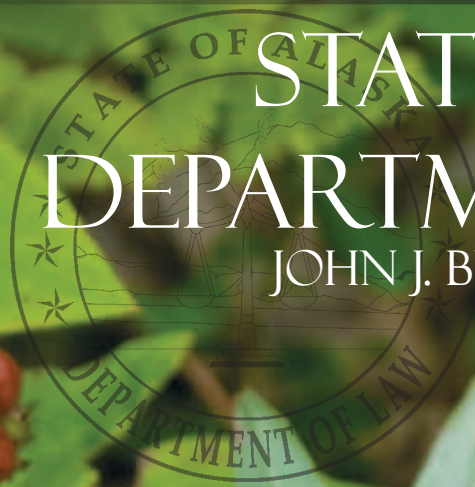




STATE OF ALASKA DEPARTMENT OF LAW

JOHN J. BURNS, ATTORNEY GENERAL

2010
ANNUAL REPORT

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MESSAGE FROM THE ATTORNEY GENERAL

Dear Governor Parnell and legislators:

It is a pleasure and a privilege to present you with an overview of the Department of Law for the year just ended – 2010.

The mission of the Department of Law remains as it has been for the past several years – protecting Alaskans, promoting good governance, safeguarding the state's fiscal integrity and facilitating economic development. These are the concerns of every Alaskan, and these are the objectives the men and women of the Department of Law are committed to pursuing with integrity and vigilance.

The successes of the department during this past year have been many and run the gamut from incarcerating dangerous criminals to interfacing with attorneys and other law agencies to provide free legal services to victims of domestic violence and sexual assault. The department daily confronts key constitutional and statutory questions, this year obtaining rulings from the Ninth Circuit upholding Alaska's merit selection system for appointing judges and from the Alaska Supreme Court allowing a parental notice ballot initiative to be placed before the voters. The department defended the Division of Elections' decisions during the state's contentious senatorial election. It successfully negotiated a half billion dollar settlement with the state's former actuary in connection with the unfunded liabilities to the state's public pension funds and also secured credit protection for current and former state employees who potentially were exposed to identity theft.

Much attention has been focused on the department's efforts to resist, aggressively, federal regulatory overreach that threatens the state's ability to responsibly develop the state's natural resources. Although those efforts have often entailed litigation against federal agencies, litigation is the choice of last resort. Unfortunately, when dialogue and educational efforts prove unsuccessful and federal agencies continue to violate the state's substantive and procedural due process rights without regard to the devastating socio-economic consequences that such regulations will impose, then it is incumbent upon the state through the Department of Law to oppose such encroachment.

One need only read the Alaska Statehood Act to recognize that the right of the state to responsibly develop its natural resources is the key to the state's economic foundation, and therefore the good jobs that allow families to prosper. The future of this great state and its citizens is inextricably tied to the state's ability to preserve and protect this right. To that end, the Department of Law, in conjunction with other state agencies and with the assistance of the administration and the Legislature, must and will remain vigilant in protecting against the federal regulatory overreach that threatens our socio-economic well-being.

Through the dedication, intelligence and passion of the men and women who comprise the Department of Law, we remain committed to making a positive and lasting difference in the future of Alaska and to improving the quality of life for Alaskans. I am very proud and honored to be part of this continuing and noble effort.

A handwritten signature in black ink, appearing to read "John J. Burns". The signature is fluid and cursive, with the first and last names being more prominent.

John J. Burns
Attorney General
January 3, 2011

DEPARTMENT OF LAW ORGANIZATIONAL CHART

John J. Burns, Attorney General

CRIMINAL DIVISION

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

Special Prosecution & Appeals

Douglas Kossler, Appeals
John Skidmore, Special Prosecutions

Juneau District Attorney's Office

Rick Svobodny,
Acting District Attorney

Ketchikan District Attorney's Office

Stephen West,
District Attorney

Sitka District Attorney's Office

Jean Seaton,
Assistant District Attorney

Barrow District Attorney's Office

Teresa Buelow,
Assistant District Attorney

Kotzebue District Attorney's Office

Angela Jamieson,
Assistant District Attorney

Nome District Attorney's Office

John Earthman, District Attorney

Anchorage District Attorney's Office

Adrienne Bachman,
District Attorney

Kodiak District Attorney's Office

Stephen Wallace,
District Attorney

Fairbanks District Attorney's Office

J. Michael Gray,
District Attorney

Dillingham District Attorney's Office

P. Susan Mitchell,
Assistant District Attorney

Palmer District Attorney's Office

Roman Kalytiak,
District Attorney

Kenai District Attorney's Office

Lance Joanis,
District Attorney

Bethel District Attorney's Office

Dwayne W. McConnell,
Acting District Attorney

ADMINISTRATIVE SERVICES DIVISION

David Blaisdell, Director
Eileen Donahue, Deputy Director

Management & Financial Forecasting

Eileen Donahue,
Deputy Director

Budgeting

Tracy Maher,
Budget Analyst

Fiscal and Accounting

Eileen Donahue,
Deputy Director

Procurement

Patricia Hull,
Procurement Specialist III

Timekeeping and Billing

Eileen Donahue,
Deputy Director

Information Services

David Seng,
Information Technology Manager

CIVIL DIVISION

James Cantor, Deputy Attorney General
Nancy R. Gordon, Statewide Office Chief

Child Protection

Carla Raymond,
Chief Assistant Attorney General

Collections & Support

Stacy Steinberg,
Chief Assistant Attorney General

Commercial & Fair Business

Signe Andersen,
Chief Assistant Attorney General

Environmental Law

Steve Mulder,
Chief Assistant Attorney General

Human Services

Stacie Kraly,
Chief Assistant Attorney General

Information & Project Support

Alan Birnbaum,
Senior Assistant Attorney General

Labor & State Affairs

Margie Vandor,
Chief Assistant Attorney General

Legislation & Regulations

Deborah Behr,
Chief Assistant Attorney General

Natural Resources

Elizabeth Barry,
Chief Assistant Attorney General

Oil, Gas & Mining

Tina Kobayashi,
Chief Assistant Attorney General

Opinions, Appeals & Ethics

Joanne Grace,
Chief Assistant Attorney General

Regulatory Affairs & Public Advocacy

Daniel Patrick O'Tierney,
Chief Assistant Attorney General

Torts & Workers' Compensation

Susan Cox,
Chief Assistant Attorney General

Transportation

Jeff Stark
Acting Supervisor

DEPARTMENT OF LAW MISSION STATEMENT:

PROTECTING ALASKA'S FUTURE

CORE SERVICES

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



The Criminal Division Results Delivery Unit

The Criminal Division works to establish safe and healthy communities by prosecuting and convicting criminal offenders in urban and rural Alaska and by upholding those convictions on appeal. The division provides assistance to victims and witnesses of crimes, and supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial and conviction. It also provides general legal services to the departments of corrections and public safety relating to their criminal justice activities. The Criminal Division has District Attorney's Offices in 13 communities. Rick Svobodny (left) is the Deputy Attorney General overseeing the Criminal Division.

The Civil Division Results Delivery Unit

The Civil Division serves the interests of Alaska's citizens by providing legal counsel to the executive branch in all civil matters. The division defends, prosecutes and oversees all civil litigation to which the state is a party. It handles legal matters for and provides legal advice to the governor, executive branch agencies, and – upon request – the legislative and judicial branches. Craig Tillery, the Deputy Attorney General overseeing the Civil Division during 2010, was succeeded by James Cantor (right) in 2011.



The Administration & Support Division Results Delivery Unit

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

PROTECTING ALASKANS' PHYSICAL SAFETY AND FINANCIAL WELL-BEING

PROSECUTING ALASKA'S CRIMINALS

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

In Fiscal Year 2010, the division filed 5,720 felony charges and 21,140 misdemeanor cases. This is a 7.3 percent increase in felony charges compared to FY09 and a 2.7 percent increase in misdemeanor charges.



Barrow Juvenile Probation Officer Garrett Danner was lucky enough to be selected to do a blanket toss during one of the Nalukataqs, community celebrations during the month of June, honoring every crew who got a whale during spring whaling.

Office of Special Prosecutions and Appeals

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

Appeals Unit

Attorneys in the Appeals Unit of the Office of Special Prosecutions and Appeals defend the convictions and sentences obtained by prosecutors in the trial courts. The Appeals Unit attorneys represent the state in appeals before both the Alaska Court of Appeals and the Alaska Supreme Court. They also represent the state in the federal courts in federal habeas actions brought by state defendants. This function frequently involves defending the convictions and sentences obtained against defendants who have committed crimes against children.

One such case was *Borchgrevink v. State*, 239 P.3d 410 (Alaska App. 2010). The primary issue on appeal was the admissibility of the statement of a three-year-old victim who replied "Daddy did this" when asked by an emergency doctor who had caused her bleeding and bruises. In *Ulak v. State*, 238 P.3d 1254 (Alaska App. 2010), the issue was whether the defendant could deny at sentencing her multiple assaults on a victim who also was only three years old. And in *Johnson v. State*, 224 P.3d 105 (Alaska 2010), the issue was whether proper jury instructions had been given in the trial of the defendant for his participation in the death of an extremely malnourished infant. In all of these cases, and in many others, the appeals unit was successful.

The appeals unit includes many attorneys who have acquired proficiency in specialized areas of the law, such as an assistant attorney general who handles only sexual assault and domestic violence appeals. That assistant attorney general successfully defended -- in *Vann v. State*, 229 P.3d 197 (Alaska App. 2010) -- the ability of a supervisor at the state's Crime Laboratory to testify as to accuracy of the DNA matching done by those she supervised. The DNA matching in that case was crucial to the conviction of the defendant for multiple counts of sexual assault and kidnapping.

During the past year, the appeals unit also produced a sentencing manual, a post-conviction relief manual, and

a D.A. Notebook to assist prosecutors in their daily practice in the trial courts. Thus, not only does the appeals unit protect children women, and other victims, but it also helps other prosecutors accomplish those goals.

Special Prosecution Unit

The Special Prosecution Unit is devoted to the prosecution of crimes that require special attention, including cold cases, alcohol interdiction, cyber crimes, environmental crimes, criminal non-payment of child support, violations of state tax law, and fraud in Medicaid, welfare, Alaska Permanent Fund Dividends, and worker's compensation. The unit also reviews all deaths resulting from police officer-involved shootings, handles conflict cases from local district attorney offices, and other matters requiring special attention from prosecutors.

In the last year the Medicaid Fraud Section has expanded its focus to include elder abuse and fraud, as seen in the prosecution of Alejandra Schaub, who abused an 81 year-old veteran by breaking his finger, flattening his nose and deforming his ears while being paid by Medicaid to care for him. The section also participated in nationwide actions against pharmaceutical companies that resulted in the return of millions of dollars that had been siphoned from the state program.

The Cold Case Section continued to bring murderers to justice despite the passage of years since their crimes. Jimmy Eacker murdered Toni Lister in 1982 by stabbing her 26 times with a Phillips head screwdriver before dumping her body in the woods. Advances in DNA technology allowed this 28 year-old murder to be solved and Lister's killer finally put behind bars. The section also prevailed in the trial of Andrew Amarok, who beat his stepfather to death in 2003.

The Child Support Enforcement Section has prosecuted 11 obligors in the last year who owed a combined total of \$1,563,276. More than \$50,000 was collected during 2010 from those individuals. They all have long probationary periods during which collections will continue.

The Fish and Game Section prosecutes commercial fish violations, illegal sport-fishing guiding activities and illegal big-game guiding activities. Such prosecutions protect state resources and have collected more than \$500,000 in fines and restitution.

Special Prosecutions also obtained the convictions of former court employee Katherine Turner, who was prosecuted for embezzling more than \$200,000 posted for bail, and of former Department of Health and Social Services employee Chona Agtarap for her theft of more

than \$600,000 of funds intended for Alaskans in need of assistance. Several tax evasion cases are being prosecuted.

Rural Prosecution Unit

The Rural Unit prosecuted several major cases in Bush communities. James Phillips of Kotzebue received 114 years to serve for sexually abusing and furnishing alcohol to numerous young women. Phillips had numerous prior convictions from other states for sexual offenses. Margaret Booth, also of Kotzebue, was convicted of arson for setting her parents' house on fire. The fire spread, burning the nearby homes of several relatives. An Anchorage man, Hakim Giddins, was convicted of misconduct involving a controlled substance by a Kotzebue jury. Giddins brought over 100 baggies of cocaine into Kotzebue with intent to sell them. He was sentenced to 12 years to serve.

In a case from Barrow, Forrest Ahvakana was convicted of assault in the first degree of another Barrow resident and assault in the fourth degree of his girlfriend. As Ahvakana was previously convicted of two serious felony offenses -- sexual assault and robbery -- he received a mandatory sentence of 99 years for the first-degree assault and an additional year for the assault of his girlfriend, resulting in a 100 year sentence.

Two brothers from Alakanuk, James and John Leopold, were convicted of sex offenses. John Leopold was convicted of sexual assault in the first degree and incest. The court considered his record of prior convictions and numerous bad acts, including sexual assaults, and imposed 99 years to serve. His brother, James Leopold III, was convicted of three counts of sexual abuse of a minor in the second degree. James Leopold III has yet to be sentenced, but he has two prior sexual felony convictions, which subject him to a mandatory sentence of 99 years, and potentially more, as each of his current convictions carries that penalty.

District Attorney's Offices

Anchorage

2010 was the year of the big case. Anchorage tried approximately 100 felony trials, several of which involved either aggravated offenses or extremely serious offenders. Examples included the conviction of serial burglar Robert Hernandez. Hernandez received a historic 179 year sentence for a life of thieving and burglaries. Many more property crimes were tried in 2010 because of an emphasis on recidivists, resulting in the isolation of many chronic offenders with dozens of prior crimes. Increased effort to prosecute the crime of escape has substantially decreased the number of offenders who flee from the

looser custody of halfway houses. Sentences in excess of five years serve as a substantial deterrent to such flight.

In the Narcotics and Felony DUI Unit, a spike in the number of heroin cases has caused that unit to retool in order to help law enforcement curtail the damage being done to young Alaskans who are abusing this highly addictive drug. The Anchorage office concluded the prosecution of a 19 member drug ring that trafficked in heroin and cocaine.

The Special Assaults Unit conducted 16 trials. Three sex offenders will serve mandatory 99 year sentences based on the enhanced sentencing for recidivists with two prior sexual offenses. Many others received sentences of more than 50 years to serve, based on the new laws passed in 2006.

Finally, the office tried eight murder cases, resulting in seven convictions. Another six killers pled guilty to murder or manslaughter. Included in the trials was the shooting of an off-duty military police officer by a gang member. Gang-involved offenders were a particular focus of attention as the number of validated gang members continued to increase in 2010. A second focus of the Violent Crimes Unit was DUI homicides and assaults. The trial and conviction of Lori Phillips, a repeat DUI offender whose blood alcohol content was over .32, rekindled the debate over how to prevent the carnage on Alaska's highways.

Barrow

The caseload in Barrow remained essentially static from 2009 to 2010, with a total caseload projected to top out with a little over 600 filed. Typically, the majority involved domestic violence assault or driving while intoxicated. With the Barrow police focusing on crimes involving methamphetamine, those cases have increased.

Bethel

J. Kim, who sexually abused a relative for years, was sentenced to 50 years, with 17 suspended, for sexual abuse of a minor in the first degree. It is likely that he will be deported to South Korea upon serving his sentence. A Kongiganak man is charged with murder in the first degree for a February shooting of a close relative and is awaiting trial.

There have been a number of cases pending in the Bethel courts in which competency issues have been raised. The case of a man accused of assaulting a relative because he believed the relative was trying to turn parts of his body into chicken parts is still pending resolution while the court determines whether he is competent to stand trial. Several others accused of sexual or physical assaults, including a 17 year-old who is accused of sexually abusing a 5 year-old girl, are in the process of litigating their competency to stand trial, or are potentially being restored to competency so that prosecution can occur.



Barrow Assistant District Attorney Teresa Buelow with a whale rib bone after the community had butchered the whale during fall whaling.

Two Bethel men have been charged with first degree murder and kidnapping of a young Hooper Bay man. A mother from Quinhagak has been charged with the first degree murder of her child, who died from numerous blunt force trauma blows to the head.

Dillingham

The Office of the District Attorney at Dillingham has had a successful but busy year, having tried 16 cases, mostly crimes of sexual assault or domestic violence. Fourteen cases were felonies. The Anchorage office provided vigorous assistance in covering many hearings and two of the trials. Guilty verdicts were returned in 12 of those trials. While these may seem like small numbers in comparison to offices with larger population and dockets, it is significant that in addition to the sitting Superior Court judge, two other judges have assisted in the busy Dillingham and Naknek courts, which each contain only one functional courtroom for jury trials.

In one trial involving sexual abuse of a minor, the 12 year-old victim was permitted to testify about details of the abuse outside the presence of the jury, judge and defendant on remote video and audio, with equipment provided by the Nitiput Child Advocacy Center. The defendant was convicted and sentenced to 62 years in prison, with 21 suspended and 41 years to serve. Another child sexual abuse trial in which the crime had occurred nine years prior also was successfully prosecuted.

Five other sexual assault cases were also prosecuted, resulting in guilty verdicts in four of the trials. In the fifth, the defense successfully moved to suppress the DNA evidence, and the defendant was found not guilty.

Renovations to the Dillingham office added a conference room, a kitchen for coffee (much needed with all the trials) and a new entry and reception area which added badly-needed space to the office. This year saw the retirement of a long term law office assistant, Iva Koutchak, and the new addition of Kyrstin Hardin, former clerk of court and domestic violence victim's advocate. John Marx was invaluable in doing the "heavy lifting" as the victim/witness paralegal in these series of trials prosecuted by Assistant District Attorney Susan Mitchell. Assistant District Attorney Ann Marie Garber joined the office in November and is a welcome addition to this previously one-attorney office.

Fairbanks

The Fairbanks District Attorney's Office, with 14 attorneys, four paralegals, an office manager and nine assistants, handles all criminal cases and juvenile delinquency cases filed in the Fairbanks Superior and District Courts, as well as the rural courts in Delta Junction, Fort Yukon, Galena, Healy,



Staff of the Dillingham District Attorney's Office travel at least a few times a year to Naknek, where local police assisted members of the office in erecting plywood trial exhibit panels.

Nenana and Tok. The Fairbanks office also supervises the Barrow District Attorney's Office, which has one attorney, one paralegal and one assistant. The 15 attorneys cover 18 courtrooms, plus Barrow and Fairbanks Grand Jury courtrooms. The Fairbanks office also participates in the Fairbanks' Wellness Court and the Juvenile Treatment Court.

In addition to staffing the various court locations, the Fairbanks DAO also provides advice to the Alaska State Troopers, the Fairbanks Police Department, the Fairbanks International Airport Police Department, the North Pole Police Department, the University of Alaska Fairbanks Police Department, the Fort Yukon Police Department, the Galena Police Department, the Nenana Police Department and the Tanana Police Department.

Caseloads continue to rise, by 17 percent from 2008 to 2009 and by an additional 7 percent from 2009 to 2010. The greatest percentage increase came in felony sexual assault (up 60 percent in both referred and accepted cases) and felony assault (up 10 percent).

Driving Under the Influence continues to be a very big problem in Fairbanks, as represented by the 76 cases of felony driving while intoxicated this year. Fairbanks' only adult therapeutic court (Fairbanks Wellness Court) increased from 20 defendants to 30 defendants during the year. The Wellness Court is populated almost entirely by felony DUI defendants. Among the 13 people who have thus far graduated from this 18 month-long intensive court-supervised program, there has only been one recidivist, a statistic well below the overall rate for DUI defendants.

Some Fairbanks case highlights from 2010:

Twenty three-year-old Richard Blevins, convicted of attempted murder and other charges, was sentenced to 70 years incarceration with 20 years suspended, with a probationary period of 10 years. Blevins tracked

down his victim at a local bar and shot him five times at close range because the victim was dating a girl who had broken up with Blevins two years earlier. The victim was left paralyzed from the neck down.

Local gang member Aaron Young was convicted of three counts of attempted murder and other weapons misconduct offenses following a month-long trial. Defendant Young fired a pistol at car of rival gang members while driving on College Avenue, a highly populated area. ADA Elizabeth Crail obtained a guilty verdict on all counts. Sentencing is scheduled for January 2011.

Brian Towndrow, the third member of the team of three responsible for the death of a local Army surplus merchant in 2008, was convicted of second-degree murder in 2010. This year, his co-defendants Michael Moore and Raymond Jones were each sentenced to 40 years, with 20 years suspended, following their pleas to second-degree murder. Sentencing for Towndrow is scheduled for the spring of 2011, when the victim's elderly relatives can come to Alaska to attend the sentencing. All three defendants had been in the Army and had been stealing cases of Meals Ready to Eat from the Army and selling them to this local merchant. When the Army's internal investigation focused on the three, the co-defendants went to the merchant's store to threaten him. The argument turned violent, and Towndrow picked up a length of parachute cord and strangled the victim.

In 2010, 67 year-old Eugene Bottcher was again sentenced to 20 years to serve following a third remand from the Court of Appeals for resentencing. In 2005, as Bottcher drove away from a bar where he had spent the previous night drinking, he ran 15 feet out of the roadway at full speed, striking and killing a young man on a bicycle standing beside the road waiting to cross. Bottcher then proceeded on his way without stopping to offer medical assistance. A Good Samaritan motorist chased and caught this defendant, telling him he needed to return to the scene, to which Bottcher responded by offering the motorist a bribe to "just forget about it" and proceeding on to his home. He was indicted and convicted of manslaughter, leaving the scene of a fatal accident, and interference with an official proceeding (bribing the witness) in 2006. Trial Judge Pengilly originally sentenced the defendant to 20 years to serve. Upon the first remand from the Court of Appeals for resentencing, Judge Wood sentenced Bottcher to 20 years to serve. Upon a second remand from the Court of Appeals for resentencing, Judge Blankenship again sentenced him to 20 years to serve.

A 37 year-old North Pole father was convicted of solicitation to commit misconduct involving a controlled substance in the third degree. His 16 year-old daughter,

who lived with her mother, was given Vicodin for pain following oral surgery. Upon learning of this prescription, the defendant, who had been previously convicted of forging prescriptions, called the child and asked her to bring the Vicodin to church with her so that he could trade her an iPod for them. This defendant was convicted and sentenced to seven years, with two years suspended and five years to serve, after which he will be placed on probation for three years.

Juneau

During the past year, the Juneau office prosecuted several notable cases involving sexual assault or domestic violence.

James Hamey, a former high school basketball coach, was employed as the driver of a bus that transported disabled and elderly people. He entered the home of a client who had severe physical and mental disabilities, cornered her in the kitchen, and assaulted her by touching her breast. The defendant was convicted after a week-long jury trial. Additionally, the defendant is set to be tried for sexual assault in the first degree involving a different victim.

A jury convicted Starla Miller of sexual abuse of a minor in the second degree for an incident in which the defendant paid a 10 year-old child \$100 to touch Miller's breast. Shortly before sentencing Miller threatened the child in an attempt to change the child's testimony. For this conduct, she was subsequently convicted of assault in the fourth degree and violating conditions of release. She received a sentence of eight years, with five suspended and three years to serve.

Thomas Jack was charged with several counts of sexually abusing an 11 year-old foster child. After one jury was unable to reach a verdict, Jack was retried and convicted of three counts of sexual abuse of a minor in the first degree and three counts of sexual abuse of a minor in the second degree. The defendant faces a minimum presumptive term of 39 years to serve.

Seventeen year-old Jonathon Conrad is accused of long-term sexual abusing two female relatives. Since it is alleged that these unclassified felony crimes occurred after Conrad's 16th birthday, the law requires that the defendant be charged as an adult. His case is pending trial.

Guadalupe Flores, another juvenile who is automatically waived to adult court, is charged with assaulting his mother's boyfriend, who ultimately died from his injuries after being in a coma for several months. The case is presently charged as an assault in the first degree; however, the state is awaiting further investigation, after which the matter will be reviewed to determine if new charges are warranted.

Nick Kokotavich is accused of assaulting the two year-old daughter of his girlfriend. The two year-old girl was beaten so badly that she was medevaced to Harborview Medical Center in Seattle. As a result of the assault, the child was declared brain dead by medical staff and is functionally handicapped. The case was set for trial March 2011 on three counts of assault in the first degree.

John Marvin is accused of shooting and killing two Hoonah police officers as they stood outside the defendant's residence. Statewide attention focused on this small community after the shooting, when the defendant barricaded himself inside his residence and, after a standoff that lasted two days, ultimately was taken into custody by AST officers. Marvin has been charged with two counts of murder in the first degree.

Kenai

In 2010, several cases involved delayed reporting of crimes that occurred more than five years ago. Solid investigation and aggressive prosecution resulted in the convictions of the perpetrators. In one case, the defendant pled guilty to sexually abusing his developmentally delayed son and received a sentence of 20 years in jail, with 12 years suspended and 10 years of probation.

One domestic violence offender agreed to plead guilty to the crime of assault in the first degree for beating his live-in girlfriend for nearly three days. He will serve a sentence of 19 years, with seven years suspended. The victim has largely recovered physically.

Kenai has dedicated an attorney to prosecute all felony drug cases. That attorney works closely with the local law enforcement, including the local Alaska Bureau of Alcohol and Drug Unit, in an effort to combat a significant controlled substance-abuse problem in the community. Drugs are the major contributing factor in property and fraud offenses, which plague the peninsula.

The largest single drug bust in the history of the Kenai Peninsula occurred this year. The DA's office is currently talking with the U.S. Attorney's Office in an effort to ensure the defendant's sentence reflects community condemnation.

Ongoing cases which occurred during the year include a drug-involved murder in which a young man was killed when he was shot in the face with a 12-gauge shotgun at point-blank range, a methamphetamine-induced random stabbing of a young man who suffered neck injuries, and a methamphetamine-related sexual abuse of minor in which a man and woman are alleged to have distributed the drug to and engaged in sexually deviant behavior with a young girl who lived in their home.



Photo courtesy of Alaska Division of Community and Business Development - Clan House, Totem Bight Park, Ketchikan.

The Legislature added two new attorney positions to the office in the governor's enacted 2010 budget. This has enabled the more experienced attorneys in the office to focus on higher-level offenses and provide specialized attention to specific areas of the law. It also provided a much needed relief in the caseload per assistant district attorney, reducing the average from 539 to 404.

Ketchikan

Ketchikan tried about 40 jury trials in a three-prosecutor office. At one time, three jury trials were going on at the same time.

One unclassified felony went to trial. Ronald Brendible was charged with sexual assault in the first degree and sexual abuse of a minor in the second degree. Although found not guilty of these crimes, the jury convicted him of the lesser charges of attempted sexual assault in the first degree and attempted sexual abuse of a minor in the second degree. The case was unusual in that some semen was recovered from the victim's clothing, and when the state sought a

continuance to have a DNA test conducted, Brendible objected that such a continuance would violate his speedy trial rights. The court denied the continuance, and the case went to trial without any DNA testing. Now that he has been convicted, Brendible wants the DNA tested, and he will now have to follow the procedure for post-conviction DNA testing set out in the recently passed AS 12.73.010.

In a rare juvenile delinquency jury trial, a 14 year-old juvenile from Kake was found delinquent by a jury for sexual abuse of minor in the fourth degree. The victim, who was also from Kake, was 3 years old at the time of the crime and was 4 at the time of trial, and was the only witness at trial to testify about the sexual abuse.

The Waterman murder case was scheduled to start trial in January 2011. It is alleged that 16 year-old Rachelle Waterman convinced two older boyfriends to kill her mother, Laurie Waterman, in Craig in 2004. The men were convicted of murder and are serving prison sentences. The 2006 trial, which generated national media attention, ended in a mistrial after the jury was unable to reach a verdict. After the mistrial, the trial judge entered an order suppressing evidence. Retrial was delayed when the state appealed that order. The Alaska Court of Appeals partially reversed the trial judge, holding that only a portion of the evidence should have been suppressed, and the remainder is admissible.

Kodiak

The Kodiak District Attorney's office has remained steadily busy for the entire year. Many cases involved domestic violence, sexual assault or sexual abuse of minors. In January a man was convicted of felony assault after strangling his 17 year-old girlfriend. Shortly thereafter, a man was indicted for sexual assault of his live-in girlfriend and her minor daughter. The offenses were reported to Alaska State Troopers after the woman fled to the local women's shelter, and there learned from her daughter that the defendant had also been sexual abusing the daughter for years. The man is currently pending sentencing following his guilty pleas to sexual offenses.

A man who committed the crime of attempted sexual assault was finally sentenced nearly a year after he pled guilty to the offense. Prior to sentencing the defendant attempted to withdraw his plea when he learned that one of the state's witnesses had died in a pedestrian/vehicle accident near Palmer. The court denied that motion and sentenced the man to 17 years in prison, with 5 years suspended and 12 years to serve.

A woman was convicted and sentenced for sexual abuse of a 14 year-old girl. The defendant, having previously



Photo courtesy of Ernst Schneider, Alaska Division of Tourism - Kodiak waterfront.

been convicted of felony vehicle theft, received a sentence of 20 years, with 10 years suspended, following her plea to sexual abuse of a minor in the second degree.

The presence of methamphetamine in this island community has led to an increase in the incidence of theft-related conduct such as forgeries and burglaries. Methamphetamine also has had an identifiable impact through domestic violence. Additionally, petitions to revoke felony probation regularly include allegations related to methamphetamine. The state has obtained pleas from multiple co-defendants charged with the continuing criminal enterprise of methamphetamine trafficking. They are pending sentencing, while others were scheduled for trial in January 2011.

During the summer the state also successfully prosecuted a local man for his involvement in raising fighting roosters for export to the Philippines, where cockfighting is legally tolerated. The court ordered that the roosters were forfeited, and suspended the man's sentence, on condition that he not possess any fighting animals.

Among scheduled felony trials: A man is charged with ordering his girlfriend to her knees before putting a gun to her head and threatening to pull the trigger. Two men are jointly charged with sexual assault and sexual abuse of a minor, arising from an incident which occurred during a party on a boat. Another man awaits trial on separate cases charging possession with intent to deliver methamphetamine and forgery in the first degree based upon allegations that he attempted to pass counterfeit \$20 bills at local businesses.

Nome/Kotzebue

The Bering Straits and NANA regions generated over 1,600 new criminal cases during the past year, split fairly evenly

between the two jurisdictions. Three attorneys — two in Nome and one in Kotzebue — along with support staff met the obligation of prosecuting these offenses. Domestic assault, sexual assault and DUI comprise the bulk of the most serious work, with alcohol abuse a major factor in most cases. Distribution of marijuana and prescription pain medications also resulted in significant cases.

Most charges were resolved through negotiation. Still, juries decided notable cases in Kotzebue, Nome and Unalakleet.

For example:

Tim Moore was returning to Elim by skiff loaded with nine cases of hard alcohol when his prop spun off. Search and rescue efforts extended over the next 24 hours, during which time Moore drank what alcohol he could, and pitched the rest overboard. Nevertheless, a Nome jury convicted Moore of felony importation. For this he received two years in prison and he lost his boat, motor and equipment.

Ronald Barr of Noorvik was found guilty by a Kotzebue jury of first degree assault and first degree sexual assault of his elderly relative.

Danny Aukon of Nome was found guilty by a Nome jury of manslaughter and felony leaving the scene. Aukon, driving his truck back into Nome after a night of rabbit hunting and drinking with friends, struck and killed Charlie Bergamaschi as he stood in the opposite lane. After directing his friends to tell no one about what had happened, Aukon drove home and went to bed. Six hours later, Nome police contacted Aukon and found that his breath alcohol concentration was still over twice the legal limit.

Lawrence Kobuk of St. Michael was convicted of manufacturing homebrew and of the second degree sexual assault of an unconscious victim. Kobuk admitted to the investigating trooper that he had had sex with the victim, but explained that another person in the room had given him permission to do so. Kobuk, who has a significant prior record, faces a potential 99 year sentence.

And in Unalakleet, a jury convicted Albert Sarren of reckless endangerment. Last winter, Sarren, father of several small children, twice set a Conibear 330 trap — designed to kill wolves and wolverines instantly — on his property next to his home within the village. Consequently, Sarren trapped two neighborhood pets, killing one dog and injuring another. Sarren explained to the village public safety officer that he had set the trap to protect his family from foxes and his fuel oil from a thief.

The Nome office continues to work with the Bering Straits School District to reduce truancy.

Palmer

In June, the Palmer District Attorney's Office moved into the Palmer State Office Building, which is located next to the court. The advantages of the new location are significant and numerous. Most importantly, employees can walk to court. The Public Defender Agency and Department of Corrections Adult Probation are also tenants of the State Office Building, making meetings convenient. The concept of having a "criminal justice complex" has worked out very well thus far in Palmer.

The workload in the Palmer office has remained consistent: more than 3,850 new criminal cases were opened, not including appeals, juvenile matters, post-conviction relief cases and traffic cases. Palmer assistant district attorneys took 15 felony cases and 21 misdemeanor cases to trial, with a very high conviction rate. Thirteen of the felony trials resulted in guilty verdicts on all counts. One case resulted in guilty verdicts on three of the four felony counts. Another case resulted in a hung jury on the higher felony charge but a guilty verdict on a lesser felony charge. Eighteen of the misdemeanor trials resulted in guilty verdicts on all counts. One case resulted in a guilty verdict on one count and not guilty on others. One case resulted in an acquittal. One case resulted in a hung jury. Most of the misdemeanor cases involved charges of assault or DUI. Six of the felony trials involved charges of felony DUI or felony refusal.

More than 400 people were indicted on new felony charges by the Palmer grand juries. The grand jurors addressed felony DUI cases, drug cases, and assault cases nearly every week, while burglary cases and cases involving sexual abuse of minors came before the grand juries most every month. Sexual assaults involving adult victims have been rare. Many of the felony assault cases fall into the category of domestic violence. Cases involving methamphetamine production have declined, but heroin use and distribution is on the increase. Five homicide cases were presented to the grand juries this year, three of which were vehicular homicides. Misdemeanor DUI cases involving impairment as a result of drug use are on the increase.

In one marijuana grow case, the ADA convinced the sentencing judge to impose a \$31,360 fine. A defendant convicted of sexual abuse of a minor in the first degree was sentenced to 25 years to serve, and another convicted of sexual abuse of a minor in the second degree was sentenced to serve 19 years. The defendant responsible for burglarizing and vandalizing the Gannett Glacier Forestry Building and stealing vehicles and property belonging to firefighters deployed at a remote location was sentenced to serve 14 years in prison. A drug defendant was

sentenced to serve 10 years for sending \$22,000 through the mail to obtain drugs, and another was sentenced to serve 18 years for manufacturing methamphetamine.

Abuse of children has risen in both the frequency and seriousness of the abuse. Sexual abuse cases make up 90 percent of all crimes against children in the Mat-Su Valley. If the child is under 13, the perpetrator is typically related to the child. For victims age 13 and older, the cases are split between domestic violence offenses and statutory rape cases.

The few adult sexual assault cases handled by the office involve incidents with incapacitated or non-consenting victims who knew the offenders. There are currently no pending “stranger” sexual assault cases in the Palmer office. One defendant currently set for trial is charged with victimizing five people.

This year, the Palmer District Attorney’s Office charged a number of “non-offending” caregivers. Two different mothers were charged with endangering the welfare of a minor for leaving a child with a registered sex offender or with a person she knew previously abused the child. A third mother was charged for failing to protect her child by allowing the toddler to remain with her boyfriend who was physically abusing him. A fourth mother was charged with hindering prosecution and felony assault (accomplice liability) for the abuse on her daughter which was inflicted by her boyfriend, as well as her refusal to cooperate in the investigation.

The number of domestic violence cases has remained steady. In 2009 the number of domestic violence cases was 1,183. Up until November 1, the number of domestic violence cases for 2010 was at 990. Strangulation cases have increased, as have cases with unusual types of abuse, such as biting chunks of skin

off the victim. Some domestic violence offenders were charged under the new “three-strikes” statute.

The Palmer District Attorney’s office participates in the Palmer Coordinated Resources Project (Mental Health Court), which had an average of 18 participants per month. Six people successfully completed the program this year.

Sitka

In March, Wilburn Jackson was convicted by a trial jury of sexual assault in the first degree, in a case involving his domestic partner. The trial occurred shortly after the governor launched the “Choose Respect” campaign. Jackson’s crime epitomized lack of respect for women and the general need for awareness about the problems of domestic violence and sexual assault.

Elisabeth Schafer, paralegal in the Sitka Office, was chosen as Woman of the Year by the local women’s shelter, Sitkans Against Family Violence. She was honored at a banquet in April.

Special Projects

DVSA Pro Bono Summits

As part of the Governor’s 10 year campaign to end the epidemic of domestic violence and sexual assault in Alaska, the Attorney General strove to increase the amount of legal representation available to domestic violence and sexual assault victims. Attorney General Sullivan made increasing the availability of pro bono legal representation, shown to decrease rates of violence, one of his signature issues.

The Department of Law worked with non-profit organizations, including the Alaska Bar Association, the Alaska Legal Services Corporation, and the Alaska Network on Domestic Violence and Sexual Assault, to host “pro bono summits” for attorneys in Anchorage, Juneau, and Fairbanks. These summits served as a call to arms for the legal community to volunteer their time to help victims meet their legal needs, such as obtaining protective orders and navigating custody disputes. The summits also provided attendees with the information and resources they can use in taking a case which, for many, entails legal issues outside their usual area of practice. At the Fairbanks summit, speakers focused especially on the plight of victims in rural Alaska, and how much attorneys can do to help.

Attorney General Sullivan also took steps to recognize those attorneys who do volunteer their time for pro bono work. He announced the first annual Attorney General’s award for pro bono service to victims of domestic violence. The award was given to John Hoag, a Petersburg attorney



Attorney General Dan Sullivan and U.S. Senator Lisa Murkowski led a march from Anchorage’s Delaney Park Strip to a rally in Town Square Park March 31st, 2010.

who has taken on eight pro bono cases in the past three years. AG Sullivan recognized Hoag in an October ceremony marking the kick-off of Domestic Violence Awareness Month.

The Department of Law is also identifying ways to facilitate pro bono work by assistant attorneys general. The department's Pro Bono Working Group is reviewing the department's pro bono policy to recommend amendments and to take other steps to support pro bono work by department employees.



Attorney General Sullivan speaks at Governor Parnell's "Choose Respect" rally in Town Square Park March 31st, 2010.

Sexual Assault Case Training

The division provided a three-day training for all attorneys and paralegals employed in DAs' offices across the state. The main focus of the training was on handling sexual assault and domestic violence cases. The training was partially funded through a grant from the U.S. Department of Justice, Office on Violence Against Women.

Paralegal Training

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

Trial Advocacy I Training

The division provided a week long Trial Advocacy I training for 25 of its least experienced assistant district attorneys. The training was presented by distinguished members of the National College of District Attorneys with a focus on domestic violence and sexual assault cases. The training was on case preparation and effective communication skills with different types of witnesses. Funding was provided by a grant the division received from the U.S. Department of Justice.



Federal funding provided for all Criminal Division paralegals to attend training in Kodiak this year. In this photo Victim Witness Paralegals Blanche Jacobs, from the Bethel District Attorney's Office, and Aubie Gregg, from the Barrow District Attorney's Office, receive training on editing audio and video files for use at trial.

Security Updates

The division began the process of installing key card access for the Anchorage and Fairbanks offices in order to provide better security of the prosecutors and staff.

Anchorage Phoenix Project

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

Technology Upgrade

The Criminal Division's 11 year-old case management system, Case Records Information Management and Exchange System (CRIMES), is being upgraded. The system has reached a critical point as both the software and hardware have become seriously out of date. The department received \$200,000 to upgrade the software as well as migrate it from Oracle to Microsoft SQL and replace the servers that were over eight years old. Although the servers have been replaced, staff turnover and software upgrades have delayed the project. Software testing has commenced; deployment of the new system is expected early in 2011.

PROTECTING ALASKA'S CHILDREN

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

Department attorneys carry an average of over 113 cases, compared to the recommended maximum of 100 per full-time attorney in guidelines from the U.S. Department of Health and Human Services.

The Child Protection Section continued to implement protocols for family contact. Research shows that increased quality and quantity of family contact when children are in the system greatly improves the rate of successful reunifications and reduces the duration of foster care. The implementation of protocols over two years was a collaboration among the Attorney General's Office, the Office of Children's Services, the Public Defender Agency, the Office of Public Advocacy and the Court Improvement Project. After multidisciplinary trainings across the state with presentations by assistant attorneys general, the new policy and protocols went into effect July



Attorney General Sullivan speaks at Governor Parnell's "Choose Respect" rally in Town Square Park March 31st, 2010.

1, 2009. Recently, practitioners formed regional teams to focus on family contact in their geographical areas.

The Child Protection Section also was part of a team that created the Family Preservation Court (FPC), a therapeutic court for CINA cases in which substance abuse is the primary issue. The FPC was created in fall 2009 as a way of providing immediate services to families with minimal child protection history, with the goal of treatment completion and case dismissal within six months. The FPC team consists of one judge, one court-employed project coordinator, one assistant attorney general, one guardian *ad litem*, one assistant public defender, two conflict attorneys and several treatment providers.

The court has often succeeded in promptly providing treatment services while maintaining children in their homes. This has resulted in fewer contested hearings and earlier closure of cases, allowing for more efficient caseload management. The department intends to expand the program and help more families resolve their problems without the need for continued foster care.

The department has a role in increasing eligibility for federal aid for children in foster care. At the first hearing in a case, attorneys must obtain a finding that it is "contrary to the welfare of the child to remain in the home." Failure to obtain such a finding will keep the Office of Children's Services from ever receiving federal foster care reimbursement for that child through Title IV-E of the Social Security Act. Over the past few years, these findings have been obtained consistently.

Many assistant attorneys general sit on working groups aimed at improving the child protection system and supporting the children in care.

PROTECTING ALASKA'S CONSUMERS

The Consumer Protection Unit in the Commercial and Fair Business Section exercises the attorney general's authority to enforce consumer protection and antitrust laws. Under the authority of the Consumer Protection Act, the section investigates and brings enforcement actions against businesses that engage in unfair and deceptive trade practices.

Because of limited funding, most enforcement activities involve only those cases affecting a large number of consumers or large sums. The unit receives and processes almost 500 consumer complaints a year. Most complaints are resolved through an informal process resulting in either direct or indirect assistance to consumers, a formal investigation or referral to appropriate state and federal agencies. During 2010, for example, the unit investigated business practices in the areas of automobile sales advertising, retail advertising, debt collection and credit practices, and breaches of security involving personal information.

In addition to handling consumer complaints and initiating formal investigations, the department also participates in many multi-state enforcement actions. These matters are coordinated through the National Association of Attorneys General and often result in sizeable recoveries for the state and affected Alaska consumers. In 2010, the section collected more than \$8.7 million for consumers and the state through settlements of multi-state and local enforcement actions.

Multi-state Settlements Benefiting the State and Consumers

Publishers Clearing House

In September, the State of Alaska, along with 32 other states and the District of Columbia, entered into a settlement agreement with the sweepstakes company Publishers Clearing House (PCH) aimed at resolving allegations of deceptive marketing practices. Alaska was one of eight states that led the multi-state investigation and settlement negotiations with PCH.

A previous settlement with PCH in 2000 included terms intended to settle allegations that PCH mailed promotional materials designed to mislead consumers into believing that they were sweepstakes winners or that making purchases would enhance their chances of winning. The states' recent investigation raised concerns that PCH

was not fully complying with the prior agreement and that consumers still could be confused by the nature and language of some of the company's subsequent mailings.

The new supplemental judgment negotiated by the states, which was approved by the Anchorage Superior Court, includes stronger provisions than the prior agreement, along with additional conditions to help ensure that consumers are not further misled or confused by PCH's sweepstakes promotions. The terms of the settlement also greatly increase consumer surveys to make sure consumers understand that purchases do not increase the odds of winning a sweepstakes prize. In addition, PCH agreed to pay the states \$3.5 million for consumer education and enforcement of consumer protection laws. Alaska's share of this settlement was \$300,000.

DIRECTV

Alaska joined 48 states and the District of Columbia in a settlement with DIRECTV, one of the nation's largest providers of satellite television service. The settlement addresses the states' claims that DIRECTV engaged in misleading advertising practices, failed to disclose limitations on service, misled consumers about the availability of sports and local channels, confused consumers about promotional offers, enrolled consumers in additional contract terms without their consent, and confused consumers about the charging of cancellation and equipment non-return fees.

Under the terms of the agreement, DIRECTV is required to clearly disclose the conditions, terms and limitations of



Assistant Attorney General Ed Sniffin of the Commercial & Fair Business Section receives a Special Recognition award from Attorney General Sullivan.

its service and the programming available to consumers and specifically will not misrepresent the availability of sports programming. DIRECTV must comply with all federal and state laws regarding incentive programs, funds transfers and auto-payment programs. DIRECTV may not automatically enroll consumers in a new commitment or agreement for services if a consumer obtains replacement equipment after malfunctions. In other instances, DIRECTV may not re-commit consumers to contract terms without first obtaining the consumer's express assent. In advertisements that include a price or a featured offer for a specific service, DIRECTV must clearly and conspicuously disclose all material limitations on the consumer's ability to obtain such price or offer. In addition, DIRECTV must require its third-party retailers to comply with the agreement and monitor their compliance.

DIRECTV committed to a broad consumer restitution program in an effort to clear all existing complaints filed after January 1, 2007, or within 150 days after the entry of the consent judgment. DIRECTV also agreed to pay the state \$13.25 million to defray the costs of the investigation and for consumer education and enforcement of consumer protection laws. Alaska's share of this settlement was \$185,000.

Local Consumer Protection Enforcement Actions

Average Wholesale Price Litigation

The Consumer Protection Unit continues to litigate against several pharmaceutical manufacturers for the illegal reporting of false drug prices, known as "average wholesale prices" (AWPs), which providers consult when determining reimbursement rates for insurers and Medicaid agencies. In October 2006, the state filed suit against 41 pharmaceutical companies alleging that they reported inflated AWPs.

As a result of false AWPs, the state's Medicaid agency reimbursed pharmacies and other providers more than they actually paid for the drugs. The state also has alleged that the companies encouraged providers to prescribe its drugs over competitors' drugs based on the spread between the inflated AWP and the actual cost, letting the providers pocket the difference.

In 2010, the Consumer Protection Unit, with assistance of outside counsel, settled claims with four of the defendant companies for a total of \$8.4 million (Actavis, \$1.3 million; Sandoz, \$2 million; Boehringer, \$2 million; Teva, \$3.1 million). Coupled with settlements from 12 other defendants, the Consumer Protection Unit has recovered almost \$15 million in Medicaid payments, civil penalties and other revenue that

may be used for consumer protection enforcement and education. Claims continue against the other defendants.

Jewelers International

The state settled an enforcement action brought against a jewelry business in Juneau for violating the Consumer Protection Act and retail advertising regulations. The store's advertising included signs for "40 to 75% off" and a "wholesale prices" on loose diamonds. The store paid a civil penalty of \$5,000 and agreed not to use price-comparison advertising based on a fictitious regular price, not to make false or misleading statements regarding the reasons for price reductions, and not to otherwise engage in unfair or deceptive practices.

Car Dealer Settlement

The Consumer Protection Unit also resolved a claim against a local auto dealer for making illegal advertisements related to "guaranteed trade-in allowances," which are prohibited by Alaska's Auto Dealer Act. The settlement required payment of \$10,000, which may be used for consumer protection, education and enforcement.

Protection of Personal Financial Information

In early 2010, the state negotiated a settlement with PricewaterhouseCoopers (PwC) following the firm's loss of confidential data containing personal information on over 77,000 current and former state employees. The settlement included free credit monitoring services for two years, plus other guarantees for consumers, including reimbursement of any financial loss in the event of identity theft as a result of this data loss. The Consumer Protection Unit played a significant role in helping to shape and implement this settlement process, which required notification of all 77,000 individuals affected. The unit responded to hundreds of consumer phone calls and helped consumers enroll in the free credit monitoring services.

The unit continues to monitor consumer complaints related to the PwC settlement and responds to inquiries from local businesses about personal information security matters.

The unit provides continuing advice to all state agencies on the implementation and interpretation of Alaska's new Protection of Personal Information Act, AS 45.48, which contains requirements for notifying individuals if their personal information is compromised and restricts the use of Social Security numbers.

PROTECTING THE VULNERABLE

The department represented the Department of Health and Social Services (DHSS) in numerous lawsuits challenging the manner of administering public assistance programs, such as food stamps, foster care payments and Medicaid, defending DHSS in both Superior Court and the Alaska Supreme Court. The department continues to work with DHSS on due process compliance programs, notices and hearing processes in an effort to mitigate ongoing litigation and avoid future litigation.

One of the major cases in this area was *USA ex rel Law Project for Psychiatric Rights vs. Matsutani et al.* That case was brought under the federal False Claims Act alleging that the way the state, doctors and pharmacies sought reimbursement for psychotropic medications for minors violated the Medicaid act and therefore constituted fraud. The alleged damages were in excess of \$1 billion. The case was dismissed in District Court, although the plaintiff has appealed.

The department also is involved in hundreds of cases related to involuntary commitment statutes and has assisted hundreds of vulnerable adults by establishing guardianships and/or conservatorships.

The department continues to increase collections efforts by improving the subrogation and third-party recovery, taking over from a third-party contract the estate and trust recovery programs, as well as creating a system of tracking these cases. The department also centralized its efforts in representing and advising on Medicaid provider audits. In FY10, the section recovered more than \$1.5 million. Seven appeals still in litigation have a value of nearly \$2 million.

Finally, DHSS has seen a marked increase in the number and complexity of licensing cases. In 2010, the department was involved in litigating the denial, suspension or revocation of 40 licensed facilities resulting in improved community care for vulnerable adults and children.

PROTECTING ALASKA'S ENVIRONMENT

The Department of Law has a significant role in protecting Alaska's environment. Prominent in that role is providing advice and legal representation to state agencies, primarily the Department of Environmental Conservation. The department is active on issues including oil spills, contaminated site cleanup, enforcement of air

and water quality laws, and the coastal management program in the Department of Natural Resources.

Litigation under the Clean Water Act

The Department of Law played a key role in negotiating a settlement with the U.S. Department of Justice in a high-profile civil enforcement action under the Clean Water Act (*United States v. Alaska Department of Transportation & Public Facilities*). In this case, the U.S. alleged over 500 violations by DOT&PF connected with storm water management at several DOT&PF construction projects, as well as additional Clean Water Act violations related to emergency flood response work in response to the 2002 Kenai River floods. The potential amount of civil penalties which the U.S. could have sought in a civil suit for all alleged violations was estimated to exceed \$50 million. Under its settlement, DOT&PF resolved the case by paying a civil penalty of \$140,000 and \$850,000 in mitigation of flood-related work to a local nonprofit, agreed to re-vegetate three sites along the Kenai River, and agreed to undertake an enhanced storm water management program. The settlement also saved the state an estimated \$1 million in legal fees from a potential lawsuit by the federal government.

Enforcing air quality standards

Department attorneys provided advice to the Alaska Department of Environmental Conservation (DEC) Air Quality Division in negotiating the settlement of an enforcement action for air quality violations related to the Alaska Railroad Corporation (ARRC) and Aurora Energy Service's (AES) operation of the Seward Coal Terminal. As part of the settlement, ARRC and AES agreed to pay a civil penalty of \$214,000 and to adopt



Coal dust produced by loading/unloading operations at the Seward Coal Terminal
February 24th 2007.

stricter dust control measures. As a result of DEC's enforcement action, over the past several years the railroad and AES have spent an estimated \$1 million in maintenance upgrades to address fugitive coal dust produced by loading/unloading operations at the terminal.

Waste Water discharge violations

The department's attorneys provided advice and helped DEC's water division negotiate the settlement of an enforcement action against Sea Level Seafood, a Wrangell-based processor that for years discharged seafood waste without a federal or state pollutant discharge permit. As part of the settlement, Sea Level agreed to pay a civil penalty of \$96,332 and to adopt enhanced monitoring and reporting procedures for two years. This case had been referred to DEC for enforcement by the U.S. Environmental Protection Agency (EPA) and was the first settlement requiring payment of a civil penalty since DEC took over seafood processing compliance and enforcement two years ago.

State water pollution program upheld

On Nov. 4, 2010, the U.S. Ninth Circuit Court of Appeals upheld the EPA's approval of the state's National Pollutant Discharge Elimination System permit program against a challenge brought by a group of tribal and environmental parties (*Akiak Native Community, et. al. v. EPA*). The state had intervened in the case to help EPA defend its decision. A divided panel rejected the three-prong challenge by holding that Alaska's "loser pays" attorney fees rules do not impermissibly deter public interest litigants; that DEC's lack of administrative penalty authority did not fatally undermine its enforcement program; and that EPA's approval process did not violate the Alaska National Interest Lands Claims Act (ANILCA). This decision allows DEC to continue assuming permitting authority over various industry sectors through a four-phase transition schedule, with the final phase scheduled for Nov. 1, 2011.



Attorney General John Burns, former Deputy Attorney General Craig Tillery, and former Attorney General Daniel Sullivan (now Commissioner of the Department of Natural Resources) at the 2010 Civil Division Service Pin Ceremony where Tillery was recognized for 25 years of state service.

FOSTERING ECONOMIC OPPORTUNITY AND RESPONSIBLE DEVELOPMENT OF OUR NATURAL RESOURCES

DEVELOPING ALASKA'S NATURAL RESOURCES

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

Challenges to Authorizations for Mineral Exploration

On July 29, 2009, Trustees for Alaska brought suit against the state on behalf of several plaintiffs, including Nunamta Aulukestai (a nonprofit coalition of eight Native village corporations), Bella Hammond (the widow of Governor Jay Hammond) and Victor Fischer (a constitutional convention delegate). The suit alleges several constitutional violations in the statutes and regulations used to authorize temporary land and water uses during mineral exploration activities, specifically in the context of the Pebble project. The challenged statutes and regulations also authorize temporary land and water uses for a variety of non-mineral exploration activities. The state counters that all of the statutes and regulations for temporary land and water uses that the plaintiffs challenge are consistent with the Constitution. In late November 2009, the Superior Court denied plaintiffs' request for preliminary injunctive relief but also denied the state's motion to dismiss. The case went to a bench trial before Judge Aarseth in December 2010.

Department attorneys represent the state in several lawsuits aimed at halting development of the Pebble Mine. A group of several tribes, a fishing organization and Trout Unlimited challenged certain provisions in the 2005 Bristol Bay Area Plan. The plan determines where various activities, including mining, will be allowed and covers the area that includes the Pebble prospect. Following the trial court's ruling that the plan is a regulation and therefore subject to challenge under the Administrative Procedure Act, the state petitioned the Alaska Supreme Court for review of that ruling, which was granted.

In Superior Court, the department defended the decision by the Department of Natural Resources (DNR) to issue a temporary, revocable miscellaneous land use permit to Pebble Limited Partnership for the 2009-2010 drilling season.

Appellants, an association of Native villages plus two individuals, appealed the granting of the Pebble permit to the commissioner of DNR. The commissioner found they lacked standing to appeal but also determined none of the grounds offered in the appeal had merit. The appellants appealed that decision to Superior Court, raising the standing issue and DNR's alleged failure to give proper notice. The case has been briefed and argued and is ripe for decision.

Challenges to Tongass Timber Sales

The department was granted intervention as a defendant in two cases in the U.S. District Court for Alaska that are critical to the survival of the timber industry in the Tongass National Forest.

Roadless Exemption

In one case, the plaintiffs, mainly environmental groups, challenged the validity of the federal regulation that exempts the Tongass from the application of the so-called "roadless rule" prohibiting road-building in currently roadless areas. The exemption resulted from a settlement agreement between the U.S. Forest Service and the state to resolve the state's earlier challenge to the roadless rule as contrary to federal statutes, including ANILCA and the Tongass Timber Reform Act.

Logjam Sale

In the second case, three environmental groups challenged the Forest Service's authorization of timber sales in its record of decision for the Logjam project. The District Court and Ninth Circuit have denied the plaintiffs' requests for a preliminary injunction, with the District Court upholding the Forest Service's decision. The plaintiffs have appealed to the Ninth Circuit.

PARTNERING FOR SUCCESS IN RURAL ALASKA

In 2010, the Governor's Rural Action Subcabinet, originally formed to identify priorities to address economic challenges affecting rural Alaska and chaired by Attorney General Dan Sullivan, continued its outreach visits. In Juneau and Yakutat, the group took testimony from local leaders, including respected Tlingit elder Dr. Walter Sobeloff. The subcabinet's advisory group met quarterly and continued its focus on energy and employment issues.

The governor later appointed Susan Bell, commissioner of the Department of Commerce, Community and Economic Development, to the position of chair of the subcabinet. He also appointed his rural advisor, John Moller, to the position of member of the subcabinet. The Attorney General continues to devote substantial time and energy to the subcabinet.

Input from citizens across the state, consistent with earlier testimony, supported better connections between communities, whether by roads, more hub facilities, or enhanced telecommunications infrastructure. Rural residents applauded Governor Parnell's domestic violence and sexual assault initiatives. They pointed to energy challenges but persisted in showing ingenuity and initiative in embracing alternative technologies.

They supported Governor Parnell's merit-based post-secondary scholarship program, and continued to point to the need for jobs and job training to enhance their quality of life and their ability to remain in their communities, rather than be forced by economic circumstance to relocate to urban areas.

BUILDING AND PROMOTING ALASKA'S INFRASTRUCTURE

Transportation and Public Facilities

The department provides advice on infrastructure and transportation issues for state agencies, including the Alaska International Airports System, Statewide Aviation System, Marine Highways System, the Department of Transportation and Public Facilities (DOT&PF) highway and facilities divisions, the Division of Measurement Standards and Commercial Vehicle

Enforcement, the Knik Arm Bridge and Toll Authority, and the Alaska Natural Gas Development Authority.

The Department also:

- Gave legal advice to state agencies on issues related to infrastructure projects such as the Goose Creek Prison in the Matanuska-Susitna Borough, the Alaska Marine Highways System headquarters and Alaska Ship & Drydock expansions in Ketchikan, Galena and Kulik Air Force Bases redevelopment, Fairbanks and Anchorage fish hatcheries, Juneau access, a Knik Arm crossing, natural gas spur pipeline and propane projects, and the acquisition of data to allow analysis of a potential in-state gas line;
- Helped DOT&PF acquire property from willing sellers and exercise eminent domain for projects such as Trunk and Seward Meridian Roads near Wasilla, the 5th-6th Avenue upgrade and Dowling extensions in Anchorage, and Fairbanks' Illinois Street;
- Worked to resolve issues between the state and Native tribes with the goal of helping Alaska tribes take full advantage of federal Indian Reservation Road funds;
- Helped the Alaska International Airports System renew its exemption from federal limitations on the handling of international cargo;
- Initiated a lawsuit against the builders of the state's fast ferries to correct engine defects or recover money damages;
- Successfully defended the public's right to beach access in Nikishka, DOT&PF's ability to regulate Willow Lake as a float plane facility, and the authority to extract gravel from sites in the DOT&PF's Northern Region;
- Prosecuted commercial motor vehicle violations;
- Defended the state's procurement decisions against contractor claims for additional compensation, as well as airport leasing and concession and highway right-of-way management decisions; and
- Helped draft regulations governing municipal harbors grants, commercial vehicles and measurement standards.

DEFENDING STATE CONTROL OVER LANDS, WATERS AND WILDLIFE

Endangered Species Act Issues

Polar Bear Litigation

The department filed suit challenging the listing of the polar bear as threatened under the Endangered Species Act (ESA) in 2008. Other parties challenged the ESA's special 4(d) rule and the ban on importation of polar bear trophies from Canada. Ten lawsuits have been consolidated in the U.S. District Court for the District of Columbia. Alaska is participating in the listing and 4(d) rule cases.

The state argues that the decision to list the polar bear was not based on the "best scientific and commercial data available" and did not adequately consider the substantial efforts already being made to protect and conserve polar bears. Most of the briefing on summary judgment motions is complete but the court has asked for additional briefs and set oral argument for February and April 2011.

Polar Bear Critical Habitat

Department attorneys assisted the Alaska Department of Fish & Game, DNR and the Division of Community and Regional Affairs with the preparation of comments on the proposed designation of critical habitat for the polar bear. These comments were filed on July 6 and included comments on the economic impacts of the proposed designation of critical habitat. The Department of Law contracted with an economic consulting firm for expert analysis of the economic impacts of the proposed rule. By court settlement between the U.S. Fish and Wildlife Service (USFWS) and environmental groups, a final rule on critical habitat was published in late November 2010.

Cook Inlet Beluga Whale Litigation

The National Marine Fisheries Service (NMFS) listed the Cook Inlet beluga whale as an endangered species in late 2008 and proposed a critical habitat designation in late 2009. In 2010, the department filed suit challenging the listing. The Alaska Center for the Environment, Center for Biological Diversity, Cook Inletkeeper, Defenders of Wildlife, Natural Resources Defense Council and North Gulf Oceanic Society have intervened in the case, as has Escopeta Oil Company, LLC. The administrative record was filed on October 29, 2010. The state's first brief is due February 18, 2011, with the final briefing (by defendant-interveners) due June 20, 2011.

Cook Inlet Beluga Whale Critical Habitat

The department assisted with the preparation of comments filed March 3, 2010, on the proposed designation of critical habitat for the distinct population segment of beluga whales in Cook Inlet.

Ribbon Seals

The Center for Biological Diversity sued NMFS over the agency's determination that projected sea ice loss in 45 years does not yet warrant listing the ribbon seal as a threatened or endangered species. The state supported NMFS' decision and filed in the case as a friend of the court and as an intervener-defendant. On September 2, Alaska also participated in oral argument on cross-motions for summary judgment.

Other Ice Seals—Spotted, Bearded and Ringed

On October 15, 2009, the National Oceanic and Atmospheric Administration's Fisheries Service announced its decision to not list the two spotted seal populations in Alaska as endangered or threatened. However, on October 22, 2010, a southern distinct population segment (DPS) of spotted seals outside of U.S. territory was listed as threatened. Because that DPS occurs outside of the United States, critical habitat will not be designated.

Humpback Whales

In *Garske v. Lloyd*, the plaintiff sought an emergency temporary restraining order to stop the salmon drift gillnet fishery in a portion of Prince William Sound formerly fished by the purse seine fleet. The argument was based on a claimed higher risk of injury to humpback whales due to the change in fishing gear type and method. The motion was denied and preliminary discovery exchanges



Photo courtesy of John Hyde, ADF&G, Alaska Division of Tourism - humpback whale.

were made. NMFS has since begun a status review for humpback whales, and indications are that the populations have favorably improved in certain stocks. A final report is pending.

In 2010 NMFS issued a Section 101(a)(5)(E) Marine Mammal Protection Act permit to authorize the incidental taking of Central North Pacific stock of endangered humpback whales by the Hawaii-based longline fisheries. In accompanying documents, the Alaska-based fisheries were discussed for separate review. Alaska has requested that review and consideration for issuing a similar permit, and the matter remains under review. The plaintiff agreed to a three-month stay while this process was initiated and a second three-month stay. However, the court ordered the plaintiff to file a status review by November 19, 2010.

Steller Sea Lions

Steller sea lions are divided into two populations under the ESA. The division line between the Western DPS and the Eastern DPS is at 144 degrees West longitude (Cape Suckling, Alaska).

On August 30, the state filed a petition with the U.S. Department of Commerce seeking removal of the Eastern population (Southeast Alaska, Canada, Washington, Oregon and California) from the list of threatened species. The petition identifies scientific information demonstrating that this population has recovered to the point that it is no longer threatened with extinction.

ESA Section 7 requires NMFS to consider the impact of certain federal actions on listed species. On August 2, NMFS released a draft biological opinion on the potential effects of the Alaska groundfish fisheries on listed species including the Western population of Steller sea lions. This draft included a proposed reasonable and prudent alternative that would close or restrict fishing in certain areas of the Aleutian Islands to avoid jeopardizing the continued existence of, or adversely destroy or modify designated critical habitat of, the Western population of Steller sea lions.

In response to NMFS' request for public comments, the state detailed its numerous concerns about the draft biological opinion, the proposed reasonable and prudent alternative, and the accompanying draft environmental assessment and regulatory impact review. The final biological opinion was expected to be issued by December 1, 2010, together with the issuance of changes to the fishery regulations to implement the reasonable and prudent alternative needed to avoid jeopardy and adverse modification of critical habitat.



Photo courtesy of Alaska Division of Tourism -
Stellar Sea Lions.

The regulations were not expected to be effective until January 1, 2011, and the state will review the final biological opinion and implementing regulations for further response, including possible legal action.

Wood Bison

The Department of Law assisted with preparation of documents to permit the eventual reintroduction of wood bison in Alaska. In 2009 Fish & Game provided the USFWS an example draft rule under 10(j) of the ESA to designate wood bison in Alaska as a "nonessential experimental population."

This rule included special provisions allowing incidental take under section 4(d) of the Endangered Species Act and thereby would permit resource development, agriculture, or other lawful land uses to continue without liability for potential incidental take. In 2010 the department assisted Fish & Game with comments on the preliminary draft 10(j) and 4(d) ESA rules then prepared by the USFWS and will have another opportunity for public review and comment when the proposed rule is actually published.

Law also assisted in review of the draft environmental assessment prepared by Fish & Game and provided to USFWS in 2010 to accompany the preparation of the proposed rule. In addition, the USFWS was reviewing a petition filed by others to change the status of wood bison from endangered to threatened or possibly to remove the species from the list entirely. The department is working to ensure adequate protections are in place for continued land use activities in the state prior to the release of any animals.

Navigable Waters

Stikine River

The department appealed the U.S. Bureau of Land Management's (BLM) decision to deny the state's application for a recordable disclaimer of interest (RDI) in the bed of the Stikine River. Under the 1953 Submerged Lands Act and the Equal Footing Doctrine, states acquire upon statehood title to the beds of navigable rivers within state boundaries. A pre-statehood reservation of the submerged land may defeat state title, provided that Congress so intended. Under the RDI process, BLM is authorized to disclaim any federal interest in submerged lands, unless another federal agency with management authority over the land raises a legitimate objection to the state's title. The Forest Service objected to the state's RDI application for the Stikine River, arguing that Congress intended to defeat state title when it authorized the federal land withdrawals that created the Tongass National Forest.

The state provided legal authority to the contrary, including prior Department of Interior decisions that found that the withdrawals that created the Chugach National Forest (which relied on the same statutory authority as the Tongass withdrawals) did not defeat Alaska's title to the bed of the Katalla River. BLM, however, found that the Forest Service raised a valid objection to the State's RDI application for the Stikine, and denied the state's application. The briefing has been completed before the Interior Board of Land Appeals.

Chena River

The department received a favorable decision in the Alaska Supreme Court involving the state's authority to require a lease and charge rent for the Chena riverbed under the docks and stern-wheelers used by the Riverboat Discovery business in Fairbanks.

Alaska Riverways, Inc. (ARI) had resisted DNR's efforts to get the operation under a lease, arguing that as a riparian land-owner of long standing they had a common law "wharfage privilege" for the dock complex. ARI also challenged the method DNR had used for charging rent, which was a per passenger fee of 25 cents.

The court ruled for DNR on the issue of its authority to require a lease, concluding that whatever common law privilege riparian land-owners might once have enjoyed had been abrogated by state statutes authorizing DNR to require leases for structures that occupy the riverbed. The decision also addressed the state's authority to regulate wharves under the public trust doctrine, as well as constitutional issues raised by ARI. The court ruled for ARI on the per passenger fee issue, holding

that the fee violated a federal statute that essentially codifies the common law arising under the Commerce Clause and Tonnage Clause of the U.S. Constitution.

National Park Service Water Regulations

The department filed a petition for rulemaking requesting that the National Park Service (NPS) repeal regulations that make all NPS regulations applicable to all land within national park boundaries, including submerged land and navigable water bodies owned by the state.

The petition was filed in response to increased enforcement activity and adverse interactions between Park Service personnel and Alaskans. The department also filed an *amicus curiae* brief in a federal case charging an individual with criminal violations based on these regulations, arguing that the NPS does not have jurisdiction to enforce its regulations on a state-owned waterway.

Skagway River

The department reached a settlement with the plaintiffs in *Hunz v. State, DNR*, a quiet title action involving a riparian boundary dispute along the Skagway River.

The settlement calls for the Hunzes to acknowledge the state's ownership of the bed of the Skagway River under the Equal Footing Doctrine (thereby acknowledging the navigability of the river), pay the state \$175,000, and split roughly \$115,000 in funds from an escrow account representing gravel proceeds, in return for the state's agreement to fix the boundary along an existing dike behind which the Hunzes' improvements are located. In addition, DNR will, subject to a "best interest" finding, offer a long-term gravel sale to the Hunzes.

Kotsina River

The department continued preparing for trial in litigation to quiet title brought against the State by Ahtna, Inc., over ownership and use of the Kotsina and Copper Rivers delta area in the vicinity of the Copper River Bridge and road to McCarthy. The parties have filed dispositive motions, conducted field work and retained experts.

Chuitna River

The department continued to work with DNR and ADF&G to ensure that the public can use the Chuitna River on the west side of Cook Inlet.

Land into Trust in Alaska

The department is waiting for a decision from the U.S. District Court for the District of Columbia on whether

the regulatory bar prohibiting the Secretary of Interior from taking land into trust for the benefit of Alaska Native tribes and individuals is valid. The state argues that the Alaska Native Claims Settlement Act (ANCSA) prohibits the creation of trust land in Alaska except for Metlakatla.

The department also continues to work with the governor's Washington, D.C., office to submit comments on bills pending in Congress to amend the secretary's authority to take land into trust to protect Alaska's interests in this matter.

Predator Control

Unimak Caribou Herd

The department filed suit in federal court seeking declaratory and injunctive relief allowing ADF&G to take action to protect and preserve the Unimak caribou herd from its steep and accelerating population decline. The



Photo courtesy of R. Valentine, Alaska Division of Tourism - caribou.

herd was estimated to have only 20 or so adult bulls left and extremely low calf production and survival rates, due to heavy predation. USFWS delayed permits and refused to allow emergency measures to preserve the herd. The court denied the state's request for a preliminary injunction allowing ADF&G to take the minimal amount of wolves necessary to halt further decline. USFWS has moved to dismiss the case. The state opposed the motion and, if it is denied, expects summary judgment briefing in 2011.

Defenders of Wildlife Case

The Alaska Supreme Court ruled in the state's favor in the consolidated appeals from Ron West and the Defenders of Wildlife, et al., which challenged Alaska's predator control programs.

The court concluded that, despite language in the constitutional convention minutes to the contrary, Alaska's constitutional sustained yield clause (Article VIII, Sec. 4) applies to predators, but that the phrase in the clause "subject to preferences among beneficial uses" permits the state to favor management of one species over another. The court then found that the state's current predator control programs do not violate either constitutional or statutory sustained yield requirements, as the challengers had not established from the record that the Board of Game had failed to take sustained yield considerations into account when adopting them.

Salmon Federal Fishery Management Plan

The department worked with Fish & Game and the federal fishery agencies, National Marine Fisheries Service and the North Pacific Fishery Management Council to seek amendments to the Fishery Management Plan for the salmon fisheries in the Exclusive Economic Zone (EEZ) off the coast of Alaska that would ensure the continuation of independent state management of salmon fisheries in the traditional net fisheries that occur in the EEZ waters off of the Copper River, Cook Inlet, and the False Pass/Alaska Peninsula areas.

Limited Entry Permits

The department continues to successfully defend decisions of the Commercial Fisheries Entry Commission in the state courts from challengers claiming they should have received permits.

Subsistence

The state appealed the U.S. District Court's dismissal of the state's lawsuit in *State of Alaska v. Salazar* to

the U.S. Ninth Circuit Court of Appeals. The plaintiffs in *Katie John, et al. v. United States* also appealed. The two cases were consolidated on appeal.

The appeals stem from regulations issued by the federal agriculture and interior departments claiming federal subsistence jurisdiction over numerous waters throughout Alaska and the fish and game within them. The state has long held sovereign jurisdiction and management authority over those waters and their submerged lands and natural resources. The state asserts that the federal regulations are overbroad, do not follow proper legal process and unlawfully infringe on state authority. The *Katie John* plaintiffs argue that the regulations should be broader and extend federal subsistence authority to virtually all waters in Alaska. Extensive briefing was completed in October and oral argument will probably be scheduled in 2011.

Department attorneys continue to review and comment on proposed federal subsistence regulations that impinge on the state's authority to manage fish and wildlife resources on public lands for conservation and non-subsistence uses.

Access

The department continues to work to preserve and secure access to public land and water throughout the state. We appealed to the Interior Board of Land Appeals a BLM decision to convey certain land to Doyon Limited without reserving a trail easement under § 17(b) of ANCSA. We are also in state court defending a right of way from a challenge by Ahtna, Inc.

Accretion

Attorneys in the department continue to represent the state in lawsuits seeking title to new land adjacent to water bodies created by accretion. These cases arise primarily in Southeast Alaska due to isostatic rebound.

Chitina Dipnet Fishery Litigation

In *Alaska Fish and Wildlife Conservation Fund v. State*, the plaintiffs challenged the Board of Fisheries' classification of the Chitina salmon dipnet fishery as a personal use, rather than a subsistence, fishery. The Superior Court upheld the regulation used by the Boards of Fisheries and Game to determine whether uses of fish and game are customary and traditional. The court upheld the board's application of the regulation except that the court remanded the matter to the board with instructions to define the term "subsistence way of life" as used in 5 AAC 99.010(b)(8) and

to re-apply 5 AAC 99.010(b) consistent with that definition. The court also limited the use of statistical evidence relating to per capita consumption of wild food in urban areas.

The court held that classifying the Chitina and Glennallen fisheries differently did not violate constitutional equal protection or uniform application principles.

In March 2010, the Board of Fisheries adopted a regulatory definition of "subsistence way of life" and reconsidered its earlier customary and traditional determination in light of the court decision and voted unanimously that uses of salmon in the Chitina Subdistrict of the Copper River were not customary and traditional under the statutory and regulatory criteria, and consequently retained the "personal use" classification of the fishery.

Salmon Management

The state moved to intervene in federal District Court in a case brought by the United Cook Inlet Drift Association (UCIDA) against the U.S. Secretary of Commerce. UCIDA sought a federal takeover of management of the drift gillnet salmon fishery in Cook Inlet with the ultimate goal of increasing the allocation of salmon to its members and reducing the allocation to other fisheries. The court stayed the litigation and denied the state's motion without prejudice when the parties began settlement talks.

UCIDA and the U.S. Department of Commerce entered into a settlement agreement, and the court issued a consent decree that requires UCIDA to submit proposals to the state Board of Fisheries and receive an adverse decision before appealing to the NMFS. The court retained jurisdiction over compliance with the consent decree but otherwise dismissed the lawsuit. UCIDA has submitted several proposals which the Board will consider at its February 20-to-March 5 meeting on Upper Cook Inlet finfish regulations. The department continues to monitor this matter closely.

PROTECTING THE FISCAL INTEGRITY OF THE STATE

PRESERVING ALASKA'S FINANCIAL INTERESTS

The department played a significant role in collecting funds owed the state and its citizens in 2010 and in defending the state against significant fiscal liabilities. Many sections of the department contributed to this effort and the following is a summary of those efforts.

Oil and Gas Royalties and Taxes

Most of the state's operating revenues are derived from oil and gas corporate income taxes, production taxes, property taxes, and royalties on Alaska North Slope (ANS) crude oil. The value of that crude oil for production tax and royalty purposes is largely determined by the price that ANS oil commands in its destination markets, less the costs of transportation to those markets. The transportation costs include pipeline tariffs and the producers' tanker costs. Thus the state closely monitors transportation costs, particularly tariffs, because they affect state tax and royalty revenues.

The department performs legal services related to these and other oil and gas revenue issues. These



Chief Assistant Attorney General Tina Kobayashi of the Oil Gas & Mining Section receives the 2010 leadership award.

efforts aided the state in collecting nearly \$62 million in additional taxes and royalties through settlements or litigation from January through October 2010.

The department assisted the Department of Revenue in drafting comprehensive regulations implementing the state's new oil and gas production tax system.

TAPS Tariff Litigation

The department participated in a multi-week hearing at the Federal Energy Regulatory Commission (FERC) in November 2010 regarding the state's protest of interstate TransAlaska Pipeline System (TAPS) tariff rates charged from 2009 through the first half of 2010, and is preparing post-hearing briefing of that protest.

The hearing was limited to issues regarding pooling of costs and return by the five TAPS owners, as the state achieved favorable settlement of its cost of capital issues prior to hearing. The state also protested the superseding 2010-forward TAPS rates at both the FERC and the Regulatory Commission of Alaska (RCA), and that litigation is on hold pending a decision on the 2009-10 rate protests.

The department completed its primary discovery and will file its initial testimony in the TAPS Strategic Reconfiguration (SR) litigation in January 2011. The SR case is scheduled to be heard concurrently before the FERC and the RCA from November 2011 through January 2012.

Oil and Gas Tax & Royalty Litigation

The department represented the Department of Revenue on a number of confidential cases involving the production tax and oil and gas corporate income taxes.

The department obtained a Superior Court decision finding that the 2006 value of TAPS for property tax purposes was \$9.9 billion, which would result in about \$198 million in property tax revenue for affected municipalities and the state. The decision upheld the state's valuation methodology and the application of that methodology.

The department also represented the Department of Revenue in consolidated appeals to the Superior Court from the State Assessment Review Board's 2007 TAPS property tax assessment of \$4.6 billion, the 2008 TAPS property tax assessment of about \$6.1 billion, and the 2009 TAPS

property tax assessment of about \$9 billion. These decisions resulted in property tax payments to affected municipalities and the state of \$92 million for 2007, \$124 million for 2008 and \$154 million for 2009. The Superior Court has scheduled an eight-week trial beginning in September 2011.

A major case pending before the Office of Administrative Hearings is an appeal of a 2005 decision by the Department of Revenue to aggregate properties within the Prudhoe Bay Unit to determine the Economic Limit Factor under the former production tax regime. The effect of this decision was to significantly increase North Slope production taxes. The parties briefed the issue and are awaiting a decision by the administrative law judge.

The Department prepared for an administrative hearing in a dispute over production allocation from the Northstar participating area, which contains both state and federal leases. Murphy (Exploration) Alaska and, indirectly, BP objected to DNR's allocation, arguing that DNR should have attributed more production to federal leases than had previously been allocated under the interim tract factors. This would have required a reallocation of past production from the state to the United States. The department is working to bring this case to hearing.

Excise Taxes

The Department of Law provides legal assistance to the Department of Revenue on various non-oil and gas excise taxes, including on tobacco, cruise ship gambling and passengers, alcohol, motor fuel and fishing.

Effective enforcement and collection of these taxes is imperative to minimize taxpayers' efforts to evade payment of taxes, particularly in the areas of tobacco and fish-related taxes, where efforts to avoid taxes have recently become more pronounced and creative.

Cruise Ship Initiative - Passenger Tax

In 2006, Alaska voters approved a cruise ship initiative that amended state law to make the income from the water-based activities of cruise ship companies subject to the Alaska Net Income Tax. In addition, the initiative imposed a tax on the proceeds of gambling conducted on cruise ships while in state waters and a "head" tax of \$46 a passenger per voyage for travel on a commercial passenger vessel (with at least 250 berths) that spends more than 72 hours in Alaska. The passenger is liable for the tax, but the tax is collected and remitted to the Department of Revenue by the commercial passenger vessel.

In 2009, the Alaska Cruise Association filed a lawsuit against the state over the collection and use of the "head" tax. According to the lawsuit, the tax violated federal constitution and statutory protections that limit what a state can charge a vessel and its passengers in its waters, permitting only fair and equitable fees that: 1) are used solely to compensate the state for specific services provided to the vessels charged; 2) impose minimal burden on interstate commerce; and 3) enhance the safety and efficiency of commerce.

While prepared to vigorously defend the legality of the tax, the department also pursued, on behalf of the governor's office, settlement of the lawsuit. The issues in the case were factually and legally complicated, and, without a settlement, the litigation was expected to be tied up in federal court for several years. The governor's office and the department were successful in negotiating a settlement in the matter, involving legislation passed to reduce the tax rate from \$46 per passenger to \$34.50.

The tax reduction was introduced by the governor and enacted by the Legislature. It is expected to spur economic growth, particularly among small businesses that will benefit from increased tourism traffic. The settlement preserved payment to the state of roughly \$34 million per year to help defray the costs of service and facilities provided to accommodate passenger visits.

Tobacco Tax

During the spring and summer of 2010, the Department of Revenue's tobacco investigators discovered two cigarette-making machines being operated in Alaska. Because the customer loaded the ingredients into these machines, these stores took the position they were not selling cigarettes and were justified in not collecting roughly \$18 per carton in state excise taxes. The Department of Revenue disagreed and concluded that the stores were manufacturing cigarettes, which required a license and payment of tax under state law. With the assistance from this department, these stores were advised to acquire the required license and to collect and remit taxes on the cigarettes being manufactured and sold in their stores.

In August, these two stores filed a declaratory judgment action in Anchorage Superior Court to restrain the state from requiring them to acquire a "manufacturer" license and collect excise taxes. Judge Michalski denied the plaintiff's request for a preliminary injunction. He concluded as argued by the department that the stores were in fact manufacturing cigarettes. One of the two machines has now been removed from the store.

EVOS Assignment Upheld

In 1991, the state Division of Investments loaned a debtor funds to purchase a fishing permit. In 1996, the debtor gave the state an assignment of his Exxon Valdez Oil Spill (EVOS) claim in the amount of \$85,000. The State registered this assignment with the Exxon Qualified Settlement Fund (EQSF) administrator in 1996.

In 2000, the debtor filed a Chapter 7 bankruptcy. The state filed a Proof of Claim (POC) showing its loan was secured by the fishing permit and the assignment. In 2000, the bankruptcy trustee demanded that all EVOS funds be sent to him. In 2002, the EQSF administrator agreed.

In 2010, the trustee received more than \$57,000 from the EQSF administrator. The trustee objected to the state's POC. The state argued that its assignment trumped any interest the trustee might have in the funds.

Judge MacDonald found that the state's notice to the EQSF administrator was sufficient to perfect its interest in the EVOS funds. Judge MacDonald further ruled that neither the debtor nor the bankruptcy estate had any interest in his EVOS claim unless the value of the EVOS claim exceeded \$85,000. He ordered the trustee to return the \$57,000 to the state.

This case is significant because several state agencies have received assignments of EVOS claims to satisfy a state debt, and the decision makes it clear that EVOS funds subject to an assignment may not be attached by a bankruptcy trustee if proper notice has been given to the EQSF administrator.

Alaska Retirement Management Board v. Mercer

The department investigated and worked with outside counsel to file and litigate a large actuarial malpractice case for the Alaska Retirement Management (ARM) Board. The ARM Board settled the lawsuit against its former actuary, Mercer, regarding claims of professional malpractice, breach of contract and unfair trade practices in advising the state on management of the Alaska Public Employees' Retirement System (PERS) and the State of Alaska Teachers' Retirement System (TRS), which face billions of dollars in unfunded liabilities.

The settlement agreement called for a \$500 million payment in exchange for dismissal of the ARM board's lawsuit with prejudice. After deducting court costs and the contingency fee for outside counsel, the state public pension systems received \$403,325,000. As noted by then-Attorney General Dan Sullivan, "This is a great result for the ARM Board and most importantly for Alaska

state workers and retirees. . . . and [it] is a significant settlement that will benefit the state and our citizens. We have been informed that by a large margin it is the largest such settlement in history for this kind of claim."

The unfunded liabilities were caused by stock market declines, significant increases in health care costs and, as alleged by the ARM Board, Mercer's negligence. "Alaskans owe special thanks to many officials in the Department of Law who worked hard on this case for years," said the attorney general. "I also want to acknowledge former Attorneys General Dave Marquez and Talis Colberg for their efforts, as well as the support of the Alaska Legislature, particularly Senator Hollis French." Sullivan also recognized the outstanding work of the ARM Board, as well as outside counsel Paul, Weiss, Rifkind, Wharton & Garrison LLP. "Their diligent trial preparation was key to a settlement of this magnitude."

Collection of Debts Owed to the State Of Alaska

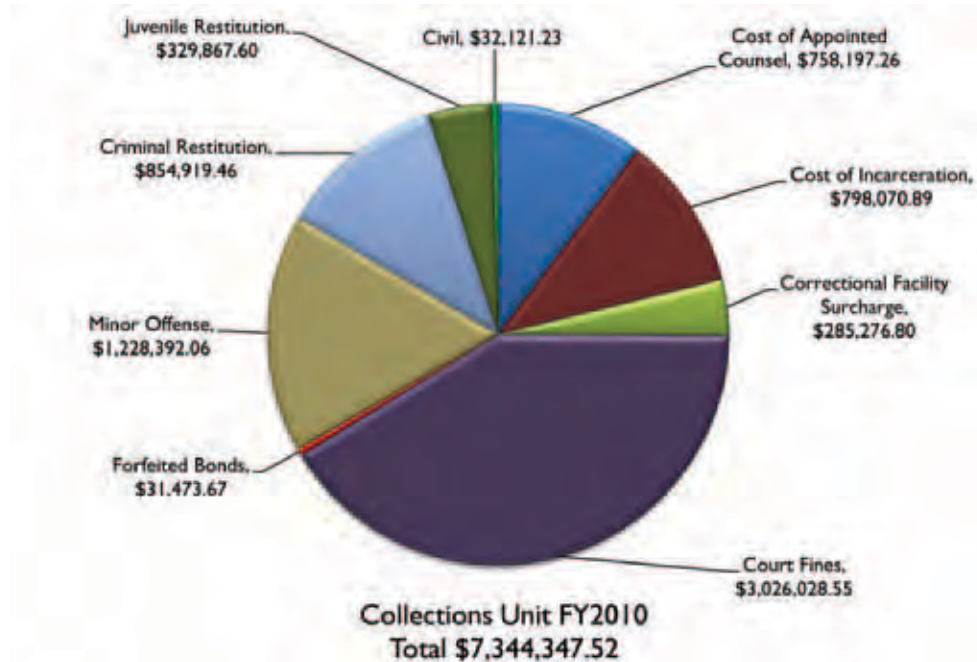
The state benefits from the department's Collections Unit and gets a positive return on its investment. In FY 2010, the unit collected more than \$7.3 million based on preliminary reports. Of that amount, about \$6 million resulted from garnishment of the debtor's PFD — funds that most likely would not have been recovered but for the effort of the collections unit.

Since 2002, after authorization by the Legislature, the unit collects victim restitution and sends the money to victims harmed by crimes. Of the total \$7.3 million collected, more than \$1.1 million was collected for victims of crimes.

The unit also collects for the Department of Corrections, the Public Defender Agency and the state general fund. The unit collected more than \$1 million for the Department of Corrections through Cost of Incarceration and Correctional Facility Surcharges; about \$750,000 for the Public Defender Agency through Cost of Appointed Counsel judgments; and more than \$4.3 million for the general fund through Fines, Minor Offenses (traffic tickets), Forfeited Bonds, and civil attorney fee awards.

Carlson v. State Of Alaska

Following entry of judgment in the Superior Court against the state for \$82.3 million in this 26 year old class action lawsuit, the state immediately appealed and the Alaska Supreme Court granted expedited consideration. The class of non-resident fishermen sought refunds of commercial fishing permit fees under prior state law that charged non-residents three times more than residents.



The state's appeal challenges the application to this permit fee case of an unusually high interest rate of 11 percent, compounded quarterly, which had been used for tax delinquencies and refunds. The appeal has been briefed and argued and is ripe for decision. A decision in the state's favor could be worth \$50 million in savings.

Defense of Torts and Workers Compensation Cases

The Department provides legal defense and advice in personal injury, property damage, and civil rights lawsuits filed against state agencies and state employees under the Division of Risk Management's self-insurance program. It also provides advice and training to state agencies.

In 2010, the Department successfully defended the state in a jury trial in Anchorage Superior Court, which involved claims brought by an inmate against the Department of Corrections and another inmate. The Department briefed four appeals in tort cases - two in the Ninth Circuit Court of Appeals, and two in the Alaska Supreme Court.

The Department actively pursues summary dismissal of lawsuits by filing dispositive motions in many of the tort cases. Where certification of individually sued state employees is appropriate under AS 09.50.253, individually sued state employees defendants are dismissed with substitution of the state as the defendant. In one case involving the Attorney General's certification of a state employee under AS 09.50.253, the Department filed a petition for review which was granted by the Alaska Supreme Court; briefing and oral argument are complete.

The Department also represents the state as an employer before the Alaska Workers' Compensation Board and the Alaska Workers' Compensation Appeals Commission. The Department has appeared and defended the state as employer in eight hearings before the Workers' Compensation Board and two appeals before the Alaska Workers' Compensation Appeals Commission in 2010.

At year end, the Department's Torts and Workers' Compensation Section had over 200 open tort matters and nearly 150 open workers' compensation files.

Education Support and Oversight

In March 2010, the Superior Court issued a decision describing four deficiencies in the State's oversight of underperforming school districts (*Moore v. State*). During the legislative session, officials from underperforming districts testified that they need more resources. At the end of the session, the House-Senate conference committee on the budget inserted intent language in the budget that advised the Department of Education and Early Development (DEED) to spend an additional \$7 million to address the concerns of the court in *Moore*.

On October 15, 2010, on behalf of DEED, the department filed a compliance report in the case. This report responds to the court's March 31, 2010, order, in which the court found continuing deficiencies in DEED's support and oversight of underperforming school districts. The 135 page compliance report documents the support,

assistance, oversight and intervention taken by DEED in five districts in intervention status during the previous year.

ADVANCING THE PUBLIC INTEREST IN UTILITY MATTERS

In 2004, the Regulatory Affairs & Public Advocacy (RAPA) section was established in the department to perform the attorney general's statutory responsibility for public advocacy on behalf of the public interest in utility and pipeline carrier matters that come before the Regulatory Commission of Alaska (RCA), in related court appeals, and before the Legislature and other policy makers.

Customer refunds and reduced rates

Alaska Power Company - customer refunds

RAPA obtained more than \$450,000 in refunds, including interest, for Alaska Power Company customers in a litigated rate proceeding that affected 6500 electric customers in Haines, Tok Junction, Prince of Wales Island and several Interior villages. The RCA agreed with RAPA's position that the utility's proposed cost of capital/rate of return was too high. As a result, the utility was ordered to refund the 4 percent rate increase it had over-collected.

Anchorage Water and Wastewater Utility - customer refunds

RAPA obtained refunds for AWWU customers totaling \$1.3 million, not including interest, in a litigated rate proceeding. As a result, \$609,000 will be refunded to Anchorage water customers and \$713,000 refunded to Anchorage wastewater customers, plus interest.

Enstar Natural Gas Co. – customer refunds

RAPA obtained \$5.7 million in refunds for Enstar natural gas customers by challenging the utility's request to adjust its gas cost adjustment calculation to recover amounts related to a billing error to the Department of Defense for incorrect recorded usage at Fort Richardson. The amount of individual customer refunds will vary according to volume of gas usage during the period of overcharge.

Kenai Kachemak Pipeline – gas transportation rate reduction

RAPA's advocacy contributed to a stipulated settlement of KKPL's transportation rate case at rates substantially lower than those proposed by the pipeline carrier. KKPL agreed to a 30 year (as opposed to its proposed 12 year) depreciation schedule and agreed to remove

certain other costs from its revenue requirement. The stipulated settlement accepted by the RCA resulted in significantly lower gas transportation rates.

Ratepayer Protection

Golden Valley Electric Assoc. – safeguards against discontinued service

RAPA disputed GVEA's proposal to implement a pre-paid customer metering service to its customers in the Fairbanks service area because there were insufficient procedural safeguards to protect against unjustified discontinuation of service without adequate due process and customer recourse under the utility's tariff. As a result, GVEA amended its pre-paid metering proposal.

Homer Electric Association – prevention of termination of service

HEA sought to discontinue service under a special contract with Cook Inlet Aquaculture Association (CIAA), but RAPA advocated for the utility's continued service to CIAA for its salmon hatchery in Kachemak Bay near Seldovia.

The RCA required the utility to continue to provide service to the Tutka Lagoon hatchery.

Regulatory Reform in Rule-making Proceedings

Telephone Access Charge Reform – rate parity established for long distance calling

RAPA's consistent advocacy during a two-year long RCA rulemaking proceeding resulted in a decision ensuring that consumers reap some benefit from a \$27 million access cost shift.

The RCA shifted \$27 million dollars in total access costs to two alternative payment funds: an increase in the network access fee (NAF) paid by local telephone end-users and modification of the Alaska Universal Service Fund (AUSF).

The AUSF will be increased and funded from a surcharge on customers of all types of Alaskan telecommunications services, including wireless/cell phone users.

The RCA adopted an industry consensus proposal, consistent with RAPA advocacy, that more clearly defines the requirement for long distance carriers to pass through their savings to ratepayers. Consumers will receive a corresponding benefit in exchange for the new cost burden that they will now be shouldering in paying the NAF and AUSF fees required to cover legacy access charges formerly paid by long distance carriers.

PROMOTING AND DEFENDING GOOD GOVERNANCE

DEFENDING ALASKA'S CONSTITUTION

Under the Alaska Constitution, the Alaska Judicial Council reviews applicants for judgeships and then recommends candidates to the governor. In *Hinger, et. al. v. Carpeneti, et al.*, a group attempted to alter this process. The plaintiffs argued that this process violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. In September, the federal District Court ruled against the plaintiffs, who then appealed to the Ninth Circuit Court of Appeals.

The Ninth Circuit affirmed the U.S. District Court's ruling that Alaska's merit selection system for appointing judges does not violate the Equal Protection Clause of the federal Constitution (*Kirk v. Carpeneti*).

The court recognized the current contentious debate in the United States over judicial selection and provided a detailed description of Alaska's process. The opinion demonstrates a clear grasp both of the essence of the appellants' argument – that equal protection requires that appointments to government bodies be made by popularly elected officials – and of the lack of legal authority to support that argument.

The appeals court rejected this “novel” underlying principle, noting that the U.S. Supreme Court had considered a similar proposition in 1982 in *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982) and found it wanting. The court also noted that various federal judicial appointments – magistrate judges and bankruptcy judges – did not comply with appellants' desired principle.

REVIEWING AND DEFENDING THE INITIATIVE PROCESS

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

Planned Parenthood of Alaska and Susan Wingrove v. Craig Campbell

Planned Parenthood filed a suit for injunctive and declaratory relief in 2009, seeking to overturn the lieutenant governor's certification of the application for a ballot initiative for a measure to require parental notification of a minor daughter's abortion. The department defended the suit, and ultimately the Alaska Supreme Court ruled that the initiative should appear on the ballot.

DEFENDING THE DIVISION OF ELECTIONS

The week before the November general election, the state Democratic Party filed suit against the Division of Elections seeking to prevent the use of a list of write-in candidates at the polls to assist voters in casting votes for write-in candidates for the office of U.S. Senate in the election. (Cases *Alaska Democratic Party v. Div. of Elections*, case number 3AN-10-11621CI and *Div. of Elections v. Alaska Democratic Party and Alaska Republican Party*, case number S-14054.) The Republican Party intervened, joining the Democratic Party in opposition to the use of the list. Senator Lisa Murkowski intervened in support of use of the list. The litigation was extremely expedited moving through the trial and Supreme Court within a week. The Supreme Court upheld the use of the list ruling that it was consistent with Alaska's voter assistance statutes and did not violate state election regulations.

After the election, the division faced lawsuits filed by the defeated Republican candidate in the U.S. Senate race, Joe Miller. He filed a state complaint alleging a public records act claim for review of the precinct registers from the Nov. 2 general election, in *Miller v. Div. of Elections*, Case No. 1JU-10-982 CI, despite the fact that the division had not declined to permit his campaign to review the registers and the time to respond to a public records act request had not yet run. When the division timely responded to his public records request, the case was dismissed.

Miller also filed a complaint in federal court alleging that the division's decision to count misspelled write-in votes if the intent of the voter could be determined violated the Elections and Equal Protections Clauses of the federal constitution. (*Miller v. Lt. Gov. Campbell and Div. of Elections*, Case No. 3:10-cv-0252-RBB). The state successfully opposed

Miller's request for an injunction to stop the write-in count, but the federal court did enjoin the division from certifying the results of the U.S. Senate race, as it abstained from addressing the state law question central to Miller's federal claims. The injunction was conditioned on Miller pursuing his state law claims on an expedited basis in state court.

As a result, Miller filed suit challenging the write-in count procedure in state Superior Court, in *Miller v. Lt. Gov. Campbell and Div. of Elections*, Case No. 1JU-10-1007 CI. Miller originally filed this action in state Superior Court in Fairbanks, but the department was successful in its motion to change venue to Juneau. The department also filed for summary judgment on an expedited basis, arguing that the division was correctly applying state law in counting write-in ballots; that its procedures were not regulations under the Administrative Procedures Act; and that other alleged irregularities cited by Miller were factually unsupported and failed to meet the standard for an election contest. Senator Murkowski intervened to challenge the division's decision not to count certain ballots. On December 10, Superior Court Judge William Carey of Ketchikan granted the state's summary judgment motion on all counts, including Murkowski's cross-complaint, and Miller appealed to the Alaska Supreme Court. Murkowski cross-appealed.

The department returned to federal court, asking the court to establish an expedited briefing schedule on

any remaining federal questions once the state Supreme Court ruled, so as to try to ensure that certification of the election result could take place early enough to allow Senator Murkowski to be sworn in when the new Congress convened in January 2011. The federal court granted this request, ordering Miller to file pleadings with the court within 48 hours of a Supreme Court ruling.

Briefing and oral argument before the Supreme Court was accomplished within a week, (*Miller v. Lt. Gov. Campbell and Div. of Elections*, Case Nos. S-14112, S-14121), and on December 22, the court issued an opinion upholding the superior court on all issues. The federal court extended its briefing schedule to accommodate the holiday weekend, but required Miller to present his position on Monday, December 27. On December 27, Miller agreed that the injunction against certification should be lifted, but asked the federal court for a new injunction that would reset the deadlines for requesting a recount or filing an election contest from the end of the federal litigation. The department opposed this request on the same day, arguing that Miller did not meet the standard for a preliminary injunction because he could not show a probability of success on the merits. On December 28, Judge Beistline issued an order denying the request for a new injunction and dismissing the entire lawsuit. The election result was certified by the division later that day.



Attorney General Sullivan (right) presents Craig Tillery with a letter of recognition from Governor Parnell for his 25 years of state service.

Key Elections Developments

The Alaska Attorney General's Office joined the Native American Rights Fund (NARF), the American Civil Liberties Union, the Northern Justice Project, four Alaska Native elders and four tribal governments in announcing a settlement of litigation in *Nick, et al. v. Bethel, et al.*

According to the settlement, the State of Alaska will make enhancements to language assistance for Yup'ik-speaking voters available at elections in the Bethel area. The resolution of the case, originally filed in June 2007 on behalf of Alaska Native elders Anna Nick, Billy McCann, Arthur Nelson and David O. David, and the tribal governments

of Kasigluk, Kwigillingok, Tuluksak and Tuntutuliak, was welcomed by all parties involved. “We are committed to equality under the law and fair voting practices and effective access to the voting booth for all Alaskans,” said then-Attorney General Dan Sullivan. “We will vigorously implement the terms of this settlement.”

The settlement recognizes improvements to language-assistance protocols implemented by the state during the 2008 and 2009 elections, while providing for enhancements designed to ensure that limited-English-proficient voters receive effective assistance.

Key protocols for the Division of Elections include:

- Training bilingual poll workers to provide language assistance to voters;
- Coordinating language assistance through a bilingual staff person with a toll-free number;
- Relying on Yup’ik language experts to translate election materials, including information on ballot measures, candidates, absentee and special-needs voting and voter registration;
- Preparation of a Yup’ik-English glossary of election terms and phrases to guide bilingual poll workers providing language assistance;
- Providing sample ballots in Yup’ik;
- Generating pre-election publicity in Yup’ik through radio ads, television programs and public service announcements, including announcements over VHF radios in villages that do not receive regular radio broadcasts; and
- Undertaking outreach to the villages in the census area.

From August 30-September 1, 2010, following the primary election, a team of AAGs assisted the Division of Elections in monitoring ballot counting and absentee and questioned ballot review. One of the candidates for U.S. Senate had questioned the ballot-counting process, and in order to ensure the integrity of the process, AAGs assisted the division at ballot-counting locations in Anchorage, Fairbanks, Juneau, Wasilla and Nome. There were numerous observers from election campaigns, as well as a large number of news reporters at the ballot-counting and review, which went smoothly. AAGs assisted the division in investigating and responding to the few complaints from campaigns, determining that none had merit.

The department also provided assistance on the recount of ballots of two primary election state house races.

Alaska Public Offices Commission

The department provides legal advice and assistance to the Alaska Public Offices Commission (APOC) staff and represents the staff in hearings on complaints brought before the commission.

In 2010, there was a heightened need for legal assistance based upon the U.S. Supreme Court’s decision in *Citizens United*, which called some of Alaska’s campaign finance laws into question as to their legality and continued enforceability. Legislative proposals related to addressing the decision in *Citizens United* were a high priority.

Additionally, several high-profile ballot measures regarding the Pebble Mine and complaints related to the funding of those ballot measures generated a heightened need for legal advice to APOC and its staff. In a general election year, there is generally a substantial increase in legal advice to APOC regarding issues of financial disclosure of candidates, funding of political campaigns and related matters.

The department provided legal assistance to APOC regarding approval of a proposed consent decree between its staff and Robert Gillam, The Renewable Resources Coalition and Alaskans For Clean Water, putting to rest the administrative proceedings resulting from alleged violations of campaign finance laws during the campaign over Ballot Measure 4 for the August 2008 primary election. While the respondents did not admit to wrongdoing, the consent agreement called for them to pay \$100,000 to APOC and requires them to file reports appropriately accounting for expenditures and contributions during the campaign.

PROMOTING TRANSPARENCY AND THE RESPONSIBLE MANAGEMENT OF INFORMATION AND RECORDS

The department’s Information and Project Support Section advises the department and other agencies on legal issues regarding the management, inter- and intra-agency exchange, and disclosure of information and records.

In 2010, the section responded to and advised other agencies in responding to many Public Records Act requests. The section also provided advice on the need for and implementation of the Email Retention Policy, procedures for implementing legal holds, procedures for handling protected records and the off-hours use of social media by department personnel.

DRAFTING AND REVIEWING LEGISLATION AND REGULATIONS

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

OIL AND GAS REGULATIONS PROJECTS

During the spring of 2010, the Legislation and Regulations Section concluded coordinated review and revisions of approximately 150 pages of regulations from the Department of Revenue and the Department of Natural Resources, relating to oil and gas royalties and production taxes. The regulations were necessary to implement the Alaska Gasline Inducement Act's royalty inducement and tax exemption provisions, in time for the start of open season in May 2010. As several distinct sets of regulations were involved, it was important that they were reviewed and refined to work harmoniously. AAGs Martin Schultz, Susan Pollard and Steve Weaver dedicated considerable time and work to the successful completion of these projects.

2010 REGULATIONS CLASSES

During August and September 2010, the Legislation and Regulations Section conducted in-person classes on the preparation and adoption process for regulations, with both classes for state agencies and separate law-oriented classes for department staff.

Over 100 students attended classes in Anchorage and Juneau. The classes will improve the quality of regulations development in the state.

2010 LEGISLATIVE PROCEDURES CLASSES

In December 2010, the Legislation and Regulations Section conducted in-person classes in Anchorage and Juneau on the legislative process, with emphasis on skills needed by agency attorneys, including training in computer resources necessary for the legislative process.

INCREASING INTERNAL EFFICIENCY

The department's administrative services division provides financial management, forecasting, budgeting, accounting, procurement, time-management, computing and mail services.

In 2010, the Information and Project Support Section deployed the case-management tools of ProLaw — the Civil Division's software that is used for the organization of information and records, time entry, billing, and accounting — for the Oil, Gas, and Mining Section's Anchorage office and deployed customized ProLaw solutions for tracking and reporting environmental cost recoveries; consumer complaints; Oil, Gas, and Mining Section archival records; legislation and regulation projects; and responses to Public Records Act requests. Also, the Information and Project Support Section monitored the ProLaw database for compliance with department protocols and to ensure the integrity of the database's information.

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

ADMINISTERING THE EXECUTIVE BRANCH ETHICS ACT

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

The ethics attorney also serves as the designated ethics supervisor for all employees of the Department of Law. In that capacity, the ethics attorney responds to requests for advice from the department's employees, reviews all outside employment, contract and gift disclosures

made by any employee, and makes determinations regarding ethics matters disclosed in notices of potential ethics violations submitted by or about a department employee. The ethics attorney also provides support to the attorney general in his role as designated ethics supervisor for the governor and lieutenant governor.

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

In 2010, the department adopted changes to the ethics regulations, including regulations establishing: (1) standards for payment of attorney fees incurred by a public officer who is exonerated of ethics charges; (2) standards for determining when state payment of travel costs for family

members of the governor or lieutenant governor is for a state purpose and does not result in a violation of the ethics act; (3) standards for determining when personal use of state-issued electronic equipment is presumed insignificant; and (4) other amendments to update the existing regulations or address interpretation or procedural issues identified by the state ethics attorney.

OUTREACH

In 2010, the Information and Project Support Section redesigned the department's consumer protection and employment opportunities web pages, the department's Victims' Handbook, four victim witness assistance program brochures, and designed the Cordova Center project proposal and three recruitment brochures.



Attorney General Sullivan with the 2010 summer interns.



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