

STATE OF ALASKA  
DEPARTMENT OF LAW  
DANIEL S. SULLIVAN, ATTORNEY GENERAL



2009

ANNUAL REPORT

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## MESSAGE FROM THE ATTORNEY GENERAL

At the Department of Law, we are making a positive difference in the everyday lives of Alaskans. Each day, we address the concerns of Alaskans of all walks of life, touching on our citizens' most important needs: safety, economic opportunity, and fiscally sound, responsible government. Whatever the specific issue of the day, the basic mission that drives us is a commitment to and passion for improving the quality of life of Alaskans and our society.

This mission has four core elements:

First, we protect Alaskans. Our foremost priority is Alaskans' safety, including both their physical and financial well-being. We're putting dangerous criminals behind bars and deterring others from breaking the law. In particular, we are helping keep Alaskans safe by seeking and winning long jail terms – some of 99 years – for repeat sex offenders. We also played a critical role in developing the governor's comprehensive strategy to end Alaska's epidemic of sexual assault and domestic violence. And our efforts to protect Alaskans go far beyond criminal prosecution. We enforce the environmental laws that keep us healthy, uphold consumers' interests so that Alaskans can keep more of their hard-earned money, and work hard to save children from dangerous domestic situations.

Second, we promote economic opportunity. Much of our work involves fighting to save jobs and creating a legal framework throughout the state that promotes economic opportunity and prosperity. By litigating the Kensington Mine case all the way to the U.S. Supreme Court, the Department of Law helped preserve hundreds of well-paying jobs in Southeast. We are also fighting efforts to shut down economic activity and tie up resource development through the misuse of the Endangered Species Act by some environmental groups. And we're



using all of our legal tools to promote Outer Continental Shelf oil and gas exploration and development in an environmentally responsible and culturally sensitive way.

Third, we protect the state's fiscal integrity. The Department of Law pursues money the state and our citizens are owed, such as taxes, royalties, and other funds, while defending the state against financial liabilities in tort and other claims. We are aggressively pursuing a case against the state's former actuary for mistakes and fraud that have severely damaged our public pension systems. We are also fighting for taxes and royalties lost due to the corrosion-related shutdown of pipelines on the North Slope.

Finally, we promote good governance. A core responsibility of the Department of Law is to defend the state's laws and Constitution. We persuaded a federal court to dismiss a challenge to our Constitution's judicial selection process. We have proposed new regulations and reforms on ethics matters to help promote good governance. The department also brings its considerable expertise to bear on proposed legislation, citizens' initiatives and regulations to ensure that our government operates within the parameters of the law and our state and federal constitutions.

All of these efforts are designed to benefit Alaskans – across regions, across races, across age groups, and across a great multitude of issues.

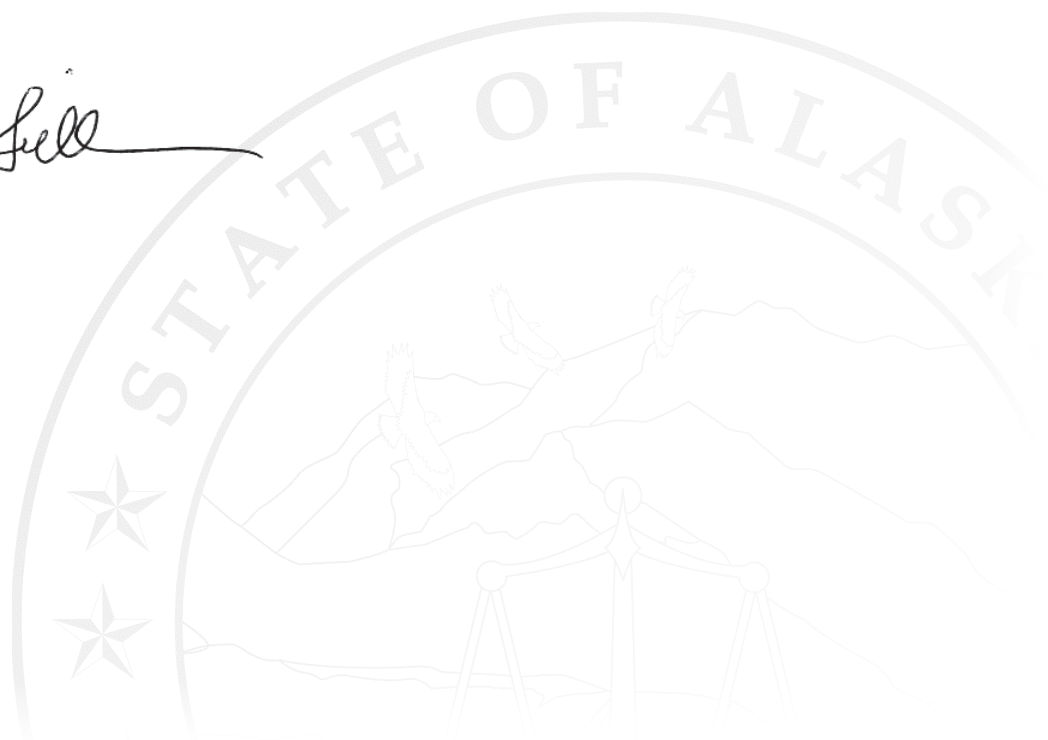
These positive results are possible because of the quality, professionalism and commitment of the men and women of the Department of Law. I have been in public service most of my life, and the attorneys and staff of the Alaska Department of Law are as good as it gets in terms of dedicated, intelligent, and hard-working public servants.

The benefit and positive difference our attorneys and staff bring to the lives of their fellow Alaskans can be difficult to measure. In putting dangerous criminals behind bars, defending our public institutions, or ensuring that a mine remains open and productive, their contribution to Alaskans' quality of life is invaluable. In our efforts that can be quantified, such as the \$560 million the Department of Law was awarded or collected for the state last year, Alaskans receive \$10 in return for every \$1 they spend on the department. We generate an impressive return, in both tangible and intangible ways, for Alaskans' investment in their Department of Law.

The attorneys and staff at the Department of Law come to work every day with a focus on making a positive difference for Alaska. As public servants, Alaska's future is our job. It is an honor to be able to lead this outstanding group of Alaskans.



*Daniel Sullivan  
Attorney General  
April 15, 2010*





# DEPARTMENT OF LAW ORGANIZATIONAL CHART

DANIEL S. SULLIVAN, ATTORNEY GENERAL

## CRIMINAL DIVISION

Rick Svobodny, Deputy Attorney General  
Susan McLean, Division Director

SPECIAL PROSECUTION & APPEALS  
Douglas Kossler, Appeals  
John Skidmore, Special Prosecutions

JUNEAU DISTRICT  
ATTORNEY'S OFFICE  
Doug Gardner, District Attorney

KETCHIKAN DISTRICT  
ATTORNEY'S OFFICE  
Stephen West, District Attorney

SITKA DISTRICT  
ATTORNEY'S OFFICE  
Jean Seaton, Assistant District Attorney

BARROW DISTRICT  
ATTORNEY'S OFFICE  
Teresa Buelow, Assistant District Attorney

KOTZEBUE DISTRICT  
ATTORNEY'S OFFICE  
Angela Jamieson, Assistant District Attorney

NOME DISTRICT  
ATTORNEY'S OFFICE  
John Earthman, District Attorney

ANCHORAGE DISTRICT  
ATTORNEY'S OFFICE  
Adrienne Bachman, District Attorney

KODIAK DISTRICT  
ATTORNEY'S OFFICE  
Stephen Wallace, District Attorney

FAIRBANKS DISTRICT  
ATTORNEY'S OFFICE  
J. Michael Gray, District Attorney

DILLINGHAM DISTRICT  
ATTORNEY'S OFFICE  
P. Susan Mitchell, Assistant District Attorney

PALMER DISTRICT  
ATTORNEY'S OFFICE  
Roman Kalytiak, District Attorney

KENAI DISTRICT  
ATTORNEY'S OFFICE  
Lance Joanis, District Attorney

BETHEL DISTRICT  
ATTORNEY'S OFFICE  
Dwayne W. McConnell, Acting District Attorney

## ADMINISTRATIVE SERVICES DIVISION

David Blaisdell, Division Director  
Eileen Donahue, Deputy Director

MANAGEMENT AND  
FINANCIAL FORECASTING  
Eileen Donahue,  
Deputy Director

BUDGETING  
Tracy Maher,  
Budget Analyst

FISCAL AND ACCOUNTING  
John Seagren,  
Finance Officer

PROCUREMENT  
Patricia Hull,  
Procurement Specialist III

TIMEKEEPING AND BILLING  
Eileen Donahue,  
Deputy Director

INFORMATION SERVICES  
David Seng,  
Information Technology Manager

## CIVIL DIVISION

Craig Tillery, Deputy Attorney General  
Nancy R. Gordon, Division Director

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

INFORMATION & PROJECT SUPPORT  
Alan Birnbaum,  
Senior Assistant Attorney General

LABOR AND STATE AFFAIRS  
Margie Vandor,  
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

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The Department of Law protects Alaska's children, communities, consumers, natural resources, financial assets and state's rights. It provides legal services to state government and prosecutes crime. The Department's four core services are: (1) protecting Alaskans' safety and physical and financial well-being; (2) fostering the conditions for economic opportunity and responsible development and use of our natural resources; (3) protecting the fiscal integrity of the state; (4) promoting and defending good governance. These core services are the responsibility of the Attorney General and carried out through the Department's three divisions: criminal, civil, and administrative services.

## THE CRIMINAL DIVISION RESULTS DELIVERY UNIT

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...protects the public by prosecuting 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's Offices in 13 Alaskan communities. Rick Svobodny (right) is the Deputy Attorney General overseeing the Criminal Division.



## THE CIVIL DIVISION RESULTS DELIVERY UNIT

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...serves the interests of Alaska's citizens by providing legal counsel to the executive branch in all civil matters. The division defends, prosecutes and oversees 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 (right) is the Deputy Attorney General overseeing the Civil Division.



## THE ADMINISTRATION & SUPPORT DIVISION RESULTS DELIVERY UNIT

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...performs duties essential to the day-to-day operation of the Department and to managing the resources of the Department. The Administrative services division prepares the Department's operating and capital budgets, oversees the Department's accounting practices and development of fiscal policies, manages procurement and provides technological support to the Department's attorneys and staff. David Blaisdell (right) is the division director.





# I. PROTECTING ALASKANS' SAFETY AND PHYSICAL AND FINANCIAL WELL-BEING

## A. PROSECUTING ALASKA'S CRIMINALS

The Criminal Division works with its partners in the criminal justice field to promote safe communities. It is the Criminal Division's responsibility to review all cases submitted by law enforcement and to determine the cases in which charges should be filed.

According to records maintained by the Alaska court system, the current trend is an increase in the number of criminal cases that are accepted and prosecuted. In Fiscal Year 2009, 5,820 felony charges and 31,713 misdemeanor charges were filed statewide. At this time, only statistics from the first quarter of Fiscal Year 2010 (July through September) are available. A comparison of the number of charges filed during that quarter show a 19.4 percent increase in felonies and a 7 percent increase in misdemeanors statewide. Misdemeanor domestic violence cases for the same quarter were up 15.2 percent. Significant increases in felony filings were noted in the Second and Third Judicial Districts, while misdemeanor charges were greatly increased in the Fourth Judicial District:

### First Judicial District:

felonies up 0%	misdemeanors down -4.3%
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### Second Judicial District:

felonies up 20.5%	misdemeanors up 2.7%
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### Third Judicial District:

felonies up 27.3 %	misdemeanors up .4%
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### Fourth Judicial District:

felonies up .4%	misdemeanors up 41.2%
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## 1. OFFICE OF SPECIAL PROSECUTIONS AND APPEALS

The Office of Special Prosecutions and Appeals is comprised of three separate units: the Appellate Unit, which responds to all criminal appeals; the Special Prosecution Unit, which prosecutes cases in specialized topic areas; and the Rural Prosecution Unit, which provides attorney assistance to rural offices and handles major cases which arise there.

### Appeals Unit

Attorneys in the Appeals Unit of the Office of Special Prosecutions and Appeals defend the convictions and sentences which have been obtained by prosecutors in the trial courts. The Appeals Unit attorneys represent the state in appeals before both the Alaska Court of Appeals and the Alaska Supreme Court. They also represent the state in the federal courts in federal habeas actions brought by state defendants.

Though there were many noteworthy appeals handled by the Appeals Unit this past year, two stand above the rest – one in federal court, and one in state court.

In *District Attorney's Office v. Osborne*, the U.S. Supreme Court agreed with the state's arguments that there was neither a federal procedural nor substantive right to post-conviction DNA testing. The state asserted that the issue of post-conviction DNA testing is better left to the states than the federal courts, a rationale ultimately adopted by a majority of the court. A concurring opinion also adopted a second rationale asserted by the state: Osborne had not complied with the various procedural requirements for making an innocence claim that would entitle him to post-conviction DNA testing. The court's 5-4 decision reversed the Ninth Circuit's decision to the contrary and had the incidental effect of affirming the Alaska Court of Appeals' determination that there was no federal constitutional right to post-conviction DNA testing.

In *State v. Miller*, the state convinced the Alaska Supreme Court to reverse a ruling of the Alaska Court of Appeals that had invalidated a police officer's stop of a car based on a 9-1-1 domestic violence call. The Alaska Supreme Court's opinion is notable for the number of times it explicitly agrees with the state's brief. The opinion wholly endorses law enforcement giving prompt and serious attention to reports of domestic violence. The opinion also corrects the Alaska Court of Appeals' application of the reasonable suspicion standard, with obvious consequences for cases outside the domestic violence arena.

### Special Prosecution Unit

The Special Prosecution Unit is comprised of attorneys dedicated to specific areas of criminal enforcement, including the prosecution of environmental crimes, criminal non-payment of child support, welfare fraud, Alaska Permanent Fund Dividend fraud, worker's compensation fraud and Medicaid fraud. The unit also



reviews all deaths which result from police officer-involved shootings.

The Medicaid fraud unit resolved one of the largest cases of Medicaid fraud in the state's history. Sherry T. Trotter, president of On Call Nursing of Alaska, pled guilty to a consolidated felony theft charge and was sentenced to 36 months in prison, with 28 months suspended, and was ordered to pay more than \$800,000 in restitution. The sentence also included 10 years of probation.

One notable environmental case this year was the conviction of American West Steamboat Company, LLC for polluting state waters. The charge arose from the May 2007 grounding of the passenger ship Empress of the North in Southeast Alaska. The company was ordered to pay a \$200,000 fine, of which \$150,000 was suspended on condition that the company serves 18 months of probation and does not violate any laws, including environmental regulations, and abides by its Safety Management System and Fleet Instructions. The remaining \$50,000 was deposited into the state's general fund and credited to the Oil and Hazardous Substance Release Prevention and Mitigation Account.

### **Rural Prosecution Unit**

The Rural Prosecution Unit has handled numerous major felonies this year, trying seven of them to convictions. They included unclassified felonies in Bethel, Kotzebue, and Barrow. The unclassified felonies resulted in major sentences for sex offenders, including one for 99 years and another for 52 years. The unit is still working with investigators around the state on other major felonies including murder and sexual assaults. Several more homicides have been charged, with trials pending.

The unit also provided assistance in person or telephonically to short-staffed offices in these same areas. It has been able to provide coverage or partial coverage in response to about two-thirds of the requests.

## **2. DISTRICT ATTORNEY'S OFFICES**

### **Anchorage**

The Anchorage District Attorney's Office conducted more than 120 trials this year, including 12 murder trials and 10 unclassified felony sexual assault trials. The office worked collaboratively with the court system and the defense bar to address the backlog of felony trials and the age of the "inventory." Though final numbers are not in, just 10 months into the process the presiding judge in the criminal division noted that virtually all of the pending inventory of felony trials had a 2009 docketing number (with unclassified felonies being the exception). It was common for seven trials to be underway at any given time throughout the year.

Several high-profile cases were tried this year. Of particular note, Christopher Rogers was convicted of murdering a UAA student and attempting to kill two more people while on the run after killing his father in a machete attack. Rogers received 309 years for the brutal, random attacks. Two mandatory 99-year sentences were given to sex offenders who were convicted of their third sexual offenses. The new sentencing laws regarding sex offenders have served to protect the public from recidivists in many more ways. It is now common for sex offenders to receive 25-year sentences for first offenses and 40-60 years if they have prior, non-sex related felonies in their criminal history.

Significant work and consultation throughout 2009 and into early 2010 resulted in the resolution of two of the most notorious murders in modern Anchorage history.

Joshua Wade changed his pleas in Alaska Superior Court and U.S. District Court to accept the responsibility for the murder of Mindy Schloss in 2007 and Della Brown in 2000. He received effective life sentences in both venues for the crimes, including a 99-year state sentence.

The Department of Law worked closely with the U.S. Attorney's Office in ensuring that Wade would be brought to justice and that the Anchorage community and the families and friends of Mindy Schloss and Della Brown could begin the important process of healing and closure.

### **Bethel**

The past year the Yukon-Kuskokwim Delta region saw continued escalation of the crimes of domestic violence. The most serious felonies continue to be assault and sexual assault.

The Western Alaska Alcohol and Narcotics unit in Bethel had a number of successful operations that resulted in seizures of fairly large quantities of Oxycontin and successful prosecution of the offenders.

The Rural Prosecution Unit continues to provide invaluable help to the Bethel District Attorney's Office. One of the major highlights of this year was a successful prosecution of John Leopold for a sexual assault in the first degree. After a hard-fought trial, the jury found the defendant guilty, and he was sentenced to serve 99 years in prison.

### **Fairbanks**

The Fairbanks District Attorney's Office obtained numerous high-profile convictions this year.

Prosecutors secured the conviction of 23-year old Richard Blevins, who shot his victim five times at short range and left him paralyzed from the neck down, for attempted murder and other ancillary counts. Blevins



also was charged and convicted of third-degree felony assault for threatening a patron with the handgun as he fled from the bar. After a two-day sentencing hearing in December, the court sentenced the defendant to a composite sentence of 51 years and nine months to serve, with another 21 years suspended.

Three men were convicted of second-degree murder after killing a local businessman and dumping his body on a levee along the Tanana River south of town shortly after Christmas 2008. Co-defendants Michael Moore, Raymond Jones and Brian Towndrow have all entered pleas to second-degree murder. Jones is scheduled for sentencing in May, Moore in June and Towndrow in September.

20-year old Eielson AFB Airman Justin Lincecum was convicted after trial of sexual abuse of a minor following his sexual relationship with a 13-year-old from North Pole he met in an Internet chat room. Sentencing is set for April.

Prosecutors secured the conviction, following a two-week trial, of 21-year-old Gareth Demoski on two counts of sexual assault in the first degree and one count of attempted sexual assault in the first degree involving three different victims. Sentencing is set for April.

### **Kenai**

The year started unfortunately with the discovery of the body of a girl in her early 20s. Her body was in a box that had been hidden in an abandoned car in Nikiski during the winter. She had been bound hand and foot, and the box had been taped shut. The body was accidentally discovered by a neighbor. A local man was charged with murder in connection with this discovery, and the case is ongoing.

One defendant was convicted at trial in Homer of manslaughter and felony DUI after driving a four-wheeler off an embankment, killing his girlfriend. Another drunk driver pled guilty to criminally negligent homicide in the death of his young passenger.

Two Seward methamphetamine manufacturers were convicted of Class-A felonies at trial, and a Kenai drug dealer was convicted of Class-A drug felonies after a jury trial. Heroin use is on the rise on the Kenai Peninsula, and in one example, a local drug dealer pled guilty to homicide after a local man overdosed and the heroin he had injected was traced back to the dealer.

One violent predator pled guilty to an agreed-upon sentence of 20 years, with 10 years suspended, in a sexual assault case. But he decided he wanted a trial in his other case, concerning the assault of a correctional officer at Wildwood Correctional Center. He was

convicted at trial of assault and received another nine months on top of his 10 years to serve.

In 2009, the Kenai District Attorney's office opened 571 new cases per attorney. The office consists of seven attorneys, three paralegals, two and one-half law office assistants, an office manager and two clerks.

### **Ketchikan**

The Ketchikan District Attorney's office had two notable successes this year.

First, the state finally convicted Marcus Anderson of arson in the first degree. On October 26, 2004, Anderson was charged with arson and assault for setting fire to an occupied house late at night, injuring the occupant. After Anderson confessed to setting five other fires to buildings during the previous year, he was charged with five counts of arson in the first degree. After litigation lasting over one year, Anderson was found to be incompetent to stand trial, and his cases were dismissed. Anderson was later released from custody and again set a building on fire. He was charged and, after litigation lasting over two years, was found competent to stand trial. He then entered a plea agreement, pled guilty to the 2004 arson, and was sentenced to 20-years' imprisonment.

Second, Tracy Swisher, who in 2008 fled the state before his sentencing on conviction for sexual abuse of a minor, was extradited from Mexico back to Alaska this year. Swisher was sentenced on his sexual abuse of a minor charge and was charged with and convicted of felony failure to appear.

### **Kodiak**

The Kodiak District Attorney's office is staffed with a district attorney, an assistant DA, a paralegal and a law office assistant.

Criminal case prosecution volume normally fluctuates during the course of the calendar year with an increase in the number of case referrals during the summer months, when the population increases as seasonal fisheries become more active. The number of criminal case referrals to the office has remained steady throughout the calendar year, however.

Cases of note during 2009 included the following:

John Pruitt, a local massage therapist, was convicted and sentenced for sexual assaults involving six women clients.

Jason Reandeau, convicted of sexual abuse of a minor following trial in late 2008, was sentenced by Judge Ashman in April to 25 years to serve, given his prior conviction as a sex offender.



A midsummer attempted sexual assault of a homeless woman has resulted in the conviction of another Kodiak man. As a second-time sex offender, he will also serve a presumptive term without good time. He is awaiting sentencing.

A husband and wife were convicted separately for their involvement related to forgeries and the embezzlement of more than \$25,000 from a local real estate company. A complete restitution recovery by the company was accomplished as a result of the state's prosecution.

Several defendants were arrested as a result of narcotics trafficking investigations during the fall. Police, with the assistance of the District Attorney's Office, executed more than 25 search warrants during the fall resulting in the seizure of 33 grams of methamphetamine. The investigation resulted in the charging of multiple defendants with methamphetamine distribution and revealed bank deposits of trafficking proceeds totaling more than \$80,000.

### **Nome/Kotzebue**

Nome and Kotzebue each handled more than 800 new criminal cases, many leading to significant criminal convictions.

For example, in Kotzebue, the state secured a conviction following a jury trial of William Smith for the attempted sexual abuse of an 11-year-old girl. Smith is now serving 20 years.

Herbert Sheldon of Selawik was convicted of attempted arson and sentenced to six years in prison for attempting to burn down a house with his girlfriend and children inside. Paul Carter of Buckland, while on probation for felony assault, put a revolver to the head of his girlfriend and told her that he was going to kill her. While his case was pending, Carter attempted to convince her to change her testimony about what happened. Unsuccessful,

Carter was convicted of third-degree assault and contempt of court, and received a sentence of more than five years. Also of note, Ken Shoogukwruk of White Mountain pled guilty to attempting to engage in sexual contact with his young daughter and faces sentencing as a two-time felony sex offender.

## **3. SPECIAL PROGRAMS**

### **Sexual Assault and DUI Case Training**

The division provided a three-day training for all attorneys employed in District Attorney's Offices across the state. The focus of the training was prosecuting sexual assault and driving under the influence cases. Funding was provided through grants from the U.S. Department of Justice, Office on Violence Against Women and the Alaska Highway Safety Office.

### **Paralegal Training**

The division provided a two-day training in Nome for all victim witness paralegals. The training covered such topics as creating visual presentations for trial, assisting for victims of violent crimes and developing communication skills for interacting with traumatized victims and witnesses. Funding was provided by a grant the division requested and was awarded from the U.S. Department of Justice.

### **Trial Advocacy Training**

The division provided a week-long Trial Advocacy III training for 23 attorneys. This was the third in a series of prosecution training for these attorneys. Six instructors from the National Advocacy Center provided the training in Sitka. The training was paid for by VAWA STOP funding through the Department of Justice, Office on Violence Against Women.



*Attorney General Dan Sullivan  
with the 2009 student interns.*



## **Security Updates**

The Dillingham District Attorney's Office was remodeled to better fit the needs of, and provide better security for, the prosecutor and staff.

## **Anchorage Phoenix Project**

Attorneys from the central office and from the Anchorage District Attorney's Office were actively involved in the Phoenix Project. This project was initiated by the court system and is a collaborative effort between all agencies using the Anchorage trial courts to reduce delays in getting cases to trial.

## **Technology Upgrade**

The Criminal Division's case management system, CRIMES, was implemented 11 years ago and needs to be upgraded. The case management system has reached a critical point as both the software and hardware have become seriously out of date. The Department received \$200,000 for this application upgrade, which includes much needed software functionality improvements, a database system replacement to meet departmental standards, and replacement of the aging servers with new, state-of-the-art server systems to improve application performance and reliability. Although staff turnover has delayed this project, the software portion has been completed and the balance is on target for completion by the third quarter of 2010.

## **B. PROTECTING ALASKA'S CHILDREN**

Protecting Alaska's children is one of the most important tasks of the Department. The Department protects Alaska's children in part by prosecuting child abuse and neglect in confidential Children in Need of Aid (CINA) cases. This year the Department prosecuted approximately 3,000 ongoing CINA cases with the goal of achieving permanency for children, whether through reunification with their families or other permanent placements such as adoption or guardianship.



*Children visit the Kotzebue District Attorney's Office for Halloween trick-or-treating.*

Department attorneys carry an average of over 125 cases, significantly higher than the 100 cases per full-time attorney suggested by the U. S. Department of Health and Human Services. This year the Department represented the Office of Children's Services in 19 appeals involving the termination of parental rights; the state prevailed in all 19.

The Department was instrumental in creating and implementing new family contact protocols, which significantly improve the quality and quantity of contact between children and families in the system. Research indicates that this increases the chances of successful reunifications and decreases the time a child spends in foster care. The two-year process of creating the protocols was a collaborative effort between the Attorney General's Office, the Office of Children's Services, the Public Defender Agency, the Office of Public Advocacy and the Court Improvement Project. After numerous multidisciplinary trainings across the state in which a number of assistant attorneys general were presenters, the new policy and protocols went into effect July 1. The child protection community expects positive results from the new policy.

The Department has a role in increasing the number of children in foster care who are eligible for federal aid by obtaining specific judicial findings at various points in the case. At the first hearing in a case, attorneys must obtain a finding that it is "contrary to the welfare of the child to remain in the home." Failure to obtain such a finding will keep the Office of Children's Services from ever receiving federal foster care reimbursement for that child through Title IV-E of the Social Security Act. Over the past few years, this goal has been met consistently.

Many of the assistant attorneys general in the child protection section sit on working groups aimed at improving the child protection system and supporting the children in care. The collective efforts in these working groups have a very real impact on emerging child protection policy and practice.

## **C. PROTECTING ALASKA'S CONSUMERS**

The Consumer Protection Unit in the Commercial and Fair Business Section exercises the Attorney General's authority to enforce consumer protection and antitrust laws. Under the authority of the Consumer Protection Act, the section investigates and brings enforcement actions against businesses that engage in unfair or deceptive trade practices. Because of limited funding, most enforcement activities involve situations affecting a large number of consumers or large dollar amounts.



The unit receives and processes almost 500 consumer complaints a year. Most complaints are resolved through an informal process resulting in either direct or indirect assistance to consumers, commencement of a formal investigation, or referral to other appropriate state and federal agencies. The Department also participates in many multi-state enforcement actions. These matters are coordinated through the National Association of Attorneys General and often result in sizeable recoveries for the state and affected Alaska consumers. In 2009, the section collected approximately \$1.5 million for consumers and the state in settlements of multi-state and local enforcement actions.

## 1. SEVEN MULTI-STATE CONSUMER PROTECTION SETTLEMENTS BENEFIT ALASKANS

### **Mattel, Inc. and Fisher-Price**

The attorney general, along with 38 other state attorneys general, entered into a settlement agreement with Mattel, Inc. and Fisher-Price, Inc., resolving a 16-month investigation into the events that resulted in a voluntary recall of the company's toys for excessive lead paint during 2007. The agreement, filed in Anchorage Superior Court, requires Mattel to phase in the recently adopted more stringent federal lead paint standards ahead of the timelines provided in the Consumer Product Safety Improvement Act; provides the states with enforcement authority for those standards; and requires Mattel to make a \$12 million payment to the states.

### **Dell Inc. and Dell Financial Services**

The state reached a settlement with Dell Inc. and Dell Financial Services to address concerns about financing promotions, technical support and repair policies, and rebate offers. The settlement provided for \$25,000 in restitution for Alaskan consumers who were harmed. Similar agreements were reached by 30 other states as part of a multi-state investigation led by Washington and Connecticut.

### **Airborne**

Alaska and 31 other states reached a settlement with the makers of Airborne, a dietary supplement promoted for cold and flu prevention. Under the consent judgment, the defendants are prohibited from urging consumers to "take at the first sign of a cold symptom" and from making claims implying that Airborne can prevent, treat, or cure colds, coughs, the flu, an upper respiratory infection, or allergies. By law, advertisements for dietary supplements such as Airborne cannot make such drug claims even if they can provide substantiation, unless and until they have been approved as a drug by the FDA.



*Joanne Grace, chief assistant attorney general for the Opinions, Appeals and Ethics Section, was awarded the 2009 Supervisors' Achievement Award.*

Airborne will also have to pay \$7 million to the states, the largest payment to date in a multi-state settlement with a dietary supplement producer. Alaska's share of the settlement is \$150,000.

### **Enviga**

Alaska and 26 other states entered into an Assurance of Voluntary Compliance (AVC) with Coke, Nestle, and Beverage Partners Worldwide to settle energy-burning and weight-loss claims concerning Enviga, a green tea beverage. Promotional materials for Enviga included phrases such as "drink negative" and "the calorie burner," and claimed that the extra calorie-burning effect would result in weight loss. The claims were based, however, on a limited, short-term study of healthy, normal-weight 18-35 year-olds, without proof of actual weight loss or of similar results for the general population.

Respondents paid \$650,000 to the states and will include disclosures for Enviga or similar products indicating that weight loss can be achieved only through diet and exercise.

### **Michelin**

Along with 16 other states, Alaska entered into a settlement with Michelin North America, Inc., regarding alleged representations Michelin made in its advertising



of Michelin fuel efficient tires. The states alleged that Michelin's fuel efficiency advertisements did not adequately disclose certain information and made claims that Michelin makes the most fuel efficient line of tires on the road, when in some classes of tires a Michelin tire is not the most fuel efficient. The settlement requires Michelin to possess competent and reliable scientific evidence substantiating any fuel efficiency claim regarding its tires, make other business practice improvements, and to pay the states \$375,000.

#### **Community Support Inc.**

The attorney general, along with at least 35 other state attorneys general, reached a settlement with professional solicitor/telemarketer Community Support, Inc (CSI). CSI, which is based in Milwaukee, Wisconsin, solicits funds from consumers in Alaska and nearly every state on behalf of over 35 charitable clients. Generally, CSI kept at least 83 percent of all money donated, and in many of the contracts kept 90 percent.

The states participating in the multi-state investigation, which was led by Alaska and Missouri, alleged that CSI had a pattern of consistently violating state laws. Alleged conduct by CSI included misrepresenting the amount of the funds that actually go to the charities, falsely asserting that donated funds would be spent in the call recipients' local communities, harassing call recipients, falsely claiming to be law enforcement officers or veterans, and falsely claiming people had made pledges when they had not.

CSI agreed to cease all of the unlawful practices discovered in the investigation through stipulated consent judgments. CSI will have to regularly report to the states and take more responsibility for its employees'

training and conduct, and for representations made to consumers. CSI also agreed to reimburse the states \$200,000 for the costs of the investigation. Alaska's share is \$16,000.

#### **Dish Network, LLC**

Alaska and 45 other states entered into an assurance of voluntary compliance (AVC) with Dish Network, LLC. The settlement resolved the states' allegations that Dish Network: failed to disclose all terms and conditions of its customer agreements; did not disclose that purchased or leased equipment was previously used and/or refurbished; charged customer credit cards and debited bank accounts without providing adequate notice and obtaining appropriate authorization; and committed other violations.

Under the AVC, Dish Network has agreed to pay restitution to consumers and \$5.9 million to the states.

## **2. LOCAL CONSUMER PROTECTION ENFORCEMENT ACTIONS**

#### **Coffman Cove Adventures**

The Attorney General's Office entered into an assurance of voluntary compliance (AVC) with the owners of the business Coffman Cove Adventures on Prince of Wales Island, resolving allegations that the business violated the Consumer Protection Act by engaging in deceptive advertising on its web site. The AVC requires the business to correct its web site; provide accurate, non-misleading information in all future advertising; send notices to clients with correct information about the business; and provide a refund to any client who requests a refund.



*The governor's Rural Action Subcabinet, chaired by the attorney general, made five listening trips in preparation for a written report on the quality of life in the Bush. In Tanana, the group received information on public works facilities. From left, Mike Black, deputy commissioner, Department of Commerce, Community and Economic Development; Larry Hartig, commissioner, Department of Environmental Conservation; Bear Ketzler, Tanana city manager; Emil Notti, commissioner, Department of Commerce, Community and Economic Development; and Dan Sullivan, attorney general.*



### **Alaska 4 Seasons**

The Consumer Protection Unit filed an enforcement action against a travel company, Alaska 4 Seasons, and its owner, Brigitte Heath, for violations of the Consumer Protection Act. The allegations in the complaint included the business' failure to provide refunds for group tours that were cancelled within the period in which the business had promised full refunds. The court issued a default judgment against the company and its owner for violations of the Consumer Protection Act, based on the failure to provide refunds when due to two companies that had made deposits for group tours. The judgment includes an award of \$30,000 in civil penalties.

### **Kia America**

The state filed a lawsuit against Kia America for violations of the Consumer Protection Act. The suit alleges Kia made misrepresentations to consumers about warranty coverage in areas where there are no authorized Kia dealers. A consumer complaint alleged Kia promised to honor warranty repairs performed by any qualified mechanic in Ketchikan, which has no Kia dealer. Based on these representations, the consumer purchased a new Kia from a dealer in Seattle. When the consumer had a warranty repair completed by the local Subaru dealer, Kia refused to honor the warranty. A couple of months after filing suit, the state was able to obtain a settlement that included restitution to the consumer of \$2,000 (roughly double the amount of the repair cost) and an agreement to pay for future warranty repairs done in Ketchikan by any qualified repair facility, plus an \$8,000 penalty to the state.

### **Klassique Jewelers**

The state settled an enforcement action brought against a jewelry business in Juneau for violations of the Consumer Protection Act and retail advertising regulations. The store, which operates during the cruise ship season, displayed signs such as "Everything 70% Off" or "Blow Out Sale" for more than half of the season. Jagtiani, d/b/a Klassique Jewelers, entered into a consent judgment, agreeing not to use price comparison advertising based on a fictitious regular price and not to make false or misleading statements regarding the reasons for price reductions, and not to otherwise engage in unfair or deceptive practices. Jagtiani has paid the state \$50,000, of which \$15,000 will be suspended if there are no violations of the consent judgment through Oct. 1, 2010.

### **On-Line Yellow Pages, Inc.**

The state entered into a settlement with On-Line Yellow Pages, Inc. (OLYP), a California business which publishes Internet yellow pages and sells web advertising service packages. The business solicited

Alaska businesses, non-profits, churches, schools and government agencies to purchase its services through the use of a solicitation check, which is a live or negotiable check made payable to the prospective customer, that upon being deposited by the customer, activates the customer's account. The customer is then billed by OLYP. The state alleged in part that OLYP's use of the checks was an unfair or deceptive act or practice in violation of the Consumer Protection Act.

Under the settlement, which was filed in court as a consent judgment, OLYP is prohibited from offering its services in Alaska through the use of solicitation checks and from billing any consumers who were signed up for its services by means of a solicitation check. OLYP was also required to provide refunds to certain consumers and make a payment to the state in the amount of \$30,000.

## **D. PROTECTING THE VULNERABLE**

The Department was involved in representing the Department of Health and Social Services (DHSS) in numerous lawsuits challenging how that department administers public assistance programs, such as food stamps, foster care payments and personal care services, defending these practices in both Superior Court and the Alaska Supreme Court. A comprehensive training program is under way to assist the DHSS in more effectively delivering services in compliance with statutes and regulations.

The Department was also involved in hundreds of cases statewide related to protecting mentally ill persons, as well as those affected by involuntary commitment statutes, and also was instrumental in assisting vulnerable adults by establishing guardianships and/or conservatorships for those individuals in need.

The Department has been increasing its collections efforts by improving the subrogation and third-party recovery, taking over from a third-party contract the estate and trust recovery programs, as well as creating a system of tracking these cases. The Department is centralizing its efforts in representing and advising on Medicaid Provider Audits. There are more than 1,500 open files and recovery in excess of \$1 million.

Finally, the DHSS has seen a marked increase in the number and complexity of foster care licensing cases. This is illustrated by the Department's advice and assistance related to the assumption of management of the Mary Conrad Center in December 2008, including assisting DHSS in finding a new operator and working through a myriad of legal issues related to the assumption of management. The Department has been involved in more than 35 appeals under AS 47.32, which



provides protection to some of the most vulnerable citizens of this state from inappropriate providers, and prevailed in all of these matters to the benefit of the state.

## E. PROTECTING ALASKA'S ENVIRONMENT

The Department of Law provides advice and representation to several agencies, including primarily the Department of Environmental Conservation, to assist them in the performance of their duties related to environmental matters. Among the major environmental issues the Department handles are oil spill cleanups, cleaning contaminated sites, enforcement of air- and water-quality laws, and the Department of Natural Resources' Coastal Management Program.

### 1. EXXON VALDEZ OIL SPILL

The 1991 agreement settling the state and federal governments' civil claims against ExxonMobil Corporation as a result of the Exxon Valdez oil spill (EVOS)

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 took the first step in asserting a claim under the reopener provision by providing Exxon 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.

### 2. BP EXPLORATION SECONDARY CONTAINMENT VIOLATIONS

The Department assisted DEC in the negotiation of two compliance orders by consent between BP Exploration (Alaska) (BPXA) and the Department of Environmental Conservation (DEC). These compliance orders resolve



*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 vessel's owner has paid more than \$800,000 to settle claims from the incident. See page 15.*



oil storage tank secondary containment violations at the Greater Prudhoe Bay, Endicott and Badami oil facilities on the North Slope. As a result of inspections conducted by DEC in October 2007, three secondary containment areas were found to be inadequate in size to hold the contents of the largest oil storage tank or the tank truck using the loading facility. In addition, the containment areas were significantly smaller than represented to DEC in BPXA's approved Oil Discharge Prevention and Contingency Plan. As part of the negotiation of the compliance order, BPXA undertook an audit of its North Slope facilities and identified 16 other secondary containment areas that were undersized either because they had not been maintained over time or because they were too small as originally constructed.

Under the compliance order, BPXA has agreed to repair the secondary containments and loading areas and has completed the repair of almost all of the facilities. The remainder of the repair work will be completed in 2010. BPXA also paid civil assessments under AS 46.03.760(a) of \$1,709,498. The civil assessments reimbursed the state's costs of investigation and negotiation of the compliance order and reflected BPXA's economic savings in not meeting the secondary containment requirement as required by DEC's 1997 spill prevention requirements and BPXA's approved oil spill contingency plan.

### 3. SEABULK PRIDE TANKER GROUNDING

The Department and DEC completed an investigation of the Feb. 2, 2006, grounding of the oil tanker Seabulk Pride near the Nikiski Kenai pipeline dock in Cook Inlet. The investigation identified violations of the vessel's oil discharge prevention and contingency plan and DEC's oil pollution prevention regulations that occurred both before and during the incident. The Department has submitted demand letters to Seabulk and Tesoro to resolve these violations. The parties have had initial settlement discussions, and the Department continues to pursue this matter.

### 4. SELENDANG AYU GROUNDING AND OIL SPILL

IMC Shipping Co. and Ayu Navigation (IMC) have paid the state \$844,707 to settle oil spill, wreck removal and lost fish tax claims arising out of the Dec. 8, 2004, grounding of the M/V Selendang Ayu, which went aground and broke apart off Unalaska Island, spilling thousands of gallons of oil into the Bering Sea and oiling miles of coastline. The total cost of cleanup actions was over \$100 million.

The owner, IMC Shipping of Singapore, paid a spill penalty of \$802,389 and trespass damages and a beach monitoring fund of \$36,000. With the exception of the Exxon Valdez spill, this was the largest civil oil

spill penalty recovered by the state. The settlement also includes a \$1 million letter of undertaking issued by the vessel's insurers to cover wreck removal should any remaining portions of the submerged vessel move onto tidelands or beaches before Aug. 30, 2015. The state already has recovered more than \$2.5 million in costs for cleanup, monitoring and other work related to the grounding.

The state also is pursuing separate natural resource damage claims in cooperation with state and federal natural resource trustee agencies. Those natural resource damage claims are not affected or resolved by this settlement.

## 5. WATER AND WETLANDS PERMITTING ISSUES

The exercise of federal jurisdiction over waters and wetlands in Alaska is of keen interest to the state because it contains more than 174 million acres of wetlands. The Department, with the DEC and the Department of Natural Resources (DNR), continues to review new and 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 to assess the potential impact they will have for projects and activities within Alaska.

## 6. ALASKA POLLUTANT DISCHARGE ELIMINATION SYSTEM

The state's application to EPA to take over the program for permitting disposal of pollutants in surface waters was approved in October 2008. The state demonstrated that it has the authority to run a program for pollutant discharge no less stringent than EPA's under the federal Clean Water Act. Following EPA approval of the state's application, several Native tribes and environmental groups petitioned the Ninth Circuit to review EPA's approval, arguing that the state program does not satisfy the applicable federal criteria for program approval. The state intervened in that proceeding, and briefing was submitted to the court during this summer and fall. While the schedule for oral argument is pending, EPA's program approval remains in effect, and DEC has begun its phased assumption of the permitting.



## II. FOSTERING THE CONDITIONS FOR ECONOMIC OPPORTUNITY AND RESPONSIBLE DEVELOPMENT AND USE OF OUR NATURAL RESOURCES

### A. DEVELOPING ALASKA'S NATURAL RESOURCES

As part of its mission to foster conditions for economic opportunity and growth, the Department of Law supports, through litigation, administrative proceedings, and advice to executive branch agencies, the responsible development of the state's natural resources. The Department seeks to create a legal climate favorable to responsible resource development that can benefit the state and its citizens for generations to come.

#### 1. KENSINGTON APPEAL

On June 22, the U.S. Supreme Court ruled in favor of the state and Coeur Alaska in their appeal from an adverse Ninth Circuit Court of Appeals decision over the permitting of tailings disposal at the Kensington Mine. The court held that because mine tailings are "fill material" under federal regulations, the Army Corps of Engineers, rather than the EPA, has permitting jurisdiction over their disposal. This decision reversed the contrary 2007 opinion of the Ninth Circuit. The mine is now proceeding to construction and operation under its various state and federal permits. Thanks to the Department's efforts, over 300 well-paying jobs in Southeast have been preserved.

#### 2. OCS DEVELOPMENT

The Department moved to protect state interests in lawsuits brought by environmental groups against the federal government over oil and gas leasing in the outer continental shelf (OCS). The Department successfully intervened in an environmental challenge to an OCS lease sale in the Chukchi Sea, in which Shell, ConocoPhillips and other oil companies bid more than \$2 billion for the leases. The Department filed a motion to intervene in a Petition for Review filed by several groups in the Ninth Circuit over the Minerals Management Service's decision to approve Shell's exploration plan in the Beaufort Sea. The Department is also defending the state's interests in an environmental challenge to the federal government's 2007-2012 plan for Alaska OCS leasing.

#### 3. ASSISTANCE WITH AGIA

The Department provided extensive assistance to the departments of natural resources and revenue in implementing the Alaska Gasline Inducement Act (AGIA) license that became effective in November 2008. The Department expended substantial resources on development and implementation of the act's reimbursement and auditing procedures and project plan implementation reviews. It provided substantial legal advice to the administration and is helping to develop royalty regulations in advance of the initial AGIA open season in 2010.

#### 4. POINT THOMSON

The Department assisted the Department of Natural Resources in a number of administrative and judicial proceedings arising out of the decision to terminate the Point Thomson Unit. The state has thus far recovered about \$20 million and eight oil and gas leases, and work is under way on lessees' post-litigation commitment to expend \$1.4 billion to drill wells and commence production of gas liquids from the gas reservoir by 2014.

#### 5. CONSTITUTIONAL CHALLENGES TO PERMITS AUTHORIZING MINERAL EXPLORATION

On July 29, Trustees for Alaska brought suit on behalf of several plaintiffs against the state, alleging constitutional violations in the statutes and regulations used to authorize temporary land and water uses during mineral exploration activities, and specifically in the context of the Pebble Mine project.

The challenged statutes and regulations also authorize temporary land and water uses for a variety of non-mineral exploration activities throughout the state. The plaintiffs assert that these laws violate the Alaska Constitution.

The Superior Court recently denied plaintiffs request for preliminary injunctive relief but also denied the state's motion to dismiss. Nonetheless, the court indicated it found little merit in five of plaintiffs' six causes of action. The parties will be briefing the case further, and if the case is not dismissed under motions for judgment on the



pleadings or on summary judgment motions, then it will go to trial sometime in mid-to-late 2010.

## B. PARTNERING FOR ECONOMIC SUCCESS IN RURAL ALASKA

The Governor's Rural Action Subcabinet, with the Attorney General as its chair, was formed to consider rural migration patterns and the cost of energy in rural Alaska, among other issues concerning the quality of life in the Bush.

The governor asked the subcabinet to develop a rural needs strategy that was sensitive to the culture and way of life of rural Alaskans. In the spring of 2009, the subcabinet convened an advisory group and commissioned and reviewed reports on rural migration and the cost of fuel.

In the fall of 2009, under the lead of AG Sullivan, the subcabinet travelled on fact-finding missions to every region of the state, meeting with local leaders, touring community projects and holding well-attended public hearings.

Over and over, rural residents told the subcabinet that they support better connections between their communities, whether by roads, more hub facilities, or enhanced telecommunications infrastructure. Rural residents pointed to energy challenges in their communities, but they showed ingenuity and initiative in embracing alternative technologies. They asked for help with jobs and job training, but they also showed a spirit of entrepreneurship and enterprise from which all Alaskans could learn.

The subcabinet's written report of its findings and recommendations will be available in the spring of 2010.

## C. BUILDING AND PROMOTING ALASKA'S INFRASTRUCTURE

### 1. TRANSPORTATION AND PUBLIC FACILITIES

The Department provides advice on infrastructure and transportation issues for state agencies, including the Alaska International Airport System, Statewide Aviation System, Marine Highway System, the Department of Transportation and Public Facilities' (DOT &PF) highways and facilities divisions, and the Division of Measurement Standards and Commercial Vehicle Enforcement.

The Department helped DOT&PF acquire property from willing sellers and exercise eminent domain for projects such as Trunk Road near Wasilla, the 5th-6th Avenue

upgrade in Anchorage, Dowling extensions in Anchorage, Ketchikan's South Tongass Highway, and Fairbanks' Illinois Street.

The Department gave legal advice to state agencies on multiple issues related to ongoing and now-completed infrastructure projects such as the Anchorage and Fairbanks 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, a Knik Arm crossing, Juneau access, and in-state gas line, spur line and propane projects.

The Department helped the state acquire and appropriately manage federal stimulus funds, and worked to resolve issues between the state and tribes with the goal of helping Alaska tribes take full advantage of federal Indian Reservation Road funds.

The Department successfully defended the public's right to beach access in Nikishka and against assertions that DOT&PF and its contractors violated Environmental Protection Agency storm water discharge permit requirements.

The Department also defended the state's procurement decisions against contractor claims for additional compensation.

### 2. RENEWABLE ENERGY

The Department has been working closely with the Alaska Energy Authority to develop and implement the renewable energy grant fund program established by HB152 in 2008. This program was enacted to grant \$250 million over five years for renewable energy projects throughout Alaska, including wind, solar, geothermal, waste-heat recovery, river in-stream, hydropower and biomass energy projects.

The Department has assisted the authority in developing procedures and criteria for soliciting applications and for evaluating and ranking them. This includes criteria for evaluating technical and economic feasibility of proposals that are ranked statewide and by region to achieve the geographical balance mandated by the Legislature.

Under this program, the Alaska Energy Authority was authorized to issue the first round of grants for FY09. For subsequent rounds, the authority makes recommendations to the Legislature for appropriation, consulting at each stage with a renewable energy fund advisory committee established by the Legislature. The authority moved quickly to solicit and evaluate applications for the first round of grants, and those grants, which total about \$95 million, are being issued now. The second round of applications has been processed and



recommendations have been made to the Legislature for funding, with a \$25 million appropriation pending.

## D. DEFENDING STATE CONTROL OVER LANDS, WATERS AND WILDLIFE

### 1. ENDANGERED SPECIES ACT ISSUES

In recent years, environmental groups have sought to list numerous species under the Endangered Species Act (ESA) and to expand the reach of ESA regulation by obtaining expansive critical habitat designations for listed species. The overly broad application of the ESA has potentially serious consequences for continued resource development and economic expansion, and thus for Alaska's economic future. The Department of Law has intervened in numerous ESA proceedings to challenge unwarranted listing decisions and overly broad critical habitat designations. The Department will continue to defend the state's interest from misuse of the ESA when the law and facts warrant.

#### Polar Bears

In August 2008, the Department 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 argues that the listing determination was not based on the "best scientific and commercial data available" and did not

adequately consider the substantial efforts being made by Alaska, its political subdivisions and foreign nations to protect and conserve polar bears.

The state's lawsuit is now one of 10 concerning the listing of the polar bear as threatened under the Endangered Species Act, the concurrent Special Rule issued under ESA section 4(d), or importation of polar bear trophies from Canada. Alaska is involved in three cases involving the first two issues. The various participants in these cases include environmental organizations, industry and business organizations, and other non-governmental organizations. Briefing on all three components of the consolidated cases is expected to be completed in August 2010.

#### Cook Inlet Beluga Whales

In October 2008, the Cook Inlet beluga whale was listed as an endangered species. In January 2009, the department prepared a 60-day notice of intent to sue, filed with National Marine Fisheries Service (NMFS), to challenge various aspects of the listing decision. The department is evaluating its legal options related to the beluga listing. Also, in December 2009, NMFS proposed a critical habitat designation for the beluga whale in Cook Inlet. The department prepared comments on the proposed critical habitat for submission to NMFS, which focused on the action being premature because the proposal did not take into account relevant available information and given the existing state and federal protections already in place, no additional or special management considerations are needed to protect



*Fish wheels stored on the banks of the Yukon river at Tanana.*



the beluga whales in Cook Inlet. The comments also questioned the economic methodology used that underestimates the cost of the designation. Finally, the proposal did not adequately consider exclusion of certain areas and activities from the critical habitat area.

### **Ice Seals**

In response to a listing petition from the Center for Biological Diversity arguing that loss of sea ice habitat imperiled several species of ice seals, NMFS published its 12-month finding that listing the ribbon seal under the ESA is unwarranted. The Center for Biological Diversity has since sued NMFS to challenge the agency's finding. The Department has prepared a motion and memorandum in support of the state's intervention in that case in the U.S. District Court for the District of Northern California.

### **Humpback Whale**

An lawsuit was filed against the state to enjoin the salmon drift gillnet fishery in the Port Chalmers sub-district. The suit argues the fishery will harm endangered humpback whales. The Department opposed a motion for an emergency temporary restraining order to close the fishery. On May 22, the court denied the motion. The court is currently considering the plaintiffs' motion for a preliminary injunction shutting down the fishery.

### **Columbia River and Snake River Hydroelectric Projects**

The Department assisted the Alaska Department of Fish & Game (ADF&G) in monitoring ongoing litigation regarding the Federal Columbia River Power System and Snake River System Biological Opinions (BiOP) developed under section 7 of the ESA, which requires that federal agencies that are contemplating actions that might affect threatened or endangered species or designated critical habitat for threatened or endangered species consult with NMFS or the Fish & Wildlife Service regarding the impact of the contemplated action on the listed species.

Specifically, the Department assisted ADF&G in providing comments on the sufficiency of the data used by NMFS, as well as the ways in which the analytical methodology employed by NMFS failed to meet legal requirements in the third revision of the BiOP. The parties to the litigation are engaged in motion practice over the sufficiency of the "final" BiOP.

### **Pacific Salmon Treaty**

The Department provided advice to ADF&G regarding various issues related to implementation of parts of the Pacific Salmon Treaty between the United States and Canada. The Chinook chapter of the treaty was

renegotiated in December 2008, and one of the deputy commissioners of fish and game is a Pacific Salmon Treaty commissioner. Treaty implementation is subject to the ESA section 7 requirement to consult with NMFS regarding the impact of the new provision on threatened and endangered species affected by the treaty. The Department provided advice on how to structure the treaty agreement so that the treaty could adapt to changing conditions without repeatedly triggering the section 7 consultation requirement.

### **ESA Section 6 Agreement**

Department attorneys assisted ADF&G's Division of Wildlife Conservation with its application to enter into a limited cooperative agreement for the conservation of animal species with the NMFS, by confirming that the state's laws meet the conditions required by the ESA for inter-agency cooperation.

In order to enter into a section 6 agreement, the state agency must demonstrate that it has the authority, plans, programs and capability to establish and maintain a program for the conservation of resident endangered and threatened species that is in accordance with the purposes and policies of the ESA.

When a state and NMFS enter into a section 6 agreement, NMFS is authorized to provide federal assistance to support development and implementation of the state's conservation programs.

## **2. ACCRETION**

Department attorneys continue to represent the state in numerous lawsuits filed by individuals and other entities claiming title to new land created by natural processes. The majority of these cases are in Southeast Alaska, where formerly submerged land is rising above sea level due to the shrinking of glaciers that once weighed the land down.

## **3. PREDATOR CONTROL**

In 2008, the state received a comprehensive summary judgment order in *Defenders of Wildlife, et al. v. State*, the consolidated lawsuits initiated by the Defenders of Wildlife, Friends of Animals, and others, which challenge the state's existing predator control plans and programs. Among other rulings, the trial court held that while the Constitution requires sustained-yield management of predators, the state's management does not violate that principle and, likewise, does not violate statutory sustained yield requirements. This issue was appealed by the Defenders of Wildlife and others. An intervenor also appealed the trial court's refusal to award him attorney fees. The appeal has been fully briefed and oral



arguments were heard on November 19. The Alaska Supreme Court's opinion is pending.

#### 4. NAVIGABLE WATERS

Department attorneys continue to work with DNR and ADF&G to identify and assert navigable waters in the state, assisting with preparation of applications for recordable disclaimers of interest from the United States, responses to public inquiries regarding the existence and allowable uses of navigable and public waters, requests for and defense of easements to navigable and public waters, and other public trust doctrine issues.

##### Chuitna River

The Department assisted DNR and ADF&G with preparation of reports and user affidavits to the Bureau of Land Management in support of finding the Chuitna River navigable. Over many years, BLM has made contradictory findings on the navigability of this river near Tyonek and is considering eliminating the easements reserved for public access pursuant to §17(b) of ANCSA. The river is popular with sport fishers and guides, and receives substantial public use. The state argues that present use of the river conclusively establishes its susceptibility to commercial use at statehood and its navigability, and thus the state owns the submerged lands.

##### Kotsina River

Ahtna, Inc. v. State of Alaska, a lawsuit filed by Ahtna in the Alaska Superior Court, places the lower Kotsina River and river bed in dispute. Ahtna claims the area through a conveyance to it by the federal government under the Alaska Native Claims Settlement Act. Navigable waters and their beds are excluded under that act and belong to the state, in trust for public use. At issue is whether the lower six miles or so of the Kotsina River running through the conveyance is navigable and, if so, the extent of the river bed. The lower mile of the river forms a broad delta fan almost a mile wide. The area is important to the public as a personal use salmon fishery, mostly using fishwheels, as a source of gravel and public right-of-way, and for boating and sightseeing opportunities.

#### 5. TRUST LAND OFFICE

The Department assisted DNR's Trust Land Office (TLO) with the final close-out of the Mental Health Trust land entitlement and with general advice on land matters.

The Department also has defended the TLO in two administrative appeals that are awaiting decision. The first involves a TLO sale of a parcel of former university grant land in 2002 that is now being challenged by the purchaser, who alleges that the sales price should have been the 1983 fair market value under chapter 81 SLA

1985, rather than the fair market value at the time of sale, and also that he should have been given a veteran's discount. The second appeal involves a decision not to renew a coal lease near Chickaloon. The lessee held a former federal coal lease on trust land, the 50-year term of which expired this year. The TLO decided not to renew the lease, and the lessee appealed, claiming that the TLO's decision was contrary to the law and the terms of the lease.

#### 6. LAND INTO TRUST IN ALASKA

##### Akiachak v. United States

The state's motion to intervene in Akiachak et al. v. United States, pending in the U.S. District Court for the District of Columbia, was finally granted. Plaintiff tribes and one individual challenge the regulatory bar prohibiting the secretary of the Department of the Interior from taking land into trust for the benefit of Native tribes and individuals in the state of Alaska. The regulatory challenge implicates state sovereignty issues, as well as issues related to the scope and finality of the Alaska Native Claims Settlement Act. The state argues that the act prohibits the creation of trust land in Alaska. Summary judgment briefing concluded in March. The case awaits a decision by the court.

##### Comments on IRA Amendments

The Natural Resources Section assisted in drafting the state's comments and recommended changes on proposed amendments to the federal Indian Reorganization Act. As initially drafted, the proposed amendments would overturn a U.S. Supreme Court decision clarifying that under current law land may be taken into trust only for tribes under federal jurisdiction as of 1934. We continue to work with the Governor's Office on the scope of the proposed amendments.

#### 7. UNIVERSITY LAND GRANT LITIGATION

In March, the Alaska Supreme Court held that legislation conveying approximately 260,000 acres of state land to the University of Alaska's endowment trust created an unconstitutional dedicated fund. The Alaska Constitution prohibits the dedication of "the proceeds of any state tax or license" to a special purpose.

Environmental organizations Southeast Alaska Conservation Council (SEACC) and Tongass Conservation Society (TCS) 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. 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 on cross-motions for summary judgment, and SEACC and TCS appealed.

The Supreme Court held that the legislation is unconstitutional, and that the provisions dedicating revenue from the land to the university endowment trust could not be severed from the land conveyance provisions. The Supreme Court remanded the case to the Juneau Superior Court with instructions to order re-conveyance of the land to the state.

The governor has stated his intent to introduce curative legislation during the 2010 legislative session that would authorize the land conveyances but not include the dedication provisions that the Supreme Court found unconstitutional. The parties engaged in motion practice before the Superior Court over whether to delay re-conveyance of the land until after the close of the legislative session.

## 8. LIMITED ENTRY PERMITS

In the Vandevere case, Cook Inlet commercial salmon fishermen argued in an action brought in the federal District Court that the regulations restricting their commercial fishing opportunities were invalid because they amounted to unconstitutional uncompensated takings of the value of their limited entry permits and shore fishery leases. The case was initially stayed while a very similar case filed earlier in state court by the same attorney for different plaintiffs, *Vanek v. State*, 193 P.2d 283 (Alaska 2008), was resolved by the Alaska Supreme Court, which ruled in the state's favor.

The federal District Court agreed with every point in the *Vanek* case and our briefing, holding in favor of the state.

## 9. APPLICATION OF THE PROVISIONS OF THE MAGNUSON-STEVENS ACT IN STATE WATERS

The federal District Court, in a series of decisions, dismissed an action, *Jensen v. Locke and State of Alaska*, brought by a Prince William Sound commercial fisherman against the U.S. secretary of commerce and the State of Alaska alleging that the Board of Fisheries regulations in Prince William Sound and the Copper River were inconsistent with the Magnuson-Stevens Act (MSA) and violated due process. The orders, taken together, held that the plaintiff did not have standing to bring his claims -- except for one cause of action involving a challenge under the Federal Administrative Procedure Act (APA) -- because he had "not established that his injury is likely to be redressed by a favorable decision," finding that even if the plaintiff were successful in the court case, the secretary still could have adopted regulations that



*Left to right: Attorney General Dan Sullivan, Mayor of Unalakleet William "Middy" Johnson, and Commissioner Emil Notti chat in Unalakleet over a lunch of smoked salmon and muktuk.*

had as much or more of a negative impact on the plaintiff as the current state regulations.

The court dismissed the plaintiff's causes of action based on arguments of inconsistency with the MSA because the MSA does not, and was never intended to, apply to state territorial or internal waters, even for anadromous species, absent implementation of the federal preemption procedures laid out in the MSA. The court also held that the plaintiff's cause of actions based on the Commerce Clause of the U.S. Constitution failed because subsistence and personal use caught fish are not items of interstate commerce.

## 10. CHITINA DIPNET FISHERY LITIGATION

The Alaska Fish and Wildlife Conservation Fund and the Chitina Dipnetters Association sued the Alaska Board of Fisheries claiming that the board's decision not to re-classify the personal use salmon dipnet fishery in the Chitina sub-district on the Copper River as a subsistence fishery was inconsistent with the Alaska Constitution and the state subsistence statute. They also challenged the validity of the regulation established by the Boards of Fisheries and Game to decide whether a stock or population has been customarily and traditionally used for subsistence. The case has been briefed and argued by the Department.



# III. PROTECTING THE FISCAL INTEGRITY OF THE STATE

## A. PRESERVING ALASKA'S FINANCIAL INTERESTS

The Department played a significant role in collecting monies owed to the state and its citizens in 2009, and in defending the state against significant financial liabilities. Many sections of the Department contributed to this achievement. Below is a snapshot of some of their efforts.

### 1. OIL AND GAS ROYALTIES AND TAXES

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 determined largely by the price that ANS oil commands in its destination markets, less the costs of transporting it to those markets. The transportation costs include tariffs and the producers' tanker costs.

The Department performs legal services related to these and other oil and gas development issues. Partly due to the Department's efforts, the state has obtained additional development of the Point Thomson Unit and collected property taxes, unpaid production tax, corporate income taxes and additional royalties from refunds of excessive tariffs, as well as money from settlements of other disputes.

#### TAPS Tariff Litigation

The Department has participated in early stages of litigation of Trans-Alaska Pipeline System (TAPS)

interstate tariffs applicable from January 1, 2008, and of superseding interstate tariffs filed this summer. The state negotiated a settlement of the interim rates and has begun negotiations to streamline the litigation issues on the going-forward rates that will be the subject of extensive discovery and testimony preparation in 2010.

The state has also protested new intrastate TAPS rates and has been working with all parties to set a consolidated hearing procedure on the strategic reconfiguration issues that are included in both the interstate and intrastate protests. In addition, the state is defending appeals of the Federal Energy Regulatory Commission decision on the 2005 and 2006 tariff litigation and proceeding with litigation over tariffs on other pipelines.

#### Oil and Gas Tax & Royalty Litigation

In March 2009, the state filed a lawsuit against BP Exploration (Alaska) Inc. (BPXA) over its negligent pipeline corrosion practices that caused pipeline leaks in transit pipelines in 2006 and cutbacks in oil production during 2006-08. The state seeks civil assessments for BPXA's violation of the state's environmental laws and damages for revenue the state lost during 2006-08 because production was reduced to replace or fix corroded pipelines. A jury trial is scheduled to begin in September 2012.

The Department is assisting the Department of Revenue in drafting comprehensive regulations implementing the state's new oil and gas production tax system. The Department also continues to represent the Department of Revenue on a number of confidential cases involving the production tax and oil and gas corporate income taxes, successfully collecting over \$9 million in additional taxes through settlement of outstanding disputes.

Another major case before the office of administrative hearings is an appeal of the Department of Revenue's decision to aggregate properties within the Prudhoe Bay Unit to determine the Economic Limit Factor under the former production tax regime. The appeal stems from a January 2005 decision by the Department of Revenue to aggregate six satellite producing areas within the Prudhoe Bay producing areas to calculate the Economic Limit Factor. The effect of this decision was to significantly increase North Slope production taxes.

The Department is representing the Department of Revenue in an appeal to the Superior Court of decisions by the state assessment review board, assessing the property tax value of the TAPS at about \$4.3 billion for



*Kotzebue  
Electric  
Association  
wind  
turbine.*



2006 and \$4.6 billion for 2007. The decision resulted in a 2006 property tax payment of \$86 million and a 2007 property tax payment of \$91 million. The property tax was divided between several municipalities and the state. Trial on the 2006 assessment was held in August and September, with closing arguments in November.

The Department also assisted DNR in settling disputes over royalties owed the state, collecting \$18.7 million in additional royalties.

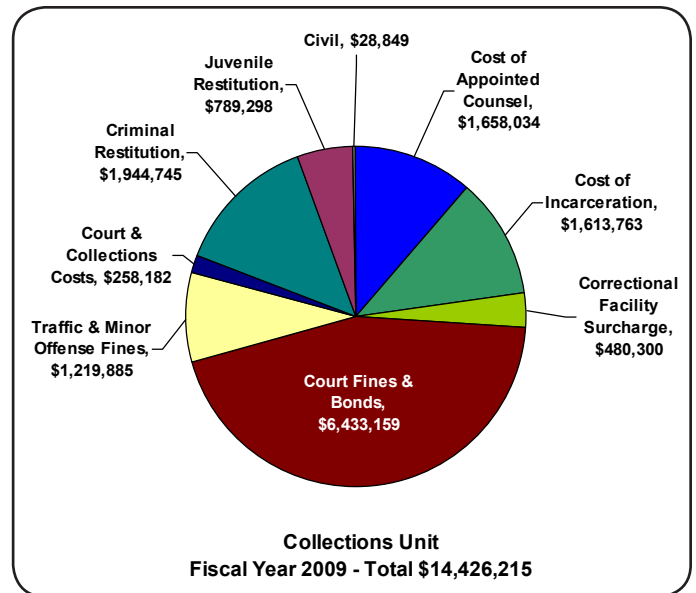
The Department represented the state in proceedings before the U.S. Court of Appeals for the D.C. Circuit, the Federal Energy Regulatory Commission and the Regulatory Commission of Alaska on issues related to the methodology for determining quality bank adjustments to account for the commingling of different quality streams in TAPS.

## 2. ALASKA RETIREMENT MANAGEMENT BOARD V. MERCER

The ARM Board filed suit against Mercer in December 2007 in Juneau Superior Court, alleging actuarial malpractice and seeking recovery for damages. Fact discovery was completed in 2009. The actuaries who worked on the Alaska account testified in their depositions about another coding error that Mercer discovered in 2003 but covered up and decided not to disclose to the state pension systems. Mercer admitted to submitting false actuarial valuations to the state's pension systems in order to conceal the error. The amount of this coding error exceeded \$1 billion. In light of this discovery, the ARM Board amended its complaint and alleged an additional cause of action for fraud. The Department amended the complaint and is now seeking over \$2 billion in damages and punitive damages. Mercer filed a motion to dismiss the complaint, which Judge Collins denied. Trial is scheduled to begin on July 6, 2010. The Department of Law retained outside counsel, the law firm of Paul Weiss in New York City, to represent the ARM Board in this case.

## 3. ALASKA CRUISE ASSOCIATION V. GALVIN

The Alaska Cruise Association (ACA) filed suit against the state in September 2009 in federal District Court in Anchorage. ACA alleges that the cruise ship passenger excise tax violates the U.S. Constitution and federal statutes. The Department is defending the case and has retained experts to conduct a cruise ship passenger impact study. The study is underway. Discovery closes on September 15, 2010. The state's expert report is also due on September 15, 2010. Trial is scheduled for January 2011.



## 4. COLLECTION OF DEBTS OWED TO THE STATE

The Collections Unit doubled its revenue in FY09, reaching a historic high of \$14.4 million (compared to \$6.4 million in FY08). The increase is attributed the unit's garnishment of the record-breaking 2008 PFD and attached energy rebate — a total of \$3,269 per qualified resident.

Of the \$14.4 million collected, the unit disbursed over \$2.7 million to victims, an increase of \$700,000 from the previous fiscal year. The most significant increase was in court fines and bonds, which jumped from \$1.8 million in FY08 to \$6.4 million in FY09.

In July, the unit replaced its three antiquated collections databases with one consolidated database called Revenue Results. The new database will assist the collections unit by providing better efficiency and customer service.

The Child Support Unit resolved and closed over 1,600 child support files in FY09, slightly higher than FY08. These files included paternity establishment and disestablishment cases, appeals, motions for the establishment and modification of child support orders, requests for PFD orders, PFD compliance cases, motions and petitions for Native dividend orders, license suspensions, appeals, seek-work actions, employer noncompliance claims other miscellaneous enforcement actions, and claims against child support services division (CSSD).

The unit completed more than 500 modifications of Alaska child support orders through court proceedings, thus ensuring 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 Native dividend, PFD orders and PFD compliance, increased. This is consistent with the CSSD trend focusing on enforcement of child support orders.

## 5. CARLSON V. STATE

The Department continues to represent the Commercial Fisheries Entry Commission in court proceedings in *Carlson v. State of Alaska*, CFEC. The Carlson case is a 25-year old class action lawsuit involving several thousand non-resident commercial fishery permit and crew member license holders. In 1984, the plaintiff class members challenged as unconstitutional state legislation that charged non-resident commercial fishermen three times more than residents for entry permits and crew licenses, and sought refunds. The case has been heard by the Alaska Supreme Court four times to decide various issues. It is now before the trial court a fifth time on remand from the Supreme Court. On remand, the Superior Court ordered the state to calculate the amount of refunds due with interest.

This past year the state attorneys assisted the CFEC in preparing and completing the difficult, protracted process of calculating refund amounts, including interest, for each class member, and presented those calculations and explanations of the process to the court. Those calculations have been independently reviewed. The calculations indicate \$68.3 million is owed as of March 31, 2009. Principal is approximately \$12.5 million and the rest, almost \$56 million, is interest. Interest continues to accrue at the high rate of 11 percent per annum, compounded quarterly, as ordered by the Supreme Court.

Litigation continues on additional awards for attorney fees and costs claimed by plaintiffs' counsel and on different plans for the extensive process of administering the individual payouts.

## 6. 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 under the Division of Risk Management's self insurance program. It also provides advice and training to state agencies.

Through November, the Department successfully defended the state and state employees in three jury trials (one in Anchorage Superior Court and two in U.S. District Court) and one non-jury trial in Sitka (arising out of the M/V LeConte grounding in 2004). Two of the jury trials involved claims against Alaska state troopers, and one jury trial involved claims against the Office of Children's Services.

The Department actively pursues summary dismissal of lawsuits through filing dispositive motions in many of the tort cases. Where certification of individually sued state employees is appropriate under AS 09.50.255, the section continues to successfully dismiss individually sued state employee defendants with substitution of the state as the defendant.

The Department also represents the state as an employer before the Workers' Compensation Board and the Alaska Workers' Compensation Appeals Commission. The section appeared and defended the state as employer in 12 hearings before the Workers' Compensation Board and two appeals before the Alaska Workers' Compensation Appeals Commission.

## B. ADVANCING THE PUBLIC INTEREST IN UTILITY MATTERS

The Regulatory Affairs and Public Advocacy (RAPA) section performs the Attorney General's statutory responsibility for public advocacy in regulatory affairs. The Attorney General, through RAPA, advocates on behalf of the public interest in utility and pipeline matters that come before the Regulatory Commission of Alaska (RCA), in related court appeals, and before the Legislature and other policy-makers.

### 1. REDUCED RATES AND RATEPAYER REFUNDS

#### Enstar Natural Gas Co. – Reimbursement Recoupment Through Rate Increases

Enstar charged the U.S. Department of Defense (Fort Richardson) for gas it did not deliver to DOD, but to other retail consumers. Enstar was ordered to reimburse DOD. The company requested an upward Gas Cost Adjustment (i.e., higher rates for its retail customers) that included amounts intended to cover the reimbursement to DOD. RCA opened an investigation and ordered Enstar to explain why its practice did not amount to retroactive rate-making. RAPA filed a brief arguing that Enstar should not be allowed to recoup the cost of a reimbursement caused by Enstar's own accounting errors through a future rate increase. A hearing was held in October.

#### Enstar Natural Gas Co. – Customer Refunds

RAPA successfully opposed Enstar's claim that it was not required to pay qualifying customer refunds dating back several years for having two different rate schedules in effect for the same service and charging customers at the higher of the two rates.



Alaska law requires that ratepayers be served under the most favorable rate when more than one rate schedule applies to the service they receive. The RCA required Enstar to identify and refund all customers who were billed at the higher rate rather than the lower rate. Enstar requested reconsideration, and RAPA argued at the hearing that ratepayers served under the higher commercial rate should be refunded the amounts incorrectly charged. The RCA agreed, again requiring Enstar to refund the amounts overcharged since 2003. Enstar appealed the RCA decision to Superior Court, but reached a settlement under which Enstar refunded an additional \$235,000, bringing its total refunds to more than \$936,000, none of which it may recover from ratepayers through either pending or future rate cases.

#### **Golden Heart Utilities/College Utilities Corp.**

RAPA advocated a refund calculation methodology that resulted in an additional \$1.2 million in refunds to water and sewer customers in the Fairbanks service area.

#### **Golden Heart Utilities and College Utilities Corp.**

These investor-owned utilities filed for permanent rate increases in 2007. This was the utilities' third filed request for rate increases in three successive years. RAPA opposed the magnitude of the requested increases at the hearing held in 2008, and the RCA subsequently approved permanent rate increases less than those previously collected by the utilities on an interim refundable basis. Therefore, the RCA ordered refunds to utility customers for the interim overcharges. Golden Heat Utilities/College Utilities Corp. (GHU/CUC) filed a Notice of Appeal of the RCA decision to Superior Court in January 2009, but the appeal has yet to be perfected.

Meanwhile, in the underlying docket, RAPA disputed the utilities' proposed refund plan that based refund calculation on a company-wide revenue analysis, rather

than on the difference between interim and approved rates on a per customer basis, as required by law. The RCA rejected the utilities' refund plan in favor of the method of calculating individual refunds advocated by RAPA. As a result, residential, metered customers of the utilities are due to receive \$4.3 million, although no refunds will be issued until the utilities' appeals are exhausted. The refund decision in this case should also have an effect on refund amounts in two other rate cases that are pending on appeal by the same utilities.

## **2. RULE-MAKING PROCEEDINGS**

### **Telephone Access Charge Reform**

RAPA has actively participated in an RCA rule-making proceeding initiated in 2008 to further modify the in-state access charge system under which long distance carriers historically have paid an access charge to use the local telephone carrier's network to complete toll calls for their customers.

The RCA has proposed to cap an access charge rate element and to expand an in-state subsidy fund to further reduce access charges by approximately \$13 million, the payment of which would be cost-shifted to all local telephone service subscribers in the state. RAPA filed comments in 2008 and 2009 opposing this proposal unless and until the RCA has assessed whether the prior reform has resulted in benefits to consumers.

RAPA filed comments in response to an RCA staff alternative reform scheme that proposes to recover \$23 million in access costs through a combination of local end-user rate increases and an increase in a subsidy funded by all telecom service providers and their customers. RAPA again advocated that the RCA should first identify whether any benefit to the consuming public can be assured as a result of the staff-proposed cost shift.



*Stacy Steinberg, chief assistant attorney general of the Collections and Support Section, received the 2009 Leadership Award. From left: Attorney General Dan Sullivan, Stacy Steinberg and Deputy Attorney General Craig Tillery.*



## IV. PROMOTING AND DEFENDING GOOD GOVERNANCE

### A. DEFENDING ALASKA'S CONSTITUTION

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Under the Alaska Constitution, the Alaska Judicial Council reviews applicants for judgeships and then recommends candidates to the governor. In *Hinger, et al. v. Carpeneti, et al.* a group of plaintiffs attempted to alter this process. Plaintiffs argued that the role of the Alaska Bar Association Board of Governors in appointing three attorney members of the Alaska Judicial Council violates their rights under the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. Plaintiffs requested an injunction in federal district court in an attempt to prevent the attorney members of the Judicial Council from participating in the selection of candidates for the pending vacancy on the Alaska Supreme Court created by the retirement of Justice Eastaugh. The state filed a motion to dismiss the suit for failure to state a claim.

In September, the district court ruled against the plaintiffs holding: (1) that a plaintiff must show invidious discrimination between citizens and those enfranchised in order to mount a successful challenge to a judicial election process and that no such discrimination has been alleged here; (2) that both the bar association Board of Governors and the Judicial Council are "limited purpose" entities to which the "one-man, one-vote" rule does not apply; and (3) that Alaska's judicial selection system easily survives rational basis review. Plaintiffs filed their notice of appeal in the Ninth Circuit on September 28.

### B. REVIEWING AND DEFENDING THE INITIATIVE PROCESS

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The Department of Law assists the lieutenant governor in reviewing ballot initiatives for constitutionality and conformity with the statutory limits on the initiative's form and subject matter. The Department also represents the state in lawsuits challenging the validity of ballot initiatives that the lieutenant governor has certified.

#### 1. CROFT V. PARNELL

The issue in this appeal to the Alaska Supreme Court is whether a ballot measure initiative can combine a revenue measure with an administrative program. The lieutenant governor concluded that combining these unrelated measures violated the single subject rule for legislative matters and declined to certify the initiative proposal. The Superior Court agreed, and the initiative

supporters appealed. Oral argument was held on June 10. A decision is pending.

#### 2. PLANNED PARENTHOOD OF ALASKA AND SUSAN WINGROVE V. CRAIG CAMPBELL

Planned Parenthood filed a suit for injunctive and declarative relief on July 31, seeking to overturn the lieutenant governor's certification of the application for a ballot initiative for a measure to require parental involvement in a minor's abortion (with certain exceptions, including a judicial bypass option). Planned Parenthood, the state and the sponsors have filed cross-motions for summary judgment, which are pending.

### C. DEFENDING THE ADMINISTRATION OF ELECTIONS

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In 2007, Yup'ik elders brought claims against the state under the federal Voting Rights Act, challenging the adequacy of language assistance provided for state elections in the Bethel Census Area. While the hard-fought litigation proceeded, negotiations continued in 2009, ultimately resulting in a favorable settlement for the state in early 2010.

Under the settlement, there was no admission of liability by the state, and there will be no ongoing court oversight. Existing Division of Elections language assistance protocols will be enhanced, and one new written assistance protocol added, for written Yup'ik translations of "pro" and "con" statements on ballot measures.

### D. PROCESSING PUBLIC RECORDS REQUESTS

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Over the past year, the Department assisted state agencies in processing approximately 222 public records requests. As part of this process, the Department reviewed tens of thousands of documents.

### E. DRAFTING AND REVIEWING LEGISLATION AND REGULATIONS

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The Department's Legislation and Regulations Section provides legal advice and review for constitutional and statutory requirements in the preparation of state legislation and regulations, both civil and criminal.



## 1. MEDICAID OMNIBUS REGULATIONS PROJECT

During the fall of 2009, the Legislation and Regulations Section concluded comprehensive review and revisions of more than 700 pages of Medicaid regulations dealing with service delivery and other topics under the program. As Medicaid is one of the largest budget components in the Department of Health and Social Services, it is important that the regulations be easy for the public and providers to use. The regulations project was checked to ensure compliance with federal and state law. This project culminates several years of work by the Department of Health and Social Services and Assistant Attorneys General Stacie Kraly, Kelly Henriksen and Steve Weaver.

## 2. 2009 REGULATIONS CLASSES

In August 2009, the Legislation and Regulations Section conducted in-person classes on the preparation and adoption process for regulations, with both classes for state agencies and separate law-oriented classes for Department staff. Classes were held in Anchorage and Juneau. Over 100 students attended, the largest group since the Department began conducting these classes. The classes were well-received and should improve the quality of regulations development in the state.

## F. INCREASING INTERNAL EFFICIENCY

The Department's Administrative Services Division provides financial management, forecasting, budgeting, accounting, procurement, time-keeping management, computing and mail services.

In 2009, the Department completed phase I of ProLaw, legal management software, completing deployment of the time-keeping and billing system for the Civil Division. Phase II of the project has begun and will incorporate ProLaw's case-management tools. The Department has also entered into a contract to upgrade a new version of the case management system used by the Criminal Division and expects deployment in 2010.



Sitka totem pole.

The Department implemented credit card merchant processing and can now accept payment by credit and debit cards. The Department expects this will increase collections of restitution payments owed to the State of Alaska.

## G. ADMINISTERING THE EXECUTIVE BRANCH ETHICS ACT

The state ethics attorney administers the Executive Branch Ethics Act on behalf of the attorney general. This function includes providing advice to the designated ethics supervisors of all executive branch agencies and public corporations and most boards and commissions, as well as the investigation and prosecution of most ethics complaints filed with or initiated by the attorney general. The ethics attorney is responsible for reviewing reports from the ethics supervisors on ethics matters required by the ethics act and for reporting to the State Personnel Board on the status of various ethics matters. The ethics attorney provides ethics training for agency employees and board members upon request and develops the disclosure forms and reference materials addressing the requirements of the act.

The ethics attorney also serves as the designated ethics supervisor for all employees of the Department of Law. In that capacity, the ethics attorney responds to requests for advice from the Department's employees, reviews all outside employment, contracts and gift disclosures made by any employee and makes determinations regarding ethics matters disclosed in notices of potential ethics violations submitted by or about a department employee. The ethics attorney also provides support to the attorney general in his role as designated ethics supervisor for the governor and lieutenant governor.

The assistant attorney general in this position is also responsible for addressing on behalf of the deputy attorney general conflict-waiver requests received from outside private counsel employed by the Department of Law and other state agencies, and may be consulted on attorney professional responsibility matters.

In December of this year, the Department for comment proposed changes to the ethics regulations. The packet includes proposed regulations regarding: (1) procedures for reimbursement of attorney fees incurred by a public officer exonerated of ethics charges; (2) standards for determining when state payment of the costs of travel for family members of the governor or lieutenant governor is for a state purpose and does not result in a violation of the Ethics Act; (3) standards for determining when personal use of state-issued electronic equipment is presumed insignificant under the Ethics Act; and (4) other amendments to update the existing regulations or address interpretation or procedural issues identified by the state ethics attorney.



## CONCLUSION

By focusing on these four core priorities, the Department furthers its mission of protecting Alaska's future. Although many of the Department's efforts – from keeping streets safe, to protecting our environment, to fostering a good climate for economic growth – cannot be monetized, they undoubtedly improve Alaskans' quality of life.

Some of the Departments' efforts can, however, be monetized, showing just how valuable our efforts are. With a budget of just over \$85 million, the Department

collected \$560 million for the state last year – a six-dollar return for every dollar spent. When considered in comparison to the \$56 million portion of our budget funded by the state, the Department's return on investment is ten-to-one.

The tangible and intangible results the Department delivers are the result of our dedicated focus on serving Alaskans. We strive every day to earn the trust Alaskans have placed in us.



*Attorney General Dan Sullivan and Rick Svobodny, deputy attorney general of the Criminal Division, award Rachel Gernat the Prosecutor of the Year Award for her exemplary career in prosecuting sexual assault and domestic violence cases.*



*Attorney General Dan Sullivan presents Dwayne McConnell the 2009 Model of Excellence Award for his track record of enthusiastically supporting, monitoring and assisting department employees.*









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DEPARTMENT OF LAW  
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