

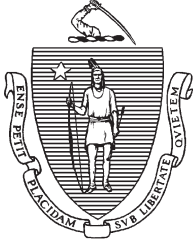
The Commonwealth of Massachusetts

**Report of the
Attorney General
for Fiscal Year 2005**

July 1, 2004 - June 30, 2005



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



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, 2004 to June 30, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. F. Reilly", followed by a long, sweeping diagonal stroke.

Thomas F. Reilly
Attorney General

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Fiscal Year 2005 (7/01/04 - 6/30/05)

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL THOMAS F. REILLY
FIRST ASSISTANT ATTORNEY GENERAL STEPHANIE S. LOVELL

ANN B. ACKIL	JOHN J. CHRISTIN, JR (23)	KELLI GUNAGAN
MICHELE L. ADELMAN	JAMES CLARK	DAVID HADAS (9)
JENNIFER A. ADREANI	PETER CLARK	DANIEL J. HAMMOND
ALEXANDRA ALLAND (10)	ALEXANDER COCHIS	BETSY E. HARPER
ALISON ANDELMAN (2)	RICHARD COLE	KATHERINE HATCH
BRUCE F. ANDERSON	VICTORIA COLE (47)	JANICE HEALY
DAVID B. ANDREWS	JEFFREY T. COLLINS	MARGARET HEGARTY (20)
JAMES ARGUIN	JOHN COMPTON	RICHARD HEIDLAGE
FREDERICK D. AUGENSTERN	ROSEMARY CONNOLLY	HILARY HERSHMAN
EVA BADWAY	PATRICIA CORREA	SARA HINCHEY (22)
CHRISTINE BAILY	PIERCE O. CRAY	JOHN R. HITT
ANNAPURNA BALAKRISHNA	GEORGIA CRITSLEY (14)	STEVEN HOFFMAN (13)
THOMAS BARNICO	GLENN CUNHA	BART Q. HOLLANDER
CHRISTOPHER K. BARRY-SMITH	PAMELA M. DASHIELL	PAMELA HUNT
JASON BARSHAK	LINDA S. DELCASTILHO	MARSHA HUNTER
DENISE M. BARTON	STEPHEN DICK	CAROL IANCU
R. DAVID BECK	THOMAS V. DIGANGI (41)	MATTHEW IRELAND
ANNETTE C. BENEDETTO	JENNIFER DOHERTY (27)	MARIA HICKEY JACOBSON (24)
LESLIE BENNETT	JOHN DORSEY (16)	JOSEPH JANEZIC (13)
MATTHEW Q. BERGE	DENISE S. DURAN (11)	THOMAS M. JOHNSON
CRISPIN BIRNBAUM	KIRSTEN ENGEL (34)	JOCELYN JONES
WILLIAM F. BLOOMER (23)	APRIL ENGLISH	MARC JONES (16)
EDWARD G. BOHLEN (45)	BENJAMIN ERICSON	TIMOTHY JONES
WILNER BORGELLA (25)	BARBARA A. FAIN	SARAH JOSS
JOHN E. BOWEN	JAMES D.P. FARRELL (32)	ROSALIND KABRHEL
JULIE BRADY	LISA J. FAUTH	STEPHANIE KAHN
MATTHEW T. BROCK	DANIEL S. FIELD (36)	JUDY ZEPRUN KALMAN
MONICA A. BROOKMAN	ROBERT FISHER	GLENN S. KAPLAN
TRACEY A. BROWN	SUSAN M. FLANAGAN-CAHILL (40)	JAMIE W. KATZ
RANJANA BURKE	MARY B. FREELEY	RONALD KEHOE
CHRISTOPHER A. BUSCAGLIA (1)	GAIL GABRIEL (5)	JEAN MARIE KELLEY (12)
JOSEPH CALLANAN	ROSALYN GARBOSE	DAVID KERRIGAN
ROME. CAMBA	MELISSA GAVEGNANO (10)	KATHARINE KLUBOCK (26)
JESSE CAPLAN	SALVATORE M. GIORLANDINO	MARK R. KMETZ (42)
SANDRA CARDONE	I. ANDREW GOLDBERG	PAMELA KOGUT
JENNIFER S. CARGILL (19)	LORRAINE GOLDENBERG-TARROW	CHARISMA LAM
ERIC B. CARRIKER	JULIE GOLDMAN (18)	SIU TIP LAM
JENNIFER CARTEE (20)	ELIOT GREEN (29)	ROBERT M. LANG
JULIE CHATTOPADHYAY	BERNARD W. GREENE	JUDITH LASTER (33)
KAJAL CHATTOPADHYAY	JOHN A. GROSSMAN	JENNIFER M. LAVERTY (10)
NORA CHOROVER	RICHARD D. GRUNDY (8)	DIANE LAWTON (4)
		DANA LECCESE

APPOINTMENTS

PATRICK LEE (37)
PETER LEIGHT
MADELINE LEONE (43)
JUDY LEVENSON
DAVID M. LIEBER
ANITA V. MAIETTA
DAVID MARKS
LAURA MARLIN
STEPHEN MARSHALEK
INGRID MARTIN (36)
TINA MATSUOKA
LEA B. MAY (38)
COLLEEN MCCONNELL
CONSTANCE M. MCGRANE
(21)
TIMOTHY MCGUIRE
IAN MCKENNY
MAURA D. MCLAUGHLIN
PATRICIA MEDEIROS
PAMELA J. MEISTER
BETH MERACHNIK
HOWARD R. MESHNICK
NICHOLAS J. MESSURI
JAMES R. MILKEY
PAUL MOLLOY
DAVID MONAHAN
NATALIE S. MONROE (35)
ALICE L. MOORE
TIMOTHY MORAN (30)
CATHRYN NEAVES
EILEEN O'BRIEN
JAMES H. O'BRIEN
THOMAS M. O'BRIEN
CHERYL O'CONNELL
JONATHAN OFILOS (19)
MARY O'NEIL
WILLIAM P. O'NEILL
QUENTIN PALFREY (14)
EMILY R. PARADISE
WILLIAM L. PARDEE
MARGARET PARKS
MAITE A. PARSI
ROBERT PATTEN
SUSAN PAULSON (36)
MARY A. PHILLIPS
MARY B. PHILLIPS (43)
KEVIN PLANTE (31)
WILLIAM W. PORTER
JASON QUEENIN
ROBERT L. QUINAN
RANDALL RAVITZ (5)
SUSANNE REARDON
KARLEN REED

DOUGLAS RICE (15)
JULIANA D. RICE
SUSAN RIEDEL (7)
ROBERT W. RITCHIE
JOSEPH W. ROGERS
DEIRDRE RONEY
RAYMOND ROWLAND (28)
JOSEPH RUCCIO
PETER F. RUSSELL (34)
PETER SACKS
ERNEST L. SARASON
SCOTT D. SCHAFER (9)
KURT SCHWARTZ
JEFFREY S. SHAPIRO
MATTHEW SHEA
SOOKYOUNG SHIN (17)
GLEN M. SHOR
ADAM SIMMS (39)
GINNY SINKEL (47)
TINA L. SMEATON
DANIEL I. SMULOW
DONNA SORGI (6)
JOHANNA SORIS
AMY SPECTOR
DAVID STANHILL
DEBORAH S. STEENLAND
CATHERINE SULLIVAN
MARK P. SUTLIFF
JAMES SWEENEY
ROSEMARY TARANTINO
NEIL S. TASSEL (43)
DANAH TENCH
STEVEN E. THOMAS (34)
MARC TONASZUCK (3)
BRUCE TRAGER
TOBY UNGER
THUY WAGNER (46)
DEBRA WALSH (35)
TERESA WALSH
JAMES S. WHITCOMB
DORIS H. WHITE
JUDITH WHITING
BETSY K. WHITTEY
GEOFFREY WHY
JESSICA WIELGUS (39)
JANE L. WILLOUGHBY
MEREDITH WILSON
CHARLES WYZANSKI
SHEILA YORK (44)
KARLA ZARBO
CATHERINE C. ZIEHL

APPOINTMENTS

APPOINTMENT DATE

- (1) 7/6/04
- (2) 8/9/04
- (3) 8/23/04
- (4) 8/30/04
- (5) 9/13/04
- (6) 10/25/04
- (7) 11/15/04
- (8) 12/20/04
- (9) 1/3/05
- (10) 2/28/05
- (11) 3/21/05
- (12) 4/4/05
- (13) 4/11/05
- (14) 4/25/05
- (15) 5/23/05
- (16) 5/31/05
- (17) 6/5/05
- (18) 6/6/05
- (19) 6/13/05
- (20) 6/20/05

TERMINATION DATE

- (21) 7/2/04
- (22) 8/13/04
- (23) 8/20/04
- (24) 9/1/04
- (25) 9/3/04
- (26) 9/24/04
- (27) 10/13/04
- (28) 10/22/04
- (29) 11/5/04
- (30) 11/12/04
- (31) 11/15/04
- (32) 11/29/04
- (33) 12/10/04
- (34) 12/31/04
- (35) 1/7/05
- (36) 1/21/05
- (37) 2/4/05
- (38) 2/11/05
- (39) 2/18/05
- (40) 2/25/05
- (41) 3/4/05
- (42) 3/11/05
- (43) 3/25/05
- (44) 4/1/05
- (45) 4/8/05
- (46) 6/3/05
- (47) 6/17/05

EXECUTIVE BUREAU

GENERAL COUNSEL'S OFFICE

HUMAN RESOURCE MANAGEMENT OFFICE

EXTERNAL AFFAIRS OFFICE

INFORMATION TECHNOLOGY DIVISION

BUDGET OFFICE

OPERATIONS DIVISION

COMMUNICATIONS OFFICE

FRANCIS X. BELLOTTI LAW LIBRARY

EXECUTIVE BUREAU

The Executive Bureau's primary function is to provide the Office with overall administration management, policy setting, staff supervision, and employee training. It is also responsible for administering technical support to over 450 employees located throughout the Commonwealth. Additionally, the Executive Bureau performs 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 Office of the First Assistant Attorney General, which oversees all legal matters and includes the Office of the General Counsel, is located in the Executive Bureau. Other offices within the bureau include Human Resource Management, Budget, Information Technology, Operations, Support Services, and the Francis X. Bellotti Law Library.

In recognition of the Executive Bureau's dual responsibility to provide leadership on the Office's overall mission and priorities, and to support administratively the Office to ensure efficiency and effectiveness, the management of the bureau is carried out by the Chief of Staff, Deputy Chief of Staff, and the Deputy Chief of Staff for Administration and Finance.

The Chief of Staff and Deputy Chief of Staff oversee several key functions of the Executive Bureau, including Communications, External and Intergovernmental Affairs, Public Information and Constituent Services, as well as Scheduling. In addition, the Chief of Staff is responsible for working directly with the bureaus to develop and coordinate the key policy initiatives and priority issues of the Office. The Deputy Chief of Staff for Administration and Finance is responsible for oversight of all the elements that go into ensuring the smooth, efficient, and effective operations of the Office, with the primary focus of working with the bureaus to develop an even more coordinated and positive work environment. The Deputy Chief of Staff for Administration and Finance has responsibility for the management of Human Resources, Operations, Budget, Information Technology, and the Law Library.

In Fiscal Year 2005, the Executive Bureau included Stephanie Lovell, First Assistant Attorney General; Stephen Kerrigan, Chief of Staff; Laura Marlin, Deputy Chief of Staff; Ellen Donaghey, Deputy Chief

of Staff for Administration and Finance; Dee Barkett; Kerri Burrige; Diane MacDonald; Labrini Malatantis; Glen Shor; Marie Urciuoli; and Christine Wilson.

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

GENERAL COUNSEL'S OFFICE ---

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

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

The General Counsel's Office started Fiscal Year 2005 with four attorneys, one paralegal and one secretary: Pamela M. Dashiell, General Counsel; Deborah Steenland, Deputy General Counsel; Judy Zeprun Kalman, Senior Counsel; Lorraine Goldenberg-Tarrow, Assistant Attorney General; Eileen Carey, Paralegal; and Akiti Chandler, Support Staff.

SIGNIFICANT CASE SUMMARIES

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

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

STATISTICAL SUMMARY

Amicus Briefs Received	37
NAAG Sign-ons Received	38
Legal Services Contracts Received	29
SAAG Appointments Made	19
SAAG Appointments Amended	20
SAAG Appointments Vacated	10
Public Records Enforcement Appeals Received	10
Public Records Requests Received	32
Public Records Trainings	4
Open Meeting Law Complaints Received	2
OCPF Cases Received	14*
Board of Bar Overseers/Tax Settlements Received	14
OUI Notices Received	3,939

*This total reflects the number of warning letters sent to non-filers. We also reviewed OCPF paperwork and pleadings (to be filed in court) and responded to questions by telephone and e-mail.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The members of the General Counsel's staff were involved in cross-bureau initiatives, including the Diversity Committee, the Employee Benefits Committee and The Elder Protection Unit of the Public Protection Bureau. This Office had a staff member serve as the Attorney General's representative on the Governor's Diversity and Equal Opportunity Advisory Council. The staff also distributed an updated supplement to the statewide record retention policy for documents unique to the Office of the Attorney General.

In keeping with the Attorney General's priority of ensuring staff has access to the latest information and training available, and in furtherance of their professional development, the AG Institute provided continuing education to legal and nonlegal staff on a variety of topics. During Fiscal Year 2005, the AG Institute offered 26 programs and brought in two "Distinguished Lecturers."

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2005, the staff of the General Counsel's Office provided training to state and local government agencies on open meeting law issues and public records law matters. Other staff members were active in the Boston, Massachusetts and American Bar Associations where they functioned in leadership positions on various committees. They also served as panelists and speakers at NAAG seminars, Massachusetts Continuing Legal Education forums and other legal programs offered across the country sponsored by the various bar associations noted above. A staff member made a presentation at a career forum at an area law school. Members of the staff also participated in the Citizen Schools mock trial program, and volunteered as tutors in its Eighth Grade Academy and worked with other community groups in their own neighborhoods.

HUMAN RESOURCE MANAGEMENT OFFICE

The Human Resource Management Office is responsible for job vacancy announcements, the recruitment and hiring of employees, benefits administration for full and part-time employees, the coordination of hiring for legal and collegiate interns, and employee and labor relations. During Fiscal Year 2005, staff members included Diana LaRochelle, Director; Sandra Macdonald, Recruitment & Hiring Coordinator; Joyce Delgado, Employee Benefits Coordinator; and Lauren Murray, Administrative Coordinator.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

ANTI-DISCRIMINATION AND SEXUAL HARASSMENT POLICY

The HRM Office reissued the Anti-Discrimination and Sexual Harassment Policy in April, 2005 to all employees, contractors and volunteers. The Office remains committed to the goal of having a workplace that is respectful, inclusive and diverse, and reinforces that commitment on a continuing basis.

OFFICE-SPONSORED BAR ASSOCIATION MEMBERSHIPS

In addition to sponsoring memberships for all attorneys in the Boston Bar Association or a county bar association, assistant attorneys general also were offered the opportunity to join one of the many minority and women's bar associations in Massachusetts. This benefit was again offered during Fiscal Year 2005 to further the Office's commitment to enhance attorneys' professional development, and to encourage involvement with professional legal organizations comprised of diverse members and experience.

LEGAL AND COLLEGIATE INTERN PROGRAMS

The Office of the Attorney General continued its strong commitment to the Legal and Collegiate Intern Programs during Fiscal Year 2005. Each winter, the Office participates in the Massachusetts Law School Consortium interview process to recruit and select summer legal interns. In addition to this valuable source of candidates, the HRM Office coordinates and holds dozens of interviews in late winter and early spring with students from numerous local law schools as well as many out-of-state law schools.

The HRM Office placed 54 law students in the Office, the majority of whom took part in the Summer Legal Intern Program. The law students are afforded a unique opportunity to participate in a full-time, structured nine-week summer program which is unfunded, aimed at both utilizing the knowledge of the law students and giving them hands-on experience and training in some of the most interesting legal cases in the Commonwealth.

The Collegiate Intern Program attracts a large number of applicants throughout the year, but has the largest component during the spring and summer months. In Fiscal Year 2005, the HRM Office placed 48 collegiate interns. These interns volunteer at least 15 hours per week and are assigned in all five bureaus across the office. The term of their internships varies from student to student, but often exceeds nine weeks.

Additionally, three assistant attorneys general ran clinical programs throughout the year for students at area law schools — Harvard Law School, Boston College Law School and the New England School of Law.

PERSONNEL ACTIVITY

During Fiscal Year 2005, the Attorney General's Office hired 25 attorneys and 27 nonlegal staff, for a total of 52 new employees. There were 85 staff members who separated from the Office.

EXTERNAL AFFAIRS OFFICE

The External Affairs Office of the Executive Bureau responds to the daily needs of the public and the legislature. It serves as a direct liaison between the community, legislature, and the Attorney General.

In Fiscal Year 2005, Deputy Chief of Staff Laura Marlin oversaw the External Affairs Office, which included the following staff members: Malisa Brown, Director of Intergovernmental Affairs; Amanda Coulombe; Leah Green; Erika Gully-Santiago; Kenneth Hardy; Aaron Labaree; Tony Melius; Janis Noble; Alejandro Rodriquez; Lori Suher; and Tom Weber.

COMMUNITY LIAISON

The Community Liaison is responsible for constituent services. The position was created as a resource for citizens to obtain information for either internal or external assistance through e-mail, letters, telephone calls, or office visits. In 2005, we received approximately 5,760 e-mail requests and 2,600 telephone calls.

OFFICE OF COMMUNITY PARTNERSHIPS

Attorney General 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 communities, particularly as they affect the health and safety of our children, environmental concerns, and housing issues. Community Partnerships acts as a direct liaison between the Office of the Attorney General and the state's cities and towns.

INTERGOVERNMENTAL AFFAIRS DIVISION ---

The Intergovernmental Affairs Division is responsible for establishing and implementing the Attorney General's legislative agenda as well as working with other offices throughout state and local government. The Legislative Affairs Division directs legislative policy, coordinates the filing of legislation, and approves written and oral testimony. The division provides external liaison services, including apprising legislators and other state and local government offices of issues that may impact their communities or the work of their office and responding to their calls and correspondence with regard to constituent problems and legislative concerns. In addition, the division disseminates legislative information throughout the bureaus, acting as an internal liaison between the legislature and the Office of the Attorney General. The Intergovernmental Affairs Division advises the Attorney General on matters of policy and participates in the overall development and implementation of office-wide initiatives.

INFORMATION TECHNOLOGY DIVISION ---

The Attorney General's Information Technology Division (IT Division) is responsible for the operation and maintenance of the agency's computer network and related technical resources. The division operates both local and wide area network communications equipment from the main office in One Ashburton Place providing electronic communication throughout the agency. The wide area network connects the Boston offices at One Ashburton Place, 100 Cambridge Street and 200 Portland Street with the local area networks installed in the regional offices in Springfield, Worcester and New Bedford.

The IT Division's mission is to maintain network communications and provide hardware, software and end-user assistance for all agency staff in all locations. The division's staff supports a variety of servers which host applications, e-mail, databases and equipment providing DNS and firewall services. Additionally, the technical staff oversees a number of routers, network switches and more than 600 computer devices, including desktop PC's, Notebook PC's, printers, scanners and other peripheral equipment. During Fiscal Year 2005, IT Division staff included Paula M. Durant, Director; Claudette Clement, Administrative Coordinator; Bruce Crosby, Technical Support Specialist; Jean Exantus, Technical Support Specialist; Christine Heneghan, Notes Database Administrator; Jack Ngan, Technical Support Specialist; Ronald Rossetti, Network Manager; Visakha Samaraweera, Relational Database Developer; and Thomas Smith, LAN Manager.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2005, the Attorney General's IT Division continued to upgrade and enhance computer systems and network operations as part of its ongoing effort to improve the quality of the Agency's technical resources. Replacement servers were acquired to replace outdated models unable to support planned operating system upgrades, faster backup technology was put into place and, to meet increasing storage needs, the division will be bringing newly acquired storage servers on line. Enhancements also continued at the desktop level with the installation of more scanning equipment and the replacement of a number of outdated desktop PC's and notebook PC's.

In addition to agency-wide improvements, the IT Division works to meet the needs of particular divisions. During Fiscal Year 2005, The IT Division assisted the Trial and Insurance Divisions with their implementation of litigation support software and continued to work with the Medicaid Fraud Control Unit and the Corruption, Fraud, and Computer Crimes Division to acquire additional computer forensics equipment and resources. IT staff also worked with the Public Charities Division to implement a new Registrations Database and assisted the Elder and Insurance Hotline staff as they converted to their new database software. The IT Division has also acquired a new server which will be installed to provide support and additional storage for the CCIS, Elder and Insurance Hotline databases as well as the Public Charities Imaging System and Registration Database.

OUTREACH, EDUCATION, AND TRAINING

The Information Technology Division provides end-user assistance both in scheduled sessions and upon request. A central Help Desk is maintained at the main office in One Ashburton Place where IT staff members receive and respond to user calls encompassing a wide variety of issues. Reported hardware problems are referred to the next available Technical Support Specialist, any requiring particular expertise are directed to the IT staff member best qualified to assist.

Orientation sessions are conducted for new employees and interns upon start of work and, in addition to issuing new feature instructions, policy reminders, virus alerts and technical bulletins, the IT staff provides individual and group training as needed.

BUDGET OFFICE

As in previous fiscal years, a challenge for the Budget Office was to provide for the ever-increasing needs of the Office while anticipating that Fiscal Year 2005 funding would most likely be level funded.

During Fiscal Year 2005, however, the most important activity of the Budget Office involved the use of the new Massachusetts Management Accounting and Reporting System (MMARS) that was implemented at the start of the fiscal year on July 1, 2005. Budget Office staff had been preparing for this event for more than a year by undertaking training — primarily individual, internet based — reviewing the many changes from the prior system, ensuring that relevant information rolled from the old system to the new correctly and setting up procedures to conduct the agency's financial business.

Since little of the old system terminology or processes are part of the new accounting system, changes have been dramatic. Budget staff interacted closely with each other to ensure that business would be conducted as normally as possible and Fiscal Year 2005 was successfully closed in the new system and Fiscal Year 2006 opened with little or no interruption.

During Fiscal Year 2005, Budget staff processed over 9,200 accounts payable (AP) documents totaling \$16,675,242. Among these totals were 1,913 documents totaling \$2,936,211 to victims of violent crimes and 2,710 documents totaling \$3,138,775 to claimants who benefited from wage recovery settlements or other settlements made with various retailers.

The Budget Office included the following staff members: Frank Velluto, Director; James Creedon; Keristollia Ford; Mary Jane Grace; Jennifer Hanly; Shanita Hill-Davis; Christina Kennedy; and Gail Sarno.

OPERATIONS DIVISION ---

The Operations Division provides professional, timely, and valuable ancillary services that allow the Office of the Attorney General to effectively carry out its mission. The multitude of initiatives, functions, cases and day-to-day business activities are supported by the technical ability within the realm of the Operations Division. In Fiscal Year 2005, the division continued to be fully engaged in daily facility and operational matters, and supported the Office of the Attorney General staff with the latest multi-media technology enabling them to effectively and efficiently perform their duties.

In Fiscal Year 2005, division staff included Kristine Hill, Director; Chris Adams; Kevin Nolan; Pasha Polihronidis; and Michael Whelan. The Support Services staff included William Coughlan, Manager, Joseph Barnes; Stephen Cress; Tim LeBlanc; Nestor Morales; Dave Scafati; and Harold Tafler.

SIGNIFICANT INITIATIVES, EFFORTS AND ACTIVITIES

In Fiscal Year 2005, the Operations Division continued the major office renovation project at One Ashburton Place. This project required a collaborative effort between all affected divisions and the Support Services, Information Technology, and Telecommunications divisions. During the construction phases, this project included relocating the Criminal, Executive and Government Bureaus to temporary space within the McCormack building and to satellite locations; moving hundreds of active and non-active case files, law books, office furniture and equipment without the use of professional moving services; and, disposing or creating surplus of hundreds of pieces of office furniture and miscellaneous items through the Commonwealth's Surplus Property program. State agencies, local cities and towns and non-profit organizations received AGO surplus office furniture through the program.

The Operations staff also provided multi-media and production support for various types of cases, training sessions, and special events. The creation of complex trial exhibits, graphs of numerical data, PowerPoint presentations and audio enhancing are examples of the tools provided by Operations for various cases and investigations. In addition, Operations staff also transport many exhibits and equipment to courthouses and provide technical assistance during trials and grand jury hearings.

Operations also played a major role with the technical setup and coordination of the Annual Garden of Peace Ceremony and reception, which took place on the plaza of 100 Cambridge Street in September. This emotional ceremony honored homicide victims with a program that included speakers, a monument dedication, musical arrangement and a candle light vigil. Over 1,500 people, including victims' families, attended this event.

Operation staff frequented the regional offices to pick-up or deliver important documents, or to provide technical or physical assistance with investigations like the Riverside matter in Central Mass. Operations staff along with CMAS staff loaded and unloaded over 150 unorganized, badly torn and overflowing boxes containing sensitive contract documents related to potential claims by former customers of the defunct dealership.

Other functions within the scope of Operations included agency security, building evacuation plans, responding to after hours emergency calls, furniture inventory, vehicle maintenance, staff parking, document archiving, press conference and training session set-ups, and general physical facility upkeep.

COMMUNICATIONS OFFICE

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

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

The Communications Office staff are David Guarino, Communications Director; Corey Welford, Press Secretary; Sarah Nathan, Beth Stone, and Terence Burke, Deputy Press Secretaries; Alexandra Bauermeister, Press Assistant; and Jen Adams, Web site Manager.

WEB SITE

In existence since December 1999, the Office Web site continued to expand during Fiscal Year 2005. The Attorney General's Elder Abuse Project launched successfully in October 2005. This project was a training grant to help professionals across the state to address the growing issue of elder abuse.

The project was funded by the Office on Violence Against Women at the United States Department of Justice. Current publications continued to be added to the Web site in PDF and, if possible, HTML and rtf formats (for accessibility compliance). The site traffic reports demonstrated between 58,000 to 69,000 visitors per month.

FRANCIS X. BELLOTTI LAW LIBRARY

The library provides the Office of the Attorney General with the finest possible research facility and supports the research activities of the attorneys and staff. The collection includes 2564 book titles and 161 periodical, law review, newspaper, and newsletter titles. The attorneys also have access to Westlaw for online searching of legal and newspaper databases. The library contains the only complete index to Opinions of the Attorney General, town bylaw and zoning approval letters on microfiche, and Bid Protest Decisions from the Fair Labor and Business Practices Division. Individuals who are not affiliated with the Office must make an appointment with the library staff in order to use the special collections.

The library is a member of the Boston Regional Library System, facilitating interlibrary loans from nonlegal libraries. Included with membership is access to OCLC, a national bibliographic database.

During Fiscal Year 2005, the library staff included Karin Thurman, Director; and Raymond Manigault, Library Assistant.

BUSINESS AND LABOR PROTECTION BUREAU

FAIR LABOR AND BUSINESS PRACTICES DIVISION
MEDICAID FRAUD CONTROL UNIT

BUSINESS AND LABOR PROTECTION BUREAU

FAIR LABOR AND BUSINESS PRACTICES DIVISION

The demands placed on the Fair Labor and Business Practices Division (FLBP Division) for Fiscal Year 2005 remained high. The telephone hotlines continue to serve the public who make over 1,330 inquiries per week. Callers are responded to and advised how to best handle their complaints and inquiries, many resulting in formal complaints being filed with the division while others referred to other agencies to assist them with their individual needs. The hotline has been supplemented by an improved Web site which continues to experience a significant volume of inquiries made through the Workers' Rights section of the Web site.

During Fiscal Year 2005, FLBP staff included Dan Field, Division Chief; Christopher Buscaglia, Deputy Division Chief; Randy Berg, Chief of Investigations; Leah Green, Outreach Director; Jeff Ambrose; Bruce Bergman; Bruce Bussiere; Cecile Byrne; Ronald Cabezas; Jay Clark; Nick Dean; Susan Decker; Joseph Drzyzga; Mary Dullinger; Patrick Faherty; Michelle Gamble; Alex Guardiola; Erika Gully-Santiago; Paul Gordon; Edward Horniak; Marsha Hunter; Tom Johnson; Jocelyn Jones; Barbara Kane; Patricia Kelleher; Noreen Kelly; Robert Lamarre; Brian Macera; Jeffrey Mahoney; Anita Maietta; Mildred Markham; Katherine Mulligan; Mario Paiva; Iona Powell-Headley; Greg Reutlinger; Mario Rosado; Jed Ruccio; Elizabeth Rufo; Palmer Santucci; Steven Spencer; Bruce Trager; Theresa Ukleja; and Karla Zarbo.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division continues to take a multi-faceted approach to ensuring compliance with the Massachusetts wage and hour laws including enforcement, education and outreach as well as oversight of public bidding requirements. The division also is responsible for reviewing and ruling on applications by businesses for waivers for certain workplace laws.

OVERALL INVESTIGATORY ACTIVITY

The FLBP Division received and investigated in excess of 3,300 formal complaints in Fiscal Year 2005. In many instances, FLBP's inspectors recovered payment of full restitution or provided another appropriate remedy to the aggrieved employee without initiating the civil citation process or litigation. In other cases, consistent with its law enforcement mission and approach, FLBP's staff employed its

prosecution authority to pursue instances of unlawful conduct and sought civil and criminal sanctions which were imposed on workplace law offenders. Through these efforts, FLBP recovered in excess of \$2,074,000.00 in wages that were owed, but unpaid, to Massachusetts workers, as well as administrative and criminal penalties and costs.

PREVAILING WAGE ENFORCEMENT

Attorney General Tom Reilly continued to place a high priority on enforcement of the prevailing wage laws. FLBP inspectors conducted unannounced site inspections at numerous public construction projects across the Commonwealth to encourage compliance and a level playing field for all employers. During Fiscal Year 2005, FLBP investigators conducted over 203 site inspections related to public construction up from 174 site inspections the prior year. The division continued its enforcement efforts regarding prevailing wage violations on public construction projects issuing 105 prevailing wage citations.

The following provides a representative sampling of prevailing wage cases undertaken by FLBP during Fiscal Year 2005:

- **Milton Marder** Defendant was indicted on 12 counts of Larceny by False Pretenses and Prevailing Wage violations. These charges stemmed from multiple complaints and a lengthy investigation involving the exploitation of immigrant workers who were performing work on public construction projects across the state. Marder was sentenced to 30 months in jail to run concurrent with a Federal sentence, \$75,000.00 in restitution and an eight-year debarment from public works projects.
- **Marathon Fire Protection** Rhode Island sprinkler fitter company that performed prevailing wage work in Worcester County had apprentices working out of ratio. A settlement agreement was executed which included \$10,000.00 in restitution and a compliance plan to comply with all applicable statutes.
- **Lighthouse Masonry, Inc.** Two intentional citations issued relating to violations regarding the failure to submit certified payroll records to the awarding authority on a weekly basis. The citations were for projects at U-Mass Dartmouth and the Middlesex House of Correction. The penalty amount for each citation is \$2,000.00.
- **Capeway Roofing** Westport roofing company that worked on three public schools in Chicopee failed to pay 17 employees the increase in the prevailing wage rate that occurred during the contract. Restitution and civil penalties totaled \$4,300.00.

- **Heritage Heating/William Deeley/Kevin Deeley** This partnership failed to pay prevailing wages on the Dartmouth Hotel renovation project. The partners made significant restitution payments during the course of investigation and did not contest the failure to pay prevailing wages. Settlement negotiations resulted in an agreement under which the partners paid approximately \$12,700.00 in restitution to three employees. The employer also admitted to unintentional prevailing wage and record keeping violations and paid \$2,000.00 in penalties.
- **Priority Wall Systems** Three citations were issued to this Waltham contractor relating to the misclassification of approximately 34 employees as independent contractors, the failure to maintain accurate certified payroll records, the failure to submit certified payroll records timely, and the failure to maintain accurate payroll records.
- **Ramco** Six citations were issued to this West Bridgewater survey/soil erosion control company regarding the failure to pay four employees approximately \$1,770.00 in prevailing wages on six public works projects. Additionally, the employer failed to maintain true and accurate certified payroll records on each of these projects. As a result the company made payment of approximately \$1,770.00 in restitution and \$2,510.00 in penalties.
- **Ajax** A citation was issued to this Rhode Island steel erection company regarding the continued failure to submit certified payroll records directly to the awarding authority relating to a Pembroke school project. Company paid a \$2,500.00 penalty and entered into a settlement agreement that included a compliance plan.
- **Lonsdale Concrete Construction** This Cumberland, R.I. company failed to pay the correct prevailing wage rate to its laborers on the Kingston Town Hall project. A citation was issued resulting in a \$650.00 penalty and \$3,146.00 in restitution.

PAYMENT OF WAGES ENFORCEMENT

The FLBP Division is authorized to issue civil citations for violations of the wage and hour laws. A civil citation issued by FLBP can require the employer to comply with the law, pay restitution to the employees, and pay a civil penalty. FLBP issues such citations to employers who fail to pay wages, overtime, the minimum wage, or prevailing wages, or who fail to provide certified payroll or other employment records required to be maintained and produced under Massachusetts law. During Fiscal Year 2005, FLBP issued 232 civil citations for violations of the payment of wages and prevailing wage statutes. This number represents an increase over Fiscal Year 2004 in which 227 civil citations were issued and a significant increase compared to the 165 civil citations issued in Fiscal Year 2003.

The following provides a representative sampling of unpaid wage cases undertaken by FLBP during Fiscal Year 2005:

- **Ground Round** Company declared bankruptcy and terminated virtually all employees without any prior notice, owing wages and vacation pay to the affected employees. The Office recovered over \$328,400.00 in outstanding wages owed to 430 employees in Massachusetts. The balance of all outstanding wages owed to Massachusetts employees was paid upon completion of auctioning the property of Ground Round. The Office was also instrumental in assisting employees from other states to obtain their back wages which was over \$1,000,000.00 from 130 restaurants in 25 states and Canada.
- **Mediplex Group, Inc. d/b/a Sunbridge Healthcare** Nursing home owner in Millbury sold the facility. Sunbridge had an agreement to fund Paid Time Off pool for employees to retain benefits with new owner. Discrepancies in the tracking of time between local and central management during changeover to centralized tracking system led to an under-funding of the pool. Employer paid approximately \$58,000.00 in restitution and penalties as part of settlement agreement which included a compliance plan.
- **Marguerite Concrete, Inc.** Overtime investigation involving this Franklin concrete company who failed to pay overtime to employees. An audit revealed that \$51,208.00 was owed to 24 employees. A settlement agreement was executed including full restitution and a \$4,000.00 penalty.
- **Bilafer Landscaping Company** Paul Bilafer pleaded guilty at Framingham District Court for multiple violations of the wage and hour laws and was placed on probation with a six month suspended sentence until 2004. Bilafer has twice been found to be in violation of the terms of his probation. Bilafer appeared in Framingham District Court on November 12, 2004, for a violation of probation hearing and was sentenced to 10 and 20 days in the House of Correction, respectively. The basis for the violation was his failure to pay \$3,380.00 in restitution due to immigrant employees from a civil citation issued by this Office. Bilafer appeared at the hearing with a certified bank check for the outstanding restitution amount. Judge Robert Greco terminated probation upon payment of all outstanding restitution.
- **MVP, Inc.** A settlement agreement was reached with this employer arising from investigation into payroll record-keeping practices for all Massachusetts locations, following allegations from former employees relating to retroactive changes in employer's vacation policy affecting 29 employees. As part of the agreement, employer remitted \$69,594.29 in unpaid vacation pay to affected employees and made a \$2,000.00 charitable donation, in lieu of a penalty.

- **Maiyo Professional Services** This employment agency misclassified 18 employees as independent contractors, failed to pay overtime, and failed to maintain true and accurate payroll records. A citation was issued which included restitution in excess of \$10,518.00 and penalties of \$2,420.00.
- **Santiago's Plaza, Inc.** Worcester based grocery store failed to pay Sunday premium pay over the past several years. A settlement agreement resulted in over \$19,000.00 in restitution to 67 employees and a \$2,500.00 penalty with an assurance of future compliance.
- **Charlotte Russe** National retailer Charlotte Russe had policy to pay only managers, and not regular retail employees, time-and one-half holiday pay for New Year's Day, Thanksgiving, and Christmas, and as a result, 208 employees were not paid holiday pay. Total restitution was approximately \$7,000.00. Final settlement agreement included full restitution and a \$500.00 penalty as well as a compliance plan.
- **KTI Recycling** This investigation involved the employer evading overtime pay requirements by utilizing a temporary employment agency. A settlement agreement included an admission to an unintentional violation of the overtime statute, the payment of \$79,678.00 in restitution to approximately 30 employees and the payment of a \$5,500.00 penalty.
- **Alutiiq-Wackenhut Security Services** Alutiiq-Wackenhut is a security company doing business in Natick. Complaint was for failure to compensate employees who were not allowed to leave the facility for meal breaks. Alutiiq agreed to pay employees back wages in the amount of \$18,560.06 and Wackenhut agreed to pay employees back wages in the amount of \$17,274.93.
- **City Express** This company employs messengers. The couriers were not being paid for all hours worked and also were not being paid time and one half for overtime. Company paid \$2,690.00 to employees for unpaid overtime and wages that were due and payable.
- **Yoozed** A citation was issued to this internet company that went out of business. Three employees were not paid all outstanding wages that were due and payable. A citation for failure to pay wages was issued resulting in over \$2,711.00 in restitution with a \$620.00 penalty.
- **Other non-payment cases** Another portion of the cases resolved by the division involved successfully concluding 570 cases that resulted in \$250.00 or less in restitution, amounting to \$64,750.78 for individuals, and another 341 cases resulting in restitution of between \$251.00

- \$500.00 for individuals, amounting to \$111,036.56. The restitution for these low wage earners was in excess of \$175,750.00. These matters were time consuming and small, but no less significant to the employees who were owed their wages.

PUBLIC CONTRACTS OVERSIGHT

The Attorney General's Office continued to provide a professional and accessible forum for the resolution of public construction bidding disputes, including investigating allegations of impropriety in connection with public-works project bidding. The Attorney General's primary enforcement efforts in this area have been undertaken by FLBP's Public Contracts Unit. The primary tool employed by the Public Contracts Unit includes adjudication of disputes through an administrative hearing process. In Fiscal Year 2005, the Unit issued 40 written decisions for these cases. The division received 45 protests which resulted in 20 hearings.

The Unit also responded to 1,345 telephone inquiries by the Commonwealth's awarding authorities, contractors or other interested parties who are involved with public works projects. The Unit's telephone support has become an important resource for contractors and awarding authorities. Telephone assistance has served as a significant prevention tool, often delivering the information necessary to prevent or quickly remedy a violation of the public bidding laws.

Enforcement efforts also included an educational component that provided public contracting participants with information regarding the public bidding laws. In addition, FLBP's staff participated in educational programs that provided substantive and procedural information to the construction industry and their counsel necessary to properly solicit or submit public works construction bids. Such proactive efforts have served many useful purposes.

The following are examples of significant public contract disputes resolved by FLBP in Fiscal Year 2005:

- **Commonwealth v. Lower Pioneer Valley Collaborative and Corporation** Collaborative established a corporation (consisting of the same individuals) to act as its alter ego in order to avoid public bidding requirements, including advertising for competitive bids on a \$9 million project to construct a vocational technical school. Protest ALLOWED. The Office of the Attorney General sought preliminary injunction against Collaborative/Corporation. The Superior Court concluded that while the collaborative was subject to these requirements, the corporation was not. We petitioned the Appeals Court Single Justice for review, but relief was denied. Still pending is our action for a declaratory judgment regarding the applicability of public bidding laws to collaboratives for future projects.

- **U.W. Marx Construction Co. v. Division of Capital Asset Management** \$5.9 million general contract by DCAM to renovate dormitory at the Mass. College of Liberal Arts. Sub-bidder list distributed to all general bidders included one price for certain waterproofing work. The first and second general bidders added this price to their bid forms even though DCAM neglected to include a space on the form for this price. This was not an addition not called for, as alleged by the protestor, the third low general bidder. Furthermore, the protestor submitted calculations with its bid showing that it also added this price to its total bid. Protest denied.
- **David Roach and Sons, Inc. v. Town of Southbridge** \$1 million water treatment plant contract. Town had discretion to waive unit price error as obvious, clerical error. The error regarding the power of attorney was also writeable. It did not affect bid bond's enforceability and was a matter of form that the Town had discretion to waive under the bidding statute. Protest denied.
- **FFCM v. City of Fall River** \$111,000, three year contract to maintain city street light system. FFCM claimed that contract was not a services contract subject to G.L. c. 30B, but rather, a contract for the alteration and repair of public works subject to G.L. c. 30, §. 39M. Contract was not bid upon uniform specifications and not advertised in Central Register as required by c. 30. Protest ALLOWED because work on components other than photocells and bulbs is c. 30 alteration and repair work, and there is sufficient amount of such work to trigger the statute.

CHILD LABOR

The Attorney General remains committed to ensuring a safe workplace for the youth of the Commonwealth. During Fiscal Year 2005, FLBP inspectors investigated reports of child labor violations and conducted workplace site inspections, visiting businesses where minors were employed, noting violations and advising employers of their responsibilities and legal obligations to provide a safe and harmonious work environment for minors. The division has also provided outreach to children through programs presented at the schools and through career day events.

Among the routine investigations handled throughout the year, the division also continued to monitor the cases mentioned below for compliance with the child labor laws.

- **Dunkin Donuts** The Office completed the final year of a three year compliance plan following an investigation that revealed thousands of child labor and wage violations. The agreement included a \$150,000.00 civil fine as well as an oversight plan by an outside auditor.

- **Six Flags New England** The Office issued a waiver to Six Flags to address ending work times for 16-17 year olds. The division continues to monitor Six Flags for compliance with the child labor statutes.

WAIVERS AND INDUSTRIAL HOMEWORK

FLBP is charged by statute with the authority to waive certain requirements of the labor laws under certain conditions. During Fiscal Year 2005, FLBP processed more than 340 waiver applications and industrial homework certificate requests. Each request for a waiver was carefully evaluated before a determination was made to grant or deny the request. FLBP enforced the industrial homework laws (work performed for a company in the employee's home) by issuing permits to the employers and certificates for each employee, where applicable. FLBP also monitored these companies to ensure compliance with the minimum wage and overtime laws.

STATISTICAL SUMMARY

Restitution Recovered	In excess of \$ 1,920,975
Hotline Calls	In excess of 69,305
Formal Complaints Filed	3,372
Cases Closed	3,553
Civil Citations Issued	232
Public Contract Dispute Decisions	40

OUTREACH, EDUCATION, AND TRAINING

Attorney General Reilly has long believed that public education is an important part in promoting compliance with workplace laws. Accordingly, outreach to the employee and employer communities, and their unions, trade associations, counsel, and other advocates, has been an FLBP priority. One means to this end has been FLBP's telephone hotline, which has served as an information source for workers and businesses. In Fiscal Year 2005 the FLBP hotlines received over 69,300 inquiries. In many instances, workers were informed of their rights and were assisted in obtaining their rightful wages.

The Immigrant Worker Outreach Project, which was established several years ago, continues to be successful. Through this program, FLBP continues to receive a large volume of complaints and referrals from the immigrant community. FLBP staff members made seven presentations to immigrant advocacy groups during the year to maintain this important program and also made presentations to employer groups in an effort to educate them regarding their rights and responsibilities concerning immigrant employees.

Outreach was conducted in other areas, as well. During Fiscal Year 2005, FLBP staff made a total of 52 presentations to bar association and continuing legal education groups, professional organizations, trade associations, labor unions, and employee advocacy groups. These presentations covered such topics as wage and hour laws, employee and employer rights and responsibilities under these laws, as well as presentations on such topics as worker classification under the prevailing wage law and the treatment of accrued vacation time as wages.

MEDICAID FRAUD CONTROL UNIT

The Medicaid Fraud Control Unit (MFCU) was established to protect the Massachusetts Medicaid program from fraudulent practices. The Office of Medicaid administers the provision of over \$6 billion of health care services to over 900,000 indigent and disabled recipients in Massachusetts. In addition to prosecuting corporate and individual health care providers who commit crimes against the Medicaid program, MFCU was also responsible for prosecuting companies and individuals who abused, neglected, or mistreated elderly and disabled residents of the Commonwealth's 525 long-term care facilities, most of which have been funded extensively by the Medicaid program.

During this reporting period, Attorney General Tom Reilly's MFCU remained committed to aggressively investigating and prosecuting Medicaid provider fraud and those who abuse, neglect or financially exploit elder and disabled residents of long-term care facilities. The MFCU brought several recovery actions utilizing the state's civil Medicaid fraud statutes and reviewed over 525 patient abuse and neglect referrals. In addition to the criminal cases reported herein, the Massachusetts MFCU returned \$24,295,426.73 to the Medicaid program through restitution, fines and penalties.

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

MFCU included the following staff members during Fiscal Year 2005: Nicholas J. Messuri, Division Chief; David Marks, Deputy Division Chief; Steve McCarthy, Deputy Division Chief and Chief of Investigations; Steve Devlin, Deputy Chief of Investigations; Ann Ackil; Bruce Anderson; Amy Beth Baron; Al Brown; Eileen Casey; Julie Chattopadhyay; Peter Clark; John Curley; Bessie Curtis; Catherine Fielding; Richard Heidlage; Steven Hoffman; Timothy Johnson; Justine Lamarre; Linda Landry; Teresa Ho Liu; Anthony Megathlin; Robert Molvar; Robert Patten; Shirley Rokosz; Mike Russo; Joseph Shea; Christine Soloperto; Jody Soucie; Nang Tran; Toby Unger; and Kris Wilhelmi.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2005, 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 conducted approximately 145 investigations, in addition to reviewing over 500 patient abuse and neglect referrals, obtained indictments and secured convictions against corporate and individual defendants.

In the past fiscal year, MFCU has also continued to devote resources to its mission of protecting elders in nursing homes, through prosecution of abusers, investigation of financial fraud by nursing homes and elder care facilities, and coordination with the Department of Public Health.

In addition, MFCU investigated physicians and psychiatrists that prescribed controlled substances for non-medical reasons, or were not supported by medical diagnosis or necessity. MFCU investigated dentists and durable medical equipment companies for upcoding and unbundling their services. MFCU also looked at the area of pharmacy chains and pharmaceutical companies that overcharged the Medicaid program and inflated the costs of prescription drugs. In Fiscal Year 2005, MFCU also investigated the relationships between physicians, hospitals, and laboratories to detect illegal referrals, kickbacks and issues of sub-standard patient care.

SIGNIFICANT CASE SUMMARIES

Consistent with its mission to protect the Medicaid program on a statewide basis, MFCU made extensive use of the Special Grand Jury sitting in Boston, as well as its statutory and regulatory discovery authority, to obtain indictments and convictions and to recover funds for the Medicaid program well in excess of MFCU's budget.

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

The following is a sample of cases undertaken by MFCU during Fiscal Year 2005:

SUMMARY OF ENFORCEMENT ACTIONS

Orthopedic Footwear Providers to Pay State Medicaid Program \$550,000 to Settle Overpayment Allegations. Sixteen members of the Massachusetts orthopedic footwear industry agreed to pay \$550,000 to the Massachusetts Medicaid program to settle allegations that they were overpaid as a result of incorrect billing and documentation deficiencies that violated Medicaid regulations.

The settlement follows an April 2000 report by the state Inspector General (IG) on the Commonwealth's top 15 orthopedic footwear providers that concluded there was widespread waste and abuse between 1995 and 1999 in the Medicaid Orthopedic Footwear Program. As a result, AG Reilly's Medicaid Fraud Control Unit (MFCU) commenced an industry-wide investigation and Medicaid revised its orthopedic regulations.

Nursing Assistant Indicted For Alleged Abuse of Elderly — Bellingham. A former certified nursing assistant has been indicted on charges she allegedly physically abused four elderly patients at a Franklin nursing home. The former certified nursing assistant faces two counts of indecent assault and battery, three counts of assault and battery and five counts of patient abuse. The charges follow an investigation by AG Reilly's Medicaid Fraud Control Unit (MFCU) into alleged abuse that occurred at the facility.

The indictments allege that in five incidents over several months, the certified nursing assistant physically and emotionally abused four elderly residents who had dementia. These residents

were aged 75, 78, 86 and 105 at the time. The indictments allege that in five separate incidents, witnessed by seven different co-workers, she allegedly punched, slapped, inappropriately touched or emotionally abused four patients.

New Bedford Pharmacist Pleads Guilty to Filing Claims For Phony Prescriptions to Steal More Than \$85,000 From Medicaid — New Bedford. A New Bedford pharmacist pleaded guilty to charges that he filed claims for more than \$85,000 with the state's Medicaid system for prescriptions that were never ordered by physicians.

The registered pharmacist pleaded guilty in New Bedford Superior Court to 30 counts of violating the Medicaid False Claims Act, and one count each of larceny over \$250, making false entries in corporate books and uttering false prescriptions. In addition, the pharmacist's corporation admitted to 30 false claims counts and one count of larceny over \$250.

Superior Court Justice Robert J. Kane sentenced the New Bedford pharmacist to 18 months in the House of Correction, suspended for three years. During that time, he will be placed on probation with the conditions that he surrender his license to practice pharmacy and agree not to reapply for three years. He must also pay restitution in the amount of \$85,747 within six months.

Springfield Personal Care Assistant Sent to Jail for Medicaid Fraud, Theft of Medicaid Funds — Springfield. A personal care assistant was sentenced to 18 months in the House of Correction after pleading guilty to charges she fraudulently billed the state Medicaid program nearly \$8,000 for services to elderly and disabled individuals that she never rendered.

For a period of 18 months, the personal care assistant billed for services she never provided to three clients: a 52-year-old wheelchair-bound woman with cerebral palsy, a 68-year-old man with numerous disabilities, and a 72-year-old man. She had been hired by these clients to provide various household tasks including housekeeping and cleaning, laundry and meals.

The personal care assistant pleaded guilty to three counts of Medicaid fraud, two counts of larceny over \$250 and one count of larceny under \$250. She was sentenced to serve 18 months in the Hampden County House of Correction followed by three years of probation. She was also ordered to pay \$5,000 in restitution and was prohibited from working with elderly or disabled individuals during the period of her probation.

Dental Corporation Pleads Guilty to Medicaid Fraud Charges For Services That Were Never Rendered — Boston. A dental corporation with offices in Walpole and Hanover pleaded guilty in Suffolk Superior Court on charges that it billed Medicaid for dental services that were never rendered and was ordered to pay \$45,000 in restitution and fines. The corporation and the dentist also entered into a separate settlement agreement that requires it to pay an additional \$200,000 to the Commonwealth.

Nursing Home Assistant Sentenced to Jail for Patient Abuse of Elderly — Orleans. A former certified nursing assistant was sentenced to serve eight months in the Barnstable County House of Correction after being found guilty of physically abusing elderly Alzheimer's patients at a Harwich nursing home. The investigation by the Medicaid Fraud Control Unit found that over several months, the certified nursing assistant verbally, physically and emotionally abused two elderly Alzheimer's patients who were residents at the facility.

STATISTICAL SUMMARY

Health Care Fraud Investigations	82
Formal Health Care Fraud Cases Opened	90
Formal Health Care Fraud Cases Closed	54
Patient Abuse Referrals Reviewed	525
Patient Abuse Investigations	93
Civil Dispositions	24
Criminal Indictments	4
Criminal Dispositions	4
Restitution and Fines Recovered	\$24,295,341.73

OUTREACH, EDUCATION, AND TRAINING

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

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

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

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

MFCU staff continued to take advantage of the rich training opportunities available nationwide to health care law enforcement personnel, with several new investigators and lawyers attending multi-day trainings and conferences. The Massachusetts MFCU Director served as President of the National Association of Medicaid Fraud Control Units. The Association coordinates multi-state investigations and creates and sponsors health care fraud training sessions for assistant attorney generals and investigators.

Staff also continued to attend in-house programs that targeted such areas as improved courtroom techniques.

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

CRIMINAL BUREAU

APPELLATE DIVISION

CORRUPTION, FRAUD, AND
COMPUTER CRIME DIVISION

VICTIM/WITNESS ASSISTANCE DIVISION

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

ENVIRONMENTAL CRIMES STRIKE FORCE

INSURANCE AND UNEMPLOYMENT FRAUD DIVISION

CRIMINAL JUSTICE POLICY DIVISION

VICTIM COMPENSATION AND ASSISTANCE DIVISION

FINANCIAL INVESTIGATIONS DIVISION

SAFE NEIGHBORHOOD INITIATIVE DIVISION

CRIMINAL BUREAU

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

The Criminal Bureau's staff of experienced Assistant Attorneys General, State Police detectives, Environmental Police officers, and civilian investigators, focus on investigating and prosecuting violations of state criminal law that result in or involve significant economic loss or injury, harm to the environment, misconduct by public employees or elected officials, crimes against public agencies, organized crime, large-scale drug trafficking, complex criminal conspiracies, consumer fraud, and crimes involving computers and other forms of technology. The majority of criminal cases prosecuted by the Criminal Bureau result from investigations conducted by the Bureau's 28 State Police detectives, three Environmental Police officers, and seven civilian investigators. Cases are developed through citizen complaints and referrals from other local, state and federal agencies. During Fiscal Year 2005, the Criminal Bureau received more than 2,886 inquiries and complaints from citizens and other agencies. Additionally, Assistant Attorneys General in the Criminal Bureau reviewed 103 rendition and extradition requests forwarded to the Bureau by the Executive Office of the Governor.

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

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

The Criminal Bureau's Safe Neighborhood Initiative Division promotes crime prevention in communities by fostering partnerships between schools, community groups, prosecutors, police officers, courts and other criminal justice professionals. Through these partnerships, the division helps communities implement crime prevention programs and other initiatives to prevent and deter involvement in crime, steer those involved in minor criminal offenses into prevention programs, and

aggressively prosecute those responsible for crimes that severely impact the community's quality of life. During Fiscal Year 2005, there were Safe Neighborhood Initiative programs in Taunton, Brockton, Orange, and the Dorchester and Grove Hall sections of Boston. Additionally, the AGO supported and participated in federally recognized "Weed & Seed" partnerships in Lawrence and Methuen.

The fourth primary mission of the Criminal Bureau is to provide support to victims of crime. The Bureau's Victim Compensation & Assistance Division provides financial support and social services assistance to crime victims and relatives of homicide victims. The division reaches victims and their families through outreach efforts and relationships with police departments, court officials, and social service agencies. During Fiscal Year 2005 the division received more than 1,253 applications for financial assistance from crime victims and their family members, and distributed almost \$3,164,571.50 to these victims and family members.

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

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

The Divisions Chiefs within the Criminal Bureau during Fiscal Year 2005 were: Appellate Division, Cathryn Neaves; Corruption, Fraud & Computer Crime Division, John A. Grossman; Victim/Witness Assistance Division, Kathleen Morrissey; Special Investigations and Narcotics Division, Eileen O'Brien; Environmental Crimes Strike Force, Paul J. Molloy; Insurance and Unemployment Fraud Division, Eliot Green followed by Glenn Cunha; Financial Investigation Division, Paul Stewart; Criminal Justice Policy Division, James O'Brien; Victim Compensation & Assistance Division, Deborah Fogarty; Safe Neighborhoods Initiative, Ellen Frank; and State Police Detective Unit, Captain Stephen Matthews.

The Criminal Bureau also had three Bureau Attorneys during Fiscal Year 2005. Assistant Attorney General Mary A. Phillips served as the Bureau's Grand Jury Coordinator, and Assistant Attorneys General Beth Merachnik and William Bloomer served as Senior Trial Counsel for the Bureau.

APPELLATE DIVISION

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

In addition to their casework, division attorneys provide assistance to other Criminal Bureau attorneys on investigations, motions, trials, post-conviction proceedings, and single justice actions, and consult with or assist other bureaus in matters where 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 Appellate Division files approximately 50 appellate briefs per year in the United States Supreme Court, Court of Appeals for the First Circuit, Supreme Judicial Court, and Massachusetts Appeals Court. The division files amicus briefs on behalf of the Attorney General in cases having broad impact and importance to the criminal justice system, consistent with the Attorney General's statutory responsibility as the chief law enforcement officer of the Commonwealth. The division also files in the United States District Court approximately 130 substantive memoranda of law per year in opposition to federal habeas corpus petitions.

During Fiscal Year 2005, the Appellate Division included Assistant Attorneys General Cathryn Neaves, Division Chief; Eva Badway; Annette Benedetto; Olivia Blanchette; David Lieber; Maura McLaughlin; Natalie Monroe; Jonathan Ofilos; Randall Ravitz; Susanne Reardon; and Daniel Smulow.

SIGNIFICANT CASE SUMMARIES

- **Wayne Blyth Healy v. Luis Spencer** (U.S. District Court) Federal habeas petition from 1981 Hampden County conviction for first-degree murder alleging, among others, a Brady claim. Magistrate Neiman issued a Report and Recommendation on September 9, 2004 that the court grant the petition in part and hold an evidentiary hearing.
- **Jorge Gonzalez v. Justices of the Municipal Court of Boston** (U.S. Court of Appeals, First Circuit) Appeal from denial of federal habeas petition challenging Suffolk County complaint for distribution of cocaine as violating Double Jeopardy. First Circuit affirmed the denial of habeas relief on August 18, 2004.
- **Commonwealth v. Joseph Silvestri** (Massachusetts Appeals Court) Direct appeal from defendant's convictions for trafficking, alleging illegal warrantless eavesdropping, insufficient evidence, and improper denial of motion for new trial. On October 19, 2004, the Appeals Court affirmed the convictions and the order denying the motion for new trial.
- **Wilfred Evicci v. Commissioner of Massachusetts Department of Corrections** (U.S. Court of Appeals, First Circuit) Appeal from denial of federal habeas petition challenging Middlesex County conviction for aggravated rape and subsequent offenses. On November 19, 2004, the First Circuit affirmed the district court's denial of the habeas petition.
- **Richard Allison v. Edward Ficco** (U.S. Court of Appeals, First Circuit) Appeal from denial of federal habeas petition challenging 1995 Middlesex County convictions for first-degree murder, armed robbery, and perjury claiming ineffective assistance of counsel, closing argument violated due process, and insufficient evidence of joint venture. The First Circuit affirmed the district court's denial of habeas relief on November 5, 2004.
- **Edward Paulding v. Peter Allen** (U.S. Court of Appeals, First Circuit) Appeal from denial of federal habeas petition challenging 1999 Suffolk County conviction for first-degree murder alleging that it was a denial of due process both to not define the elements of second-degree murder and for the SJC to not require its new rule — that second-degree murder be defined — be applied to petitioner. The First Circuit affirmed the district court's denial of habeas relief on January 5, 2005.

- **Julie Pike v. Barbara Guarino** (U.S. District Court) Federal habeas petition challenging 1995 Franklin County conviction for second-degree murder claiming petitioner suffered from battered women's syndrome and was therefore unable to meaningfully communicate with her counsel, rendering her incompetent to stand trial, and violated her right to present a defense. On March 24, 2005, the district court granted the petitioner's motion for an evidentiary hearing.
- **Melvin Smith v. Massachusetts** (United States Supreme Court) Petition for writ of certiorari to the Massachusetts Appeals Court concerning its decision that a trial judge can reconsider an order granting a motion for required finding and submit the charge to the jury without violating the Double Jeopardy Clause. On February 22, 2005, the Supreme Court reversed and remanded the case to the Appeals Court, determining that the Double Jeopardy Clause is violated in such circumstances absent a state court rule that specifically states that orders granting such motions are not final.
- **Commonwealth v. Robert Newell** (Massachusetts Appeals Court) AGO defendant's appeal from the denial of his motion to withdraw his guilty plea to numerous indictments for larceny and violation of home contractor laws, alleging that the motion judge both incorrectly admitted evidence of trial counsel's hearsay affidavit at the evidentiary hearing and abused his discretion in denying the motion. The Appeals Court affirmed the convictions on February 17, 2005.
- **Commonwealth v. John Williams** (Massachusetts Appeals Court) Appeal from defendant's conviction secured by Insurance and Unemployment Fraud Division for worker's compensation fraud, presenting a false insurance claim, and larceny, claiming insufficient evidence and evidentiary error. On May 25, 2005, the Appeals Court affirmed the conviction for presenting a false insurance claim and reversed the conviction for larceny by false pretenses.
- **District Attorney for Norfolk County v. Quincy Division of the District Court Department** (Massachusetts Supreme Judicial Court) Appeal from single justice's denial of Norfolk County District Attorney's 211/3 petition seeking reversal of district court judge's order refusing to issue criminal complaints on misdemeanors following arrests of three individuals, after determining that no probable cause existed to support the applications for complaints. On May 10, 2005, the Full Bench reversed the single justice and ordered the complaints to issue.

STATISTICAL SUMMARY

	CASES OPENED	CASES DISPOSED	TOTAL CASES HANDLED
Federal Habeas	160	143	558
Federal Civil	13	15	36
Federal Subpoena	14	3	14
State Civil	20	28	75
State Habeas	8	8	25
Criminal	40	17	83
211 § 3 and Other Single Justice Cases	11	5	27
Other	10	1	23
TOTAL	276	220	841

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

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

- Writing Coach, Citizen's Schools' Eighth Grade Academy
- Attendee, BBA New Lawyers Section Annual Judicial Conference
- Paul McLaughlin Center, Volunteer Tutor

OUTREACH, EDUCATION, AND TRAINING

The Appellate Division devoted a substantial amount of energy and resources to training and outreach. These efforts included frequent attendance at AGO and BBA trainings, as well as the following:

- Massachusetts District Attorneys Association Conference
- Commonwealth Appellate Attorneys Action Project
- Lecturer and Clinical Coordinator at Harvard Law School
- Comments Editor, Massachusetts Law Review
- Tutor at the Paul McLaughlin Center
- Moot Judge, Esdaile Moot Court Program, Boston University Law School
- Teacher, First Year Writing Program at Boston University Law School
- Advisor, Tufts University Career Advisory Network
- “Teacher for a Day”, Brookline High School Program
- Lecturer, BBA Law Day in the Schools Program
- Moot Judge, Ames Moot Court Competition, Harvard Law School

CORRUPTION, FRAUD, AND COMPUTER CRIME DIVISION

The Corruption, Fraud, and Computer Crime Division (CFCC) within the Criminal Bureau protects individuals and businesses residing or working in the Commonwealth by focusing on the following:

(1) Public Corruption: investigating and prosecuting crimes that compromise the public’s confidence in the government or harm public agencies. These cases include crimes committed against state and local public entities and government-funded organizations as well as crimes committed by government employees, agents and contractors. Cases successfully prosecuted by the division have included charges of bribery, larceny, procurement fraud, tax fraud, perjury, filing false reports, and accepting unlawful gratuities.

(2) Economic Crime: investigating and prosecuting all types of private sector economic and white collar crime, including cases involving fiduciary embezzlement, complex financial fraud, and insider theft.

(3) Consumer Crime: investigating and prosecuting crimes targeting consumers, with an emphasis on cases involving the Internet, charitable solicitations, unlicensed practice of law and other professions, and home improvement contracting. The division pursues high impact cases, such as frauds perpetrated against children, the elderly, immigrants, and cases involving multiple victims in multiple counties.

(4) Computer Crime: Increasingly, criminals, including con artists, cyberstalkers, hackers, child pornographers, and child predators, use computers, the Internet and other forms of technology to victimize others. In response, the division's specially trained prosecutors and computer forensics specialist work with the State Police and financial investigators to investigate, arrest and prosecute cybercriminals, whether they try to attack the computer infrastructure, compromise the safety of our children as they "surf the net," or defraud consumers and businesses. In addition, the division provides support and training in computer searches and forensics to law enforcement throughout the Commonwealth. Cases handled by the division have included charges of larceny, trademark infringement, unauthorized access to computers (hacking), possession and dissemination of child pornography, and stalking and harassment.

During Fiscal Year 2005, CFCC included the following staff: John Grossman, Chief; Carolyn Bradshaw and Lillian Cox, support staff; Assistant Attorneys General Denise Barton, Marc Jones, Dana Leccese, Madeline Leone, Laura Marlin, Ingrid Martin, Molly Parks, Tina Smeaton and Debra Walsh; and Dave Swan, Computer Forensic Analyst. A significant number of our cases were also handled by the Criminal Bureau's representative in Western Massachusetts, Assistant Attorney General Matt Shea, and by Senior Trial Counsel Beth Merachnik. Our cases, however, were in no way pursued alone; we worked as an integrated team with the members of the Financial Investigations Division, the State Police High Tech Unit, the State Police White Collar and Public Corruption Unit, and the Victim Witness Advocacy Division. On various occasions, we also collaborated with the Criminal Investigation Bureau of the Department of Revenue, the Criminal Investigations Division of the Office of the Inspector General, the State Auditor and a number of federal and local law enforcement agencies.

SIGNIFICANT CASE SUMMARIES

- **The Registry of Motor Vehicles Cases** (Suffolk and Middlesex Superior Courts) The division charged sixteen individuals, including seven RMV employees, in relation to three corrupt schemes involving branch offices of the RMV. In Watertown, we used an undercover operation that involved multiple Blood warrants and video surveillance to uncover a scheme that had been going on for at least eight months. Several people were selling identification documents and then connecting their customers to one of three corrupt RMV employees who would in turn issue learner's permits, without testing the applicants or vetting their identification documents. In Melrose, we charged three people — including two RMV employees — with selling licenses to people without adequate documentation. And in Chinatown, six people have been charged in relation to a scheme whereby two RMV employees accepted money to alter the records of drivers whose licenses had been suspended, thereby allowing these drivers to return to the road earlier than the law allowed. So far, one of the middlemen in the Watertown scheme, William Matos, has pleaded guilty, receiving four years in the House of Correction, and the two Chinatown Registry employees, Christopher Macy and Henry Fenton, have pleaded guilty, each receiving 2.5 years in the House of Correction with six months to serve and the balance suspended for two years.
- **Commonwealth v. Heroin Karburnara, et al.** (Middlesex Superior Court) The division indicted five people in connection with an organized retail theft ring that ran a number of schemes targeting high-end chain stores. Most often they would steal merchandise, return the goods to other branches of the stores for credit, and then sell the store credits on the Internet. We believe they stole over \$350,000 in goods. All five pleaded guilty. The ringleader, Heroin Karburnara, received a sentence that included 14 months in the House of Correction. Ann Leeman and Helen Macy were sentenced to probation. Lindsay Holland was sentenced to two years of probation and ordered to serve the first six months in home confinement. Christina DeGrandis was sentenced to two years in the House of Correction with four months to serve and the balance suspended for three years.
- **Commonwealth v. Cynthia Perry-Alves** (Suffolk Superior Court) Perry-Alves stole some \$700,000 from her employer by manipulating expense records. She pleaded guilty and was sentenced to two years in the House of Correction, with a year to serve and the balance suspended for three years, during which time she is to pay restitution.

- **Commonwealth v. John Kilcommons** (Suffolk Superior Court) Kilcommons was an independent investment advisor associated with John Hancock who managed a large program investing funds deducted from City of Boston employees' paychecks. Beginning in 2000, Kilcommons began directing some of those funds into his own accounts. He pleaded guilty to multiple counts of larceny over \$250 and received two years in the House of Correction, suspended for five years and was ordered to pay \$235,000 of restitution and perform 200 hours of community service.
- **Commonwealth v. David Gill and Patricia Chu** (Norfolk and Plymouth Superior Courts) Gill and his wife Chu ran a boiler room operation that solicited advertising money from local businesses for a publication they dubbed "Youth Sports News." In reality, their operation was a con and they never intended to publish anything. Each pleaded guilty to multiple counts of larceny. Chu was placed on probation and Gill received two years in the House of Correction followed by three years of probation.
- **Commonwealth v. Kevin Bruce White** (Middlesex Superior Court) White was a con man who stole tens of thousands of dollars by impersonating executives of large companies, persuading merchants to "sell" goods to him on the companies' credit, and re-selling the goods. White received three years in the House of Correction.
- **Commonwealth v. Kenneth Cook** (Boston Municipal Court) Cook was an airline pilot based in Boston who failed to pay Massachusetts income taxes. He pleaded guilty to four counts of failing to file his tax returns and received three years of probation.
- **Commonwealth v. Marcus Aponte; Commonwealth v. Davis Gousie** (Bristol Superior Court) Aponte and Gousie each disseminated child pornography over the Internet. They both pleaded guilty and served House of Correction sentences and are now on probation for ten and five years, respectively.
- **Commonwealth v. Joan Pierce, et al.** (Worcester Superior Court) Pierce was an employee of Carrier Trucking in Fitchburg. Taking advantage of her access to the system that her employer used to wire money to truckers around the country, she wired over \$600,000 to 11 co-conspirators and split the proceeds. Joan Pierce has pleaded guilty and received three years in State Prison. Two co-conspirators, Kevin Dufresne and John Hermanson, have also pleaded guilty and have received sentences to the House of Correction.

STATISTICAL SUMMARY

During Fiscal Year 2005, CFCC charged forty-one individuals and corporations with various crimes, including bribery, false written reports, larceny over \$250, unauthorized access (computer hacking), identity fraud, making false entries in corporate books and dissemination of child pornography. Thirty-four people or companies pleaded guilty or otherwise admitted to sufficient facts in Superior or District Courts across the Commonwealth.¹ Sixteen of these defendants were ordered to serve time in a county House of Correction or State Prison. Additionally, these defendants have been ordered to pay in excess of \$1.5 million in restitution.

The following chart summarizes the case referrals that CFCC screened for possible investigation and prosecution during Fiscal Year 2005 and the number of those referrals that matured into formal investigations. When a case fell into more than one category, we have tried to place it based on the prospective lead charge.

CASE DESCRIPTION	CASES SCREENED	INVESTIGATIONS INITIATED
Auction/Internet Fraud (not from IFCC)	20	4
Child Exploitation	65	14
Computer Intrusions/Hacking	16	1
Threats/Harassment	16	5
Miscellaneous	5	1
Assist	7	N/A
TOTAL FISCAL YEAR 2005 COMPUTER CRIME	129	25

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

CASE DESCRIPTION	CASES SCREENED	INVESTIGATIONS INITIATED
Fiduciary and Insider Embezzlement	34	18
Home Improvement Fraud	9	0
Identity Fraud	24	9
Other Consumer Fraud	77	16
Theft of Trade Secrets or Other Intellectual Property	4	1
Other Larceny	20	7
Miscellaneous	14	5
TOTAL FISCAL YEAR 2005 ECONOMIC CRIME	182	56

CASE DESCRIPTION	CASES SCREENED	INVESTIGATIONS INITIATED
State Employee Corruption	29	8
Municipal Employee Corruption	65	17
Theft from the Commonwealth, Cities and Towns	12	11
Tax Fraud	10	7
Miscellaneous	8	1
Legal Advice or Assistance	2	1

CASE DESCRIPTION	CASES SCREENED	INVESTIGATIONS INITIATED
Crimes against the Commonwealth	5	2
Auditor's Reports and Ethics Notifications Reviewed	89	N/A
TOTAL FISCAL YEAR 2005 PUBLIC CORRUPTION	220	47
TOTAL FISCAL YEAR 2005 MISCELLANEOUS MATTER	10	0
FISCAL YEAR 2005 TOTAL	541	128

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division has historically been very involved in encouraging and coordinating efforts between the public and private sectors to promote Internet and computer security. This year was little different. An AAG sits on the sub-committee of ITD's Enterprise Security Board that coordinates the Commonwealth's participation in the multi-state Information Sharing and Analysis Center ("ISAC"). This ISAC allows the Commonwealth to share information regarding cyber and physical security with other states and with the federal government and will then be a mechanism to disseminate appropriate information throughout state government and, we hope, to large municipalities as well. The AGO has been hosting the periodic meetings of this group. Additionally, division members continued to play a leadership role within Infragard Boston, the FBI's public/private cybersecurity outreach program.

Without a doubt, however, the highlights of our outreach efforts come as a result of our participation in the Internet Crimes Against Children ("ICAC") Task Force. Our dedicated ICAC prosecutor — the first in the country — spends a significant amount of her time on outreach and training both inside the Commonwealth and throughout the country, as well as providing legal advice to the Task Force, and, of course, prosecuting cases. Perhaps most notably, she has created the Computer Crime Working Group that meets quarterly and is comprised of prosecutors, police officers and computer forensic analysts from around the Commonwealth who work on computer crime matters. This group has shared techniques and insights in this dynamic area and provided training that the attendees may

take back to their offices and pass on to their colleagues. Additionally, she has been coordinating an important effort to provide probation and parole officers and DYS case workers with the training and tools to supervise the computer usage of sex offenders and others who would be likely to use computers to commit or facilitate their crimes.

In the area of public corruption, we continue to work hard to maintain and renew relationships with other agencies working in similar areas and now have regular contact with the FBI, the Office of the State Auditor, the Inspector General, the State Ethics Commission, the Department of Education, and the Public Employee Retirement Board.

Finally, CFCC prosecutors have continued to work closely with staff from the Executive Bureau to research, draft and/or promote various legislative changes. The changes included amendments to the administrative subpoena and search warrant statutes that would assure that local law enforcement has the tools to protect its constituencies from computer crime, and a new identity theft bill.^q

OUTREACH, EDUCATION, AND TRAINING

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

Among the highlights in this area over the last year were participation in a number of law enforcement training conferences focused on computer crime that were sponsored by various entities including the ICAC Task Force, the American Prosecutors Research Institute, and the National Association of Attorneys General (NAAG).

Working with another member of the Bureau, the ICAC prosecutor also devotes substantial amounts of time providing Internet safety training in the schools.

What is more, we participated in various programs community service programs including the Eighth Grade Academy and the mock trial program of Citizen Schools. Finally, to assure that we, ourselves, remain current in the dynamic field of computer crime, AAG's attended a number of free training programs including NAAG and NAC classes, seminars sponsored by the National Center for Missing and Exploited Children and computer forensics training.

VICTIM/WITNESS ASSISTANCE DIVISION

The Victim/Witness Assistance Division (VWAD) was developed to meet the following goals: (1) to provide crisis assessment and intervention to crime victims and witnesses to facilitate their emotional, psychological, physical and financial recovery from victimization; (2) to reduce the level of secondary victimization associated with victims' and witnesses' involvement in the criminal justice system and other collateral systems; and (3) to aid in the prosecution of criminal cases by ensuring that crime victims and witnesses are provided with the rights and services mandated by the Victim Rights Law (G.L. c. 258B). Advocates provide victim advocacy, witness management and consultation to the following divisions in the Criminal Bureau: 1) Appeals; 2) Criminal Justice Policy; 3) Corruption, Fraud and Computer Crime; 4) Environmental Crimes Strike Force; 5) Financial Investigations; 6) Special Investigations and Narcotics; and 7) the State Police Detective Unit.

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

During Fiscal Year 2005, VWAD was staffed by Director Kathy Morrissey.

SIGNIFICANT CASE SUMMARIES

Three cases of particular note illustrate work in priority areas set by Attorney General Tom Reilly.

- **Commonwealth v. Timothy White** Special Investigations and Narcotics Division (SAAG's Bill Bloomer, Dean Mazzone; VWA Kathy Morrissey; MSP Lt. Dermot Quinn and Det. Lt. Bruce Gordon) Sergeant Timothy White was a state trooper assigned to the Narcotics Inspection Unit. The investigation of Sergeant White began in late January, 2003 when he was arrested in Stoughton for committing acts of domestic violence on his wife who revealed to the responding officers that Sergeant White was a user of cocaine. The investigation revealed that Sergeant White had stolen approximately 13 kilograms of cocaine from the State Police Bunker. White

was indicted for these thefts, trafficking cocaine and distributing other drugs. White was also charged with domestic violence offenses related to three separate incidents perpetrated on his wife at their home.

On May 31, 2005, a jury in Norfolk Superior Court found the defendant, Timothy White, guilty of two counts of Assault and Battery. There were twelve indictments before the deliberating jury. The jury found the defendant not guilty of five of the indictments: Distribution of a Class B Substance; Armed Assault with Intent to Murder; two Counts of Assault and Battery with a Dangerous Weapon; and one Count of Assault and Battery. The jury was deadlocked on five remaining drug indictments: Trafficking Cocaine 200+; Larceny by Scheme \$250+; Distribution of Class D Substance; Conspiracy to Distribute Class D Substance; and Conspiracy to Traffick Class B Substance.

On June 1, 2005, the defendant was sentenced to two and one-half years in the House of Correction, committed, and three years of probation with conditions. Bail was set at \$25,000 cash. A retrial on the remaining indictments is scheduled for October 17, 2005. The defendant was released from jail on July 21, 2005, as he had incurred substantial time served since his arraignment in 2003.

Kathy Morrissey was assigned to the White case to provide victim advocacy to the domestic violence victim, Maura White. Victim/witness services included: crisis counseling; safety planning; court accompaniment, including obtaining a permanent restraining order; and notification of case status to the victim with courtesy contact to her counsel.

The White trial began on May 2, 2005; the verdict was returned on May 31, 2005. At trial, Kathy Morrissey provided victim advocacy to the victim, including securing a safe waiting area. Kathy Morrissey also provided critical witness management services to a host of key, and sometimes challenging, witnesses including the co-defendant, a proffered co-conspirator, a bouncer, collateral law enforcement personnel, an eBay representative, and a U.S. Postal Agent. Kathy Morrissey also handled securing travel arrangements and hotel accommodations. Kathy Morrissey consulted daily with the prosecution team to address victim/witness issues and was on call 24/7 to provide assistance outside the courtroom. The victim/witness advocate role was a critical link in this prosecution.

- **James M. Kater v. Michael T. Maloney** Appeals Division (AAG Susanne Reardon, VWA Kathy Morrissey) On April 4, 2005, the Criminal Bureau received a copy of Judge Saris' Order dated March 31, 2005 that the habeas corpus petition be dismissed.

The Commonwealth's prosecution of James Kater resulted from the 1978 kidnap and murder of 15 year-old Mary Lou Arruda. On December 23, 1996 — after the fourth trial in Middlesex Superior Court — Kater was convicted of first-degree murder and kidnapping and sentenced to life in state prison without parole.

Following this case to conviction and beyond was, and has been, a long and torturous process for Joanne Arruda, the mother of the victim. Kathy Morrissey has been working with Ms. Arruda since 2002 to provide notification of the case status in the federal appellate court. Ms. Arruda remains vigilant and follows any court-related activity in this case. Kathy Morrissey spoke with Ms. Arruda in April, 2005 and followed up with a letter enclosing a copy of Judge Saris' Order.

- **Commonwealth v. Alan S. Katz** Corruption, Fraud and Computer Crime Division (AAG Deb Walsh, VWA Kathy Morrissey) On October 27, 1998, in Middlesex Superior Court, the defendant, Alan S. Katz, was ordered by Judge White to pay restitution in the amount of \$27,921.70. The defendant pleaded guilty in 1994 to multiple larcenies from computer companies some of which ceased to do business as a result of the crimes. Initially, the defendant agreed to pay \$20 a month towards restitution. As of March 2004, the defendant had paid only \$480 towards restitution. On March 5, 2004, a hearing was held in Worcester Superior Court and the defendant was ordered to increase his restitution payments to \$200 a month. The defendant then filed a motion to modify the payments claiming he could not afford the monthly increase. The Commonwealth objected. On September 13, 2004, ten years after the plea, and after multiple appearances by the Commonwealth in Worcester Superior Court, the defendant paid restitution in full.

STATISTICAL SUMMARY

During Fiscal Year 2005, the Victim/Witness Assistance Division provided services to a high volume of victims and witnesses. Victim advocacy and witness management services were provided by the division on 32 cases across the Commonwealth. The case breakdown is as follows:

<u>REFERRAL SOURCE</u>	<u>NUMBER OF CASES</u>
Appeals Division	6
Corruption, Fraud and Computer Crime Division	22
Special Investigations & Narcotics Division	1
Conflict Case	1
Medicaid Fraud Control Unit	
Business Labor and Protection Bureau	1
Other - United States Attorney's Office	1
TOTAL	32

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division provided daily in-house consultation to prosecutors, investigators, and state troopers by screening and responding to duty calls and correspondence from the public when victim/witness issues were identified.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2005, the division maintained numerous outreach efforts in community activities and both taught and attended training classes inside and outside of the Office of the Attorney General, including:

- Attending bi-monthly meetings of the Victim and Witness Assistance Board chaired by Attorney General Tom Reilly;
- Attending statewide Victim/Witness Directors meeting sponsored by the Massachusetts District Attorneys Association;
- Serving as the Attorney General Liaison at bi-monthly meetings of the Boston Area Sexual Assault Coalition at Massachusetts General Hospital, Beth Israel Deaconess Medical Center, and the Boston University School of Public Health;
- Attending the Annual Victim Rights Conference in April 2005 sponsored by the Massachusetts Office for Victim Assistance, the Victim and Witness Assistance Board, Attorney General Tom Reilly, and the Massachusetts District Attorneys Association. The division director served on the Planning Committee for this event and received Award for Dedicated Victim Advocacy (20 years);
- Attending 9 educational training seminars across the Commonwealth relating to victim/witness issues;
- Consulting with the Victim Services Coordinator and Policy Analyst at the Massachusetts Office for Victim Assistance (MOVA) regarding the state-of-the-state of victim services for fraud victims; and
- Consulting with the Massachusetts Office for Victim Assistance as a member of the Victim Rights Law Project Working Group to propose amendments to enhance the Victim Bill of Rights (G.L. c. 258B).

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

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

The SI&N Division, through its Asset Forfeiture Unit, initiates and pursues civil and criminal forfeiture and nuisance actions of property related to the sale, distribution, and facilitation of drug related offenses as well as gaming violations. Funds recovered by the Unit are distributed in accordance with the forfeiture laws.

Among the general categories of crimes the SI&N Division investigated and/or prosecuted during Fiscal Year 2005 were the following: armed robbery, narcotics trafficking and related offenses, armed career criminal violations, armed assault with intent to murder, assault and battery with a dangerous weapon, breaking and entering with intent to commit a felony, perjury, larceny of a motor vehicle, extortion and habitual criminal offenders. This division also was charged with investigating possible acts of violence related to the Democratic National Convention in the event that such acts occurred.

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, Immigration and Customs Enforcement, the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigations, the Suffolk County Sheriff's Department, the Department of Corrections, District Attorneys Offices, and various state and local police departments and task forces throughout the Commonwealth and in some circumstances across the country. These joint undertakings primarily targeted large-scale drug distribution and armed career criminals.

Fiscal Year 2005 was marked by major transitions in the makeup of the unit, which functioned for more than half the year at half-staffing levels. Members of the division for all or part of Fiscal Year 2005 included Assistant Attorney General Eileen M. O'Brien, Division Chief; Assistant Attorneys General Jennifer Adreani; Jennifer Doherty; Robert Fisher; Patrick Lee; Cheryl O'Connell; Mary P. Phillips (Asset Forfeiture); and Tracie Fernandes, support staff. Assistant Attorney General Matt Shea, who is assigned to the Springfield regional office, also handled SI&N cases. Approximately twenty-one (21) Massachusetts State Troopers are assigned to the SI&N Division within the Attorney General's Office. During Fiscal Year 2005, Captain Stephen Matthews oversaw the command of all State Police Detectives assigned to the Attorney General's Office including SI&N troopers. Lieutenant Francis Matthews, with Lieutenant Richard Prior (Boston) and Lieutenant John Gibbons (WMAS), formed the central core of the remaining command structure for SI&N troopers.

SIGNIFICANT CASE SUMMARIES

- **Three-Month Wiretap Investigation** Commonwealth v. Jeremy Katz (Middlesex Superior Court); Commonwealth v. Joshua Katz (Middlesex Superior Court); Commonwealth v. Robert McCormick (Middlesex Superior Court); Commonwealth v. Andrew McCormick (Middlesex Superior Court); Commonwealth v. Kory Arquette (Middlesex Superior Court); Commonwealth v. Thomas Cataloni (Middlesex and Norfolk Superior Courts) Beginning in the summer of 2004, Massachusetts State Police assigned to the Attorney General's office began an investigation of a group responsible for distributing large quantities of hydroponic marijuana in the greater Boston and Providence areas. Following a wiretap investigation in Canada, the State Police began working with Agents from Immigration and Customs Enforcement (ICE) to investigate the local distributors. The targets of the investigation were skilled at counter-surveillance techniques and were particularly sophisticated in their use of cutting-edge communications technology. Ultimately, the State Police and Attorney General's Office with the assistance of ICE, conducted a wiretap investigation between November 2004 and January 2005 targeting the two at the head of this organization: Jeremy Katz and Robert McCormick. For three months, SI&N applied for and obtained fourteen (14) wiretap warrants covering four (4) communications devices. In addition, state police and federal agents installed and monitored a Global Positioning Satellite device on one target's car and installed and monitored a telephone pole mounted surveillance camera outside the home of another target. The investigation concluded on January 22, 2005 with the execution of ten (10) search warrants in Burlington, Sharon and Walpole in addition to locations in Rhode Island. The narcotics seized in this investigation totaled approximately 90 pounds of hydroponic marijuana, more than 80 percocet pills weighing more than 28 grams and a loaded and functional .45 caliber handgun. Police arrested five (5) defendants in Massachusetts and Rhode Island authorities arrested two additional defendants in Rhode Island. Six (6) defendants stand charged with narcotics offenses in Middlesex and Norfolk Counties.
- **Simone/Gioacchini Wiretap** (Suffolk and Middlesex Superior Courts) Following an extensive wiretap investigation in the fall of 2000, Frederick Simone a made member of La Casa Nostra, and another LCN member, Vincent "Didi" Gioacchini were indicted in Middlesex and Suffolk Superior Courts, respectively for being Armed Career Criminals. After years of protracted litigation, defendant Gioacchini was convicted by a jury in Suffolk Superior Court in January 2005 and was sentenced to four years in state's prison followed by eighteen months suspended. Following that conviction, defendant Gioacchini pleaded to pending charges in the federal system and co-defendant Simone likewise pleaded to the state and federal charges and received a 5 to 6 years state prison sentence.

- **Commonwealth v. John Paul LeBlanc** (Middlesex Superior Court); **Commonwealth v. Milko Rosario** (Middlesex Superior Court); **Commonwealth v. Raul Rivera** (Middlesex Superior Court); **Commonwealth v. Alfred Bears** (Chelsea District Court) From July through September 24, 2004 the Massachusetts State Police, DEA and Waltham Drug Task Force conducted an undercover investigation in Everett and Malden. During the investigation, John Paul LeBlanc sold cocaine to the undercover officer in ounce and multiple ounce quantities on 5 occasions. During two deliveries over 28 grams, police identified Milko Rosario as LeBlanc's supplier. During one delivery over 100 grams, police identified Raul Rivera as the supplier.

On September 24, Rosario arrived at a meeting in Everett to deliver 9 ounces to LeBlanc. Police arrested both men and found 9 ounces of cocaine in Rosario's pants. A search of Rosario's residence revealed \$28,000 in cash, cut, a scale, and records. Police searched Rosario's stash pad and found Bears, holding a small amount of cocaine. Bears pleaded guilty in Chelsea District Court and the three remaining defendants were indicted for trafficking in cocaine. Defendants Rivera and Rosario defaulted and defendant LeBlanc is currently awaiting trial.

BOGLE WIRETAP

- **Commonwealth v. Clyde Bogle** (Hampden Superior Court); **Commonwealth v. Juana Edmonds** (Hampden Superior Court); **Commonwealth v. Myra Marable** (Hampden Superior Court); **Commonwealth v. James Voorhies** (Hampden Superior Court); **Commonwealth v. Brenda Featherstone-Holloman** (Hampden Superior Court); **Commonwealth v. Cynthia Green** (Springfield District Court); **Commonwealth v. Myoshi Dickson** (Springfield District Court); **Commonwealth v. Yuri Rankin** (Hampden Superior Court) In November 2003, the Massachusetts State Police assigned to the Attorney General's Office and prosecutors in SI&N conducted a wiretap investigation targeting a violent, crack-cocaine trafficking organization headed by an individual named Clyde Bogle. Bogle had successfully avoided prosecution for years in the Springfield area when witnesses repeatedly recanted their prior statements at trial. Bogle and his crack-cocaine business were shut down after an intense two-week wiretap investigation led to the issuance of search warrants resulting in the seizure of trafficking quantities of crack and thousands of dollars in proceeds. Eleven individuals were charged in Springfield District and Hampden Superior Courts. AAG Matthew Shea successfully concluded the prosecution of these co-defendants with the remaining eight (8) defendants all pleading guilty in Hampden Superior Court. Clyde Bogle pleaded guilty to Trafficking 28+ grams of Cocaine, Inducing Minor to Distribute Cocaine and Conspiracy. Bogle was sentenced on 5/13/05 to 10 yrs. in State Prison. Myoshi Dickson pleaded guilty on 5/20/05 to Trafficking 14+ grams Cocaine and Conspiracy to Violate Drug Law and was sentenced to 2 yrs. House of Correction, 18 months

From & After and 2 yrs. Probation. Yuri Rankin pleaded guilty on 5/25/05 for Distribution of Cocaine, School Zone Violation and Conspiracy to Violate the Drug Laws and was sentenced to 2 yrs. 6 months House of Correction. On 5/26/05 James Voorhies pleaded guilty to Conspiracy to Violate Drug Laws and placed on probation for 2 yrs. Cynthia Green pleaded guilty to Trafficking 28+ grams Cocaine and Conspiracy to Traffick Cocaine on 6/01/05 and was sentenced to 2.5 yrs. in House of Correction. Juana Edmonds, Myra Marable and Brenda Featherstone-Holloman were each sentenced to 3-5 yrs. in State Prison on 6/02/05 after pleading guilty to Trafficking 14+ grams of Cocaine.

- Commonwealth v. Waldemar Diaz-Gonzalez; Commonwealth v. Carlos Rivera (Suffolk Superior Court) In September 2004, an investigation into cocaine and heroin activities in Revere resulted in the delivery of close to ½ kilogram of cocaine and 200+ grams of heroin at a parking lot in Revere. Surveillance set up on a suspected apartment/stash on Beach Street and the anticipated meet location. Two targets left Beach Street and arrived at location but did not stop and a chase ensued. Both above-identified targets were arrested in the car and State Police seized 200+ grams heroin and 300+ grams of cocaine. After getting post-Miranda statements from a female potential target at Beach Street, State Police got consent to search and a search warrant for the apartment and seized approximately \$1,600, as well as another 110 grams of heroin and 200 grams of cocaine. Both males were indicted for trafficking in cocaine and heroin and school zone violations. The case is scheduled for trial in September 2005.
- Commonwealth v. George Dabrolet; Commonwealth v. Ryan Hennessey (Norfolk Superior Court) State Police identified a house in Holbrook and a target selling Oxycontin pills. Following a month long investigation, State Police executed a search warrant on Friday, October 22, 2004 and recovered in excess of 1,500 Oxycontin pills (OC 80's), Percocet pills, other narcotics and \$65,000 in cash. They arrested Hennessey and another male, George Dabrolet of Weymouth. Both defendants were indicted for trafficking in Opium Derivatives. Their motions to suppress were denied and the defendants are awaiting trial.
- Commonwealth v. Domenic Baldassari; Commonwealth v. Patrick MaGee (Middlesex Superior Court) Following an investigation by the State Police and the Drug Enforcement Agency, the two above identified defendants made several sales of 100 Oxycontin pills to an undercover officer in Cambridge. Both defendants were arrested on May 5, 2005 and are currently awaiting trial for Trafficking in an Opium Derivative, Conspiracy and School Zone Violations.

- **Commonwealth v. Timothy White**; **Commonwealth v. Robert Crisafulli** (Norfolk Superior Court) On January 27, 2003, Sergeant Timothy White of the Massachusetts State Police was arrested at his home at 65 Southworth Court, Stoughton, MA, after he allegedly assaulted his wife, Maura White, with his service weapon — a .40 caliber Sig Saur handgun. At the time of his arrest, Sgt. White was assigned to the Narcotics Inspection Unit (NIU) of the State Police. Subsequent investigation revealed approximately 13 kilograms of cocaine and other narcotics as missing from the NIU storage facility in Framingham. After interviews of witnesses and search warrant executions, Sgt. White was indicted for, among other things, the theft and distribution of nearly all the missing cocaine as well as varying amounts of marijuana and ecstasy taken from the bunker. An acquaintance of the Whites named Robert Crisafulli allegedly sold multiple ounce quantities of cocaine for White from October through December of 2002. On February 28, 2003, troopers searched a storage bin in Hyde Park rented by Crisafulli and discovered approximately 700 grams of cocaine. These cases came to the Attorney General's Office, specifically to the SI&N Division, upon requests from the Massachusetts State Police and the Norfolk County District Attorney's Office. After a protracted trial in May 2005, the jury returned partial verdicts convicting the defendant of two counts of assault and battery. The jury deadlocked on the majority of the drug charges and the case is scheduled for trial in October of 2005.

RIZZO WIRETAP

- **Commonwealth v. Anthony Rizzo** (Suffolk and Middlesex Superior Courts); **Commonwealth v. Paulo Tizzano** (Suffolk Superior Court); **Commonwealth v. Pasquale Regnetta** (Suffolk Superior Court); **Commonwealth v. Richard Moretto** (Suffolk and Middlesex Superior Courts); **Commonwealth v. William Meehan** (Suffolk Superior Court); **Commonwealth v. Andrew Arinello** (Suffolk and Middlesex Superior Courts); **Commonwealth v. Dean Rosati** (Suffolk and Middlesex Superior Courts); **Commonwealth v. Louis Carpinto** (Suffolk Superior Court); **Commonwealth v. Wilberto Pagan** (Middlesex Superior Court); **Commonwealth v. Norge Olivero** (Middlesex Superior Court); **Commonwealth v. Frank Coscarelli** (Middlesex Superior Court) On December 19, 2002, over 130 State, Federal and local police officers executed 17 search warrants at locations in the North End and throughout Greater Boston following the SI&N Divisions investigation into the criminal activities of La Cosa Nostra. Police seized 13 guns, explosive devices, hundreds of Percocets, trafficking quantities of cocaine and marijuana, and approximately \$132,000 in drug money. The 15 month investigation, dubbed Operation Neighbor-Hoods, involved the electronic surveillance of seven telephones and the placement of a bugging device and GPS Tracking System in a targets vehicle. Eighteen individuals were arrested or charged, including the primary target, Anthony Rizzo, an alleged made mafia solidier.

As a result of the concerted efforts of the State Police and AAG Patrick Lee, five defendants pleaded prior to Fiscal Year 2005, another defendant pleaded this fiscal year and the remaining defendants are scheduled for motions to suppress or changes of plea in the fall.

OPERATION COLUMBIA GOLD – WIRETAP

- Commonwealth v. Mario Reyes (Middlesex and Suffolk Superior Courts); Commonwealth v. Monica Reyes (Middlesex and Suffolk Superior Courts); Commonwealth v. James Abreus (Suffolk Superior Court); Commonwealth v. Faber Aldana (Middlesex Superior Court); Commonwealth v. Gilberto Cruz (Middlesex Superior Court); Commonwealth v. Jose Rivera (Suffolk Superior Court); Commonwealth v. William Torres (Middlesex and Suffolk Superior Courts); Commonwealth v. Carlos Parra (Suffolk Superior Court) This DEA Task Force investigation of an international drug distribution organization revealed that the principals of the organization regularly obtained and distributed kilograms of cocaine and heroin as well as thousands of MDMA (ecstasy) pills, and also imported the drugs into the United States. From September 2001 to November 2001, agents and officers monitored five telephones pursuant to court-ordered electronic surveillance warrants. The initial target, Monica Reyes, sold over 100 grams of heroin to an undercover trooper on several occasions, and approximately 1 kilogram of heroin was interdicted from Costa Rica based on the information from the wiretap. Additionally, New York office of DEA initiated a wiretap investigation based on the intelligence from this case, which led to the seizure of approximately 1.5 additional kilograms of heroin and a handful of arrests. A shipment of 18 kilograms of cocaine, part of which was destined for Monica Reyes was also seized. On November 2, 2001, after another principal target, Mario Reyes Jr. was intercepted bringing approximately 700 grams of cocaine to the Boston area from New York, 9 search warrants were executed and approximately 500 grams of additional cocaine were seized. Currently, 8 defendants stand charged of narcotics offenses in Middlesex and Suffolk. Defendant Abreus pleaded and was sentenced in March 2005. The remaining defendants are scheduled for trials or pleas in the fall.

- Commonwealth v. James A. Nolan (Suffolk Superior Court) In February 2004, the defendant, James Nolan, was arrested after he shot a Boston Police Special Operations officer through the front door of his apartment with a .45 caliber handgun while that officer was attempting to execute a search warrant along with other MOP (Mobile Operations) team members. The bullet struck the officer in his side and lodged itself into his tactical vest. A Superior Court judge had previously issued the warrant — which authorized a search of the residence for marijuana, firearms, and ammunition — to troopers assigned to the Attorney General's Office. A search of the defendant's apartment uncovered one loaded H & K .45 caliber

handgun, a spent .45 caliber shell casing, several rounds of loose ammunition, a bullet proof vest, a couple of ounces of marijuana packaged for distribution, a digital scale, approximately \$1565.00 in U.S. currency, and personal papers in the defendant's name as well as his belongings. On April 1, 2004, a Suffolk County Grand Jury returned indictments charging Nolan with Armed Assault with Intent to Murder in violation of c. 265, § 18(b), Assault and Battery with a Dangerous Weapon in violation of c. 265, § 15A(b), Assault and Battery of a Police Officer in violation of c. 265, § 13D, Possession of a Firearm in violation of c. 269, § 10(h), Possession of Ammunition in violation of c. 269, § 10(h), Possession of Marijuana with Intent to Distribute in violation of c. 94C, § 32C(a), and Violation of a Drug Offense within a School Zone in violation of c. 94C, § 32J. Nolan is scheduled for trial in October 2005.

STATISTICAL SUMMARY

At any given time, the division generally has close to one hundred (100) cases pending in various courts throughout the Commonwealth, over two dozen ongoing investigations, and a handful of post trial motions that require written responses and court appearances. The statistical breakdown of the number of arrests, criminal cases initiated, and cases disposed during Fiscal Year 2005 is set forth below.

GENERAL CASE INFORMATION

Felony Arrests	23
Criminal Cases Initiated	25 (2 Default Removals)
Cases Disposed	44

From July 1, 2004, through June 30, 2005, State Police assigned to the SI&N Division made approximately twenty-three (23) felony arrests. Prosecutors in the division in turn successfully disposed of forty-four (44) pending cases in the Massachusetts Superior and District Courts, while initiating approximately twenty-five (25) new cases in those same courts. Six of the 44 convictions were attained by means of guilty verdicts following jury trials in Superior Courts in Hampden, Norfolk and Suffolk Counties. Of the number of drug cases investigated by the division in Fiscal Year 2005, approximately five percent (5%) 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. Virtually all of these cases involved trafficking large quantities of these drugs.

FIREARMS

Guns Seized or Purchased	5
Individuals Charged with Firearms Offenses	2

From July 1, 2004, through June 30, 2005, State Police assigned to the SI&N Division seized five (5) firearms, including a 9 mm handgun, a revolver, several rifles and a .45 handgun and ammunition. Based upon these seizures, prosecutors in the SI&N Division charged two (2) individuals with several firearms offenses including armed career criminal violations.

ASSET FORFEITURE

Civil Forfeiture Cases Initiated	6
Civil Forfeiture Cases Disposed	16

During Fiscal Year 2005, the Asset Forfeiture Unit initiated six (6) new civil forfeiture actions (not including forfeitures pursued by means of criminal motions) and concluded sixteen (16) actions involving money, cars, and jewelry. By way of example, the unit commenced civil actions against cars and money that were used to facilitate the distribution of narcotics or were purchased with the proceeds of the distribution of narcotics following the Katz Wiretap.

WIRETAPS

Wiretap Warrants Applied for	14
Wiretap Warrants Received	14
Devices Tapped	4
One-Party Consent Warrants Applied for	6
One-Party Consent Warrants Received	6

A significant tool that the division utilized to penetrate and dismantle complex illegal enterprises during Fiscal Year 2005 was electronic surveillance. Over the past year, troopers assigned to this division have on numerous occasions equipped themselves and informants with electronic body wires, pursuant to so-called *Blood* warrants, to intercept and record criminal conversations with unsuspecting targets. Additionally, from July of 2004 through June of 2005, the SI&N Division executed fourteen (14) court-authorized wiretap warrants (excluding one-party consent /*Blood* warrants). These warrants authorized law enforcement officers to intercept, monitor, and record criminal communications occurring over four cellular telephones. In addition, as part of that investigation the division also applied for and obtained a warrant authorizing the attachment of a GPS device on one of the vehicles used by the drug ring and that device assisted state and federal law enforcement in conducting surveillance, which at times had the targets as far away as Rhode Island, Vermont and New York. 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 assist police officers and fellow prosecutors in the law of search and seizure and electronic surveillance.

2703(D) WARRANTS

2703(d) Emergency Warrants Applied for	2
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2703(d) Emergency Warrants Ordered	2
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The expertise of the prosecutors and troopers assigned to SI&N is often of the utmost assistance to law enforcement facing emergency situations. For example, on several occasions during Fiscal Year 2005, prosecutors and troopers assigned to SI&N quickly and successfully obtained emergency warrants under Section 2703(d) of the federal wiretap statute which enabled law enforcement to obtain cell-site tower information to track down wanted targets. On one occasion law enforcement was attempting to locate a man suspected of kidnapping two minor children and on another occasion law enforcement was tracking down an escaped convict who had been convicted of armed assault with intent to murder. Both suspects were ultimately apprehended, along with another parolee violator. All three were apprehended without serious physical injuries to others in the process.

POST-TRIAL MOTIONS

Post-Trial Motions Filed by Defendants	9
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Post-Trial Motions Disposed	9
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In addition to prosecuting pending criminal cases, Assistant Attorneys General in the SI&N Division responded to seven (7) post-trial motions. These motions, filed by convicted felons, sought guilty plea withdrawal, new trials and sentencing appeals. Of the number of post-trial motions filed, other than two, which were allowed to correct clerical errors, all others were denied.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

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. Some of these extracurricular contributions include service on the Youth Violence Task Force; the Citizens School Community Outreach Program, which allows students an opportunity to participate in a mock trial as prosecutors and criminal defense attorneys; Northeastern University's Moot Court Competition; the Springfield Task Force addressing inner-city drug and gun problems; MCLE; multi-agency panel on Loan Forgiveness and Assistance Program for Public Employees; and the Massachusetts Law Review.

During Fiscal Year 2005, attorneys in the SI&N Division were also required to act as point persons for the office on a variety of topics that require specialized knowledge in certain areas of law. For instance, prosecutors in the division provided advice and assistance to attorneys and police officers across the state in rendition matters. In addition, an Assistant Attorney General fields all public record inquiries directed to the division. Prosecutors also served as the division's intern coordinators, who in that capacity supervise and monitor the progress of law student interns assigned to the division.

OUTREACH, EDUCATION, AND TRAINING

Members of the division attended trainings both inside and outside the office during Fiscal Year 2005 in an effort to keep abreast with important current issues and trends in the law. These trainings encompassed a variety of topics including ethics, anti-discrimination, computer forensics, international investigative issues and trial advocacy techniques. Some of the trainings attended by Assistant Attorneys General in the division included Grand Jury Practice; MCLE's program on Attacking and Defending Search Warrants; and the MDAA's DNA Training.

ENVIRONMENTAL CRIMES STRIKE FORCE

The Massachusetts Environmental Crimes Strike Force (ECSF) is a unique interagency enforcement tool used in the investigation and prosecution of the Commonwealth's environmental enforcement efforts. Through the cooperation of the Attorney General, the Secretary of Environmental Affairs, the Department of Environmental Protection (DEP) and the Massachusetts Environmental Police, the ECSF brings specialized prosecutorial, technical and police resources under a single umbrella. The ECSF thus provides the legal, scientific and investigative expertise necessary to identify environmental violations, evaluate their impact on public safety and the environment, and develop the evidence necessary to prosecute environmental crimes. Among the general categories of environmental crimes the ECSF Division investigated and/or prosecuted during Fiscal Year 2005 were the following: illegal treatment and disposal of hazardous waste; discharging pollutants to the waters of the commonwealth; illegal dumping; open burning; illegal removal of asbestos; and filling or altering of wetlands. In addition the ECSF division investigated or prosecuted traditional white-collar crimes for example: larceny by false pretense, procurement fraud, and identity fraud. In addition, division attorneys often work with local police and fire departments, federal law enforcement officials, Attorney General's Offices from neighboring states, District Attorney's Offices from across the state and investigators assigned to other state agencies.

Members of the division for all or part of Fiscal Year 2005 included Paul J. Molloy, Division Chief; Assistant Attorney General Douglas Rice; and Stacey Glynn, support staff. Three Massachusetts Environmental Police Officers were assigned to the ECSF within the Attorney General's Office: Lt. Gail Larson, Sgt. Pat Haley, and Officer Chris Baker.

SIGNIFICANT CASE SUMMARIES

Highlights of cases handled by the Environmental Crimes Strike Force in Fiscal Year 2005 include:

- **Commonwealth v. Richard Denham** (Suffolk Superior Court) On January 19, 2005, a Suffolk County jury returned guilty verdicts against Richard Denham, a vice-president of an environmental consulting firm, on two counts of procurement fraud, for filing fraudulent environmental plans with the Central Artery/Tunnel Project. On February 15, 2005, Judge Brady sentenced Denham to two years probation and two hundred hours of community service.

- **Commonwealth v. Glenn Seaver** (Worcester Superior Court) On June 10, 2005, a Worcester County Grand Jury returned two indictments against Glenn Seaver, a licensed asbestos abatement contractor, for violating the Clean Air Act. Seaver conducted uncontained removal of asbestos containing material, resulting in the release of carcinogenic fibers, contaminating a condominium complex in Worcester and a residence in Westborough.
- **Commonwealth v. Jocelyn Toussaint** (Worcester District Court) On April 28, 2005, an application for a criminal complaint was filed in Worcester District Court against Jocelyn Toussaint for violations of the Clean Air Act. Toussaint, a residential landlord, conducted an uncontained removal of asbestos containing material at his rental property resulting in the contamination of the basement, while the tenants were at home.
- **Commonwealth v. David Rothstein** (Great Barrington District Court) On June 22, 2005, an application for a criminal complaint was filed in Great Barrington District Court against David Rothstein for violations of the Clean Air Act and Labor and Industries Act; resulting from the illegal removal of asbestos from the Stagecoach Inn and Tavern. The Inn and Tavern were operational and open for business. Rothstein also failed to provide protective equipment to the employee, who was directed to dry rip the asbestos with no containment.

STATISTICAL SUMMARY

Investigations	Opened	19
Investigations	Closed	29
Indicted in Superior Court		1
Disposed in Superior Court		1
District Court Complaints Filed		2
Pending in Appeals Court		1

During Fiscal Year 2005, the Environmental Crimes Strike Force opened 19 investigations and closed 29 (some of which were opened in prior fiscal years). There was one individual indicted in Superior Court. District Court complaints were taken out against two individuals. There was one jury trial that resulted in a conviction in Superior Court.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Throughout Fiscal Year 2005 AAG Paul Molloy attended meetings with the Department of Environmental Protection, Executive Office of Environmental Affairs, Mass. Environmental Police, U.S. Coast Guard and Mass. Pilots Association, to plan implementation of the Buzzards Bay Oil Spill Legislation and responses to federal preemption challenges.

ECSF personnel, including AAG's and Environmental Police Officers assigned to the Strike Force, made presentations at all DEP regional offices throughout the state, on how to identify environmental crimes, sample, photograph and report suspected criminal activity to the Strike Force.

INSURANCE AND UNEMPLOYMENT FRAUD DIVISION

The mission of the Insurance and Unemployment Fraud Division (IUFD) has been to investigate and prosecute fraud against all types of insurers in Massachusetts, and against the Commonwealth's unemployment insurance system. IUFD prosecuted these crimes to protect Massachusetts businesses, consumers, and taxpayers from the higher premiums and taxes that are the ultimate result of the fraud.

IUFD's cases varied widely, including 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 and unemployment benefits, and fraud by businesses on the Commonwealth's unemployment security fund. IUFD gave special attention to policing fraud by insurance industry insiders, including insurance agents, claims adjusters, and damage appraisers, whose frauds could have had an especially corrosive effect on public confidence in the insurance and unemployment compensation systems. In addition, we have focused on staged accidents working with the Insurance Fraud Bureau Community Insurance Fraud Initiative (CIFI) to combat fraud in select communities such as Lawrence and Boston.

IUFD received referrals from a number of sources. One source was the Massachusetts Insurance Fraud Bureau (IFB), a non-governmental entity created by the Massachusetts Legislature and funded pursuant to statute indirectly by the Massachusetts insurance industry. In addition, IUFD received referrals from the Commonwealth's Human Resources Division, the Division of Unemployment Assistance (DUA), the Governor's Auto Theft Strike Force, the Department of Industrial Accidents, the Workers Compensation Rating and Inspection Bureau, the National Insurance Crime Bureau, and the

Social Security Administration. IUFD also received complaints and referrals from concerned citizens, private attorneys, and court personnel. The wide range of referrals helped demonstrate the IUFD's efforts in fighting insurance fraud throughout the Commonwealth.

IUFD also is a part of the Cooperative Disability Investigations (CDI) Unit. CDI is funded by the Social Security Administration (SSA), and is comprised of the SSA's Office of Investigations (OI), Office of the Inspector General (OIG), the Massachusetts Disability Determination Services (DDS), and IUFD. IUFD provides CDI with two AGO Investigators who conduct surveillance and provide the evidence used to prosecute Social Security disability-related fraud. Because a portion of Social Security disability benefits are paid for with state funds, this crime robs the Commonwealth's taxpayers twice: once as federal taxpayers, and again as state taxpayers. In Fiscal Year 2005, the CDI Unit completed investigations in a total of 46 cases. SSA savings for this time period was \$2,909,120 and Non-SSA savings for this time period was \$1,104,007. Thus, IUFD contributed to helping recover more than \$4,000,000 in taxpayers' monies.

During Fiscal Year 2005, IUFD staff included Glenn Cunha, Division Chief; Eliot Green, former Division Chief; Georgia Critsley, Deputy Division Chief; Assistant Attorneys General Alexandra Alland; David Andrews; Julie Brady; Tracy Brown; Kajal Chattopadhyay; John Compton; Melissa Gavegnano; Lea May; Ian McKenny; Ray Rowland; civilian investigators Kenneth Belson; Pepper Daigler; Brian Delaney; Tami Kelley; Byron Knight; Jason Kravetz; Cindy Walsh; and support staff members Gloria Luk-Bruno; Kathy Reyes; and Vicky Scolnick.

SIGNIFICANT CASE SUMMARIES

MOTOR VEHICLE INSURANCE FRAUD

- **Commonwealth v. Kenneth Knight** (Salem Superior Court) After a jury trial in Essex Superior Court, a Lawrence/Haverhill auto body shop owner, Kenneth Knight, was convicted of staging an accident, which he used to submit phony PIP claims and property damage claims. Knight was sentenced by Judge Elizabeth Fahey to 2 1/2 years in a House of Correction, one year to serve.
- **Commonwealth v. Melvin Martinez** (Salem Superior Court) Martinez was one of several co-defendants in the Kenneth Knight case, which involved a motor vehicle insurance fraud ring. Martinez pleaded guilty and was sentenced to three years probation, a \$1,000 fine, and ordered to obtain his GED.

- **Commonwealth v. Esmerlyn Diaz** (Essex Superior Court) Diaz was one of several co-defendants in the *Kenneth Knight* case, which involved a motor vehicle insurance fraud ring. Diaz pleaded guilty to one count Attempted Larceny and was sentenced to one year probation.
- **Commonwealth v. Miriam Mojica & Rafael Hernandez** (Pittsfield District Court) Mojica placed herself in an automobile accident that occurred outside her residence. Mojica's boyfriend, Hernandez, was driving the car at the time of the accident. Both Mojica and Hernandez filed false insurance claims stating that Mojica was the driver of the vehicle. A jury trial resulted in guilty verdicts for both defendants, with sentences of six months in a House of Correction, suspended for one year with probation, and 100 hours of community service.
- **Commonwealth v. Keith DeBarge** (Worcester District Court) Following a motor vehicle accident, the defendant sought lost-wage benefits while continuing to work. He pleaded guilty, which resulted in nine months to serve in a House of Correction, beginning on and after he completes his current six month sentence for a separate offense; approximately two years probation (to begin after DeBarge's release from the House of Correction and to end no later than July 11, 2006); and full restitution of \$5,487.94 to Amica Mutual.
- **Commonwealth v. Karl Clemmey, Jr.** (Norfolk District Court) Defendant was an auto appraiser who allegedly inflated his estimates on several vehicles and wanted a kickback for each one. A change of plea resulted in the defendant pleading guilty to insurance fraud, with a sentence of two years probation, \$2400 restitution, and a \$1500 fine.
- **Commonwealth v. Andre Rouse** (Norfolk Superior Court) Rouse, a claims adjuster for Norfolk and Dedham Insurance Company, took legitimate motor vehicle accident claims and added fraudulent claimants, thus embezzling funds from the insurance company for which he worked. He pleaded guilty at his arraignment and was sentenced to 2 ½ years in a House of Correction, suspended for 4 years; a \$20,000 fine; and as condition of probation, Rouse is prohibited from working in the insurance industry.
- **Commonwealth v. Richard Mojica, Kimberly Ballard, Bienvenida Mojica, Angela Lynch, Melvin Reyes, Robert Gamble, George Ivey** (Norfolk Superior Court) The defendants abetted Andre Rouse, a claims adjuster, by adding their names as claimants to otherwise legitimate accident claims in order to embezzle insurance funds. Once the funds were received, the defendants and Rouse split the ill-gotten proceeds. The seven co-defendants pleaded guilty in October 2004.

The sentences were as follows:

1. Angela Lynch: one year probation, 100 hours community service, and an \$800 fine.
 2. Kimberly Ballard: one year probation, 50 hours community service, and a \$200 fine.
 3. Bienvenida Mojica: one year probation, 50 hours community service, and a \$1200 fine.
 4. Robert Gamble: one year probation, 50 hours community service, and a \$300 fine.
 5. George Ivey: one year. probation, 50 hours community service, and a \$2000 fine.
 6. Melvin Reyes: one year. probation, 50 hours community service, and a \$700 fine.
 7. Richard Mojica: one year probation, 50 hours community service, \$700 fine.
- **Commonwealth v. Mario Espinosa** (Lowell District Court) Espinosa, a licensed insurance agent, struck a parked car (causing property damage) and was observed fleeing the scene. Espinosa subsequently filed a false insurance claim in which he claimed that he was the victim of a hit-and-run accident. As the trial was about to begin, Judge McGinnis allowed the defendant to admit to sufficient facts and continued the case without finding. Espinosa was given two years probation, and 200 hours of community service.
 - **Commonwealth v. Hassan Khowais** (Boston Municipal Court) Khowais claimed his car was stolen, when really he had shipped it to his brother in Israel six months earlier. A change of plea resulted in the defendant pleading guilty to insurance fraud and filing a false police report. Khowais was sentenced to two years probation, a \$1500 fine, and 100 hours of community service.
 - **Commonwealth v. Tracey Hurley** (Essex Superior Court) The defendant assisted her husband, Jeffrey Hurley, in committing serial motor vehicle and workers' compensation insurance fraud. A change of plea resulted in the case being continued without finding, and Hurley was placed on probation for one year and ordered to pay \$500 in court costs in lieu of a fine.

FRAUD BY PROFESSIONALS

- **Commonwealth v. Harvey Schneider** (Suffolk Superior Court) This optometrist engaged in multiple types of fraudulent schemes including billing for services not rendered, miscoding, upcoding, and billing for services after license suspension. The defendant defrauded approximately nine health insurers over \$350,000. A change of plea resulted in 2 ½ years in the House of Correction, committed, but stayed to July 1, 2005; three years probation; and restitution of \$373,000.
- **Commonwealth v. Joel Charles** (Dorchester District Court) Charles, a chiropractor, was working while collecting total disability benefits, which he began receiving after an alleged auto accident. Charles treated the passengers in the accident and others while allegedly disabled. Judge Horgan ordered the case continued without finding, with full restitution of \$4,920 to CNA Insurance, rather than proceed to trial as scheduled.

WORKERS' COMPENSATION FRAUD

- **Commonwealth v. James H. Dormon** (Brockton Superior Court) Dormon, a business owner, defrauded his workers' compensation carrier and the Division of Unemployment Assistance (DUA) by underreporting the number of employees and related payroll expenses. The workers compensation fraud was valued at \$268,000 and the DUA tax at approximately \$39,000. The defendant also failed to pay employee wages of approximately \$80,000. Dormon pleaded guilty and was sentenced to 364 days in the House of Correction, committed; \$150,000 restitution, of which \$50,000 was paid on the date of plea.
- **Commonwealth v. Horman Carcamo** (Suffolk Superior Court) This is a case in which an employee was working while collecting workers compensation for alleged injuries sustained while working on the Big Dig/Central Artery Tunnel. Carcamo was captured working on videotape, but not before he had received over \$40,000 in benefits. He pleaded guilty and was sentenced to six months in the House of Correction, suspended for three years, and \$25,000 restitution.
- **Commonwealth v. John Garceau** (Suffolk Superior Court) This is another case in which an employee was working while collecting workers compensation for alleged injuries sustained while working on the Big Dig/Central Artery Tunnel. Garceau pleaded guilty and was sentenced to one year in a House of Correction, with nine months to serve, and the balance suspended for one year.

- **Commonwealth v. Jeffrey Peacock** (Suffolk Superior Court) Peacock, who was allegedly injured while working on the Big Dig/Central Artery Tunnel project, continued to work other jobs while collecting workers compensation payments. A guilty plea resulted in a sentence of two years probation, 135 hours community service, and restitution in the amount of \$10,000.
- **Commonwealth v. Scott Taylor** (Suffolk Superior Court) This is another case in which an employee was working while collecting workers compensation for alleged injuries sustained while working on the Big Dig/Central Artery Tunnel. Taylor pleaded guilty and was sentenced to two years probation, \$20,000 restitution, and 100 hours of community service.
- **Commonwealth v. Kevin Mello** (Bristol Superior Court) Mello, a former corrections officer, was working while collecting workers' compensation. He pleaded guilty and was sentenced to two years House of Correction, suspended for three years, restitution of \$94,657.76 and 150 hours of community service.
- **Commonwealth v. Paul Santora** (Westborough District Court) Santora concealed payroll from two workers' compensation carriers, hiding over \$255,000 in labor costs, and evading over \$17,987.69 in premiums. Santora pleaded guilty and was sentenced to one year probation and 100 hours of community service. Santora was also ordered to pay \$1,000 in court costs and full restitution of \$14,670.54, which was due upon sentencing.
- **Commonwealth v. Christopher Spanks, Mary Mello** (Essex Superior Court) With the assistance of Mary Mello, Spanks filed a workers' compensation claim using fraudulent taxi receipts, which he claimed were for transportation to and from medical appointments related to his injury. A guilty plea resulted in 2 ½ years in a House Of Correction, suspended for five years, with one year on the bracelet, and full restitution of \$55,000, with a \$5,000 payment required at sentencing.
- **Commonwealth v. Luis Algarin** (Woburn District Court) While receiving workers' compensation benefits, Algarin formed a company in which he performed administrative work. After dissolving this company, Algarin worked for a roofing company, while still collecting benefits. His guilty plea resulted in six months in a House of Correction, suspended for a three-year term of probation; 100 hours of community service; and an order to pay full restitution of \$23,000, \$10,000 of which was due at sentencing. Algarin was ordered to pay \$150/month toward the remaining restitution.

- **Commonwealth v. David Bruce Perry** (Suffolk Superior Court) Perry worked as a self-employed painter and carpenter while collecting over \$52,000 in total temporary workers' compensation. A change of plea resulted in a sentence of six months in the House of Correction, suspended for two years with probation, \$18,000 restitution payable in 14 days, with the balance to be paid at a rate of \$200/month over the next two years. (Total \$22,800 out of \$52,800).
- **Commonwealth v. Paul Horton** (Plymouth District Court) Paul Horton worked while collecting workers' compensation. Horton pleaded guilty at his arraignment, which resulted in a \$500 fine and 30 day CWO, per Commonwealth's recommendation.

PROPERTY FRAUD

- **Commonwealth v. Robert Therrien** (Barnstable Superior Court) This architect was convicted of arson in May 2004. After post-conviction motions were ruled on, Judge Nickerson sentenced Therrien in the first quarter of 2005 to two years committed in the House of Correction, with three years probation to follow, 600 hours of community service, and restitution of \$12,000.

UNEMPLOYMENT COMPENSATION FRAUD

- **Commonwealth v. Peter Willwerth** (Boston Municipal Court) Willwerth was working under the table as a fulltime driver while he was receiving unemployment benefits from DUA. The fraud totaled over \$18,000. Willwerth pleaded guilty to unemployment insurance fraud and was sentenced to one year of probation, 50 hours of community service, fined \$1,000, and ordered to pay \$18,000 restitution.
- **Commonwealth v. Pedro Lugo** (Chelsea District Court) Lugo filed for unemployment benefits five months before he stopped working. He collected \$6,697 in benefits while working. Lugo pleaded guilty to all 12 counts and was sentenced to two years supervised probation and restitution of \$6,697, payable on a monthly basis.
- **Commonwealth v. Edie Salgado** (New Bedford District Court) This former intermittent Division of Unemployment Assistance employee stole a paycheck, endorsed and cashed it. A change of plea resulted in six months committed on each count (one count of Larceny Over \$250, one count of Forged and Cashed Stolen Checks and one count of Uttering False Record).
- **Commonwealth v. Dennis Mullaly** (Barnstable District Court) The defendant was working while collecting unemployment benefits. The proceeds from his bilking the state totaled \$8,127. He pleaded guilty and was sentenced to one year in the House of Correction, suspended for

three years, 300 hours of community service, and full restitution, payable at a rate of \$50/month for next three years. If the payments are met, the remainder of the restitution order will be vacated.

- **Commonwealth v. Adam Collins, Jr.** (Suffolk Superior Court) Father/son duo cashed 30 counterfeit DUA checks. Collins Sr. pleaded guilty and was sentenced last year. Collins Jr. changed his plea to guilty and was sentenced to one year probation, 100 hours community service and a fine of \$1408.

OTHER

- **Commonwealth v. Wayne Martowska** (Plymouth District Court) Martowska created and used fraudulent certificates of insurance to secure work as a contractor. He pleaded guilty and the Court imposed the agreed upon sentence recommendation of a \$2,000 fine and one year of probation.
- **Commonwealth v. Joseph Varrichione** (Framingham District Court) This uninsured construction contractor presented forged/false insurance documents to secure construction contracts. He pleaded guilty to Larceny Over \$250, Filing a Fraudulent Insurance Claim, Forgery at Common Law, Uttering at Common Law, and Attempted Larceny (the latter three placed on file). In exchange, the Commonwealth agreed to recommend the following sentence, which was accepted by the Court: One year probation, \$12,000 restitution and a \$10,000 fine; additionally, \$10,000 of the restitution was paid within 30 days of sentencing, with the remainder to be paid at a rate of \$1,000/month.

DUA POST CONVICTION CASES CLOSED IN FISCAL YEAR 2004

The IUFD has a cooperative agreement with the Division of Unemployment Assistance (DUA, formerly known as the Division of Employment and Training, or DET), helping to ensure that outstanding restitution is paid to DUA. One of IUFD's roles in collecting these outstanding balances included court appearances at post-conviction restitution status hearings. AAGs were assigned to DUA post-conviction cases on a rotating basis throughout the year. The IUFD AAGs represented the Commonwealth's interests in these settlement agreements, ensuring that the taxpayers' interests were taken into account.

The following cases were fully closed out in Fiscal Year 2005, after restitution settlements were agreed upon.

- **Commonwealth v. Ronald Spellman** (Quincy District Court) Spellman received a \$2,349 overpayment of unemployment benefits in the late 1980's. Pursuant to an agreement, defendant began to pay back the Commonwealth at a monthly rate but defaulted in 1991. Spellman recently tried to renew his Illinois driver's license, but could not, due to the outstanding default warrant. On March 19, 2004, defendant paid DUA the remaining balance of \$945. Defendant was in court this past quarter to remove the default warrant. The Attorney General's Office recommended 6 months CWOFF with \$500 fine; however, a change of plea resulted in a one month CWOFF with all fees waived.
- **Commonwealth v. Robert and Ernest Richards** (BMC) The Richards committed DUA-related fraud. In 1996, defendants were granted a CWOFF for three years, and ordered to pay \$77,041.51 in restitution. As of January 25, 2002, \$6810 had been paid in restitution, leaving \$70,231.51 outstanding. At a prior court appearance, the Court indicated its willingness to dismiss the case upon receipt of a lump sum payment of \$20,000. The Court received a \$20,000 check dated 11/24/04, and accordingly, the cases were dismissed.

STATISTICAL SUMMARY

During Fiscal Year 2005, IUFD indicted or charged 23 cases. A total of 47 cases were disposed of, either by trial or plea. Of these 47 cases, seven defendants were ordered to serve committed time in a county House of Correction. Restitution and fines in these cases totaled \$920,513.00.

STATISTICAL BREAKDOWN

Referrals Received	311
Insurance Fraud Bureau	35
Other Insurance Companies	13
Div. of Unemployment Assistance (DUA)	23
DUA — Post Conviction	33

STATISTICAL BREAKDOWN

Fair Labor and Business Practices Division	116
Governor's Auto Theft Strike Force (GATSF)	0
Health Care Task Force	2
Letter	17
Nat'l Insurance Crime Bureau	1
Suffolk County District Attorney	0
Telephone	53
Walk-In	2
Other AG's Office	9
Other Federal Agency	0
Other Police Agency	4
Other State Agency	3
Investigations Opened	114
DUA	22
DUA - Post Conviction	28

STATISTICAL BREAKDOWN

Fair Labor and Business Practices Division	0
GATSF	0
IFB	32
Letter	0
NICB	1
Suffolk County DA	2
Telephone	0
Walk-In	1
Other AG's Office	2
Other Federal Agency	0
Other Insurance Company	16
Other Police Agency	3
Other State Agency	7
Other: IFB Post-Conviction	0
Investigations Closed w/o Prosecution	50
Cases Charged	23
Cases Disposed of	47
Cases Disposed, w/Committed Prison Time	7
Restitution and Fines Recovered	\$920,513

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2005, IUFD continued efforts to develop and investigate health insurance fraud cases. As part of this effort, we fostered our relationship with the FBI's Health Care Fraud Task Force, focusing on provider fraud cases. IUFD has also established a private health insurance task force with Blue Cross / Blue Shield, Tufts and Harvard Pilgrim in an effort identify appropriate cases to investigate and prosecute. Several cases are currently being prosecuted as a result of the task force. These range from individuals billing insurance companies for services never received to health care providers billing for services not rendered or services they are not licensed to provide. IUFD also receives case referrals directly from the health insurers in cases that are beyond the scope of the task force and they are also being evaluated and investigated by IUFD.

Another area in which IUFD focused significant efforts was in fighting fraud related to the Central Artery Tunnel Project, also known as the "Big Dig." In Fiscal Year 2004, the IUFD began investigating a number of cases involving employees who were allegedly injured while working on the Big Dig. All of these workers went out on disability because of their purported injuries, and began collecting workers compensation insurance. In each instance, evidence was developed establishing that the employee began working another job or jobs and misrepresented his employment status to the relevant insurer. In Fiscal Year 2005, we charged several of these cases to serve as a deterrent as well as punishing these wrongdoings. Three of those cases have resulted in guilty pleas with full restitution; one case resulted in the defendant being committed to the house of correction. In Fiscal Year 2006, the IUFD will continue to work on Big Dig cases to continue our commitment to fighting workers compensation fraud.

The IUFD has worked closely with the Insurance Fraud Bureau CIFI to investigate and prosecute individuals responsible for staging accidents in communities like Lawrence, Boston, Brockton and Springfield. Through a community-based effort that involved local law enforcement, the IFB, the local District Attorneys and the Attorney General's Office, these local task forces have worked to significantly reduce fraudulent auto insurance claims. Investigation and prosecution of all suspected motor vehicle insurance fraud in these communities has led to a reduction in fraud through the presence of task force members in the neighborhoods doing intervention and searching for evidence.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2005, IUFD staff attended trainings on a regular basis, including the National District Attorney Association Trainings in Columbia, South Carolina; Trial Advocacy Training at New England School of Law; a lecture on “Obtaining Confessions” at the Social Law Library; and arson investigation training. In addition, IUFD staff also actively participated in the legal intern program, the Health Care Fraud Task Force, South Asian Bar Association, Womens’ Bar Association, and the AGO Diversity Committee. IUFD staff also participated in the Citizen Schools Legal Apprenticeship Program, helping grade school students with writing skills in preparation for advanced studies.

IUFD Division Chief Glenn Cunha gave several speeches to outside groups. The first was a lecture for Massachusetts Risk Managers regarding developing a criminal case at the first sign of fraud. AAG Cunha served on the faculty at New England School of Law’s Trial Advocacy Training. AAG Cunha also presented information at the AG Institute program on the “New Massachusetts Criminal Rules of Procedure for Prosecutors.” Additionally, AAG Cunha presented at the Insurance Fraud Bureau’s Annual Conference, where he spoke to investigators from across the state about the new insurance laws as well as investigating and prosecuting criminal cases when fraud is first suspected by an insurer. Two other IUFD AAGs, Kajal Chattopadhyay and Dave Andrews, also gave presentations at the IFB Annual Conference on sentencing issues as well as obtaining statements from targets of investigations.

Two of the IUFD attorneys, AAGs McKenny and Rowland, organized and arranged an insurance fraud seminar, in conjunction with the Special Investigations Unit of Liberty Mutual Insurance. The presentation focused on accident reconstruction. It was structured to increase a lay person’s working knowledge of general accident investigation to a level where the participant will begin to view vehicle damages to determining exactly what “really” occurred in a loss. The seminar was beneficial to fraud investigation as well as liability issues within the claims and legal profession.

CRIMINAL JUSTICE POLICY DIVISION

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

The Criminal Justice Policy Division included Division Chief James O'Brien; Assistant Attorneys General Pamela Hunt (Senior Counsel); Emily Paradise; Catherine Sullivan; Marsha Cohen, staff writer; and Jean Fanning, support staff.

SIGNIFICANT CASE SUMMARIES

- **Commonwealth v. William Rodriguez, et. al. (Lawrence B&E Case)** (Middlesex, Essex, Norfolk and Hampden Superior Courts) This multi-county, multi-defendant B&E prosecution was completed in Fiscal Year 2005. Defendants Steven Rios, George Velasquez, David Barker, William Rodriguez, Enrique Rivera and Robert Cabrera received committed prison sentences. Roberto Santiago's case was disposed of by way of pre-trial probation.
- **Commonwealth v. Jeffrey Bly** (Massachusetts Supreme Judicial Court and Suffolk Superior Court) This case is the appeal of Bly's 1995 conviction for the murder of AAG Paul McLaughlin. A CJPD attorney is representing the Commonwealth. In October 2003, the Superior Court held a hearing on the Commonwealth's motion for a colloquy with the defendant on a potential conflict of interest by appellate counsel. Following the resolution of that issue, the AGO moved for expedited preparation of transcripts to be sent to the SJC. All transcripts have been received and the case awaits a briefing schedule.
- **DYS Cases: Andrew v. Department of Youth Services, Commonwealth v. Andrew, and Commonwealth v. Eliot E.** (Massachusetts Supreme Judicial Court and Lynn Juvenile Court) CJPD continued its involvement with several DYS cases involving constitutional and legal challenges to the DYS process for extending a juvenile's commitment to DYS beyond his/her

18th birthday. In July 2004, the SJC issued its decision in *Andrew v. DYS* concerning whether there is a right to bail or other process while awaiting trial on continued control beyond age 18. The division worked to create a good record for appeal, worked closely with DYS and the qualified examiners contracted by DYS to evaluate the juveniles, met with the Juvenile Court Department leadership on the practical impact of the proposals, and filed a post-argument supplement to the brief proposing specific procedures that address new matters raised at oral argument. While the AGO prevailed on the issues raised by the case, the Court expressed concern about some provisions of the statute and ordered that copies of the briefs and supplemental filings be sent to the Legislature. By the end of the fiscal year, CJPD continued to work with DYS in planning a legislative strategy on the many issues raised by the case.

- **Coe v. Sex Offender Registry Board (SORB)** (Massachusetts Supreme Judicial Court) In August 2004, the SJC issued its decision upholding the constitutionality of legislation providing for Internet posting of identification information about the most serious (Level 3) sex offenders on the Sex Offender Registry Board website. Criminal Justice Policy Division attorneys were extensively involved in assisting on the case by soliciting amicus support for SORB's position. After the filing of two amicus briefs — from the National Center for Missing and Exploited Children and the Massachusetts District Attorneys' Association — CJPD assisted various municipalities in filing motions to join the brief filed by the National Center. After the favorable decision, CJPD provided analysis and advice to several police departments on linking to the SORB website and maintaining their own individual sites under the SORB regulations.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

- **Liaison to External Agencies and Organizations** During Fiscal Year 2005, CJPD attorneys interacted with the Appellate Bench Bar Committee, Boston Bar Association Criminal Law Section, Boston Bar Association Task Force on Improving Efficiency in the Courts, Massachusetts Statewide University and College Coalition on Underage and Problem Drinking, Commonwealth's Attorneys Appellate Action Project, Commonwealth's Criminal Justice Research Group, Criminal History Systems Board, Department of Public Health Emerging Drug Trends Advisory Group, Elder Abuse Project Steering Committee, Equal Justice Partnership, Firearm Licensing Review Board, Governor's Advisory Council on Alcoholism and Drug Rehabilitation, Governor's Integrated Criminal Justice Planning Council, Massachusetts Association of Campus Law Enforcement Administrators, Massachusetts Chiefs of Police Association, Massachusetts Sentencing Commission, Massachusetts Bar Association Corrections and Sentencing Practice

Group, Massachusetts District Attorneys Association (MDAA)/AGO Criminal Rules Training Working Group, MDAA DNA Working Group, MDAA Juvenile Justice Subcommittee, MDAA Sexually Dangerous Person Working Group, Municipal Police Training Committee, NAAG Working Group on Sexually Violent Predators, SJC Standing Advisory Committee on Criminal Rules, Statewide Child Fatality Review Team, and the Trial Court Criminal Standing Committee of the MassCourts Project.

- **Criminal Justice Legislation** The division works closely with, and serves as the Criminal Bureau's primary liaison to, the Attorney General's Intergovernmental Affairs Division. In Fiscal Year 2005, CJPDP played a coordinating role in soliciting ideas and making recommendations on the AGO's slate of criminal bills. It drafted and testified on behalf of various proposals. In addition to the Attorney General's own bills, CJPDP also helped draft, edit, and review other legislation affecting the criminal justice system, and made recommendations to the Attorney General on supporting or opposing specific pieces of legislation. During Fiscal Year 2005, significant bills that were either sponsored by the Attorney General's Office or were the subject of noteworthy CJPDP involvement included: Enforcement of Child Abuse Reporting Requirements; Protecting the Computer Infrastructure of the Commonwealth; Protecting Victims of Computer Crimes; Protecting Victims of Identity Theft; Updating the Massachusetts Wiretap Statute; Statewide Grand Jury; Protecting Students and Promoting School Safety; Compensating the Wrongfully Convicted; Preventing Insurance Fraud; Sentencing Guidelines; Various Outside Sections to the Budget; Victim Rights; the Governor's criminal justice slate — Witness Protection, Witness Intimidation, Post-Release Supervision and Manufacture of Methamphetamines; Alternate Funding for the Massachusetts Police Training Council; Gang Violence; Loan Forgiveness for Public Lawyers; Expanding Restraining Orders to Cover Sexual Assault and Stalking Victims; Eliminating Statute of Limitations for Certain Child Abuse and Sexual Abuse Crimes; and the Victims of Crime Act.

- **Poker Advisory** The rising popularity of Texas Hold 'Em and other forms of poker has led to a huge increase in poker tournaments, many of them organized by charities for fundraising purposes. In light of this rising popularity and numerous calls from law enforcement and public charities seeking guidance, CJPDP, along with the Bureau Chief and the Charities Division, worked on an AGO advisory to distinguish between legal and illegal (subject to prosecution in Massachusetts) poker tournaments. This resulted in an analysis of two separate statutory provisions, G.L. c. 271, § 7, which generally prohibits lotteries, and G.L. c. 271, § 17, which prohibits anyone from registering bets or buying or selling pools, upon the result of poker hands, games or tournaments. By the end of the fiscal year, the advisory was complete, approved and

distributed both electronically and via hard copy to police chiefs, municipal clerks, and managers of charities across Massachusetts. The advisory is also posted on the websites of the AGO and the Massachusetts Chiefs of Police.

- **Twelve Cases Seeking Compensation for Erroneous Convictions** CJPD actively participated in the discussions and drafting that led to the creation of the law providing compensation for persons erroneously convicted and imprisoned. Since the new law was approved in December 2004, there have been, by the close of the fiscal year, 12 cases filed under this new cause of action. The Office is charged with representing the Commonwealth in these actions. The Criminal Justice Policy Division is intimately involved in the cases, which are being handled by the Trial Division. The divisions are working to establish practices and protocols for handling the cases, and to develop fair and consistent approaches and strategies. A division attorney spent considerable time acting as liaison to the District Attorneys' offices, DOC and the sheriffs, Parole Board and other agencies that have information and records relevant to the cases. The attorney also assisted in getting Trial Division attorneys authorization for access to CORI materials; drafting and editing motions; reviewing pleadings, case filings and letters; and providing considerable strategic assistance, background information and help to the Trial Division.
- **DiGiambattista *Amicus*** A CJPD attorney reviewed the issues surrounding the question of whether the SJC should require the videotaping of all interrogations in places of detention, and gave advice and assistance to the Appeals Division on the amicus brief. During the fiscal year, the SJC decided the cases.
- **Sportsmanship Alliance of Massachusetts (SAM)** CJPD's primary function is policy, not programs. Notwithstanding, from time to time CJPD becomes involved in crime prevention initiatives, either because the program started as a policy idea within the division, or because there is a particular interest or expertise in that area. An example of this is SAM, formerly the Massachusetts Alliance for the Promotion of Sportsmanship. SAM, which is comprised of representatives from the Commonwealth's professional sports teams (Bruins/hockey; Celtics/basketball; Patriots/football; Red Sox, baseball; Revolution, soccer; and Cannons/lacrosse), the Massachusetts Interscholastic Athletic Association (MIAA), Northeastern's Center for the Study of Sport in Society, and law enforcement, meets regularly to strategize on reducing sports-related violence and promoting sportsmanship. A CJPD attorney remained active with the group throughout Fiscal Year 2005.

OUTREACH, EDUCATION, AND TRAINING

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

In Fiscal Year 2005, the division produced a special four-page *CJN* issue informing the Commonwealth's police chiefs and sheriffs of new criminal justice laws enacted in Massachusetts from January 1, 2003 to January 15, 2005. The special issue fulfilled the AGO mandate under G.L. c. 12, § 6A, to provide this information to the state's police chiefs and sheriffs. In addition, this issue of *CJN* was also distributed to the Criminal History Systems Board, legislative committees, the state's harbor masters, Superior Court administrators, the District Court administrative office, and Regional Administrative judges. All CJPDP members played a role in producing the special issue, which is posted on the Office of the Attorney General and the Criminal History Systems Board Web sites.

The four attorneys in CJPDP are experienced prosecutors, with both trial and appellate backgrounds. They are frequently invited to serve as faculty/staff for formal training programs. These trainings afford CJPDP lawyers the opportunity to share their expertise with other criminal justice professionals. Significant Fiscal Year 2005 trainings in which CJPDP staff participated as faculty/staff included:

- AGO/MDAA Criminal Rules Training Group;
- NAAG Trial Advocacy Training;
- Ohio Attorney General's Office Trial Advocacy Training;
- Suffolk District Attorney's Office;
- Plymouth District Attorney's Office;
- Massachusetts Continuing Legal Education, Inc.;
- Flaschner Judicial Institute;
- Suffolk University Law School Center for Advanced Legal Studies;
- Boston Bar Association;
- AG Institute;
- Citizen Schools Program to help 8th grade students improve writing skills and get into the high school of their choice

- Commonwealth's Criminal Justice Researchers;
- Annual Prosecutors' Conference.

In addition to the more formal educational assistance and training, CJPD attorneys routinely receive an array of other requests for information and guidance from professionals throughout the criminal justice community. Without giving formal legal opinions, division members provided objective guidance and assistance. A significant part of every work week in Fiscal Year 2005 was spent providing this service to law enforcement officials and others within the criminal justice network. Particular assistance was provided to the Criminal History Systems Board, the Department of Youth Services, the Massachusetts District Attorneys Association, Massachusetts District Attorneys' Offices, the Massachusetts Chiefs of Police Association, the Massachusetts Department of Public Health, the Municipal Police Training Committee, and Attorney General Offices in other states.

Informal guidance covered a broad variety of subjects. Examples included:

SDP/SEX OFFENDERS

- sexually dangerous person cases;
- whether SDP proceedings can be brought against one who has not been convicted of a sex crime but who engaged in deviant sexual behavior in prison;
- procedures when a person is held on bail during pending SDP proceedings; and
- rights of Level 1 sex offenders.

JUVENILES

- juvenile continued custody matters;
- whether juveniles can plead guilty before the District Attorney can obtain a youthful offender indictment; and
- issues concerning juveniles charged with murder.

CORI

- implications of CORI in civil litigation; and
- work with CHSB subcommittees and focus groups on drafting CORI regulations.

RULES CHANGES

- new Criminal Rules amendments and standing orders.

DNA

- obtaining a DNA sample in a criminal case from a third party; and
- DNA database statute challenge.

OTHER

- evidentiary post-conviction hearings;
- drafting AGO comments to proposed criminal case time standards;
- whether CWO's can be ordered over the Commonwealth's objection;
- forfeitures and motions for return of property;
- law enforcement privileges;
- First Amendment implications of faith-based DOC re-entry programs;
- *McGonigle v. Middlesex Retirement Board* amicus brief;
- draft guidelines for the conduct of electronically recorded interrogations;
- a defendant's ability to access police Internal Affairs Division files;
- whether the SJC should retain the Hallet rule on revival of waived claims;
- court orders for prosecutors to produce things not within their custody and control;
- whether local police employees are under the direction and control of the DA;
- procedures when a state agency attorney is subpoenaed to grand jury;
- school drug testing with parental permission;
- impaired driving crash reduction in Massachusetts;
- issues relating to the legal and practical impact of the Supreme Court decision in *Crawford v. Washington*; and
- whether retirement boards can obtain sealed records to determine whether to disqualify a pension.

VICTIM COMPENSATION AND ASSISTANCE DIVISION

The Victim Compensation and Assistance Division provides financial compensation, referrals and other assistance to victims of violent crimes. Most significantly, it assists eligible victims and their families in paying for out-of-pocket medical expenses, lost wages, funeral and burial, mental health counseling and other crime-related expenses. Since 1994, the division has assumed legal and administrative responsibility for receiving, investigating and making determinations on all compensation claims in accordance with the requirements of G.L. c. 258C. Previously, compensation claims were determined through a litigation-based process in the district courts. In addition, since 2002, the Office of the Attorney General assumed responsibility for payment of claims, taking over that responsibility from the State Treasurer's Office.

During Fiscal Year 2005, the division continued to have staff turnover but by the end of the fiscal year, the division was fully staffed. New fiscal year 2005 hires included Investigator/Advocates Christopher Shen, Robert Black and Megan Foster and Advocate/Outreach Coordinator Gadyflor Nicolas-St.Clair. Investigator/Advocate Laura Michalski left the office in October, 2004. Other division staff included Director Deborah Fogarty, Deputy Director Sandra Clark and Division secretary Erica Johnson. The division operated with only two investigators for the first quarter of 2005, had three investigators for three months, and was finally fully staffed by March 2005 and continued to be fully staffed through the end of the fiscal year. One significant activity that occurred during this fiscal year was the temporary relocation of the division into the Saltonstall Building in March while renovations were completed on the 19th floor in Ashburton. Preparations for the move included archiving several years of Victim Compensation files due to limited space in the Saltonstall quarters.

STATISTICAL SUMMARY

<u>CLAIM INFORMATION</u>	<u>TOTAL # CLAIMS</u>
New Claims Received	1,247
New Claims Opened	2,263
Supplemental Claims Opened	824
Administrative Review	74

Decision Affirmed	62
Modified or Reversed	11
Pending Decision	1
Judicial Review	4
Homicide Claims	210
Domestic Violence	187
DUI/MVH-DUI	34

In fiscal year 2005, the Victim Compensation and Assistance Division received 1,247 new claims. This represents a slight decrease from the 1,277 new claims received in Fiscal Year 2004. During Fiscal Year 2005, the division received 210 homicide claims representing an increase from the 195 claims received in Fiscal Year 2004. This figure includes 6 homicides related to domestic violence. The division received 187 claims for other domestic violence related crimes that include assault, stalking, sexual assault and kidnapping. The division continued to work on claims submitted by family members of victims of the September 11, 2001 attacks and awarded \$8,826.00 on 6 claims in Fiscal Year 2005. One new claim from a September 11 family member was received.

EXPENDITURES

During this fiscal year, the total compensation awarded to victims was \$3,164,571.50. Approximately \$2.1 million came from state funds, and the remainder from federal funds. This represents an increase in awards of approximately 14% over Fiscal Year 2004 awards. This is the tenth consecutive year in which the division had adequate funding to support expenditures.

PROGRAM EVALUATION

An applicant survey is sent to each claimant with award letters. The division received 433 completed surveys from claimants. The surveys were overwhelmingly positive, with approximately 86% of claimants agreeing or strongly agreeing that the application was easy to complete, the letters were easy

to understand, they were treated respectfully by division staff, their phone calls were returned promptly, and they were satisfied with the amount of time it took to process their claim.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division received a continuation grant from the Executive Office of Public Safety through the Department of Justice, Violence Against Women Act funds for Federal Fiscal Year 2004 in the amount of \$41,483.54. The amount reflected an 11% decrease in funding as the overall VAWA funding for Massachusetts was cut. The VAWA funding allowed the division to continue the Specialized Investigator/Advocate position currently staffed by Elizabeth Desmond who provides specialized services to domestic violence, sexual assault and stalking victims who seek compensation and services from the division. Federal Fiscal Year 2005 is a competitive grant year for VAWA funding. The division submitted an application for Federal Fiscal Year 2005 funding on June 30, 2005 for \$41,483.54. The division applied for and was awarded an annual grant for Federal Fiscal Year 2005 from the Department of Justice through Victims of Crime Act Funds (VOCA) in the amount of \$1,312,000. This represents 60% of the total state appropriation paid out in the prior fiscal year and is a decrease over the prior VOCA grant amount of \$1,520,000.

FEDERAL REPORTING REQUIREMENTS

The division submitted its annual Certification Report, Annual Performance Report, and all quarterly financial reports to the Department of Justice, Office for Victims of Crime for the Victims of Crime Act. In addition, quarterly reports were submitted to the Executive Office of Public Safety

AUTOMATION

The division continued to work with the Genoa Group in Colorado to trouble shoot problems with the victim compensation software (CCVC). A new update for the database was installed in February that included enhanced reporting capabilities and a compacting feature to minimize problems as the database grows in size. Overall the staff is pleased with the ease and efficiency of the program.

DIVISION MATERIALS

For the fourth consecutive year, in recognition of Victim Rights Week, division staff developed a new calendar using artwork created by the art students at the Paul McLaughlin Youth Center. The calendar is included in the materials distributed by division staff at all training events, and is distributed at the Victim Rights conference held in April.

Using funding available in the VOCA grant, the division reprinted small “palm” cards that contain information about the Victim Compensation program. The cards include division contact information as well as the Domestic Violence Safelink 24 Hour Hotline number. There have been several requests from police departments for the cards so that they can be made available to police officers to give to victims at first response.

OUTREACH, EDUCATION, AND TRAINING

Outreach and training about the program and its benefits continued to be a major focus for Fiscal Year 2005. Gadyflor Nicolas-St.Clair provided outreach to hospitals, dentists, funeral directors, and many victim service providers to inform them of the program. Victim Compensation training was provided to:

- Probation Officers from across the state at a statewide probation training;
- Children’s Hospital Child Protection Team, Taunton State Hospital, Whittier Rehabilitation Hospital, Brockton Hospital;
- Administrators of VOCA Funded Program and Drunk Driving Trust Fund programs sponsored by the Massachusetts Office for Victim Assistance;
- SAFEPLAN domestic violence advocates in Northampton, Gardner and Worcester;
- Northeastern University Domestic Violence Law Clinic and the International Institute;
- Norfolk District Attorney’s Office, Hampden District Attorney’s Office, Brockton Family and Community Resources, Lowell Mental Health Association, YWCA of Greater Lawrence, Casa Myrna, Independence House, North Shore Rape Crisis Center, Lynn Senior Services, REACH Battered Women’s Services, Criminal History Systems Board, Boston Area Sexual Assault Coalition.
- Office of the Attorney General’s Intern Orientation Program

Division staff also represented the Attorney General at a number of committee meetings throughout Fiscal Year 2005. These included:

- Executive Office of Public Safety VAWA Advisory Committee;
- Norfolk DA's Children's Advocacy Advisory Board;
- MOVA Victim Witness Assistance Board;
- MOVA Victim Rights Legislation Working Group;
- MOVA Victim Rights Planning Committee.

Division staff participated on the Office's Employee Benefits Committee, the Diversity Committee, and in the tutoring program at the Paul McLaughlin Center.

Division staff attended the National Association of Crime Victim Compensation Boards annual conference in Charleston, SC and the regional conference in Atlantic City, NJ, the Massachusetts District Attorneys' Association Training for Experienced/Advanced Advocacy, AG Institute presentations, Suffolk County Child Advocacy Center presentations, and the National Conference on Child Abuse and Neglect.

FINANCIAL INVESTIGATIONS DIVISION ---

The Financial Investigation Division provides the Criminal Bureau with seven experienced civilian investigative professionals who investigate and assist in the prosecution of white-collar criminal cases. These investigations include larceny, identity theft, public corruption, securities fraud, tax fraud and all other white-collar frauds, 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 investigation and work closely throughout with Criminal Bureau prosecutors and also Massachusetts State Police assigned to the bureau's Criminal Investigation Division.

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

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

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

The majority of the division's investigative assignments come from the bureau's Corruption Fraud & Computer Crimes Division. The division works closely with the Chief of the Corruption Fraud & Computer Crimes Division during the screening process and then with the assigned assistant attorney general when a matter has been accepted for formal investigation.

During Fiscal Year 2005 the division also committed investigative resources to the Public Protection Bureau in connection with an investigation into retail profiling. Since the division's formation in 1995, it has also performed investigative assignments for the bureau's Environmental Crimes Strike Force, Appellate Division and Special Investigations and Narcotics Division.

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

SIGNIFICANT CASE SUMMARIES

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

FISCAL YEAR 2005 HIGHLIGHTED CASES

Matter indicted with multiple victims:

- Commonwealth v. Michael Abbot

This group of indicted matters involved employee embezzlement:

- Commonwealth v. Jodie Walsh
- Commonwealth v. Patrick Bauer
- Commonwealth v. Janin Otero
- Commonwealth v. Kinh-Luan Dao
- Commonwealth v. Joan Pierce

This group of indicted matters involved procurement fraud:

- Commonwealth v. Dalvia Pena
- Commonwealth v. Phyllis Trippe

This group of indicted matters involved clients' funds or fiduciary embezzlement:

- Commonwealth v. Brian Chance
- Commonwealth v. Edward O'Connell
- Commonwealth v. Daniel Hurley

This indicted matter involved identity theft:

- Commonwealth v. Jennifer Wood

STATISTICAL SUMMARY

<u>REFERRING SOURCE</u>	<u>NUMBER OF CASES</u>
Matters screened and evaluated for investigation	306
Matters referred by Corruption, Fraud, and Computer Crimes Division to Financial Investigation Division for formal investigation	64
TOTAL	370

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division also performs many administrative duties for the bureau with respect to cars, seized evidence and the spending of forfeited funds. The division is responsible for all bureau cars - the assignment, reporting, and maintenance. The division maintains a log of all monies seized by the State Police in association with any arrest. The seized monies are kept in safety deposit boxes and the contents are inventoried on a quarterly basis by division staff. Additionally, the division prepares an accounting of all funds forfeited through the Special Investigations and Narcotics Division, which are subsequently disbursed in accordance with the Commonwealth's forfeiture laws. The accounting system is designed as a management tool for the bureau, not only to retrospectively track spending but also to project future needs.

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

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

OUTREACH, EDUCATION, AND TRAINING

The staff is also an integral part of the bureau's outreach to referral agencies, maintaining contact with the BBO's Senior Financial Investigator and CIB's Chief Investigator to update them periodically on the status of all referrals from their respective agencies to the bureau. BBO and CIB cases are referred through the Corruption, Fraud, and Computer Crimes Division. Our outreach efforts are designed to complement those of the Corruption, Fraud, and Computer Crimes Division Chief. Outreach efforts include internal quarterly meetings with Public Protection Bureau representatives to monitor progress on cases referred between the two bureaus.

Division members maintain memberships in many external organizations including the *Boston Clearing House Association-Check Fraud Subcommittee (Boston Clearing House)*, *High Tech Crime Investigators Association (HTCIA)*, *International Association of Certified Fraud Examiners (CFE)*, *International Association of Financial Crimes Investigators (IAFCI)*, *New England Electronic Crimes Task Force (NET)*, *North East Massachusetts Law Enforcement Council (NEMLEC)*, and the *International Association of Law Enforcement and Intelligence Analysts (IALEIA)*.

Internally, division members are members of the Attorney General's Benefits Committee, Elder Task Force, Office-Wide Health Care Committee, Public Records Office, and have volunteered as tutors at the Paul McLaughlin Center. Division members have also participated in the Citizens' School Project and allowed students to observe them as they work as part of the Safe Neighborhood Initiative's *Job Shadow Program*.

One member of the division is the Attorney General's liaison with the National White Collar Crime Committee (NW3C) and as a direct result of her efforts the Attorney General's Office hosted an NW3C-taught course entitled, *Financial Records and Evidence Analysis* in January 2004 and will again host (October 2005) the NW3C's *White Collar Crime and Terrorism* course.

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

Presentations included:

- Asset Search Training
- Financial Investigative Techniques
- Bank Information: How to Get it and What it Tells you
- Interview and Report Writing Techniques
- Investigating and Preparing an Elder Financial Exploitation Case
- Investigative Resource Sites on the Internet
- Financial Investigation Division Structure & Operation

During Fiscal Year 2005 division members attended the following AG Institute trainings:

- *LEAPS Re-certification Training*, July 2004
- *Hany Farid: Computer Generated Images*, August 2004
- *Rules of Criminal Procedure*, August & September 2004
- *Stop Handgun Violence*, October 2004
- *Staged Motor Vehicle Accidents*, November 2004
- *On Apology Lecture*, June 2005
- *Extended Managers' Retreat*, June 2005

Division members attended a number of external training sessions throughout the year including:

- ChoicePoint *Autotrack XP Training*, August 2004
- HTCIA: Periodic Training, September & November 2004, May 2005
- IAFCI: Periodic Trainings, October 2004, February, April & May 2005
- Kroll Risk Associates: *Suspicious Activity Reports*, November 2004
- NET: *Identity Management*, January 2005
- NET: *Information Security*, March 2005
- NW3C: *ID Theft and Money Laundering*, May 2005

The division's intern program seeks to provide a valuable one semester training experience for interested students who have a background in accounting, finance, business law or criminal justice. Through the efforts of our intern coordinator, the division has been provided with a steady stream of talented interns from graduate and undergraduate programs throughout New England.

As a direct result of their volunteer experience with the division's program, Financial Investigation Division interns have accepted jobs with Hewlett Packard Corporation, John Hancock Life Insurance Company, Suffolk County District Attorney's Office and the Office of the Attorney General.

SAFE NEIGHBORHOOD INITIATIVE DIVISION

The first Safe Neighborhood Initiative (SNI) partnership was established in Dorchester in February 1993 by the Office of the Attorney General, the Suffolk County District Attorney's Office, the Mayor's Office of the City of Boston, and the Boston Police Department. Based on the premise that no single entity alone can solve all problems faced by a community, the SNI provided a framework for community residents and service providers to work collaboratively with law enforcement and government agencies to identify and address priority public safety and quality-of-life issues in the community. The SNI model has been replicated in a number of communities across the Commonwealth — each using a somewhat different approach. Some are law enforcement-driven while others are community-driven, but all are organized around the three core principles of coordinated law enforcement; neighborhood revitalization; and prevention, intervention, and treatment. During Fiscal Year 2005, the Office of the Attorney General participated in active SNI partnerships in Taunton, Brockton, Orange, and in the Grove Hall and Dorchester neighborhoods of Boston. Additionally, the AGO supported and

participated in federally recognized “Weed & Seed” partnerships in Lawrence and Methuen. In addition to maintaining these various on-going partnerships, the SNI Division engages in a number of innovative community-based activities to prevent crime and promote public safety, some of which are described in the sections below.

At the beginning of Fiscal Year 2005, division staff included Division Director Ellen Frank; AAGs Jennifer Adreani; Linda DelCastilho; Katherine Hatch; Cheryl O’Connell; and Neil Tassel; and programs staff Jennifer Grigoraitis and Lenell Silva. There was transition in the division this year as AAGs Adreani and O’Connell left SNI and joined the Special Investigations and Narcotics Division of the Criminal Bureau in January and February, respectively, and AAG Tassel and Lenell Silva, left the Office in the spring. New additions to SNI staff this year included AAGs Denise Duran (Lawrence District Court) and Joseph Janezic (Roxbury District Court) as well as programs coordinator Amanda Halpern.

SIGNIFICANT CASE SUMMARIES

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

- **Commonwealth v. Flavio DeJesus Gabriel** (Lawrence District Court) On March 14, 2005, Lawrence police officers observed a vehicle with a driver and a passenger circle the block five or six times and observed the car pull over at several times at public telephones with one of the individuals having short conversations on these telephones. After 70 minutes, the vehicle parked on Greenwood Street. The defendant walked directly to the car, made a hand-to-hand transaction with one of the individuals and the car drove off. Officers stopped the car and confirmed that a drug transaction had taken place. Officers subsequently approached the defendant and observed him trying to swallow the drugs. The defendant fled with officers pursuing him on foot. During the chase, the defendant discarded his jacket, which was found to contain \$40. On June 20, 2005, the defendant pleaded guilty in Lawrence District Court to Distribution of Class B. He was also violated on probation as this event occurred just two weeks after he'd been placed on probation for non-drug-related offenses. The defendant was sentenced to nine months in the House of Correction.
- **Commonwealth v. Scott Hamburger** (BMC, Roxbury Division) The defendant owns a communications store where in addition to beepers and cell phones, he sold pirated CDs, DVDs, pellet and BB guns, throwing stars, brass knuckles, and double-edged knives. Police were alerted to the store after a school police officer noticed several youth with realistic-looking pellet guns in their possession and students indicated where they had purchased them. An undercover investigation ensued. The defendant pleaded guilty and his counsel recommended that he receive a continuance without a finding for six months based primarily on his limited record. The Commonwealth's recommendation — based in part on the significant impact the defendant's crimes (those related to weapons sales) had on a community already plagued with violence — was: (1) on the two counts of carrying a dangerous weapon and one count of selling a double-edged knife: 6 months in the House of Correction suspended for one year; and (2) on one count of possession of chemical mace and two counts of unauthorized recording of copyrighted material, one count of distribution of a counterfeit mark: 18 mos. probation. The court adopted the Commonwealth's recommendation. Terms of the defendant's probation included his attendance at the Mother's Day Walk for Peace. He was also prohibited from possession or sale of any weapon prohibited under c. 269, § 10 (b), any pellet or BB gun, or any counterfeit CD/DVD and/or any CD/DVD not purchased from an authorized distributor. Furthermore, he was ordered to pay restitution of \$3,105 to the Recording Industry of America.
- **Commonwealth v. Aloysius Walker** (Orange District Court) In June 2005, the defendant attacked his girlfriend with a blunt metal object and strangled her while her two children heard what was occurring. The defendant then fled in his girlfriend's car. Two days later, he called

her leaving a voicemail threatening to put her in a crematorium or funeral home the next time she saw her because he'll have a gun with him. He was arrested and charged with attempted murder and violation of a 209a. The defendant was indicted on these charges and is being held pending trial.

- **Commonwealth v. Juan Torres** (Suffolk Superior Court) In May 2003, the police first noticed the defendant driving a car erratically and failing to obey traffic laws. When the police tried to stop him, the defendant caused a car accident injuring several individuals and causing significant property damage. The defendant jumped out of the vehicle and ran into a residence. The police eventually found him hiding in a closet sitting on top of a large amount of gold jewelry. Upon being interviewed by the detective, the defendant admitted he had broken into two homes in order to steal valuables to support his drug habit. The defendant had a long record of Breaking and Entering charges and was indicted on two counts of Breaking and Entering as a habitual offender. The defendant pleaded guilty and was sentenced to 7-9 years in state prison with 3 years probation from and after.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

BROCKTON SNI

Throughout most of Fiscal Year 2005, the Attorney General's Office supported the position of the SNI Community Liaison who was based in the Plymouth County District Attorney's Office and worked closely with that office, with the other principal partners from the City of Brockton and the Brockton Police Department as well as with community residents and service providers. With the departure of the SNI Community Liaison, the Attorney General's Office and the Plymouth County District Attorney are reassessing the best use of the Office of the Attorney General's resources to the SNI partnership. This reassessment notwithstanding, the Brockton SNI Advisory Council continued to meet monthly to discuss community concerns primarily related to crime and public safety. During Fiscal Year 2005, the Brockton SNI collaborated with community service providers and public agencies on a number of initiatives two of which are listed below.

- **Vacant Lot/Neighborhood Clean-Ups:** This initiative is a partnership among the Plymouth County District Attorney's Office, the Mayor's Office, the Office of Community Corrections, and the Department of Public Works. The purpose of the project is to provide community residents with assistance in cleaning vacant lots and neighborhood streets in the SNI that may pose crime or health and safety hazards when not maintained.

- **Landlord Notifications:** The purpose of this initiative is to provide notification to landlords whose tenants have been charged with drug-related offenses. Landlords are given information regarding their obligations to maintain the safety of their properties. The SNI Community Liaison works with the District Attorney's Office on this initiative and is responsible for implementing the system for notifications.

DORCHESTER SNI

The Dorchester SNI Advisory Council continued to meet the fourth Tuesday evening of each month to identify and address the most pressing public safety and quality-of-life issues including many that have consistently plagued the community (e.g., youth violence, truancy, and a lack of job and training opportunities). The Boston Police Department and other law enforcement partners focused primarily on "impact players" and quality-of-life issues, while service providers focused on providing after-school programming offering recreational, educational, and job training programs. In February, the Office of the Attorney General and the SNI partner agencies hosted a community forum with Boston Police Commissioner O'Toole, with over 75 Dorchester SNI area residents and service providers in attendance. Additionally, SNI programs staff formalized a relationship with Community Links, an initiative focused on addressing resident concerns in sections of the SNI target area, in order to share resources and avoid duplication of efforts.

In order to bolster the capacity of community agencies to address these issues, the Office of the Attorney General allocated \$198,571 of its Fiscal Year 2005 budget to eight community-based agencies, the Bowdoin/Geneva Re-Entry Project, and the Boston Police Department for crime prevention initiatives in the SNI target area. An additional \$20,000 from the Office's budget was allocated to provide funding to new Dorchester SNI partner agencies serving the target area through a competitive RFP process. The SNI Division and Dorchester SNI partners implemented the third year of the *Dorchester Youth and Family Project* with \$166,667 in Byrne Memorial Grant funds from the Executive Office of Public Safety and with partners contributing an equal amount for the required hard-cash match. The *Dorchester Youth and Family Project* is described in greater detail in the "Byrne Memorial Grants" section later in this report. Additionally, to bolster prosecution capacity, a full-time very experienced Assistant Attorney General was assigned to the Suffolk County District Attorney's Office to work with that office and particularly with the Drug Control Unit of Boston Police Department, Area C-11, to provide guidance on investigations and prosecute significant drug cases from the target area.

The SNI Division, with assistance from the Diversity Committee, planned and hosted a job-shadow day for teens from the Teen Center at St. Peter's, a SNI partner agency. Fourteen teens from the SNI target area spent a school vacation day at the Office of the Attorney General shadowing and interacting with staff from all five bureaus and the State Police Unit representing diverse functions in the Office.

An Attorney General was assigned to the Suffolk County District Attorney's Office until his departure in April after thirteen years' service at the Attorney General's Office. The AAG handled numerous cases (e.g., armed robbery, drug cases) arising out of the target area bound for Superior Court. He handled the prosecution of these cases and also worked closely with the officers of Boston Police Department, Area C-11 (particularly the Drug Control Unit) on numerous cases, advising them on legal issues through the investigation and charging phases.

GROVE HALL SNI

In October 2004, the Grove Hall Safe Neighborhood Initiative began its eighth year as an officially recognized Weed and Seed site as designated by the Department of Justice, Executive Office for Weed and Seed. At that time, the Department of Justice, through the Attorney General's Office, awarded \$225,000 to the Grove Hall SNI/Boston Weed and Seed Site to support its activities centered on the four core Weed and Seed principles: (1) Law Enforcement; (2) Community Policing; (3) Neighborhood Restoration; and (4) Prevention, Intervention, and Treatment. The Attorney General provides in-kind grants administration and management for the Weed & Seed funds but sub-contracts all funding to the Boston Police Department and other community-based agencies serving the target area. Also this year, on behalf of the Grove Hall SNI/Boston Weed and Seed Site, the Attorney General's Office applied for and was awarded an additional \$50,000. These funds originate from HUD, are administered through the Department of Justice and are designated to address violent crime and drugs in federally-assisted housing. The Grove Hall SNI/Boston Weed and Seed Site earmarked these funds to pay for increased law enforcement and coordination activities and community organizing and outreach to engage residents in improving public safety at several multi-unit housing units that are locations for some the most challenging criminal activity in the target area. The effort is called the Multi-Unit Housing Initiative.

This year, as in every year, the Grove Hall SNI/Boston Weed and Seed Site held seven Coordinating Council meetings and five community meetings that were attended by dozens of community residents in addition to representatives from law enforcement and prosecution, city and local government agencies, district court, service providers, and faith based organization. In addition to these regular meetings, one or the other of the Grove Hall SNI AAGs regularly participated in the bi-weekly Boston Police Department's Street Violence Suppression meetings, the monthly North Shore Gang Intelligence meetings; and the monthly meetings in Roxbury Court to address issues related to prostitution/johns.

ORANGE SNI

The Orange SNI is a collaboration of the Attorney General's Office and the Northwestern District Attorney's Office, with the Town of Orange, the Orange Police Department, community residents, educators, government agencies, and service providers. The Orange SNI Advisory Council met the third

Tuesday of each month and continued working toward identifying priority public safety and quality-of-life issues. In the fall of this year, a representative of the Northwestern Counties District Attorney's Office and a community representative began serving as co-chairs of the Orange SNI. Among this year's activities, several SNI partners joined forces to sponsor an educational workshop on child abuse prevention. Efforts were also begun to provide and hang numbering for all houses in the town.

The Assistant Attorney General assigned to the Orange District Court prosecuted criminal cases occurring in the Town of Orange and offenses committed by Orange residents in other towns in the court's jurisdiction. Her caseload primarily involved offenses including domestic violence and other assaults, breaking and entering, and substance abuse involving both alcohol and narcotics.

TAUNTON SNI

The Taunton SNI continued to focus on law enforcement, prevention, and neighborhood restoration through the activities of its sub-committees and collateral activities (i.e., Criminal Justice, Treatment and Prevention, Education, Neighborhood, Crisis Intervention Team, and a Community Crisis Spiritual Care Response Team). The City of Taunton plays the primary leadership role for the Taunton SNI. SNI Division staff participated in monthly advisory council meetings and provided technical assistance to partner agencies as needed.

During Fiscal Year 2005, the Taunton SNI continued its focus on public safety concerns at the Fairfax Gardens housing development (i.e., violence, drugs, lack of youth programming). In connection with the Taunton SNI focus, steps were taken to address these concerns including the hiring of a full-time on-site manager and a social services coordinator to implement youth activities and the creation of a partnership between the Taunton Boys & Girls Club and the regional transit authority to provide free transportation and programming for youth residents of Fairfax Gardens. Additionally, SNI Jobs for Youth funds were used to employ three Taunton youth at the Boys & Girls Club and two at the Fairfax Gardens Community Center.

LAWRENCE AND METHUEN WEED AND SEED SITES

SNI programs staff represented the Attorney General on the steering committees of both the Lawrence and Methuen Weed and Seed sites, each in its fourth year as an officially recognized Weed and Seed site as designated by the U.S. Department of Justice, Executive Office for Weed and Seed. Moreover, the Office of the Attorney General supports the Lawrence and Methuen Weed & Seed efforts through the provision of the *Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor* as described in the "Byrne Memorial Grants" section later in this report.

SNI JOBS FOR YOUTH

One of the major SNI Division efforts aimed at prevention and intervention is the SNI Jobs for Youth Program. The program, which started in 1996, has grown from employing 23 youth in five communities in that year to employing more than 90 young people in twelve communities throughout the state in Fiscal Year 2005. This year, the SNI Division held a competitive RFP process in the three Jobs for Youth communities of Brockton, New Bedford, and Worcester. The RFP was announced in the local papers and the existing sites were invited to apply. A new site was selected for Worcester; the Brockton and New Bedford sites remain the same as in previous years. All SNI Jobs for Youth sites offer job opportunities throughout the school year, as well as a variety of workshops and enrichment activities such as mock interviews, resume writing, and community service projects. Each site is briefly described below.

- **Boston:** Nineteen youth from Grove Hall and Dorchester SNI target areas were employed through the City of Boston's Centers for Youth and Families. The goal is to provide employment opportunities, hands-on training, safe-havens and adult support. Partnering with local businesses and agencies, Boston Centers for Youth and Families placed young people in a variety of positions, enabling them to learn skills related to entrepreneurship, leadership, and civic duty. Placements included local community centers, private businesses, and neighborhood social services agencies.
- **Brockton:** The Old Colony YMCA in Brockton just completed its ninth year as a JOBS FOR YOUTH site. The program serves teens in the Brockton area who reside in the SNI target area and 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 five teens, ages 15-16, worked as program and child-care assistants at YMCA facilities.
- **Chelsea:** This year marked the City of Chelsea's ninth year as a JOBS FOR YOUTH site. This Fiscal Year, the program provided positions for six teens at the Chelsea Public Library and for one teen at Chelsea Community Cable Television. The teens also received training on resume writing and interviewing skills and planned a year-end group activity with their families and supervisors.

- **Holyoke:** Holyoke's JOBS FOR YOUTH program was administered by the Teen Resource Project, which serves youth from low-income neighborhoods, particularly in downtown Holyoke. The program reinforces literacy skills, education, and responsible work behavior. Over the course of the year six Holyoke youth, ages 13-15, worked as youth readers and child care assistants at a local family shelter. In addition to reading to the children, the teens provided on-site homework help and recreational activities and organized a holiday celebration for the shelter's residents.
- **Methuen:** Five youth, ages 15-17, participated in the Methuen Jobs for Youth program. All the teens were residents of the Methuen Weed & Seed target area and worked at the Methuen Arlington Neighborhood, Inc., which is the safe-haven for the Methuen Weed & Seed Site. The teens provided after-school homework assistance and activities and also received more than 40 hours of computer and job skills training.
- **Lawrence:** The Lawrence Jobs for Youth program was administered by Lawrence Community Works, Inc. Eight youth, ages 16-20, served as assistant instructors in dance, computer, music, and drama at the Movement City after-school program. Youth staff attended weekly staff meetings and are involved in event planning and curriculum development. The teens also organized and hosted monthly Friday night Open Mic nights, which provided area youth with a safe and positive activity.
- **Lynn:** Lynn's program was administered by the City of Lynn's Office of Economic and Community Development and served disadvantaged and at-risk youth. During this fiscal year, the program employed eight teens who worked in various positions at after-school programs and community arts programs. All teens took part in a week-long job training program held during February school vacation.
- **New Bedford:** Seventeen at-risk and out-of-school New Bedford youth, ages 16-21, received GED classes, job skills training, and job placement assistance through the University of Massachusetts/Dartmouth Division of Continuing Education. The goal of the program is to provide training and support for youth to gain employment and to continue their educations. Job placements included a variety of local businesses. In November, the Attorney General visited the New Bedford program to meet with program participants, coordinators, and city officials and to present them with their Fiscal Year 2005 funding award.
- **Orange:** The Orange Jobs for Youth program was developed through a collaboration among the Town of Orange, the Franklin/Hampshire Career Center, the Department of Social Services, and several community organizations. The Career Center managed the program and

placed DSS-involved youth residing in the Town of Orange at worksites in town agencies and local non-profits. Program participants also participated in weekly job training and academic support sessions. In this fiscal year, eight youth participated in the program.

- **Springfield:** The Springfield SNI Jobs for Youth program is administered through the Caring Health Center and serves youth from low-income families. The program provides youth with opportunities to increase their employability, self-esteem, and knowledge and skills in the area of health promotion. Four youth, ages 15-19, were employed as Youth Health Liaisons during this fiscal year. They participated in delivering health education information, including violence prevention, to other youth at local community centers, and staffing the Health Center's Teen Health Clinic.
- **Taunton:** Six youth, ages 16-17, were placed through the Taunton Department of Human Services during this fiscal year. The youth were assigned to various agencies, including the Boys and Girls Club of Taunton, the City of Taunton's Law Department, the Taunton Department of Human Services, and the Community Center at the Fairfax Gardens housing development. The program's goal is to provide employment and educational opportunities to youth to build skills and future employment capability.
- **Worcester:** As of Fiscal Year 2005, the Worcester SNI Jobs for Youth program is run by Pride Productions, Inc., which seeks to empower at-risk youth in the Worcester area through the development of skills use of media and technology. A total of 24 youth, ages 14-18, from all six Worcester high schools, developed and produced all aspects of a cable access television show highlighting local businesses and colleges.

On May 11, 2005, approximately 100 youth, program coordinators, and employers from all twelve SNI Jobs for Youth sites attended a recognition event at the Attorney General's Office. In addition to their achievements being recognized by the Attorney General, the purpose of the event was to provide program participants the opportunity to meet and speak with teens from other sites about issues related to work and their experiences as youth. Youth and coordinators participated in facilitated group discussions on these subjects. The Attorney General was able to greet the group and the First Assistant made formal remarks. Certificates of completion were awarded to each participant.

BYRNE MEMORIAL GRANTS

- **Dorchester SNI Youth and Family Project:** Fiscal Year 2005 marked the third year of the *Dorchester Youth and Family Project* which complemented the ongoing efforts of the Dorchester SNI by focusing services on the diverse youth in the SNI target area. Funding supported a variety of programming to coordinate enrichment and recreational activities for youth. Additionally, Byrne funding also supported training for police officers on issues related to child witnesses and violence and expanding therapeutic resources for adolescent witnesses to violence. The sub-grantees contributed the required 50% hard-cash matching funds for this project. In June, the Attorney General's Office was invited to apply for a fourth and final year of funding for the Dorchester Youth and Family Project.
- **Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor:** Since December 2003, an Assistant Attorney General has been assigned to the Essex County District Attorney's Office to provide a district court community prosecution component to Lawrence and Methuen Weed and Seed initiatives. The SNI community prosecutor maintains a caseload consisting primarily of narcotics and priority quality-of-life offenses arising from the targeted Arlington neighborhood that spans the cities of Lawrence and Methuen. The new AAG assigned as of March made strides in improving case identification and management and implementing a modified vertical prosecution model to enhance effective prosecution. The prosecutor also continued to improve coordination and communication between law enforcement and the community by regularly attending relevant public safety and community meetings in both cities (e.g., the Methuen Arlington Neighborhood, Inc. monthly meetings). The Office of the Attorney General contributed the required 50% hard-cash matching funds for this project.
- **SNI Community Re-Entry Project:** Fiscal Year 2005 marked the fourth and final year of Byrne funding for the *SNI Community Re-Entry Project*. The project grew out of and was completely integrated with the efforts of the Dorchester and Grove Hall SNIs. The two project components were: (1) the Grove Hall component focused on juvenile offenders, 14-years-old to 21-years-old, returning to the Grove Hall neighborhood upon release from custody in a Department of Youth Services secure treatment facility; and (2) the Bowdoin-Geneva component focused on offenders, primarily 17-years-old to 24-years-old, returning to the Bowdoin-Geneva neighborhood following a period of incarceration at the Suffolk County House of Correction. The participants for both the components consisted of those assessed to be most at-risk for re-offending. Both components utilized an enhanced case-management model to help participants successfully return to their communities. Re-entry coordinators for each component managed a caseload of approximately 20–30 offenders over the year. Although the project formally

ended on June 30, 2005, aspects of both components will continue to be implemented through the ongoing activities of the Boston Police Department's Boston Re-Entry Initiative and the Department of Youth Services' Serious and Violent Re-entry Initiative funded by the U.S. Department of Justice. The principal partners coordinating with the Office of the Attorney General on the Grove Hall component were: The Department of Youth Services, Roxbury Youthworks, Inc., the Boston Police Department, and the Suffolk County District Attorney's Office. The principal partners coordinating with the Office of the Attorney General on the Bowdoin-Geneva component were: the Suffolk County Sheriff's Department, Community Resources for Justice, Inc., the Boston Police Department, and the Dorchester District Court Probation Department. The Roxbury YouthWorks, Inc. was the sub-grantee and primary implementing agency for the Grove Hall component; Community Resources for Justice was the sub-grantee and primary implementing agency for the Bowdoin-Geneva component. These two agencies and the Boston Police Department contributed the required 50% hard-cash matching funds for this project.

OUTREACH, EDUCATION, AND TRAINING

The philosophy of the SNI is predicated on partnering with community stakeholders to enhance public safety and quality-of-life for neighborhoods. As such, all SNI staff regularly participate in formal and informal outreach activities to solidify existing working relationships as well as to build new ones. Moreover, SNI staff serve as resources and provide technical assistance and training both formally and informally to community partners. Many of the SNI Division's outreach, education, and training activities are described in the previous sections of this report; two that are not, are described below.

- **Abandoned Properties Initiative:** The Abandoned Housing Initiative is a cross-bureau initiative coordinated by programs staff from the SNI Division, legal staff from the Government Bureau's Trial Division, and investigators from the Public Protection Bureau's Investigations Division. The Initiative was one strategy and resource of the Attorney General's Office responding to concerns expressed by SNI community residents many years ago regarding the public safety and health risks posed by dilapidated abandoned residential properties in their otherwise viable neighborhoods. The purpose of the initiative is to assist cities and towns in ridding their neighborhoods of these blighted properties by utilizing the receivership provisions of the state sanitary codes to effect the rehabilitation of these properties. The initiative continued its successful efforts in Fiscal Year 2005. As reported in the Government Bureau Trial Division's section elsewhere in this report, because of the strong real estate market in many Massachusetts

communities, the initiative has been most efficient in helping to locate remote owners and resolve issues with properties left by deceased owners without known heirs. In most instances, communications from this office with owners or next-of-kin have resulted in these individuals taking voluntary action to rehabilitate the properties and bring them up to state sanitary codes. During this year, five new properties were referred to the AGO. The process progressed to petitions for receiverships for just two properties – one with a deceased owner and the other for an owner out-of-state. During this year, AGO staff conducted outreach to introduce the model to new communities (e.g., Springfield, Holyoke, Haverhill, New Bedford) and researched the potential expansion of the model to include Common Nuisance Statute claims to combat drug activity and other violations in occupied properties.

- **McLaughlin Center Partnership:** With Byrne funding from Fall 2000 through December 2003, The YES Project established a formal partnership between the Office of the Attorney General and the Colonel Daniel Marr Boys and Girls Club/Paul R. McLaughlin Youth Center in Dorchester. The Attorney General's staff tutored and taught classes to the children and provided training and education on a variety of topics for staff and children. While the funding for The YES Project concluded in December 2003, the SNI Division continued to coordinate this project. During Fiscal Year 2005, the Office's ongoing commitment to the McLaughlin Center was reflected in the eight volunteers from the Office who participated in the weekly tutoring program and the more than 400 toys donated by staff to the Center's holiday toy drive.

GOVERNMENT BUREAU

ADMINISTRATIVE LAW DIVISION

TRIAL DIVISION

GOVERNMENT BUREAU

The Government Bureau provides representation for the Commonwealth and its agencies and officials in all types of civil litigation, and for employees of the Commonwealth with respect to certain civil claims made against them resulting from the performance of their duties. The Bureau also provides general advice and consultation to officials with respect to legal issues arising in connection with their official functions, particularly in instances where such advance consultation may serve to prevent unnecessary litigation. As in previous years, the Bureau in Fiscal Year 2005 continued its efforts to develop and maintain close working relationships with agency counsel and to provide them with information and advice on matters of broad common interest.

The Government Bureau consists of an Administrative Law Division and a Trial Division. During Fiscal Year 2005, 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 Year 2005, the Government Bureau included the following staff members: David Kerrigan, Chief; Sherrie Costa; and Peter Sacks. Staff members assigned to particular divisions within the Government Bureau are listed below.

AFFIRMATIVE LITIGATION

Both the Administrative Law Division and the Trial Division initiate affirmative litigation on behalf of the Commonwealth, when such litigation is in the public interest; furthers the Attorney General's priorities; and has a significantly high monetary value or raises legal or policy issues of concern to the public and the Commonwealth. The Government Bureau maintained an active docket of affirmative litigation in Fiscal Year 2005 to protect the public interest and the interests of its state agency clients. Numerous matters were favorably resolved without formal litigation. Highlights of actual litigation were as follows:

- **Attorney General v. Second Chance, Inc.** (Suffolk Superior Court) The Attorney General sued the manufacturer of defective bullet-proof vests sold to Massachusetts law enforcement personnel. It is estimated that more than 4,000 such vests were sold in Massachusetts. The suit seeks to recover the replacement cost of the vests and other civil damages. Second Chance has filed for bankruptcy, which stayed the pending state court action. The Attorney General also sued Toyobo, the manufacturer of the fabric used in the vests, which entered into a class action settlement for the benefit of consumers of the vest in Oklahoma. That settlement is expected to benefit Massachusetts law enforcement users of the vest.
- **Attorney General v. Pakachoag Acres Day Care Center, Inc.** (Suffolk Superior Court) The Attorney General continues to press a claim on behalf of the Office of Child Care Services to recover monies the defendants allegedly wrongfully obtained through prohibited related-party transactions, prohibited accounting practices, asset transfers and other financial dealings. The claim seeks in excess of \$1.5 million.
- **Regan v. United States** (U.S. District Court) The Commonwealth intervened in this action to seek a refund of Medicare taxes paid to the federal government with respect to about 500 employees of Sheriffs' offices who became state employees by operation of law when various county governments were abolished. The Commonwealth asserts that such employees qualify for the statutory "continuing employment" exception to the Medicare tax. About \$3 million is at issue for tax years 1999-2002. If the suit succeeds, half would be refunded to the employees, half to the Commonwealth, and additional refunds for years after 2002 could be obtained.
- **Griffin v. Heck** (Suffolk Superior Court) In this ongoing matter, a former state employee filed a lawsuit against the owner of the office building where she allegedly became ill. On behalf of the State Board of Retirement, the Attorney General intervened and continues to press a claim for recoupment of some of the disability retirement benefits previously paid to the plaintiff.

- **Commonwealth of Massachusetts v. Dolphin Forwarding, Inc. and Mary M. White** (Suffolk Superior Court) The Attorney General continues to press a suit on behalf of the Commonwealth's Department of Education against a storage company and its owner for allowing \$1.6 million of food owned by the Department and local school districts to become contaminated. The United States Department of Agriculture had donated the food to the Department for school lunch programs.

ABANDONED HOUSING PROJECT

Government Bureau attorneys also litigated cases through the Attorney General's Abandoned Housing Project. The project is designed to assist community groups in choosing and appointing their own people to take over abandoned houses that, due to the absentee owners' indifference, have created a health, safety and crime hazard for the community. The Attorney General assists the community groups by petitioning the appropriate court for an order 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.

The project continues to be successful in rehabilitating dilapidated properties. Because of the strong real estate market, the project has been most efficient in helping communities locate distant owners and resolve issues with properties left by deceased owners without known heirs. In most cases, contact by the project with those owners or next-of-kin has led to voluntary action by those responsible to rehabilitate the properties. In Fiscal Year 2005 the project needed to seek receiverships for only two properties — one in Dorchester without a living owner, and a second in Greenfield with an out-of-state owner. The project also introduced the model to new communities (Springfield, Holyoke, Haverhill, New Bedford) and expanded the model to potential inclusion of claims under the common nuisance statute to combat drug activity and other violations in occupied property. The project also offers technical assistance on other issues involving distressed properties.

ADMINISTRATIVE LAW DIVISION

The Administrative Law Division has four principal functions: (1) to defend lawsuits against state officials and agencies concerning the validity of statutes and regulations and the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) to defend suits for judicial review of adjudicatory decisions of state administrative agencies, (3) to undertake a legal review of newly enacted town by-laws; and (4) to prepare legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties. During Fiscal Year 2005, significant events occurred in each of these areas, as set forth below.

During Fiscal Year 2005, the Administrative Law Division included the following staff members: William Porter, Division Chief; James Arguin; Luna Bacon; Christine Baily; Annapurna Balakrishna; Dena Barisano; Thomas Barnico; Romeo Camba; Jennifer Cartee; Judith Cassino; Victoria Cole; Julie Collins; Pierce Cray; Julie Goldman; David Hadas; Daniel Hammond; John Hitt; Ronald Kehoe; Diana Leeman; Quinnette Littleton; Bernadette Lovell; Pauline O'Brien; Susan Paulson; Ann Preston; Robert Quinan; Susan Riedel; Juliana Rice; Deirdre Roney; Sookyong Shin; Adam Simms; Ginny Sinkel; Amy Spector; Steven Thomas; Jane Willoughby; and Sheila York.

SIGNIFICANT CASE SUMMARIES

Highlights of some of the most significant cases handled by the Administrative Law Division in Fiscal Year 2005, grouped by subject matter, are as follows:

JUDICIAL AND ADMINISTRATIVE PROCEDURE

- **Lavallee v. Justices of the Hampden Superior Court** (Supreme Judicial Court) The court granted relief to indigent criminal defendants who were held in lieu of bail or under preventive detention and who alleged that attorneys were unavailable to represent them in Hampden County at the rate of compensation for bar advocates authorized in the annual state budget. The court held that petitioners were being deprived of their right to counsel under Art. 12 of the Massachusetts Declaration of Rights and ordered that, upon a showing that no counsel is available to represent a particular indigent defendant despite good faith efforts, such a defendant may not be held more than seven days and the criminal case against that defendant shall, after forty-five days, be dismissed without prejudice until such time as counsel is available.

- **Building Inspector and Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery Corporation** (Supreme Judicial Court) The court held that the Wampanoag Tribe in 1983 waived its sovereign immunity from suit to enforce the Aquinnah zoning bylaw against construction on tribal land. The Attorney General had intervened in the appeal seeking this result.
- **Horizon Bank and Trust v. Commonwealth** (U.S. Court of Appeals, First Circuit) This appeal raised the question whether the United States, asserting a tax claim, may remove an interpleader action to federal court when an unconsenting state, which is also a party with its own tax claim, asserts its Eleventh Amendment immunity and argues that it is an indispensable party. The court did not reach the merits and dismissed the appeal as moot because two other creditors (including the United States) had claims superior to the Commonwealth's and satisfaction of those claims would leave no remaining assets to satisfy the state's tax claims.
- **Snaxin v. Underground Storage Petroleum Cleanup Fund** (Appeals Court) The court held that plaintiff gasoline retailers, who were approved after a lengthy delay for reimbursement of costs incurred in replacement of underground storage tanks at their gas stations, could not recover interest on the amount reimbursed. The court concluded that sovereign immunity precluded the payment of interest absent specific statutory authorization.
- **Naranjo v. Department of Revenue/Child Support Enforcement** (Appeals Court) The court reversed the dismissal of plaintiff's action, which challenged child-support enforcement actions taken by the Commonwealth without an administrative hearing, including taking steps to revoke the plaintiff's driver's and professional licenses.
- **Hunt v. Appeals Court** (Supreme Judicial Court) The court held that an individual seeking review of the denial of his request for waiver of appellate docketing fees should appeal to a panel of the Appeals Court rather than seeking review by a single justice of the Supreme Judicial Court.
- **Cepulonis v. Commonwealth** (Supreme Judicial Court) The court held that the length of time the Appeals Court took to decide plaintiff's appeal in a civil case (less than 18 months after docketing) did not violate plaintiff's right under Article 11 of the Massachusetts Declaration of Rights to obtain justice "without delay."

- **Cruthird v. Superior Court** (Supreme Judicial Court) The court affirmed the dismissal of an inmate's challenge to the former civil action "anniversary fee" statute, because the Superior Court had already waived the plaintiff's fee on indigence grounds and the Legislature had already repealed the underlying statute.

ELECTORAL AND LEGISLATIVE PROCESS

- **Wirzburger v. Secretary of the Commonwealth** (U.S. Court of Appeals, First Circuit) The First Circuit rejected the plaintiffs' challenge to provisions in Article 48 of the Massachusetts Constitution that precluded certification of their proposed initiative petition to amend the Anti-Aid Amendment to the Massachusetts Constitution to permit public funding for students attending private schools, including religious schools. The court held that the two challenged provisions, which prohibit initiatives that seek to amend the Anti-Aid Amendment and initiatives that relate "to religion, religious practices or religious institution," do not violate the Free Speech or Free Exercise Clauses of the First Amendment or the Equal Protection Clause of the Fourteenth Amendment.
- **McClure v. Secretary of the Commonwealth** (U.S. Court of Appeals, First Circuit) A prospective state senate candidate who was unenrolled in any political party sued to challenge the state law requiring such candidates, in order to appear on the ballot, to maintain unenrolled voter status for 90 days prior to the applicable nomination paper filing deadline. The Secretary had denied ballot access to the plaintiff because, by voting in the Democratic Party's presidential primary election, plaintiff had become enrolled in a political party within 90 days prior to the filing deadline. The First Circuit affirmed the dismissal of the case, holding that the disaffiliation statute placed no great burden on the candidate's constitutional rights and promoted important state interests by providing some assurance that persons seeking to run as unenrolled candidates have not recently been affiliated, even briefly, with political parties.
- **DelGallo v. Secretary of the Commonwealth** (Supreme Judicial Court) The court declined to order the Secretary to list the plaintiff's name on the ballot as either an unenrolled or a party candidate for the Office of the Governor's Council, where the Commonwealth's party affiliation and disaffiliation laws combined with plaintiff's recent changes in party enrollment status to render him ineligible for ballot access. The court reaffirmed that such laws are constitutional and held that the Secretary was not estopped from enforcing them based on the allegedly negligent advice of local election officials.

- **Owens v. Secretary of the Commonwealth** (U.S. District Court) Relying on the First Circuit's recent decision in McClure v. Galvin, the court allowed the Secretary's motion to dismiss the plaintiff's action seeking to compel the Secretary to list plaintiff's name on the ballot as an unenrolled candidate for state representative.
- **Andrew v. Commissioner of Correction** (Appeals Court) The court rejected the claim made by a juvenile convicted of murder that the emergency enactment of legislation revoking statutory and earned good time for juveniles convicted of murder was invalid based on the Governor's alleged failure to adequately set forth the facts constituting the emergency as required by Amendment Article 48 of the Massachusetts Constitution.

EDUCATION

- **Hancock v. Commissioner of Education** (Supreme Judicial Court) In view of the "long-term, measurable, orderly, and comprehensive process of [education] reform" embarked on by the state legislative and executive branches, a majority of the court rejected the conclusion of a Superior Court judge that the Commonwealth presently is not meeting its obligations under the "education clause" of the Massachusetts Constitution, and rejected her recommendation for further judicial action. The court therefore denied the plaintiff students' motion for further relief and terminated the Single Justice's ongoing jurisdiction of this long-running case.
- **City of Salem v. Bureau of Special Education Appeals** (Supreme Judicial Court) The court affirmed the BSEA's determination that the two municipalities in which the divorced parents of a child separately live should share financial responsibility for providing special educational services to the child, where the child is in the custody of the Department of Social Services (DSS), and is living and receiving services at a private residential school in another community. The court also upheld the validity of regulations of the Department of Education that, in these circumstances, assign the cost of special education services equally to the two school districts in which the child's divorced parents separately live.

HEALTH AND HUMAN SERVICES

- **Lopes v. Commonwealth** (Supreme Judicial Court) The court affirmed the dismissal of claims by the estates of deceased smokers who argued that funds received by the Commonwealth in its settlement with tobacco manufacturers must be set off against amounts the estates owe the Medicaid program for treatment of their decedents' tobacco-related illnesses. The court held that certain claims were barred by sovereign immunity and that others were foreclosed by a 1999 amendment to the federal Medicaid Act governing disposition of tobacco settlement payments.

- **McGuire v. Reilly, as Attorney General** (U.S. Court of Appeals, First Circuit) The court affirmed the entry of summary judgment in favor of the Commonwealth in this as-applied challenge under the First Amendment to the state law that creates a six foot “buffer zone” around persons entering reproductive health care facilities. The court held that, as implemented, the law did not impermissibly discriminate against the plaintiffs’ anti-abortion views, because the Attorney General and local law enforcement had followed an evenhanded approach to its enforcement.
- **Long Term Care Pharmacy Alliance v. Director, Division of Health Care Finance and Policy** (Suffolk Superior Court) The court held that DHCFP could reasonably construe a statute reducing the dispensing fee paid to “retail” pharmacies participating in the state Medicaid program to apply to the plaintiffs, who described themselves as “long term care” pharmacies.
- **Ricci v. Okin** (U.S. District Court) The court denied plaintiffs’ motion to reopen consent decrees governing state facilities for mentally retarded persons, without prejudice to plaintiffs’ ability to bring more specific claims later. The court also accepted and ordered certain modifications to the Department of Mental Retardation Individual Service Plan (ISP) process that were earlier agreed to by the parties.
- **Anderson Insulation Co. v. Department of Public Health** (Appeals Court) The court held that the plaintiff must reimburse DPH for the reasonable costs of removal of urea formaldehyde foam insulation (UFFI) from three homes, where DPH’s UFFI Trust Fund had earlier paid for removing the UFFI. This concluded a series of cases, first filed by Anderson in 1983, challenging DPH’s UFFI “repurchase” regulations.

CHILDREN AND FAMILIES

- **Care and Protection of Erin** (Supreme Judicial Court) In a case of first impression, the court held that a parent (or child) who petitions for review and redetermination of a care and protection decree (under which custody of a child was transferred to the Department of Social Services) bears the initial “burden of production” of demonstrating that circumstances have changed sufficiently to merit modifying or dismissing the petition, at which point the burden of proof shifts to DSS to prove parental unfitness.
- **Department of Revenue/Child Support Enforcement v. Ryan R.** (Appeals Court) The court held that Ryan R.’s biological child — born during the mother’s marriage to another man — was born “out of wedlock” within the meaning of G.L. c. 209C; accordingly, the mother could properly initiate a child-support action against Ryan R. on the child’s behalf.

- **Adoption of Abby** (Appeals Court) The court vacated a Juvenile Court decision terminating a mother's parental rights as to her 4-year-old child. Subjecting the trial court's findings to stricter scrutiny because they were taken almost verbatim from the proposed findings of DSS and the child, the court found clearly erroneous most of the trial court's central findings, including that the mother had battered the child as an infant and that the mother's personality disorder made her unable to provide minimally adequate care. The court concluded that the remaining, supported findings primarily raised questions about Mother's "parenting style," and did not reflect the grievous shortcomings necessary to an ultimate finding of parental unfitness.
- **Naranjo v. Department of Revenue/Child Support Enforcement o/b/o Venus Rodriguez** (Appeals Court) The court held that the trial court should have granted the appellant's motion for relief from a judgment of paternity, holding that DOR/CSE had failed properly to serve process on him when it commenced a paternity action in 1990.
- **Town Clerk of Provincetown v. Attorney General; Cote-Whitacre v. Department of Public Health** (Suffolk Superior Court) The court denied motions by town and city clerks and out-of-state same-sex couples to enjoin DPH's enforcement of state laws barring clerks from licensing the marriage of an out-of-state couple if the marriage would be void or prohibited in the couple's home state. Plaintiffs appealed, and the Supreme Judicial Court granted direct appellate review.
- **Doyle v. Goodridge** (Supreme Judicial Court) The court dismissed as moot an appeal of a ruling refusing to stay the entry of judgment in the Goodridge case, which legalized same-sex marriage in the Commonwealth.

EMPLOYMENT AND RETIREMENT

- **Local Union No. 12004 v. Massachusetts Commission Against Discrimination** (U.S. Court of Appeals, First Circuit) In this case involving a gay mid-level manager who was allegedly targeted for sexual orientation-based harassment by union members during a bitter labor dispute, the First Circuit reversed the District Court's dismissal of the union's federal complaint, which asserted that the manager's MCAD complaint was preempted by the National Labor Relations Act (NLRA). The First Circuit held that the union's action, seeking to enjoin MCAD officials from interfering with their federal rights under the NLRA, properly invoked federal-question jurisdiction. The court remanded for a determination of whether the District Court should nonetheless abstain from hearing the union's suit under the Younger doctrine while the MCAD adjudicates the manager's discrimination complaint.

- **DeLeo v. City of Boston & Massachusetts Human Resources Division** (U.S. District Court) In an action by eight white males seeking appointments as Boston police officers, the court held that the essential provision of the long-running affirmative action consent decree in Castro v. Beecher — that the police department attain a complement of minority officers commensurate with the minority population of the City — was satisfied as of October 2003. As a result, the court held that continued use of a race-conscious hiring protocol under the decree no longer satisfied constitutional standards. The court did not, however, order that the plaintiffs be hired, where it had not been shown that they would have been selected absent the consent decree.
- **Sheriff of Middlesex County v. International Brotherhood of Correctional Officers, Local R1-193** (Appeals Court) The court affirmed an order staying arbitration of a correction officer's claim that the Sheriff discriminated against the officer in declining to appoint him as deputy sheriff. The court held that the Sheriff's non-delegable statutory authority to appoint deputies was not a proper subject for arbitration and that the officer's claim was not within the non-delegability doctrine's exception for certain claims of unconstitutional discrimination.
- **Thomas v. Department of State Police** (Appeals Court) The court held that, although G.L. c. 32, § 8(2), entitled the plaintiffs (troopers returning to the State Police after accidental disability retirement) to the same position in rank and title they previously held, it did not entitle them to a higher pay grade and seniority credits, issues that were governed by the collective bargaining agreement between the parties.
- **Massachusetts Correction Officers Federated Union v. Commissioner of Correction** (Appeals Court) The court reversed the dismissal of this suit seeking confirmation of an arbitration award imposing a disciplinary "twenty workday unpaid suspension" on the employee. The court held that DOC had not complied with the award when it recorded a twenty-day suspension in the employee's file and withheld twenty days' pay, but did not permit the employee to serve a twenty-day suspension away from work.
- **Gupta v. Division of Employment and Training** (Appeals Court) The court upheld DET's decision denying unemployment benefits to a claimant who lost his job after reacting rudely to a customer's ethnic slur. Because the claimant had been previously warned against reacting rudely to abusive customers, the court affirmed DET's conclusion that the employee's rudeness was "deliberate misconduct in wilful disregard" of his employer's interest, which disqualified him from receiving benefits.

- **New England Wooden Ware v. Division of Employment and Training** (Appeals Court) The court affirmed DET's award of unemployment benefits, concluding that the employer had failed to show that the claimant knowingly violated a uniformly enforced rule or policy. Even though the claimant had violated the employer's absenteeism policy, the policy was neither uniform on its face nor uniformly enforced.
- **Buchanan v. Contributory Retirement Appeals Board** (Appeals Court) The court affirmed CRAB's decision denying plaintiff's claim for accidental disability retirement benefits, concluding that substantial evidence supported CRAB's conclusion that the plaintiff had failed to establish a causal nexus between her emotional disability and her employment.
- **Robinson v. Contributory Retirement Appeals Board** (Appeals Court) The court held that the conviction of the plaintiff, a former Boston police officer, of embezzlement and conspiracy to violate civil rights had triggered automatic forfeiture of his right to accidental disability retirement benefits, rendering moot a dispute over his medical eligibility for such benefits.
- **Knox v. Civil Service Commission & Department of Social Services** (Appeals Court) The court affirmed judgments denying relief to a former DSS employee who challenged her termination. The court held that the Civil Service Commission properly decided that it lacked jurisdiction, that DSS's performance management system guide did not create an enforceable employment contract with the plaintiff, and that the plaintiff had no property interest in her position upon which to base a due process claim.

PROFESSIONAL LICENSING

- **Weinberg v. Board of Registration in Medicine** (Supreme Judicial Court) The court affirmed a decision by the Board revoking plaintiff's license to practice medicine based on findings that he had engaged in sexual relations with a current patient in violation of prevailing professional standards. The court rejected the physician's arguments that imposing discipline based on what he described as private, consensual sex infringed on any due process, privacy or other constitutional rights. The court also held that the Board properly considered, as an exacerbating factor in determining the appropriate sanction, the physician's attempts to obstruct its investigation.
- **Cobb v. Supreme Judicial Court** (U.S. District Court) The court dismissed on Younger abstention grounds an attorney's suit to enjoin his state-court disbarment proceeding due to alleged judicial bias.

INSURANCE AND BANKING

- **Postal Community Credit Union v. Commissioner of Banks** (Appeals Court) On the Commissioner's appeal, the Appeals Court agreed that a state-chartered credit union lacks state statutory authority to convert to a federally-chartered bank without the approval of the Commissioner. The court also rejected a claim by the credit union that the Federal Credit Union Act preempted the Commissioner's order barring the conversion.
- **Hanover Insurance Co. v. Commissioner of Insurance** (Supreme Judicial Court) The court affirmed the Commissioner's dismissal of an administrative "unfair practices" complaint brought by one insurer against another insurer. The court held that the Commissioner did not abuse her statutory discretion in declining to address the issue raised in the administrative complaint, especially where the Commissioner took responsive action through the rule-making process of the Commonwealth Automobile Reinsurers.
- **Commerce Insurance Co. v. Commissioner of Insurance** (Superior Court) The court held that the Commissioner lacks statutory authority to adopt an "assigned risk plan" for the "residual" market for auto insurance in the Commonwealth.
- **Massachusetts Bankers Ass'n v. Commissioners of Insurance and Banks** (U.S. District Court) The court held that certain state laws regulating, in the interest of consumer protection, the sale of insurance by banks are preempted by the federal Gramm-Leach-Bliley Act because they "significantly interfere with the ability" of national banks to sell insurance.
- **Massachusetts Academy of Trial Attorneys v. Commissioner of Insurance** (Supreme Judicial Court, Single Justice) MATA challenged the Commissioner's decision to approve an optional managed medical care endorsement that was expected to reduce claimants' medical costs and thereby reduce the number of claims that meet the minimum \$2000 medical-expenses threshold required to bring a tort claim for pain and suffering. The single justice dismissed the action, holding that the expected reduction in lawyers' ability to bring motor vehicle lawsuits did not confer direct standing upon MATA or its members to challenge the endorsement and that MATA lacked standing to challenge the endorsement on behalf of consumers who might purchase it.

TAXATION

- **Peterson v. Commissioner of Revenue** (Supreme Judicial Court) In this case the court addressed the construction and constitutionality of two statutes enacted by the Legislature in 2004 in response to Peterson v. Commissioner of Revenue (Peterson I). In Peterson I, a divided court held that the May 1, 2002, effective date for a new rate of tax on capital gain income in the Revenue Enhancement Act of 2002 violated the “uniformity” provision of Amendment Article 44 of the Massachusetts Constitution. After Peterson I, the Legislature enacted an effective date of January 1, 2002, but in a separate section exempted from the new rate those who had paid their taxes on gains realized between January 1, 2002, and April 30, 2002. In Peterson II, the court struck down the exemption under Art. 44 but deemed it severable from the provision providing an effective date of January 1, 2002.
- **RCN-BecoCom, LLC v. Commissioner of Revenue** (Supreme Judicial Court) The court affirmed an Appellate Tax Board decision holding (1) that the taxpayer, a provider of bundled telecommunications services (telephone, cable and Internet services), was entitled to the favorable tax treatment statutorily reserved for “telephone companies,” even though a majority of its property was used in service of non-telephone technologies; and (2) that the taxpayer was not entitled to claim a property tax exemption available to utility corporations, insofar as its status as a limited liability company disqualified it from such treatment. In so ruling, the court rejected appeals brought by both the taxpayer and the Commissioner.
- **Boston Professional Hockey Ass’n v. Commissioner of Revenue** (Supreme Judicial Court) The court upheld the bulk of the Commissioner’s corporate excise tax assessment against the Boston Bruins, rejecting a wide array of statutory, regulatory, and constitutional claims by the hockey team.
- **Sylvester v. Town of Danvers & Commissioner of Revenue** (Superior Court) The court upheld the constitutionality of the five-year residency requirement imposed by state statute on those eligible for a modest property tax abatement for disabled veterans. Plaintiff has appealed.

TELECOMMUNICATIONS

- **Global NAPs, Inc. v. Verizon New England & Department of Telecommunications and Energy** (U.S. Court of Appeals, First Circuit) The court affirmed DTE's order under the Federal Telecommunications Act of 1996 denying Global NAPs' request for approval to adopt, as its own, an "interconnection agreement" between Verizon and Sprint. DTE had ruled that Global lacked authority under the Act to adopt the Sprint Agreement because Global had earlier invoked and obtained arbitration by the Department of ongoing disputes between Global and Verizon regarding the negotiation of an interconnection agreement between them.
- **Global NAPs v. Department of Telecommunications and Energy** (U.S. District Court) The court ruled that Global's federal action (challenging the Department's interpretation of an "interconnection agreement" between Global NAPs and Verizon) was an impermissible attack on a prior judgment of the Supreme Judicial Court.

ALCOHOL REGULATION

- **Heineken v. Alcoholic Beverages Control Commission** (Appeals Court) The court affirmed the ABCC's decision that a supplier could not unilaterally determine that its licensed wholesaler "had ceased to operate" and therefore was no longer entitled to certain statutory notice protections. The court remanded the case to the ABCC to determine whether the supplier had good cause to terminate sales to the wholesaler.
- **Gilman v. Alcoholic Beverages Control Commission** (Appeals Court) The court affirmed the ABCC's decision that a supplier that purchased certain brands of liquor was not statutorily obligated to continue sales to the wholesalers with whom the predecessor supplier had done business. The court rejected the argument that a buyer's general contractual assumption of the seller's liabilities under an arms-length purchase agreement was sufficient to transfer the seller's statutory sales obligations to the buyer.

PRIVACY AND PUBLIC RECORDS

- **Coe v. Sex Offender Registry Board** (Supreme Judicial Court) The court held that Internet dissemination of level three sex offender registration information by the Sex Offender Registry Board does not violate the due process requirements of the Massachusetts Declaration of Rights.

- **Globe Newspaper Co. v. Secretary of Public Safety** (Superior Court) The court upheld the denial of a request under the public records law for records concerning the identities of criminal defendants who are at large and against whom outstanding arrest warrants have been issued for the commission of violent crimes. The court held that the request sought information in the state Warrant Management System relating to the identities of persons wanted for violent crimes, and so was exempt from disclosure as criminal offender record information (CORI).

STATISTICAL SUMMARY

During Fiscal Year 2005, the Administrative Law Division opened 834 cases and closed 1042 cases. At the close of the fiscal year, 1495 cases were pending in the division. Cases handled by the division resulted in 18 reported decisions of the Supreme Judicial Court, 17 reported decisions of the Massachusetts Appeals Court, 6 reported decisions of the United States Court of Appeals for the First Circuit, and 6 reported decisions of the United States District Court for the District of Massachusetts. In addition, division attorneys were involved in numerous cases in those courts and in state trial courts that resulted in unpublished decisions.

MUNICIPAL LAW UNIT

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

During Fiscal Year 2005, the Municipal Law Unit included the following staff members: Assistant Attorney General Robert Ritchie, Director; Sandra Giordano; Kelli Gunagan; and Eva Szczech.

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 facially inconsistent with the laws or the Constitution of the Commonwealth. The Attorney General has 90 days from the date on which he receives by-law amendments from the Town Clerk in which to conduct his review. He will disapprove any amendment, or appropriate portion thereof, where the amendment is in facial conflict with substantive state law or where mandatory procedural requirements of adoption are not met.

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

During Fiscal Year 2005, the Municipal Law Unit reviewed 712 general by-laws, of which 627 (88.0%) were approved, 38 (5.3%) were approved with partial deletion, 9 (1.3%) were disapproved, 20 (2.8%) were returned with a finding that no action by the Attorney General was required by state law, and 18 (2.5%) received cautions; 1,056 zoning by-laws, of which 1,008 (95.5%) were approved (including 169 zoning map amendments), 14 (1.3%) were approved with partial deletion, 2 (0.2%) were disapproved, 2 (0.2%) were returned with a finding that no action by the Attorney General was required by state law, and 30 (2.8%) received cautions; 6 historic district by-laws, all of which were approved, and 13 charter amendments, all of which were found to be consistent with state law.

During Fiscal Year 2005, the authority conferred by Chapter 299 of the Acts of 2000, under which the Attorney General may waive minor procedural deficiencies in zoning by-law enactments submitted to him for approval, was exercised in over 32 instances, an increase of nine instances from the previous year. In all instances, no objections were filed to the Attorney General's decision to waive the deficiencies.

Above and beyond what is required by statute, the Attorney General has chosen to extend the services and resources of his Municipal Law Unit by providing, when possible, voluntary informal review of proposed town by-law amendments, and — even though not subject to review by the Attorney General — proposed city ordinances. During Fiscal Year 2005, the unit experienced an increase in the number of calls from local public officials and members of the general public, many of which relate to anticipated changes in local laws and charters.

During Fiscal Year 2005, the unit monitored a 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 Year 2005, unit attorneys were monitoring approximately 65 such matters.

The most prevalent subjects of local regulation during Fiscal Year 2005 were by-laws regulating affordable housing/inclusionary housing, telecommunications facilities, wetlands, open space, agricultural uses and structures, sexually-oriented businesses and motor scooters. Community preservation by-laws were more prevalent this year than previously.

Over time, unit personnel have gradually increased their outreach efforts by writing and speaking to groups all around the Commonwealth. Particular emphasis has been placed on working with town clerks and local planning boards, as both are intimately involved in the substance and procedure of local legislation. Unit personnel participated in dozens of outreach and educational events during Fiscal Year 2005. Unit personnel attended the Massachusetts Town Clerk's Conferences to hold classes and to present and explain the books used for submitting the by-law packets. Unit personnel also actively participated in events held by the City Solicitors and Town Counsel Association in order to exchange perspectives on issues of mutual interest and concern.

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 pending or likely litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation. Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the Attorney General, the secretary then makes or approves the opinion request. During Fiscal Year 2005, no formal opinions were issued. During the same time period, the Attorney General issued 13 letters providing informal advice, providing a certification or designation to a federal agency in connection with the Commonwealth's participation in a federal program, or declining to give advice.

TRIAL DIVISION

The Trial Division is responsible for defending the Commonwealth in civil cases brought against the Commonwealth and its departments, agencies and employees in a variety of actions, primarily consisting of tort, eminent domain, employment, contract, civil rights and land registration actions. Members of the division analyze each case at the outset to see if the case should be resolved through settlement or in favor of the Commonwealth by dispositive motion. If not, the case proceeds through the discovery phase, and the division continues to try to resolve the case through settlement or by filing a summary judgment motion. Alternative dispute resolution approaches are always considered and are utilized at any appropriate stage of the case. The experience of the division in representing the Commonwealth in civil lawsuits is consistent with private practitioners in this area of law in that the majority of cases resolve prior to a trial. If the case goes to trial, the division aggressively defends the Commonwealth and its employees. The division also handles any appeals arising from its cases, whether brought in state or federal court. Several appeal decisions are highlighted below. The division has enjoyed impressive results by defending the Commonwealth and its employees in its trials, resulting in a large number of defense verdicts.

The following personnel served in the Trial Division during fiscal year 2005: Rosemary Connolly, Chief; Alison Andelman; Asha Awad; Jason Barshak; Matthew Berge; Crispin Birnbaum; John Bowen; Ranjana Burke; Joseph Callanan; Lynnette Cheseborough; Renee Coleman; Cathleen Collins; Jeffrey Collins; Stephen Dick; Thomas DiGangi; John Dorsey; Janet Elwell; Lisa Fauth; Susan Gaeta; Salvatore Giorlandino; Mary Hall; Judy Jakobsche; Sarah Joss; Jean Kelley; Ronald Kehoe; Jennifer Lavery; Jennifer Lespinasse; Lucinda MacDonald; Howard Meshnick; Sally Mengual; Janet Nolan; Ann Marie Noonan; Alicia Oladayiye; Mary O'Neil; Maite Parsi; Fran Riggio; Noelle Renaud; Peter Russell; Ernest Sarason; David Stanhill; Mark Sutliff; Teresa Walsh; Jessica Wielgus; Meredith Wilson; Doris White; and Charles Wyzanski.

TORTS

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

- **DiBenedetto v. Commonwealth** (Superior Court) Plaintiff was a passenger in a van operated by a Department of Correction employee which was involved in an accident. Plaintiff claimed that the state employee negligently operated the van which caused the accident and the resulting personal injuries to the plaintiff. At trial, the jury found no negligence on the part of the Commonwealth.

- **Henderson v. Executive Office of Health and Human Services** (Superior Court) Plaintiff, a pedestrian, was struck by a van driven by a Department of Mental Retardation employee and sustained permanent physical injuries and experienced a long convalescence. The jury awarded plaintiff \$160,000, which was reduced by the plaintiff's 30% degree of fault as found by the jury. The award was further reduced to \$100,000, the statutory cap (per plaintiff), for tort claims against the Commonwealth.
- **Arruda v. Commonwealth** (Superior Court) Plaintiff fell and injured her wrist while playing tennis on courts at the Bristol Community College. At trial, the jury found no negligence on the part of the college in the maintenance of its courts.
- **Herd v. State Police** (Superior Court) Plaintiff claimed that the State Police negligently operated a boat in Boston Harbor, causing it to collide with plaintiff's boat, thus injuring the plaintiff and damaging his boat. At trial, the jury found no negligence on the part of the State Police.
- **Paine v. Department of Mental Health** (Superior Court) Plaintiff, a DMH client, was placed in a residential group home where she was assaulted by another resident. Plaintiff claimed that DMH was negligent in referring the perpetrator to this group home given his past history of violent behavior. At trial, the jury found that DMH and the plaintiff were each 50% at fault, and the plaintiff's \$75,000 jury award was reduced accordingly to \$37,500.
- **Gibau & Ogara v. Commonwealth** (Superior Court) Plaintiffs claimed that they suffered injuries as a result of a three-car collision allegedly caused by a trooper's negligent operation of a State Police cruiser. After the first day of trial, one plaintiff settled for \$12,000. After trial, the jury returned a \$33,700 verdict for the other plaintiff, which was less than the plaintiff's lowest demand before trial.

Many tort cases are also resolved through other means, such as dispositive motions which may dismiss all of or some of the claims brought in a suit. The following are examples of resolutions achieved through those means:

- **Cronin v. Shea** (Superior Court) Plaintiffs' nephew was the subject of a Department of Social Services investigation to determine if he had been abused by his biological father, the plaintiffs' brother. In the investigation the plaintiffs provided certain statements and information to social workers. Plaintiffs subsequently learned that the social workers' report attributed statements to them about their father that they allege they did not make and were false. As a

result, plaintiffs contend that their family, including their brother, will not speak with them, causing them emotional distress. The court allowed a motion to dismiss claims against the social workers, leaving only a negligence claim against the DSS itself.

- **Hodge v. Massachusetts Highway Department** (Superior Court) Plaintiff claimed that his automobile accident was caused by the state's failure to properly plow snow, permitting it to accumulate on the median strip and thereby impairing his view of the road. The Commonwealth moved to dismiss because the case was improperly brought under the Massachusetts Tort Claims Act rather than as a road defect case under a separate statute, the notice requirements of which plaintiff had not satisfied. The court agreed and dismissed the suit.
- **Barnes v. Department of Transitional Assistance** (Superior Court) Plaintiff claimed that DTA had negligently administered his payments and recouped too much of the money he had received from Social Security. The Commonwealth successfully moved to dismiss the suit because of the plaintiff's failure to exhaust his administrative remedies and because the Commonwealth had not expressly waived its sovereign immunity to be sued in this type of case.
- **Wojcik v. Executive Office of Public Safety** (Superior Court) Plaintiff, while an inmate of the Middlesex House of Correction, claimed that he had been subjected to a chemical restraint and was not provided with proper medical treatment as a result of his exposure. The Commonwealth's motion for summary judgment was allowed.

Other tort cases raised legal issues requiring resolution by the appellate courts. Examples of these are as follows:

- **Twomey v. Commonwealth** (Supreme Judicial Court) Plaintiffs' son died in an automobile accident at an intersection. Plaintiffs claimed that the state Highway Department's failure to trim town-owned trees surrounding a state stop sign at the intersection substantially contributed to causing the accident. The Commonwealth claimed immunity from this type of suit, because the state did not own or control the trees which obscured the sign. The Superior Court rejected the immunity claim, and on appeal, the Supreme Judicial Court agreed and remanded the case for a trial on the factual question whether the obscured stop sign was a proximate cause of the accident.

- **Vining v. Commonwealth** (Appeals Court) Plaintiff was arrested, and his personal property, including a valuable gold ring, was taken from him and transferred to court officers. Upon his release, his ring was not returned to him. He sued for the negligent handling of his ring. The Commonwealth successfully moved for summary judgment, arguing that the state Tort Claims Act preserves immunity from suits arising from the lawful detention of property by a law enforcement officer. On the plaintiff's appeal, the Appeals Court agreed that the Commonwealth was immune from the suit.

This year the Legislature passed a new law, G.L. c. 258D, to provide financial compensation and services for eligible persons who had been erroneously convicted of a felony and who had served time in a state prison or house of correction as a result. As of the end of Fiscal Year 2005, the division was handling nine of these cases.

CONTRACTS

The division defends the Commonwealth and its agencies in a variety of contract actions, including construction disputes, breach of lease cases and bid protests. These cases are complex because they often involve interpretation of bidding regulations and a complicated statutory framework. These cases also frequently require the division to defend requests for preliminary injunctions which may resolve the entire case.

Unlike tort cases, there is no statutory cap on the potential exposure to the Commonwealth, so the Commonwealth's liability exposure can be quite large in any given case. The following are examples of the types of contract cases handled by the division.

- **Treviicos Corp. v. Massachusetts Highway Department** (Superior Court) Plaintiff was a subcontractor on a state contract to rebuild a bridge. Plaintiff claimed that it was owed an equitable adjustment to increase the amount payable under the contract because it encountered a substantial change in construction conditions. Plaintiff sought an order in the nature of mandamus requiring MHD to pay it additional money. The court dismissed the complaint on the ground that plaintiff, as a subcontractor, lacked standing to bring the claim against MHD.
- **Superior Abatement Inc. v. Division of Capital Asset Management** (Superior Court) This dispute arose from the additional costs incurred for the removal of asbestos floor tiles before the demolition of the old Boston State Hospital. Plaintiff sued DCAM and a project designer to recover the approximately \$800,000 in additional costs. The case settled favorably for the Commonwealth with a payment from DCAM of \$135,000 and a payment of \$165,000 from the project designer.

- **IDM Environmental of Massachusetts, Inc. v. Manafort Brothers, Inc. v. The Commonwealth** (Superior Court) In this second case arising out of the demolition of Boston State Hospital, the general contractor, Manafort, brought several claims totaling \$3 million. A settlement was achieved whereby Manafort received an additional payment of \$800,000, and the Commonwealth retained liquidated damages against Manafort in the amount of \$265,000 due to Manafort's failing to complete work on time as required under the contract.

REAL ESTATE

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

- **Village Homes v. Massachusetts Highway Department** (Superior Court) Plaintiff's land in Plymouth was taken for the construction of Route 44 project. Plaintiff sought \$528,000 in damages, but the jury returned a verdict of only \$87,500 — less than the \$128,000 pro tanto paid by MHD to the plaintiff at the time it took the land.
- **Digital Equipment Corp. v. Commonwealth** (Superior Court) Plaintiff sought damages of \$2,516,800 for the taking of 102 acres in West Boylston. The pro tanto paid at the time of the taking was \$241,000. After the start of trial, the parties settled the case, favorably to the Commonwealth, for \$675,000.
- **Cargill v. Commonwealth** (Superior Court) Plaintiff's 2.9 acre parcel was taken for the improvement of Route 146. The pro tanto paid at the time of the taking was \$175,000. At trial the plaintiff claimed the land was worth \$1.1 million. The jury returned a verdict of \$304,000.
- **Memorial Association Whitman Post #22, American Legion v. Town of Whitman & Commonwealth** (Superior Court) In 1956, plaintiffs gave the Commonwealth land to build an armory; recently the Commonwealth declared the armory surplus, and the plaintiffs sued the Commonwealth to have the land revert to them if it was no longer to be used for an armory. The Commonwealth's motion to dismiss the complaint on lack of standing and other grounds was allowed.

- **51 Ballard Street Realty Trust v. Commonwealth** (Superior Court) The Commonwealth took a parcel of land, formerly used as a gas station, in connection with the project to improve Route 146. Plaintiff claimed approximately \$210,000 in damages, exclusive of interest. The case settled for \$65,000.
- **Locator Services, Ltd. v. Treasurer** (Supreme Judicial Court) Plaintiff claimed to represent numerous landowners whose land had been taken by the Commonwealth and who were not paid compound interest on their eminent domain awards. The Treasurer moved for summary judgment, asserting that the relevant statutes did not require the payment of compound interest and that most of the claims were barred by the statute of limitations. The Superior Court denied the motion, but on appeal, the Supreme Judicial Court held that compound interest was not required; rather, the money should be invested at the Treasurer's discretion in any of the investment vehicles permitted by statute (some of which pay compound interest), so that at the time of the payment the principal along with any accrued interest may be paid to the land owner. Damages flowing from any breach of the Treasurer's obligation in this regard are measured according to the interest available on the lowest-paying permitted investment vehicle. The court found that there was a three-year statute of limitations on these claims and remanded for further proceedings on the question whether plaintiffs' claims were brought within the three-year period or whether the statute of limitations was tolled by agreement, as claimed by the plaintiff.
- **Boston Water & Sewer Comm'n v. Commonwealth** (Superior Court) The Legislature took a large parcel of land, claimed by BWSC, for use by the University of Massachusetts at its Harbor campus. BWSC sued, claiming that the Legislature's act was invalid and did not provide the constitutionally required just compensation for the taking. The Superior Court agreed with the Commonwealth that BWSC, as a public entity, cannot contest the constitutionality of an act of Legislature and therefore entered judgment for the Commonwealth. BWSC has appealed.
- **Laham v. Massachusetts Highway Department** (Appeals Court) At trial in this eminent domain matter, the Commonwealth obtained a jury verdict less than the pro tanto, resulting in plaintiff owing the Commonwealth \$7000. Plaintiff appealed, claiming the trial court erred in certain evidentiary and other rulings. The Appeals Court, in an unpublished decision, reversed the verdict and remanded the case to the Superior Court for a new trial.

EMPLOYMENT, CIVIL RIGHTS, AND OTHER CASES

Increasingly the Trial Division is called upon to defend the Commonwealth and its agents in employment and civil rights cases. These cases are factually and legally complex and present challenging issues to the division. Also, because there is no statutory cap on the monetary damages that can be awarded in these cases, and because these types of claims frequently are brought against officials or employees in their individual capacity, the potential financial exposure can be significant. The division handled a number of employment and civil rights cases during Fiscal Year 2005, including the following:

- **Mihos v. Swift** (U.S. District Court) This case involved a claim for damages arising out of the Acting Governor's attempt to remove the member from the board of the Turnpike Authority. After the First Circuit Court of Appeals remanded the case for further proceedings on the member's First Amendment claim, and after discovery and further proceedings in the District Court, the parties negotiated a resolution of the claims which denied any wrongdoing by the plaintiff or any Commonwealth employee and included a payment on behalf of the defendant to the plaintiff.
- **Babayan v. Secretary of the Commonwealth** (Superior Court) Plaintiff, a former state archives employee, claimed that the Commonwealth, as his employer, discriminated against him on account of his national origin. After a bench trial, the court entered judgment for the Commonwealth, finding that there had been no discrimination.
- **Gibney v. Department of Public Safety** (Superior Court) Plaintiff, a Vietnam veteran, claimed he was disabled and that the Department, in failing to hire him as a special investigator, discriminated against him on the basis of his disability. The court granted the Department's motion for summary judgment.
- **Lahousse v. Department of Correction** (Superior Court) Plaintiff, claiming that she was involuntarily transferred within DOC in retaliation for her whistleblowing activities, sued DOC as well as several individuals. On the Commonwealth's motion for summary judgment, all of the claims against the individuals were dismissed. The case will proceed to trial only on the single whistleblower claim against DOC.
- **Moccio v. Suffolk County District Attorney** (Superior Court) The court granted the Commonwealth's motion for summary judgment and dismissed plaintiff's claims that she was terminated due to her age and in breach of the covenant of good faith and fair dealing.

- **Carboni v. Quinsigamond Community College** (Superior Court) Plaintiff claimed that he was denied a faculty position because of his gender. He claimed that the college instead offered the positions to two females. Alternatively he argued that he was not hired in retaliation for previously filing an MCAD complaint against the College. After a voluntary mediation the parties settled this matter for \$32,500.
- **Dasey v. State Police** (Superior Court) Plaintiff was a probationary trooper dismissed because it was learned that he lied on his application about prior drug use. After his several federal suits failed, plaintiff filed this state suit claiming that the State Police violated the collective bargaining agreement by the manner in which they terminated him. The court granted the Commonwealth's motion for summary judgment, ruling that these claims were barred by res judicata and that plaintiff had failed to exhaust his administrative remedies.
- **Washington v. Massachusetts Commission Against Discrimination** (U.S. District Court) Plaintiff sued officials at MCAD because they had dismissed a discrimination complaint that he had filed with the agency. The district court dismissed the suit, agreeing with the Commonwealth that the MCAD enjoyed absolute immunity for its dismissal decision.
- **Hatch v. Department of Mental Retardation** (Superior Court) Plaintiff claimed that DMR had failed to tell him that, when he was an adolescent at Fernald State Hospital, he had been subjected to experiments using radioactive isotopes. Previously, the Commonwealth, MIT and others settled dozens of such claims asserted in a federal lawsuit, but this plaintiff claimed he was not given notice that he could participate in that settlement. Plaintiff asserted intentional tort claims and negligence claims against DMR. The court dismissed the intentional tort claims and the parties settled the negligence claim for the statutory cap of \$100,000.

Some employment and civil rights cases raised legal issues requiring resolution by the appellate courts. Examples of such cases include:

- **McKeag Leach v. Massachusetts Rehabilitation Commission** (Appeals Court) Plaintiff, an MRC employee who is deaf, contended that MRC should have accommodated her for her repetitive stress syndrome, which she claimed is common among deaf people. The Appeals Court affirmed the lower court's award of summary judgment, finding that an employer has no obligation to accommodate a disability before the employee affirmatively asks for the accommodation and that the factual record revealed that MRC took all necessary steps to accommodate the plaintiff at work.

- **Donaldson v. Town of Wakefield and Superior Court** (U.S. Court of Appeals, First Circuit) Plaintiff, a former town police officer, contested his dismissal from work after he failed a drug test. Plaintiff lost his suit over this issue in state court and then filed a federal court suit contending that the state court, and the superior court judge who dismissed his state court suit, denied his constitutional right to a jury trial. The First Circuit affirmed the dismissal of his case, holding that it was an improper attempt to appeal the state court decision to a lower federal court.
- **Whalen v. Massachusetts Trial Court** (U.S. Court of Appeals, First Circuit) Plaintiff, an assistant court clerk, claimed that his layoff without a hearing violated a state statute and his federal due process rights. The Commonwealth's motion to dismiss based on qualified immunity and mootness was allowed. On plaintiff's appeal, the First Circuit affirmed the dismissal.
- **Breneman v. Massachusetts Aeronautics Commission** (U.S. Court of Appeals, First Circuit) The court affirmed the dismissal of plaintiffs' claims that the Commission took their property without just compensation. The court agreed that the claim was barred by the Commonwealth's Eleventh Amendment immunity from suit.

STATISTICAL SUMMARY

At the beginning of Fiscal Year 2005, the Trial Division had 1,858 open and pending cases. Throughout the year the division opened 359 new cases and closed 432 cases. At the close of Fiscal Year 2005 the division reported 1,785 open and pending cases.

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2005, assistant attorneys general in the Trial Division participated in a wide range of outreach and training efforts, including serving as faculty in Massachusetts Continuing Legal Education programs, participating in the Citizen Schools Project, and assisting in trial training and moot court programs at various law schools and donating time and talent to tutor students at the McLaughlin Center in Boston.

PUBLIC PROTECTION BUREAU

CHILDREN, YOUTH AND COMMUNITIES DIVISION

CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

CONSUMER PROTECTION AND ANTITRUST DIVISION

ENVIRONMENTAL PROTECTION DIVISION

INSURANCE DIVISION

INVESTIGATIONS DIVISION

DIVISION OF PUBLIC CHARITIES

UTILITIES DIVISION

PUBLIC PROTECTION BUREAU

The Public Protection Bureau manages and oversees civil affirmative litigation on behalf of the Commonwealth and its citizens; the development of policy, legislative, and regulatory proposals; and personnel for eight divisions: Children, Youth and Communities; Civil Rights and Civil Liberties; Consumer Protection and Antitrust; Environmental Protection; Insurance; Investigations; Public Charities; and Utilities. The Bureau also includes the Consumer Complaint and Information Section and oversees the Local Consumer Aid Fund, which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

The bureau develops and coordinates healthcare policy initiatives to improve the coordination, enhancement, and expansion of current healthcare policy enforcement efforts. The Bureau targets its efforts to preserve access to affordable, high-quality healthcare services that meet the needs of communities.

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

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

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

CHILDREN, YOUTH AND COMMUNITIES DIVISION

The Children, Youth and Communities Division identifies and addresses existing and emerging trends affecting the safety of children, youth and vulnerable communities, including elder and immigrant populations. The division serves as an internal and external information and referral source; develops prevention programs and materials; develops resources to support new and existing programs through grant writing and grants management; delivers education and outreach programs as a division and in collaboration with other divisions and bureaus; and facilitates and leads internal or external collaborative efforts on behalf of the Attorney General. The division also co-directs the Attorney General's Safe

Schools Initiative and collaborates with other divisions to support the Attorney General's Elder Abuse Project.

Division staff included Michelle Booth; Dawn Fontaine; Johnny Laine; and David Rudewick.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Student Conflict Resolution Experts Program Founded in 1989, SCORE is a school-based program that uses trained student mediators to resolve conflict among peers. In Fiscal Year 2005, the Attorney General awarded \$396,000 to twenty-eight schools in communities across Massachusetts, including Boston, Dartmouth, Greenfield, Holyoke, Lowell, Lynn, Malden, Medford, Quincy, Pittsfield, Shirley, Somerville, Springfield, Stoughton, Taunton, Wakefield (serving twelve communities), and Worcester. Student mediators in SCORE programs mediated 2,627 conflicts involving 6,411 youth; 93% of these were resolved through the use of peer mediation. SCORE programs this year experienced a 14% increase in conflicts mediated, with a modest increase in the number of youth involved in conflicts, compared to Fiscal Year 2004. The conflicts included situations involving physical fights, harassment, name-calling, stealing, threats, property damage, and rumors.

The division maintained close contact with participating schools, monitored grants and provided technical assistance. Staff served as faculty for student mediator training events in which over 65 new youth mediators received training. In addition, the division also provided advanced training and support to 48 adult mediation program coordinators and supervisors.

Conflict Intervention Team The Conflict Intervention Team (CIT) is a collaborative project among the Attorney General, the Massachusetts Department of Education, and the Massachusetts Association of Mediation Programs and Practitioners. Composed of a network of specially trained community mediators, CIT provides mediation services on a short-term basis to schools experiencing large-scale conflicts. In addition to the in-kind contributions of the Attorney General's staff assigned to the project, a grant from the Hewlett Foundation has funded CIT since 2001. The division, although not conducting any full-scale CIT responses this year, conducted assessments of incidents at two school districts experiencing racially-motivated conflict and provided services and referrals to other resources. The division also engaged in targeted outreach to schools experiencing or having the potential to experience large-scale conflict to make them aware of services and to provide referrals to appropriate resources.

OUTREACH, EDUCATION, AND TRAINING

The division participated in a wide range of outreach, technical assistance and training events applying mediation and violence prevention strategies, including mediation training for Boston youth workers; training for adults interested in establishing effective peer mediation programs in schools; the Federal Reserve Bank's 2005 Life Smarts Youth Consumer Education competition; workshops for middle school and high school students, including diversity appreciation training for over 500 youth; the 13th Annual Peacemakers Summit for middle and high school mediators; and the North Shore Peer Mediators' Summit. In addition to outreach events centered specifically on mediation, division staff served as members of an office training team that provided workshops for over 1,300 educators about bullying, harassment, and hate crimes. Division staff also served on the Attorney General's Diversity Committee, Elder Issues Committee, and the Massachusetts Task Force on Hate Crimes.

CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

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

The division also enforces the fair housing laws, which prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, marital status, source of income (receipt of housing subsidy), age, or disability. The division also focuses on employment discrimination, discrimination in places of public accommodation and educational equity.

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

The Civil Rights and Civil Liberties Division included Cathy Ziehl, Division Chief; Patricia Correa, Director, Disability Rights Project; Bethany Brown; Michael Fleischer; Rosalind Kabrhel; Judy Levenson; Maria MacKenzie; Tina Matsuoka; and volunteer attorneys Melissa Brooks and Andrew Goldberg.

SIGNIFICANT CASE SUMMARIES

BIAS AGAINST SEXUAL ORIENTATION

- **Commonwealth v. Isaiah Bass, Brian Belew, Jeffrey Guity, and Teagan Isabelle Simms** (Suffolk Superior Court) The division obtained final judgment against Simms after he physically assaulted a gay couple in Boston in 1999 using a baseball bat and a vodka bottle.

BIAS AGAINST NATIONAL ORIGIN

- **Commonwealth v. McPherson et al.** (Suffolk Superior Court) The division obtained final judgment by consent against three defendants who threatened, intimidated, and assaulted a 15-year-old Somalian boy in Charlestown.

EMPLOYMENT DISCRIMINATION

- **UNICCO Services Co.** The division, with the EEOC and MCAD, continued to monitor Unicco's compliance with a June 2002 consent decree arising from allegations of repeated sexual harassment of immigrant female office cleaners.
- **Massachusetts Bay Transportation Authority** The division continued to monitor the MBTA under an Equal Employment Opportunity Agreement and EEO Compliance Program the Attorney General and MBTA executed on February 6, 1997, in response to longstanding complaints of discrimination, harassment and retaliation at the MBTA.

EDUCATIONAL EQUITY

- **Comfort et al. v. Lynn School Committee, et al.** (U.S. Court of Appeals, First Circuit) On October 20, 2004, the First Circuit Court of Appeals reversed the District Court's judgment upholding Lynn's voluntary school desegregation plan. The division appealed the decision, and on June 16, 2005, the en banc First Circuit Court of Appeals reversed its panel decision and affirmed the District Court judgment, holding that Lynn had a compelling interest in implementing its desegregation plan, and that the plan is narrowly tailored.

HOUSING DISCRIMINATION

The division settled eight cases, which resulted in \$142,500 in monetary relief and affirmative injunctive relief changing the business practices, including equal housing opportunity policies, complaint and investigation procedures, anti-discrimination training, and reporting mechanisms of landlords, management companies and rental agents. Through training programs and prosecuting housing

discrimination cases, the division also worked to modify landlord and realtor practices, to educate tenants about the right to fair treatment in the housing market, and to increase the availability of safe, affordable housing for families with young children.

- **Commonwealth v. Clarendon Towers/McNeil Management Company** (Suffolk Superior Court) The last individual damage claim in these two cases against a federally subsidized, 500 unit housing complex based on allegations of intimidation, harassment, discrimination and retaliation because of race, national origin and disability was settled on July 9, 2004 for substantial monetary damages. The division continues to monitor the compliance with the settlement provisions.
- **Commonwealth v. Cooperative Living of Newton, Inc.** (Middlesex Superior Court) Allegations of sexual harassment and hostile living environment, settled for \$18,000 and injunctive relief.
- **Commonwealth v. Dove** (Norfolk Superior Court) Allegations of disability, race and public accommodation discrimination, settled for injunctive relief, including a policy requiring shelters to provide services to persons with disabilities and grant reasonable accommodation requests.
- **Commonwealth v. Scolaro** (Suffolk Superior Court) Allegations of refusal to provide a reasonable accommodation to a tenant's twin babies with disabilities, settled for \$15,000 in damages and injunctive relief.
- **Commonwealth v. PJNC** (Middlesex Superior Court) Refusal to rent to a Section 8 recipient, settled for \$3,500 and injunctive relief.
- **Commonwealth v. Chelsea Housing Authority** (Suffolk Superior Court) Allegations of disability and religious discrimination, settled for injunctive relief.
- **Commonwealth v. Springfield Housing Authority** (Hamden County Superior Court) Allegations of disability discrimination, settled for \$1,000 and injunctive relief.
- **Commonwealth and Hishmehs v. O'Briens** (Middlesex Superior Court) Allegations of neighbor harassment because of national origin (Palestinian descent), settled for \$5,000 and permanent injunctive relief.

The division also filed seven new cases referred from the Massachusetts Commission Against Discrimination (MCAD), after the Commission determined that discrimination claims were supported by probable cause and an election for judicial determination was made, as required by the Fair Housing laws.

- **Commonwealth/Alvarez v. Farag Mohammed** (Worcester Superior Court) Allegations of lead paint violations and refusal to rent to a Section 8 recipient.
- **Commonwealth v. Eric Stevens et al.** (Suffolk Superior Court) Allegations of a condominium trustee taking advantage of an Asian condominium owner's perceived vulnerabilities to threaten, harass, and coerce her into selling her condominium to him for his own economic gain.
- **Commonwealth v. Shimon Orian** (Middlesex Superior Court) Allegations of refusal to rent to an organization because the organization intended to use it as a residence for developmentally disabled adults.
- **Commonwealth v. Giambro** (Suffolk Superior Court) Allegations of disability discrimination because the tenant had AIDS.
- **Commonwealth v. Brookside Condo. Assoc. and Tony Colarusso** (Middlesex Superior Court) Allegations of disability discrimination, primarily asthma and arthritis, by refusing to grant a reasonable accommodation.
- **Commonwealth v. Michael Klun** (Barnstable Superior Court) Allegations of harassment and eviction of a tenant after she gained custody of her two-year-old grandson and her Section 8 voucher required lead-free premises.
- **Commonwealth v. Cambridge Housing Authority** (Middlesex Superior Court) Allegations of refusal to extend a Section 8 housing voucher as part of a request for a reasonable accommodation for disability.

PUBLIC ACCOMMODATION

- **Commonwealth v. Fung Wah Bus Transportation Inc.** (Massachusetts Commission Against Discrimination) The division filed a complaint against Fung Wah after it refused to allow a blind couple to buy bus tickets for transportation to New York City because they are blind and because they use a service dog.

DISABILITY RIGHTS

- **Commonwealth and National Federation of the Blind v. E*TRADE** The division continued to prosecute this lawsuit alleging that E*TRADE, operator of one of the largest ATM networks in the country, has failed to make the ATMs it operates, but does not own, accessible to the blind. Four individual plaintiffs, all Massachusetts residents, represent the approximately 35,000 blind people in Massachusetts, who, in accordance with the Massachusetts Public Accommodations Act, are seeking the same access to bank and investment services available to sighted ATM users.
- **CVS** The division continued to monitor the Assurance of Discontinuance with CVS Stores requiring them to remedy violations of turning radius and aisle width requirements. Initial audits revealed multiple violations of the Assurance, and CVS ultimately paid approximately \$7,500 in additional fines during the summer of 2004. Additional audits in the spring of 2005 found additional violations of aisle access.
- **Starwood Hotels/Cape Codder Hotel** The division continued to monitor the consent decree arising from architectural deficiencies under the ADA.
- **Fenway** The division continued to review Fenway Park accessibility improvements, including plans to add approximately 2,000 seats and access plans for Rolling Stones concerts. New wheel chair seating provides patrons clear sightlines over the shoulders and between the heads of standing spectators in front of them.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Nursing Home Initiative The division created and sent an “Advisory on the Civil Rights of Immigrant Workers — Prohibitions on National Origin” to over 400 nursing homes, hospitals and community health centers and to approximately 130 organizations providing services and advocacy for immigrant workers. The division, with the Massachusetts Extended Care Federation, also organized “Preventing Discrimination in the Workplace: Are You in Compliance?” an educational program on December 2, 2004 for owners and directors of nursing homes.

The Massachusetts Hate Crimes Task Force The Attorney General’s Hate Crimes Task Force, comprised of about 100 law enforcement officers and prosecutors, community leaders, civil rights advocates, victim assistance professionals, educators, and other leaders from throughout the

Commonwealth, shares information and highlights efforts in Massachusetts related to hate crimes enforcement, response, training and prevention.

Project Schoolyard USA In January, 2005, Attorney General Reilly sent all school superintendents in Massachusetts a warning about Project Schoolyard USA, a national campaign by a white supremacist music label, Panzerfaust Records, to distribute CD's containing lyrics of hate to children at schools, malls and other places where they congregate.

Civil Rights In Schools The division continued its focus on ensuring the civil rights of students attending schools in the Commonwealth. The division launched Attorney General Reilly's School Safety Initiative at a June 24, 2005 conference at UMASS-Boston attended by over 350 school committee members, superintendents, principals, and police chiefs. The division released a model Civil Rights and Anti-Harassment Policy and "Hate Crimes in the Commonwealth, A Guide for Victims and Communities" at the conference; the School Safety Initiative will also include demonstration projects, intensive technical assistance and training to promote civil rights and change school climate and culture.

The division has also provided or participated in educational programs to train students, teachers, and administrators on hate crimes, bullying and hazing, and harassment and discrimination regarding a person's gender, sexual orientation, racial, national origin or religion. The programs for school administrators, teachers and staff included information on identifying and responding to unlawful conduct and how to create comprehensive civil rights protection programs.

Civil Rights And Police In a collaborative effort to promote civil rights, assist police departments, and provide departments with technical assistance, the division provided civil rights training to law enforcement on hate crimes identification, response and prosecution, civil liability, sexual harassment, and racial and cultural awareness.

The division also investigated allegations of police misconduct, and police departments regularly consulted with the division for assistance on internal civil rights investigations. The division has closely worked with departments to ensure that they take appropriate remedial steps when credible evidence substantiates civil rights complaints.

Racial Profiling Chapter 228 of the Laws of 2000, An Act Providing for the Collection of Data Relative to Traffic Stops, requires law enforcement departments and agencies to collect data to all traffic stops where a traffic citation or warning was issued. After 130 police departments appealed the Secretary of the Executive Office of Public Safety's determination that they must collect additional traffic stop

data for an additional year, the division prepared and issued responses to the appeals on October 18, 2004.

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

Democratic National Convention Security The division assisted federal officials and Boston police in identifying and addressing civil rights and civil liberties issues arising from demonstrations and other actions taken at the Democratic Convention in the summer of 2004. The legal issues included civil rights in soft security zones, permitting processes for demonstrators, sites for protestors within sight and sound of convention locations, arrest standards, use of force and search issues, and procedures for processing those arrested.

OUTREACH, EDUCATION, AND TRAINING

Education The division participated in the National Conference on Integration and Affirmative Action in Education on October 15, 2004 to discuss legal issues and challenges for K-12 school integration programs; presented "Making the Case for Integrated Schools: The Case of Lynn, Massachusetts" at the national conference, "Building Blocks for Inclusive Communities;" and participated in the Harvard Civil Rights Project's conference on School Integration.

Arab, Muslim, South Asian, Sikh Community The division is working with a "Community-Law Enforcement Working Group" to develop new efforts at encouraging ongoing communication between law enforcement and the Muslim, South Asian, Arab and Sikh communities in Greater Boston.

Community Hate Crime Prevention The division participated in the Watertown Hate Crimes Community Forum on November 9, 2004, the Needham Town Hall Forum "When Hate Comes to Town" on March 31, 2005, and "A Challenge for the 21st Century: Hate Crimes, Domestic Terrorism and the Constitution," a criminal justice conference at Bridgewater State College on April 12, 2005.

Disability Community The division participated in the Coalition for the Legal Rights of People with Disabilities, Massachusetts Developmental Disabilities Council, and NAAG Disability Rights in Public Accommodation Task Force.

Fair Housing The division participated in “Damages and Injunctive Relief in Fair Housing Cases,” training for the Fair Housing Center of Greater Boston on June 2, 2005; “Fostering Secure and Diverse Communities,” a HUD regional fair housing conference on April 4, 2005; and a predatory/discriminatory lending practices conference on June 28, 2005.

CONSUMER PROTECTION AND ANTITRUST DIVISION ---

The Consumer Protection and Antitrust Division (CPAD) is the leading voice in the Commonwealth for consumers disadvantaged by unfair or deceptive acts or practices in the marketplace. The division enforces both state and federal consumer protection and antitrust laws by investigating and prosecuting civil cases. By aggressively enforcing the consumer and antitrust laws, CPAD helps protect consumers from unethical business practices, and insures that businesses compete on a level playing field based on the best quality, service and price.

CPAD also promulgates consumer protection regulations, mediates consumer complaints against businesses, and provides information to the public through Attorney General Reilly’s Consumer Hotline, advisories and information on Attorney General Reilly’s Web site, distribution of brochures on consumer topics, and speaking engagements across the Commonwealth.

Through the Consumer Complaint and Information Section (CCIS), the division acts as a resource for consumers and businesses, providing information, direction to additional resources at the state and federal level, and free mediation services to consumers who have encountered a problem in a purchase of consumer goods or services. The division also provides grants to a statewide network of 18 Local Consumer Programs (LCPs) and nine Face-to-Face Mediation Programs to furnish information and mediation services. The information CCIS and the LCPs gather is available to the division for review and evaluation for possible legal action. Many cases the division has brought over the years have had their genesis in CCIS and the LCPs, and patterns of unfair or deceptive conduct revealed by these cases have also served as the basis for draft legislation (identity theft, telemarketing fraud) and regulations (travel services, long-term care facilities).

CPAD staff included Jesse Caplan, Division Chief; Christopher Barry-Smith; Caitlin Burke; Jack Christin; April English; Julie Esposito; Mary Freeley; Sara Hinchey; Diane Lawton; Stephanie Kahn; Mark Kmetz; Pam Kogut; Timothy Moran; Carmen Osorio-Bermudez; Kasey Lindsey; Betty Maguire; Mary Marshall; Lois Martin; David Monahan; Scott Schafer; Jeffrey Shapiro; Christine Sullivan; Thuy Wagner; Judith Whiting; Betsy Whittey; Geoffrey Why; Marvina Wilkes; and Mary Wollenhaupt.

CCIS staff included Gail Gabriel, Director; Melissa Armstrong; Tiffany Bennett; Paul Carey; Christina Ciampolillo; Max Feldpausch; Ricardo Goodridge; Jeremy Janow; Brenda King; Rose Miller; Julie Papernik; Anya Petroff; Andria Simon; and Jon Wai Tommee.

SIGNIFICANT CASE SUMMARIES

HEALTH CARE AND PRESCRIPTION DRUGS

- **Bristol-Myers Squibb (“BMS”) Taxol and Buspar Litigation** (U.S. District Court, DC) In 2001 and 2002, CPAD joined Attorneys General from across the country in filing suits in connection with antitrust allegations that BMS harmed consumers by illegally maintaining the monopolies of its anti-anxiety drug, Buspar, and its cancer drug, Taxol, by conspiring to keep generic competition off the market. In 2003, BMS entered into Consent Judgments resolving the lawsuits. In July 2004, approximately 1,000 Massachusetts consumers received refund checks totaling over \$535,000 in overpayments for Buspar. In November and December 2004, Massachusetts state programs, including Medicaid, the Department of Public Health, the Executive Office of Pharmacy Services, and the Group Insurance Commission, received over \$4 million in reimbursement in connection with both the Buspar and Taxol cases.
- **Multistate Pharmaceutical Antitrust Settlements** CPAD participated in separate multistate settlements with the pharmaceutical companies Perrigo, Alpharma, and GlaxoSmithKline resolving antitrust allegations in connection with sales and marketing of generic children’s ibuprofen and the drug Relafen. These cases resulted in close to \$400,000 returned to the Commonwealth.
- **Tufts Health Plan** (Suffolk Superior Court) In January 2005, CPAD, working with the Insurance Division, obtained an Assurance of Discontinuance with Tufts Health Plan, resolving claims that the health insurer violated state consumer protection and insurance laws in connection with the 2003 “Pharmacy Assessment” law that imposed fees on pharmacies based on the number of prescriptions filled. Tufts agreed to pay the Commonwealth a total of \$75,000.

FALSE CLAIMS

- **Commonwealth v. O’Neill, Finnegan & Jordan, and Unum Life Insurance Company** (Suffolk Superior Court) In June 2005, CPAD and the Insurance Division filed suit against O’Neill, Finnegan & Jordan (OFJ) and Unum Life Insurance Company (Unum), alleging that

the insurance broker and insurance carrier violated the Massachusetts False Claims Act by failing to disclose hundreds of thousands of dollars the broker received from the carrier in connection with Group Insurance Commission contracts to provide life insurance to state employees and retirees. Simultaneous with the filing of the lawsuit, OFJ and Unum entered into Consent Judgments in which they agreed to pay the state \$1.3 million in false claims damages.

ELDER PROTECTION

- **Commonwealth v. Affordable Hearing Aid Technology** (Suffolk Superior Court) In August 2004, CPAD obtained a Consent Judgment against Affordable Hearing Aid Technology of Chelmsford, Custom Care Hearing Aid Center of Lexington, and their principal, Debra Arnett, in connection with a 2003 lawsuit alleging that Arnett engaged in multiple violations of the Massachusetts Consumer Protection Act in the conduct of her hearing aid businesses. The original lawsuit alleged that Arnett misrepresented her professional qualifications, engaged in false advertising of hearing aid services, failed to properly size hearing aids, and misrepresented the types and quality of hearing aids sold to consumers, most of them elders. The Consent Judgment resolving the lawsuit required Arnett to refund \$40,000 to consumers harmed by her practices.
- **Commonwealth v. Jesse L. Corbin Funeral Home** (Suffolk Superior Court) In June 2005, CPAD filed suit against the Jesse L. Corbin Funeral Home, alleging that the Mattapan, Massachusetts funeral home collected payments for pre-need funeral arrangements, failed to account for the deposits, and in some cases spent the money for personal expenses. At the same time, CPAD entered a Consent Judgment resolving the lawsuit. Under the Consent Judgment, the funeral home must pay over \$27,000 in full restitution to consumers, and \$10,000 in civil penalties and attorneys fees.

CHILD PROTECTION

- **On-line Sales of Alcohol to Underage Students** (Suffolk Superior Court) In December 2004, CPAD obtained Consent Judgments against three on-line liquor retailers — Wine Globe, Sherry-Lehman, and Clubs of America — for selling wine, beer and liquor to underage students over the Internet. In March 2005, CPAD obtained a Consent Judgment against a fourth on-line retailer — Queen Anne Wine Exchange. Under the terms of the Consent Judgments, each of the businesses was ordered to pay a \$5,000 civil penalty.
- **On-Line Sales of Cigarettes to Minors** (Suffolk Superior Court) In August 2004, CPAD obtained a Consent Judgment against dirtcheapcig.com requiring it to pay the state \$125,000, and in February 2005 obtained a Consent Judgment against eSmokes, Inc., requiring it to pay

the state \$80,000, resolving lawsuits filed against these on-line cigarette retailers in 2003 for selling cigarettes to Massachusetts teenagers without verifying whether they were 18 years old — the legal age to purchase cigarettes. Another Internet cigarette dealer, Broadway Smoke Shop, entered into an Assurance of Discontinuance requiring it to pay \$3,000 to the Commonwealth and end its illegal sales to minors.

- **On-Line Sales of Illegal Weapons** (Suffolk Superior Court) In August 2004, CPAD filed lawsuits against seven out-of-state online weapons dealers for selling and shipping illegal weapons into Massachusetts. The cases arose from undercover sting operations where investigators from the Investigations Division were able to purchase illegal weapons from these companies over the Internet, and to have them delivered to addresses within Massachusetts. The illegal weapons — many of them popular with young people — included stun guns, switch-blade knives, swords, nunchaku (a/k/a numchucks), throwing stars, sling shots, and dirk knives. Four of the online dealers — Bynoon.com, Discount Martial Arts Supply, Lifestyle Fascination, and Talley Products — agreed to Consent Judgments that ban all future sales of weapons into Massachusetts and order them each to pay civil penalties of \$5,000. In September 2004, CPAD obtained preliminary court orders against the remaining online dealers, C&M Enterprises, Copgear.net, and Martial Arts Gear, prohibiting them from selling weapons into Massachusetts.

- **On-Line Sales of Ammunition** (Suffolk Superior Court) In August 2004, CPAD filed lawsuits against three out-of-state ammunition dealers for illegally selling ammunition over the Internet to Massachusetts residents. The lawsuits resulted from undercover sting operations conducted by the Investigations Division. State law requires dealers be licensed to sell ammunition and prohibits the sale of ammunition to minors or those without a permit. None of the companies held the proper state license or had taken the required steps to verify that purchasers were authorized under state law to buy ammunition.

- **Glock Handguns** In July 2004, CPAD notified Glock, Inc., that handguns it began selling in Massachusetts did not comply with the Attorney General's Handgun Sales Regulations because the guns did not have either a magazine safety disconnect or an effective load indicator, one of which is required under the regulations to prevent accidental injuries or deaths. As a result, Glock immediately notified CPAD that it would recall all handguns shipped to dealers and distributors in Massachusetts.

INTERNET AND HIGH TECH

- **Commonwealth v. DC Enterprises** (Suffolk Superior Court) In July 2004, CPAD filed a lawsuit against DC Enterprises and its principal, William T. Carson of Weston, Florida, for

illegally sending thousands of unwanted electronic “spam” messages from a business address in Newton, Massachusetts. This lawsuit was the nation’s first state action to enforce the federal CAN SPAM Act, which went into effect in January 2004. CPAD’s lawsuit alleged that Carson and his company, DC Enterprises, sent unsolicited and misleading e-mail messages offering pre-approved mortgages, and that the messages failed to include opt-out mechanisms, failed to clearly identify the messages as advertisements, and used non-functioning sender addresses in violation of the federal law protecting against unwanted spam, the Massachusetts Consumer Protection Act and state laws regulating advertising of mortgage loans. In October 2004, Carson entered into a Consent Judgment requiring him to pay \$25,000 in civil penalties.

- **Commonwealth v. Leo Kuvayev, et al.** (Suffolk Superior Court) In May 2005, CPAD filed a lawsuit against Leo Kuvayev and six other individuals with Massachusetts ties accused of running an elaborate “spam” operation in violation of federal and state consumer protection laws, including the federal CAN SPAM Act. According to the lawsuit, Kuvayev and his associates sent hundreds of millions of unsolicited “spam” e-mails to consumers and businesses across the United States directing them to Web sites selling a variety of illegal products, including counterfeit prescription drugs, pirated software, and pornography. Kuvayev and his “spam gang” had been tracked to Russia and other countries overseas, while using a Boston post office box address for some of their business operations. CPAD successfully obtained an emergency court order shutting down an estimated 250 illegal Web sites that Kuvayev and his ring had operated.
- **Commonwealth v. Mainline Airways and Luke R. Thompson** (Suffolk Superior Court) In September 2004, CPAD obtained a Consent Judgment against Mainline Airways and its principal, Luke R. Thompson, in connection with a 2003 lawsuit alleging that Thompson used an elaborate Web site and on-line booking system to defraud consumers by selling them discounted flights between Los Angeles and Honolulu on a non-existent airline he called “Mainline Airways.” Under the Consent Judgment, all consumers received full restitution.
- **Commonwealth v. Clockworks.com** (Suffolk Superior Court) In October 2004, CPAD obtained a Consent Judgment against Clockworks.com of Westfield, Massachusetts and its owner, James Stoudenmire, for unfair and deceptive practices in connection with offering watch and clock repairs and supplies. The judgment stemmed from a 2003 lawsuit alleging that Stoudenmire failed to deliver products advertised on his website to consumers in Massachusetts and 40 other states. Under the terms of the Consent Judgment, Stoudenmire was ordered to return more than \$13,000 in refunds and credits to approximately 150 consumers.

CONSUMER CREDIT AND DEBT COLLECTION

- **In Re Schreiber & Associates** (Suffolk Superior Court) In November 2004, CPAD filed an Assurance of Discontinuance against a Danvers, Massachusetts law firm, Schreiber & Associates, resolving an investigation into the law firm's debt collection practices. The Assurance resolved allegations that the Schreiber firm violated both state and federal debt collection laws by, among other practices, using obscene language with consumers when collecting debts, harassing and embarrassing consumers, and making unsubstantiated threats against consumers. Under the Assurance, Schreiber and its president and owner, Jeffrey A. Schreiber, paid a total of \$100,000 in restitution, civil penalties, and costs of the investigation. The Assurance also required Schreiber to implement new policies and procedures to prevent future abuses.
- **Commonwealth v. Mortgage One Financial Corp.** (Suffolk Superior Court) In August 2004, CPAD, with the assistance of the Massachusetts Division of Banks, filed a lawsuit and Consent Judgment against Mortgage One Financial Corp., alleging that the company illegally issued rate-locks and misled consumers with mortgage loan commitments it could not honor. Under the judgment, the Norwood, Massachusetts based mortgage broker was ordered to pay almost \$300,000 in restitution to approximately 150 Massachusetts consumers who had been promised, but never received, favorable interest rates on their mortgage loans.

TELECOMMUNICATIONS

- **In Re Verizon Wireless, Cingular Wireless, and Sprint PCS** (Suffolk Superior Court) In July 2004, CPAD helped lead a group of 32 Attorneys General in resolving allegations that three of the largest wireless phone carriers — Verizon Wireless, Cingular Wireless, and Sprint PCS — used misleading advertisements and failed to adequately disclose important information about cell phone service agreements and wireless coverage areas. Under the terms of the Assurance of Discontinuance, Verizon, Cingular and Sprint must provide detailed information to consumers before entering into cell phone contracts and offer a comprehensive return policy, including a minimum three-day right to cancel with no penalties or activation charges, and a minimum fourteen-day trial period when consumers can terminate service without paying an early termination fee. The Assurance also required the companies to pay the states a total of \$5 million; Massachusetts received \$425,000.
- **In Re AT&T** (Suffolk Superior Court) In February 2005, CPAD filed an Assurance of Discontinuance against AT&T addressing allegations that the company over-billed certain AT&T long distance customers, and sent bills to other consumers who were not AT&T customers.

Under the Assurance, AT&T made refunds to all harmed consumers, paid the Commonwealth \$140,000, and provided the Massachusetts National Guard with 1,100 long distance calling cards worth approximately \$30,000.

- **Commonwealth v. Norvergence** (Suffolk Superior Court; United States Bankruptcy Court, NJ) In November 2004, CPAD filed suit against Norvergence, Inc., a New Jersey-based telephone company, for defrauding more than 200 Massachusetts small business owners who had signed long-term contracts for discounted telephone and Internet services. According to the lawsuit, Norvergence required the small businesses to enter into long-term leases for a “matrix box;” Norvergence then assigned those contracts to a number of financing companies throughout the United States. In 2004, Norvergence filed for bankruptcy protection and ceased providing any telephone or Internet services, but left its customers subject to collections actions from the financing companies holding the “matrix box” contracts. In June 2005, CPAD obtained a default judgment against Norvergence that rescinds the customer contracts and requires the company to pay the Commonwealth \$445,000 in civil penalties. In related actions, CPAD obtained multistate settlements with several of the finance companies (TCF Leasing, Inc., CIT Technology Financing Services, Inc., Lyon Financial Service, Inc, (d/b/a U.S. Bancorp), and Wells Fargo Financial Leasing, Inc.), providing over \$1 million in relief to Massachusetts-based Norvergence customers. CPAD continues to investigate finance companies holding Norvergence contracts.

OTHER CONSUMER PROTECTION

- **Commonwealth v. Riverside Mitsubishi, et al.** (Worcester Superior Court) In 2003, the Central Massachusetts Office, with the assistance of CPAD, filed suit against Riverside Mitsubishi, an Auburn, Massachusetts car dealership, and its owners and operators, Todd, Daryl and Brenda Rivernider, for defrauding over 100 consumers by failing to pay off outstanding trade-in loans on cars, failing to provide consumers with titles to cars they bought, and in some cases failing to deliver cars at all, when the dealership abruptly closed its doors in November 2003. In May 2004, Daryl and Brenda Rivernider were found in contempt of court for selling and otherwise transferring certain assets without court approval. The Attorney General obtained a receiver over the dealership properties, and, in November 2004, the properties were placed into bankruptcy and defaults were entered against the individual Riverniders. In the fall of 2004, the Attorney General sought to enforce the contempt judgments against the Rivernider’s property in Florida, which ultimately led to lawsuits being filed in Florida state court. The Attorney General continues to litigate this case to obtain restitution for consumers, as well as civil penalties, costs, and injunctive relief.

- **Commonwealth v. Car Center USA, et al.** (Suffolk Superior Court) In February 2005, CPAD obtained a Consent Judgment against four North Shore used car dealerships and their principal owners resolving allegations that they defrauded consumers out of hundreds of thousands of dollars by failing to pay off outstanding trade-in loans on cars, failing to timely deliver car titles to consumers, and failing to purchase or activate extended warranties purchased by consumers. Under the judgment, Car Center USA, Suzuki of Boston, Foreign Cars North, and Cars R Us, and their principals, Nader and Ardeshir Jamali Affoussi, were ordered to pay consumers approximately \$30,000 in restitution; activate over 200 extended warranties valued at over \$300,000; and pay approximately \$20,000 in civil penalties.
- **Commonwealth v. Boston Fitness LLC (d/b/a Gold's Gym Downtown Crossing)** (Suffolk Superior Court) In January 2005, CPAD obtained a Consent Judgment against Boston Fitness LLC, doing business as Gold's Gym Downtown Crossing, and its owner, Marc Orlandella, resolving a June 2004 consumer protection lawsuit. The 2004 lawsuit alleged that, among other unfair and deceptive conduct, Orlandella and Gold's Gym took thousands of dollars in membership fees from consumers, and then refused to refund these fees when the club failed to open as advertised. Under the judgment, Orlandella was ordered to return \$9,000 to harmed consumers.
- **Commonwealth v. Global Marketing, LTD and Dennis Drummond** (Suffolk Superior Court) In April 2005, CPAD secured a default judgment against Global Marketing, LTD, its principals, Dennis and Linda Drummond, and related entities, for defrauding as many as 90 consumers out of hundreds of thousands of dollars in connection with the marketing and sale of vacation time-shares. Under the judgment, the defendants were ordered to pay \$1.3 million in restitution, civil penalties, and attorneys' fees. The individual defendants have all moved out of state, and CPAD continues to take legal action in Massachusetts and elsewhere to collect on the judgment.
- **Commonwealth v. James Brien, the American Sunroom Company, and Associated Leisure Products** (Suffolk Superior Court; United States Bankruptcy Court) In February 2005, CPAD filed suit against James Brien of Andover, Massachusetts, and Associated Leisure Products for defrauding consumers in the sales and installation of swimming pools. CPAD successfully obtained preliminary orders shutting down the company and freezing its assets. The company was later placed into bankruptcy. CPAD continues to litigate these cases seeking restitution, penalties and costs.

- **Commonwealth v. Francis P. Bellotti, Jr. and Insurance Loss Restoration Services, Inc.** (Suffolk Superior Court) In April 2005, CPAD obtained a Consent Judgment against Francis P. Bellotti, Jr., a South Attleboro contractor, resolving a June 2003 lawsuit alleging that Bellotti defrauded at least 13 fire victims. The 2003 lawsuit alleged that Bellotti would rush to house fires, use high-pressure tactics to get the homeowners to contract for his restoration services, and then have them sign over their insurance checks. Bellotti would then fail to complete the work or abandon the projects, leaving many homeowners living in trailers or other accommodations for a year or longer. The Consent Judgment ordered Bellotti to refund \$50,000 to consumers and contractors.
- **In Re Blockbuster Inc.** (Suffolk Superior Court) In March 2005, CPAD joined Attorneys General from 46 states and the District of Columbia in a settlement with Blockbuster Inc., resolving allegations that the video rental company misled consumers in connection with its “No Late Fees” advertising campaign. The settlement, filed as an Assurance of Discontinuance, provided refunds to consumers who were forced to pay “restocking” and other fees, and required the company to revise its advertising. Blockbuster also agreed to pay Massachusetts \$12,500.
- **Auctioneer Cases** (Suffolk Superior Court) In August 2004, CPAD took actions against three auctioneers accused of misleading consumers with advertisements that falsely represented that items available for purchase had been bought at estate sales or confiscated by the government. In an Assurance of Discontinuance filed against Anwar Khan and Fidelity First Financial Corp., the auctioneer agreed to change his advertisements and to pay the Commonwealth \$10,000. CPAD’s agreements with two other auctioneers required them to cease and desist from their alleged deceptive practices.
- **Commonwealth v. Simon Property Group** (Suffolk Superior Court; United States District Court, MA) In November 2004, CPAD filed suit against Simon Property Group, the owner and operator of Simon Malls, alleging that Simon’s marketing and sale of its Simon Gift Cards violated the Massachusetts Gift Certificate law. CPAD’s lawsuit alleged that Simon violated the law by charging gift card holders multiple fees, including dormancy fees, that substantially reduce the value of the card. Simon claimed, among other defenses, that Massachusetts is preempted from enforcing state law in these circumstances under the National Bank Act and the powers given to the federal Office of the Comptroller of the Currency (OCC). Simon, based in Indiana, owns and operates 14 malls in Massachusetts. CPAD continues to litigate this case.

- **Home Heating Oil and Propane** (Suffolk Superior Court) In November 2004, CPAD obtained an Assurance of Discontinuance against Astrofuel, LLC and two other related heating oil businesses located in Swampscott and Marblehead, Massachusetts, resolving allegations that the home heating oil dealers refused to honor fixed price contracts with customers. Under the settlement, Astrofuel must honor fixed price contracts it entered into with consumers for the winter heating season, and the company also agreed to contribute \$10,000 to a local fuel assistance program. In January 2005, CPAD filed a lawsuit against Lyons Fuel of Arlington, Massachusetts, alleging the home heating oil dealer reneged on promises to its customers who entered into capped price contracts for the winter heating season. In March 2005, Lyons resolved the lawsuit by entering into a Consent Judgment that required the dealer to honor its price promises with consumers and to pay \$10,000 to a local fuel assistance program. Also in March 2005, CPAD obtained an Assurance of Discontinuance against E. Osterman Gas in connection with the sale of propane. Under the terms of the Assurance, Osterman agreed to revise its contracts, to provide approximately \$57,000 in credits to hundreds of consumers, and to contribute \$5,000 to a fuel assistance program.
- **Commonwealth v. Richard C. Kostandin** (United States Bankruptcy Court, NH) In February 2005, CPAD filed an adversary proceeding in bankruptcy court against Richard Kostandin, the owner and operator of RCK Construction, a seller and installer of modular homes. CPAD's complaint alleged that Kostandin converted and fraudulently transferred assets of his corporation for personal gain and to the detriment of RCK's creditors, including approximately 26 Massachusetts consumers who paid for modular homes that were never delivered or were delivered but improperly installed. In May 2005, CPAD obtained an order denying Kostandin's homestead exemption; after an evidentiary hearing in June, 2005, CPAD obtained an order and judgment denying his right of discharge of his debts. CPAD is continuing to assist the bankruptcy trustee in recovering assets for potential consumer restitution.
- **Xintra Institute of Technology** (Suffolk Superior Court; United States Bankruptcy Court) In June 2005, CPAD filed a lawsuit and Consent Judgment against Xintra Institute of Technology, a now-defunct vocational school, for defrauding students – many of them recent immigrants – by closing its doors without refunding students' tuition payments. While the school is in bankruptcy, CPAD continues to pursue assets and other monies that may be available to provide refunds to harmed students.
- **Commonwealth v. All County Storage, William Kennedy, and Kazis Furs** (Suffolk Superior Court) In August 2004, after one week of trial, CPAD obtained a Consent Judgment against All County Storage and its principals, Nikki Granitsas and William Kennedy, and a default judgment

against Steven Kazis, arising out of a 2002 lawsuit alleging unfair and deceptive practices in the storage of hundreds of fur coats. In April 2005, CPAD conducted a two-week trial against All County Storage, Granitsas and Kennedy, arising out of a separate 2002 lawsuit against the warehouse storage company for alleged unfair and deceptive practices targeting lower income consumers who had been evicted from their homes. CPAD is awaiting the court's decision in the case.

ANTITRUST

- **Commonwealth v. Oracle Corp.** (U.S. District Court, San Francisco, CA) Oracle and PeopleSoft are two of the largest designers of “enterprise” software systems that automate financial and human resource management functions for government and large organizations. In September 2004, after a four-week antitrust trial, the United States District Court in San Francisco held that the merger of Oracle and PeopleSoft would not substantially lessen competition, allowing the merger to go forward. The decision resolved the February 2004 antitrust challenge brought by the United States Department of Justice and six states, including Massachusetts, to block Oracle's hostile takeover of its rival, PeopleSoft. The lawsuit alleged that the proposed acquisition would substantially reduce competition and ultimately hurt consumers in Massachusetts and across the country.

STATISTICAL SUMMARY

MONEY RETURNED TO THE COMMONWEALTH

(Penalties/Costs/Other)	\$7,248,460
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CONSUMER RESTITUTION RECOVERED

CPAD	\$1,040,0871
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CCIS	\$141,534
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Local Consumer Programs	\$2,700,077
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Face To Face Mediation Programs	\$1,118,759
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CONSUMER HOTLINE CALLS

CCIS	70,197
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Local Consumer Programs	40,785
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CONSUMER COMPLAINTS RECEIVED/REFERRED

CCIS and Local Consumer Programs	12,158
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Face To Face Mediation Programs	4,442
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CONSUMER COMPLAINTS MEDIATED

CCIS	1,036
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Local Consumer Programs	6,806
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Face To Face Mediation Programs	2,081
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SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Amicus Curiae Massachusetts joined a number of *amicus curiae* briefs sponsored by other state Attorneys General, including supporting state “Do Not Call” laws, advocating for consumers in banking matters, and supporting efforts to control tobacco advertising targeted at children. In addition, Massachusetts wrote two *amicus curiae* briefs supporting consumers in connection with collection actions in Ohio stemming from the Norvergence litigation.

Consumer Advocacy Massachusetts joined multistate letters and comments to federal agencies and Congress, and participated in federal initiatives, advocating for consumers and state enforcement of consumer laws in the areas of class action reform, bankruptcy, credit counseling, tobacco, and wireless phone services. Massachusetts has also advocated for pro-consumer state legislative proposals relating to debt collection and public guardianships.

Privacy & Identity Theft Attorney General Reilly remains a national leader on privacy and identity theft issues. In the new state legislative session, he proposed “Security Freeze” legislation (Senate Bill 237) that would give every Massachusetts consumer the option of telling credit reporting agencies not to make their credit reports available to others without the consumer’s express permission. Without access to a consumer’s credit report, an identity thief is unable to open a credit card under that consumer’s name. Massachusetts is also a lead state in national investigations of security breaches at data companies that resulted in the unauthorized dissemination of confidential information belonging to thousands of Massachusetts consumers. In February 2005, CPAD issued a new consumer brochure called *Identity Theft: It Could Happen To You! Attorney General Tom Reilly’s Guide to Protecting Yourself and Your Credit*. And CPAD staff have addressed consumer groups and professional organizations on how individuals can protect themselves from identity theft, and what to do if they become victims.

Manufactured Housing CPAD continued its role in connection with protecting residents of manufactured housing communities from unfair practices by taking and mediating complaints from residents and regular participation at Manufactured Housing Commission meetings across the state.

TOBACCO

Cigarette Advertising and Sales Targeted to Minors In light of the ready access minors have to cigarettes by purchasing them online, Massachusetts joined other Attorneys General and federal officials in calling on the credit card industry and major shippers to stop handling transactions by Internet

cigarette retailers. As a result, the credit card companies agreed to stop handling those transactions; shippers have not yet acted. In March 2005, CPAD joined a multistate *amicus curiae* brief in support of the American Legacy Foundation (ALF) in connection with Lorillard's challenge to ALF's "truth" advertising campaign targeting the dangers of smoking.

The Tobacco Master Settlement – 2005 MSA Payment The Commonwealth received \$254,593,760 in April 2005 as its share of the 2005 Annual Payment under the 1998 tobacco Master Settlement Agreement, and another \$2,818,035 in August 2004 in back MSA payments from General Tobacco Company, bringing the total amount received under the MSA to more than \$1.6 billion. CPAD closely monitored and enforced the settlement to ensure that the Commonwealth received the full amounts due under the agreement. Attorney General Reilly also, under G.L. c. 29D, §3(i), reported to the legislature quarterly on MSA payments.

Tobacco Master Agreement – Significant Factor Determination In the spring of 2005, the major tobacco companies who were original participants in the MSA moved for a "Significant Factor Determination" in connection with their 2003 MSA payment. The tobacco companies are seeking to reduce their 2003 MSA payment to all of the states by as much as \$1.1 billion. Massachusetts and the other states, in coordination with the National Association of Attorneys General, have commenced their defense. Under procedures set forth in the MSA, the states and the tobacco companies select a single decision-maker who will determine whether the MSA was a significant factor in the tobacco companies' market share losses for 2003. A final determination is expected in March 2006.

Non-Participating Manufacturer (NPM) Enforcement In 2005, CPAD began implementation and enforcement of a new statutory and regulatory scheme, initiated by the Attorney General, that requires NPMs to file certification statements with the Department of Revenue and the Attorney General, and prohibits the NPMs from selling tobacco products in Massachusetts until and unless they establish escrow accounts, they have deposited funds into those accounts, and all their cigarette brands sold in the state are listed on a directory. In February 2005, CPAD obtained its first Consent Judgment against a cigarette stamper, G.A. Andron, for stamping and selling cigarettes in Massachusetts that had not been listed on the Massachusetts directory. CPAD also continued to litigate cases against cigarette manufacturers that did not comply with the state's NPM Escrow Law (G.L. c. 94E). In August 2004, CPAD obtained a Consent Judgment against Sun Tobacco, resolving a 2002 NPM enforcement action and requiring Sun to pay \$25,000 in civil penalties and its parent, General Tobacco, to join the MSA and make back escrow payments. In February 2005, CPAD obtained a Consent Judgment against ETI, an Italian NPM, for failing to make required escrow payments. In May 2005, CPAD obtained a judgment against Universal Hamilton that requires the cigarette manufacturer to establish an escrow account under c. 94E, to make a \$33,000 payment for past 2001 and 2002 cigarette sales in

Massachusetts, and to pay civil penalties of \$100,000. Massachusetts also continued to participate with Attorneys General in other states in defending litigation brought to challenge the NPM enforcement activities of those states.

OUTREACH, EDUCATION, AND TRAINING

Consumer Education/Advisories CPAD, in some cases in coordination with other divisions within the Attorney General's Office, issued consumer advisories on pressing consumer issues: sweepstake scams, purchasing gift cards, phony government grant scams, ticket scalping, Internet "phishing" scams, preparing for the winter heating season, and scams targeting elders relating to the new Medicare prescription drug benefit. CPAD also helped publish or update a number of the Attorney General's consumer guides and brochures, including *Identity Theft: It Could Happen to You*, and *The Attorney General's Guide to Keeping Warm this Winter*. CPAD also sponsored a series of National Consumer Week initiatives in February 2005.

Consumer Complaint and Information Section (CCIS) CCIS provided consumer information by responding to over 70,000 telephone calls to the Consumer Hotline, by responding to letters, by distributing brochures, and through public speaking engagements. CCIS also responded to approximately 452 public records requests from the press and consumers seeking complaint information against specific businesses. CCIS also participated in National Consumer Week activities in February 2005 by, among other things, appearing at several MBTA stations, malls and post offices and answering consumers' questions while also providing them with brochures and pamphlets on various consumer protection issues.

CPAD Attorneys CPAD attorneys participated as speakers and panelists in consumer education events, as well as in industry seminars and forums, on numerous issues, including identity theft, Internet safety, predatory lending, prescription drugs, and other consumer protection issues.

ENVIRONMENTAL PROTECTION DIVISION

The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive Office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, and hazardous and solid waste. EPD also plays a key role under the Clean State

Initiative to ensure that the Commonwealth's own agencies abide by state and federal environmental laws, and in doing so the division may bring enforcement actions against those agencies in court where the Attorney General, in his enforcement discretion, deems action necessary. Based on the Attorney General's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in state and federal litigation, and participates in administrative proceedings before federal agencies on significant environmental issues. EPD defends lawsuits challenging the actions of state environmental agencies and the legality of state environmental laws.

EPD staff included James R. Milkey, Division Chief; Frederick Augenster; Matthew Brock; Nora Chorover; Carolyn Edwards; Benjamin Ericson; James Farrell; I. Andrew Goldberg; Nancy (Betsy) Harper; Carol Iancu; Matthew Ireland; Eleanor Johnson; Siu Tip Lam; Linda Myllmaki; William Pardee; Amy Pinabella; and Danah Tench.

SIGNIFICANT CASE SUMMARIES

NATIONAL AND REGIONAL AIR POLLUTION ISSUES

- **Global Warming/Climate Change** Attorney General Reilly continued his leadership role in seeking to address the problem of global warming. On August 28, 2003, the U.S. Environmental Protection Agency issued two rulings declining to regulate greenhouse gases under the federal Clean Air Act. The office served as lead counsel in Commonwealth of Mass. v. EPA, a challenge to those rulings in the D.C. Circuit Court of Appeals. Sixteen states or other governmental entities and fourteen national or regional environmental groups joined the challenge. EPD filed its reply brief on December 17, 2004, and presented oral argument on April 8, 2005. At the end of the fiscal year, EPD was still awaiting a ruling from the Court.
- **Mercury Emissions** In Fiscal Year 2005, the federal EPA issued two sets of regulations regarding the emission of mercury from power plants. Power plants are the largest source of mercury, which poses serious neurological risks, especially to children and pregnant women. EPD joined several other states in filing a challenge to both sets of regulations in the D.C. Circuit. EPD also filed suit in U.S. District Court in Massachusetts challenging EPA's failure to turn over key documents EPD had pursuant to a Freedom of Information Act request.
- **New Source Review** EPD continued to play a significant role in a multistate and EPA enforcement action against American Electric Power, a large Ohio-based power company, for upgrading plants without installing Best Available Control Technology required by the New Source Review (NSR) provisions of the federal Clean Air Act. During Fiscal Year 2005, significant

discovery and settlement negotiations continued. In the meantime, EPD continued its efforts working with other states to challenge two sets of regulatory changes that will significantly weaken the NSR program. On January 25, 2005, the D.C. Circuit heard oral argument in one of those challenges, and issued a ruling on June 24, 2005, striking down some of EPA's regulatory changes and upholding others. The challenge to the other set of NSR regulations is still pending, although a judicial stay of those regulations EPD secured in December, 2003 remains in place.

STATE AIR POLLUTION LAWS AND REGULATIONS

- **128 Sales** The Superior Court imposed a \$270,000 penalty in a case involving the sale of vehicles that were not certified as meeting state auto emission standards.
- **General Motors** GM agreed to pay a \$230,000 penalty to settle allegations that it imported some cars that violated state auto emission standards. The company also agreed to pay \$77,000 toward a Supplemental Environmental Project that will help clean up public buses owned by Pioneer Valley Transit Authority.
- **Power Plants** In May 2001, DEP adopted new emissions standards for the six older power plants in Massachusetts. In Fiscal Year 2005, EPD continued its defense of a challenge to those regulations filed by the owner of one of the power plants.

ENERGY CONSERVATION

During Fiscal Year 2005, Attorney General Reilly endorsed state legislation mandating new energy efficiency standards. He also worked with other states in putting together a challenge to the Department of Energy's failure to set new energy efficiency standards for various appliances.

ENFORCEMENT OF OUR HAZARDOUS AND SOLID WASTE DISPOSAL AND MANAGEMENT LAWS

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 itself clean up the contamination. This saves the Commonwealth money up front and results in the efficient administration of site cleanups. EPD also enforces our hazardous and solid waste management laws to prevent environmental contamination from occurring in the first place.

- **Mendon Road** EPD continued to pursue recovery of costs the state spent 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 the state spent, which now total several million dollars with interest. The First Circuit referred the question of whether ferric ferrocyanide is a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act to EPA, and EPA issued a ruling that it was. During Fiscal Year 2005, EPD helped secure a dismissal of an appeal the company took of EPA's administrative ruling, and continued to press its case in federal District Court.

- **Boston Junk/Boston Edison** In another major 21E action, EPD is seeking recovery, from Boston Edison and others, of monies being spent to clean up the site of the Boston Convention Center. EPD is working closely with the Massachusetts Convention Center Authority and the Boston Redevelopment Authority, co-plaintiffs in the case. In Fiscal Year 2005, EPD prevailed in Commonwealth v. Boston Edison, 444 Mass. 324 (2005), an important interlocutory appeal before the SJC. The SJC reversed the trial court and held that 1) the Commonwealth is not liable under c. 21E for the exercise of its enforcement discretion regarding whether or not to bring an enforcement action and 2) the Commonwealth is entitled to pursue joint and several liability against all liable defendants (although the issues of Boston Edison's liability and affirmative defenses remain to be resolved at trial). The SJC ruled for the first time that any non-labile Commonwealth agency (in this case, the Executive Office of Administration and Finance) — not just DEP — may seek joint and several liability under c. 21E against any liable defendant, provided the other requirements for recovery are met. The case has been remanded back to the trial court.

- **Weymouth Neck/East Bay cases** These two cases, which included both affirmative and defensive elements, concerned a contaminated site in Weymouth. EPD reached a settlement that required private parties to complete a cleanup of the area, saving the Commonwealth great expense.

- **D.B. Enterprises** EPD continued its prosecution of owners and operators of a large landfill in the Town of Wendell, seeking to recover millions of dollars that DEP spent to stabilize the landfill to prevent its catastrophic collapse. In Fiscal Year 2005, EPD won summary judgment on liability.

- **Commonwealth v. Trant** EPD received a judgment from the Superior Court on October 6, 2004 finding the estate of Carl Trant and co-defendant Tire Recycling and Development, Inc. liable to the Commonwealth for the \$644,860.95 in unreimbursed response costs that DEP incurred in cleaning up the tire pile at Trant's property in Brimfield, and for any of the Commonwealth's future response costs at the site. The Court also ordered that the Clerk of the

Court pay to the Commonwealth \$72,918.81 (the proceeds of a liquidation auction of Trant's equipment) that the Court has been holding since 2000.

- **Commonwealth v. Flaherty** EPD continued its suit against developers of a contaminated site in Tyngsborough who were disclaiming liability for the cleanup.
- **Commonwealth v. D'Angelo** (Broadway Brake) EPD filed suit against Philip D'Angelo, owner of a contaminated property located in Brockton, and a trust he created to recover almost \$200,000 in c. 21E response costs and to get the historical releases of oil and hazardous material at the property cleaned up. EPD also sued Broadway Brake, a company D'Angelo owned that had operated out of the property, to seek a civil penalty for failure to comply with state law during a cleanup of a more recent release of fuel oil. The parties settled this matter, and Final Judgment was entered on May 26, 2005, requiring D'Angelo and Broadway Brake to clean up the property, pay a civil penalty of \$50,000, and pay \$195,000 in response costs.
- **Commonwealth v. Parker** (Cataumet Garage) EPD prevailed on summary judgment in this case involving an owner who disclaimed liability to clean up a contaminated site in Bourne. The Court issued a judgment that, in addition to finding the owner liable, ordered him to pay \$62,380 in civil penalties and attorneys' fees. The owner has appealed.
- **Commonwealth v. Beaudette** (Sandy Bay) The Court entered a Modified Final Judgment as part of a settlement to resolve John Beaudette, Inc.'s noncompliance with the terms of a 1997 Final Judgment and Settlement Agreement. The case is a Chapter 21E cost recovery and enforcement "inability-to-pay" case involving two sites in Rockport. The Modified Final Judgment requires JBI to establish a letter of credit, for the benefit of the DEP, and a Standby Trust, in the amount of \$100,000; pay the Commonwealth \$67,000, the full amount of its unreimbursed costs; and pay a penalty of \$20,000, of which \$10,000 has been deferred and will be waived if JBI complies in full with all requirements of the agreement.
- **Commonwealth v. Town of Longmeadow** EPD brought suit against the Town of Longmeadow and current and former employees for allegedly disposing of solvents and waste oil through underground drains near wetlands; improper disposal of asbestos wastes; releasing freon and other harmful coolants from the crushing of appliances; burying drums of hazardous material and large amounts of solid wastes, including old fuel and oil tanks, truck tires, street sweeper equipment, concrete and asphalt; operating its recycling facility in ways not approved by DEP; discharging sewage into various state waters and improperly maintaining town sewer lines; and altering wetlands areas without required permits. Under the final judgment, the

town was required to pay a \$250,000 civil penalty (a record for a municipality), a portion of which will be waived if the town successfully returns to compliance under prescribed terms and conditions, and to conduct environmental management systems audits and compliance audits for virtually all town properties and to correct any environmental violations found at any of them. Each of the individual defendants paid a \$7,500 civil penalty.

- **Commonwealth v. Town of Wayland** In a 2002 settlement, the town agreed to pay a \$25,000 penalty, although \$10,000 was suspended. The town agreed to pay half of the suspended penalty to settle allegations of a new violation.
- **Commonwealth v. Troiano** The Superior Court granted the Attorney General's motion for a Preliminary Injunction on March 24, 2005, requiring Troiano to fully abate nuisance conditions at his Grafton food waste recycling business.
- **Commonwealth v. Eskanian** EPD sued the owner of four gas stations in Medford and Malden alleging that he failed to clean up his properties in accordance with c. 21E and to comply with various state air pollution requirements.

NATURAL RESOURCE RECOVERY, PROTECTION, AND PRESERVATION

- **Natural Resource Damages** EPD, with the federal government, brought a case against the City of Holyoke Electric Department involving coal tar wastes in the Connecticut River. EPD secured entry of a consent decree that will require payment of a total of \$500,000, including \$345,000.00 for natural resource damages, and \$36,755.00 as reimbursement for state costs of NRD assessment.
- **Buzzard's Bay Oil Spill** EPD, with the federal government, is pursuing natural resource damages from the owner of the barge that caused an oil spill in Buzzard's Bay in 2003.
- **Protection of Endangered Species and Plants: Capolupo v. DFW** Capolupo, who wanted to build a single family home on a Merrimack River island in Salisbury that is prime Bald Eagle habitat, challenged Fisheries' regulatory interpretation of MESA's "take" prohibition as ultra vires, arguing that the legislature did not intend for a "take" to include "mere habitat alteration." On March 4, 2005 the Superior Court granted EPD's motion to dismiss, agreeing with EPD's arguments that Capolupo's challenge was not ripe and that there was no actual controversy for declaratory relief because Capolupo had not yet applied for a permit. Capolupo filed a notice of appeal on April 1, 2005.

WETLANDS, WATERWAYS, AND WATER POLLUTION

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

- **Commonwealth v. Adesa** In a case involving alleged wetlands violations in Framingham, EPD obtained a settlement requiring restoration and payment of a \$225,000 civil penalty.
- **Commonwealth v. Brandywine** EPD is prosecuting a case involving wetlands violations in Billerica.
- **Commonwealth v. LaMountain** EPD obtained a preliminary injunction against a developer for alleged wetlands violations in Oxford.
- **Commonwealth v. Santos** EPD obtained a judgment against a homeowner in Millis for wetlands violations along the Charles River. The judgment requires restoration and the payment of a \$102,500 civil penalty.
- **Commonwealth v. B&M Fitzgerald** After a jury trial, EPD obtained a judgment against a Westfield homeowner for violating state Title 5 septic system regulations and the Consumer Protection Act. The judgment required payment of \$50,000 in civil penalties, restitution and attorneys' fees.
- **American Rooter** In this case involving the use of an unauthorized septic system treatment technology, the company agreed to a \$10,000 penalty, half of which was suspended.
- **Municipal wastewater treatment cases** EPD, with the federal government, handled numerous cases against municipalities, including Billerica, Brockton, Chicopee, Fitchburg, Gloucester, and the Greater Lawrence Sanitary District, regarding violations at their wastewater treatment plants.
- **Protection of Public Conservation Land** The Attorney General enforces Article 49 of the Amendments to the State Constitution (as amended by Article 97), which serves to protect public park land and land dedicated to conservation purposes. EPD continued its involvement in a controversy concerning the Town of Hanson, which sold two parcels of conservation land to private parties. EPD submitted an *amicus* brief to the SJC in Lindsay v. Town of Hanson, a case involving one of the two parcels. On June 29, 2005, the SJC issued a ruling in which it held that the land was not in fact protected conservation land (at least with respect to a bona fide

purchaser) because the town meeting vote to acquire the land contemplated that a conservation restriction be recorded, and that act never occurred.

DEFENSIVE LITIGATION

EPD defends state environmental agencies and officials sued on environmental issues. This defensive litigation includes both high profile matters, such as defense of the newly enacted state Oil Spill Act against a preemption challenge by the Coast Guard, and many “nuts and bolts” cases.

- **Edgartown** The Superior Court affirmed DEP’s issuance of a groundwater discharge permit to Edgartown Wastewater Commission to operate its wastewater treatment facility.
- **Clifford** A citizen group challenged DEP’s grant of a Chapter 91 license to the City of Everett to build a water-dependent park on filled tidelands near the Malden River. EPD prevailed in Superior Court on motions for judgment on the pleadings and summary judgment. The Superior Court found that DEP could permissibly find water-dependent uses in waters like the Malden River that were once tidal but are no longer, as Chapter 91 was best read to allow uniform licensing and other regulatory treatment of tidelands, whether a dam had been built downstream or not. It found DEP’s water-dependency conclusion in this case reasonable, since visual access to the water could support enjoyment of the water, and the park had other features to support water enjoyment, like water-themed interpretive signs.
- **Pires v. DEP and Town of Easton** The Superior Court denied a motion for judgment on the pleadings in this Chapter 30A wetlands appeal, holding that the Commissioner properly found that the project met the regulatory criteria for redevelopment projects even though the ALJ never reached the question (because it was mooted by her finding on another issue). The Court held that the Commissioner’s redevelopment “finding” was sufficient to meet the statutory requirement of c. 30A, §11(8), that there be a determination of each issue of fact or law necessary to the final decision since “the Commissioner’s reasoning is discernible from his reference to the pre-filed testimony of the Department’s witnesses; it appears that he found the facts to be as the Department’s witnesses testified.”
- **Kitras** The Superior Court granted EPD’s Motion to Dismiss after two owners of property in the Town of Aquinnah (f/k/a Gay Head) alleged that DEP had effected a “regulatory taking” of their land through delaying wetlands approval.
- **Fore River** EPD obtained a judgment in favor of DEP in this c. 30A wetlands appeal concerning whether the water body in question was part of the Fore River.

- **Charlestown DPA Cases** In the consolidated Charlestown Designated Port Area Cases (U.S. Gypsum v. EOEa et al., C.A. No. 03-0214; LaFarge North America v. EOEa et al., C.A. No. 03-0215; and Pizzuti v. EOEa et al., C.A. No. 03-0216), the Superior Court ruled on cross motions for summary judgment and judgment on the pleadings in favor of the Commonwealth on all claims, upholding the Office of Coastal Zone Management’s 2002 decision to redraw the boundaries of the Charlestown section of the Mystic River Designated Port Area (“DPA”). CZM’s decision redrew the boundaries to conditionally exclude the properties of two owners, even though those properties still met the criteria for inclusion, because CZM concluded that the conditioned exclusions would substantially improve the overall infrastructure of the DPA, leaving it better able to support maritime industrial activity.
- **Riverdale Mills v. DEP** The Superior Court upheld DEP’s interpretation of the term “human consumption” in DEP’s Drinking Water regulations to include supplying water to bathrooms for the purpose of flushing toilets and washing hands, where it also was available for drinking, brushing teeth, and cleaning eating utensils, cups and dishes. Riverdale Mills had challenged a DEP order requiring it to stop using water from its private well for those purposes unless and until Riverdale Mills satisfied the regulatory requirements for a public water supply, including complying with the required testing protocol for public water and using a certified operator.
- **Greenbush** The Superior Court affirmed DEP’s issuance of a wetlands variance allowing the MBTA to build the Hingham portion of the Greenbush Line. The Hingham Conservation Commission and a ten citizen group had appealed the variance. The Court ruled that the Hingham Conservation Commission, which has merely an advisory role in the issuance of a variance, cannot prevent the DEP from issuing a variance indefinitely by continuing to rule that the plans submitted during the order of condition stage were insufficient; that the DEP held an evidentiary hearing by allowing the parties to submit prefiled and rebuttal testimony; that there was substantial evidence in support of the issuance of the variance; and that the variance does not violate MESA because the variance specifically required the MBTA to comply with MESA.
- **Moot v. Golledge** EPD prevailed in this challenge to DEP’s regulatory exemption for landlocked tidelands and the application of this exemption to the North Point development near Lechmere station in Cambridge. The landlocked tidelands exemption is a critical component of DEP’s Chapter 91 regulations because it allows DEP to focus on licensing areas with appreciable impacts on existing waterways, instead of those historic tidelands which, because of their distance from the water, contribute little to the public’s rights of access to, and use of, the water.

STATISTICAL SUMMARY

During Fiscal Year 2005, EPD handled enforcement proceedings leading to judgments or similar resolutions requiring payment of \$2,298,475.95. This figure is for penalties, cost recovery, and other payments awarded in Fiscal Year 2005, whether or not actually paid in Fiscal Year 2005. It does not include penalties that are subject to waiver if the defendant stays in compliance. In Fiscal Year 2005, EPD received actual payments totaling \$1,820,847.23 in penalties, cost recovery, and other payments. Other cases resulted in court judgments requiring private parties to undertake costly cleanups — a savings of millions of dollars for the Commonwealth.

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

BROWNFIELDS

Chapter 206 of the Acts of 1998, “An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property,” otherwise known as the “Massachusetts Brownfields Act,” encourages the cleanup and redevelopment of Brownfields sites through both liability reforms and financial assistance. One of the liability reforms authorizes the Attorney General to enter into Brownfields Covenant Not to Sue Agreements (“Brownfields Covenants”) that provide liability relief beyond what is otherwise available under Chapter 21E, the state hazardous waste site liability law. The Brownfields Covenant Program addresses site specific liability concerns for complex cleanups and important redevelopment efforts.

Applications for Brownfields Covenants 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; or 5) providing some other public benefit to the community in which the site is located.

In Fiscal Year 2005, EPD’s Brownfields Unit continued to work on a number of diverse cleanup and redevelopment projects throughout the Commonwealth. The Brownfields Unit considered several applications for Brownfields Covenants and finalized three Brownfields Covenants designed to promote cleanup and reuse projects in Falmouth, Palmer, and Westborough. The Brownfields Unit has continued its ongoing efforts on various long-term priority projects, and has also continued to solicit new projects through outreach and education.

On November 29, 2004, Brownfields Chief Jim Farrell died unexpectedly. Attorney General Reilly acknowledges with great respect and appreciation the outstanding work that Jim Farrell did in building the Brownfields Covenant Program and in serving the people of the Commonwealth.

BROWNFIELDS COVENANTS FINALIZED

- **Westborough – Westborough Commons Project** EPD entered into a Brownfields Covenant with Westborough CC, LLC for the cleanup and redevelopment of a 57-acre parcel located at 12 Union Street in Westborough. Westborough CC is revitalizing the former Bay State Abrasives/Tyrolit manufacturing facility into a community-oriented shopping center with public open space that will create an estimated 750 new jobs and provide tax revenue for the city.
- **Palmer – Quabog East Development of Standex International Property** A Brownfields Covenant helped Quabog East LLC purchase the contaminated 5.31 acre Standex International Corporation manufacturing facility at 1127 South Main Street in Palmer. Quabog East intends to clean up the site and move its regional HVAC distribution business there, bringing approximately 35 full time employees to Palmer.
- **Falmouth – Hatem Enterprises Development of Former Sousa's Texaco** The Brownfields Unit completed a Brownfields Covenant allowing Hatem Enterprises to clean up and redevelop the former Sousa's Texaco gas station located at 121 East Falmouth Highway in Falmouth so that it is suitable for a small number of housing units.

OTHER ACTIVE BROWNFIELDS PROJECTS

EPD was actively involved in many other Brownfields projects this year, and received draft or final applications for Brownfields Covenants for many of these projects. Other projects involve longer-term developments for which the Brownfields Unit has provided consulting and assistance toward a future Brownfields Covenant or another resolution of liability concerns.

- **Andover – Reichhold Chemical Site** The Town of Andover is interested in acquiring a 46 acre former chemical site to redevelop into three-to-five playing fields for active recreation, and retain 19 or more acres for open space and recreation. The town and current owner submitted a draft application for a Brownfields Covenant, and the Brownfields Unit worked with the applicants on a cleanup and redevelopment plan, with a covenant expected to be completed in Fiscal Year 2006.
- **Attleboro – Swank Jewelers Site** The Attleboro Redevelopment Authority is facilitating the cleanup of a contaminated jewelry manufacturing site and redevelopment of the site by a

new jewelry manufacturer interested in expanding its operations. The Brownfields Unit helped the Redevelopment Authority assess liability concerns for an application for a Brownfields Covenant.

- **Attleboro – Texas Instruments Site** Preferred Real Estate Investments purchased the multi-building former Texas Instruments property and is proposing to redevelop it into commercial/industrial and residential developments. PREI submitted a final application in May 2005, and EPD worked with the applicant on a potential Brownfields Covenant.
- **Belchertown – Former Belchertown State School** MJK Group applied for a Brownfields Covenant as it sought to purchase a three acre portion of the former Belchertown State School to build an office, garage facility and parking area for a transportation company that includes handicap vans, school buses and vehicles. The Brownfields Unit issued a letter explaining why a covenant was not necessary.
- **Berkley – Cranberry Crossing Development at Bogs Landing** The Brownfields Unit worked with a developer interested in cleaning up and developing a 72 acre site into 12 to 18 lots for single family residences and donating a portion of the site to the Town of Berkley for public use. EPD received a draft application for a Brownfields Covenant in March 2005.
- **Burlington – Filter Sales Project** After entering into a Brownfields Covenant in 2003 to help the cleanup and redevelopment of a vacant manufacturing facility as a new air filter manufacturing facility, EPD worked with a party who sought to join the covenant agreement, explaining why joining was not necessary to respond to liability concerns.
- **Chelsea – Forbes Park Residential Development** The Davis Design Development Corp. expressed interest in buying, cleaning up and redeveloping the former Forbes Lithographic Company Property at 1 Forbes Street on the Chelsea waterfront into 225 housing units, including some affordable units. The Brownfields Unit began to assess the project, and reviewed a draft application for a Brownfields Covenant.
- **Easthampton – Ferry Street Project** The Brownfields Unit worked with the City of Easthampton on plans for a 22 acre vacant property formerly associated with the historic Hampton Mills Complex. The City submitted a draft application in September 2004, and the Brownfields Unit worked with the City to determine an appropriate regulatory approach to clean up and redevelop the site.

- **Foxborough – Development of Porter Estate Property, Cocasset Road** Foxborough Land Partners LLC proposed to purchase the 100 acre former location of a septic treatment and disposal facility, clean it and build cluster housing with significant open space. The Brownfields Unit began reviewing an application for a Brownfields Covenant.
- **Hudson – Hillside Development** Thorndike Development expressed interest in developing the 40 acre Hillside site into 151 units of village-type housing on 25 acres with open space on the remaining land. The site is contaminated with arsenic from historic wool operations.
- **Lawrence – Brook Street Park Project** Bank of America, owner of a site formerly occupied by a dry cleaner, has worked with Lawrence Community Works, Groundwork Lawrence and the City of Lawrence to turn the site into a city park. The Brownfields Unit has worked to coordinate funding, regulatory compliance and liability relief for several years, and helped the parties move from site assessment to a discussion of the liability relief necessary, with an application for a Brownfields Covenant expected.
- **Lawrence – GenCorp/Lawrence Gateway Project** One of the Brownfields Unit's long-term priority efforts is the Gateway Area of Lawrence. Redeveloping the GenCorp site into parking and the abutting Oxford Paper site into a park and open space recreation area will be a catalyst for revitalizing the Gateway area — inspiring new development, increased occupancy and use in existing mill buildings and expansion of Lawrence General Hospital services. This project would create hundreds of jobs and spur economic development in the area, creating significant public benefits to greater Lawrence. The Brownfields Unit continued to participate in regular Gateway meetings convened to provide momentum to move the GenCorp and Oxford Paper projects forward.
- **Marlborough – Frye Boot Site** The City of Marlborough took the former Frye Boot Manufacturing site by eminent domain, planning to turn the property into senior assisted living housing. The Brownfields Unit worked with the city to prepare an application for a Brownfields Covenant, which the city submitted in May 2005, and to negotiate an agreement.
- **North Andover – Ozzy Properties Redevelopment of Lucent Site** EPD negotiated a Brownfields Covenant, to be completed in early Fiscal Year 2006, for Ozzy Properties to redevelop the former Lucent complex, an important part of the Merrimack Valley economy, into a mixed office, industrial, and research and development facility to bring back some of the 4,000 jobs lost when Lucent closed.

- **North Attleborough – Handy & Harman Site** The current owner of this property, Handy and Harman Electronic Materials Corporation, is interested in cleaning up and redeveloping this site into a multi-tenant retail center. The Brownfields Unit began negotiating a Brownfields Covenant and worked with abutters, commenters and persons who requested to join the agreement.
- **Norwell – Shaw Saab Project** Norwell Pond Realty Trust intends to redevelop a vacant and contaminated automotive facility at 10 and 22 Pond Street into a refurbished car sales and service center. In response to an application for a Brownfields Covenant, EPD explained why a covenant was unnecessary to resolve liability concerns related to the development.
- **Pittsfield – Colonial Theatre Restoration Project** The Colonial Theatre Association has purchased an abutting contaminated property to help complete the restoration of an historic downtown theater. The Brownfields Unit worked to resolve the Association's liability concerns.
- **Plymouth – Revere Copper Site** The Plymouth Redevelopment Authority is pursuing the cleanup and redevelopment of a 1.5 acre waterfront site formerly operated by the Revere Copper and Brass Company. The Redevelopment Authority submitted an application for a Brownfields Covenant to facilitate the redevelopment of the site into housing, including affordable units.
- **Weymouth, Rockland, and Abington – South Shore Tri Town Development Project at Former South Weymouth Naval Air Station** This project will clean up and redevelop 1,400 acres of land at the Naval Air Station by South Shore Tri Town Development Corporation (which will take title from the Navy) and LNR Property Corp., a private developer. The Brownfields Unit continued to work with these entities and the many other state and federal regulatory bodies to pursue redevelopment of the site.
- **Whitman – Decor Manufacturing Site** The Brownfields Unit continued its efforts to help resolve Chapter 21E liability and cost recovery at this 6.9 acre site as a tenant at the property attempted to purchase the site to expand its business there.

BROWNFIELDS PROGRAM DEVELOPMENT

This year continued to highlight the important role the Brownfields Covenant Program plays in both public and private efforts to transform contaminated and abandoned or underutilized properties throughout the Commonwealth. EPD explored cleanup and redevelopment opportunities with a variety of property owners and prospective developers that could lead to the creation of new jobs, affordable housing, open space, and other important public benefits.

The Brownfields Unit has encouraged cleanup and redevelopment projects to proceed in many ways — by entering into Brownfields Covenants when appropriate and through education and consulting that resolves liability concerns in other ways. Brownfields Covenants may be necessary where cleanup is complex and liability concerns stand in the way of a redevelopment opportunity of significance to the economic or environmental well-being of a community. There are many cases, however, in which a Brownfields Covenant is not necessary for a project to proceed, once the parties to a development — owner, purchaser, developer, lender, or others — understand the liability relief available automatically under Chapter 21E. Through public outreach and meetings with stakeholders across the development spectrum, the Brownfields Unit works to provide interested parties with an understanding of Chapter 21E to ensure that questions of liability are adequately and appropriately addressed throughout the development process.

LEAD PAINT

Massachusetts has a high rate of lead poisoning among children because, at least in part, of exposure to lead-based paint in the state's older housing stock. Luckily, Massachusetts also has one of the nation's strongest lead-based paint notification and abatement laws. The Massachusetts lead law requires the de-leading or interim control of lead hazards existing in homes built before 1978 where children under six are living. Owners must also notify tenants that a property has not been de-leaded, regardless of whether a child under the age of six is living in the home.

Massachusetts continued a lead paint enforcement initiative with the EPA and the U.S. Department of Housing and Urban Development (HUD). As part of this initiative, EPD reached settlements with Winn Management that required testing and abatement of over 7,000 housing units in Massachusetts. Winn also agreed to institute a new civil rights policy prohibiting discrimination against families with small children. EPD also brought two state enforcement actions against landlords in Holyoke. It resolved one of those for a \$21,000 penalty, and the other is still pending.

ENVIRONMENTAL HEALTH AND SAFETY IN THE SCHOOLS

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

EPD continued to work with community groups and other state agencies to identify the common environmental health and safety issues in schools, the challenges schools face in addressing those issues, and gaps in the laws and regulations governing environmental health and safety. EPD worked with

several members of the Healthy Schools Council to develop legislation to address environmental health and safety issues in the schools.

PROTECTING CONSUMERS FROM EXPOSURE TO ASBESTOS, TOXICS, AND PESTICIDES

Massachusetts has a long-standing commitment to reducing human exposure to harmful substances such as asbestos, toxics, and pesticides.

Pesticides and Food EPD joined New York, California, and Connecticut in a rulemaking petition before the U.S. EPA asking it to implement the Food Quality Protection Act (FQPA) by modifying the tolerances it set for residue levels for five pesticides: alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb. These pesticides are used in the agricultural production of fruits and vegetables, such as apples, grapes, peanuts, tomatoes and wheat, commonly consumed by children, and EPA has failed to apply the mandatory safety factor in setting the allowed levels for these pesticides.

Pesticides and Schools Attorney General Reilly and Department of Agricultural Resources (DAR) Commissioner Douglas P. Gillespie sent more than 3,600 notification letters to Massachusetts schools and child care centers that failed to prepare and file integrated pest management (IPM) plans. These plans, required by law, are designed to protect children from exposure to harmful pesticides in and around schools.

POPs Preemption Issue EPD opposed a version of a federal bill to implement the treaty on “persistent organic pollutants” that would preempt state regulatory power over certain substances even when those substances were not regulated at the federal level.

THE CLEAN STATE INITIATIVE

A priority of the Attorney General is compliance, by all state agencies and authorities, with the environmental laws and regulations of the Commonwealth. Attorney General Reilly continued his oversight of the MBTA’s compliance with environmental laws, including the T’s compliance with a consent decree governing the demolition of its old power plant in South Boston. In addition to pressing individual cases against state entities, the Attorney General seeks to have state agencies generally implement policies to prevent environmental violations from occurring.

CAPE WIND

In November, 2001, Cape Wind Associates filed an application with the Army Corps of Engineers for a permit in conjunction with a proposal to build a “wind farm” on Horseshoe Shoals in Nantucket Sound. The proposal envisioned 170 (since scaled down to 130) wind turbine generators on pylons

standing approximately 260 feet above sea level, spread over 28 square miles of the Sound. Horseshoe Shoals is located in the center of the Sound, more than three miles beyond the coastline and closing lines, and therefore outside of Massachusetts territorial waters.

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

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

Accordingly, Attorney General Reilly continued to raise these concerns in many different forums. In Alliance to Protect Nantucket Sound, Inc. v. United States Department of the Army, 398 F. 3d 105 (1st Cir. 2005), the First Circuit issued a ruling in a case involving the test tower for the project. Attorney General Reilly had submitted an *amicus* brief in this case arguing that a permit issued by the Army Corps of Engineers pursuant to the Rivers and Harbors Act does not provide sufficient authority to allow a private party to occupy federal public trust lands. The Court found it unnecessary to reach this issue in the current case but specifically noted that it was a "thorny" issue. EPD followed up the Court's ruling by submitting comments to the Army Corps of Engineers on February 24, 2005.

WEAVER'S COVE LNG FACILITY

EPD became very involved in a controversy over the proposed Weaver's Cove liquified natural gas terminal in Fall River. EPD filed an administrative petition (joined by Rhode Island) asking the federal Department of Transportation to adopt new siting regulations, prepared oral testimony and formal written comments to the Federal Energy Regulatory Commission on its draft environmental impact report, and moved to intervene in the FERC licensing process. Attorney General Reilly called on FERC to put its review of the proposal on hold until the agency has digested and responded to concerns raised in a new study on LNG safety issues done at the request of the Department of Energy.

EPD also submitted comments supporting a rulemaking petition that the City of Fall River filed with the Coast Guard; submitted comments on LNG siting issues to the Senate Committee on Energy & Natural Resources; opposed LNG provisions in the federal energy bill; and, with the City of Fall River and other parties, filed various significant motions and testimony with FERC. At the very end of Fiscal Year 2005, FERC voted to approve the Weaver's Cove facility and EPD began work on a Petition for Rehearing.

LEGISLATIVE EFFORTS

Much of EPD's legislative work this year was in fighting various efforts to cut back on state authority. For example, EPD opposed efforts to limit the state role in the siting of liquified natural gas terminals, and opposed efforts by the oil industry to win immunity from law suits over contamination related to the gasoline additive MTBE. EPD also continued to oppose efforts by the Department of Defense to secure additional exemptions from federal environmental laws.

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

NUCLEAR SAFETY ISSUES

EPD continued to play a role in nuclear safety issues. EPD transmitted to the Nuclear Regulatory Commission its concerns regarding the potential vulnerability of spent fuel stored at nuclear power plants, and urged the NRC to follow the recommendations of the National Academy of Sciences addressing those concerns.

BANKRUPTCY MATTERS

EPD participates in bankruptcy cases on a fairly regular basis to protect the Commonwealth's interests. EPD represents the DEP, as a creditor, in numerous cases in which a debtor has environmental liability by filing a claim on the DEP's behalf seeking to recover outstanding costs or fees. EPD also seeks to prevent a culpable debtor from abandoning contaminated property that would otherwise likely create a brownfields site. Where possible, EPD also attempts to compel the debtor to perform cleanup actions that are still necessary or to obtain funding from its estate to cover any costs the Commonwealth may incur to contain any immediate hazards posed by the debtor's sites.

In the W.R. Grace bankruptcy, for example, EPD negotiated a stipulation, approved by the court, that the debtors owe the DEP over \$700,000 in past costs and fees, as a general, unsecured claim; EPD

continues to negotiate with Grace and EPA over Grace's future liability at several sites throughout the Commonwealth. EPD sped up resolution of its claim for past costs by coordinating with other state agencies (like the Department of Revenue, who owed the debtors a refund, and the Comptroller's Office) in an effort to obtain the overall best outcome for the Commonwealth. In the US Gen bankruptcy, EPD obtained a \$75,000 payment for potential cleanup costs.

INSURANCE DIVISION

The Insurance Division represents the public interest in administrative insurance rate setting proceedings, brings actions in state court against insurers for unfair acts and practices, provides comments and testimony regarding proposed regulations and laws relating to insurance, assists in other litigation in the Public Protection Bureau, mediates claims on behalf of consumers, and provides assistance on insurance and other issues to members of the Massachusetts elder community.

The Insurance Division included Glenn Kaplan, Chief; Stacy Book; Gerald Cahill; Michael Dunn; Judy dePontbriand; Barbara Fain; Burt Feinberg; Maureen Forbes; Rebecca Frade; Stacey Gotham; Maureen Hensley-Quinn; Hilary Hershman; Tonie Jhun; Shannon Keith; Peter Leight; Stephanie Kessler; Ryan Downer; Arwen Thoman; Nathan Rawding; Rosina Lucibello; Pamela Meister; Tom O'Brien; Quentin Palfrey; Mary Jane Preskenis; Jayna Stafford; Ruby Mintz; Pat Morgan; Monica Brookman; and Rachel Weiner.

SIGNIFICANT CASE SUMMARIES

RATE CASE LITIGATION

Insurance rate proceedings involve highly complex litigation, with hundreds of millions of dollars in customer premiums at issue. The Insurance Division, with its attorneys, support staff, and in-house actuarial and mathematical experts, reviews industry filings and intervenes in rate cases to prevent unfair rate increases. The Attorney General, as the only party in the rate cases representing the public interest in fair rates for consumers, and as the only party able to appeal unjustified rate increases approved by the Commissioner of Insurance, plays a key role in this process.

- **2005 Automobile Insurance Rate Proceeding** The automobile insurance rate setting proceeding is an annual administrative litigation in which the Commissioner of Insurance, based on proposals and evidence submitted by the auto industry and other parties, sets automobile

insurance rates for the coming year. The Insurance Division litigates these proceedings, representing the public interest. The division completed its administrative litigation against the industry's requested 5.8% rate hike, and the Commissioner issued a decision reducing rates by 1.7%. The division's involvement saved consumers approximately \$300 million.

- **Appeal of 2004 Auto Rate Case** The division also pursued its appeal of the 2004 rate decision. While the division was largely successful in the litigation of last year's rate case during the initial litigation, the Commissioner nevertheless made certain errors in her decision that adversely affected consumers. Attorney General Reilly appealed to the Supreme Judicial Court, and the SJC remanded portions of the case to the Commissioner for further proceedings.
- **2005 Workers Compensation Insurance Rate Proceeding** Workers Compensation Insurance is a mandatory insurance coverage for Massachusetts companies that pays claims for job related injuries and costs Massachusetts businesses over one billion dollars in premiums each year. The rates for workers compensation insurance are set in a cyclical administrative rate proceeding, and the industry filed for a 1% rate increase. Attorney General Reilly intervened in the rate case, resulting in a settlement for a -3% rate decrease, saving consumers \$40 million.
- **Hartford Medicare Supplement Insurance Rate Case** Hartford Insurance Company provides Medicare Supplement insurance to approximately 900 residents in the Commonwealth. Rates for this coverage are approved in an administrative docket before the Commissioner of Insurance. Hartford sought a 19.8% rate increase for its Supplement 1 policy and a 23.4% rate increase for its Supplement 2 policy. The division's intervention resulted in the reduction of both rate increases to 12.9%.
- **Oxford Life** Oxford Life sought to increase rates for its 2,000 Massachusetts Medicare Supplement insurance customers by more than 20%. The division intervened in the rate case, obtained a reduction in Oxford's request, and saved Massachusetts consumers \$300,000.
- **FAIR Plan (Homeowners Insurance) Rate Case** The FAIR Plan provides homeowners insurance to consumers who cannot obtain coverage from private insurers. Rates for this residual market plan are set in a cyclical rate proceeding. The industry sought significant rate increases, including higher rates for urban areas. The division intervened, and its actions saved Massachusetts consumers over \$1,000,000 in home insurance premiums, and resulted in a rate rollback for FAIR Plan policyholders in much of the City of Boston.

SUFFOLK SUPERIOR COURT LITIGATION: INSURANCE ISSUES

In addition to the rate setting cases, the Insurance Division aggressively pursues insurers, insurance agents, and other players in the insurance system when they commit unfair acts and practices.

- **Tufts** Pharmacies allegedly misled consumers and violated the balance billing laws by passing on as a “consumer tax” certain state assessments on the retail pharmacy industry. After Tufts encouraged this illegal behavior and misled its policyholders, Attorney General Reilly brought an action against Tufts and obtained a \$75,000 payment to the Commonwealth and changes in Tufts Health Plan documents and business practices.
- **Nationwide Insurance** Nationwide failed to disclose properly information about its life insurance offerings. The division investigated Nationwide, and obtained an Assurance of Discontinuance under which the insurer paid \$50,000 to the Commonwealth and undertook measures to provide restitution worth over \$500,000.
- **State Farm** State Farm failed to follow state disclosure regulations when it resold totaled cars in the aftermath of accidents (consumers who bought the cars did not receive proper notice that the cars were salvaged). The division filed an Assurance of Discontinuance in this case, and State Farm paid a \$15,000 penalty and offered restitution to consumers.
- **Unum Provident/O’Neill Finnegan & Jordan** O’Neill Finnegan & Jordan served as an insurance advisor for the Commonwealth’s Group Insurance Commission. The advisor, in violation of its agreement with GIC, sought commissions from Unum Provident. Unum and OFJ paid \$1.3 million to the Commonwealth, and agreed to changes in their business practices.
- **Reliastar** Reliastar, a life insurance company formerly called Security Connecticut, failed to disclose certain information regarding a life insurance investment product. The division filed an Assurance of Discontinuance and Reliastar paid \$5,000 in penalties and \$31,528.54 in consumer restitution.
- **Pike Insurance Agency** This insurance agency sold policies from an unlicensed insurer that failed to pay medical claims after it became insolvent. Pike entered into a consent judgment with the Attorney General, agreeing to changes in business practices and to payment of restitution for harmed consumers.

- **Delta Dental** The division received a complaint from a Delta Dental consumer that her dentist no longer gave her the negotiated rate after she reached the cap on her dental insurance. Delta Dental's plan information failed to explain that after the plan cap is met, the dentist does not have to offer a negotiated rate. The division entered into an Assurance of Discontinuance, and Delta agreed to clarify its literature and pay a statutory penalty.
- **Michael Porter** This insurance agent failed to take reasonable measures to ensure that the insurance products he recommended to his clients were legitimate. After suit, the division obtained a judgment against this agent for equitable relief and restitution.
- **Creative Solutions Group, Inc.** This insurance broker misled consumers about the benefits under a Guardian Life dental plan. The division obtained an Assurance of Discontinuance, a statutory penalty, and restitution for consumers.
- **Long Term Care Agent Stings** The division conducted a series of stings against long term care insurance agents, and found that certain agents and insurers were failing to disclose important information to consumers. The division obtained Assurances of Discontinuance against New York Life Insurance Company, MetLife Insurance, and a broker, Cawthorne Financial, for statutory penalties and equitable relief.
- **Harvard Pilgrim** This insurer included unlawful limitations on coverage for pre-existing conditions in some of its insurance policies. The division obtained an Assurance of Discontinuance requiring Harvard Pilgrim to change its contracts and pay a statutory penalty.
- **Jill Goldman** After this insurance agent unfairly provided faulty insurance coverage to certain small businesses, the division obtained an Assurance of Discontinuance and restitution for consumers with unpaid medical bills.
- **Robert Hall** Hall was an insurance agent for Employers Mutual, an unlicensed insurance company that failed to pay claims. The division sued Hall and obtained a consent judgment that required changes in his business practices and provided for restitution for any harmed consumers.

STATISTICAL SUMMARY

Investigations initiated	64
Litigation Initiated (Court cases)	5
Litigation Initiated (Rate Setting Proceedings)	5
Judgments Obtained (Superior Court)	8
Assurances of Discontinuance	10
Rate Case Stipulations or Judgments	5
Penalties and Related Payments	\$1,200,000
Restitution and Monetary Savings for Consumers	\$1,300,000
Monetary Savings for Consumers as a result of Rate Cases	\$380,000,000

The division includes two mediation projects, the Insurance Mediation Program and the AG Elder Hotline, that help consumers resolve certain individual disputes without legal action.

<u>MEDIATION PROJECT</u>	<u>CONSUMER CALLS</u>	<u>MEDIATIONS/ COMPLAINTS</u>	<u>ASSISTED RECOVERIES</u>
Insurance Mediation	6,396	905	\$1,561,533.20
AG Elder	9,087	3,823	\$128,000

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

PUBLIC POLICY INITIATIVES

In addition to enforcing existing statutes, the Insurance Division actively explores various public policy issues. The division advocates regarding potential legislative changes and proposed regulations. It also performs important research and analysis regarding the actual effect of various trends and systems

on the insurance market and on consumers. These data, and the conclusions drawn from them, are useful for public policy debate surrounding insurance issues.

Auto Insurance Residual Market Reform The division continued its longstanding efforts to have the Commissioner of Insurance reform the way in which consumers obtain auto insurance when they cannot obtain coverage from insurers voluntarily (the “auto residual market system”). The division had provided the Commissioner with data demonstrating that the current system perpetuates fraud, results in unpredictable and inequitable divisions of losses among existing carriers, and fails to protect consumers. This year, the Commissioner adopted significant residual market reforms, and the division testified on the need for reform and made suggestions on how the Commissioner could improve the plan to better protect consumers.

Merit Rating Board This board considers how automobile accidents and driving records are used to assign consumers to certain “safe driver” categories for auto insurance purposes. The board, which meets quarterly, is comprised of representatives of the Attorney General’s Office, the Registrar of Motor Vehicles, and the Commissioner of Insurance. The Insurance Division represents the Attorney General on this board. The division continued to participate on the board, and worked toward improving the functioning of the “merit rating” system for Massachusetts drivers.

Auto Insurance Reform Task Force This task force, created by the Governor, looked at ways to improve the auto insurance system in Massachusetts. The division served on the task force, and headed the safety subcommittee (which focused on proposals to lessen insurance costs by reducing accidents). The division participated in the drafting and release of the task force’s interim report, and remained a task force participant until the Governor disbanded the task force.

Workers Compensation Insurance Rating Reform Group This group, convened by a committee of the Legislature, looked at ways to reform Workers Compensation Insurance rate setting mechanisms. The division participated in periodic meetings, and ensured that small businesses and other rate payers remained protected.

Testimony and Legislative Guidance The division also provided testimony at administrative public hearings and before the legislature and provided legislators with guidance regarding regulatory initiatives and changes in insurance law. During the past year, the division provided guidance on proposed changes to the Safe Driver Program in auto insurance, the Territorial rate setting system, residual auto insurance market mechanisms, competition in auto insurance, the state Consumer Protection Act, Long Term Care insurance reform, and proposed healthcare insurance reforms.

ASSISTING WITH THE ATTORNEY GENERAL'S GENERAL CONSUMER PROTECTION MISSION

Internet Ammo Dealers Following allegations that certain Internet ammunition dealers had been selling ammunition illegally to Commonwealth residents, the Insurance Division, in conjunction with the Investigations Division, oversaw a sting operation to review Internet ammunition dealer practices. This sting operation and its resulting court cases shut down the illegal ammunition sales channels of four Internet ammunition dealer operations: Dan's Sporting Goods, C & EJ's Hunting and Fishing, Marksman's Mart and the Ammobank. The division's judgments barred these unlicensed sites from selling ammunition in Massachusetts and imposed penalties against the perpetrators.

CONSUMER MEDIATION AND OUTREACH

Insurance Mediation Services In Fiscal Year 2005, 6,396 people, an average of 533 each month, called the Insurance Division's Insurance Mediation Program to ask questions and seek help with insurance problems. The Insurance Division mediators, assisted by undergraduate interns trained by the Insurance Division, answered the questions of callers, provided information, guidance and referrals, and, when appropriate, sent consumer complaint forms.

Some 45% of the callers each month were concerned about health insurance. Many of these callers had recently been laid off from their jobs and were not familiar with their health insurance rights. Many small business owners also contacted the Insurance Division to ask questions about their responsibilities under Massachusetts' "mini COBRA," which allows former employees to continue health insurance coverage in certain situations after losing their jobs.

Approximately 25% of the callers sought help with auto insurance problems. Most were having difficulty with accident claims; others asked about premium billing, cancellations and surcharges.

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

In Fiscal Year 2005, the Insurance Division opened 905 consumer complaint files. As with the telephone inquiries, a significant portion of these written complaints related to health insurance. Three hundred fifty-one of the new complaints, 39% of the total, involved health insurance. The top six health insurance complaint categories were claim denials (68), billing problems (57), mini COBRA (29), misleading sales (29), disability claims (28), and employer's failure to remit health insurance premiums (27).

In Fiscal Year 2005, Insurance Division mediators closed 959 consumer complaint files and recovered \$1,561,533.20 for Massachusetts consumers.

AG Elder Hotline Attorney General Reilly's Elder Hotline provides a central place where senior citizens, age 60 and older, and their families can call for assistance on insurance issues and other consumer matters. AG Elder provides written and oral information, referrals within the Attorney General's Office or to other government agencies, and mediation services.

During Fiscal Year 2005, AG Elder received more than 9,087 calls from consumers, opened 3,823 intakes on elders, and closed 4,304 complaints. AG Elder's mediation services saved consumers \$128,000.

Most complaints (630) were against non-health businesses. Other significant areas of concern were telemarketing, sweepstakes, mail solicitations and mail fraud (480); credit card and other debt (360); and home improvement contractors (220). Health insurance continued to be a major concern, although the number of complaints in Fiscal Year 2005 decreased to 240 from over 400 in Fiscal Year 2004.

AG Elder staff and volunteers participated in five speaking events; attended two conferences where they provided literature and answered questions from the public; took advantage of training sessions on a variety of topics, including utility shut off protection, wireless phone complaints, Medicare rights and protections, the professional role of a mediator, consumer rights related to banking transactions, and debt collection; and attended a 33-hour training on mediation provided by the Community Dispute Settlement Center.

HOSPITAL AND HMO COMMUNITY BENEFITS

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

The Attorney General continued to oversee and monitor the electronic filing of hospital and HMO community benefit annual reports, working with the Massachusetts Hospital Association, the Massachusetts Association of Health Plans, and consumer health advocates.

ELDER PROTECTION UNIT

Elder Protection Unit The Elder Protection Unit seeks to enhance protections for Massachusetts elders by improving the coordination and monitoring of elder issues, including the office's outreach efforts and its response to matters involving elder abuse and fraud. The unit draws on the talents of staff throughout the office. An internal steering committee, composed of division chiefs or bureau chiefs as well as other representatives with substantive jurisdiction over elder cases and matters, creates the policy agenda for elder issues within the office. The steering committee meets on a quarterly basis.

Attorney General Reilly, the PPB Bureau Chief, AAGs and mediators appeared on local cable television programs, radio, and at elder events to discuss issues affecting elders, including health care, telemarketing, financial fraud, charity fraud, and identity theft. Staff spoke at assisted living facilities, senior centers, hospitals, TRIADs and community groups, and also distributed information and answered questions at the annual conference of the Massachusetts Councils on Aging, and at two events sponsored by the Massachusetts Alzheimer's Association. Staff also trained municipal police cadets on elder fraud and abuse.

Staff served as representatives on various elder advisory boards including the Massachusetts District Attorneys Association's Elders and Persons with Disabilities Sub-Committee, Massachusetts End of Life Commission, and Boston Partnership for Elder Adults.

Elder Abuse Grant Project In late 2002, the Attorney General's Office was awarded a training grant from the Office on Violence Against Women, U.S. Department of Justice, to establish an inter-disciplinary initiative to improve the capacity of prosecutors, law enforcement, elder service and domestic violence professionals to recognize, investigate, and prosecute abuse perpetrated against older individuals. The project received a no-cost extension to operate through September 30, 2005.

With assistance from the project's multi-disciplinary Steering Committee, the office partnered with the Massachusetts Chiefs of Police Association (MCOPA) to develop a protocol and procedure on elder abuse in the community. MCOPA's board of directors adopted the protocol and sent it to police departments throughout the Commonwealth. The office also produced *At the Hands of Others: Elder Domestic Violence and Sexual Assault in Massachusetts*, a 25 minute police roll call video on elder domestic violence and sexual abuse. The video was closed-captioned and released as part of a training packet to 351 police departments and to regional police training academies and prosecutors.

The project coordinated with the Worcester and Essex County District Attorneys' Offices to create pilot roundtables, composed of representatives from the district attorney's office, law enforcement, elder services, domestic violence advocates, health professionals, and multicultural organizations, to

discuss how best to handle regional elder issues. The first meetings of these roundtables were held in late March 2005. The Essex County Roundtable plans to focus on elder financial exploitation; the Worcester County Roundtable plans to focus on elder domestic violence.

The project is currently waiting on final approval from the office on Violence Against Women for its Web site/Web page resource on elder abuse issues.

The Attorney General's Working Group on Assisted Living Facilities The Office convened an Assisted Living Facilities working group to develop a plan to identify and address perceived gaps in the laws governing assisted living facilities. The group is meeting with advocates and industry groups.

End of Life Issues Consistent with the Attorney General's dual role of prosecuting drug-related offenses while protecting consumers' access to needed prescription drugs for pain management through their physicians, the office joined with 31 other Attorneys General in a written comment to the Drug Enforcement Agency, urging the DEA to develop a balanced policy regarding the dispensation of controlled substances for the treatment of pain. The office also issued a Web-based advisory concerning advance directives.

The Attorney General's Elder Fraud Alert Calendar The internal steering committee produced the Attorney General's annual calendar covering a variety of fraud prevention information, including scams; foreign lotteries; home improvement; health, life and annuity scams; Internet; identity theft and charities fraud. The office distributed 25,000 English language, 2,500 Spanish language, and 2,500 Portuguese language calendars to law enforcement, elder groups and individual consumers, and also posted the calendar on its Web site.

INVESTIGATIONS DIVISION ---

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

Division investigators locate and interview victims, witnesses, and subjects; obtain and review documentary evidence from numerous sources including individuals, corporations, and federal, state, county and municipal agencies; conduct surveillance, background checks and asset checks; analyze

financial records and perform other forensic accounting functions; and testify before grand juries and at trial. In some cases investigators worked closely with other state attorneys general, district attorneys, local and state police departments, the U. S. Attorney's Office, the U.S. Postal Inspection Service, the Federal Bureau of Investigation and the Federal Trade Commission.

The Investigations Division included Quinton Dale, Director; Dante Annicelli, Managing Investigator; Monique Cascarano; Todd Davis; Susan Devine; Ashley Dizel; Eric Funk; Jim Gentile; Jake Harney; Mary H. Marshall; Nozomi Murakami; Nicholas Paras; Lou Russo; Richard Steward; and Nancy Ward.

SIGNIFICANT CASE SUMMARIES

The division initiated 89 investigations in the following major areas:

CIVIL RIGHTS AND 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.

CONSUMER PROTECTION AND 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 multistate and nationwide investigations into fraudulent sweepstakes promotions and telemarketing scams. The division also participated in Internet stings gun enforcement and healthcare initiatives.

ENVIRONMENTAL PROTECTION

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

INSURANCE

Investigators reviewed and investigated businesses and organizations and agents offering long term care insurance plans. Other cases investigated included unlawful sales practices, known as “churning,” and the sale of fraudulent or costly life and health insurance policies.

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. The division also investigated cases of excessive compensation to trustees.

CRIMINAL BUREAU

Investigators worked on cases that resulted in indictments against individuals for violations of the Commonwealth’s criminal laws. Cases included larceny against the elderly and vulnerable by home improvement contractors and illegal charitable fundraisers.

TRIAL DIVISION

The division played a major role in tort actions filed against the Commonwealth by investigating allegations of abuse, mistreatment and deaths of individuals in state care; alleged wrongful termination of state employees; and personal injuries and other damages occurring on state-owned property and/or in accidents on state roads or involving state vehicles. The division also investigated cases involving contract disputes and eminent domain proceedings.

STATISTICAL SUMMARY

The division opened 89 investigations in Fiscal Year 2005, with 255 investigations ongoing as of June 30, 2005.

DIVISION/BUREAU	OPENED DURING FISCAL YEAR 2005	ONGOING AS OF 6/30/05
Consumer Protection/Antitrust	29	84
Civil Rights	8	40
Public Charities	7	6
Insurance	5	16
PPB/Criminal	0	9
Government	7	0
Environmental Protection	7	23
Trial	26	77
TOTAL	89	255

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Abandoned Properties Project 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. The division researched properties in Boston, Taunton, New Bedford, Worcester, and Brockton.

DIVISION OF PUBLIC CHARITIES

The Division of Public Charities carries out the Attorney General's responsibilities to represent the public interest in the proper solicitation and use of charitable funds and to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c. 12, §8. 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.

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 the division maintains public viewing files. More than 22,000 charities are registered with the division, as well as over 300 professional fundraisers presently soliciting donations on behalf of charities in Massachusetts. In addition to registering and obtaining financial reporting by charities and fundraisers, the Attorney General is the defendant in all proceedings brought to wind up the affairs of a public charity or to change the terms of a charitable trust.

The division engaged in corporate governance and oversight initiatives to ensure that the governing boards of institutions carried out their fiduciary duties of due care and loyalty, and continued its activities in areas central to its mission: enforcement litigation to address deception and fraud in charitable fundraising, estate and trust actions to ensure that charitable trust funds were appropriately administered and applied, enforcement of laws requiring accountability by public charities, and healthcare.

The division 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 a result, the division was involved in a number of initiatives intended to strengthen the charitable sector, including presentations to a large number of public groups and bar organizations on charities issues and adding instructional materials to the charities section of the Attorney General's website.

The Public Charities Division included: Jamie Katz, Chief; Leslie Bennett; Amy Bryson; Sandra Cardone; Eric Carriker; Brant Casavant; Patricia Clifton; Daniel Ferullo; Bernard Greene; Ann Higgins; Cathy Hoffman; Tenelle Jones; Beth McGillicuddy; Kathleen O'Connell; Johanna Soris; Elizabeth Story; and Eric Swansburg.

SIGNIFICANT CASE SUMMARIES

CHARITY GOVERNANCE

Much of 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 engaged in investigations and then negotiated governance agreements that provided for reforms in how charities operate. In other cases, the division filed enforcement actions in court after investigations.

- **Cambridge Credit Counseling Corp.** Cambridge Credit Counseling Corp., a non-profit corporation based in Agawam, Massachusetts, is the second largest credit counseling corporation in the country. It holds itself out as providing credit counseling services to individuals who have amassed excessive credit card debt. In the spring of 2004, the Attorney General sued Cambridge Credit in state court for violating both charities and consumer protection laws. Cambridge Credit has also been sued by North Carolina, which settled its claim, and is involved in disputes with other federal and state regulators. While Cambridge Credit has since changed its operations and fees in response to concerns raised by the division's lawsuit, the Attorney General has not yet resolved his case against the company.
- **For-Profit Acquisitions** The division continued to devote considerable time and resources to reviewing proposed for profit acquisitions of health care providers and other charitable corporations. Massachusetts charitable organizations may not, on their own, "convert" to for profit status. If 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. The division reviewed a number of proposed transactions and either agreed to the transactions or negotiated resolutions.
- **Review of Asset Dispositions** A charitable corporation must give 30 days advance written notice to the Attorney General before making a sale or other disposition of all or substantially all of the charity's assets if the disposition involves or will result in a material change in the nature of the activities conducted by the corporation. G.L. c. 180, §8A(c). On a regular basis and in substantial volume, the division reviewed correspondence and documents about transactions involving charities.

- **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 dissolving charity files the pleadings in the Supreme Judicial Court. The division reviewed many transactions involving proposed dissolutions.

SOLICITATION OF CHARITABLE FUNDS

Under G.L. c. 68, §19, every charitable organization intending 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.

Under G.L. c. 68, §§22 and 24, all persons acting as professional solicitors, professional fundraising counsel, or commercial co venturers in conjunction with soliciting charitable organizations must register annually with the division. Solicitors and commercial co venturers must also file a surety bond in the amount of \$10,000. All fundraisers must also file with the division a copy of each fundraising contract they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

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.

- **Cancer Fund of America** The division settled this case involving a national charity, Cancer Fund of America, just prior to trial. The division had brought suit on the basis that Cancer Fund and its paid fundraisers used deceptive practices and representations in the course of their fundraising. Cancer Fund of America agreed to pay \$75,000 to two Massachusetts charities to settle the lawsuit, and the charity and the fundraisers also agreed to reform a number of their fundraising practices.

ESTATES AND TRUSTS

The Attorney General focuses much attention on cases addressed to the preservation and protection of charitable trusts.

- **Roman Catholic Archdiocese of Boston** In the wake of the announced closings of numerous Boston-area Catholic parishes, the division began dealing with the RCAB over the handling of certain restricted funds and restricted properties either held by, or on behalf of, specific parishes. Fundraising for the RCAB and its parishes over the years has resulted in the creation of a large number of restricted funds. The division has worked with the RCAB, as well as gathered information from outside sources, to ensure that the assets in those restricted funds go to the proper charitable organizations after the closing of the parishes.

In accordance with 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 also 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. The division continued to handle a large volume of cases in this area, including proposed allowances of accounts, will compromises, sales of real estate, changes of purposes or beneficiaries of charitable trusts and bequests, amendments of charitable trusts to meet IRS requirements, and terminations of charitable trusts under G.L. c.203, §25.

STATISTICAL SUMMARY

Charitable Corporation Dissolution Statistics The division assented to 86 final judgments dissolving charitable corporations pursuant to G.L. c. 180, §11A.

Public Viewing Files The division responded to over 868 requests to view files and, in response, produced approximately 1,935 files.

Wills, Trusts, and Other Probate Statistics The division received and reviewed 962 new wills, and received and reviewed 1,997 interim accounts and 718 final accounts for executors and trustees. The division received, reviewed, and assented to 50 petitions for license to sell real estate and received and reviewed 379 miscellaneous complaints and filings.

Charitable Organizations: Registration and Enforcement The division processed approximately 19,508 annual financial reports; annual filing fees totaled \$1,793,510. The division reviewed 815 new organizations, determined them to be charitable, and registered them. The division sent each new charitable organization a packet of information about the division’s registration and filing requirements.

As part of an ongoing compliance program, division staff also contacted charities whose annual filings were deficient or delinquent to rectify filing deficiencies.

Registration of Professional Solicitors and Fund Raising Counsel The division received and approved 308 registrations, resulting in \$65,200 in fees to the Commonwealth. The division received registrations from 87 solicitors, 187 fund raising counsel, and 34 commercial co venturers.

MONEY RECOVERED FOR THE COMMONWEALTH TREASURY

Charitable Registration Fees	\$1,793,510
Fundraiser Registration Fees	\$65,200
Other fees, requests for copies, requests for computer information	\$628.25
<hr/>	
TOTAL	\$1,859,338.25

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Legislation The Attorney General sponsored legislation that would enhance the financial integrity and operating strength of public charities. The Attorney General first circulated the draft legislation within the charities community and among legislators. After revising the legislation, the Attorney General filed the legislation in the spring of 2005. It provides for certifications by board members, whistleblower protections, and other measures designed to help charities strengthen their finances and operations.

Healthcare The division focused much of its efforts on healthcare. Consistent with the Attorney General's strong interest in resolving problems related to the delivery of healthcare, the division monitored the actions of a number of the significant non-profit healthcare institutions that are public charities in Massachusetts, including both hospitals and insurers. In particular, the division continued its review of the finances of a number of financially distressed Massachusetts hospitals. The division continued to look at academic medical centers in Boston and elsewhere, but also reviewed the activities of community hospitals. The division, for example, devoted much attention to working on financial

and management issues at Hubbard Regional Hospital in Webster, Massachusetts, which has endured severe financial distress and management turmoil. The division also began an effort to review the finances of Massachusetts non-profit HMO's.

Technology and Public Access The division continued to scan images of filed documents into its computers, a project that will ultimately help both information retrieval and compliance efforts and will allow the public better access to the documents. The division also began a program with the IRS that will bring the division new technology so it can easily retrieve data provided to the IRS by many charities.

OUTREACH, EDUCATION, AND TRAINING

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

UTILITIES DIVISION

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

The Utilities Division focused on advocacy of consumer interests in connection with traditional utility rate cases (electric, gas and telephone) and wholesale electric restructuring issues. Work continued among interested parties to enhance the service quality provided by the state's utilities.

The Utilities Division staff included: Joseph Rogers, Chief; Edward Bohlen; Wilner Borgella; Alexander Cochis; Patricia Kelley; Judith Laster; Colleen McConnell; Penny Michalski; Timothy Newhard; Doe Pichard; and Karlen Reed.

SIGNIFICANT CASE SUMMARIES

UTILITY RATE CASES

- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric, DTE 03-121** On January 16, 2004, NSTAR asked the DTE to approve tariffs for standby rates for large and medium-sized commercial and industrial customers who have their own on-site, self generation facilities. After eight days of evidentiary hearings, NSTAR and several intervenors filed a settlement agreement with the DTE on June 4, 2004. The division did not sign the settlement and asked the DTE to approve the settlement agreement with modifications: (1) that standby rates in the agreement, as well as exemptions to certain on-site generating customers, be only temporary; (2) that the settlement standby rates include a contract demand transition charge, contract demand transmission charge and an administrative fee to prevent under-recovery of distribution system costs; and (3) that NSTAR perform studies and analyses on the type, amount and benefits of on-site generation units on the distribution system. On July 23, 2004 the DTE approved the settlement but indicated that the rates would only be in effect until NSTAR's next rate case when the DTE would investigate the issues the division raised.
- **Massachusetts Electric Company and Nantucket Electric Company, DTE 03-124; Massachusetts Electric Company and Nantucket Electric Company, DTE 03-126; Massachusetts Electric Company and Nantucket Electric Company, DTE 02-79; National Grid / New England Power Company, FERC Docket No. ER 97-678-000/ER97-2800** The division's comprehensive settlement with Massachusetts Electric Company/National Grid provided significant retail customer benefit through a combination of credits and deferrals with an aggregate value to customers of \$71.2 million. The settlement resolved disputed issues in the four cases, including the recovery of increased costs associated with Massachusetts' Renewable Portfolio Standards, ISO-New England market rule changes, uplift, and the reclassification of Massachusetts Electric's customers to Standard Offer Service from Default Service; set the rate for Standard Offer Service; and resolved the treatment and deferral of unrecovered wholesale purchased power expense. The settlement was one of the top ten settlements in the Commonwealth in 2004.

- **Blackstone Gas Company Rate Case, DTE 04-79** Blackstone Gas, the state's smallest gas company, sought a general increase in base rates, claiming a revenue deficiency of approximately \$82,000. Following several months of negotiations, Blackstone and the division reached an agreement that balanced the financial needs of the Company with the concerns of customers regarding cost containment – a \$40,000 annual base rate increase with a 5-year Performance Based Rate Plan ("PBR"). The DTE approved the settlement.
- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company, DTE 03-47** On October 5, 2004, the DTE issued an order of notice regarding an examination of NSTAR's reconciliation filing for its pension and post-retirement benefits other than pensions ("PBOP") recovery mechanism. The DTE conducted hearings; the matter remains open at the end of the fiscal year.
- **Western Massachusetts Electric Company, DTE 04-106** WMECO provided the division with rate case working papers demonstrating it could file for a \$17 million base rate increase, primarily to recover increases in healthcare and pension related costs, as well as create a PBR that would allow increases in rates to account for capital projects planned over the next few years. After a series of settlement discussions, WMECO agreed to accept a distribution rate increase of \$6 million in 2005 and another \$3 million in 2006 in exchange for abandoning its rate case filing until 2007, saving customers approximately \$8 million. The DTE approved the settlement on December 29, 2004.
- **Bay State Gas Company, DTE 05-27** Bay State Gas, who serves about 300,000 natural gas customers in Massachusetts, filed a major rate and PBR case on April 27, 2005, seeking a 30% distribution rate increase over the next 5 years. This base rate case, the first since 1992 and since NiSource Inc., based in Merrillville, Indiana, took over Bay State Gas, raised a number of issues, including service quality, the condition of the Company's distribution system and merger related issues. The matter remains open at the end of the fiscal year.
- **Cambridge Electric Light Company, Commonwealth Electric Company, FERC Docket No. ER05-742-000** On March 29, 2005, the Companies asked FERC to approve major changes to their formula rate transmission tariffs passed through to retail customers. The division protested the tariffs; FERC accepted the proposed tariffs for filing but suspended them to conduct hearings on their reasonableness and settlement judge procedures. On May 31, 2005, FERC assigned a settlement judge, and the parties remain in settlement negotiations at the end of the fiscal year.

ELECTRIC MATTERSFERC WHOLESAL MARKET ISSUES

- **Bangor Hydro-Electric Company, et al., FERC Docket No. ER04-157-000** In a companion case to the Regional Transmission Organization (“RTO”) filing, the New England Transmission Owners filed requests to increase their FERC authorized return on equity (“ROE”) for building new transmission lines and for an incentive bonus to their ROE. The division joined briefs filed by the Massachusetts Municipal Wholesale Electric Company, the Attorney General of Rhode Island and other municipal power companies opposing the requests. On May 27, 2005, the Administrative Law Judge granted the transmission companies a ROE of only 10.72% compared to the 12.8% requested and rejected the 1% incentive bonus on new transmission, saving Massachusetts customers approximately \$18-30 million/year. The Municipal Light Departments appealed the decision to the full Commission on the basis that the allowed return is excessive. The matter remains open at the end of the fiscal year.
- **Devon Power LLC, et al., FERC Docket No. ER03-563-030** On November 4, 2004, the division, on behalf of a coalition consisting of the Rhode Island Attorney General, the New Hampshire Consumer Advocate, AIM, The Energy Consortium, NSTAR and Strategic Energy, filed testimony at FERC opposing the ISO-New England’s proposal for Locational Installed Capacity (“LICAP,” the amount of generation capacity required by ISO-NE, on a regional basis, to ensure there is enough generating capacity in the system to allow it to work if there is a loss of some generating capacity). On November 9, 2004 FERC issued an order “clarifying” the scope of its evidentiary hearings, which had the effect of summarily dismissing a large portion of the division’s testimony without a hearing. On December 9, 2004 the division filed a petition for review of that order in the First Circuit Court of Appeals; the Court dismissed the appeal as premature. The Coalition filed initial briefs on April 15, 2005, and reply briefs on April 27, 2005. An Initial Order from the ALJ was issued on June 15, 2005 accepting the ISO’s proposal. The matter remains open at the end of the fiscal year.
- **USGen New England, Inc., FERC Docket No. ER04-841-000 (Salem Harbor Power Plant)** PG&E’s subsidiary USGen New England asked ISO-New England for permission to retire its Salem Harbor plant, claiming that it could not afford the \$175 million of equipment needed to comply with DEP air regulations (USGen later reduced its request to \$85 million for the first phase of upgrades). ISO-NE decided USGen could not retire the plant, but, on July 8, 2004, FERC refused to approve USGen’s proposed contract that would have allowed ISO-NE to charge customers \$85 million for environmental upgrades. FERC ordered the parties to pursue settlement, and they agreed that customers will pay \$6.75 million to Dominion, the plant’s

new owner, to keep Salem Harbor running until 2008 when transmission upgrades will help maintain reliable power. Customers will pay \$168.25 million less than originally proposed.

- **Connecticut Yankee Atomic Power Company, FERC Docket No. ER04-981-000** On July 1, 2004, the Connecticut Yankee Atomic Power Company asked FERC to approve a 1,334% increase in rates to recover increased costs of September 11, 2001 security measures, storage of spent fuel, local zoning restrictions, pensions, and decommissioning of its retired power plant in Haddam, Connecticut (four Massachusetts utilities own 43% of the plant). On July 30, 2004, the division filed a FERC protest and joined the Connecticut Department of Public Utility Control in arguing that FERC should either reject the requested rate increase as insufficiently supported or conduct a hearing to determine just and reasonable rates based on prudently incurred costs. FERC allowed the provisional rates to go into effect, subject to refund, and the matter is pending at the end of the fiscal year.
- **ISO New England, Inc., FERC Docket ER05-715-000** On March 21, 2005, ISO-New England asked FERC to approve monthly Installed Capacity Requirements (“Objective Capability Values”) for the 2005/2006 Power Year. The division, the Rhode Island Attorney General, the Maine Public Advocate and the New Hampshire Consumer Advocate protested ISO-NE’s assumptions concerning the tie benefits from its interconnections with neighboring control areas. FERC accepted the protest, saving Massachusetts customers approximately \$460 million in lower LICAP payments over the next five years. The Connecticut Commission challenged FERC’s authority over this issue, and the matter is pending at the end of the fiscal year.
- **Consolidated Edison Energy MA Inc., FERC Docket ER05-903-000** On April 29, 2005, Con Ed submitted a reliability must run agreement for an electric generating unit in West Springfield, asking for ISO-NE’s reliability determination as Con Ed considered whether further capital improvements to the unit would be cost justified. The matter is pending at the end of the fiscal year.

ELECTRIC UTILITY TRANSITION CHARGE RECONCILIATIONS

The transition charge is a mechanism established by the Electric Restructuring Act of 1997 for an electric distribution company to recover its allowable stranded costs as a charge to customers. A company must annually reconcile or “true-up” its forecasted transition charges with the amount it actually recovered through its rates. G.L. c. 164, § 1A(a), and 220 C.M.R. § 11.03(4)(e). The division reviews the reconciliation filings to insure that companies only recover costs permitted by the Restructuring Act.

- **Fitchburg Gas and Electric Light Company, DTE 02-84** After Fitchburg made an electric reconciliation and inflation adjustment filing, the division asked the DTE to (1) deny the Company's request to recover congestion costs for which the supplier is responsible; (2) require the Company to correct its miscalculated working capital requirement; and (3) require the Company to monitor a \$450,000 uniform transition charge under-collection from its G-3 customers. On May 19, 2005, the DTE approved the Company's filing.
- **Western Massachusetts Electric Company, DTE 03-34** On September 23, 2003, WMECO submitted an amended reconciliation filing for the calendar year 2002 to comply with Western Massachusetts Electric Company, DTE 01-36/02-20 (2003). On September 24, 2004, the DTE adopted the division's recommendations on the accelerated amortization of transition costs and the compounding of interest on transition charge over-collections. As a result, customers will receive an estimated \$5.5 million reduction in transition charges.
- **Fitchburg Gas and Electric Light Company, DTE 03-115** Fitchburg made its 2003 reconciliation on October 31, 2003. The matter remains open at the end of the fiscal year.
- **Cambridge Electric Light Company and Commonwealth Electric Company, DTE 03-118/04-114** The Companies made their 2003 transition charge reconciliation adjustment filing on December 1, 2003; they made their 2004 transition charge reconciliation adjustment filing on December 7, 2005. The division conducted discovery on the filings and engaged in settlement discussions. The matter remains pending at the end of the fiscal year.
- **Boston Edison Company, DTE 03-117** The Company made its 2003 transition charge reconciliation adjustment on December 1, 2003. After discovery and settlement discussions, the division reached an agreement with the Company that resulted in refunds to ratepayers in the amount of \$4,725,000.
- **Western Massachusetts Electric Company, DTE 05-10, 04-40, 04-109** WMECO submitted an amended reconciliation filing on March 31, 2005, for calendar years 2003 and 2004 to comply with Western Massachusetts Electric Company, DTE 01-36/02-20 (2003) and the rate settlement in Western Massachusetts Electric Company, DTE 04-106 (2004). The division conducted discovery and filed expert testimony. The matter remains pending at the close of the fiscal year.
- **Boston Edison, d/b/a NSTAR Electric, DTE 05-44** On May 25, 2005, the Company asked the DTE to approve tariffs affecting its transition and distribution charges designed to

prevent over-collecting on its transition charge during 2005. On June 9, 2005, the division asked the DTE to reject the Company's proposal. The matter is pending at the close of the fiscal year.

- **Cambridge Electric Light Company, d/b/a NSTAR Electric, DTE 05-45** On May 25, 2005, the Company asked the DTE to approve tariffs affecting its transition and distribution charges that would increase the monthly bill for the average residential customer using 500 KWH of electricity by \$5.13 or 7.3 percent. On June 9, 2005, the division asked the DTE to reject the Company's proposal. The matter is pending at the close of the fiscal year.

ELECTRIC INDUSTRY RESTRUCTURING RELATED CASES

- **Fitchburg Gas and Electric Light Company, DTE 05-29** When Standard Offer Service and the Electric Industry Restructuring Act's 15% rate reduction ended on March 1, 2005, Fitchburg could, consistent with its approved Restructuring Rate plan and the Restructuring Act, file for substantial rate increases (almost \$1,100/customer for its 26,000 customers). The division entered into settlement discussions with Fitchburg to smooth recovery of these costs, and reached a settlement, joined by AIM and LEAN, that would provide for no bill change for almost half (46.6%) of Fitchburg's customers and 5.2% for the remaining customers during calendar year 2005. The Company also agreed to an arrearage forgiveness/credit-counseling program for low-income customers. The Department approved the settlement.
- **Investigation Into the Costs That Should Be Included in Default Service Rates, DTE 03-88A-F** On April 24, 2003, the DTE identified the types of costs that should be included in default service rates, and announced an investigation to determine the amount of these costs incurred by each electric distribution company. Settlement discussions were held with all the electric utilities; the DTE held evidentiary hearings on December 13 and 14, 2004; and on January 21, 2005, the division filed a settlement agreement with the utilities and AIM. On March 31, 2005, the DTE approved the settlement.
- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric, DTE 04-60, 04-61, 04-68, 04-78** NSTAR asked the DTE to approve buyouts of its purchase power contracts with Pittsfield Generating Company, MASSPOWER, Ocean State Power, and Dartmouth Power Associates. The division reviewed the filings and participated in evidentiary hearings. The DTE approved the buyouts.

ELECTRIC COMPANY FINANCING PROPOSALS

- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric, DTE 04-70** On August 27, 2004, NSTAR asked the DTE to approve the securitization of approximately \$675 million relating to the liquidation of obligations under power purchase agreements with MASSPOWER and Dartmouth Power Associates. The division reviewed the filing and participated in evidentiary hearings. On January 21, 2005, the DTE approved the securitization.

NATURAL GAS

- **Berkshire Gas Company, DTE 04-52** On June 9, 2004, Berkshire Gas made its first annual price cap rate adjustment filing under its performance based rate (“PBR”) plan, seeking approval of normalized revenues of \$252,197, or a base revenue increase of .92 percent; an inflation adjustment under its PBR; and exogenous costs. The division filed comments and requested an investigation. On August 27, 2004, the DTE denied the Company’s requested exogenous costs increases, but permitted a .66 % rate increase under the inflation factor adjustment of the Company’s PBR.
- **Berkshire Gas, DTE 04-47** Berkshire Gas asked the DTE to approve a gas portfolio optimization agreement and a gas sales and purchase agreement between Berkshire Gas and BP Energy Company. The DTE conducted hearings and the division filed briefs on September 24 and October 1, 2004, challenging the Company’s proposals. The DTE approved the agreements, but ordered the Company to refund its \$118,000 in legal fees in its next cost of gas adjustment filing.
- **KeySpan Energy Delivery New England, DTE 04-62** On June 18, 2004, KeySpan asked the DTE to approve consolidation of the Boston Gas Company, Essex Gas Company and Colonial Gas Company tariffs for Cost of Gas Adjustment (CGA). The division attended a public hearing/procedural conference and participated in evidentiary hearings. On November 30, 2004, the DTE approved the Company’s petition with conditions, including the proper treatment of gas acquisition costs and implementation of a mitigation plan for Essex customers.
- **KeySpan Energy Delivery Services, DTE 04-9** KeySpan asked the DTE to approve a gas portfolio management agreement and a gas sale agreement between KeySpan and Entergy-Koch Trading, L. P. The division opposed the agreements on the ground that the complexity of the optimization transactions with multi-jurisdictional entities would increase the likelihood of trading which is not in the best interests of consumers. On December 28, 2004, the DTE

approved the proposal, permitting the Company to share in margins earned on the customer assets. The division awaits the results of an external audit to be filed with the DTE reviewing the first year of transactions.

GAS SAFETY

- **NSTAR Gas Company, DTE 05-36** NSTAR Gas asked the DTE to hold an adjudicatory hearing after DTE's Pipeline Safety and Engineering Division issued a Notice of Probable Violation (NOPV). The NOPV alleged NSTAR Gas did not comply with federal pipeline safety regulations, resulting in a natural gas explosion that killed two children in Hopkinton on July 24, 2002. The matter remains open at the end of the fiscal year.

LONG-RANGE NATURAL GAS SUPPLY FORECAST APPROVALS

- **New England Gas Company, DTE 04-6** On December 30, 2003, New England Gas filed its Long Range Forecast and Resource Plan for November 1, 2003 through October 31, 2008. The division participated in an evidentiary hearing on September 8, 2004.

TELECOMMUNICATIONS

RETAIL RATES

- **Verizon's Alternative Regulation Plan, DTE 01-31** Verizon filed a \$4.3 million tariff modification that would increase local dial tone rates for 1 million Massachusetts customers who are not on a bundled service plan by \$.34 per month, effective October 6, 2004. The division filed comments urging the DTE to investigate the proposal, but the DTE allowed the rate increase to go into effect without investigation.

WHOLESALE RATES

- **Verizon's Petition to Amend All Its Interconnection Agreements, DTE 04-33** Verizon filed a petition on February 4, 2005, to amend by consolidated arbitration all of its 100+ interconnection agreements with wireline and wireless competitors to reflect the Federal Communications Commission's Triennial Review Order. The division intervened, and continues to monitor the docket.
- **Mass Market UNE Impairment Review, DTE 03-60** On August 20, 2004, the FCC issued an interim order asking state commissions to file summaries of the evidence in their state Triennial Review Order (TRO) proceedings. The DTE asked the parties to attempt to file a joint summary of the results of the DTE's TRO proceeding, DTE 03-60 (which the DTE suspended just before hearings began), but the carriers could not agree on a joint version and some submitted separate comments. The matter remains open at the end of the fiscal year.

FEDERAL COMMUNICATIONS COMMISSION REGULATORY POLICY PROCEEDINGS

- **Voice Over Internet Protocol (VoIP) Rulemaking, FCC Docket WC 04-36** After the FCC released an order requiring all VoIP providers to provide 911 emergency service, the division participated in a multistate enforcement action against Vonage, a VoIP provider whose technology lacked 911 capability, which appears to have contributed to the deaths of individuals in Texas and Florida. The division helped prepare an Assurance of Voluntary Compliance (AVC) for Vonage that focuses on short-term notification of 911 incompatibility pending the FCC effective date. The Vonage matter is pending at the end of the fiscal year.
- **NASUCA Truth In Billing Petition, FCC CG Docket No. 04-208, 98-170; FCC Truth in Billing Rulemaking, FCC CC Docket 98-170, CG Docket 04-208** On March 18, 2005, the FCC denied NASUCA's petition asking the FCC to investigate phone carriers' practice of passing along ordinary operating costs as "regulatory compliance" fees in monthly line item surcharges on customers' bills. The FCC also sought comment on preempting state wireless terms and conditions legislation and on extending the point-of-sale disclosure requirements of the 32-state Attorney General Assurance of Voluntary Compliance to all wireless carriers. The division filed joint comments with the National Association of Attorneys General, and continues to monitor the FCC docket.

WIRELESS

- **Cingular Multistate Wireless Inquiry** The division is participating in a multistate inquiry into consumer complaints about Cingular Wireless's transition fees and incompatibilities arising from Cingular's merger with AT&T Wireless. The matter remains open at the end of the fiscal year.

STATISTICAL SUMMARY

<u>DOCKET</u>	<u>SAVINGS</u>
Western Massachusetts Electric Company, DTE 03-34	\$5,500,000
Boston Edison Company, DTE 03-117	\$4,725,000
Berkshire Gas, DTE 04-47	\$118,000
Western Massachusetts Electric Company, DTE 04-106	\$8,000,000

Massachusetts Electric Company, DTE 03-124 et al.	\$71,200,000
Blackstone Gas Company, DTE 04-79	\$40,000
Individual Division Total Savings	\$89,583,000
Bangor Hydro-Electric Company, et al., ER04-157-000	\$18,000,000 – \$30,000,000
USGen New England, Inc., Docket No. ER04-841-000	\$168,250,000
ISO New England, Inc. FERC Docket ER05-715-000	\$460,000,000
Total Savings Working With Other Parties	\$646,250,000 – \$658,250,000
<hr/>	
GRAND TOTAL	\$1,382,083,000

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Increasing the Penetration Rate for Discounted Electric, Gas and Telephone Service, DTE 01-106 On August 8, 2003, the DTE ordered utilities to electronically transfer all residential accounts to the Executive Office of Health and Human Services (EOHHS) for the sole purpose of identifying customers eligible for discounted service, and indicated that it would consider proposals for rate recovery of increased expenses resulting from the computer-matching program in a second phase. On December 3, 2004, the DTE allowed utilities to recover revenues lost as a result of this low income program as part of the next reconciliation filing (electric companies) or as part of the LDAF filing (gas companies). The division continues to monitor implementation of the computer matching program.

Utility Service Quality The division continued to examine the issue of utility service quality, working with consultants, unions, customer groups and other interested parties to review the service quality performance of Massachusetts-based companies.

Service Quality Standards for Gas and Electric Companies, DTE 04-116 On December 13, 2004, the DTE opened a docket to review existing service quality regulations. The division filed comments based on its Energy Advisors, LLC, report that reviewed DTE regulations and suggested modifications,

and asked the DTE to open an investigation into requiring utilities to perform comprehensive inspections for stray voltage. The matter remains pending at the end of the fiscal year.

All Electric and Gas Companies' Annual Service Quality Reports, DTE 05-12 through 05-25 On March 1, 2005, all Massachusetts electric and gas distribution companies filed their 2004 annual service quality reports with the DTE. On April 21, 2005, the division asked the DTE to investigate further the information in the companies' reports. The matter is pending at the end of the fiscal year.

REGIONAL OFFICES

WESTERN MASSACHUSETTS

CENTRAL MASSACHUSETTS

SOUTHEASTERN MASSACHUSETTS

REGIONAL OFFICES

WESTERN MASSACHUSETTS DIVISION

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

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

During Fiscal Year 2005, the Western Massachusetts Division staff included: Janice Healy, Division Chief; Michelle Aubé; Bruce Bussiere; James Clark; Susan Decker; Jonathan Driskell; Joseph Drzyzga; Robyn Gay; John Gibbons; Sandra Giordano; Kelli Gunagan; Bart Hollander; Timothy Jones; Karen Kapusta; Dana Lapointe; Susan DeVine; Tom Nartowicz; William O'Neill; Robert Ritchie; Michael Russo; Palmer Santucci; Matthew Shea; Cynthia Sherman-Black; Laurie Simmons; Maria Smith; Richard Steward; Eva Szczech; Rosemary Tarantino; Theresa Ukleja; James Whitcomb; and Judy Zeprun Kalman.

SIGNIFICANT CASE SUMMARIES

The following provides an overview of several significant cases undertaken by the Western Massachusetts Division during Fiscal Year 2005:

BUSINESS AND LABOR PROTECTION BUREAU

- **Kleiser-Walczak** This small animation production company in North Adams had previously admitted non-payment violation due to market downturn. Company agreed to accept a citation and sent proof of restitution payment in the amount of \$83,000 of which \$54,000 was wages and \$29,000 was bonus earnings not subject to the wage law. Citation with civil penalty of \$4,000 issued.
- **Capeway Roofing** This Westport roofer worked on three public schools in Chicopee. Failed to pay seventeen employees the increase in the prevailing wage rate that occurred during the contract. Restitution and civil penalties in the amount of \$4,300.

STATISTICAL SUMMARY

FAIR LABOR AND BUSINESS PRACTICES

NON-PAYMENT OF WAGES AND PREVAILING WAGE MONIES

QUARTER	COMB. RESTITUTION AND PENALTIES/FINES	CASES OPENED	CASES CLOSED	TELEPHONE CALLS	WALK INS
1st	38,872	151	135	2,294	91
2nd	159,468	143	150	2,141	84
3rd	74,239	147	159	2,150	62
4th	55,470	133	131	2,137	80
TOTAL	328,049	574	575	8,722	317

CRIMINAL BUREAU

- **Commonwealth v. Bogle** This case involved a violent trafficker who pleaded to ten years in prison for cocaine trafficking and running crack distribution houses after a wiretap and undercover investigation by this Office. Four co-defendants received three to five year sentences, with others receiving various sentences. In total, eleven defendants were convicted.

GOVERNMENT BUREAU

- **Michael and Marcus McCreary v. Edward Ramos & Matthew Keating** This is an action for civil rights violations and personal injuries which arose as a result of an altercation at a courthouse. A probation officer subdued the plaintiff, Michael McCreary, after he started a fight during his son's trial and a court officer subdued Marcus McCreary, who was fighting with the officers who were arresting his father. The case against the probation officer was dismissed. After an eight day trial in July 2004, the jury found that the court officer had committed an assault and battery and had violated the plaintiff's right to be free from excessive force when taken into custody. The jury deadlocked on an intentional infliction of emotional distress claim, which was subsequently dismissed as duplicative of the assault and battery claim. The jury awarded the plaintiff \$1.00 in compensatory damages and \$3,000.00 in punitive damages.
- **Darlene Anderson v. Berkshire Community College (BCC)** The plaintiff alleged that she slipped and fell on ice in a parking lot at BCC. A trial in February 2005 in Berkshire Superior Court resulted in a directed verdict in BCC's favor because of the plaintiff's failure to prove that her fall had been the result of an unnatural accumulation of snow or ice.
- **Melody Farris v. University of Massachusetts** This tort action arose from the plaintiff's slip and fall on wet stairs at her UMass-Amherst dormitory while she was a resident and undergraduate student there. In an effort to avoid her failure to make timely presentment under c. 258, the plaintiff's complaint included a breach of contract claim and a claim for breach of the warranty of habitability. The plaintiff alleged injuries including a fractured T6 vertebra and internal bleeding from bruised kidneys as a result of her fall. Our motion to dismiss this action on presentment grounds was successfully argued before Judge C. Brian McDonald on July 10, 2003 and judgment was entered in UMass's favor. The plaintiff appealed and after argument, the judgment was affirmed by the Appeals Court.

- **Commonwealth of Massachusetts v. Ronald P. Weiss** A magistrate found the respondent was not “responsible” on a traffic citation. Pursuant to statute, the officer then sought and partially prevailed at a de novo hearing before a district court judge. The respondent challenged this, arguing that a de novo hearing as provided by statute violated the double jeopardy, due process and separation of powers clauses. The magistrates’ judgment was affirmed and the appeal was dismissed.
- **Judith Glenn v. City of Springfield Police Department and Massachusetts Department of Personnel** The plaintiff claimed she had been denied a promotion because of her race, sex and sexual orientation. She also asserted a claim for negligent infliction of emotional distress. In 1992 she took the Police Sergeant’s exam and, in March 1993 received a score of 81, thus placing her 13th on the list. In July 1993, the DPA published a corrected score for the exam, which scored her at 80, placing her 17th on the list. In 1995, interviews were conducted of the top 16. She was not interviewed for and was not promoted to the position of Sergeant. The entire case was dismissed without prejudice.
- **East Longmeadow Public Schools v. Massachusetts Department of Education and Massachusetts Department of Social Services** This was an action for declaratory relief to review and reverse a decision of the DOE’s Bureau of Special Education Appeals (BSEA) as well as for reimbursement of monies expended pursuant to that decision. The BSEA decision affirmed DOE’s earlier decision that East Longmeadow is fiscally and programmatically responsible for the special education programs, at out-of district residential schools, for two siblings in DSS’s custody. After moving between different Massachusetts municipalities, the children’s mother moved out of state. The children’s father, who has had no contact with the children for years, lives in East Longmeadow. Disputed issues before the BSEA included the location of the children’s residence for purposes of determining the responsible local educational agency; the adequacy of the notice to East Longmeadow of its responsibilities; and DSS’ s responsibilities. The court allowed the Commonwealth’s motion for summary judgment, finding that the BSEA judge correctly ruled on the merits.
- **City of North Adams, et al. v. Board of Education, et al.** This case arose out of the plaintiffs’ effort to undo the Board of Education’s (the “Board’s”) grant of a charter to the Berkshire Arts & Technology Charter School (“BATCS”) in North Adams. The plaintiffs contended, in the main, that directing public funds to BATCS violated the anti-aid amendment and that therefore a statute as well as certain regulations of the Board should be declared invalid and funding for BATCS enjoined (Count I); that actions of certain members of the Board violated provisions of the conflict of interest law and that therefore the Board’s approval of the establishment of

BATCS should be rescinded or canceled (Count II); and that the Board, in conducting the public hearing on the charter school application and through other actions, violated the plaintiffs' rights and that therefore the Board's approval should be set aside (Count III). The Commonwealth prevailed on its motion to dismiss and motion for summary judgment.

- Ty Stockman v. BAMVLPB, RMV, Daniel A. Grabauskas, in his official [capacity] as Registrar of the aforesaid Registry of Motor Vehicles This was a 30A arising out of a decision affirming the lifetime revocation of the plaintiff's license to operate a motor vehicle. Various issues of first impression — including the effect to be given to Stockman's motor vehicle homicide conviction that was vacated as duplicative of his involuntary manslaughter conviction and the proper construction of G.L. c. 90, § 24(1)(c)(4) — were raised. In a full opinion, the Appeals Court affirmed the judgment of the Superior Court in favor of the defendants and upheld the revocation of Stockman's license for life. Later, the Appeals Court denied Stockman's petition for rehearing and the Supreme Judicial Court denied his application for further appellate review.

STATISTICAL SUMMARY

GOVERNMENT BUREAU

As of June 30, 2005, there were a total of 175 Government Bureau cases consisting of 79 Trial Division cases and 96 Administrative Law Division cases pending in the WMAS Division.

During Fiscal Year 2005, 64 new civil defensive cases were assigned and one affirmative case was approved for litigation. In addition, one new case was assigned to a volunteer assistant attorney general, new cases were assigned to special assistant attorneys general and a WMAS assistant attorney general was assigned to supervise the litigation and handling of those cases.

During Fiscal Year 2005, 42 cases were closed by division staff.

Total Saved for the Commonwealth on civil defensive litigation cases: \$541,220.

MUNICIPAL LAW UNIT

During Fiscal Year 2005, the Municipal Law Unit reviewed: 712 general by-laws, of which 627 (88.0%) were approved, 38 (5.3%) were approved with partial deletion, 9 (1.3%) were disapproved, 20 (2.8%) were returned with a finding that no action by the Attorney General was required by state law, and 18 (2.5%) received cautions; 1056 zoning by-laws, of which 1008 (95.5%) were approved, 14 (1.3%) were approved with partial deletion, 2 (0.2%) were disapproved, 2 (0.2%) were returned with

a finding that no action by the Attorney General was required by state law, and 30 (2.8%) received cautions; 6 historic district by-laws, all of which were approved and 13 charter amendments, all of which were found to be consistent with state law.

PUBLIC PROTECTION BUREAU

Civil Rights Division

Pending Housing Discrimination cases	6
Settlements and Consent Judgment achieved in Housing Discrimination cases working in collaboration with intervening plaintiffs' counsel	2 cases settled for a total of \$24,000
Pending Massachusetts Civil Rights Actions (MCRA)	0
Pending MCRA Investigations	0

Public Charities Division

Pending Public Charities Cases	0
Pending Public Charities Investigations	0

Consumer Division

Pending Consumer Cases	2
Pending Consumer Investigations	4
Total Consumer Calls Received	1,643
Total Consumer Complaints Received	171
Consumer Correspondence Processed by Consumer Liaison	1,814
Money Saved Consumers Through Consumer Liaison Mediation	\$77,062.04

CRIMINAL BUREAU

Pending Criminal Cases	5
Pending Criminal Investigations	7

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

GOVERNMENT BUREAU

Civil Defensive Litigation

WMAS continued to provide the highest quality of legal representation to agencies and individual state employees required to respond to litigation filed by members of the public. During Fiscal Year 2005 there were 175 civil defensive litigation matters active in the division.

PUBLIC PROTECTION BUREAU

Civil Rights Division

The Attorney General's WMAS Division continued to meet its statutory responsibilities to affirmatively prosecute housing discrimination actions throughout Western Massachusetts and obtained significant settlement results in two housing discrimination cases.

During Fiscal Year 2005, WMAS also continued with its efforts to assist schools throughout the region in ensuring that students' civil rights are protected. To that end, division staff participated in numerous outreach and training efforts designed to educate school personnel at all levels regarding the key components of a comprehensive student civil rights policy, along with more specific trainings focusing on the prevention of bullying, harassment, hate crime and civil rights violations.

Consumer Protection and Antitrust Division

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

OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2005, staff in the WMAS regional office were actively engaged in advancing numerous Attorney General's Office cross-bureau initiatives and trainings. Division staff advanced the Attorney General's child protection and school safety priorities by providing the Springfield School System with numerous civil rights training programs for school personnel. The Deputy Division Chief, four assistant attorneys general, and six support staff participated in a variety of programs, including the 36th anniversary year of the Springfield School Volunteers Program. The Division Chief actively participated in the development of a community based Weed & Seed Initiative that targeted the Mason Square section of Springfield for crime reduction and neighborhood revitalization. The Attorney General's Abandoned Housing Project is also contributing to this initiative. WMAS staff also participated at the local level in the Attorney General's Office Holiday Toy and Food Drive by coordinating a clothing and food drive, as well as a holiday toy drive to benefit ARCH, the YWCA's domestic violence shelter program. Additionally, addressing the needs of elder consumers was designated as a priority of the Public Protection Bureau. Regional staff advanced this priority by conducting numerous educational training programs for area seniors and elder service providers. Staff also volunteered their time to the "Spruce Up Springfield" park cleanup campaign.

In order to foster communication and cooperation among local law enforcement agencies, staff attended the monthly meetings of the Springfield Violence Prevention Task Force. Assistant Attorney General staff also actively fostered our Office's relationship with the local legal community through participation in the Women's Bar Association, the Hampden County Bar Association, and as panelists for legal programs at Western New England College School of Law. Additionally, staff in the Municipal Law Unit continued to provide numerous training and educational programs for towns and municipalities throughout Western Massachusetts.

Division staff also actively participated in numerous cross-bureau working groups, including the Diversity Committee, the Web site Committee, the Elder Strike Force, and the Professional Development Unit working group. Lastly, staff participated in numerous professional development training programs presented by the Attorney General's Institute.

CENTRAL MASSACHUSETTS DIVISION

The Central Massachusetts Division (CMAS) of the Office of the Attorney General is located at 1 Exchange Place in Worcester. The CMAS Division is comprised of lawyers, inspectors, and administrative staff committed to promoting Attorney General Tom Reilly's initiatives in the Central Massachusetts region and responding to the specific needs of Worcester County residents. During Fiscal Year 2005, CMAS was comprised of members of several of the Attorney General's bureaus and divisions, including the Business and Labor Protection Bureau's Fair Labor and Business Practices Division; the Public Protection Bureau's Consumer Protection and Antitrust Division; and the Government Bureau's Trial Division. In addition to handling cases, the regional office responds to numerous calls and in-person visitors from Worcester County residents and businesses seeking consumer information and wage and hour assistance, and making requests for educational outreach.

During Fiscal Year 2005, the Central Massachusetts Division staff included: Rosalyn Garbose, Division Chief; James Gentile; Salvatore Giorlandino; Alex Guardiola; Eileen Hernandez-Cole; Edward Horniak; Charisma Lam; and Wendy Parsons.

SIGNIFICANT CASE SUMMARIES

GOVERNMENT BUREAU

The Attorney General's Central Massachusetts Division continued to provide the highest quality of legal representation to state agencies and individual state employees required to respond to litigation filed by members of the public. Highlights of the Government Bureau cases handled by the CMAS staff in Fiscal Year 2005 include:

- **Breneman v. Massachusetts Aeronautics Commission, et al.** (U.S. Court of Appeals for the First Circuit) A panel of judges of the U.S. Court of Appeals for the First Circuit upheld the District Court's dismissal of the plaintiffs' takings claim against the Massachusetts Aeronautics Commission. The District Court had dismissed the case against the Commission because of 11th Amendment immunity.

- **Gonsalves v. Commonwealth, et al.** (Franklin County Superior Court) The plaintiff, a former inmate of the Franklin County Jail, brought a negligence action against the Sheriff seeking recovery for injuries that he suffered when he jumped off the jail's third tier and landed on his head. He claimed his injuries were caused by the failure of medical personnel in the Franklin Sheriff's Office to provide him with adequate psychiatric treatment. The Commonwealth's motion to dismiss the suit was allowed.
- **Carboni v. Quinsigamond Community College** (Worcester Superior Court) The plaintiff claimed that the College discriminated against him based on his male gender by hiring two women for faculty positions and by retaliating against him for filing an MCAD Complaint against the College. The plaintiff's initial settlement demand was \$175,000. Through mediation, the Commonwealth was able to achieve a favorable settlement of \$32,500 with the plaintiff.
- **Crisanto Mendonca v. Commonwealth of Massachusetts Supreme Judicial Court and Commonwealth of Massachusetts** (U.S. Court of Appeals for the First Circuit, unreported decision) This case was a federal suit challenging the validity of various SJC orders in cases involving the plaintiff. In a summary decision, the First Circuit affirmed a lower court judgment dismissing the pro se suit against the SJC.
- **Stern v. University of Massachusetts, et al.** (U.S. District Court) The plaintiff is a UMASS Amherst student who brought suit against the school and various parties contending that the school is required to provide him with health insurance coverage notwithstanding his part-time status. The U.S. District Court dismissed the case as being barred by the Eleventh Amendment. The case is on appeal.
- **DSS v. Willard** (Mass. Appeals Court) The Appeals Court affirmed judgments in favor of DSS in a case involving termination of parental rights. The father had a long history of alcohol abuse, domestic violence, and a criminal record involving violent crimes such as assault and battery.
- **DSS v. McHugh** (Mass. Appeals Court) The Appeals Court affirmed judgment in favor of DSS in a case terminating mother's parental rights. Appeals Court found that there was clear and convincing evidence that mother was unfit as a parent.
- **Fafel v. Middlesex Sheriff James DiPaola** (Court of Appeals for the First Circuit) The First Circuit affirmed a lower court judgment barring the plaintiff from pursuing his state court employment litigation against Sheriff DiPaola.

- **Locator Services, Lt. v. Treasurer** (Supreme Judicial Court) The State Treasurer appealed from the Superior Court's (Connor, J.) denial of the Treasurer's motion for summary judgment in this case brought by an asset locating company on behalf of 55 claimants. The plaintiff contended, among other things, that the Commonwealth was required to pay compound interest to the 55 claimants on 103 eminent domain takings dating back as far as 1956. On appeal, the SJC ruled in the Treasurer's favor on all legal issues except one.
- **Jouvelakas v. Minnehan, et al.** (U.S. District Court) The plaintiff was the mother of a boy, who at 14, stole his parents car and took it for a 60+ mile joy ride on I-93 from New Hampshire to Massachusetts at speeds of 100 to 125 miles per hour. State Troopers Minnehan and Sullivan apprehended him. The boy contended that the troopers beat him severely and brought a civil rights action against several state police officers and Thomas Foley, the retired colonel of the state police. The boy pleaded guilty in Juvenile Court on various criminal charges regarding the incident. The case was favorably settled after mediation.
- **Shramek v. University of Massachusetts, et al.** (Worcester Superior Court) The plaintiff is a graduate of UMass. Amherst who was beaten up in September 2001 by another student during a fraternity party on privately owned property. He brought a negligence suit against the school and several college fraternities. The superior court denied the university's motion to dismiss.
- **Butler v. State Police** (Worcester Superior Court) This case was a personal injury suit arising from an April 1997 collision between a State Police cruiser and the plaintiff's vehicle. Case settled favorably for \$12,500 where initial demand had been for \$100,000.
- **Claire E. Murphy-Doubleday v. Massachusetts Department of Correction** (Middlesex Superior Court, Lowell) This case was a c. 151B discrimination case against DOC by a plaintiff seeking to become a correctional officer. The court granted the DOC's motion to dismiss the case on statute of limitations grounds.

PUBLIC PROTECTION BUREAU

In Fiscal Year 2005, CMAS handled numerous investigations and the following highlighted cases:

- **Adventure World RV** Continued litigating case filed in May of 2004 against related corporate entities and owners and managers of Adventure World RV for unfair and deceptive practices in connection with their sale of recreational vehicles. Defendants' alleged unlawful

acts and practices included: failing to pay off loans on traded in recreational vehicles; failing to provide consumers with titles to purchased recreational vehicles; failing to pay off original loans after refinancing; and failing to purchase extended warranties paid for by consumers. In June of 2004, the court issued a preliminary injunction against the corporate defendants and David Hirsch. The three corporate defendants and David Hirsch had filed for bankruptcy in January 2004. The Commonwealth filed proofs of claim with the Bankruptcy Court in the corporate and David Hirsch bankruptcies and is seeking restitution on behalf of injured consumers. In September 2004, the Commonwealth filed a complaint to determine dischargeability of debt with the Bankruptcy Court. Litigation continued into next fiscal year.

- **Commonwealth v. Riverside Mitsubishi, BJR Enterprises, LLC** CMAS staff continued to vigorously litigate this consumer protection case against Riverside Mitsubishi and its owners and managers, Daryl, Todd and Brenda Rivernider, for defrauding consumers through various unfair and deceptive trade practices in connection with their sale of used and new motor vehicles. Defendants' unlawful acts and practices included: failing to pay off loans on traded in vehicles; failing to provide consumers with titles to purchased vehicles; failing to provide promised "cash back" or refinancing; failing to provide advertised incentives; failing to pay off original car loans after refinancing; and failing to purchase extended warranties paid for by consumers. During Fiscal Year 2005, staff obtained default judgments against the Riverniders in state court and successfully petitioned the court to appoint a receiver over all defendants. The trustee filed voluntary bankruptcy petitions on behalf of BJR and Riverside Mitsubishi in order to pay corporate debts. The Commonwealth filed proofs of claim in the corporate bankruptcies and seeks to share, for the benefit of injured consumers, in any funds generated by bankruptcy trustee's sale of dealership property. Staff also contested a homestead exemption the Riverniders claimed on property owned in Florida, and filed an extensive motion and memorandum in support of its motion for final judgment and assessment of damages in the Massachusetts state court suit.
- **Commonwealth v. Theresa Smith** In 2003, Teresa Smith pleaded guilty to wire and mail fraud in federal court in June 2003, and is currently serving a 57-month prison term and has been ordered to pay \$885,166.19 in restitution. The wire and mail fraud charges are based on the same acts that formed the basis for a separate case brought by the Commonwealth under the Massachusetts Consumer Protection Act. In May, 2005, the Commonwealth filed a Consent Judgment providing for permanent injunctive relief consistent with complaint filed with the court.

- **Commonwealth v. Blackstone Valley Investment, LLC, et al.** After investigation into allegations that this business swindled a mentally impaired woman out of her home, a complaint was filed against the business and principals on May 5, 2005. A Temporary Retraining Order was issued on the same day. On June 2, 2005, the court allowed in part and denied in part the Commonwealth's Motion for Preliminary Injunction. Litigation continued into next fiscal year.

BUSINESS AND LABOR PROTECTION BUREAU

For Fiscal Year 2005 Fair Labor and Business Practices cases and statistics, please refer to the Fiscal Year 2005 Report of the Business and Labor Protection Bureau.

OUTREACH, EDUCATION, AND TRAINING:

Central Massachusetts staff participated in numerous outreach, education, and training opportunities in Worcester County communities including:

- Presentations on wage and hour issues to Worcester County Bar Association's Labor and Employment Group; Lutheran Community Services, Refugee and Immigrant Services; and the Massachusetts Department of Education's Conference at the College of the Holy Cross
- Presentations on bias and/or youth mediation programs at North Central Charter School, Fitchburg; Burncoat High School, Worcester; and the Worcester Boys and Girls' Club
- Presentation on identity theft for Worcester Cable Show ("Soapbox")
- Presentations on elder fraud at Cyprian Keyes and the Barre Senior Center
- Presentation to the Worcester Institute for Seniors in Education (WISE) on the Attorney General's statutory authority and office overview
- Division Chief served on the Worcester Mayor's At Risk Youth Task Force; Worcester City Manager's Community Task Force on Bias and Hate Crimes; and statewide interagency task forces on child labor issues and occupational safety
- Worked with Worcester City Officials to address abandoned housing issues in Worcester neighborhoods
- Worked with the City Manager's Task Force on Bias and Hate Crimes and Anti-Defamation League to make Worcester a "No Place for Hate" Community

- Participated in Worcester County's Elder Abuse Roundtable sponsored by Attorney General Reilly and District Attorney Conte's Office
- Participated on the Office of the Attorney General Elder Steering Committee
- Assistant Attorney General Giorlandino served as co-chair of the Trial Division's Civil Rights Practice Group

SOUTHEASTERN MASSACHUSETTS DIVISION

The Southeastern Massachusetts Division (SEMAS) located at 105 William Street, New Bedford, one of Attorney General Tom Reilly's three regional offices, is committed to promoting the Office's initiatives in the Southeastern Massachusetts region. The division consists of lawyers, inspectors, mediators, and administrative staff that work through the Business and Labor Protection Bureau's Fair Labor and Business Practices Division; Public Protection Bureau's Civil Rights Division and Consumer Protection Division; Government Bureau's Administrative Law Division and Trial Division; and whom handle a wide range of matters from various areas of the Attorney General's Office.

During Fiscal Year 2005, staff included Jim Sweeney, Division Chief; Cecile Byrne; Todd Davis; Diane Lopes Flaherty; Paul Gordon; Anita Maietta; Stephen Marshalek; Timothy McGuire; Patricia Medeiros; Mario Paiva; and Patricia Tapper.

SIGNIFICANT CASE SUMMARIES

The following provides an overview of cases undertaken by SEMAS staff during Fiscal Year 2005

GOVERNMENT

Administrative Law

- **Cummings v. Registrar of Motor Vehicles** (Bristol Superior Court) The Court upheld the indefinite suspension of a driver's license as an immediate threat because the driver killed two people while driving under the influence of alcohol.
- **Colameco v. Board of Motor Vehicle Liability Policies and Bonds, et al.** (Plymouth Superior Court) The Court upheld the suspension of plaintiff's driver's license for eight years upon his third conviction for operating under the influence of alcohol.
- **Marquit v. Department of Social Services** (Barnstable Superior Court) The Court upheld a Department of Social Services' decision to support a G.L. c. 51A report of neglect of the plaintiff's child.
- **Butler v. Department of Social Services** (Bristol Superior Court) The Court upheld a Department of Social Services' decision to support G.L. c. 51A report of abuse by plaintiff of his daughter.

- **Benoit, with and by her minor child v. Commonwealth** (Barnstable Superior Court) The Court upheld a decision that the Town of Mashpee provided a special education child with a fair and proper education.
- **Mailloux, by his Guardian v. Division of Medical Assistance and Commonwealth of Massachusetts** (Barnstable Superior Court) The parties settled claims in six consolidated cases arising from the Division of Medical Assistance the amount and type of personal care assistance given to the plaintiff's disabled son.
- **Automotive Recyclers of MA, Inc., and Borges v. Daniel A. Grabauskas, Registrar of Motor Vehicles** (Bristol Superior Court) The Court upheld the authority of the Registrar of Motor Vehicles to accept certain titles for reconstructed vehicles.

The division also successfully handled a number of other cases arising out of a range of administrative agency decisions. Those cases included appeals from the Registry of Motor Vehicles license suspension and revocation decisions, appeals from the Department of Social Services decisions involving findings of abuse or neglect and termination of parental rights, appeals from the Retirement Board and Civil Service Commission decisions, appeals from decisions of the Housing Appeals Committee, appeals from decisions of the Department of Employment and Training on entitlement to unemployment benefits, appeals from the Board of Registration in Medicine decisions, and challenges to agency regulations.

TRIAL

Torts

- **Rodriguez v. Commonwealth of Massachusetts, Executive Office of Public Safety** (Bristol Superior Court) The parties resolved a claim arising out of an accident in which a state police cruiser that was traveling the wrong way down a one way street struck the plaintiff's vehicle. Plaintiff sought approximately \$30,000; the case settled for approximately \$10,000.
- **Dias, individually and as administratrix of the estate of Amarantes v. Commonwealth of Massachusetts** (Bristol Superior Court) A wrongful death claim of \$100,000 was dismissed.
- **Cabral v. Patrick Jordan, William Bucelezicz, Marc Lavoie and the Commonwealth, Department of State Police; Saraiva v. Patrick Jordan, William Bucelewicz, Marc Lavoie and the Commonwealth, Department of State Police** (Fall River District Court) Two personal injury cases arising out of a motor vehicle accident that occurred when plaintiff's car was struck by an individual who was evading the State Police were dismissed.

- **Ruth Walkden, as administratrix v. Commonwealth** (Bristol Superior Court) A wrongful death case arising out of the death of a woman receiving services through the Department of Mental Health was settled for \$3,000.

CONTRACTS

- **Franchi Equipment Co. v. Massachusetts Highway Department** (Middlesex Superior Court) A construction contract claim arising out of bridge reconstruction project of approximately \$90,000 was settled for \$25,000.
- **Comark Government and Education Sales, Inc. v. Commonwealth** (Suffolk Superior Court) Contract claims of approximately \$200,000 arising out of computer purchase were settled for \$10,000.
- **IDM Environmental of Massachusetts v. Manafort Brothers v. Commonwealth** (Middlesex Superior Court) Construction contract claims arising out of the demolition of Boston State Hospital of approximately \$2,000,000 were settled for \$800,000.
- **Superior Abatement, Inc. v. Commonwealth, et al.**, (Suffolk Superior Court) A construction contract claim arising out of the demolition of Boston State Hospital of approximately \$900,000 settled for \$135,000 from the Commonwealth. Other parties also contributed to the settlement.

The SEMAS Division also handled a number of additional Trial Division cases involving personal injuries on state property or as a result of motor vehicle accidents with state vehicles and cases involving contractual claims against the Commonwealth.

PUBLIC PROTECTION

Consumer Protection

- **Commonwealth v. Nelson Rego, d/b/a Sunset Video Productions** (Suffolk Superior Court) A case was brought in which a video company failed to deliver first communion videos and wedding videos to consumers. Under the settlement agreement, the video company was required to deliver the videos and donate three CD/DVD players to three local Boys & Girls Clubs.
- **Commonwealth Sardinha Sausage, Inc. d/b/a Amaral and Son Products** (Bristol County Superior Court) A case was brought against a Fall River sausage manufacturing plant for operating without the necessary license from the Department of Public Health. The court

issued an injunction against the continued operation of the plant without the license and ordered payment of \$7,000 in penalties to the Commonwealth.

- **Commonwealth v. Rachel M. Deschene-Costa d/b/a LO Paradis Funeral Home** (Bristol Superior Court) As a result of a case brought for failing to honor pre-paid funeral contracts, a Judgment for \$496,305.35 in restitution to consumers was entered, and a partial payment of the Judgment has been obtained.

CONSUMER PROTECTION MEDIATION

Home Improvement

- **Almeida's Home Improvement** We assisted a New Bedford homeowner who had contracted with Almeida's Home Improvement. The contractor had damaged her slate roof, which in turn caused leaking of her attic ceiling. The homeowner was able to obtain \$9,626.00.
- **HM Services Co.** Through mediation, a consumer was able to obtain full reimbursement for \$830.00 that the consumer paid the contractor to install two skylights, but which the contractor failed to do.
- **Lumber Liquidators** Through mediation, a consumer was able to obtain a refund of \$978.60 for an overcharge for the cost of flooring supplies.

Debt Collection

- **Arrow Financial Services** The division convinced a debt collection company to stop pursuing a \$3,056.48 debt that the company was mistakenly trying to collect, using aggressive tactics, from a consumer who had not incurred the debt.

Auto Sales and Repair

- **Barry's Dartmouth Nissan Volvo** The division assisted and obtained a refund of \$1,799 for a consumer who had his extended warranty cancelled by the car dealership.
- **L&R Auto Repair** The division assisted a consumer in obtaining a refund of \$1,300 for a vehicle that he had purchased that did not pass the inspection.
- **RRR Auto Sales** The division mediated and obtained a refund of \$4,339.55 for a consumer who experienced multiple mechanical problems after purchasing a vehicle from the dealership

Solicitations/Scams

- **Community Reading Club** The division mediated and obtained a refund of \$4196.52 for a mentally challenged consumer who was caught up in a multiple magazine subscriptions scam.

Other

- **Sovereign Bank** The division mediated a dispute between the Bank and a consumer who had paid off an auto loan, obtaining the title and reimbursement of fees totaling \$235.
- **JK Harris & Company** The division mediated and obtained a refund of \$2,405 from a company that failed to perform a contract to resolve the consumer's income tax problems.
- **Forbe's Co.** The division obtained a refund of a consumer's deposit of \$6,500 on a parcel of land, after the seller did not complete the sale.
- **NStar Electric & Gas** The division successfully mediated a dispute between NStar and a consumer. NStar had improperly billed the consumer for \$1,000.29 and then placed the account into debt collection when the consumer did not pay.
- **Private Mentoring Group** The division obtained a refund of \$7,898.45 for a consumer who had enrolled in an Internet mentoring program that did not deliver the promised program.

BUSINESS AND LABOR PROTECTIONOverdue Wage

- **Winds** A citation of \$1,025 was issued and upheld on appeal against an Easton window washing company for failure to pay overtime.
- **Temp Job Agency** After an investigation, the company paid \$3,300 in back wages that it had failed to pay to painters.
- **Brooks and Eaton** A citation was issued against a Freetown trucking company requiring the company to pay \$18,169.89 in restitution and a \$36,000 penalty for issuing payroll checks with no funds in the payroll account.
- **Marguerite Concrete, Inc.** After an investigation, a Franklin concrete company agreed to pay \$51,208 owed to 24 employees for overtime work, and a \$4,000 penalty.

Prevailing Wage

- **DG Services** After an investigation for underpayment of wages, the company agreed to pay their sheet metal workers a total of \$9,600.
- **Gil-Den Inc./Daniel Loranger** After an investigation, a New Bedford construction company was cited for failure to pay the prevailing wage and failure to submit certified payrolls, and was required to pay restitution to the employees.

STATISTICAL SUMMARYGOVERNMENTAdministrative Law and Trial Litigation

During Fiscal Year 2005, the division was assigned 32 and closed 23 Administrative Law cases and assigned 6 and closed 10 Trial cases. At the end of Fiscal Year 2004 there were 49 open Administrative Law and/or Trial cases in the division. Cases handled by the division in this area of law saved the Commonwealth a total of \$3,490,754.71.

PUBLIC PROTECTIONConsumer Protection and Civil Rights Litigation

Cases Opened	3
Cases Closed	3
Restitution	\$503,305.35 and donation of 3 cd/dvd players

Consumer Protection Mediation

Calls	2,444
Consumer Complaints Received	286
Consumer Complaints Resolved/Mediated	280
Total Saved SEMAS Consumers	\$57,974.86

BUSINESS & LABOR PROTECTIONFair Labor & Business Practices

Calls	6,174
Non-payment and Prevailing Wage complaints - Opened	594
Non-payment and Prevailing Wage complaints - Closed	845
Total Restitution and Penalties/Fines	\$366,128.86

SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2005, SEMAS consumer staff continued to integrate consumer information into the Consumer Complaint and Information Section (CCIS) Everest database allowing for a consistent, accurate and streamlined consumer complaint mediation and reporting process.

Attorney General Reilly, along with SEMAS staff, spoke regarding anti-hazing at the 'Protecting Students from Harassment, Hazing, and Hate Crimes' conference at Barnstable High School in December of 2004.

Assistant Attorney General Steve Marshalek sat as hearing officer with the Registry of Motor Vehicle's Board of Appeal weekly. Diane Lopes Flaherty served on the AGO Elder Steering Committee/AGO Elder Strike Force. Kayla Barnes, a student at New Bedford High School, interned during Fiscal Year 2005.

OUTREACH, EDUCATION, AND TRAININGYOUTH

During Fiscal Year 2005, and since 2002, the Massachusetts Attorney General's Office has been a collaborating partner in New Bedford Public Schools Youth Court program due to the efforts of Assistant Attorney General Patricia Medeiros. Pattie continued to serve on the advisory board of this juvenile diversion program recognized by the National Youth Court Center. Assistant Attorneys General Timothy McGuire, Stephen Marshalek and Jim Sweeney assisted with training and volunteered as judges.

SEMAS staff was part of the executive planning committee and presented a workshop on conflict resolution at New Bedford Public School's Third Annual Youth Summit. The community collaborative initiative offers speakers, presentations, and activities to empower youth.

SEMAS staff assisted students for a second year in their Summer of Work and Learning Project with the production of a television segment to be aired on local cable TV, filmed at the SEMAS Regional Office, on topics relating to young workers, young consumers, and the function of the regional Office of the Attorney General. The students interviewed division staff as they learned to compile and edit the television segment. The Project's goal was to combine the benefits of classroom learning with one-the-job experience and to assist high school seniors in passing the MCAS.

During Fiscal Year 2005, SEMAS staff presented information to constituents at a variety of events. Attorney General Reilly and SEMAS staff spoke at the Ellis Elementary School in Pembroke about Internet safety. Additional presentations at local schools reached approximately 70 fifth and sixth graders. At the Sylvan Learning Center's "We Care About Kids Day", staff provided parents and children with information about Internet safety and teen dating violence. The division, along with staff from the Fair Labor and Business Practices Division also delivered a child labor presentation for the Massachusetts Association of Cooperative Education.

SEMAS staff also volunteered at programs sponsored by the New Bedford Prevention Partnership, such as: National Night Out, an annual community event for a night out against crime; Lights on After-school, a national program replicated by the City of New Bedford and the New Bedford Prevention Partnership; and SMILES Breakfast Club Mentor program. Division Chief Jim Sweeney continued to volunteer at the Colonel Daniel Marr Boys & Girls Club mentor program.

ELDER

Attorney General Reilly, along with SEMAS staff, spoke on elder issues at the Council on Aging in Pembroke and staff regularly visited the Councils on Aging in Acushnet and Fairhaven. Outreach presentations were provided to numerous seniors on how elders can protect themselves and feel safe in their homes & communities, consumer issues, identity theft, scams, and home improvement.

Educational presentations were given at the Cape Cod Synagogue in Hyannis; a monthly TRIAD meeting at the Plainville Senior Center, the Seekonk Lions Club, a volunteer foster grandparents group at Coastline Elder Services and to assisted living family members at The Oaks in New Bedford. Helpful information was provided to seniors at a Wellness and Safety Fair at the Council on Aging in East Bridgewater; a at Senior Health & Fitness Day Fair at Old Colony YMCA in East Bridgewater. SEMAS staff spoke and provided information packets at the 2nd annual Portuguese Elder Conference, "Know Your Rights II" at Fort Taber Community Center Hall in New Bedford.

Various tips from the Attorney Generals Elder Fraud Alert calendar; AG's advisories; AG Elder hotline number appeared regularly in New Bedford's Senior Scope, a monthly and free newspaper which serves the City of New Bedford, the Towns of Acushnet, Dartmouth, Fairhaven, Gosnold, Marion, Mattapoisett and Rochester and is published by the City of New Bedford with a grant from Coastline Elderly Services.

CONSUMER

Consumer Mediator and Outreach Coordinator, Diane Lopes Flaherty presented a seminar on the Do's and Don'ts of Hiring a Home Improvement Contractor at New Bedford Chamber of Commerce's annual Home Show and at the Plumb Library in Rochester. Diane spoke to the Southeastern MA Building Officials Association at its monthly meeting about home improvement complaints to discuss strategies to educate homeowners and appeared on WBSM 1420 AM radio talk show "Open Line" on the topic of home improvement contractor's law and elder issues.

COMMUNITY

SEMAS staff served on United Way of Greater New Bedfords' Citizen's Review Board and participated in monthly Neighborhoods United neighborhood group meetings and activities.

Staff attended community initiatives such as ACTS, A Community Together Succeeds; the City of New Bedford's volunteer citywide group seeking creative solutions to violence at New Bedford High School and "Pathways to Prevention . . . Roads to Recovery" a new program to shape the direction of the City's substance abuse and prevention and treatment initiatives.

EDUCATION AND TRAINING

SEMAS regional office staff continued to participate in Attorney General Institute trainings on various topics including New Massachusetts Rules of Criminal Procedure; Public Records Officers procedures; Housing Discrimination; and an Appellate Advocacy Program. Staff participated in monthly Local Consumer Program/Consumer Coalition meetings and training.

SEMAS regional office staff attended an Executive Briefing on Workplace Violence and the Employer's Response; the annual Federal Reserve Bank National Consumer Protection week conference in Boston; and a National Association of Attorneys General conference in Chicago.