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STATE OF ALASKA DEPARTMENT OF LAW

Talis Colberg, Attorney General

2008
ANNUAL
REPORT

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MESSAGE FROM THE ATTORNEY GENERAL

December 2008

Dear Governor Palin, Alaska Legislators and Fellow Alaskans,

Shakespeare, in the play *Henry V* provides the ultimate team-building speech for King Henry in what is now known as the “St. Crispin’s Day” speech. The real King Henry V may or may not have given a rousing speech to his outnumbered army on the eve of the Battle of Agincourt in 1215, but as with so much, fact has become conflated with myth—and the result is inspiration. I think we have an inspiring story to tell, based largely on facts.

In 1959 our team was smaller. The Department of Law was six attorneys (including Attorney General John Rader). Now we are about five hundred fifty two. Nearly a hundred-fold increase in the same fifty-year period that the rest of the population increased by only six times. Oddly enough, although we are far more numerous than we were in 1959, we often still feel outnumbered. Our civil attorneys are divided into thirteen sections and our criminal division is spread over thirteen offices. There is no community where the criminal division is not outnumbered by local public defenders, the Office of Public Advocacy, and the private defense bar. Likewise, while the outside world sees the civil division as a monolith, it is in fact divided into small sections, all of which are likewise outnumbered by opposing counsel. However, there is a sense of cohesion and team unity that is both pleasant and effective throughout the department. How can we have grown so large and still find ourselves constantly trying to keep up?

In his book *The Richness of Life*, science writer Stephen Jay Gould observed:

Most knowledgeable students of life’s history have always sensed the failure of the fossil record to supply the most desired ingredient of Western comfort: a clear signal of progress measured as some form of steadily increasing complexity for life as a whole through time. The basic evidence cannot support such a view.

Gould was not writing about law. However, lawyers are perceived to be a major source increasing complexity in the modern world and some legitimately reason that legal complexity may not be progress. Lawyers often stand in the way of the appealing simple solutions. Our job is in part to uphold the law and at the same time not lose the confidence of the public in doing so. We don’t write the laws, but we are charged with trying to make sense of them and enforce them. It is a tough, but honorable, job.

As Henry said in his speech, “The fewer men [Shakespeare did not go out of his way to anticipate the advancement of women], the greater share of honour.” Tell that to the Collections Section—that it is a greater honor because you have fewer colleagues? The point is, that the Department of Law does a lot and does it honorably and can be proud of it.

Henry called on his team to look to the future:

He that outlives this day, and comes safe home
Will stand a tip-toe when this day is nam'd,
And rouse him at the name of Crispian.
He that shall live this day, and see old age,
Will yearly on the vigil feast his neighbors
And say, ‘Tomorrow is Saint Crispian.’

Well, maybe the staff at the Department of Law will not commemorate their service to the state with a yearly vigil and declare, “I was there when...” but they have reason to.

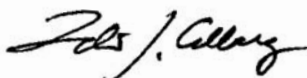
In his conclusion, Henry declares:

We few, we happy few, we band of brothers [and sisters];
For he today that sheds his blood with me
Shall be my brother; be he ne’er so vile,
This day shall gentle his condition;
And gentlemen in England now a-bed
Shall think themselves accurs’d they were not here,
And hold their manhoods cheap whiles any speaks
That fought with us upon Saint Crispin’s day.

Brought into a modern Alaskan translation, “Those poor attorneys who have never known the privilege of standing in the ranks of the Department of Law during the Fiftieth Year of Statehood will think themselves accursed.”

We (relatively) few. We happy few.

Sincerely,



Talis J. Colberg
Attorney General

DEPARTMENT OF LAW ORGANIZATIONAL CHART

TALIS COLBERG, ATTORNEY GENERAL
MONICA JENICEK, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

CRIMINAL DIVISION

Rick Svobodny, Deputy Attorney General
Susan McLean, Chief Assistant Attorney General

SPECIAL PROSECUTION & APPEALS
Douglas Kossler, Appeals Chief
James Fayette, Special Prosecutions Chief

JUNEAU DISTRICT ATTORNEYS' OFFICE
Doug Gardner, District Attorney

KETCHIKAN DISTRICT ATTORNEYS' OFFICE
Stephen West, District Attorney

SITKA DISTRICT ATTORNEYS' OFFICE
Julie Willoughby, Assistant District Attorney

BARROW DISTRICT ATTORNEYS' OFFICE
Teresa Buelow, Assistant District Attorney

KOTZEBUE DISTRICT ATTORNEYS' OFFICE
Angela Jamieson, Assistant District Attorney

NOME DISTRICT ATTORNEYS' OFFICE
John Earthman, District Attorney

ANCHORAGE DISTRICT ATTORNEYS' OFFICE
Adrienne Bachman, District Attorney

KODIAK DISTRICT ATTORNEYS' OFFICE
Stephen Wallace, District Attorney

FAIRBANKS DISTRICT ATTORNEYS' OFFICE
J. Michael Gray, District Attorney

DILLINGHAM DISTRICT ATTORNEYS' OFFICE
Susan Mitchell, Assistant District Attorney

PALMER DISTRICT ATTORNEYS' OFFICE
Roman Kalytiak, District Attorney

KENAI DISTRICT ATTORNEYS' OFFICE
Lance Joanis, District Attorney

BETHEL DISTRICT ATTORNEYS' OFFICE
Andrew Grannik, District Attorney

ADMINISTRATIVE SERVICES DIVISION

David Blaisdell, Director
Bob Meiners, Deputy Director

MANAGEMENT & FINANCIAL FORECASTING
Bob Meiners, Deputy Director

BUDGETING
Bob Meiners, Deputy Director

FISCAL & ACCOUNTING
John Seagren, Finance Officer

PROCUREMENT
Gina Chalcroft, Procurement Specialist III

TIMEKEEPING & BILLING
Bob Meiners, Deputy Director

INFORMATION SERVICES
David Seng,
Information Technology Manager

CIVIL DIVISION

Craig Tillery, Deputy Attorney General
Nancy R. Gordon, Statewide Office Chief

CHILD PROTECTION
Carla Raymond,
Chief Assistant Attorney General

COLLECTIONS AND SUPPORT
Stacy Steinberg,
Chief Assistant Attorney General

COMMERCIAL AND FAIR BUSINESS
Signe Andersen,
Chief Assistant Attorney General

ENVIRONMENTAL LAW
Steve Mulder,
Chief Assistant Attorney General

HUMAN SERVICES
Stacie Kraly,
Chief Assistant Attorney General

LABOR AND STATE AFFAIRS
Jan DeYoung,
Chief Assistant Attorney General

LEGISLATION AND REGULATIONS
Deborah Behr,
Chief Assistant Attorney General

NATURAL RESOURCES
Elizabeth Barry,
Chief Assistant Attorney General

OIL, GAS AND MINING
Tina Kobayashi,
Chief Assistant Attorney General

OPINIONS, APPEALS AND ETHICS
Joanne Grace,
Chief Assistant Attorney General

REGULATORY AFFAIRS AND PUBLIC ADVOCACY
Daniel Patrick O'Tierney,
Chief Assistant Attorney General

TORTS AND WORKERS' COMPENSATION
Gail Voigtlander,
Chief Assistant Attorney General

TRANSPORTATION
James Cantor,
Chief Assistant Attorney General

DEPARTMENT OF LAW MISSION STATEMENT:

PROTECTING ALASKA'S FUTURE

MISSION & CORE SERVICES

The Department of Law protects Alaska's children, communities, consumers, natural resources, financial assets and state's rights. Its mission is to provide legal services to state government and to prosecute crime. The Department of Law's core services are reflected in its three core divisions also known as results delivery units (RDU).



THE CRIMINAL DIVISION RESULTS DELIVERY UNIT

protects the public by prosecuting all violations of state criminal law committed by adults, and a large portion of the serious crimes committed by juveniles. The Criminal Division provides assistance to victims and witnesses of crimes and supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial and conviction; it also provides general legal services to the Departments of Corrections and Public Safety relating to their criminal justice activities. The Criminal Division has District Attorney Offices in thirteen Alaskan communities. Rick Svobodony (above) is the Deputy Attorney General overseeing the Criminal Division.



THE CIVIL DIVISION RESULTS DELIVERY UNIT

supports the Civil Division of the Department of Law. The Civil Division serves the interests of Alaska's citizens by providing legal counsel to the executive branch in all civil actions. The Division defends and prosecutes all civil litigation to which the State is a party, and handles legal matters for and provides legal advice to the governor, executive branch agencies, and – upon request – the legislative and judicial branches. Craig Tillery (above) is the Deputy Attorney General overseeing the Civil Division.



THE ADMINISTRATION AND SUPPORT DIVISION RESULTS DELIVERY UNIT

includes the Office of the Attorney General and the Administrative Services Division. The Office of the Attorney General provides overall management of the Department of Law. The Attorney General, as principle executive officer of the Department, is responsible for both the legal and administrative aspects of the Department's operations. The Administrative Services Division provides the core administrative services that are essential to the day-to-day operation of the Department of Law and to managing the resources of the Department. David Blaisdell (above) is the Division Director.

PROTECTING ALASKA'S CHILDREN AND VULNERABLE CITIZENS

Protecting Alaska's children is one of the most important tasks facing the Department of Law. One significant way the Department protects Alaska's children is through the prosecution of child abuse and neglect in confidential Children in Need of Aid (CINA) cases. This year the Department prosecuted approximately 3,000 ongoing CINA cases, moving toward the goal of achieving permanency for children, whether it is reunification with their family or other permanent placement, such as adoption or guardianship.

Statewide attorneys carry an average of 141 plus cases, significantly higher than the 100 cases per full time attorney suggested by the U. S. Department of Health and Human Services, Administration for Children and Families.

The Department represents the Office of Children's Services in a lawsuit filed by four Alaska Native villages alleging violations of the Indian Child Welfare Act, the Adoption and Safe Families Act, and the Multi-Ethnic Placement Act. Another important piece of pending litigation will determine whether Indian tribes can initiate cases in tribal court under the federal Indian Child Welfare Act.

The Department provides legal assistance to the Department of Health and Social Services on issues arising from the state's health services, social services, and welfare

programs. Work loads have increased due to changes in the regulations related to Medicaid waivers and lawsuits related to the Personal Care Attendant Program. These cases have resulted in a backlog of due process hearings. The Department has also seen a marked increase in the number of licensing hearings as a result of the changes to the licensing statute and regulations.

The Certificate of Need Program continues to generate significant litigation related to the out patient health care facilities, such as ambulatory surgery centers and independent diagnostic testing facilities. The Department has increased its support to the third party recovery process under the state Medicaid Program, and its attorneys are now staffing estate-recovery cases and additional Medicaid provider audits. The Department has also added a full-time attorney to advise the Alaska Psychiatric Institute.

The Department supports the Department of Labor and Workforce Development's efforts to assist the disabled through its Division of Vocational Rehabilitation programs. Included are the preferences provided to seriously disabled and blind vendors on state properties. This year the Department successfully defended the program for the seriously disabled against an administrative challenge before the Office of Administrative Hearings.



How fishing in Barrow compares to other parts of the state.

PRESERVING ALASKA'S FINANCIAL INTERESTS

The Department played a significant role in collecting monies owed to the state and its citizens in 2008. Many sections of the Department contributed to this achievement. Below is a snapshot of some of their efforts.

OIL, GAS AND MINING

Most of the state's operating revenues are derived from oil and gas corporate income taxes, production taxes, and royalties on Alaska North Slope (ANS) crude oil. The value of that crude oil for production tax and royalty purposes is largely determined by the price that ANS oil commands in its destination markets, less the costs of transporting it to those markets. The transportation costs consist of tariffs and the producers' tanker costs. The Department performs legal services related to these and other oil and gas development issues. The Department's efforts have aided the state in the collection of additional property taxes, fines for breach of drilling commitments (Point Thomson Unit), unpaid production tax, corporate income tax, and monies from settlements of other disputes.

The Department expended substantial resources to monitor the TransAlaska Pipeline System (TAPS) owners' compliance with the 1985 TAPS Settlement Agreement, and to monitor and participate in state and federal regulatory oversight of the tariffs of all common carrier oil and gas pipelines operating in the state. The state has been negotiating with the TAPS Carriers over a possible follow-on agreement to the TAPS Settlement Agreement, which may be terminated in 2009. The state also participated in an appeal of a decision by the Federal Energy Regulatory Commission (FERC) lowering interstate tariffs. The state is also protesting expenditures by the TAPS carriers on the Strategic Reconfiguration Project. In addition, the state is proceeding with litigation over tariffs on other oil pipelines.

The Department provided extensive assistance to the Governor's Office and the Departments of Natural Resources and Revenue in implementing the Alaska Gasline Inducement Act (AGIA). The Department expended substantial resources during the analysis and evaluation process of AGIA license applicants. The Department provided legal assistance to the commissioners in developing the administrative findings and determination recommending issuance of the AGIA license. The Department provided extensive legal advice to the administration and expended a considerable amount of time and resources during two consecutive special legislative sessions where the legislature considered whether to authorize issuance of the AGIA license to

TransCanada Alaska. The legislature authorized issuance of the license, effective the end of November 2008.

The Department is assisting the Department of Revenue (DOR) in drafting comprehensive regulations implementing the state's new oil and gas production tax system (ACES). The Department also continues to represent DOR on a number of confidential production tax and oil and gas corporate income tax cases. A major case, which is at the informal conference stage, is an appeal of the DOR's decision to aggregate properties within the Prudhoe Bay Unit to determine the Economic Limit Factor (ELF) under the former production tax regime. The ELF appeal stems from a January 2005 decision by DOR to aggregate six satellite producing areas within the Prudhoe Bay producing areas to calculate the ELF. The effect of this decision was to significantly increase North Slope production taxes. The Department is assisting DOR in drafting its decision. The Department is representing DOR in an appeal of decisions by the State Assessment Review Board (SARB), assessing the value of TAPS at about \$4.3 billion for 2006 and \$4.6 billion for 2007. The decision resulted in a 2006 property tax assessment of \$86 million and a 2007 property tax assessment of \$91 million. The property tax is divided between several municipalities and the state.

The Department assisted the Department of Natural Resources (DNR) in continuing litigation over DNR's decision to terminate the Point Thomson Unit. There are a number of appeals and proceedings before both the superior court and DNR on this issue.

The Department represented the state in proceedings before the DC Circuit, the FERC, and the Regulatory Commission of Alaska (RCA) on issues related to the methodology for determining quality bank adjustments to account for the commingling of different quality petroleum streams in TAPS.

LABOR AND STATE AFFAIRS SECTION FILES SUIT AGAINST MERCER

The state, through the Department, filed a complaint against the former actuary for the PERS and TRS pension plans, Mercer (US), Inc. The complaint seeks more than \$1.8 billion in damages from Mercer for mistakes in calculating the plans' expected liabilities, including mistaken actuarial assumptions and methods about future healthcare costs, and basic mathematical and technical errors. This is an important matter not only for the State of Alaska, but also for the 161 other municipal employers who participate in

PERS and the 58 employers who participate in TRS, all of whom were impacted by Mercer's errors.

COLLECTION OF DEBTS OWED TO THE STATE

The Collections unit of the Collections and Support section of the Department collects unsecured debts owed to the state. These collections included criminal fines, cost of appointed counsel, cost of imprisonment, civil judgments owed to the state including attorney fee awards, and victim restitution.

The Department collected over \$6.8 million in FY2008, an increase of over \$1 million from FY2007. Of this amount, the Department collected and disbursed over \$2 million in restitution to crime victims. The Department also began collecting a new judgment type, the Correctional Facility Surcharge.

The Child Support unit represents the Child Support Services Division (CSSD). The Department resolved and closed over 1,500 child support files in FY2008, consistent with FY2007, resulting in Alaska's children obtaining the support to which they were legally entitled. These files included paternity establishment and disestablishment cases, appeals, bankruptcies, and motions for the establishment and modification of child support.

The Department completed more than 700 modifications of Alaska child support orders through court proceedings, thus assuring that these support orders comply with

the child support guidelines set forth in Alaska Civil Rule 90.3. CSSD referrals for enforcement action, including requests for garnishment of native dividends and PFD payments, increased. This is consistent with the CSSD trend focusing on enforcement of child support orders.

In March 2007, the federal Office of Child Support approved the Tlingit and Haida Indian Tribes' application to operate a IV-D child support agency. Due to the unique legal landscape in Alaska concerning Native law and tribal jurisdiction, the Department has been and will continue to be providing additional assistance to CSSD to address legal issues related to tribal child support agencies.

DEFENSE OF TORTS AND WORKERS' COMPENSATION CASES

The Department provides legal defense and advice in personal injury lawsuits filed against state agencies and state employees. It also provides advice and training to state agencies and represents the state as employer before the Workers' Compensation Board. Through October, 2008, the Department had three tort jury trials in Anchorage (one case settled during trial). The Department continues to actively pursue summary dismissal of claims against the state through filing dispositive motions in most of the tort cases handled by the section. Where certification of individually sued state employees is appropriate under AS 09.50.255, the section has successfully dismissed individually sued defendants with substitution of the state as a defendant.

PROTECTING ALASKA'S CONSUMERS

INTRODUCTION

2008 was another busy and productive year for the consumer protection unit of the Commercial and Fair Business section of the Department. With the assistance of outside counsel, the Department successfully investigated, prosecuted, and settled the largest consumer protection action in Alaska history that was brought against a major pharmaceutical company for violations of Alaska's Consumer Protection Act. The state achieved a record-setting settlement of \$15 million for damages and penalties. Below is a summary of that case and other noteworthy cases resolved by the Department as well as an overview of consumer protection education and outreach efforts for the year.

STATE SETTLES CASE WITH ELI LILLY FOR \$15 MILLION.

Three weeks into a four-week trial, and just three days before closing arguments, the state accepted a \$15

million offer to resolve claims against Eli Lilly related to its antipsychotic drug Zyprexa. Zyprexa is approved to treat schizophrenia and bipolar mania in adults. The state alleged Lilly failed to warn physicians about the serious side effects of the drug, including diabetes, hyperglycemia, hyperlipidemia, and weight gain. The state's evidence showed that Lilly knew of these side effects soon after the drug was put on the market in 1996, and that Lilly downplayed these risks. Lilly also promoted the drug for "off-label" uses, including depression and mood disorders in children. The state alleged Lilly engaged in this conduct to make up for lost sales of Prozac, which came off-patent when Zyprexa was introduced.

The state's case was brought on behalf of the Medicaid Division, which pays for over 70% of all Zyprexa sold in Alaska. After considering the state's damages and penalty potential, along with the likely appeal of any favorable verdict which would delay payment of any award by years, Attorney General Talis Colberg decided to accept Lilly's offer of \$15 million.

The settlement also includes a “most favored nations” clause that requires Lilly to pay Alaska more money if it settles any of the 42 pending Zyprexa cases on more favorable terms so that Alaska will be treated at least as favorably as any other state who settles these claims. The Eli Lilly settlement represents the largest consumer protection settlement in Alaska’s history.

CONSUMER PROTECTION SETTLEMENT WITH HCI DIRECT, INC.

The state entered into a multistate settlement agreement with HCI Direct, Inc., a direct marketer of women’s hosiery (known as Silkies hosiery), requiring the company to change its marketing practices and pay the states a total of \$455,000 to settle charges it violated the states’ consumer protection statutes. The states alleged that HCI’s conduct in running its “continuity sales plan” violated consumer statutes in failing to clearly and conspicuously disclose all of the material terms of the plan, including the fact that after the consumer accepted a “free” sample of the hosiery, the consumer would be automatically enrolled in the plan. The settlement, which was filed in court as an Assurance of Voluntary Compliance, requires HCI to include clear and conspicuous disclosures of all material terms of any offer in its solicitations, and requires an affirmative response from consumers before enrolling them in a continuity sales plan or providing any merchandise, including free samples.

CONSUMER PROTECTION SETTLEMENT WITH DIRECTORY BILLING, LLC

The state entered into a multistate settlement agreement with Directory Billing, Inc., an on-line yellow page directory, requiring the company to stop the use of promotional checks and pay the states a total of \$400,000 to settle charges it violated the states’ consumer protection statutes. The states alleged that Directory Billing engaged in deceptive business practices by sending live checks to businesses, churches, schools and other organizations, which, when deposited, obligated the organizations to pay for its on-line yellow page services. The states’ investigation revealed that many organizations which received the checks believed them to be refund or rebate checks and did not intend to enter into a contract with Directory Billing when they deposited the checks. In addition to prohibiting the use of the checks, the settlement requires Directory Billing to send a notice to its current customers allowing them to terminate their contract with Directory Billing and obtain a partial refund. This is the fourth multistate settlement entered into by Alaska relating to the use of promotional checks in the state. The legislature recently passed legislation proposed by the Department of Law, and sponsored by Representative Bob Lynn, which prohibits the use of promotional checks in Alaska, by making their use an

unfair or deceptive practice in violation of the Alaska Unfair Trade Practices and Consumer Protection Act.

STATE SETTLES PHARMACEUTICAL PRICING CLAIMS WITH DEY, INC. FOR \$1.5 MILLION.

The state reached an agreement with Dey, Inc. to settle claims in a lawsuit filed by the state against Dey and 40 other pharmaceutical companies in October, 2006. The complaint alleges the defendants reported inflated average wholesale prices, or “AWP,” which providers rely on when determining appropriate reimbursement rates for payers, like insurers and Medicaid agencies. Relying on these inflated prices, the state paid pharmacies and other providers more than the actual cost of the drugs. The state alleged in its complaint that defendants encouraged providers to prescribe its particular drug over a competitor’s drug based on the “spread” between the inflated AWP and the actual cost of the drug, letting the providers pocket the difference.

Dey manufactures a variety of drugs sold in Alaska. The settlement will return to Alaska 150% of the state’s actual damages. The state continues to litigate the case with the remaining defendants, and has hired outside counsel to litigate these claims.

STATE BRINGS ACTION AGAINST TWO SOUTHEAST JEWELERS

The state filed two lawsuits against jewelry businesses in Juneau for violations of the Consumer Protection Act and Retail Advertising Regulations. The stores, which operate seasonally, displayed signs such as “Everything 70% Off” or “Blow Out Diamond Sale” starting on the day that they opened for the season and continuing into July. Claiming that merchandise has been reduced by 70 percent is illegal comparison pricing when it is based on a fictitious “regular” price, such as occurs when the merchandise is always on sale. Similarly, it is illegal to advertise a “blow out” sale when there is no materially significant reduction from the regular price. Even after receiving letters from the Department warning them that the signs were illegal, the stores continued to post the signs.

STATE FILES CONSENT JUDGMENT AGAINST PFIZER INC.

On October 23, 2008, Alaska and 33 other states filed consent judgments resolving a five-year multistate investigation of Pfizer Inc. for its deceptive promotion of Bextra, a “Cox-2” drug designed to reduce pain and inflammation. The multistate investigation initially focused on whether Pfizer misrepresented that another “Cox-2” drug, Celebrex, was safer and more effective than traditional anti-inflammatory drugs such as Ibuprofen and naproxen. As the investigation proceeded,

additional concerns were raised about Bextra. Ultimately, the investigation concluded that Pfizer engaged in an aggressive, deceptive, and unlawful campaign to promote Bextra “off-label” for uses that had been expressly rejected by the Food and Drug Administration. (“Off-label” uses are those that are not approved by the FDA; doctors may prescribe drugs for off-label uses but pharmaceutical companies are prohibited from marketing products for off-label uses). In 2005, Bextra was withdrawn from the marketplace and the FDA required a “black box” safety warning for Celebrex.

The consent judgment contains injunctive terms designed to restrict Pfizer’s ability to deceptively promote its products, including prohibitions on deceptively using scientific data in marketing, distributing samples with the intent to encourage off-label prescribing, providing incentives to sales staff to increase off-label prescribing, using “mentorships” to pay physicians for time spent with Pfizer sales representatives, and using patient testimonials to misrepresent a drug’s efficacy. Pfizer also must make a \$60 million payment to the participating states. Alaska’s share of the payment is \$580,619.

TWO CONSUMER PROTECTION SETTLEMENTS FILED WITH THE COURT FOR APPROVAL

In two other unrelated matters, the state filed consumer protection settlements with the court for approval.

In the Alaska Adventures and Outfitters (AAO) case, the state alleged that the business and its principals took reservations and payments from consumers to provide fishing guiding and lodging services, but failed to provide the services or a refund in violation of the Consumer Protection Act. Under the settlement, a consent judgment was filed with the court enjoining the

defendants from engaging in similar conduct and requiring the payment of full restitution to all consumers harmed by their conduct in the amount of \$44,571.

In the case against ERCA (Educational Research Center for America), a multistate group of states alleged that the company offered gift cards to educators for distributing student surveys, and collected student personal information in surveys, but failed to disclose to students and parents how to opt out of sharing the personal information. The states alleged this conduct violated the consumer protection acts of the participating states. The settlement, in the form of an assurance of voluntary compliance, requires ERCA to stop sending anything of value to educators in connection with the administration of the surveys and requires ERCA to disclose to students and parents information about opting out of taking the surveys. ERCA is also required to pay the states \$200,000 to cover their costs and attorneys fees in bringing the case.

CONSUMER PROTECTION EDUCATION AND OUTREACH

In 2008, the Department completed several consumer education and outreach initiatives. The Department designed and produced a travel brochure, with input from the Alaska Travel Industry Association, to educate and help protect tourists who travel to Alaska. The Department also drafted a section on consumer issues in the publication “Seniors & the Law: A Guide for Senior Citizens in the Last Frontier.” This publication was a project of the Elder Law Section and the Young Lawyers Section of the Alaska Bar Association. In addition, the Department helped distribute over 25,000 Alaska Native Art brochures throughout the state and on cruise ships that provide information on how to identify original and counterfeit Alaska Native art.



Observing whaling in Barrow

PROTECTING UTILITY USERS

INTRODUCTION

In 2004, the Regulatory Affairs & Public Advocacy (RAPA) section was established in the Department to perform the Attorney General's statutory responsibility for public advocacy for regulatory affairs. RAPA advocates on behalf of the public interest in utility matters that come before the Regulatory Commission of Alaska (RCA). The Attorney General, as the public advocate, represents the general public interest before the RCA, in related court appeals, and before the Legislature and other policy makers.

REDUCED RATES AND RATEPAYER REFUNDS

RCA Docket U-07-144, Adak (telephone). On September 17, 2008, the RCA accepted a stipulation filed by Adak Telephone Utility (AdakTel) and RAPA that provides for a 57 percent reduction in permanent local telephone rates and a one-time distribution of \$56,000 in refunds to individual Adak ratepayers for local rates paid during 2008. AdakTel had previously filed two simplified local service rate filings that estimated a revenue surplus but did not propose to reduce rates to the full extent that its study cost-justified by its study because of an anticipated reduction in receipts from the federal Universal Service Fund. Under the terms of the stipulation, the utility agreed to implement the full effect of the refunds and to file a full rate case for RCA review in 2009. RAPA issued a Public Advocate Advisory on October 9, 2008 explaining the favorable impacts of the approved settlement.

RCA Docket U-08-27, Lausen's (refuse). Lausen's Dependable Disposal, Inc. (Lausen) is a small provider of refuse services along the Parks Highway from Nenana to north of Cantwell. The RCA opened this docket to review Lausen's proposal to implement a 15 percent rate increase. After analysis of the utility's information, RAPA filed direct testimonial evidence on September 16, 2008 concluding that the rate increase was not cost-justified by the available records. Thereafter, Lausen and RAPA entered into a stipulated settlement that provides for no rate increase and also directs Lausen to refund the 15 percent interim rate increase that it had previously been granted while the case was pending. In addition, Lausen agreed to file a new rate case in 2011. The Settlement was filed on October 31, 2008 and the parties await RCA approval.

RCA Docket U-07-112, Bethel (electric). Bethel Utilities Corporation (BUC) filed for a 9.8 percent rate increase for electrical service on July 25, 2007. RAPA analyzed the BUC information and filed direct testimonial evidence that challenged various aspects of the utility's proposed operating expenses and the proposed overall



The 2008 Attorney General's Leadership Award was presented to Joanne Grace, Statewide Supervisor of the Opinions, Appeals, and Ethics Section.

rate of return on rate base. Prior to hearing, the parties reached a settlement of outstanding issues, including manager compensation, prepaid expenses, and cost of capital. The RCA accepted the settlement on June 2, 2008, as a result of which the BUC rate increase was reduced to six percent and ratepayers will be refunded the four percent difference in higher rates collected on an interim basis prior to the approval of the settlement.

RCA Docket U-07-76/77, Golden Heart Utilities/College Utilities (water/wastewater). Golden Heart Utilities (GHU) and College Utilities Corp. (CUC) each provide water and wastewater service in Fairbanks. In their original filings, the utilities proposed a 23 percent consolidated water rate increase and a seven percent consolidated wastewater rate increase, respectively. RAPA filed direct testimonies that recommended a two percent water rate increase but an 11 percent wastewater rate decrease. The utilities additionally requested proposals for "step" rate increases of five percent per year for three years. A three-day adjudicatory hearing was conducted in early March, subsequent to which the RCA issued a June 30, 2008 decision directing GHU and CUC to file a revised revenue requirement that would require refunds. The ultimate calculation of refunds will depend in part upon the outcome of RCA determinations in a prior rate case (Docket U-05-43/44) that has been stayed pending appeal to the Superior Court. Meanwhile, GHU and CUC, as well as RAPA, have asked for reconsideration of the RCA decision in this matter.

RAPA LITIGATES ENSTAR WHOLESAL GAS SUPPLY CONTRACTS

RCA Docket U-08-58, Natural Gas Supply Agreements. On April 14, 2008, Enstar Natural Gas Company (Enstar) filed two proposed Gas Supply Agreements (GSAs) for natural gas supply from 2009-2013: one GSA with Marathon Oil Company for 25.6 Bcf, and one GSA with ConocoPhillips for 12 Bcf. The filings are matters

of first impression to the extent that they involve multiple providers of gas, relatively short-term contracts, and novel tiered-pricing based upon an unapproved market basket floor index to value different levels of gas deliverability. RAPA pre-filed testimony concluded that the terms of both proposed GSAs are unjust and unreasonable. Further, that if the GSAs are approved, various features should not be deemed precedent for future GSAs, and that Enstar should not be allowed to pass through to its ratepayers certain costs incurred under the GSAs.

An adjudicatory hearing was held July 28 through August 8, 2008. The RCA issued a unanimous decision on October 31, 2008 approving the GSAs if certain required amendments that modify the contract terms are filed by December 1, 2008. Consistent with RAPA advocacy, the RCA found that: the Cook Inlet gas producers have market power over Enstar as reflected in the various GSA terms, and it is in the public interest to place a market-based cap upon gas prices. The RCA devised its own price proxy index similar in nature to that advocated by RAPA, but utilized various production-area pricing points advocated by Chugach Electric. The decision should result in gas prices that are less than those under the Enstar-proposed GSAs.

RAPA PARTICIPATION IN RULEMAKING PROCEEDINGS

RCA Docket R-08-3, Telecom access charge reform.

The RCA opened a rulemaking docket on May 20, 2008 proposing to explore further modifications to the intrastate access charge system wherein long distance carriers have historically paid a fee (access charge) to use the local telephone network to complete toll calls for their toll customers. The RCA specifically proposed to increase the 'network access fee' (NAF) that was established in 2005 for charging local telephone subscribers in order to reduce the access charges payments made by long distance carriers. The Commission also sought comment on a proposal to subsidize the long distance 'carrier of last resort' in certain areas of the Bush by increasing the consumer surcharge payment into the Alaska Universal Service Fund.

In Comments filed July 18, 2008, RAPA reiterated previous advocacy that any increase in the NAF paid by local ratepayers should be accompanied by a mandatory pass-through to ratepayers of the NAF monies received by the long distance carriers, via a dollar-for-dollar reduction in long distance rates. RAPA also urged the RCA to now assess whether the NAF originally set in 2005 has resulted in the promised benefits to consumers, absent a mandatory pass-through of the access charge cost savings received by the long distance carriers. Further, RAPA recommended that the RCA should not introduce an additional universal service surcharge



Assistant Attorney General Michelle Higuchi receiving the Attorney General's 2008 Newcomer Award.

to subsidize the long distance carrier of last resort absent evidence that there exists a cost-based need for a subsidy that would be assessed upon all telecommunications services. Commission action is pending.

RCA Docket R-06-05, federal Energy Policy Act. The RCA opened this docket responsive to the federal Energy Policy Act of 2005 (EPAct) which requires states to consider whether to adopt standards regarding: smart metering, interconnection, net metering, fossil fuel efficiency and fuel source diversity (the 'PURPA standards'). If adopted, the standards would only apply to Alaska's four largest electric utilities (all located in the Railbelt). RAPA participated in numerous workshops along with members of the electric industry, and other interested parties.

The provision for net metering and interconnection standards provides for how customer-owned/self-generated electricity is priced and delivered to the established power grid. The fuel diversity standard is a risk-management tool to improve price stability and fuel availability by minimizing dependence upon one fuel source. The fuel efficiency standard involves development of a 10-year plan for promotion of conservation of fossil fuels.

On July 7, 2007, RAPA filed Comments supporting the implementation of an Alaska-specific interconnection standard. On July 28, 2008, RAPA filed further Comments generally supporting the implementation of the net metering and fuel source diversity standards, as well as the implementation of a fuel efficiency standard that does not include the 10-year planning horizons included in the federal standard. The RCA declined to adopt the federal standards but opened new dockets on October 22, 2008 to consider Alaska-specific standards for interconnection and net metering.

ALASKA ENERGY AUTHORITY ENERGY GRANTS

In the summer of 2008, Department attorneys assisted the Alaska Energy Authority in implementing a new \$100 million renewable energy grant fund and grant recommendation program. Under this program, utilities, municipalities and other governmental entities, and independent power producers can apply for grant funding for innovative renewable energy projects such as hydroelectric, wind, and geothermal projects, to help alleviate the high costs of energy in Alaska. The first grants are expected to be awarded by early 2009.

DEFENDING ALASKA'S PUBLIC PROCESS

The Department continues to successfully represent the state in *Nick v. State*, a challenge to state election and ballot practices based on the federal Voting Rights and Help America Vote Acts. The claim is that the state was providing inadequate assistance to voters who are Native language speakers. The federal district court issued an order granting summary judgment to the state that the Yup'ik language is historically unwritten, and that therefore only oral language assistance is required. The court also issued a preliminary injunction against the state requiring it to continue to provide language assistance improvements that it had voluntarily implemented. This litigation is ongoing.

The Department also represents the state in *Moore v. State*, an education case with potentially significant budget impacts. The case is a challenge under the

Alaska Constitution that public education is inadequately funded. It seeks significant additional funds for education. The superior court determined most issues in the state's favor in 2007, including the substantial monetary claims. The superior court retained jurisdiction over the issue of the sufficiency of state oversight of the school districts. A decision on this issue is expected in 2009.

In *Coonrod et al. v. State*, the state prevailed in a constitutional challenge to a law expanding a property tax exemption to non-secular educational institutions.

The Department responded to multiple public records requests during the summer and fall of 2008 from citizens and news media. The Department also gave advice to other state agencies on their responses to public records requests.



Attorney General Talis Colberg presenting Deputy Attorney General Craig Tillery with the one and only Attorney General's "Coveted John D. Rockefeller Special Achievement Award".



Attorney General Talis Colberg presenting Senior Assistant Attorney General Dave Jones with the 2008 Outstanding Service Award.



Nancy Gordon, Statewide Office Chief, was presented with her 25 year service pin and certificate along with a congratulatory letter from Governor Palin.

BUILDING AND PROMOTING ALASKA'S INFRASTRUCTURE

The Department helped the Department of Transportation and Public Facilities (DOT&PF) acquire property from willing sellers and through the exercise of eminent domain for projects such as Parks Highway Upgrades and Trunk Road near Wasilla, 5th/6th Avenue Upgrade in Anchorage, East Dowling Extension in Anchorage, Juneau's Sunny Point Intersection, Ketchikan's South Tongass Highway, and Fairbanks' Illinois Street.

The Department gave legal advice to other state agencies on multiple issues related to ongoing and now-completed infrastructure projects such as the new Kenai River Bridge, Anchorage and Fairbanks International Airports concourse and airfield renovations, parking garages in downtown Anchorage and Juneau, Fairbanks and Anchorage fish hatcheries, prison construction

and expansion projects in the Mat-Su Borough and Seward, a Knik Arm Crossing, Juneau access, the Department of Public Safety Crime Laboratory, a DHSS McLaughlin Youth Center Expansion, and the closure and revitalization of the Galena Air Force Base.

The Department defended DOT&PF against assertions that it and its contractors violated E.P.A. storm water discharge permit requirements.

The Department also defended the state against contractor claims for additional compensation and it prosecuted the state's claims against other contractors, including the builder of defective portions of the fast ferries and the builder of a defective Fish and Game enforcement vessel.

PROTECTING ALASKA'S ENVIRONMENT

CRUISE SHIP PROGRAM REVISIONS

In 2008, the Department of Environmental Conservation (DEC) and the Department continued to work diligently in implementing significant revisions to DEC's cruise ship program relating to Ocean Rangers and cruise ship wastewater discharges established under Ballot Measure 2 (the Cruise Ship Initiative), which voters approved in August of 2006. The Ocean Ranger program deploys rangers to conduct on-board monitoring of large cruise ship operations, including air emissions and wastewater discharges. DEC issued a general permit for large cruise ship wastewater discharges.

WATER AND WETLANDS PERMITTING ISSUES

Given that there are more than 174 million acres of wetlands found within Alaska, the exercise of federal jurisdiction over waters and wetlands in Alaska is of keen interest to the State of Alaska. The Department, as well as DEC and DNR continue to review new or evolving policies and guidance (including June 2007 joint guidance) generated by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (COE) to assess the potential impact they will have for projects and activities within Alaska.



On December 8, 2004, the 738-foot cargo vessel M/V Selendang Ayu, ran aground and broke in half off Unalaska Island in the Aluetian Islands.

KENSINGTON APPEAL

This case involves an appeal of the Army Corps of Engineers' permit allowing for disposal of mine tailings at the Kensington Mine outside Juneau. The Ninth Circuit ruled that the COE permit was invalid because such tailings require a different federal permit, from EPA. Petitions for review of the decision by the U.S. Supreme Court has been granted and arguments are scheduled for January 2009.

APDES PROJECT

The state's application to EPA to take over the program for permitting disposal of pollutants in surface waters has been approved. Alaska is one of five states not to have assumed that permit program from EPA. To get EPA approval of a state program, ADEC demonstrated that it has the authority to run a program no less stringent than EPA's under the federal Clean Water Act.

APPEAL OF RED DOG MINE DISCHARGE PERMIT

Certain residents of Kivalina, along with some environmental advocacy groups, have appealed the discharge permit EPA issued for the mine, as well as the state's certification that the permit also satisfies state law. The case is now before the state Office of Administrative Hearings, and a briefing schedule is being negotiated.

EXXON VALDEZ OIL SPILL

The 1991 agreement settling the state and federal governments' civil claims against Exxon as a result of the Exxon Valdez oil spill includes a provision which allows the governments to reopen the settlement and require Exxon to make additional payments totaling as much as \$100 million to fund specific restoration projects identified by the governments to address injuries that meet the Reopener criteria. On June 1, 2006, the Department and the U.S. Department of Justice announced that they have taken the first step in asserting a claim under the Reopener provision by providing ExxonMobil Corporation with a detailed project plan for the cleanup of lingering oil at an estimated cost of \$92 million. On August 31, 2006, the Department and the U.S. Department of Justice submitted a demand letter to ExxonMobil for \$92 million pursuant to the EVOS settlement Reopener provision. The governments continue to pursue this matter.

In January of 2008, the Department filed an amicus brief in the Supreme Court of the United States in support of the plaintiffs' position in *Exxon v. Baker* that the punitive damage award against Exxon should be upheld.

SEABULK PRIDE TANKER GROUNDING

The Department is assisting the DEC's investigation of the February 2, 2006 grounding of the oil tanker Seabulk Pride near the Nikiski Kenai pipeline dock in Cook Inlet. DEC administrative subpoenas were issued to Tesoro, the vessel's contingency plan holder, and Seabulk Tankers, Inc., the vessel owner. Both companies have provided documents in response to the subpoenas and the investigation is continuing.

SELENDANG AYU GROUNDING AND OIL SPILL

On December 8, 2004, the 738-foot cargo vessel M/V Selendang Ayu, ran aground and broke in half off Unalaska Island in the Aleutian Islands. The cargo vessel, which was bound for Asia with a 60,000-ton soybean load, was carrying approximately 425,000 gallons of Intermediate Fuel Oil 380 and 21,000 gallons of marine diesel oil; an estimated 354,218 gallons of those oils were released into the environment. Six of the vessel's crew members were lost in the rescue effort. Representatives of natural resources trustee agencies, which for the state include the Departments of Law, Natural Resources, Environmental Conservation, and Fish and Game, have undertaken pre-assessment activities associated with the natural resource damage assessment and restoration process. On March 30, 2007, the trustee agencies published a notice of intent to conduct restoration planning in the federal register. The Department is also pursuing, on behalf of the Departments of Environmental Conservation, Natural Resources and others, civil claims against the owner and operator of the M/V Selendang Ayu arising out of the grounding and oil spill. These claims involve oil spill penalties, wreck removal, trespass and other non-natural resource damages. Included in these civil claims is recovery of the state's costs responding to and overseeing the response to the oil spill from the Selendang Ayu and the company's wreck removal efforts.

2006 BP PIPELINE SPILLS AND SHUTDOWNS INVESTIGATION

DEC and the Department are investigating the March 2006 Prudhoe Bay pipeline spill at Flow Station 2, as well as corrosion and integrity problems with BP-operated pipelines discovered in 2006.

DEVELOPING ALASKA'S NATURAL RESOURCES AND PROTECTING STATE'S RIGHTS

ENDANGERED SPECIES ACT ISSUES

Polar Bears: In August, the state filed a lawsuit in the United States District Court for the District of Columbia challenging the listing of the polar bear as threatened under the Endangered Species Act. The state claims that the listing of the polar bear as threatened was not based on the "best scientific and commercial data available" and did not adequately consider the substantial efforts being made by Alaska and others to protect and conserve polar bears. The state's lawsuit is now one of five lawsuits involving the listing of the polar bear as threatened. About 21 parties are involved in some capacity in one or more of the cases.

Cook Inlet Beluga Whales: The Department assisted the Alaska Department of Fish and Game (ADF&G) in preparing comments and reviewing documents related to whether the Cook Inlet beluga whale should be listed as endangered. In October, the whale was listed, and we continue to work with ADF&G to explore the state's options.

Columbia and Snake River Hydroelectric Projects: The Department assisted ADF&G in submitting comments to National Oceanic and Atmospheric Administration (NOAA) Fisheries Service on the remand draft of the Federal Columbia River Power System and Snake River System Biological Opinions (BiOP) regarding the impact of dams on these rivers on listed salmon species. Alaska has an interest in this issue because operation of the dams affects threatened salmon populations, some of which are subject to regulation under the Pacific Salmon Treaty and intermingle with stocks fished in Alaska fisheries. Alaska's comments addressed the sufficiency of the data used by NOAA as well as the ways in which the analytical methodology employed by NOAA failed to meet legal requirements.

Pacific Salmon Treaty: The Department provided advice to ADF&G in the renegotiation of parts of the Pacific Salmon Treaty between the United States and Canada. The Chinook chapter of the treaty expires in December, 2008.

ALASKA GROWN LITIGATION

The state prevailed on summary judgment on all claims raised in the Division of Agriculture's trademark infringement lawsuit confirming state ownership of the Alaska Grown logo and control over its promotional use and

allowing it to recover a significant portion of its costs.

KATIE JOHN SUBSISTENCE LAWSUITS

"Which Waters" Litigation. The Department completed briefing in the "which waters" consolidated action pending in the United States District Court, District of Alaska. This lawsuit challenges claims by the United States that it has federal subsistence jurisdiction in waters throughout Alaska under the Alaska National Interest Lands Conservation Act (ANILCA) and the federal reserved water rights doctrine. The state contends that the United States' claims are overbroad, including its claims that the federal subsistence priority applies to waters (1) adjacent to national parks, refuges and forests; (2) bounded by reservation "inholdings" owned by the state or in private ownership; (3) bounded by state and Alaska Native corporation selected-but-not-yet-conveyed lands; and (4) consisting of marine and tidal waters at the "mouths" of rivers and in bays. Other plaintiffs claim that the federal government's claims are under-broad.

PREDATOR CONTROL

The state received an important ruling in *Defenders of Wildlife, et al. v. State*, which challenged the state's existing predator control programs. The court ruled that the state's predator control programs comply with all statutory requirements, with two minor exceptions. The court ruled that, while the Board of Game has the authority to adopt bounty programs, it has not done so, making an attempted "incentive" program unlawful. Second, the court ruled that, because they are not supported by separate written findings, the extensions of two predator control plans into adjacent areas did not comply with statutory requirements. The court ordered those programs to be halted. The Board met in emergency session to correct the failings identified by the court. The two invalidated plans were repealed and readopted, based on these corrections.

CARLSON IV

The Alaska Supreme Court issued its decision in *Carlson IV*, largely upholding the lower court's rulings, but ruling in the state's favor on a key liability issue that will affect the damages calculation in a way that will potentially save the state a significant amount of money owed to the plaintiff class. The case involves a challenge by nonresident commercial fishery permit holders to the 3:1 nonresident differential the state charged for many

years. In earlier proceedings in the case, the Alaska supreme court held that the Privileges and Immunities Clause of the U.S. Constitution requires “substantial equality” of treatment of residents and similarly situated nonresidents, and that, in setting nonresident fees, the state could take into account residents’ pro rata shares of state revenues to which nonresidents make no contribution. The state could legally charge nonresidents more as long as the fee differential had a close relationship to the goal of equalizing the economic burden. In the latest decision, the court rejected the argument that the state should be able to account for nonresident fees on a collective basis, and ruled instead that the state is required to compare nonresident fees individually to the permissible differential. However, the court held that incidental inequality between residents and nonresidents is permissible within a rational system, and ruled that a reasonable margin of error is up to 50 percent.

LAND INTO TRUST IN ALASKA

The state’s motion to intervene in *Akiachak et al. v. United States*, was finally granted. Plaintiff tribes and one individual challenge the regulatory bar prohibiting the Secretary of Interior from taking land into trust for the benefit of Native tribes and individuals in Alaska. The state argues that the Alaska Native Claims Settlement Act (ANCSA) prohibits the creation of trust land in Alaska. The court granted intervention as of right, holding that the state meets the Rule 24 requirements, and has constitutional and prudential standing. The judge also held that the Attorney General has authority to waive Alaska’s Eleventh Amendment immunity, and ordered that the Department’s briefing on the summary judgment motions be filed.

FIRE SUPPRESSION COST RECOVERY

The state settled the litigation over the 2006 Parks Highway fire. Asset searches revealed that the property owner had little beyond the insurance proceeds to satisfy any adverse judgment. The settlement resolves all litigation concerning the fire and awards the state \$90,000. Other parties that suffered damage, including Toghotthele Native Corporation and private property owners, also received settlements.

The state entered into a settlement agreement with the person who, while sharpening tools, started the Caribou Hills Fire on the Kenai Peninsula. The fire burned dozens of cabins, homes, and other structures, and expanded to over 55,000 acres before it was controlled. Under the settlement, the state received \$250,000 plus the remainder of a \$1.5 million insurance policy, if any, following payment of other claims and upon expiration of the statute of limitations, in exchange for releasing the person who started the fire from further liability. Private

parties damaged by the fire are currently pursuing their claims against the remainder of the insurance policy.

APOC COMPLAINT

The Department successfully defended the Department of Fish and Game’s and Board of Game’s predator control educational effort before the Alaska Public Offices Commission. The Legislature appropriated \$400,000 to the Department in 2007 with instructions to educate the public about the state’s predator control programs and the Department developed three publications and a power point program that Board of Game members have subsequently presented at various venues around the state. The Department redistributed a brochure in several statewide newspapers in early August, 2008. The Alaska Wildlife Alliance and several other groups and individuals brought a complaint before the Alaska Public Offices Commission a few days before the August primary election claiming that the entire effort violated state campaign finance laws in that public funds were being used to influence the outcome of the election on Ballot Measure 2, which would have readopted the 1996 prohibition on same-day airborne shooting of wolves. The Commission concluded that no campaign finance laws had been violated and that the educational effort was within the Department’s statutory mandates to educate the public on fish and game issues and especially on predator control. The complainants’ request for reconsideration was denied.

UNIVERSITY LAND GRANT LITIGATION

The Department defended the Legislature’s decision to grant 260,000 acres of state land to the University of Alaska. Environmental organizations Southeast Alaska Conservation Council (SEACC) and Tongass Conservation Society (TCS) have challenged the legislation on the grounds that any revenue generated by the university’s management or sale of the land constitutes “proceeds of a state tax or license” that is impermissibly dedicated to the university’s endowment trust in violation of the dedicated funds prohibition in the Alaska Constitution. The state and university argued that the university is entitled to the revenue from land that it owns because the Alaska Constitution authorizes the university to hold title to real property. The state and university prevailed in the trial court and SEACC and TCS appealed. The case has been briefed and argued, and the parties await the supreme court’s decision.

NINTH CIRCUIT COURT DECIDES FEDERAL SUBSISTENCE APPEAL

Although the Ninth Circuit rejected the state’s challenge to a particular customary and traditional use (C&T) determination by the Federal Subsistence Board

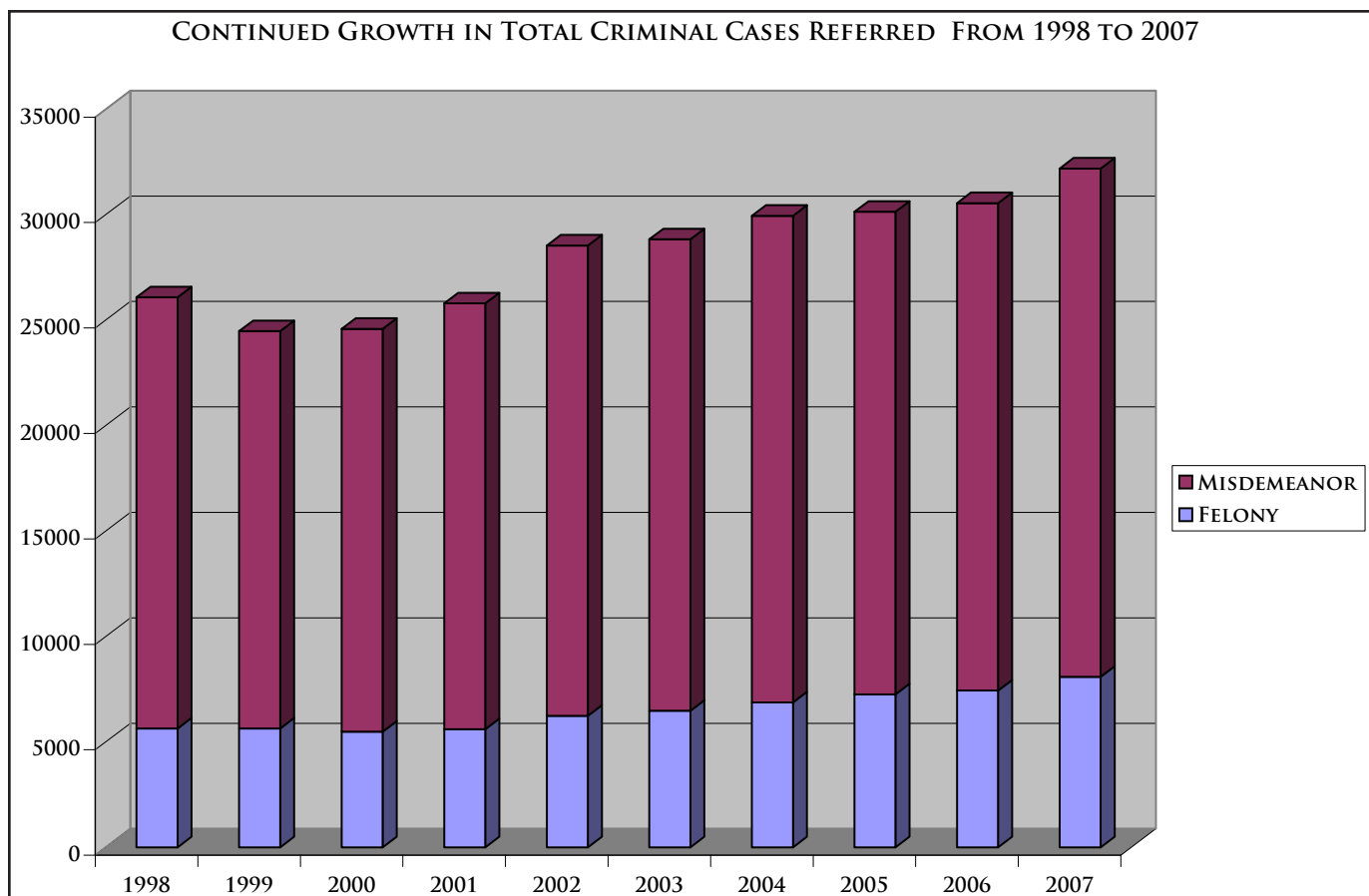
(FSB), the state obtained a significant ruling, as the panel clearly rejected the federal government's claims for, in the court's words, "unfettered discretion." The FSB's regulatory action granted the residents of Chistochina a priority over other users to take moose under the federal subsistence program within a 5,900 square mile area of federal lands based on evidence of prior

hunting for moose by members of that community in approximately 2,500 square miles of that area. However, the court agreed with the state that the FSB's C&T determinations must be based on substantial evidence of a specific rural community or area's demonstrated customary and traditional taking of a specific wildlife population within a specific geographic area.

INCREASING EFFICIENCY WITHIN THE DEPARTMENT

The Department's Administrative Services division provides financial management and forecasting, budgeting, accounting, procurement, timekeeping management, computing and mail services. The Department has embarked on a new technology project (ProLaw) that will replace the existing timekeeping and billing system and

provide case management tools that have previously been lacking or inconsistently managed. This project, which started two years ago, is nearing completion. Six of the department's thirteen sections have been successfully migrated to ProLaw. Migration of the remaining sections is expected to be completed by May 2009.



PROSECUTING ALASKA'S CRIMINALS

The mission of the Criminal Division is to work with its partners in the criminal justice field to promote safe communities. Two of the biggest problems Alaska's criminal prosecutors faced in 2008 are sexual abuse of minors and sexual assaults. In 2008, the number of sexual abuse of a minor cases was similar to the previous year. However, the victims appear to be younger. It may be that community education is working and victims are reporting earlier. Adult sexual assault cases increased in 2008. There have been a steady number of reports of acquaintance rapes, mostly involving alcohol abuse. Alcohol interdiction continues to be a major focus of the division in attempting to reduce violent crimes in rural Alaska. The division expects to see increases in sexual assault and sexual abuse trials due to the new enhanced sex offender sentencing statutes.

National data indicate a correlation between increases in methamphetamine use and increases in both adult and child sexual assaults. The manufacture and use of methamphetamines have increased profoundly in the past few years in Anchorage and Palmer and the problem is now spreading to other areas of the state.

There has also been an increase in internet crimes against children, including possession and distribution of child pornography, child exploitation, and peer-to-peer sharing of pornographic images. Some of these cases have accompanying sexual abuse charges. To help combat the problem, the 2008 Legislature budgeted funds for a statewide prosecutor to address the increase of internet-based crimes that include fraud, identity theft, and child pornography crimes.

The division provided specialized training to prosecutors and paralegals in 2008, one of which was a three-day conference focused on sex offenders. Prosecutors were also involved in task forces and programs in their own communities including the Internet Crimes against Children Task Force and the Alaska Tribal-State Forum on Safety and Justice.

OFFICE OF SPECIAL PROSECUTIONS AND APPEALS

Appeals

The Appeals Unit of the Office of Special Prosecutions and Appeals continued to fulfill its core mission of aggressively defending convictions and sentences obtained in the trial courts. This included representing the state in all the felony merit and sentence appeals, and in selected misdemeanor appeals before the Alaska Court of Appeals and Alaska Supreme Court. The unit also pursued

interlocutory appeals – that is, appeals of pretrial rulings – before the Alaska Court of Appeals and, if necessary, the Alaska Supreme Court. In addition, the unit defended state convictions in the federal courts against federal habeas applications brought by state defendants.

One change made in the unit this past year was to have a single assistant attorney general dedicated to handling a number of the sexual assault and domestic violence appeals. This attorney also advises prosecutors on the best practices to pursue in the trial courts on issues that arise in their sexual assault or domestic violence cases. (This function – advising trial prosecutors on issues that arise in their cases – is also fulfilled by every other attorney in the Appeals Unit without regard to what type of case it is.)

Though the Appeals Unit had many victories this past year, a few of the more notable ones follow. Many of these victories came in cases where the unit was defending convictions many years after the convictions had been obtained in the trial courts.

Williams v. State. In this case, the defendant attacked the performance of his attorney that occurred over 18 years earlier in a first-degree murder case. The Alaska Court of Appeals agreed with Assistant Attorney General Mike McLaughlin that the defendant's confession was not rendered involuntary because the interviewing trooper had mentioned the fact that he and the defendant were both in Alcoholics Anonymous and that organization's credos include honesty and taking responsibility for one's actions.

State v. Kameroff. The Alaska Court of Appeals sided with the arguments made by Assistant Attorney General Mick Hawley in this state interlocutory appeal where AAG Hawley asserted that a defendant should not be able to plead to lesser-included offenses and thereby prevent the state from prosecuting on the greater (more serious) offenses. This victory resulted in the Alaska Court of Appeals reversing the superior court decision and reinstituting the felony charges in a sexual assault prosecution.

Douglas v. Hyden. Assistant Attorney General Blair Christensen convinced the Ninth Circuit Court of Appeals to reverse the U.S. District Court ruling that granted federal habeas relief to Douglas. Douglas had been convicted in 1999 of first-degree robbery of a cabdriver; in 2007, the court found that Douglas's defense attorney had been ineffective for not further cross-examining the cabdriver with the tape recording of his 9-1-1 call to the police. AAG Christensen persuaded the Ninth Circuit that the defense attorney had made a reasonable tactical decision

not to play the 9-1-1 tape at trial. This victory saved not only the first-degree robbery conviction, but also affirmed the opinions of the Alaska Court of Appeals and former Superior Court Judge Elaine Andrews that Douglas had received effective assistance from his defense attorney.

State v. Garrison. In this state's interlocutory appeal, the Alaska Supreme Court was persuaded by Assistant Attorney General Diane Wendlandt that Garrison's speculative claims did not entitle her to raise a necessity defense in a trial for driving under the influence. AAG Wendlandt's success resulted in the Alaska Supreme Court reversing the ruling of the superior court and the state being able to retry Garrison for driving under the influence after a hung jury in Garrison's first trial. It is believed the first jury hung because Garrison had been allowed to advance a necessity defense in that first trial.

Basurto v. Luna. Assistant Attorney General Diane Wendlandt convinced the Ninth Circuit Court of Appeals to reverse the decision of the U.S. District Court to grant federal habeas relief to Basurto. Basurto was convicted in 2000 of first-degree sexual assault, kidnapping, and third-degree assault for his abduction and rape of the victim. During trial, evidence of his similar assaults on three other women was admitted without limiting instruction as to the evidence. The Alaska Court of Appeals held in 2003 that the lack of a limiting instruction was error, but harmless in the light of the final jury instructions and the prosecutor's closing argument. In 2008, the U.S. District Court disagreed with the Alaska Court of Appeals, finding that the lack of a limiting instruction was sufficiently

harmful to constitute a violation of Basurto's right to due process. The Ninth Circuit reversed, holding that the Alaska Court of Appeals' holding of harmless error was entitled to more deference than it had been given.

Special Prosecutions

The special prosecution unit is comprised of a number of staff, each of whom is dedicated to a specific area of criminal enforcement. In the past year, general special prosecution cases included a "cold" homicide, a high profile application for post conviction relief in which a convicted murderer challenged her conviction twenty years after the crime, an investigation regarding an individual who defrauded the state retirement system, and the prosecution of a jail guard who engaged in a sexual relationship with an inmate.

Cold Case Unit

In 2008 the criminal division's cold case prosecution team, Katie Paakki (paralegal) and Pat Gullufsen (prosecutor), conducted three murder sentencing hearings that resulted in a total of 264 years for the three offenders, all of whom had been convicted in lengthy jury trials in 2007. John Carlin and Mechele Linehan, after separate trials and separate sentencing hearings, were each sentenced to serve 99 years for the murder of Linehan's fiancé in 1996. Derek Sawyer, after a month-long trial in Glenallen, received a sentence of 60 years to serve for the murder of his wife in 1997.



Assistant District Attorney Scott Mattem, from the Fairbanks District Attorney's Office, is awarded the 2008 Prosecutor of the Year award.

Two additional cold case murder trials scheduled to commence in 2008 have been continued to early 2009: *State v. James Eacker*, a 1982 murder in Seward involving the sexual assault and stabbing of the victim, and *State v. Kenneth Dion*, a 1994 murder in Anchorage involving the sexual assault and beating of the victim.

During this year the unit has continued to work closely with the cold case investigators in the Department of Public Safety, and with the Municipality of Anchorage Police Department, in reviewing and screening other cold cases for presentation to a Grand Jury in late 2008 and in 2009.

Rural Prosecutions Unit

During 2008 the Rural Prosecutions Unit continued the expansion of its work assisting numerous off the road system district attorney offices by handling major crimes from those offices; working with law enforcement departments in difficult cases that require substantial interaction to potentially put a case together; filling in at offices during staffing shortages; training village police officers (VPO), village public safety officers (VPSO), new Alaska State Trooper recruits, and recertification of officers. The unit has also continued to mentor younger lawyers in the rural offices on certain cases.

The Rural Unit usually takes over the more complex cases to allow the local office to function or focus on the crimes occurring day to day. The cases which the unit directly handles are almost entirely homicides and major sexual assault and abuse cases. Most are unclassified or class A felonies; for example, a quadruple homicide from the Sitka office where only one prosecutor resides. The rural prosecutors have taken over prosecution of other homicides from the Bethel and Kodiak areas. Two pending cases are extremely complex and it is anticipated that considerable time will be needed to determine whether or not these are prosecutable cases.

The unit is engaging in several major cases where the younger rural lawyers assist or act as second chairs to gain experience and mentoring in the strategy in a major case. Additionally, attorneys from the unit have filled in at rural offices so that the less experienced attorneys could obtain off-site training.

The unit routinely covers hearings by telephone from Anchorage, but on some occasions, the unit's lawyers have been on-site for extended periods of time in person. This year, attorneys from the unit traveled and worked in one of the rural offices a total of approximately 190 days. When traveling, the attorneys also screen backlogs of cases in the rural offices. This screening of cases has increased since last year and in 2008 totaled more than 300 cases.

This year the unit trained law enforcement officers at the Alaska State Trooper Academy, including newly hired trooper recruits, officers seeking recertification and Village Public Safety Officer recruits. It also trained Village Police Officers in other parts of the state. Additional officer training is set for 2009.

The unit has had the desired effect of stabilizing the rural offices that it serves by working on some of the more difficult cases, catching up on screenings, and allowing the local offices to have a place to turn for coverage when vacancies arise.

Alcohol Interdiction

The alcohol interdiction prosecutor is responsible for addressing violations of Title 4 of the Alaska Statutes. During 2008, the unit coordinated investigations, provided assistance and training to Kotzebue and Fairbanks ABADe (Alaska Bureau of Alcohol and Drug Enforcement) troopers, and traveled regularly to Kotzebue, Nome, and Fairbanks for grand jury hearings, and trial court hearings. The unit handled cases from Angoon, Fairbanks, Kotzebue, Unalakleet, Anchorage, and Nome.

The alcohol interdiction unit charged David Rue and his corporation, Ambler Air, after Mr. Rue was found to be importing alcohol into a dry community using his air taxi company. He received a sentence of 180 days jail with 160 days suspended, and was placed on probation for four years with probation conditions requiring him to submit to troopers' and airport police officers' future requests to search his aircraft. As part of the same agreement, Ambler Air was sentenced to pay a fine of \$85,000 with \$65,000 suspended, and was placed on probation for four years subject to the same probation conditions. The corporation also agreed to forfeit the 1976 aircraft. The state agreed to sell the plane back to the corporation for the reduced price of \$35,000. Therefore, the corporation submitted checks for \$55,000 to the court to resolve this case.

A former Noorvik Village Police Officer was the first person to be sentenced under the new 2008 bootlegging laws. Leon Outwater, Sr. was convicted of felony manufacturing alcohol without a license or permit in a local option area, for making homebrew. He was sentenced to 36 months in jail, with 24 months suspended, a \$10,000 fine, mandatory in-patient alcohol treatment, and three years of probation. A condition of probation allows a warrantless search of Outwater when he is traveling to local option areas.

The alcohol interdiction unit also prevailed in a snow machine forfeiture motion arising in Kotzebue Superior Court which involved disputed evidentiary hearings. It also assisted the Bethel alcohol interdiction

Getting ready for trial in Kotzebue.



prosecutor in determining whether an aircraft should be forfeited in connection with a crime in the Bethel area.

Fish and Game

2008 has been a busy year for fish and game prosecution in Alaska with successful prosecutions in cases from Ketchikan to Nome.

In Nome, commercial crab fisherman Eric Osborne was cited for leaving his pots actively fishing for crabs during a closed period. He was sentenced to one count of commercial fishing during a closed season and fined \$10,000. He received 20 days of suspended jail, loss of his commercial fishing permit for one year, five years of probation and forfeiture of his commercial fishing vessel valued with a buyback provision.

In Craig, Kenneth E. Quigley was convicted of guiding big game hunters on baited black bear hunts without being properly licensed as a big game guide. He was sentenced to pay a fine of \$30,000 with \$25,000 suspended, imposed 180 days of jail with all 180 suspended, revoked Quigley's guiding and transporting privileges for a period of five years, revoked his hunting license for a period of one year, forfeited his 21 foot Olympic boat and motors to the state (which Quigley will buy back from the state for \$10,000) and ordered him to pay \$10,000 in restitution to the state and federal government. Quigley will be placed on probation for a period of five years from the date of his sentence.

In Anchorage, Joseph Querin of Washington State and Carson Kemmer of Oregon were convicted of killing numerous big game animals while hunting in Alaska without resident big game licenses. Carson Kemmer was convicted of five class A misdemeanor counts and ordered to pay \$50,000 with \$36,500 suspended, restitution for the animals killed in the amount of \$5,885, forfeiture of his hunting privileges for four years and probation for a period of four years. Joseph Querin was sentenced to 3.5 years in jail with 2.5 years suspended, \$31,000 in fines with \$27,500 suspended, five years of probation and a loss of hunting privileges for five years.

In Cordova, big game guide Darren Byler was sentenced on conviction of one count of illegal acts by a big game guide for allowing a client to kill a brown bear during a closed season. Byler was sentenced to a fine of \$10,000 with \$7,500 suspended, restitution of \$1,300 for the brown bear, informal probation for 10 years, loss of his guide's license for five years and a prohibition from applying for a new guide's license for a period of 10 years.

Medicaid Fraud

The past year was a record setter for the Alaska Medicaid Fraud Control Unit (MFCU). The MFCU initiated an outreach program with other state entities to increase the number of abuse and neglect referrals, which in turn led to a record number of cases dealing with abuse and neglect of Medicaid recipients. The MFCU also brought in the near record setting amount of over \$1.9 million in financial recoveries, including over three quarters of a million dollars in global settlements and over half a million dollars in restitution from both civil settlements and criminal convictions. Finally, the MFCU secured a record 23 criminal convictions in the past year, beating old numbers by a significant margin.

Child Support

The child support prosecutor works closely with Child Support Services to identify and criminally prosecute those individuals who are financially able to pay child support but fail to do so. Several felony and misdemeanor level cases were filed this year, as were several petitions to revoke the probation of individuals previously convicted of failing to pay support. In one notable case, an offender refused to be placed on probation and was sentenced to serve the remainder of a lengthy prison term.

Public Assistance and Permanent Fund Dividend Fraud

During 2008 OSPA obtained the first conviction for the new felony crime of unsworn falsification in the first degree (class C felony), for submitting fraudulent Permanent Fund Dividend applications. Five defendants were convicted of PFD fraud, two felonies and three misdemeanors. Restitution orders were entered in all cases with four defendants permanently disqualified from receiving any future PFDs as a result of the conviction.

Additional PFD fraud charges were also filed against six other defendants, all of whom have been convicted, resulting in four additional defendants being permanently disqualified from the PFD program and restitution orders entered.

This unit of OSPA also obtained more than \$154,000 in restitution orders in prosecution cases involving seven defendants who were convicted of public assistance recipient fraud. Seven additional defendants were charged with public assistance fraud with three already convicted and sentenced.

DISTRICT ATTORNEY'S OFFICES

Anchorage/Dillingham

2008 saw a significant increase in the number of cases prosecuted by the Anchorage DA's office. The number of serious crimes prosecuted to a jury verdict also increased. In 2008 Anchorage staff prosecuted 11 murders, five attempted murders, 17 sexual offenses and eight robberies. The Dillingham office, which is supervised by the Anchorage office, added to those numbers with 14 trials during the current year, including an arson murder and five sex crimes prosecutions.



Left: Mileage sign. Bottom: Being new to Barrow, both Assistant Public Defender Larry Lipka and Assistant District Attorney Teresa



Buelow were double dared to a public initiation through the polar bear jump.

Both offices focused special attention on recidivists, convicting many defendants of property or drug crimes after those offenders accumulated multiple felonies and had many more misdemeanors on their records. The so-called revolving door of repeat offenders is slowing because longer sentences are imposed after trials, rather than by compromised negotiated dispositions. As well, enhanced sentences for sex crimes have dramatically impacted resolutions of those cases. Sentences, even in negotiated cases, are two to three times longer than the presumptive sentences previously provided.

Drug prosecutors focused on the growing heroin problem in Alaska and worked with multi-jurisdictional police task forces to target networks of dealers. Given the significantly higher penalties that accrue in state court, most distribution cases are referred to the district attorney's office.

In an effort to combat backlog, the Anchorage office partnered with the defense bar and the court system to resurrect an out-of-date pretrial order that addresses discovery issues. The hope is that all parties

will be better able to identify those standard parts of discovery that might have been missed during the early stages of a prosecution. Additionally, the office participated with the court and defense bar in a program to identify and implement other efficiencies.

Barrow

This three-person office has seen complete turnover during the past year. The transition brought a new law office assistant, a new paralegal, and a new assistant district attorney to the office. The paralegal position was newly created this year and is a welcome addition to the staff.

Alcohol related crimes in Barrow have skyrocketed this year. In one such case, an 18-year-old was sentenced for assault in the third degree, felony leaving the scene and driving under the influence for an incident in which he lost control of his four-wheeler while driving intoxicated and hit a seven-year-old boy riding his bike beside the road. The defendant was sentenced to 36 months with 12 months suspended for the vehicular assault, and 12 months with six months suspended for leaving the scene, and five years probation.

In another case, a woman had a "friend" post \$5,000 bail for her release on a felony DUI charge. Her conditions of release included that she appear at the police station daily and provide a breath sample to insure that she was not drinking. One day shortly thereafter she did not appear and the police found her drunk and also badly beaten by the man who had bailed her out. He was arrested for felony assault and she was medivaced to Anchorage.

In another area of the law, a 49-year-old resident was indicted for misconduct involving a controlled substance in the fourth degree. The North Slope Borough police, in conjunction with postal authorities, intercepted nearly 11 pounds of marijuana headed for Barrow. It had a street value of about \$200,000.

Fairbanks

At the close of 2008 it is estimated there will be a nine percent¹ decline in total misdemeanors referred to the office and a six percent decline in total felony referrals to the office. When flagged for domestic violence, the office saw a 28 percent decline in misdemeanor referrals and a 16 percent decline in felony referrals. Felony assaults were up by 13 percent, while domestic violence (DV) flagged felony assaults remained relatively unchanged.

Violent felonies (murder, manslaughter, negligent homicide, and kidnapping) were overall down eight percent, but up 50 percent when flagged for DV. This

¹ In all categories, 2008 numbers were considered final through October 31 and extrapolated out through December 31st.

increase in DV related violent felonies is likely attributable to a philosophy of “pushing” kidnapping charges when the same conduct may not have generated a kidnapping referral in previous years.

Sexual assaults were down 46 percent overall, and down 40 percent when flagged for domestic violence. However, sexual abuse of minors were up 24 percent overall, and 44 percent when flagged for domestic violence.

Felony drug referrals were down 11 percent, and misdemeanor drug referrals were down seven percent. However, the office is observing a dramatic increase in methamphetamine use. The nineties cocaine has turned into the 2000's methamphetamine (yet without a noticeable drop in cocaine cases).

Felony DUIs were up five percent, while misdemeanor DUIs referrals were down 14 percent. This may be attributed to having the same offenders becoming felons because of their prior convictions. During 2008 there were two defendants who received their third felony DUI charge, and one defendant who received his fourth felony DUI charge. In none of the subsequent felony DUI convictions did the courts impose a flat time five year sentence. The number of DUI-related manslaughter cases is also increasing. Most often the victim is a passenger in the DUI offender's car, as opposed to a pedestrian or other driver.

Overall felony property crime referrals were down by 15 percent, while overall misdemeanor property crime referrals saw a two percent increase. When flagged for domestic violence, felony property crime referrals were down 20 percent and misdemeanor crime referrals were down 18 percent. It is curious to note that felony property crimes and felony drug crimes fell by about the same percentage (15 percent and 11 percent, respectively).

The biggest trend in crime in Fairbanks is the rise in the level of violence in street gangs and their culture. Gang violence has increased dramatically over the last year. For the first time Fairbanks is seeing traveling gun battles between rival gangs driving down the road and shooting at each other. High school football games have been



Attorney General Colberg and Judge Erlich discussing the art in the Kotzebue courthouse.



In his spare time, Juneau District Attorney Doug Gardner plays the bagpipe in a rock band.

cancelled because of gang behavior. There was a gang rush at the Tanana Valley State Fair this year. Local police agencies and the Division of Juvenile Justice have begun a multi-agency task force to track and prosecute gang behavior. It remains difficult, however, to prove to the court that criminal activity was gang related.

Highlights of the year in Fairbanks:

- 85 year sentence in a murder case in which a first time felony offender drug addict murdered and dismembered his friend before the friend could “rat out” their mutual supplier to the police.
- 34 year sentence in a murder case in which a man, on felony release pending his trial on other charges, murdered his third party custodian.
- Numerous 20-30+ year sentences in sexual assault cases. The change in the sexual assault sentencing law has helped in prosecuting sex offenders and obtaining enhanced sentences.

Ketchikan

In the first 10 months of 2008, about 30 jury trials were conducted in Ketchikan. A number of home invasions were charged this year and several went to trial.

Jimmy Lynch was convicted at trial of burglary and assault when he and another person, who pled guilty, broke into another person's house and beat up the resident by hitting and kicking him so hard that the shoe patterns from their shoes were all over the victim's body. The treating doctor said he had only seen such bruising caused by tire treads when the person was run over by a car.

Nathan Garrison was convicted by a jury of two charges of burglary and two charges of assault when he and another person, who pled guilty, broke into two residences and beat up a person in each house.

Michael Howard, who was on felony probation for assault involving stabbing a person with a knife, was

convicted by jury of assault when he was told to leave a residence and proceeded to beat up the person telling him to leave. His felony probation was revoked based on the current assault. Several other home invasions where people broke into homes and beat up residents were handled by plea agreement.

Terry Swisher was convicted of sexual abuse of a minor for engaging in sexual contact with his ex-stepdaughter. He claimed that he touched her genitals while he was sleepwalking. To support his claim he had a professor from Stanford University, who was head of their sleep clinic, testify that Swisher did engage in sleep walking and was sleep walking when he touched the victim. The jury did not accept the expert's testimony because Swisher's description of the event, as he claimed to remember when he woke up, differed in some facts from the victim's description. Swisher, who was on bail of \$10,000 cash, failed to show up for sentencing and is currently a fugitive.

Other jury trials included several cases of theft, DUI, minor consuming alcohol, fish and game violations, failure to appear, criminal mischief, and a number of assault cases including several categorized as domestic violence.

Kodiak

The Kodiak District Attorney's Office has witnessed some transition in 2008. This four person office has seen the replacement of one paralegal and one attorney during the year. Through these transitions of staffing shortages, the office benefited from the assistance of the division's Rural Prosecution Unit, which allowed the office to continue a fairly normal operation.

Another transition is noted with Superior Court Judge Joel Bolger's appointment to the Court of Appeals. After a several year period marked by Judge Bolger's steady presence on the bench, the office wishes him luck as he moves on from Kodiak.

Criminal activity has kept this office busy throughout the year providing advice to Kodiak's law enforcement officers regarding a myriad of complaints involving homicides, sexual assaults, assaults, vandalisms, thefts, and violations of court orders. Property offenses seemed to keep pace with the rising fuel prices throughout the summer.

The lack of some basic resources in Kodiak gives rise to some challenges in the prosecution process not experienced by other offices in the state. For example, the office's connection to the statewide network is severely limited, making data entry and document creation a slow, difficult process.

Likewise, in years past, Kodiak had a Sexual Assault Nurse Examiner program in place. The program failed due to a lack of available money for training to keep nurse examiners currently certified. The collateral impact on the collection of meaningful physical evidence has been significant.

Nome/Kotzebue

This past year the Nome and Kotzebue regions saw over sixteen hundred new criminal cases split relatively evenly between the areas. This number, which does not include petitions to revoke probation or other matters on ongoing cases, is handled by two prosecutors in Nome and one in Kotzebue. The most serious felonies continue to be assault and sexual assault, though Nome saw two homicides resolved last year, one of them vehicular. The balance of the caseload consists largely of domestic violence, driving under the influence and alcohol importation/manufacture-type crimes. Almost all cases were alcohol-related.



Attorney General Colberg admiring the art during a visit to the Kotzebue courthouse.

As for other drugs, marijuana distribution cases also appeared regularly on the docket, and Kotzebue generated several cases involving cocaine. Nome saw no cases involving the harder drugs, and has yet to receive a case involving methamphetamine, whether of use, distribution, or manufacture. Abuse of prescription narcotics, given available police information, appears to be a likely source of new cases in the future.

Palmer

The Palmer District Attorney's Office, composed of 11 attorneys, three paralegals, one office manager, five law office assistants and one receptionist, handles all criminal cases filed in the Palmer Superior and District Court as well as the Glennallen, Valdez, and Cordova courts. Attorneys assigned to Cordova, Valdez and Glennallen travel frequently and may be out of the office for weeks at a time. None of these locations has a municipal prosecutor.

The office also provides advice to law enforcement agencies, assistance in juvenile delinquency cases and traffic

trials, and participates in Palmer Mental Health Court and Mat-Su Youth Court. Palmer prosecutors also handle felony sentence appeals and most misdemeanor appeals.

As of October, 2008, 3,092 criminal cases were filed in the Palmer courts, 197 in the Valdez court, 145 in the Glennallen court, and 133 in the Cordova court. These are all new filings for 2008 and do not include cases involving petitions to revoke probation, appeals, post-conviction relief, and juvenile delinquency.

In the Palmer court, 2,613 new misdemeanor cases were filed to date (October) in 2008, 153 more than the same time last year. In the Palmer court, 419 new felony cases were filed to date, three less than the same time last year.

Due to the volume, most criminal cases are resolved short of trial. In the Palmer office, the following types of cases cannot be reduced or dismissed without the approval of the district attorney: unclassified felonies; class A felonies; DUIs and breath test refusals; cases involving domestic violence; and first-degree burglaries. Reductions of felonies to misdemeanors must also be approved by the district attorney. As a result of such policies, many cases are resolved with pleas to the highest offense charged in the indictment or information.

At the close of October 2008, Palmer attorneys had completed 18 trials in district court – 16 jury trials and two bench trials. Ten of the jury trials resulted in “guilty” verdicts on all counts. Three other jury trials resulted in “guilty” verdicts on some of the counts. Three of the jury trials resulted in “not guilty” verdicts. One bench trial resulted in an as-charged conviction, while the other resulted in an acquittal.

The office obtained some significant sentences in sexual assault and abuse cases in 2008. For example, Aric Tolen was sentenced to a total of 85 years, with 15 suspended, for sexual assault in the first degree, assault in the second degree and assault in the third degree. Mark Dunder was sentenced to serve 36 years, with nine suspended, on charges of sexual abuse of a minor in the first and second degree and distribution of child pornography. Todd Crist was sentenced to 32 years, with seven years suspended, for the rape and assault of his girlfriend. Micah Beshaw was sentenced to serve 75 years on charges of kidnapping, attempted sexual assault and assault in the third degree. Glenn Prince was sentenced to 22 years for sexually abusing his granddaughters. Victor Natekin was sentenced to 45 years, with 15 suspended, for attempted sexual assault in the first degree and sexual assault in the second degree.

As in previous years, defendants convicted of murder and manslaughter received lengthy sentences. Tommie Patterson was sentenced to serve 85 years for first-

Chief Assistant Attorney General Sue McLean at Mile 0 of the Alyeska Pipeline.



degree murder and an additional 15 years for kidnapping. Younger co-defendant Kira Gray was sentenced to serve 65 years in prison. Kimberly Dubie was sentenced to serve 20 years on a manslaughter charge for causing the death of her eight-week-old daughter by leaving her in an upside-down position while Dubie was drunk.

Drug offenders were also sentenced to lengthy sentences on charges of misconduct involving a controlled substance in the second degree. For example, Lee Stenseth was sentenced to 20 years, with 10 years suspended. David Hyche was sentenced to serve 14 years, with 4 years suspended. Brandon Dodd was sentenced to eight years, with two years suspended.

In the past number of years, drug prosecutions in the Palmer office focused heavily on methamphetamine production and distribution. A large number of defendants were successfully prosecuted and sentenced to mandatory prison terms. For various reasons, including the significant past police and prosecution efforts, 2008 brought a decline in the number of methamphetamine cases, but an increase in heroin cases. The motives behind many property crimes, including burglaries, continue to be drug-related. The burglary rate in the Mat-Su area remains high. The district attorney's office will remain focused on heroin and burglary cases into 2009.

It is typical for law enforcement agencies to send all cases involving vehicular fatalities, including those involving watercraft, to the district attorney's office for review. Review of such cases is time-consuming. In cases where the issue of whether the conduct was criminally negligent or reckless is close, grand juries have been called upon to make the decision. In 2008, the grand juries were in session two full days most every week, sending a steady supply of new felony cases to the Palmer Superior Court.

2008 REGULAR AND SPECIAL SESSION LEGISLATIVE HIGHLIGHTS

INTRODUCTION

Every year the Department of Law is actively involved in shaping new legislation being considered by the Alaska Legislature. Whether the legislation is proposed by the Administration, the legislature, or even by ballot initiative, the Department usually has an active hand in crafting the new law. In 2008, the Department continued this process and provided assistance in the passage of a number of significant laws, ensuring that enactment of the law was in accordance with existing law, and state and federal constitutional requirements. The following are summary descriptions of this legislation enacted by the Alaska State Legislature.

SB 265 (CH. 75, SLA 2008) – CRIME BILL

- Reduces the probationary period for first and repeat minor consuming to a maximum of one year -- prior law required probation until the minor's 21st birthday;
- Makes bootlegging a class C felony for smaller amounts of alcohol if the defendant has two or more convictions for bootlegging in the preceding 15 years;
- Adopts mandatory minimum terms for bootlegging that are similar to the mandatory minimum terms for drunk driving and refusal;
- Creates a new crime of criminally negligent burning in the first degree, a class C felony, if the defendant has two or more convictions of criminally negligent burning or arson in the preceding 10 years; the former crime becomes criminally negligent burning in the second degree, still a class A misdemeanor;
- Clarifies that a judicial officer may issue a search warrant for property located both within and outside the state;
- Allows a judicial officer to issue a search warrant based on telephonic testimony in all cases;
- Makes changes in the treatment of persons found incompetent to be tried for a crime, and requires notice to prosecutors before release of incompetent persons; and
- Requires a sex offender or child kidnapper to be current with his or her sex offender registration obligations before receiving a permanent fund dividend.

HB 307 (CH. 96, SLA 2008) – ASSAULT AND ANIMAL CRUELTY

- Raises what otherwise would be misdemeanor injury assault to third degree assault (class C felony) if the defendant has been convicted on two or more prior occasions in the preceding 10 years of assault (except fourth degree fear assault), homicide, stalking, sexual assault in the first or second degree, or one form of third-degree sexual assault;
- Raises animal cruelty to a class C felony if the defendant has been convicted of animal cruelty on two occasions in the preceding 10 years.

SB 139 (CH. 3, SLA 2008) – AIRFIELD OWNER'S AND OPERATOR'S LIABILITY

- Limits the liability of persons who own or operate an airfield, runway, or landing area without compensation. The limitation on liability applies to personal injury or aircraft damage resulting from taking off, landing, parking, or operating an aircraft.
- The limitation does not apply to conduct that is grossly negligent, reckless, or intentional.
- Repeals conditions applicable to limiting liability for airfield owners and operators that require marking closed runways or listing the runway as closed on aeronautical charts.

HB 182 (CH. 14, SLA 2008) – OFFERING OF PROMOTIONAL CHECKS

- Makes the offering of certain promotional checks an unfair trade practice under the state's general unfair trade practices law, if cashing or depositing the check obligates the person to pay for goods or services.

SB 97 (CH. 16, SLA 2008) – IDENTIFICATION SEALS FOR NATIVE WORKS OF ART

- Changes certain requirements for the use of a state seal identifying authentic Alaska Native works of art. Allows an individual who is a state resident and an enrolled member of an Alaska tribe to receive the seal for an article created or crafted by the individual.
- Requires an article to be an original article of authentic Alaska Native art created or crafted in the state in order to be entitled to have the seal affixed.



Statewide Civil Division Supervisors enjoying a lunch break with Professor Peter Robinson from Pepperdine Law School and presenter of Negotiations Training at the 2008 Civil Division Retreat.

SB 101 (CH. 53, SLA 2008) – UNIFORM ADULT GUARDIANSHIP ACT; CONSERVATORS AND GUARDIANS

- Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and makes conforming statutory changes.
- Changes licensing categories, requirements, and procedures for guardians and conservators. Amends court procedures related to guardians, conservators, and protected persons.

HB 281 (CH. 95, SLA 2008) -- OFFICIALS, LOBBYISTS, AND CANDIDATES ETHICS AND DISCLOSURE REQUIREMENTS

- Requires certain candidates for state and municipal office subject to AS 15.13 to report certain contributions. Requires preservation of records for six years.

- Extends the statute of limitations to five years for reporting violations. Broadens authority to file a complaint against a lobbyist.
- Allows any person to file a complaint relating to financial disclosure by legislators, public members of the ethics committee, and legislative directors.

HB 196 (CH. 100, SLA 2008) – REVISED UNIFORM ANATOMICAL GIFT ACT

- Replaces the current anatomical gift statutes with the Revised Uniform Anatomical Gift Act. Makes conforming changes regarding who can make a gift, how a gift is made, and how a gift is amended or revoked.
- Amends provisions relating to estate property, non-probate transfer on death provisions in life insurance contracts, and the anatomical gift awareness fund.

HB 3001 (CH. 3, 4SSLA 2008) – APPROVAL OF ISSUANCE OF A LICENSE UNDER AGIA

- Authorizes the commissioner of revenue and commissioner of natural resources to issue a license under the Alaska Gasline Inducement Act (AS 43.90) to TransCanada Alaska Company, and Foothills Pipe Lines, Ltd., jointly, thereby constituting legislative approval of the license required under AS 43.90.190.



Attorney General Colberg awards Marja Hallsten the Victim Witness Paralegal of the Year award at the 2008 annual District Attorney/Victim Witness Paralegal Conference. Ms. Hallsten works in the Fairbanks District Attorney's Office.



STATE OF ALASKA DEPARTMENT OF LAW

2008 ANNUAL REPORT