



2006 Annual Report

Protecting Alaska's ...

... natural resources



... communities



... finances



... environment



... kids



Alaska Department of Law, Office of the Attorney General
David Márquez, Attorney General

2006 Annual Report

State of Alaska
Office of the Attorney General
P.O. Box 110300
Juneau, Alaska 99811
(907) 465-2133

WHAT'S INSIDE

Message from the Attorney General	3
Department of Law Mission Statement	4
Department of Law Organizational Chart	5
Protecting Alaska's Children and Communities	
Criminal Caseload and Staffing Table	6
Introduction/New Resources/Legislation	7
Blakely & Smart: Challenges to Alaska's Sentencing Statutes	8
Criminal Prosecution Highlights from Around the State	9
Cold Case Prosecutions	10
Fish & Game Highlights	15
Protecting Alaska's Communities—Rural Justice	16
Protecting Alaska's Consumers	18
Consumer Protection Education	20
Protecting Alaska's Utility Users	22
Protecting Alaska's Natural Resources and State's Rights	23
Protecting Alaska's Natural Resources Environment	25
Environmental Legislation	27
BP North Slope Shutdown	27
New Legislation	30
Conference of Western States Attorneys General Annual Meeting	33
Awards & Recognition	34
Civil Supervisor Retreat	34
Civil Section Award Photo-Montage	35
Criminal Division 2006 Achievement Awards	36
Criminal Division Service Pins Photo-Montage	38
Civil Division Service Pins Photo-Montage	39

Dear Fellow Alaskans:

I am pleased to present to you the Attorney General's Annual Report highlighting the achievements and activities of the Department of Law for 2006. I am proud and pleased for this opportunity to serve the people of Alaska, Governor Frank Murkowski and his Administration.

I was especially proud to work with the attorneys, paralegals, office assistants and administrative personnel of the Department of Law. This dedicated group of professionals works hard to protect the rights and legal interests of all Alaskans. They will continue to work hard in the new administration and I wish them all the very best in their future endeavors.

This has been a monumental year for the state. In addition to the numerous duties of the department, attorneys in our Oil, Gas and Mining Section invested a prodigious amount of sweat equity to negotiate a proposed natural gas pipeline. Though this effort was not ultimately successful, it created the ground work from which the new administration can re-engage Alaska's major oil producers to successfully conclude a project that will benefit many generations of Alaskans. We were able to introduce legislation that culminated in a new petroleum production tax – a critical prelude for finalizing any future gas pipeline proposal.

In recent months the oil industry has been thrust into the spotlight of Alaska's political events. In August BP Exploration Alaska was forced to temporarily shutdown portions of the Prudhoe Bay oil field due to corrosion and maintenance issues. The Department of Law and the U.S. Department of Justice also submitted a demand letter to ExxonMobil for over \$92 million under the Reopener provisions on



the 1991 settlement and consent decree over the 1989 Exxon Valdez oil spill.

This report is not a complete recitation of all the important work and accomplishments of the Department of Law. It is intended to provide you with a snapshot examining many of the diverse tasks undertaken to improve the quality of life in Alaska. Our ability to do our job well is solely the product of the dedication and professionalism of all the department's employees.

Very truly yours,

Department of Law Mission Statement—Protecting Alaska's Future

Mission & Core Services

Attorney General Márquez has adopted the theme of "Protecting Alaska's Future" as the leadership direction for the Department of Law. We focus on protecting Alaska's children, communities, consumers, natural resources, financial assets and state's rights are his top priorities. The mission of the Department of Law is to provide legal services to state government and to prosecute crime. The Department of Law's core services are reflected in its three core divisions also known as results delivery units (RDUs):



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

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



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

Department Organizational Chart

David Márquez, Attorney General

Criminal Division
Susan Parkes, Deputy Attorney General
Rick Svobodny, Chief Assistant Attorney General

Special Prosecutions & Appeals
Douglas Kossler, Appeals Chief
James Fayette, Special Prosecutions Chief

Juneau—Doug Gardner, District Attorney

Ketchikan—Stephen West, District Attorney

Sitka—Greggory Olson, District Attorney

Barrow—Sara Simpson, Ass't District Attorney

Kotzebue—Paul Roetman, Ass't Dist Attorney

Nome—John Earthman, District Attorney

Anchorage—Bob Linton, District Attorney

Kodiak—J. Michael Gray, District Attorney

Fairbanks—Jeffrey O'Bryant, District Attorney

Dillingham—Ben Hofmeister, Ass't Dist. Attorney

Palmer—Roman Kalytiak, District Attorney

Kenai—June Stein, District Attorney

Bethel—Joe Slusser, District Attorney

Civil Division
Craig Tillery, Deputy Attorney General
Nancy R. Gordon, Chief Assistant Attorney General

Child Protection
Dianne Olsen, Chief Ass't Atty. General

Collections and Support
Stacy Steinberg, Chief Ass't Atty. General

Commercial and Fair Business
Signe Andersen, Chief Ass't Atty. General

Environmental
Steve Mulder, Chief Ass't Atty. General

Human Services
Stacie Kraly, Chief Ass't Atty. General

Labor and State Affairs
Jan DeYoung, Chief Ass't Atty. General

Legislation and Regulations
Deborah Behr, Chief Ass't Atty. General

Natural Resources
Elizabeth Barry, Chief Ass't Atty. General

Administrative Services
Kathryn Daughhetee, Director
Bob Meiners, Deputy Director

Budgeting
Tracy Maher, Budget Analyst

Fiscal & Accounting
Doug Hanon, Finance Officer

Information Services
Drew McDougal, ITS Manager

Oil and Gas
Larry Ostrovsky, Chief Ass't Atty. General

Opinions, Appeals and Ethics
Joanne Grace, Chief Ass't Atty. General

Regulatory Affairs and Public Advocacy
Daniel Patrick O'Tierney, Chief Ass't Atty Gen

Torts and Workers' Compensation
Gail Voigtlander, Chief Ass't Atty. General

Transportation
James Cantor, Chief Ass't Atty. General

Criminal Caseload and Staffing: 1996 through December 31, 2005

	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Statewide District Attorney's Office										
Statewide Criminal Caseload										
New Felony Referrals	7220	6880	6477	6101	5513	5471	5629	5633	5504	5224
Felony Probation Revocations and PCRs*	2735	2578	2365	2250	2334	2439	1825	1815	1802	1469
Total	9955	9458	8842	8351	7847	7910	7454	7448	7306	6693
% Increase from 1995										
New Misdemeanor Referrals	22,766	23,074	22,238	22,041	19,997	19,077	18,832	20,442	19,543	20,064
% Increase from 1995										
Full Time Attorneys in Judicial Districts		73	67	67	64	63	64	62	62	60
Office of Special Prosecutions & Appeals										
OSPA Appeal Unit felony appeals/petitions	298**	280	226	250	304***	297***	347***	247	276	230
% Increase from 1995		67%								
OSPA Prosecution New Felony Referrals	116	152	98	39	32	36	51	28	25	10
Full Time OSPA Attorneys		16.5	15.5	14.5	13.5	14.5	11	11	11	11
Total Attorneys: Prosecutors and OSPA		89.5	82.5	81.5	77.5	77.5	78.5	73	73	71

NOTES:

* Post-Conviction Relief (PCR) actions

** adjusted for multiple appeals filed on the same issue

*** not adjusted for multiple appeals filed on the same issue

Protecting Alaska's— Children & Communities

INTRODUCTION

The Department of Law continued to make serious inroads into bringing criminal offenders to justice, especially those defendants charged with violent crimes, including murder, assault, and sexual assaults, as well as drug-related offenses.

Over the last four years we have seen a concerted effort by the Murkowski Administration and the Alaska State Legislature to address some of the most significant forms of criminal conduct occurring in the state as well as to provide the court system, state prosecutors and law enforcement with additional resources to address crime in Alaska.

New Prosecutors:

In 2004, the legislature increased funding for state prosecutors, creating six new positions. Two additional positions were created to specifically prosecute crimes related to gun violence, and another position was created to prosecute major offenders. In FY2005, six new general fund prosecutor positions were created for Kenai, Palmer and Anchorage. In FY 2005 the state received special federal appropriations to fund the enhancement of rural prosecutions and for additional prosecutors to address the areas of domestic violence and sexual assault. Also in that year we received funding from the legislature, due in good measure to the efforts of Rep. Bill Stoltze, for the State's first "cold case" prosecutor.

2006 Legislation:

In 2006 we saw several new pieces of criminal legislation pass that will enhance the state's ability to prosecute serious crimes throughout the state:

HB 149 – Controlled Substances: Meth & Marijuana: Two years ago Governor Murkowski introduced legislation to create stricter



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penalties for people who use marijuana. During the previous legislative session the Alaska Senate combined the marijuana bill with a separate bill addressing methamphetamines ("meth"). The resulting legislation places sales limitations on products containing pseudoephedrine, which is used in the production of meth. The bill criminalizes the possession of meth in organic solution and the delivery of precursor forms of the drug for manufacturing purposes. Manufacturers of meth can be subject to stiffer prison sentences for making the drug in buildings where children reside.

The marijuana provisions of this legislation is intended to reverse a decision by the Alaska Court of Appeals in *Crocker v. State*, issued in 2004, that protects marijuana growers and dealers from being subjected to search warrants. The primary purpose of the marijuana provisions of this legislation is to target commercial growers of this drug, not to undermine Alaskans' right to privacy. This court decision significantly restricted law enforcement efforts to combat this large-scale illegal industry that targets Alaska's children. The marijuana provisions are currently under review by the Alaska Supreme Court.

SB 218: Sex Offender sentencing / polygraphs (Sen. Bunde)

Senate bill 218 increases the sentences for the most egregious unclassified and class "A" sexual assaults against a minor to a minimum 25 years. It increases sentencing for unclassified and class A sexual assaults (against adults) to a minimum 20 years. The legislation also increases the sentences for class B and C sex offenses and requires periodic polygraph testing for sex offenders on probation and parole.

SB 237: Additional Judges (Governor's bill)

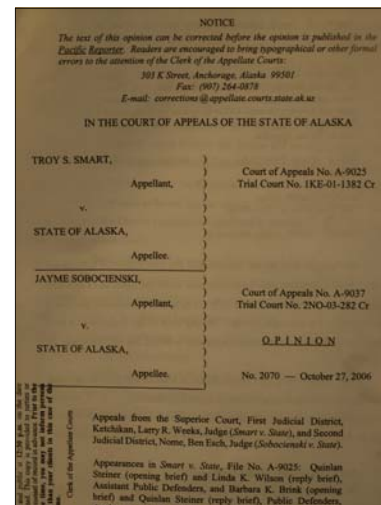
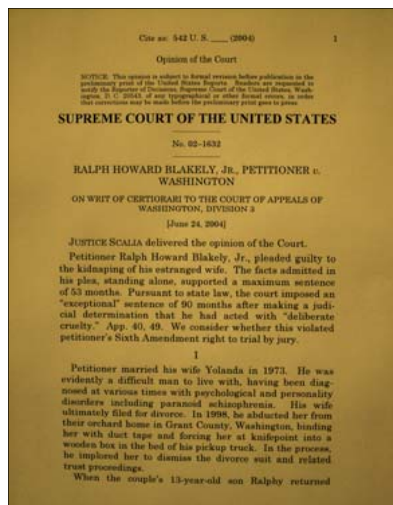
This legislative session Governor Murkowski introduced SB 237 – legislation to create six new trial court judicial positions in Alaska. Specifically the legislation adds two judges in Anchorage, two in Palmer, one in Kenai and one in Fairbanks. The bill was introduced in recognition of Alaska's growing population and the backlog of cases in those communities. With increased population there is increased activity in both civil and criminal cases.

SB 3005: Detention / Identification / Contempt Witnesses

In mid-August, Governor Frank Murkowski signed the material witness bill into law. This legislation was sponsored by Anchorage state Senator Con Bunde. The purpose of this legislation is to give law enforcement the statutory authority to temporarily detain a witness of a serious crime in order to find out what the person may know.

The new law only applies to felony crimes against people (i.e., murder, sexual assault, robbery or assault), a felony, drive-by shooting, the most serious crimes involving destruction of property and arson.

The bill safeguards the constitutional rights of witnesses at the scene of the crime. The bill does not require that the witness answer any questions or speak to the officer, nor does it allow the person to be removed from the vicinity or be unreasonably delayed. Law enforcement will be allowed to take the person's photograph. In cases involving murder, attempted murder and drive-by shootings, the legislation also allows the police to obtain some type of identification or the person's fingerprints.



Blakely and Smart

In the upcoming year Alaska's prosecutors face a significant challenge in addressing offenders who received increased criminal sentences as a result of a recent Alaska Court of Appeals decision.

In 2004, in **Blakely v. Washington**, 542 U.S. 296 (2004), ("Blakely" decision), the U.S. Supreme Court ruled that the Sixth Amendment right to a jury trial requires a jury, not the sentencing judge, to determine whether aggravating circumstances exist to increase a convicted defendant's prison sentence. The decision required Alaska, and 12 other states and the federal government to change their sentencing systems.

In March 2005 Governor Murkowski signed the Blakely bill that fixed Alaska's criminal sentencing statutes. For over 25 years Alaska's sentencing statutes provided a statutory baseline for imposing felony sentences. Judges had the discretion to modify these sentences upward or downward based on statutory mitigators and aggravators. The Blakely decision created a potential attack on the constitutional

ity of state law, gave rise to inconsistent trial court rulings and generated numerous appeals. Legislation introduced by Senator Gene Therriault (R-North Pole) and Ralph Samuels (R- Anchorage) created "presumptive" ranges of years for felony convictions. Judges now have the discretion to weigh the facts and circumstances of individual defendants to determine an appropriate sentence within the presumptive range.

In October 2006 the Alaska Court of Appeals added a new and significant setback to prosecuting cases previously concluded that involved the use of aggravating factors to increase criminal defendants' sentences. In **Smart v. State of Alaska**, A-9037 (October 27, 2006), the Court of Appeals held that the Blakely decision applies retroactively to all cases, even those which were final when Blakely was issued. SEE opinion at: <http://www.state.ak.us/courts/ops/ap-2070.pdf>.

The state Office of Special Prosecutions and Appeals (OSPA) immediately filed a petition for hearing with the Alaska Supreme Court seeking review of this opinion. Currently, there are over 250 cases that were stayed in the Alaska Court of Appeals pending this opinion. OSPA moved to continue the stay pending the outcome of the state's petition for a hearing before the Alaska Supreme Court.

Based on the court of appeals' opinion, other defendants may be filing motions in the superior courts seeking relief on the basis of *Blakely*. The superior courts in those cases are required to follow the decision of the court of appeals unless and until the Alaska Supreme Court reverses the court of appeals.

CRIMINAL PROSECUTION HIGHLIGHTS AROUND THE STATE

It is impossible to do justice to the significant efforts undertaken by the state's 13 District Attorney's offices and the Office of Special Prosecutions & Appeals to fulfill their mission of prosecuting criminal offenders. Here are some highlights from the past year:

January 2006

- ❖ **Anchorage Chief Assistant DA John Novak** assisted the

Bethel DA's office to secure a manslaughter plea from a Kwethluk man who rammed his boat into another boat, driven by David Martin. Martin died of injuries resulting from the collision.

- ❖ **Fairbanks:** ADA **Jenel Domke** secured a conviction of Lyndon Pasion for attempted sexual assault in the 1st degree.
- ❖ **Palmer:** On January 27, 2006, Niobie Ewing was sentenced to 60 years in prison after pleading no contest to second degree murder. In 2004, after drinking and arguing with her boyfriend Tom Bourbeau, Ewing splashed gasoline on him and the stairs leading out of the room he was in. Ewing ignited the gas, walked down the street and reported the fire. It was Bourbeau's 56th birthday. Bourbeau suffered from several physical impediments that prevented him from escaping the room and he died in the blaze. **ADA Richard Payne** handled this case.

February 2006

- ❖ **Anchorage:** ADA **Sharon Marshall** obtained a guilty plea in **SOA v. William Willett**. Prior to trial Willett pled to first degree murder. He was later sentenced to 88 years. In January 2003, Willett had beat his girlfriend, Lorene Boehly, to death with a frying pan
- ❖ **Anchorage:** ADAs **Adrienne Bachman** and **Dan Shorey** obtained a guilty verdict for assault one in **SOA v. Clark**. Clark had stabbed David Fox at a local park. Members of the Samoan church volleyball team were key witnesses in obtaining the conviction.
- ❖ **ADA Katholyn Runnels** obtained a felony DUI conviction against Ronald Parks for driving his motor home while intoxicated. Parks had a BAC of .229 and two prior convictions for DUI.
- ❖ **Kenai:** **Will Walton**, the Kenai DAO's newest attorney started a trial and took the Bar exam – not bad for someone who had just moved to Alaska from Dallas Texas within the last month.
- ❖ **Kodiak:** A disgruntled Seattle Seahawks fan was sentenced to a composite 36 months with 30 months suspended following a plea for two counts of criminal mischief in the fourth

degree and one count of attempted witness tampering. The man had knocked out two car windows following the Seahawks loss in Superbowl XL. The defendant had been invited to the victim's home to watch the game. He had gone outside for a smoke break when he decided to break the windows, in clear view of his host.

March 2006

- ❖ Anchorage: **SOA v. Nathaniel Vickers. ADA John Skidmore** obtained a verdict of assault 1 against Vickers. A domestic altercation between Vickers and his girlfriend resulted in Vickers dousing his girlfriend with rubbing alcohol and setting her clothes on fire.
- ❖ Anchorage: **SOA v. Annette Moore**. After the first trial ended with a hung jury, **ADA Dan Cheyette** secured a verdict for 12 counts of making a false statement to obtain unemployment benefits and theft in the 2nd degree against Annette Moore.
- ❖ Kodiak: A 49-year old man was indicted for promoting an exhibition for fighting animals, a class C felony after the Kodiak Police Department seized 27 fighting roosters.
- ❖ Nome: A nurse at the Norton Sound Regional Hospital was charged with numerous felonies involving drugs. Last November the hospital reported a large volume of narcotics was missing. Police found that the lining of the defendant's coat had been cut open and stuffed with a number of drugs, including Demerol and morphine injectables, Oxycodone tablets and syringes. In June the defendant entered no contest pleas to felony drug and theft charges.
- ❖ Palmer: Richard Deremer III was sentenced to 134 years. Last November a Palmer jury found Deremer guilty of murder in the first and second degree, burglary in the first degree, arson in the first degree and tampering with evidence. **ADA Suzanne Powell** prosecuted this case. Powell also had previously obtained a verdict against Deremer's wife, Cynthia Estes, as an accomplice to murder in the first degree, murder in the second degree and burglary in the first degree. The two defendants planned to kill the victim, David McKinney, to steal his prescription medications. In

Cold Case Prosecutions

State of Alaska v. John T. Carlin III and Mechele K. Linehan, a/k/a Mechele Hughes

In early October the department's cold case prosecution unit charged John T. Carlin III * and Mechele K. Linehan (aka Mechele Hughes)* with first degree murder for the May 1, 1996 homicide of Kent Leppink.

Leppink's body was discovered near mile 13.5 of the Hope Road near Hope, Alaska on Thursday, May 2, 1996. An on-scene investigation concluded that Leppink had been shot three times. The initial investigation into Leppink's death was conducted by the Alaska State Troopers.

"Additional information from several witnesses, newly discovered evidence regarding the suspect's possession of and handling of what we believe to be the murder weapon, and changes in technology improving forensic analysis from the defendants' computers provided the state with a foundation to proceed with the presentation of this case to the grand jury," said Senior Assistant Attorney General Pat Gullufsen.

**** The charges in this case are merely an accusation. Defendants Mechele K. Linehan and John T. Carlin III are presumed innocent until and unless proven guilty.**

State of Alaska v. Esau Fualema, Jr.

In mid July the department's cold case prosecution unit charged Esau Fualema, Jr.* with second-degree murder in connection with the June 13, 1999 death of Marc Hopfenspirger.

Fualema was alleged to have been involved in an altercation with Hopfenspirger at the Carrs store at the Sears Mall at approximately 2:00 a.m. on June 13, 1999. An autopsy conducted the next day by Dr. Franc Fallico determined that the cause of death was a sharp-force injury to Hopfensinger's neck.

**** The charges in this case are merely an accusation. Defendant Esau Fualema is presumed innocent until and unless proven guilty.**

May, Estes was sentenced to 75 years on the murder charge and three years on the burglary charge.

- ❖ Palmer: Timothy Wey was sentenced to serve 99 years, with 24 years suspended, for first degree murder of his mother. On July 4, 2005, Wey started a fire in the basement of the family home and barricaded the stairwell to prevent his mother's escape. **ADA Richard Payne** prosecuted this case.
- ❖ Palmer: Eugene Gordon was sentenced to serve 75 years for the December 12, 2004 murder of Jesus "Jesse" Manglona and the attempted murder of Laurie Welsh. **DA Roman Kalytiak** and **ADA Michael Perry** were involved in the prosecution.
- ❖ Palmer: Glen W. Ogletree was sentenced to 18 years, with time suspended plus probation on charges of sexual abuse of a minor in the first degree, exploitation of a minor, burglary, violating a domestic violence protection order, distribution of child pornography and possession of child pornography. **DA Roman Kalytiak** and **ADA Michael Perry** prosecuted this case.

April 2006

- ❖ Anchorage: **ADA John Skidmore** obtained a 60 year sentence for Leroy Lopez for killing a Taco Bell worker during a robbery
- ❖ Anchorage: **ADA Alan Goodwin** obtained a guilty verdict against Oscar Cano for attempted sexual assault in the second degree in a non-jury trial. Cano had 18 prior misdemeanor convictions starting in 1977.
- ❖ Nome: State prosecutor **Richard Svobodny** obtained a 99-year prison sentence for Matthew Owens, a former Nome Police Officer convicted of the murder of Sonya Ivanoff.

May 2006

- ❖ Kenai: **ADA Scot Leaders** obtained a murder conviction against Barry McCormack for the death of Opal Fairchild. The jury was only out a few hours. This was an unusual homicide – the murder took place 21 years ago and the defendant is a serial killer. After he is sentenced he will be sent to Kansas to be tried on a different murder. This case

involved some terrific "CSI" – type evidence – the defendant's fingerprints were found on a newspaper in the victim's home from the date of the murder. His fingerprints were also found on a note in the victim's purse. Sentencing is scheduled for January 2007.

- ❖ Fairbanks: North Pole Man Charged with 79 Counts of Possession of Child Pornography. (May 2006): Louis C. Konetski** was charged with 79-counts of possession of child pornography and one count of distribution of child pornography in Fairbanks. The majority of those counts are for 75 individual videos that Konetski is alleged to have stored on his home computer. Four counts charged collectively that Konetski also possessed over 400 still images of child pornography, and well over 100 additional videos showing children being sexually abused. The charges arose out of a nationwide federal investigation by the Immigration and Customs Enforcement Bureau into illegal child pornography websites on the Internet. During that investigation, it was determined that a credit card and email account tied to Konetski at his North Pole home was used multiple times between 2002 and 2003 to access several of those sites. **Assistant Attorney General Teresa Foster** is prosecuting this case. ** **NOTE: The charges in this case are merely an accusation. Defendant Louis C. Konetski is presumed innocent until and unless proven guilty.**

June 2006

- ❖ Ketchikan: James Paul was sentenced to 60 years with 10 years suspended on his conviction for murder in the 2nd degree. Paul murdered his 22-month old child in 2004. The pathologists were unable to conclude whether the child died of electrocution, drowning or an overdose of over-the-counter drugs fed to the child by Paul. **ADA James Scott** handled this case.

July 2006

- ❖ Anchorage: Jack Morrell was convicted of murder in the second degree. On February 2004, Morrell was in line at the drive-up window of the Taco Bell on East Fifth Avenue in Anchorage when, intoxicated, he bumped into the vehicle in

front of him, driven by Eric Kalenka. The two drivers got into an altercation. During the struggle Morrell stabbed Kalenka seven to eight times. Kalenka died at the hospital. **ADA Adrienne Bachman** prosecuted this case.

- ❖ Anchorage: 74-year-old Keith Landers was convicted of murder in the first degree for killing his wife during their divorce case. **ADA Sharon Illsley** prosecuted this case.
- ❖ Anchorage: Lance Hinson was sentenced to 70 years in jail for the second degree murder of Tina Shangin. Shangin's body was found in the wooded area along the Glenn Highway between Bragaw Street and Airport Heights Boulevard. **ADA Sharon Illsley** prosecuted this case.
- ❖ Palmer: Gordon Carvalho was sentenced to 20 years in prison on charges of robbery in the first degree, misconduct involving a weapon in the third degree, felony eluding, assault in the third degree on a police officer and vehicle theft. Carvalho went on a crime spree in May 2005, which included stealing vehicles, stealing a firearm, taking drugs and driving vehicles erratically through school zones and residential neighborhoods, even after being shot by an Alaska State Trooper. Carvalho was on bail release and on felony probation during the commission of these offenses. **DA Roman Kalytiak** was the prosecutor in this case.

August 2006

- ❖ Anchorage: Antonio Garrison was sentenced to 42 years in two second degree murder 2 cases for the murders of Paul Clinton in November 2000 and Tawni Williams in June 2001. On November 1, 2000 Clinton was found dead from a gunshot wound to the back of his head at his place of business, Clinton Auto Sales. A 1997 Chevy pick up truck was missing from the car lot. In May 2001, Tawni Williams hired Garrison to remodel her trailer in Anchorage. She gave Garrison her credit card and pin number to pay for materials. On May 18, 2001, Garrison and a man he hired to help with the work on William's home, Curtis Kragero, took Williams to an area off Knik-Goose Bay Road and killed her with a .22 caliber rifle. In August 2001 Kragero told others about the crime and they called Crime Stoppers. Kragero told police

about the killing and took them to the location where William's body was buried. Since the evidence in both cases was circumstantial or depended upon the testimony of witnesses incarcerated in jail, the state entered into a plea agreement under which Garrison plead to two counts of murder in the second degree to be sentenced to 21 years in jail on each murder, consecutively, with a parole restriction that will prevent his release from jail until he has served 28 of the 42 years. **Chief ADA John Novak** negotiated the plea bargains.

- ❖ Anchorage: **Football field shooters indicted.** On August 1 three men were charged for shooting at football players engaged in a pickup game at the Municipal football stadium near Sullivan Arena and Chester Creek. On July 9, 2006, a group of young men had gathered at the football field. After an argument between Norma Fagafaga and another player, an altercation took place. Clayton Nai and Kalani Maalona joined in on Fagafaga's side. Fagafaga, Nai and Maalona then walked into the sidelines, pulled weapons and started firing at about 50 people on the playing field. Anchorage police found 53 expended cartridges on the playing field. A gunshot hit Daniel Leituala in the face. The three were charged with five counts of attempted murder for shooting at their opponents in the pushing and shoving match, one count of assault in the first degree for injuring Leituala, and 74 counts of assault in the third degree. **NOTE: The charges in this case are merely an accusation. Defendants Fagafaga, Nai and Maalona are presumed innocent unless and until proven guilty.**
- ❖ Palmer: Judge Beverly Cutler forfeited the \$100,000 bail posted by John Smith's mother for her failure to adequately monitor her son while on release to attend his father's funeral. The court found she allowed her son to be outside her presence during the five-hour release. Smith escaped during the release and cut off two ankle monitors in the process. He will receive four years in prison (in addition to the 16 years he previously received on the underlying offenses) for crimes related to his escape. **ADA Richard Payne** han-

dled this case.

September 2006

- ❖ Anchorage: Jerry Daniel McClain was sentenced to a mandatory 99-year sentence for the murder of his girlfriend, Kiva Friedman. In April 2003 McClain beat Friedman to death with a bat. McClain plead no contest to murder in the first degree. Following the pleas **Chief ADA John Novak** presented clear and convincing evidence (as found by the court) that McClain had tortured Friedman during the killing. This showing of torture resulted in a mandatory sentence of 99-years.
- ❖ Anchorage: In September Jack Morrell was convicted of liquor importation in violation of local option law. Morrell attempted to transport 24 plastic bottles containing alcohol to the community of St. Mary's. Troopers investigated the packaging box at Anchorage International Airport and found the bottles. The bottles had been "burped." "Burping" is a technique where plastic bottles are open and squeezed to remove the air before the bottle cap is re-tightened. "Burping" prevents the liquid contents in the bottle from sloshing around to avoid detection if the container carrying the bottles is shaken. Morrell admitted he knew that St. Mary's was a dry community. **ADA Dan Shorey** tried this case. [NOTE: This is the same Jack Morrell who was convicted of second degree murder on July 10, 2006 for the February 2004 murder of Eric Kalenka.]
- ❖ Kenai: Three women were charged with felony drug crimes in September in Kenai. One of the women charged was indicted for running a meth lab after officers reviewed the logbooks pharmacies are required to keep and discovered that the defendant and her sister had purchased Sudafed 14 times in the last month. An investigation led to the discovery of a portable lab on the grounds of the defendant's house.
- ❖ Ketchikan: A Ketchikan jury found George Archbold guilty of misconduct involving a controlled substance in the third and fifth degrees. Archbold allowed a police officer into

his hotel room where the officer discovered several small packages of methamphetamines and three packages of marijuana. Archbold told police about his selling meth and marijuana.

October 2006

- ❖ Anchorage: Darian Patterson was convicted of attempted murder and first degree assault. On April 2, 2006 Patterson fired eight shots at a large SUV filled with 10 passengers after an altercation at a Holiday Gas Station on Muldoon. Two women seated in the back seat were struck by bullets. One was shot in the back and the other was shot through her lung. **ADAs John Skidmore and Rob Henderson** prosecuted this case.
- ❖ Anchorage: Buford Goldsmith was convicted of assault in the first and third degree for injuries he inflicted on his 10-month old son in June 2004. **ADA Adrienne Bachman** prosecuted this case.
- ❖ Anchorage: Joshua Thomas was convicted of assault in the second degree for physical abuse of a child. **ADA Sharon Marshall** tried this case.
- ❖ Bethel: Isaiah Chikigak pled to murder in the second degree for the death of Mary James and received a 75-year jail term. Chikigak and James had been drinking at a party. When the party ended they went to an area near the airport to continue drinking. Five days later James' body was found buried in a mound of dirt. The autopsy revealed that James had been beaten and tortured. **Anchorage Chief ADA John Novak** prosecuted this case.
- ❖ Kodiak: A 26-year old Cordova man in Kodiak on a commercial fishing boat was convicted as an accomplice of class B felony interference with official proceedings after helping another defendant who was beating up a witness scheduled to testify against him. The "other defendant" was convicted of felony assault and sentenced to 120-days in jail. This "interfering" defendant received a suspended imposition of sentence, with probation for five years and 90 days to serve in jail.
- ❖ Nome/Kotzebue: A Nome man was charged with arson

after splashing kerosene on a house. Inside the house was the man's ex-girlfriend. Superior Court Judge Ben Esch, who happened to be walking by after the fire was set, rushed in to clear the house. The defendant was a suspect in the case, which occurred in March, but he could not be linked to the crime until later this past summer when he confessed to the police.

- ❖ Palmer: Christopher Kevan was convicted of two counts of murder in the first degree and four counts of murder in the second degree after a jury trial. Kevan killed his girlfriend, Brandie Burns, and their 6-week old baby, Ashton, on October 26, 2005. **ADA Richard Payne** prosecuted this case.
- ❖ Palmer: Matthew Kompkoff was indicted on charges of murder in the first and second degree, manslaughter, criminally negligent homicide and assault in the first degree for the stabbing death of his wife, Kelly Kompkoff. The stabbing occurred in Tatitlek. The victim died in Valdez. ADA Jon-Marc Petersen handled this case for the state. **** NOTE: The charges in this case are merely an accusation. Defendant Matthew Kompkoff is presumed innocent until and unless proven guilty.**
- ❖ Palmer: Joseph S. O'Brien was convicted of criminally negligent homicide and driving with a suspended license. O'Brien, who was driving in a sub-standard vehicle, struck a snow machine driven by Calvin Toal.

November 2006

- ❖ Anchorage: Russell Hanks sentenced to eight years for attempted sexual abuse of a seven-year old girl. **ADA Alan Goodwin** prosecuted this case.
- ❖ Anchorage: Steve Lapitre was convicted of second degree murder in the Chilkoot Charlie's parking lot shooting. Lapitre and his companion had competed in a dance competition with Kylan Brown and Brown's companion at the bar. Later Lapitre was escorted from the bar. Lapitre uttered a slur to Brown, which Brown's companion heard. As they were preparing to drive off Brown had his companion stop their vehicle and issued a "come on gesture"

to Lapitre. Brown was unarmed. Lapitre pulled a handgun and shot and killed Brown. This event took place in 2005. The case was made challenging by the fact that Brown's companion overdosed approximately one-month after she testified at grand jury. **ADA Sharon Illsley** tried this case.

- ❖ Naknek: Emma Alto, of Naknek, was convicted of criminally negligent homicide for rolling her car and killing her passenger. Anchorage **ADA Ben Hofmeister** prosecuted this case.

* * *



Fish & Game Snapshot

One of the important functions of the Criminal Division is to prosecute those individuals who violate state laws and regulations designed to protect and manage our fish and game resources. Within the Office of Special Prosecutions and Appeals, Assistant Attorney General Roger Rom prosecutes individuals who violate our fish and game laws.

Fishing Violations

Bristol Bay Salmon Fishery: Bristol Bay is one of the most productive salmon fisheries in the world. Between mid-June and mid-July a fleet of about 800 boats are fishing these waters. The Alaska State Troopers temporarily assign about 30 -40 of their personnel to Bristol Bay when the fishery is open and three patrol vessels are monitoring fishing activities. These boats include the P/V Stimson, Wolstad, and Fidelis. This year the troopers wrote about 350 tickets for commercial fishing violations. Ninety-percent of these violations are for fishing boats that fish outside legal boundaries. Fines for these violations typically range from \$1,500, for first time offenders, to \$20,000. One boat was also seized. Fines for fishing violations often exceed \$400,000 a year.

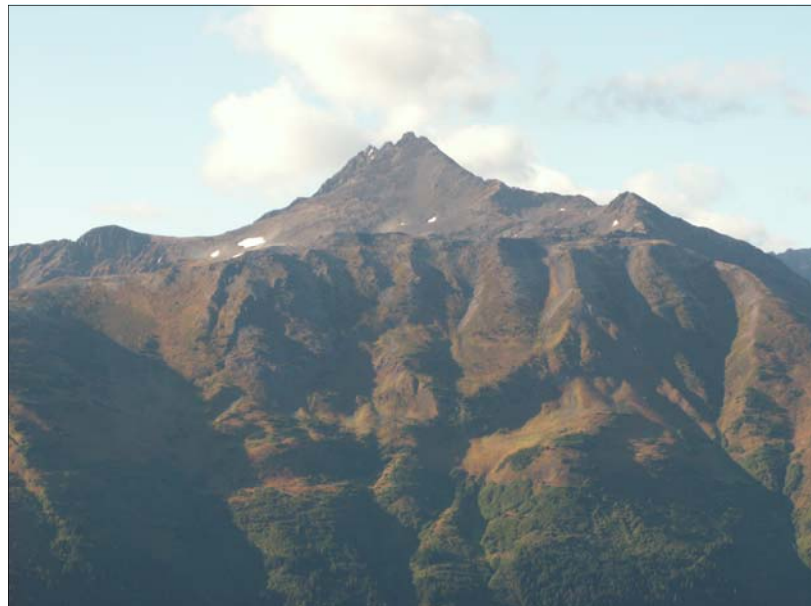
Hunting

Registered Hunting Guide Charged with Multiple Counts of Assault: (February 2006) Edward Byron Lamb was charged with 8 counts of assault in the third degree in Dillingham Court. Lamb, a registered hunting guide, was also charged with several counts of fourth degree assault, four counts of hindering lawful hunting, one count of failure to remove meat from bone and two counts of failure to salvage meat. The assault charges stem from accusations that Lamb used a red and white Supercub to accost hunters near the Dillingham area. Assistant Attorney General Roger Rom is prosecuting this case. Trial is scheduled in mid-December.

NOTE: The charges in this case are merely an accusation. Defendant Edward Byron Lamb is presumed innocent until and unless proven guilty.

Two Men Sentenced for Multiple Game Violations Involving Dall

Sheep Near Popular Anchorage-area Viewing Area: (September and October 2006): Robert McConnell and Douglas E. Perfetto were charged with multiple violations of Alaska Fish & Game laws including taking sheep out-of-season, wanton waste of two Dall sheep and unlawful transportation. The charges stemmed from events taking place on February 12, 2006 near mile marker 104 of the Seward Highway south of Anchorage. McConnell plead no contest in May 2006 for tampering with evidence (a C class felony) as well as for five misdemeanor violations for wanton waste, taking sheep out-of-season and unlawful transportation. McConnell is a taxidermist who was previously convicted in federal court for illegally taking desert sheep in the lower 48. Perfetto plead no contest to felony tampering and multiple fish & game violations and was sentenced in September 2006.



Protecting Alaska's Communities—The Alaska Rural Justice and Law Enforcement Commission

The Alaska Rural Justice and Law Enforcement Commission (ARJLEC) was created by Congress in 2004 and was charged with the task of studying four areas of the law related to rural Alaska including: law enforcement, judicial services, alcohol importation and interdiction, and domestic violence and child abuse.

In 2004 Senator Ted Stevens told the Alaska Legislature that the panel's primary objectives will be stronger law enforcement and a swift, fair system of justice for all. We must move forward, at a state and federal level, to implement today's recommendations with the continued participation of Alaska's rural stakeholders.

ARJLEC members participated in meetings beginning in October 2004. Fifteen public hearings were held across the state and in our rural communities from October 2004 through June 2005.

The Commission members, their staff and the 50 members comprising the Commission's working groups worked extremely hard to create a comprehensive report, which was completed in April 2006. Implementing the recommendations of this Report will require continued advocacy at the state and federal level.

On April 5, 2006, Attorney General David Márquez, in his capacity as Co-Chair of the ARJLEC, participated in a presentation before Alaska House and Senate Judiciary Committees to discuss the findings and recommendations of the Commission. The report was presented to Alaska's Congressional delegation and was forwarded on to Congress.

The process was invaluable in mapping out directions for future legislative efforts and allocation of state and federal resources to improve rural justice efforts throughout the state. At the time Márquez noted, "I was especially impressed with the information and recommendations the ARJLEC received, which focused on community-based approaches to address rural justice issues."

The working groups identified over 100 options, which, through careful deliberation, resulted in nine broad categories of recommendations for improving the four aspects of rural justice identified in the Commission's legislative mandate: (1) Engaging in more partnerships and collaboration, (2) Making systemic changes to improve rural justice law enforcement, (3) Enlarge the use of community-based solutions, (4) Broaden the use of prevention approaches, (5) Broaden the use of therapeutic approaches, (6) Increase employment of rural residents in law enforcement and judicial services, (7) Build additional capacity, (8) Increase access to judicial services, and (9) Expand the use of new technologies.

At the legislative level we continue to improve our state bootlegging and local option laws – topics strongly tied to concerns raised by the Commission with respect to the use, sale and abuse of alcohol in rural Alaska. At the departmental level, we have created new law enforcement and rural prosecution positions, worked with federal agencies to step up rural alcohol interdiction efforts, and have launched a pilot "Sub-Hub" project to become more proactive in providing services to villages. Our goal is to work with village residents to address their needs.

Kobuk Holds First Court Hearing Ever When Shungnak Resident Pleads No Contest to Liquor Importation:

Shungnak Resident Heather Lee, age 20, was sentenced in Kobuk, Alaska on Friday, November 17, 2006 after pleading no contest to a consolidated A misdemeanor Liquor Importation into Local Option Area. Kotzebue Magistrate Karen Bendler sentenced Lee to a one-year suspended imposition of sentence with 120 hours of community work service working with the Shungnak alcohol counselor and conditions of no jailable offenses, subject to search for alcohol at airports, forfeit items seized, and no possession or consumption of alcoholic beverages.

The sentencing occurred at the Kobuk School in the cafeteria/gymnasium. Normally court proceedings for events involving the community would take place in Kotzebue. In this case, the judge assigned to the case and the attorneys agreed to conduct a special sentencing hearing in the Kobuk school (SEE picture below).



“The decision to hold this hearing in Kobuk is appropriate given the community impact involving liquor importation issues, and especially here, where a young man, Leon Horner, lost his life. In 2004 the legislature passed Governor Murkowski’s omnibus crime bill – SB170 – that strengthened our local option laws. The fact that this proceeding was held in Kobuk reinforces the commitment of all branches of state government to address the significant alcohol issues impacting our children and our rural communities.”

- Attorney General David Márquez

At the sentencing in Kobuk, Lee admitted to importing 3 containers of vodka into the “dry” communities of both Kobuk and Shungnak where sale and importation are banned. On the night of the importation, the alcohol was consumed by Leon Horner who subsequently drowned in the Kobuk River. Leon Horner’s blood alcohol level was 0.324 (over four times the legally intoxicated limit).

“This tragedy (Leon Horner’s death) was avoidable and is exactly the reason why some communities choose to enact a local option law,” said Assistant Attorney General Andrea Russell, the prosecutor in the case.

According to the 2002 Annual Drug Report, Alaska Bureau of Alcohol and Drug Abuse, alcohol is the primary substance of abuse in Alaska and is the leading cause of violence and accidental death, especially in the state’s rural areas.

The residents of Shungnak voted to ban the sale and importation of alcohol in 1987. The residents of Kobuk voted to ban the sale and importation of alcohol in 1989.

* * *

Protecting Alaska's Consumers

Introduction

This year the consumer protection unit of the Commercial and Fair Business Section was hard at work on a number of significant cases and educational opportunities. What follow is a list of some of the more significant cases the consumer protection section addressed followed by a list of several educational opportunities the unit accomplished this year.

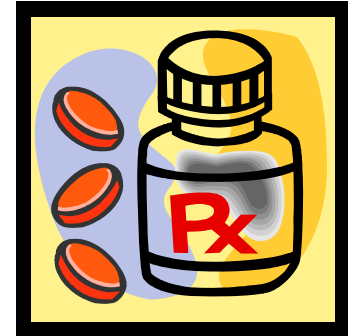
Alaska Supreme Court Affirms Civil Penalties Ruling in Deceptive Advertising Case (Aug. 15, 2006)

The Alaska Supreme Court affirmed a superior court ruling imposing \$30,000 in civil penalties plus costs and attorneys fees against Dennis Lee, d/b/a United Community Services of America and Better World Technologies. In 2001 Lee advertised on the Internet and in an ad in the Anchorage Daily News that he would be demonstrating at a presentation in Anchorage various "new revolutionary technologies" including a generator that could provide "free electricity." The state filed a complaint against Lee for deceptive advertising in violation of Alaska's consumer protection act.

Legislature Passes Law Increasing Civil Penalties for Consumer Protection Violations (Aug. 2, 2006) - This year the Department of Law assisted Anchorage Representative Lesil McGuire to pass HB 446, which increased the penalties for consumer protection violations. The old law, passed in 1974, provided for penalties up to \$5000. The new legislation adjusted that maximum fine amount for inflation. As a result a \$5000 fine in 1974 (the maximum fined amount under the prior law) would be approximately \$22,500 in 2006 dollars (the maximum fine amount under the new legislation). The new legislation also creates a minimum fine of \$1000, in addition to any restitution that may be ordered. In addition to the increased size of the penalty, individuals who engage in fraudulent conduct can be subject to multiple penalties. Every transaction with a consumer is a separate violation that can result in significant penalties, and each transaction may also have several separate violations.

State sues Lilly for illegal marketing of drug Zyprexa®: (March 2006)

The state sued Lilly, the maker of Zyprexa, an antipsychotic drug used to treat various bipolar disorders, including schizophrenia. The complaint alleges that Lilly knew of potentially harmful side effects of the drug, including diabetes and hyperglycemia, but failed to disclose this information.



DRAM lawsuit - Alaska joined in a multistate lawsuit against the manufacturers of Dynamic Random Access Memory (DRAM) chips used in computers, servers and other electronic storage devices. The complaint alleges that several manufacturers conspired to fix the price of DRAM. Most of these chips were sold to manufacturers including Dell, Gateway, Apple, Sony and others for use in computers and other consumer electronic products. The lawsuit seeks to recover damages for the amount of overcharges attributable to the conspiracy as well as penalties and injunctive relief.

United Egg Producers Run "A-Fowl" of Consumer Protection Laws—Producers reach an agreement with 15 states' attorneys general: In September Attorney General David Márquez announced that Alaska and 15 states and the District of Columbia reached an agreement with United Egg Producers ("UEP") to resolve allegations that the trade association misled consumers regarding standards of care for egg-producing hens. In early 2005 the Consumer Protection Unit of the Department of Law joined in a multi-state investigation into UEP's "Animal Care Certified" logo. The logo appeared on egg cartons to



certify compliance with UEP's hen-care standards. The Attorneys General concluded that the "Animal Care Certified" logo misled consumers as to the quality of UEP's standards of care, which allowed the forced molting of hens, confinement of birds in crowded wire cages, and de-beaking of chicks. In November 2005, UEP discontinued its "Animal Care Certified" logo and adopted its current "United Egg Producers Certified" logo.

Ameriquest to Pay \$325 Mill to Reform its Lending Practices. In 2006, the State of Alaska joined with 49 states in settling with Ameriquest over the company's use of high pressure tactics to reach desired sales levels and monthly sales quotas.

Time Inc. Settlement: In 2006 the state joined with 23 other states to settle with time over the company's practice to engage in automatic renewal practices and for its direct mail solicitation practices. Time agreed to pay \$4.5 mill to the states. Alaska received \$12,500 as its share plus over \$20,000 for restitution to Alaskan subscribers.

Department of Law issues a Business Advisory to Car Rental Companies Warning of Unlawful Fees: The commercial and fair business section issued a business advisory to all Alaska car rental companies warning that "vehicle licensing fees" (VLFs) must be included in the advertised rental rate. The car rental companies had claimed are necessary to recover the cost to license and register rental cars with DMV. The department of law determined these fees are nothing more than the cost of doing business, and cannot be charged as a separate "add-on" item.

State Sues Several Drug Manufacturers for Unlawful Price Reporting (October 2006): The state filed a lawsuit against 41 drug companies to recover for inflated prices Alaska paid for prescription drugs. The lawsuit alleges the defendants took advantage of the complex and non-transparent market for prescription drugs to publish false "average wholesale prices" or AWP, which then becomes the basis for calculating the price at which providers are reimbursed by Alaska. Alaska is among 23 states to bring a lawsuit alleging AWP manipulation. This conduct, if proven, is a violation of Alaska's

Consumer Protection Act, which provides penalties of at least \$1,000 and up to \$25,000, for each separate violation of the Act.

State Settles Consumer Protection Case with Lithia Auto Dealers (December 2006)

The Department of Law filed for court approval of a Consent Judgment to settle a year-long investigation of Lithia auto dealerships in Alaska for violations of Alaska's consumer protection laws. The state and Lithia entered a Consent Judgment that requires Lithia to pay a \$500,000 civil penalty to the state and additional monies in restitution to consumers who were harmed by the illegal conduct. The investigation focused on two issues. The first was Lithia's practice of charging an "administrative" or "document preparation" fee on all of its vehicle sales. These fees, called "doc prep fees" in the industry, are nothing more than dealer profit, and consumers often confuse this fee with state title, licensing, and registration fees paid to the DMV. Alaska Statute 45.25.440 prohibits Alaska auto dealers from charging doc fees unless they are included in the advertised price of the vehicle. Lithia has agreed to refund this fee, typically \$200.00, to all consumers who purchased a vehicle from Lithia on or after October 1, 2002 if the fee was paid in addition to an advertised price. The second issue focused on Lithia's failure to provide certain disclosures to consumers who purchased used vehicles. Alaska law requires all auto dealers to obtain accident and repair information from consumers who trade-in vehicles, then disclose this information to prospective purchasers. In addition, the law requires dealers to clearly post a disclosure on used vehicles that Alaska's lemon law does not apply to used car sales, that a manufacturer's warranty may not apply, and, if applicable, whether the vehicle was manufactured for sale in a foreign country, including Canada. If approved by the court, the Consent Judgment allows consumers to file claims for any harm caused by Lithia's failure to make used car disclosures that will be reviewed in a simplified process by an independent arbitrator.

* * *

Consumer Protection Education

Attorney General David Márquez Announces that the Weinstein Company will add Anti-Smoking Public Service Announcements to Newest DVD Release

In October Attorney General David Márquez announced that The Weinstein Company was the first motion picture company to insert anti-smoking public service announcements (PSAs) in DVDs in which smoking is depicted. The Weinstein Company responded to a September 2006 letter to Hollywood's 13 major motion picture companies, which was signed by the Attorneys General from 41 states. Beginning with the December release of "Clerks II," the Weinstein Company's upcoming DVDs, which are distributed by TWC's exclusive home entertainment distributor, Genius Products, will include an anti-smoking ad created by the American Legacy Foundation.

Attorneys General Reach Historic Settlement with R.J. Reynolds to End the Sale of Flavored Cigarettes

In October Attorney General David Márquez announced that R.J. Reynolds Tobacco Company and the Attorneys General of 39 states have entered into a settlement to end the sale of candy, fruit and alcohol flavored cigarettes manufactured and sold by Reynolds. Under the settlement, Reynolds agreed to a ban in the United States of its flavored Camel, Kool and Salem cigarettes. The agreement also imposes significant marketing restrictions that make it virtually impossible for Reynolds to market a flavored cigarette to youths in the future. The Attorneys General had asserted that Reynolds was violating the 1998 tobacco Master Settlement Agreement's prohibition on youth targeting through its advertising, marketing and promotion of its flavored cigarettes.

Attorney General David W. Márquez Issues Cease and Desist Order to Company Soliciting Phony Food Service Posters In September 2006 Attorney General David W. Márquez issued a

warning to Alaska food service establishments asking them to be aware of a letter notifying them of "new health codes" and requiring them to purchase hand washing posters. The Department's Consumer Protection Unit issued a cease and desist order to Alaska Food Service Compliance Center (AFSCC) to prohibit this organization from soliciting hand washing posters to Alaska food service establishments. AFSCC was distributing letters to food service businesses urging them to purchase and post hand washing posters. The content of the letters was deceptive and, among other things, referenced model federal food code provisions that have no application in Alaska. Neither Alaska nor the federal government has implemented any new hand washing posting requirement. Restaurant and food service establishments do not have to post a certain type of poster. The law does require that notices be posted reminding employees to wash their hands before handling food. Food service establishments are free to use posters that they have created or free stickers that may be obtained through the Department of Environmental Conservation's Food Safety and Sanitation Program or the Municipality of Anchorage's Food Safety and Sanitation Program.

Consumer Protection Outreach at AFN and Alaska Native Arts Summit (October 2006):

The attorney general's office, consumer protection unit, was present at the AFN conference, providing consumer protection information to the public from a booth at the convention shared with the Indian Arts and Crafts Board and the Federal Trade Commission. AAG Julia Coster and Investigator Lisa Turrini helped staff the booth. Coster also participated as a group leader in several roundtables at the Alaska Native Arts Summit, presenting information on counterfeit native art. The Alaska Native Arts Summit was an all day program sponsored by the Alaska State Council on the Arts and the Alaska Native Heritage Center. The purpose of the summit was to provide a forum for native artists to come and get questions answered about fair trade practices, counterfeit art, intellectual property and copyright laws, and obtaining grants.

* * *

Alaska Received Several Thousand Spanish-Language Consumer Protection Brochures at No Cost to Taxpayers

In October 2006 Attorney General David Márquez announced that the Department of Law, Consumer Protection Unit received several thousand consumer protection brochures designed to combat scams that target Latino communities. Printed in Spanish, the brochures are the product of a cooperative effort of Attorneys General Offices nationwide.

The idea for the brochures was developed by a group of Attorney General Public Information Officers working through the National Association of Attorneys General (NAAG). The funding was obtained through a consumer protection grant fund established in a 1997 settlement between the State of Massachusetts and Sears-Roebuck. This "Sears Fund" grant financed the production and distribution of 300,000 of these brochures nationwide.

Entitled "Fraud in Your Home," "Fraud in Your Wallet," and "Fraud in Your Car," each of the three contain general information for consumers. The focus is on commonly reported scams, including home repair, telecommunications fraud and auto sales. In addition, the brochures focus on scams that specifically target Latinos, such as sale of fraudulent international driver's licenses.

The brochures are being distributed to 41 states, Puerto Rico and the District of Columbia. As part of the same grant, NAAG is developing additional educational materials to be made available through the Internet in the coming months.

The brochures are available in the three state attorney general offices in Anchorage, Fairbanks and Juneau.



Protecting Alaska's Utility Customers

One of the ways in which the Department of Law protects Alaska's finances is acting as a state watchdog over regulatory affairs. In 2003, Governor Murkowski signed Executive Order 111 establishing in the Office of the Attorney General the authority to intervene on behalf of Alaska citizens in statewide utility issues before the RCA. In 2004 the Governor, with the assistance of the DOL, sponsored (and saw passed) Senate Bill 392. This legislation provided the Attorney General's office with the funding and legal tools necessary for him to carry out his duties as public advocate, and led to the creation of RAPA within the Department of Law.

In 2006 RAPA section participated in a number of important regulatory cases, including:

Kake Rate Settlement: (April 2006) - The state entered into a settlement with Kake Tribal Corporation. Kake filed a rate case proposing a 55% rate increase to its electric customers in Southeast, at the same time proposing a special contract with its affiliate, Pelican Seafoods, to reduce its rates by 69%. RAPA's prefiled testimony found the utility's proposed contract unwarranted and the proposed rate increase unjustifiable. The parties stipulated to a settlement including an 11% rate increase across the board, with no special contract for the utility's affiliate.

Enstar Credit Card Billing Practice: (May 2006) - The Regulatory Commission of Alaska approved a settlement negotiated by RAPA that Enstar's outsourcing of collection and billing practices remain subject to RCA oversight. As a result of the settlement the RCA will have the right to review the reasonableness of any proposed fee increase to ratepayers who use credit cards to pay their gas bills, and the utility must submit any proposed new contract for third party credit/debit card payments to the RCA for approval.

RCA Rejects Gas Supply Contract Proposed by Enstar:

(September 2006) – The RCA issued a decision rejecting the gas supply contract proposed by Enstar Natural Gas Co. with Marathon Oil Co. because Enstar did not meet its burden of proving that the contract provided for a sufficiently reliable gas supply at a reasonable price.

Enstar filed the proposed gas supply agreement (GSA) with Marathon for supply of natural gas from Marathon's proven reserves in the Cook Inlet beginning in 2009. The contract proposed to use a 12 month average of the Henry Hub Index (HHI) to price the gas. Last December Attorney General David Márquez elected to participate in the RCA proceeding to oppose the proposed rate increase in his capacity as the public advocate for regulated utility matters.

Enstar's proposed GSA immediately raised concerns because it would have increased natural gas costs to the company's captive ratepayers. More problematic was the fact that Enstar sought to justify having consumers pay for gas supplied under this contract utilizing a pricing mechanism intended for use as an incentive to explore for new and undiscovered natural gas resources. Under the proposed Marathon contract, the gas to be sold is based on proven reserves".

This pricing mechanism, known as the Henry Hub Index (HHI), is used to establish natural gas prices for delivery of gas to a number of markets in the southeastern U.S. and, in particular, at the Henry Hub pipeline crossroad in Louisiana. The RCA has used the HHI as a pricing mechanism in previous rate cases as an exploration incentive, to offset the additional costs associated with exploration.

The case went to administrative hearing before the RCA this summer. Throughout the proceeding the Attorney General argued that Enstar must prove both the sufficient reliability of gas supply and the reasonableness of price. The Commission agreed and found an insufficient showing by Enstar on both counts.

In its 3-2 split decision, the RCA also adopted the Attorney General's argument that any reasonable market pricing index cannot include add-ons for transportation of the gas from the wellhead to the hub, or add-ons to pay for the seller's production taxes. The proposed Enstar contract included both of those additional increases to the HHI base price index.

Enstar passes its gas costs through directly to consumers by filing an annual gas cost adjustment with the Commission for approval. On the evidence presented in this gas supply case, the RCA rejected the proposed contract because it increased Enstar's current average cost of system gas without sufficient evidence that doing so was just and reasonable under the circumstances.

Enstar's current weighted average cost of gas for 2006 is approximately \$5.00/Mcf. The commission estimated that if Enstar were taking gas under the proposed contract today the price of gas would be approximately \$7.50/ Mcf plus production taxes.

Protecting Alaska's Natural Resources And State's Rights

An important function for the Department of Law is to help protect responsible development of the state's vital natural resources industry. This task is often made more challenging from the standpoint of protecting our state's rights because Alaska is often the focus of efforts by the federal government and outside groups that seek to regulate or limit access to our natural resources.

Alaska Natural Gas Pipeline: The Attorney General and the Department of Law, Oil, Gas and Mining section worked with the Administration to develop a contract between the State and the project sponsors to allow construction of a natural gas pipeline from Alaska's North Slope to markets in the lower 48 by assuring fiscal

stability through the term of the contract. A significant step in laying the groundwork for a natural gas pipeline occurred in 2006 with the passage of a new Petroleum Production Tax, introduced by Governor Murkowski.

Predator Control - *Friends of Animals, et. al. v. the Department of Fish & Game*: In January the trial court entered a summary judgment in favor of the state in a challenge to Alaska's five current predator control programs. The court concluded that the programs did not violate state or federal law, were not arbitrary or capricious, and were adequately supported by the record and by scientific evidence. The court did find that the regulations creating the plans were inconsistent with a procedural regulation requiring certain details to be covered, and that two of the plans were too large geographically when compared with the findings on which they were based, so the regulations were declared invalid. The Board of Game, at the advice of the department, met in emergency session to repeal the invalid regulations and to adopt corrected, substitute regulations addressing the court's concerns.

Roadless Rule: In April the state filed an amicus brief in support of the U.S. Department of Agriculture (USDA) in the consolidated lawsuit ***California, et. al. v. USDA*** and ***The Wilderness Society, et. al. v. U.S. Forest Service***. In 2001 the Clinton Administration pushed through a final rule prohibiting construction of roads and harvest of timber in 58 million acres of inventoried roadless areas in national forests across the country (the "Roadless Rule"). The rule impacted 14.7 million acres in the Chugach and Tongass National forests. The rule had been challenged in nine separate lawsuits. Alaska settled its suit when the USDA agreed to initiate a process to enact a regulation temporarily exempting the Tongass from the "roadless rule" until completion of a rulemaking process for a permanent amendment intended to exempt both the Tongass and Chugach from its application. After the settlement the Wyoming District Court invalidated the "roadless rule." While that decision was on appeal, the USDA promulgated a new rule requiring that national forests be managed under the existing National Forest Management Act, but allowing individual states to petition the USDA to promulgate indi-

vidualized, specific rules related to the national forest lands within their state. The plaintiffs in the consolidated cases sued challenging the validity of the new rule as a violation of NEPA, the Administrative Procedure Act and the Endangered Species Act.

U.S. District Court Judge Dismisses Kensington Lawsuit

(August 4, 2006) - The U.S. District Court dismissed a federal lawsuit brought by environmental groups challenging the validity of a mine tailings discharge (section 404) permit for the Kensington Mine project.

At Governor Murkowski's request, the Department of Law intervened in the Kensington Lawsuit last year to protect the state's significant economic and regulatory interests. The Department's position remains that, from a legal perspective, the Army Corps of Engineers was well within its right to issue the section 404 permit and that the issuance of this permit was in compliance with the Clean Water Act.

The section 404 permit allows for mine tailings to be transferred as permissible fill into nearby Lower Slake Lake. The permit was issued after the U.S. Forest Service had released a final supplemental environmental impact statement showing that the project would have minimal environmental impacts.

The Kensington Mine project, located near Juneau, Alaska, represents the largest new mining project in Southeast Alaska in years. The project is estimated to recover one million ounces of gold over ten years and generate nearly \$2 million in mining licensing taxes and an additional \$3.5 million in corporate income taxes.

"The Kensington Mine project is critical for creating good-paying jobs and strengthening the economy of Southeast Alaska," said Governor Frank H. Murkowski. "The permitting process through which this project was developed shows that protecting the environment and creating family-wage jobs are not mutually exclusive."

Congress did not define the term "fill" in the Clean Water Act. The decision noted that the court should defer to and uphold regulations

adopted by federal agencies, including the definition of fill material adopted by the Corps of Engineers. The Court also held that the Corps of Engineers reasonably determined that mine tailings are covered in the definition of "fill material."

NOTE: Plaintiff environmental groups in this case filed an immediate appeal of this decision to the Ninth Circuit Court of Appeals. All work on the mine has been stayed pending this appeal.

Ninth Circuit Upholds BLM Oil and Gas Development Plan for the Northwest Section of the National Petroleum Reserve –

Alaska (July 27, 2006) - The Ninth Circuit Court of Appeals affirmed a ruling by U.S. District Court Judge James K. Singleton rejecting legal challenges brought by a number of environmental groups involving a plan of development to issue oil and gas leases in the northwest section of the National Petroleum Reserve – Alaska (NPR-A).

Judge Singleton had previously rejected the arguments advanced by the environmental groups and found the Bureau of Land Management (BLM) had properly balanced the competing interests of oil and gas development with environmental conservation, and had even adopted some protective measures similar to those suggested by the environmental groups.

Out of concern for the vital interests of the State of Alaska, including environmental concerns, royalty revenue, jobs and the economic activity associated with development, Governor Frank H. Murkowski asked the Department of Law to review the litigation two years ago.

The BLM leasing plan opens 7.23 of the 8.8 million acres in the Northwest part of the NPR-A to oil and gas development and could be one of the largest onshore lease offerings ever held.

A May 2002 U.S. Geological Survey assessment estimated that NPR-A holds between 5.9 and 13.2-billion barrels of technically recoverable undiscovered oil and between 39.1 and 83.2-trillion cubic feet of natural gas.

In April 2006 the state intervened in a similar lawsuit brought by environmental groups challenging the BLM's plan of development in the Northeast planning area of the reserve. This matter, *National Audubon Society, et. al. v. Kempthorne*, is still pending before Judge Singleton.

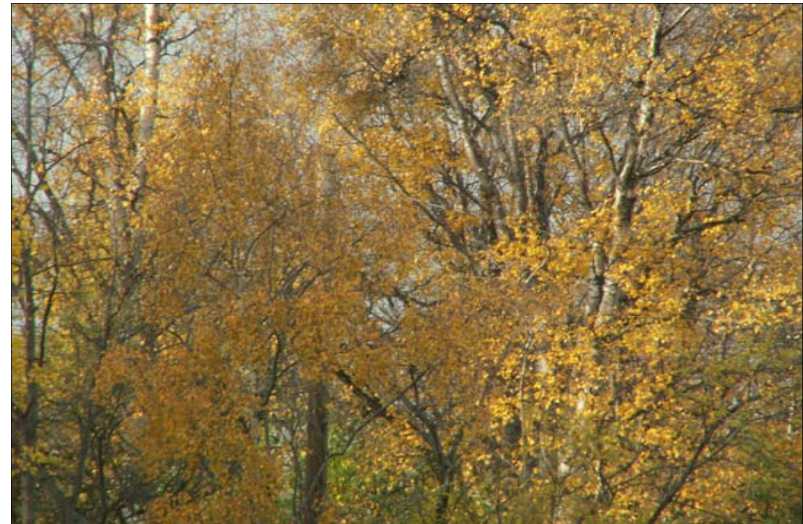
The NPR-A was originally known as the "Naval Petroleum Reserve Number 4 and was created in 1923 by President Warren G. Harding to secure a source of oil for the nation. The State of Alaska is entitled to 50-percent of the oil and gas royalties within the reserve.

Alaska Challenges Federal Attempt to Unilaterally Establish Federal Reserved Water Rights and Expand Jurisdiction over State Lands through Rulemaking. In July the state filed an opening brief in a case challenging the federal government's attempt to use the rule-making process to conclusively establish and exercise Federal Reserved Water Rights (FRWR) and to treat state lands as "federal public lands" in Alaska. *Katie John v. United States* (A05-0006 (HRH) (Consolidated)). The case, originally filed in 2005 as *State v Norton*, challenges 1999 Department of the Interior and Department of Agriculture regulations establishing FRWR on thousands of rivers and streams in Alaska without complying with any traditional requirements for establishing FRWR. The regulations also claimed and exercised FRWR in salt and intertidal waters overlying state-owned lands within the boundaries of federal conservation system units and downstream of those units. Although minor corrections to the regulations were recently adopted, the majority of the regulations remain unchanged, and the federal agencies continue to assert they can unilaterally establish and exercise FRWR through rulemaking without quantification or adjudication of those rights. **AAG Steven Daugherty** worked with the Alaska Department of Fish & Game and outside counsel on these issues.

Iliamna to Nondalton road project lawsuit dismissed: (April 2006)
- Judge Gleason dismissed an action brought by the Alaska State Council of Trout Unlimited challenging the construction of a road link between Iliamna and Nondalton. The Department of Transportation

sought to repair approximately nine miles of an existing dirt road from Iliamna to the Newhaven River and to construct a one-lane bridge over the river, and to build three miles of connecting road over an existing ATV trail to the village of Nondalton. Two federal lawsuits challenging this project are pending.

* * *



Protecting Alaska's Natural Resources Environment

Alaska is a true, resource development state, but along with ensuring that the state optimizes its constitutional mandate to develop its resources to the maximum benefit of all Alaskans is a related duty to ensure that our uniquely beautiful Alaska environment remains protected.

Though this section was engaged in several important efforts, perhaps the most significant one involved a joint decision by the state and federal governments to exercise the reopener provision of the 1991 settlement over the Exxon Valdez oil spill.

Exxon Valdez Oil Spill Settlement Reopener Clause (August 31, 2006) – The Alaska Department of Law and U.S. Department of Justice submitted a demand letter to ExxonMobil for \$92 Million under a provision of the 1991 settlement agreement's "reopener for unknown injury" clause. This clause was intended to allow the state and federal government to make an additional claim up to \$100 million for specific restoration projects provided that the governments establish that: (1) a population, habitat, or species has suffered a substantial and continuing loss or decline in the spill area; (2) the loss or decline is attributable to the spill; and (3) the loss or decline could not have been known nor reasonably anticipated by any of the federal or state trustees from information available to them when the settlement was signed in 1991.

Prior to submitting the Comprehensive Plan representatives for both governments held a series of public meetings in Alaska communities around the spill area to share information regarding impacts to the area, to outline the mechanics for submitting a claim under the reopener, and to solicit public comments. The Comprehensive Plan is available online at: <http://www.law.state.ak.us>.

Alaska Joins With 13 Other States in a Petition to the EPA to Require Disclosure of Hazardous Ingredients in Pesticides (August 1, 2006)

Alaska joined with 13 other states and the U.S. Virgin Islands to petition the EPA to require pesticide manufacturers to disclose on the label of their products all hazardous ingredients. More disclosure will lead to greater consumer awareness of the potential health and environmental impacts of using pesticides.

The EPA currently requires that pesticide labels disclose only the product's "active" ingredients that contain toxic materials intended to kill insects, weeds or other target organisms. Pesticide products

also contain many other "inert" ingredients, which are intended to preserve or improve the effectiveness of the pesticides' active ingredients. These "inert" ingredients may be toxic themselves.

Nearly 400 "inert" chemicals have been identified by the EPA or other federal agencies to be hazardous to human health and the environment, but the EPA does not require them to be included on pesticide labels. Current EPA regulations allow the identity of almost all "inert" ingredients to be omitted from the label based only on their function in the product, not on their health or environmental effects. States are pre-empted by federal law from requiring additional labeling for pesticides.

Coastal Management Plan: In January 2006 the state's hard-fought revised coastal management plan to protect state coastal resources while providing for environmentally responsible development received final approval from the national Oceanic and Atmospheric Administration (NOAA). NOAA issued its final approval on December 29, 2005, confirming that Alaska's amended plan met all federal requirements and standards.

GC-2 Crude Oil Transit Line Spill: The Department of Law assisted the emergency response and investigation of the large crude oil spill from BP's GC-2 transit pipeline at Prudhoe Bay. The department drafted a DEC administrative subpoena to BP to preserve and introduce documents concerning the spill and inspection, monitoring and maintenance of the line.

DEC Mixing Zone Regulations: The Department of Law's environmental section completed review of the DEC's mixing zone regulations. The primary changes dealt with DEC's deference to the DNR in defining spawning areas and approving mitigation plans in all waters (except those areas where the Dept. of Fish & Game retains authority).

***Commonwealth of Massachusetts et. al. v. EPA*:** In March, the D.C. Circuit Court upheld the EPA's decision not to regulate CO₂ and green house gas emissions from automobiles. At issue is

whether EPA has statutory authority to regulate air pollutants associated with climate change. Massachusetts et. al. have filed a petition for certiorari which the EPA opposes. Alaska is among state intervenors supporting the EPA.

Goldpanner Chevron Fined for Breaking Environmental Laws

(Nov. 20, 2006): Goldpanner Chevron and two of its employees were fined for abandoning drums of waste oil at three locations near mile 25 of the Chena Hot Springs Road. Goldpanner Chevron's president cooperated with the Department of Environmental Conservation to properly dispose and clean up the contamination.

Environmental Legislation Enacted in 2006

HB 269, sponsored by **Rep. Jay Ramras**, involves contribution rights under Alaska's strict liability law for the release of hazardous substances. HB 269 affirms existing Alaska law by allowing a contribution action "after the issuance of a potential liability determination" by the DEC.

HB 419, sponsored by **Rep. John Coghill**, repealed the Board of Storage Tank Assistance, the underground storage tank revolving loan fund, and the tank cleanup loan program. Since the repeal of the grant program, DEC has not received any loan application and the board had not met in a number of years.

HB 380 updated and consolidated statutory authorities for the state veterinarian and relating to animals and animal and agricultural products.

HB 392, sponsored by **Rep. Peggy Wilson**, authorized the establishment of regional solid waste management authorities. It received nearly unanimous legislative support. In light of expensive out-of-state waste disposal rates, the bill is designed to enable Alaska communities to independently or jointly act to implement waste management transport systems and disposal sites to handle local wastes at reduced costs and in an environmentally safe manner.

BP Pipeline Corrosion Issues in Prudhoe Bay Operating Unit by Attorney General David Márquez

In early August 2006, BP Exploration Alaska announced it was closing off production of oil from Prudhoe Bay in light of significant concerns surrounding pipeline corrosion issues. I formed a taskforce of attorneys to conduct a thorough fact-finding investigation of BP's management of the Prudhoe Bay oil field.

Corrosion issues must be examined along both directions of a timeline. We need to assess what damages the state suffered. We also need to ensure that future risks are significantly reduced or eliminated.

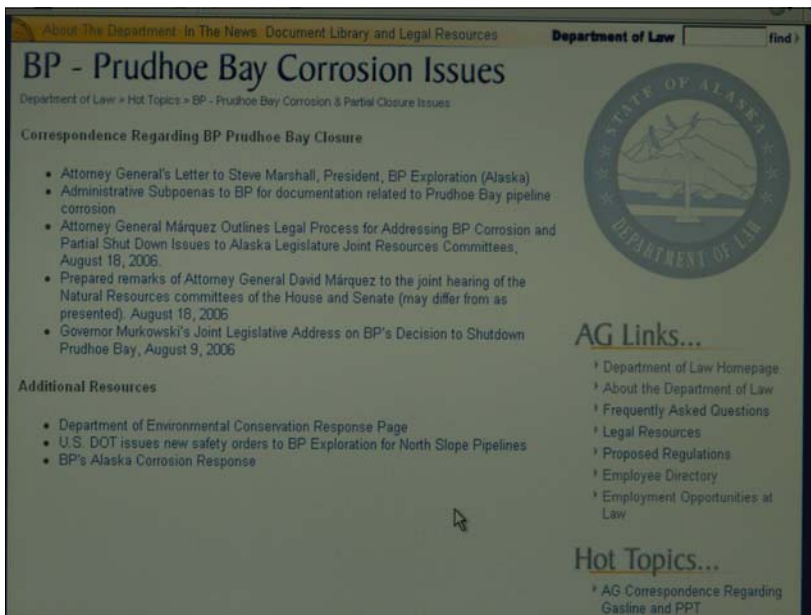
In mid-August, through administrative authorities within the state Department of Environmental Conservation, we issued subpoenas to BP and other holders of the Prudhoe Bay leases to preserve all documents related to corrosion going back to 1996. The subpoenas are intended to identify the record retention policies in place by BP (and the other Prudhoe Bay lease holders) and to place them on notice that any documentation related to corrosion and spill issues needs to be preserved and produced.

I need to emphasize that this investigation is in its early stages. The integrity of this process must be preserved until such time that we initiate any formal, legal action. While I am not free to discuss details of ongoing investigations, I can make some general observations.

There is an ongoing criminal investigation into both the March and August spills involving DEC investigators and the Department of Law environmental prosecutor. I cannot communicate about the investigation in order to preserve its integrity and also because we are working cooperatively with the federal authorities. The subject matter of a federal grand jury investigation is confidential – disclo-

sure of any information is prohibited except under specific exceptions.

Any successful criminal prosecution at the state level will require that the State prove that the actions taken, or omitted, were “criminally negligent.” Criminal negligence is defined under state law as essentially “a gross deviation from the standard of care that a



reasonable person would observe in the situation.” Alaska statutes make any criminally negligent violation of a DEC statute, regulation, order or permit a misdemeanor. The criminally negligent spilling of oil is also a crime.

Depending upon the investigation there may be civil remedies available to the state for damages. Damages for discharges of petroleum on state lands will reflect reasonable compensation for adverse envi-

ronmental effects, costs incurred by the state in detection, investigation, and attempted correction of the violation, and the economic savings realized by the person or corporate entity. Additional liability may be sought for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment, and all incidental administrative costs.

Additionally, pipeline owners and operators are strictly liable for the State’s response costs. Owners and operators are also liable for damages, including injury to property, loss of income, loss of means of producing income, or loss of economic benefit. An operator must pay restoration damages to restore the environment to its pre-spill condition. Owners and operators are liable for natural resources damages, such as damages to the tundra

The owners and operators of a facility from which there is a release of oil are strictly liable jointly and severally for “damages” “resulting from an unpermitted release.”

There are also enforcement tools available to the state. A person responsible for discharge of oil must immediately contain and clean it up and DEC must approve the cleanup plan. DEC has authority to obtain search warrants to investigate actual or suspected pollution incidents. It may inspect oil terminal facilities, pipelines, and exploration and production facilities to ensure pollution control. Absent timely and adequate inspections by other agencies, DEC may perform its own inspection of the structural integrity and operating and mechanical systems of pipelines and oil facilities. DEC can issue a Notice of Violation requesting the violator to cease and desist the violations; state why the violation occurred and how it will cleanup or repair of the problem.

In addition, the Department of Law is reviewing the state’s rights

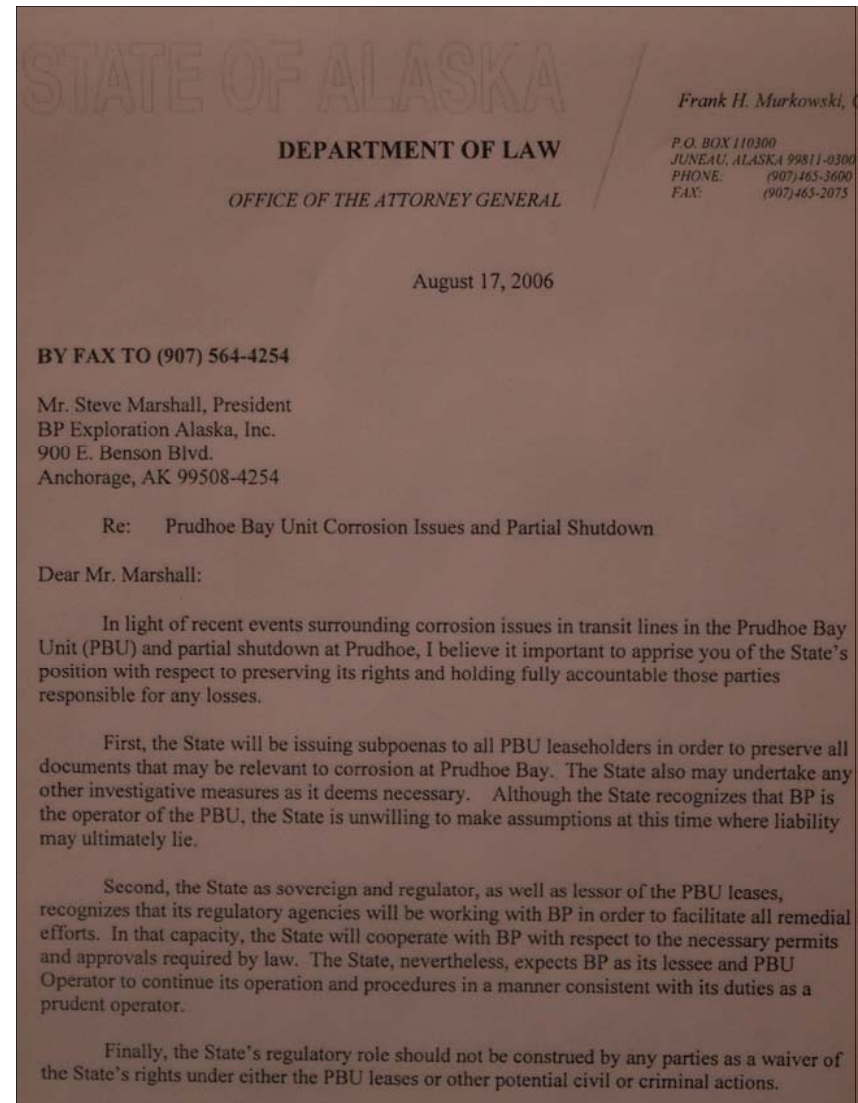
under the various leases, unit agreements, state statutes and the common law. Some of the claims most likely to arise will be those based upon principles of contract law; specifically, those claims that are based on breach of both the express and implied terms of the applicable oil and gas lease (DL-1 lease) and the Unit Agreement.

For example the lease requires that the oil companies “shall exercise reasonable diligence in drilling, producing and operating wells on said land unless consent to suspend operations is temporarily granted by [the] State.” The oil companies “shall carry on all operations in a good and workmanlike manner in accordance with approved methods and practices, having due regard for the prevention of waste of oil and gas.”

There may be extra costs due to decreased flow through TAPS. The State's royalty and tax interests in North Slope production are calculated on the wellhead value of the oil. The wellhead value for oil that is shipped interstate is determined by subtracting the transportation costs (i.e., the TAPS tariff plus tanker costs) from the market price at the purchasing refineries.

We all need to be careful not to treat BP unfairly at this stage of the investigation or unjustifiably raise the expectations of the public and the legislature with regard to the opportunities to recover damages under these theories. The State will have to establish the facts as events further unfold, will need to assess the relevant industry standards and review BP's and other documents in order to determine whether its conduct fell below those standards.

* * *



New Legislation

Every year the Department of Law is actively involved in shaping new legislation for the state. Whether legislation is proposed by the Administration, the legislature, or even by ballot initiative, the Department often has a hand in the crafting of new laws. This year saw the passage of a number of significant laws that the Department was actively engaged in to ensure that their state purpose was accomplished in accordance with the state and federal constitutions, as well as existing state law.

HB 149 – Controlled Substances: Meth & Marijuana: (May 2006)

Two years ago Governor Murkowski introduced legislation to create stricter penalties for people who use marijuana. During the previous legislative session the Alaska Senate combined two bills that addressed methamphetamines (“meth”) and marijuana. The revised bill was intended to control the diversion of pseudophedrine products for “meth” labs and to help reverse a 2004 Court of Appeals decision protecting marijuana growers. It passed in May 2006.

The “meth” provisions place sales limitations on products containing pseudophedrine, which is used in the production of this drug, and place cold remedies containing pseudophedrine as an active ingredient behind the counters at stores.

The bill criminalizes the possession of meth in organic solution and the delivery of precursor forms of the drug for manufacturing purposes. Manufacturers of meth can be subject to stiffer prison sentences for making the drug in buildings where children reside.

The bill passed by the House was also intended to reverse a decision by the Alaska Court of Appeals in *Crocker v. State*, issued in 2004, that protects marijuana growers and dealers from being subjected to search warrants. The primary purpose of the marijuana provisions of this legislation is to target commercial growers of this drug, not to undermine Alaskans' right to privacy. This court deci-

sion has significantly tied the hands of law enforcement to combat this large-scale illegal industry that targets Alaska's children.

After Governor Murkowski signed the bill into law the American Civil Liberties Union of Alaska sued to enjoin the law going into effect. On July 10 Judge Patricia Collins issued a decision that focused on only one provision of the legislation making possession of one or less ounce of marijuana a class B misdemeanor. Under this narrow focus, Judge Collins ruled that she was bound by the Supreme Court's previous determination in *Ravin* regarding an adult's right to possess a small amount of marijuana for personal use at home.

On July 28 the state announced that it was appealing this decision to the Alaska Supreme Court.

At the time Attorney General Márquez noted:

“I expected that this debate would require review by the state's highest court and I appreciate Judge Collins expediting this process, paving the way for a decision by the Supreme Court,” said Márquez. “Unfortunately this ruling still impedes law enforcement from obtaining search warrants for individuals engaged in the production, sale



Kotzebue drug bust—picture courtesy of the Department of Public Safety, Alaska State Troopers

and distribution of commercial amounts of marijuana that are illegal under state law. Possession of any amount of marijuana is illegal under federal law.”

The state’s statement of points on appeal also notes that the court failed to consider the findings made by the Alaska Legislature in support of modifying the penalties for possession of marijuana and failed to recognize and appreciate the government’s interests in regulating marijuana use. The matter is now being briefed for argument before the Alaska Supreme Court.

HB 446 – Unlawful Trade Practice: Penalty/Injunction (Rep. Lesli McGuire. Sponsor)

In August 2006 Governor Murkowski signed into law HB 446 that updates and increases the civil penalties that can be imposed on individuals who violate the state’s consumer protection laws.

The old law passed in 1974 provided for penalties up to \$5,000. The new legislation in effect adjusts that maximum fine for inflation. A \$5000 fine in 1974 would be approximately \$22,500 in 2006 dollars. HB 446 increased the penalty range up to a maximum penalty of \$25,000.

A new aspect of this law is the creation of a minimum fine of \$1000, in addition to any restitution that is ordered. In addition to the increased penalty size, individuals who engage in fraudulent conduct can be subject to multiple penalties. Every transaction with a consumer is a separate violation that can result in significant penalties, and each transaction may also have several separate violations.

SB 132: Human Rights Commission (Governor’s bill) (May 4, 2006)

In May the legislature passed a bill that will provide more discretion to the state’s Human Rights Commission to prosecute meritorious allegations of unlawful discrimination.

SB 132 amends or adds several provisions to the state’s existing discrimination laws that allow:

- A complainant to withdraw a complaint during the investigation and before the commission begins the formal accusation process
- A written conciliation of a complaint to have the equivalent weight of a commission order for enforcement purposes
- The commission the opportunity to summarily dismiss a complaint based on a legal evaluation of the claims raised in situations where the underlying facts are not in dispute

In 2003 there were 297 discrimination complaints before the Human Rights Commission. Of this total, 263 claimed employment discrimination. The four highest bases for these complaints were, in order: race (67); physical disability (34); sex (29) and age (18). Of these cases, 244 or sixty-nine percent were dismissed for lacking substantial evidence, eleven-percent were resolved by mediation, ten-percent were resolved administratively, and nearly eight –percent were resolved by conciliation/settlement efforts. Only six cases proceeded to hearing, and of those, two cases were resolved in the complainants’ favor and four ended in pre-hearing settlements.

SB 210: Violation of Alcohol Laws - Forfeiture (Sen. Therriault / Rural Justice Recommendations)

This year the Rural Justice and Law Enforcement Commission issued its final report to the Alaska State Legislature. Many of the commission’s recommendations have been addressed in part by previous legislation, most notably SB 170 – the Omnibus Crime Bill.

SB 170, sponsored by Governor Murkowski, was the most significant crime package to pass the legislature in 8 years. It provided significant improvement to local option & bootlegging laws. Specifically, it allows communities to adopt, as part of a local option under Title 04, lower amounts of alcohol that may be possessed or imported into the community than may currently be possessed or imported, and

still presumed to be for personal use rather than for sale.

Several communities have already adopted lower limits by local ordinance. If the lower limits are part of a local option election under state law, however, state law enforcement authorities can help communities enforce them.

SB 170 also closed a loophole in the local option law. Under then current law, a local option limiting alcohol applied in a five-mile radius around the center of the village. This circle helped protect against bootleggers on skiffs and snow machines from bringing alcohol to sell in local option villages. In cases where villages are close together, the areas of protection may overlap, and a loophole in the law essentially wipes away the protective radius for both villages, and limits alcohol only in the area of the village. The law was changed to provide that the least restrictive local option applies in an overlapping area, and that the radius does not shrink back to the village.

This past session SB 210 was passed in direct response to recommendations made in the Rural Justice Commission's interim report. SB 210 changes current law to help law enforcement better protect communities that have chosen to limit the sale or possession of alcohol under local option laws. It strengthens current forfeiture provisions by allowing seizure of alcohol transported by common carrier in violation of law. It authorizes seizure of property determined to have been purchased or obtained through proceeds of illegal importation or sale of alcohol and outlines procedures for a person claiming an interest in property that has been seized. The new law defines "manufacture" of alcohol and provides consistency between statutes by amending the allowable quantities. Over 100 communities in Alaska have chosen a local option to combat the problems associated with alcohol abuse and violence.

SB 218: Sex Offender sentencing / polygraphs (Sen. Bunde)

Senate bill 218 increases the sentences for the most egregious unclassified and class "A" sexual assaults against a minor to a mini-

mum 25 years. It increases sentencing for unclassified and class A sexual assaults (against adults) to a minimum 20 years. The legislation also increases the sentences for class B and C sex offenses and requires periodic polygraph testing for sex offenders on probation and parole.

SB 237: Additional Judges (Governor's bill)

This legislative session Governor Murkowski introduced SB 237 – legislation to create six new trial court judicial positions in Alaska. Specifically the legislation adds two judges in Anchorage, two in Palmer, one in Kenai and one in Fairbanks. The bill was introduced in recognition of Alaska's growing population, but particularly in recognition of the criminal case backlog. With increased population there is increased activity in both civil and criminal cases.

SB 3005: Detention / Identification / Contempt Witnesses

In mid-August Governor Frank Murkowski signed the material witness bill into law. This legislation was sponsored by Anchorage state Senator Con Bunde. The purpose of this legislation is to give law enforcement the statutory authority to temporarily detain a witness of a serious crime in order to find out what the person may know.

The new law only applies to felony crimes against people (i.e., murder, sexual assault, robbery or assault), drive-by shooting, the most serious crimes involving destruction of property and arson.

The bill attempts to safeguard the constitutional rights of witnesses at the scene of the crime. To respect constitutional rights, the bill does not require that the witness answer any questions or speak to the officer, nor does it allow the person to be removed from the vicinity or be unreasonably delayed. Law enforcement will be allowed to take the person's photograph. In cases involving murder, attempted murder and drive-by shootings, the legislation also allows the police to obtain some type of identification or the person's fingerprints.

* * *

Council of Western Attorneys General Hold Annual Meeting in Anchorage (August 6-10, 2006)

This August the Conference of Western Attorneys General (CWAG) held its annual meeting in Anchorage, Alaska. CWAG is a legal forum that assists its members by cultivating knowledge and facilitating cooperation and coordination around areas of interest to the west, including: water, fish, wildlife, public lands, mineral, environmental protection and Indian law.



Over 500 guests attended this event including the Attorneys General and staff for CWAG's 15 member states plus the Attorneys General for the states of Texas, Nebraska, Tennessee and West Virginia.

Anchorage is central to Alaska's forward-looking commercial, energy, natural resources, aeronautical and legal industries, so it is a great place to meet and conduct our business," said CWAG Chair Mark Shurtleff, Attorney General of Utah.

Panels explored key issues in the West, including: oil and natural gas; western energy supplies; state preparedness from natural disasters such as forest fires, tsunamis and floods; potential state liability issues arising from Avian Influenza (H5N1); "Best Practices" examples for improving law through multidisciplinary task forces; Clean Water Act issues resulting from mineral extraction; an update on state legislative initiatives involving Methamphetamine in the West; and identity theft, to name just some of the topics.

This year's keynote speakers included the Honorable John M. Roll, Chief Judge, U.S. District Court for Arizona and Jesse Choper, the Earl Warren Distinguished Professor of Law and former Dean of the University of California, Boalt Hall School of Law, who offered observations and commentary on the U.S. Supreme Court's 2005 term. Other VIPs participating at this event included the Honorable Vic Toews, Minister of Justice and Attorney General of Canada, and the Honorable John M. Roll, Chief Judge for the U.S. District Court for Arizona.



CWAG is a bipartisan group comprised of the 15 western states and three Pacific territories. Members include: Alaska, Arizona California, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, American Samoa, Commonwealth of the Northern Mariana Islands and Guam.

Civil Supervisor Retreat 2006

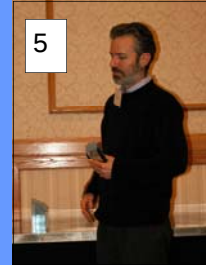
The Statewide Civil Supervisors Retreat was held in September 2006. This annual meeting provides an opportunity for the supervisors of the Department of Law's Civil Division to meet and prepare for future events that will impact the department. It also provides a collegial forum for frank discussion and education on how section supervisors and the Department of Law's senior leadership team can improve our skills and training so we can better serve the needs of the Civil Division and all its employees.

This year the main presenter at the conference was Robert Fortunato. The focus of Mr. Fortunato's presentation was "Empowering Leadership at All Levels." This topic is important in the day-to-day operation of the Department and is especially relevant now, given the approaching general election in November.

At this year's meeting two individuals within the Department were honored by their peers. Gail Voigtlander, who heads the Tort's and Workers' Compensation section, received the 2006 Civil Leadership Award. Kathryn Daughhetee, Director of Administrative Services, was also honored for her exceptional service to the Department. These individuals embody a standard of professionalism that all of us should strive to obtain. Kathryn is retiring this year and she will be greatly missed. In her time with the Department she has ably managed the budget, administrative and IT components that allow us to fulfill our public mandate for providing exemplary state legal representation.

BOTTOM PHOTO: BACK ROW (L-R) Mark Morones, Larry Ostrovsky, Elizabeth Barry, Steve Mulder, Craig Tillery, Jim Cantor, Bob Meiners, Signe Andersen, Di-anne Olsen, Randy Ruaro and Joanne Grace. **FIRST ROW (L-R)** : Deborah Behr, Stacie Kraly, Gail Voigtlander, Daniel Patrick O'Tierney, Attorney General David Márquez, Stacy Steinberg, Jan DeYoung, Nancy Gordon, Kathryn Daughhetee and Melanie Ferguson; **TOP PHOTOS: (L)** Gail Voigtlander, **(R)** Kathryn Daughhetee





Civil Division Retreat Award Scrapbook

(1) Karol Alderman (30-year Service Pin); (2) Rebecca Cain, Tina Paige & Patti Shake (Team Player Award); (3) Kay Rawlings & Bonnie Buchanan (Special Achievement Award); (4) Gayle Garrigues (15-year Service Pin); (5) Robert Mintz (Career Achievement Award); (6) Jennifer Joanis (Rookie of the Year Award); (7) Terri Begley-Allen (Legal Assistant Award); (8) Bob Auth (5-year Service Pin); (9) Sharon Stein (Career Achievement Award); (10) Virginia Ragle (Outstanding Service Award); (11) Melanie Ferguson (Legal Office Administrator); (12) Cindy Drinkwater (10-year Service Pin); and (13) Lew Craig (15-year Service Pin & Special Recognition Award)

Criminal Division

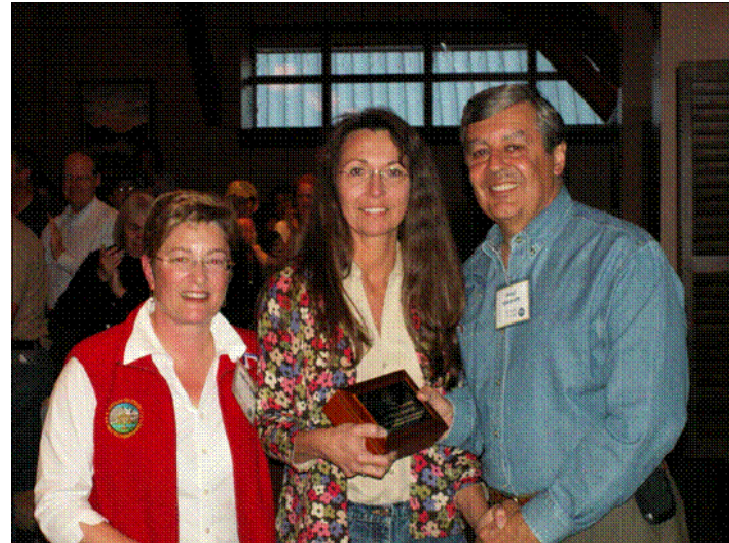
2006 Achievement Awards

In September the district attorneys and paralegals from the state's 13 District Attorneys offices gathered for their annual District Attorney & Victim Witness Paralegal Conference. Each year a number of attorneys and paralegals in the criminal division are recognized for outstanding service to the Department of Law.

This year, Anchorage Assistant District Attorney Adrienne Bachman was awarded Prosecutor of the Year. Adrienne is pictured center left. On her left is Susan Parkes, Deputy Attorney General for the Criminal Division. Attorney General Márquez is on the right.

Sue Wilson, far right, was awarded Victim/Witness Paralegal of the Year. Wilson, who works in the Special Assaults Unit, is retiring in January after 18 years of service with the state. According to the individual who nominated Sue for this award:

"Sue has been a remarkable asset of our office for many years. She is great at trial prep ... helping with photos, boards, organizing witnesses, etc. I can ask her to do so many things for me and I know she will execute the task quickly and well. I tease her that she is often like 'RADAR' on the old MASH show because she anticipates our needs and gets things done before even being asked."



Criminal Division—2006 Achievement Awards (con't.)



Diane Wendlandt (Anchorage)
Prosecutor Recipient of the Team
Award



Jonelle Stephens, Joleen Cooper,
Bryan Buchanan, Marja Halsten (not
pictured) (Fairbanks) - Victim/Witness
Paralegal Recipients of the Team
Award (Fbx DA Jeff O'Bryant on right)



Suzanne Powell (Palmer) Prosecutor
Recipient of the Model of Excellence
Award



Anna LaRoche (Kenai) Recipient of
the Victim/Witness Paralegal Model
of Excellence Award



Joe Slusser (Bethel) Prosecutor
Recipient of the Making a Difference
Award



Carrie Hulse (Juneau) Recipient of the
Victim/Witness Paralegal, Making a
Difference Award



Jarom Bangerter (Palmer) Prosecutor
Recipient of the Rookie of the Year
Award



Francie Clay (Dillingham) Victim/
Witness Paralegal Recipient of the
Rookie of the Year Award



*Anchorage District Attorney's Office
Service Pin Awards—November 15, 2006*

Nanette Lindsey, 5 years

Tim Terrell, 15 years



Doug Kossler, 10 years

Vivien Noll, 10 years



Erin White, 5 years

Bobby West, 5 years



John Novak, 15 years

Jim McCarty, 15 years



Not pictured, Nancy Simel, 20 years, Natalie Dunlap, 5 years and Cathy Satterfield, 5 years



Attorney General's
Office—Service Pin
Awards
November 7, 2006



TOP ROW (L-R): Daniel Patrick O'Tierney (10 years), Marilyn Sansom (15 years), Kay Rawlings (10 years), Keri Hile (10 years), Larry McKinistry (15 years); MIDDLE ROW: (L-R): Gail Voigtlander (25 years), Sabina Figueroa (5 years), Dianne Olsen (25 years), Pam Post (5 years); BOTTOM ROW (L-R): Mindy Ziolkowski (5 years), Signe Andersen, Cathy Marvel-Hall (25 years), Constance Croak (5 years). NOT PICTURED: Daniel Cadia (5 years), Darin Goff (5 years), Karyl Richards (5 years), Gretchen Knapp (10 years), Patti Runyan (10 years), Jim Cantor (15 years), Linda Kesterson (15 years), Susan Wibker (15 years), Bob Meiners, Kevin Messing, Margie Vandro and Christine Oles (25 years); Dan Branch, Kathryn Daughetee (20 years); Annie Carpenetti, Robert Collins, Mary Ann Lundquist and Joan Niemi (15 years); Stacie Kraly, Patricia VanPool, Teresa Foster and Gregory Olson (10 years); Randy Ruaro, Jack Schmidt, Heather Hartmann, Neil Spencer, Ben Hofmeister, Stefanie Wackler and Stacie Ryman (5 years)