have asked whether PERAC, in conducting subsequent field examinations, is authorized to review the procurement of investment management services by the PRIM Board, given that G.L. c. 32, § 23(2A)(h), prevents the investment management policies adopted by the PRIM Board from being subject to PERAC’s rules or regulations. I conclude that, in conducting field examinations of the PRIM Board, PERAC is authorized to review contracts issued by the PRIM Board with investment managers and advisors, as well as fees paid thereunder, but lacks authority to review the process adopted by the PRIM Board for the selection of particular investment managers or advisors.

A. PERAC’s Statutory Authority

In analyzing this issue, I start with an overview of the relevant statutory provisions. PERAC’s predecessor was established by Chapter 630 of the Acts of 1982 as a division within the Executive Office of Administration and Finance to improve the administration of the public retirement systems

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operating in Massachusetts.<sup>1</sup> G.L. c. 7, §§ 4A, 49, 50. PERAC, which was created by Chapter 306 of the Acts of 1996, has general responsibility for the administration of the public employee retirement systems under G.L. c. 32, see *Barnstable County Retirement Bd. v. Contributory Retirement Appeal Bd.*, 43 Mass. App. Ct. 341, 345 (1997), and has promulgated a comprehensive series of rules and regulations governing the administration of such systems. See G.L. c. 7, § 50; G.L. 32, § 21(4); 840 C.M.R. §§ 1.00-27.04. In addition to the Teachers' Retirement Board and the State Board of Retirement, which serve the Massachusetts State Teachers' and Employees' Retirement Systems ("MASTERS"), there are more than one hundred county, district, and municipal retirement boards (collectively, the "local boards").

Among its responsibilities, PERAC is charged with overseeing the administration of benefits by retirement boards, G.L. c. 32, § 20, and is authorized to review certain pensions granted by such boards. *Id.*, § 21(1)(d). Several of the rules and regulations promulgated by PERAC govern the administrative procedures, financial operations, records and reports of the retirement boards, see, e.g., 840 C.M.R. §§ 4.01-4.04 (financial operation/standard methods of accounting); *id.* §§ 5.01-5.05 (records and reports), including the administration of benefits.<sup>2</sup> See, e.g., 840 C.M.R. §§ 6.00-6.14 (rules of disclosure of personal information), *id.* §§ 7.00-7.13 (elections in county and regional retirement systems), *id.* §§ 10.00-10.21 (rules for disability retirement). By setting forth methods for the local boards to account for cash receipts, for example, PERAC places such boards on the same footing and allows for ready comparisons of investment results. *Barnstable County Retirement Board v. Contributory Retirement Appeal Bd.*, 43 Mass. App. Ct. at 347. PERAC also produces an annual report of the investment portfolio, the return on investment, and the management performance of each retirement system. G.L. c. 32, § 21.

In addition to overseeing the administration of benefits, PERAC is also authorized to conduct field examinations of each board:

The Commissioner of PERAC or his agent shall conduct an in-depth field examination of each board at intervals not exceeding three years to ascertain its financial condition, its ability to fulfill its obligations, whether all parties in interest have complied with the laws applicable thereto, and whether the transactions of the board have been in accordance with the rights and equities of those in interest.

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<sup>1</sup> PERAC was formerly the Division of Public Employee Retirement Administration. For consistency, I will refer to this agency as "PERAC" throughout.

<sup>2</sup> Unlike the local boards, the PRIM Board has no responsibility for the administration of pension benefits.

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G.L. c. 32, § 21(1)(a). In this context, the statutes governing the respective duties and responsibilities of PERAC and the PRIM Board, as well as the rules and regulations promulgated by PERAC, constitute “laws applicable” to the parties in interest. PERAC has promulgated regulations governing field examinations, at 840 C.M.R. §§ 25.01-25.73. Such examinations, conducted in accordance with generally accepted auditing standards, are intended “to determine the [retirement] system’s financial condition, to monitor performance under the terms of its legal, contractual and fiduciary requirements, and to examine the system’s effectiveness in achieving the intended results established by M.G.L. c. 32.” 840 C.M.R. § 25.01. After conducting such an examination, PERAC issues an audit report setting forth the results of the examination, including any noted deficiencies. See, e.g., 840 C.M.R. § 25.60 (regarding notes to audit report).

When a board retains a certified public accountant (“CPA”) to conduct an audit, PERAC may elect to accept such audit in lieu of a field examination, subject to certain conditions. G.L. c. 32, § 21(1)(a); see also 840 C.M.R. § 25.01. The protocol adopted by PERAC to determine whether to accept an audit conducted by a CPA in lieu of a field examination by PERAC is designed to assure that the examination is conducted pursuant to the statutory requirements. See PERAC Memo #47/1999 (Guidance on Retirement Systems Audits Performed by Certified Public Accounting Firms).<sup>3</sup> If PERAC determines that such audit was not conducted in accordance with its procedures, then it may elect to perform a supplemental field examination for any remaining issues. G.L. c. 32, § 21(1)(a); 840 C.M.R. § 25.01; PERAC Memo #47/1999 at ¶4. The apparent purpose of this protocol is to avoid the need for PERAC to duplicate work already completed by a CPA, while at the same time providing assurances that the CPA conducted such work in accordance with PERAC’s requirements. If PERAC elects to accept a CPA’s audit, then said audit “shall be deemed to be the [field] examination required by [G.L. c. 32, § 21(1)(a)].” *Id.*; see also 840 C.M.R. § 25.01.

#### B. The PRIM Board and the PRIT Fund

The PRIM Board was created by Chapter 661 of the Acts of 1983 to improve the investment returns on pension assets and to reduce the unfunded pension liabilities of the Commonwealth. This

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<sup>3</sup> For example, the CPA conducting the audit must complete an internal control questionnaire developed by PERAC, 840 C.M.R. § 25.10; PERAC Memo #47/1999 at ¶3; must file the examination with PERAC within ten days of making the report to the board, G.L. c. 32, § 21(1)(a); and must meet with representatives of PERAC within thirty days of filing the report, while providing copies of the work papers and schedules at the time of the meeting. 840 C.M.R. § 25.01.

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legislation also established the Pension Reserves Investment Trust (“PRIT”) Fund as an investment fund for the Commonwealth, to be managed by the nine-member PRIM Board. G.L. c. 32, § 23(2A) (2000 ed.). By statute, each of the local retirement systems may elect to invest some or all of its pension assets in the PRIT fund. G.L. c. 32, § 23(2)(b) (2000 ed.). In 1997, the trust that held the assets of MASTERS merged with the PRIT Fund, Chapter 315 of the Acts of 1996, which became the sole investment vehicle for MASTERS assets. G.L. c. 32, § 22(8)(a). As of December 31, 1999, the aggregate market value of the retirement system investments exceeded \$43.8 billion, of which 72% was managed by the PRIM Board and the remaining 28% by the local retirement boards. See State Auditor’s Report No. 99-1315-3 at 3, 5.

By statute, the PRIM Board is authorized to employ such investment advisors, legal counsel, and consultants as it deems necessary. G.L. c. 32, § 23(2A)(e)(iii). Each year, the PRIM Board files quarterly reports with the House and Senate Committees on Ways and Means, G.L. c. 32, § 23(2A)(e)(xi), and files its annual budget for approval by these committees. *Id.*, § 23(2A)(e)(vi). The quarterly reports include a listing of brokerage transactions and of fees paid to investment managers and consultants, as well as a detailed investment portfolio analysis describing all holdings in the PRIT fund. *Id.*, § 23(2A)(e)(xi).

#### C. PERAC’s Investment Oversight of Boards Prior to 1987

In the same legislation that created the PRIM Board and the PRIT Fund, the Legislature established a pension advisory unit of PERAC, which is responsible for advising local retirement boards on investments, measuring the investment performance of the retirement systems, establishing fund management policies, and granting qualified boards an exemption from certain statutory restrictions on investments. G.L. c. 7, § 50, as amended by Chapter 661 of the Acts of 1983. As authorized by statute, PERAC has promulgated rules and regulations to implement its oversight of investment management decisions made by local retirement systems. G.L. c. 7, § 50; see, e.g., 840 C.M.R. §§ 16.00-16.10 (investment advice and management); *id.* §§ 17.00-17.04 (standard rule for the formation of investment policy and statement of investment objectives); *id.* §§ 18.00-18.03 et seq. (formation of investment policy and statement of investment objectives); *id.* §§ 19.00-19.05 (exemptions from investment restrictions); *id.* §§ 21.00-21.01 (prohibited investments); *id.* §§ 26.00-26.06 (standard rule for the retention of consultants).

Prior to 1987, such investment oversight of boards by PERAC excluded the PRIM Board, because the Legislature had initially defined the term “board” in G.L. c. 32 as meaning each retirement board established under Section 20 of the statute having jurisdiction of any contributory retirement system established under Sections 1 to 28 of the statute. G.L. c. 32, § 1. The PRIM Board did not fall within

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this definition, unlike the local boards. The subsequent amendments to Chapter 32 are discussed below. Prior to December 20, 1983, the local boards were allowed to invest in a limited group of investments, those on an approved list. At the same time that it established the pension advisory unit of PERAC, the Legislature also relaxed the prior restrictions on the range of investment options for the local boards. G.L. c. 7, § 50, as amended by Chapter 661 of the Acts of 1983.

While the revised statute is less confining than the prior list of approved investments, the statute nonetheless limits the range of possible investment vehicles by the local boards. For example, with respect to investment in securities, the assets of a retirement system (with certain exceptions) may be invested only in those securities that are legal for the investment of funds by savings banks, as determined by the Commissioner of Banks. G.L. c. 32, § 23(2)(b)(I). In addition, there are provisions requiring the diversification of investments between securities and other investments on the one hand, and among specific securities on the other hand. See, e.g., G.L. c. 32, § 23(2)(b)(I)(A) (no more than 20 per cent of the assets of any retirement system shall be invested in railroad obligations, with no more than 2 per cent of the assets invested in the obligations of any one railroad).<sup>4</sup>

#### D. The 1987 Amendments to Chapter 32

The present inquiry by PERAC arises from two changes made by the Legislature to Chapter 32 in 1987. First, the Legislature added the PRIM Board to the definition of the term “board” in Chapter 32, thereby subjecting the PRIM Board to PERAC’s authority to conduct field examinations under G.L. c. 32, § 21(1)(a). *Id.*, § 1 (2000 ed.), as amended by Chapter 697 of the Acts of 1987. Second, at the same time, the Legislature exempted PRIM’s investment policies from PERAC’s rules and regulations that govern the investment of funds by the local boards: “The investment and fund management policies adopted by the PRIM board shall not be subject to any rules or regulations promulgated by [PERAC] governing the investment of funds by the retirement boards.” G.L. c. 32, § 23(2A)(h) (2000 ed.), as amended by Chapter 697 of the Acts of 1987.

Both before and after the 1987 amendments, Chapter 32 has contained the following directive on the investment of funds by the PRIM Board. “Subject to the approval or ratification of the PRIM Board, the executive director shall invest and reinvest such funds held by such board to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the

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<sup>4</sup> Upon application by a retirement board, PERAC is authorized to exempt the board from these restrictions on investment options if PERAC determines that the board’s record of investment management merits broader investment powers. G.L. c. 32, § 23(2)(g); 840 C.M.R. §§ 19.00-19.05.

other requirements of this section.” *Id.*, § 23(2A)(h) (2000 ed.).<sup>5</sup> This directive applies solely to the PRIM Board. It is in the context of this directive that the Legislature made the second change to Chapter 32 in 1987, thus ensuring that the investment and fund management policies adopted by the PRIM Board would not be subject to any rules or regulations promulgated by PERAC that govern the investment of funds by other retirement boards. The issue presented by PERAC involves the interpretation of this provision in light of PERAC’s statutory authority to audit the PRIM Board under G.L. c. 32, §21(1)(a).

After the Legislature added the PRIM Board to the definition of the term “board” in Chapter 32, PERAC conducted two field examinations of the PRIM Board’s financial condition, the first for the period from 1988 through 1990, and the second for the period from 1991 through 1993. These two field examinations are not at issue here, nor is PERAC’s authority to conduct field audits directed to the PRIM Board’s financial condition. Although neither of these examinations included a review of the PRIM Board’s contracts with investment managers or advisors, PERAC indicated in December of 1999 that its third examination, covering the period from 1994 through 1999,<sup>6</sup> would include such matters.<sup>7</sup> In particular, PERAC stated that the scope of this field examination would include all contracts, including those with investment managers and advisors; that the review would be a sampling to insure that PRIM adopted and followed a procurement process; and that PERAC would review the selection process, the signed contracts, and the fees paid by the PRIM Board, in order to determine

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<sup>5</sup> The 1987 amendment added to this directive a separate provision that prohibits PRIM from investing the assets of the PRIT Fund in companies doing business with the Republic of South Africa or companies engaged directly or indirectly in certain military transactions with Northern Ireland. G.L. c. 32, § 23(2A)(h) (2000 ed.), as amended by Chapter 697 of the Acts of 1987. The Legislature had previously imposed the same restriction on MASTERS assets, effective in 1983. See G.L. c. 32, §23(1)(d) (1989 ed.).

<sup>6</sup> Although G.L. c. 32, § 21(1)(a), calls for triennial field examinations, the third field examination of the PRIM Board was delayed, and PERAC thus sought to conduct a single examination for the period from 1994 through 1999.

<sup>7</sup> The third field examination also included the PRIM Board’s financial condition. The PRIM Board elected to retain CPAs to conduct audits regarding its financial condition during the period from 1994 through 2000, and PERAC was given access to the CPA’s work papers in accordance with the protocol by which PERAC may elect to accept an audit conducted by a CPA in lieu of a field examination under G.L. c. 32, § 21(1)(a). See 840 C.M.R. § 25.01 et seq.; PERAC Memo # 47/1999. The present inquiry thus does not involve this portion of the third field examination.

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that such fees were paid in accordance with the contracts. After the PRIM Board objected,<sup>8</sup> PERAC sought an opinion on this matter.

E. Determining the Proper Scope of PERAC's Field Examination of the PRIM Board

The issue presented is whether including the procurement of investment management services in the scope of a field examination by PERAC would violate G.L. c. 32, § 23(2A)(h), by making the investment management policies adopted by the PRIM Board subject to rules or regulations promulgated by PERAC.<sup>9</sup> With respect to the scope of a field examination by PERAC, the PRIM Board differs from the local boards in one material respect.<sup>10</sup> Several PERAC regulations derive from its role in oversight of investment management decisions made by local retirement systems. See, e.g., 840 C.M.R. §§ 16.00-19.05; id. §§ 21.00-21.01; id. §§ 26.00-26.06. In conducting field examinations of local boards under G.L. c. 32, § 21(1)(a), PERAC has authority to review and evaluate the board's investment management decisions, in order to monitor the board's performance and the retirement system's effectiveness in achieving the statutorily intended results, 840 C.M.R. § 25.01.

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<sup>8</sup> In 2000, the PRIM Board also retained a CPA to perform additional audits regarding the process for procurement of services by PRIM, including investment management and advisor services, for the same time period. The CPA issued audit reports for these periods on December 1, 2000. The PRIM Board declined to provide PERAC with access to the CPA's work papers.

<sup>9</sup> PERAC is not estopped from seeking to include contracts in the scope of its field audits of the PRIM Board, despite the omission of such matters from the first two audits, any delay in conducting the third audit, or any prior statements made to the PRIM Board, see, e.g., *Harrington v. Fall River Housing Auth.*, 27 Mass. App. Ct. 301, 308 (1989), nor does the position now taken by PERAC contravene a consistent, long-continued interpretation of the relevant statute. Cf. *DiGianni v. Contributory Retirement Appeal Bd.*, 421 Mass. 350, 355-56 (1995).

<sup>10</sup> Also, because the PRIM Board has no responsibility for the administration of pension benefits, portions of the questionnaire developed by PERAC as part of the protocol by which it may accept an audit by a CPA in lieu of a field examination, 840 C.M.R. § 25.10, do not apply. For example, the sections of the questionnaire covering membership and disability procedures are directed to the administration of benefits. See 840 C.M.R. §§ 25.32, 25.33. These issues should not be included in the field examinations of the PRIM Board, and the PERAC regulations that govern the administration of benefits are inapplicable to the PRIM Board. See, e.g., 840 C.M.R. §§ 6.00-7.13; id. §§ 10.00-10.21.



This difference between the PRIM Board and the local boards is material to my analysis. Sections 21(1)(a) and 23(2A)(h) of Chapter 32 must be read together in determining the permissible scope of a field audit by PERAC of the PRIM Board. The reasoning employed by the Supreme Judicial Court in another case involving PERAC is instructive here, given that the case also involved the interpretation of two statutes, one general and the other specific:

Where one provision is more restrictive in a particular area, then that provision controls in that area. All areas covered under the general provision and not covered by the particular provision are unaffected by the particular provision. This way, both provisions can be given effect, with neither rendered nugatory.

*Plymouth County Retirement Ass'n v. Commissioner of Pub. Employee Retirement*, 410 Mass. 307, 312 (1991). In that case, the Court determined whether PERAC had authority to review two local boards' approvals of applications for accidental death benefits, as opposed to accidental disability pensions. In asserting that it had such authority with respect to benefits, PERAC pointed to its general authority to review determinations made by boards under G.L. c. 32, § 21(4). *Id.* at 309-10. The two boards noted, however, that the more specific grant of authority to PERAC for review accidental and ordinary disability pensions, G.L. c. 32, § 21(1)(d), "conspicuously did not include review of accidental death benefits," *id.* at 311 (emphasis added), and the boards asserted that the more specific provision should apply. *Id.* at 310. The Court harmonized the broad grant of review authority conferred on PERAC under G.L. c. 32, § 21(4), to review determinations made by boards, on the one hand, with the more specific grant of authority to review accidental and ordinary disability pensions under G.L. c. 32, § 21(1)(d), on the other hand. *Id.* at 312. The Court found that the Commissioner had authority to review local boards' approval of applications for death benefits under G.L. c. 32, § 21(4), reasoning that "§ 21(1)(d) controls § 21(4) only to the extent that review of accidental and ordinary disability pension determinations is concerned." *Id.* at 311-12.

#### F. Conclusions

In like manner, Section 23(2A)(h) of Chapter 32 is the more specific provision with respect to the investment and fund management policies adopted by the PRIM Board, while the more general provision, Section 21(1)(a), governs other aspects of PERAC's field examinations. Thus, while PERAC has the authority to include a review of executed contracts as part of its field examination of the PRIM Board pursuant to G.L. c. 32, § 21(1)(a), and 840 C.M.R. § 25.01, the scope of field examinations of the PRIM Board must be more limited than the scope applicable to local boards, such that PERAC lacks authority to review the process adopted by the PRIM Board for the selection of particular investment managers or advisors, or to assess the results of such selection. Applying such a

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limitation ensures that the investment and fund management policies adopted by the PRIM Board will not be subject to any rules or regulations adopted by PERAC governing the investment of funds, consistent with G.L. c. 32, § 23(2A)(h).<sup>11</sup>

Sincerely,

Thomas F. Reilly

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<sup>11</sup> The same limitation applies where, as here, the PRIM Board has elected to retain a CPA to conduct an audit regarding the process for procurement of services by the PRIM Board. In determining whether to accept that audit in lieu of a field examination, PERAC lacks authority to review those work papers of the CPA that relate to the PRIM Board's decision to select particular investment managers or advisors, while retaining authority to review the remaining work papers that relate to the performance of contracts issued by the PRIM Board, including the payment of fees under those contracts with investment managers and advisors.

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