



State of Alaska
Department of Law

Richard Svobodny, Acting Attorney General

2011
Annual Report

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Message From the Attorney General's Office

January 20, 2012

Dear Members of the Alaska Legislature, Governor Parnell, and Fellow Alaskans:

I present the Department of Law's 2011 annual report to you with pride, but also with humility. I believe that this is the first annual report you have received from an Acting Attorney General. The Department of Law has been my home for most of my professional life and I have been Acting Attorney General four times. With this background I cannot help but be proud of the work the lawyers, paralegals, and staff of the Department of Law have done this year. At the same time, I am humbled by the opportunities Alaska has given me and the employees of the department in protecting citizens and being good stewards of Alaska.

The department is divided into three parts: the Civil, Criminal, and Administrative Services Divisions. The Civil Division has 14 sections that advise and assist the legislature, administration, and state agencies in matters as diverse as protecting children, developing the state's natural resources, and assuring good governance. The Criminal Division consists of 13 District Attorneys' Offices and the Office of Special Prosecutions and Appeals that prosecute those individuals who break the law and violate the peace. The Administrative Services Division provides the infrastructure that holds the department together by managing the department's budget and providing us with the critical communication and case management systems that are necessary to support the legal needs of Alaska.

The core services of the department extend into four overarching areas: protect Alaskans; promote economic opportunity; protect Alaska's fiscal integrity; and promote good governance. The report that follows is organized by these services. I encourage its reading for a better understanding of the comprehensive work of the Department of Law in making Alaska a better place to live, a better place to raise our families, and a place where our citizens can be meaningfully employed and grow to their full potential. Our lawyers and staff thank you for the honor of providing these legal services to all Alaskans.

A handwritten signature in black ink that reads "Richard Svobodny". The signature is written in a cursive, flowing style.

Richard Svobodny
Acting Attorney General

Department of Law Organizational Chart

Richard Svobodny, Acting Attorney General

Criminal Division

John Skidmore,
Acting Deputy Attorney General

Special Prosecution & Appeals
Douglas Kossler, Appeals

Clinton Campion, Special Prosecutions

Juneau District Attorney's Office
David Brower, 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
David Powell, Assistant District Attorney

Kotzebue District Attorney's Office
John Cagle, 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
Scot Leaders, District Attorney

Bethel District Attorney's Office
June Stein, 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
Deborah Idone,
Finance Officer

Procurement

Patricia Hull,
Procurement Specialist III

Timekeeping and Billing
Eileen Donahue,
Deputy Director

Information Services
Jennifer McCaul,
Acting Information
Technology Manager

Civil Division

James Cantor, Deputy Attorney General
Nancy Gordon, Civil Division 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
Steve Mulder,
Chief Assistant Attorney General

Human Services
Stacie Kraly,
Chief Assistant Attorney General

Information & Project Support
Alan Birnbäum,
Chief 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
Steve DeVries,
Chief Assistant Attorney General

Torts & Workers' Compensation
Susan Cox,
Chief Assistant Attorney General

Transportation
Jeff Stark,
Chief Assistant Attorney General



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' physical safety and financial well-being; (2) fostering the conditions for economic opportunity and responsible development and use of our natural resources; (3) protecting the fiscal integrity of the state; and (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

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. John Skidmore (left) is the acting deputy attorney general overseeing the Criminal Division.

The Civil Division

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. James Cantor (right) is the deputy attorney general overseeing the Civil Division.



The Administrative Services Division

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, develops fiscal policies, manages procurement, and provides technological support to the department's attorneys and staff. David Blaisdell (left) is the division director.

Introduction

The 2011 annual report is divided into four sections. Each section sets out a core function of the department, which are:

Protecting Alaskans' Physical Safety and Financial Well-Being

Our foremost priority is Alaskans' safety, including both their physical and financial well-being. We are putting dangerous criminals behind bars and deterring others from breaking the law. We are playing a critical role in developing the Governor's comprehensive strategy to end Alaska's epidemic of sexual assault and domestic violence. And our efforts to protect Alaskans go far beyond criminal prosecution. We enforce the environmental laws that keep us healthy, uphold consumers' interests so that Alaskans can keep more of their hard-earned money, and work hard to save children from dangerous domestic situations.

Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Our Natural Resources

Much of our work involves fighting to save jobs and creating a legal framework that promotes economic opportunity and prosperity throughout the state. We are fighting efforts to shut down economic activity and tie up resource development through the misuse of the

Endangered Species Act by some groups. We are using our legal tools to promote Outer Continental Shelf oil and gas exploration and development in an environmentally responsible and culturally sensitive manner.

Protecting the Fiscal Integrity of the State

The Department of Law pursues money the state and our citizens are owed, such as taxes, royalties, and other funds, while defending the state against financial liabilities in tort and other claims. We are also fighting for royalties lost due to the corrosion-related shutdown of pipelines on the North Slope.

Promoting and Defending Good Governance

A core responsibility of the Department of Law is to defend the state's laws and constitution. The department also brings its considerable expertise to bear on proposed legislation, citizens' initiatives, and regulations to ensure that our government operates within the parameters of the law and our state and federal constitutions. We help the Division of Elections assure that all votes are properly counted, and are defending a parental notification law adopted by Alaska's voters.

Under each of these sections you will read examples of the work the civil and criminal divisions are doing as Alaska's lawyers.



2011 Interns with Attorney General John Burns.

Protecting Alaskans' Physical Safety and Financial Well-Being

Prosecuting Alaska's Criminals

Office of Special Prosecutions and Appeals

The Office of Special Prosecutions and Appeals is composed of two separate units: the Appeals Unit and the Special Prosecutions Unit.

Appeals Unit

Attorneys in the Appeals Unit defend the convictions and sentences obtained by prosecutors before both state and federal appellate courts. This function frequently involves the Appeals Unit attorneys defending convictions and sentences obtained against defendants who have committed crimes against children or women in accordance with the Governor's goal of ending sexual assault and domestic violence. Examples include: *Sikeo v. State* where the Appeals Unit defended a 99-year sentence obtained against a defendant who impregnated an 11-year-old girl and who had a previous conviction for impregnating a 13-year-old girl. In *Carney v. State*, the Appeals Unit defended the murder conviction of a defendant who confessed to strangling a woman to death.

The Appeals Unit, under limited circumstances where the law allows, pursues state appeals. An example is *State v. Carlin* where the Alaska Supreme Court overturned a doctrine under which the defendant's conviction would be automatically vacated if the defendant died while his or her case was on appeal. The new doctrine adopted by the court at the urging of the Appeals Unit permits the conviction to stand and, if necessary, the appeal to continue. This recognizes the interests of victims as well as the broader goals of the criminal justice system.

The Appeals Unit produced a post-conviction relief manual to assist prosecutors handling trial court post-conviction attacks. The unit updated its 2010 sentencing manual with cases decided in 2011. Appeals Unit attorneys are also available on a daily basis to provide advice or support to prosecutors in the trial courts to obtain and defend convictions.

Special Prosecutions

The Special Prosecutions Unit focuses on the prosecutions of highly specialized crimes, such as cybercrimes, alcohol interdiction, environmental crimes, fish and game violations, criminal non-

payment of child support, Medicaid fraud, public assistance fraud, Permanent Fund Dividend fraud, tax fraud, cold cases, and workers' compensation fraud. The unit is also responsible for reviewing all deaths resulting from incidents involving police officers, and handles conflict cases.

The Medicaid Fraud Control Unit continued prosecuting providers committing Medicaid fraud or injuring Medicaid recipients. The unit tried an assisted living home provider this year for causing an elderly resident's body temperature to drop to 92 degrees after a winter sponge bath in front of an open window. The unit convicted a personal care attendant of fraud and prosecuted a former health aide for a probation violation. In addition, the unit engaged in numerous federal and state multi-agency investigations. The unit participated in nationwide pharmaceutical settlements returning over a million dollars to the state.

In the past year, the Cybercrimes Unit successfully prosecuted more than a dozen online offenders. Notably, Charles Paul was convicted for distribution of child pornography and was sentenced to 6 years in prison. This is the longest sentence imposed in the state for a strictly online offense. The unit advised prosecutors across the state regarding online offenses and obtaining search warrants for computers, cell phones, and digital media.

The Cold Case Unit secured a conviction against Kenneth Dion for a 1994 sexual assault and murder. This was a case featured on the television show *48 Hours* on January 13, 2012. Dion received 124 years in prison. The unit obtained an indictment against Derrick Torian for a 2000 murder where the victim was stabbed nearly 40 times and left on the shoulder of Arctic Valley Road. The unit also indicted Robert Kowalski for a 1996 murder in Yakutat.

The Fish and Game Unit prosecutes commercial fish and commercial big game violations and complex non-commercial cases investigated by the Alaska Wildlife Investigations Unit. The fish and game prosecutor works closely with more than 100 state fish and wildlife officers, various state boards, and several federal law enforcement agencies to ensure proper regulation of big game guides, sport fishing guides, and the implementation of regulations that serve to better protect the fish and game resources.

The Fish and Game Unit successfully prosecuted more than 50 big game hunting and sport fishing guides. For

example, a jury convicted Kurt Lepping of 23 fish and game offenses, sentencing him to a year in jail, a 40 year ban on hunting in Alaska, a lifetime ban on guiding in Alaska, a 10 year ban on hunting anywhere in the world, and forfeiture of two airplanes. In the past year, the unit has recovered more than \$500,000 in restitution paid to the Fish and Game fund, which provides for wildlife conservation projects across the state. More than \$250,000 in fines were assessed and six aircraft were forfeited to the Department of Public Safety.

The Public Assistance Fraud Unit works closely with the Division of Public Assistance to ensure integrity in the division's programs. In the past year, the unit successfully prosecuted nine felony cases for theft of public assistance, resulting in \$137,427 of restitution.

The Environmental Crimes Unit obtained a \$504,125 settlement from Unisea, a seafood processing company, for violation of state environmental laws when ammonia and other waste was discharged from its Dutch Harbor facility between 2005 and 2008. In addition, Unisea Maintenance Engineer Director Arthur K. Aliment pled guilty to a criminal charge of failing to report the release of a hazardous substance. Aliment was sentenced to 45 days in jail with the time suspended, a \$7,500 fine with \$3,750 suspended, 60 hours of community service, and probation for a period of one year.

This unit also assisted in the white collar crime prosecution against Edward Byford for a scheme to defraud several senior citizens of their life savings and for deceptive business activities.

The Alcohol Interdiction Unit was reorganized and has become more aggressive in indicting bootleggers. In the last quarter of 2011 it indicted 33 bootleggers and convicted 18 defendants, collecting \$68,000 in fines and more than four years of active prison terms.

Department of Revenue (DOR) prosecutions have been consolidated with one attorney handling both Permanent Fund Dividend (PFD) fraud and tax law violations. Eight defendants were indicted for PFD fraud, and Abe Spicola was indicted for theft in the first degree for defrauding Alaska charities as their gaming operator.

The Rural Prosecution Unit continued to prosecute significant rural cases. For

example, Patrick Tickett was convicted by a Kotzebue jury of manslaughter, assault in the first degree, and Driving Under the Influence (DUI) for crashing his snow machine into a dog sled, causing the death of one person and significant injuries to another. Tickett was sentenced to a 19 year composite sentence.

Moses George was convicted by a Bethel jury of manslaughter and multiple counts of assault for killing his longtime girlfriend by shooting her in the heart with a rifle in front of two young children. George was sentenced to a 17 year composite sentence.

District Attorney's Offices

The department has 13 district attorney's offices from Ketchikan to Barrow. The smallest office, Sitka, has one attorney and the largest, Anchorage, has 35 attorneys. All the offices have been busy with prosecuting 7,591 felonies and 22,721 misdemeanors. The following paragraphs give a few examples.

Anchorage

Anchorage tried fourteen serious sex cases this year and pled out another seventeen. Of particular note was the trial and conviction of former Anchorage Police Officer, Anthony Rollins, for sexually assaulting five women over a two year period while he was on duty.



Gustaf Olson (left) of the Anchorage District Attorney's Office was named Prosecutor of the Year. With him, from left, are Attorney General John Burns and Acting Attorney General Rick Svobodny.

The year's seven murder trials averaged 2.2 years to prosecution; the oldest case was five years old. All of the murder cases involved abuse of alcohol. One high profile case involved the shooting of a young mother and her infant daughter by her drunken, GI husband. At trial the soldier claimed that he was not involved, despite an apparent (and unsuccessful) suicide attempt after he killed them. He claimed traumatic brain injury and an inability to remember the events, but the jury found that he had deliberately killed his family. The apparent motive was her likely decision to move back home.

Another high profile murder trial involved a 57-year-old woman, Lori Phillips, whose blood alcohol was over .3 and whose family and friends had warned her about drinking and driving. She was pending trial on two DUI charges the day she drove her car into on-coming highway traffic and killed a husband and maimed his wife.

Anchorage saw a small decrease in property and drug crimes; however, overall case referrals continue to increase.

Felony DUIs plateaued in 2011. Additionally, the Anchorage Wellness Court engaged in a major overhaul with the hope that the changes will enhance the long-term success of this court.

Barrow

Until 2011 the Barrow office was a one attorney office. In a collaborative effort with the North Slope Borough a second attorney position was added. The second attorney will be more active in crime prevention including a concerted effort to keep students in school and at the same time out of court.

Bethel

With changes in the local option laws allowing more importation of alcohol into Bethel and the resulting ease of access to alcohol for bootlegging to the surrounding villages, the Bethel office has seen an increase in related caseload. The office employs a full-time alcohol prosecutor working with law enforcement to focus on suppliers and prosecuting individual bootleggers. The office is also working with federal agencies to improve federal prosecutions. This year the U.S. Attorney's Office prosecuted four cases out of the Bethel region involving illegal firearms.

The office has been successful in prosecuting all of the non-competency-related cases discussed in last year's report. Two of the murder defendants pled and the two men who were charged with the torture/murder of a teenager from Hooper Bay went to trial and were convicted of murder and kidnapping. The



Christy Davis (center) of the Bethel District Attorney's Office was presented with the Model of Excellence Award. Pictured with her, from left, are Attorney General John Burns and Acting Attorney General Rick Svobodny.

office is currently working on three other murder cases, nine attempted murder cases, and approximately 100 sexual assault or sexual abuse cases.

Staff in this office is putting an emphasis on participating in community-action groups and conducting trainings for law enforcement, schools, and other groups. Real strides are being made in the direction of becoming an integral part of the Bethel community.

Members of the office staff met with schools and the court system and have implemented a truancy program to prosecute parents whose children have significant unexcused absences from school. In an effort to get these children back in school, the parents are encouraged to correct the behavior by receiving a reduction in fines.

Dillingham

This year Dillingham conducted fewer jury trials than last but settled some significant cases involving domestic violence, sexual assault, and child sexual abuse including the following examples.

Issac Kvasnikoff was convicted of sexual abuse of a minor in the second degree and attempted sexual abuse of a minor in the second degree for inappropriately touching an 11-year-old girl.

Paul Nicoli, an offender with a long history of misdemeanor domestic violence, was convicted at trial of assault in the second degree for breaking a canning jar on the side of a teenage girl's head. He received a 10 year sentence with 5 suspended.

Timurphy Andrew was indicted on 19 counts of child sexual abuse with multiple victims. A plea agreement was reached, sentencing him to 37 years in prison with 24 "active" years. This means that even with good time and the possibility of parole, he will not be released before he is 73 years old. At the time of his



Victim Witness Paralegal John Marx and Assistant District Attorney Ann Marie Garber from the Dillingham District Attorney's Office during a break in the 2011 District Attorney & Paralegal Conference.

arrest, he was the chairman of the Board of Behavioral Health and supervised the local child advocacy center.

The Dillingham District Attorney's Office is working with multiple social service agencies to advocate for children and victims of sexual violence, including the Dillingham's child advocacy center which fosters a supportive environment permitting children who experience sexual abuse to report and obtain assistance. The Governor's Sexual Assault and Domestic Violence initiative is funding Community Action Network Directed Upstream (CANDU), a multi-year pilot project in the Bristol Bay region. CANDU is a comprehensive domestic violence and sexual assault prevention and early intervention initiative with multiple elements focused on fostering healthy, culturally empowered communities that treat each other with kindness and respect.

Fairbanks

Fairbanks is the second largest district attorney's office and this year prosecuted some complicated homicide cases. For example, Justin Powers pled to criminally negligent homicide and misconduct involving a controlled substance in the second degree and received a composite sentence of 14 years with 6 suspended. He provided an 18-year-old a mixture of fentanyl patches and methadone. Instead of taking the girl to a hospital after he realized that something was wrong, Powers put her in the shower, gave her a Red Bull, and deserted her. She later died of multi-drug intoxication.

In 2007 Brian Galbraith was charged with the brutal stabbing murder of a young female social worker at the mental health facility where he lived. After four years of protracted litigation the first indictment was dismissed when the court found that he was not competent to stand trial. The Alaska Psychiatric Institute later determined that he was not a threat to himself or others, and planned on releasing him. He was again indicted for first

degree murder and his competency was litigated for another year. This year he was determined competent and on the eve of trial Galbraith pled to first-degree murder with an agreed sentence of 99 years with 66 years suspended and a restriction on discretionary parole. This sentence insures that Galbraith will remain in custody until he is at least 75 years old.

Three attorneys assisted the federal government as cross-designated Special Assistant United States Attorneys in prosecuting a seven defendant cocaine distribution ring that had been operating in the Fairbanks area for three years. There was evidence of importing as much as a kilo a day of cocaine. The drugs seized included nearly three kilos of cocaine, an ounce of crack cocaine, five grams of heroin, several pounds of marijuana, over 180 ecstasy pills, and \$100,000 in cash. Five of the original seven defendants pled and two defendants were convicted at trial.

After a local Fairbanks banker died, Forrest Holton, a bonded locksmith, drilled into the banker's safe deposit boxes to retrieve valuable documents and antique currency. A local collector later observed notes known to belong to the banker, at the time of his death, on the Dallas, Texas Heritage Auction site. The local collector contacted the banker's estate attorney who notified the police. Holton was arrested and admitted stealing the antique currency valued at \$395,780. Holton pled guilty to theft in the first degree.

Shawn Justice was the pastor of a Fairbanks church when he began "grooming" a 14-year-old girl attending his church. The victim's parents observed his inappropriate behavior and intervened by warning Justice to stay away from their daughter and leaving the church. About seven months later, Justice and the victim again began having contact. At trial a former victim from Justice's previous congregation in North Carolina testified she had been victimized under similar circumstances in 2003.

Juneau

In 2011 the office resolved several cases involving post-conviction relief applications at trial. After two trials, Richard Gottardi was convicted of arson in the first degree for intentionally setting fire to Auke Bay by spreading gasoline and diesel on the water. He filed a petition for post-conviction relief claiming his attorney had been ineffective in his defense. The superior court denied the application.

In another arson case, Robert Huber was convicted by plea of arson in the first degree for the 2006 St. Paul church arson. He was sentenced to 15 years with seven years suspended. Huber filed an application for

post-conviction relief claiming ineffective assistance of counsel and an excessive sentence, although it was within the parameters of his plea agreement. The superior court denied his application. Two days later the Alaska Supreme Court published a decision in *Stone v. State*. In *Stone* the court allowed a petition to the Supreme Court for an excessive sentence claim, despite the sentence meeting the terms of the plea agreement. Huber appealed his decision and the Supreme Court denied a hearing.

Kenai

In 2011 the Kenai office prosecuted several significant cases involving domestic violence and sexual assault.

Following a jury trial, Anthony Stiffarm was convicted of three counts of sexual assault in the second degree. Stiffarm had two prior felony convictions and was serving a felony probation revocation sentence when he sexually assaulted a victim in the Wildwood Correctional Facility. He stopped the assault when two other inmates came down the stairs during the criminal act.

Ryan Cox was convicted of one count of burglary in the first degree and one count of assault in the second degree after he broke into the cabin of his former girlfriend in the middle of the night and assaulted her over the course of approximately two hours. The assaults included repeatedly smothering her by placing his hands over her mouth and nose and twisting her head and neck in an apparent attempt to break it. He was sentenced to 8 years in jail with 6 years suspended and 5 years of probation.

Darrell Rodgers entered a guilty plea to one count of burglary in the first degree and one count of arson in the second degree as part of a plea agreement under which he will serve a composite sentence of 10 years with 5 years suspended and probation for a period of 7 years. Rodgers broke into the victims' house in middle of the night, set a fire in a separate bedroom, and then stood over the bed of the sleeping mother, stroking and kissing her face and saying "it will be alright" before his actions awoke the mother and father who chased him out. The arson appeared to be motivated by an infatuation with their teenage daughter.

Edward Herring was convicted of assaulting his live-in girlfriend. Over a three day period he repeatedly struck his girlfriend in the face with a closed fist causing substantial facial injuries as well as bleeding to the brain. Herring received a sentence of 19 years in jail with 7 years suspended and 7 years probation for first degree assault. This was Herring's second felony conviction, and he has several prior domestic violence convictions.

Nick Berestoff was sentenced to 8 years with 4 years suspended, which was far in excess of the presumptive range in effect in 2003 (the date of the crime), for sexual assault in the second degree where the victim was his developmentally disabled adult step-daughter. The case came to the office as a delayed report when the victim mentioned the abuse to her caretakers.

The Kenai office saw a marked increase in the number of heroin and intravenous drug prosecutions. Additionally, in apparent attempts to avoid detection, less familiar prescription substances and synthetic drugs are appearing more often and in greater quantities. Due to a large scale state and federal investigation last year, oxycodone cases are less common, but substances like oxymorphone (Opana®) and buprenorphine (Suboxone®) are filling the void.

Ketchikan

In 2011 verdicts were returned and a sentence was imposed in the seven-year-old *State v. Waterman* case. Rachele Waterman, who was 16 years old at the time, convinced her two older boyfriends, Jason Arrant and Brian Radel, to kill her mother. Arrant and Radel pled guilty to murder in the first degree for their roles. The jury found Ms. Waterman guilty of criminally negligent homicide, but not guilty of murder in the first and second degree. She was sentenced to serve three years in jail. Her sentence has been stayed pending the appeal of her conviction and sentence.

Anthony Carter and his wife Denita Carter, San Francisco area drug dealers, were informed by a Ketchikan woman that an oxycodone pill that sold for about \$30 in California sold for over \$100 in Ketchikan. The Ketchikan woman recruited some of her friends to sell oxycodone in Ketchikan and the Carters sent them large quantities of the pills. Ketchikan police and U.S. Post Office inspectors



Assistant District Attorney Regan Williams (center) from the Anchorage District Attorney's Office received the Making a Difference Award. Pictured with him, from left, are Attorney General John Burns and Acting Attorney General Rick Svobodny.

intercepted some of the packages. The Ketchikan sellers provided information about Mr. and Mrs. Carter. Postal, cell phone, bank, and financial records demonstrated the extent of the distribution. The Ketchikan defendants plead to conspiracy charges in exchange for testifying against Mr. and Mrs. Carter. Mr. Carter then pled guilty to misconduct involving a controlled substance in the second degree and received a five year sentence, and Mrs. Carter pled guilty to conspiracy to commit misconduct involving a controlled substance in the second degree and received a four year sentence.

Nathan Olson, a registered sex offender, advertised in a local paper about needing a woman for work. When a woman answered at the email address he gave, his response got sexual, so the woman reported him to the police. Police responded to his email claiming to be a 15-year-old girl and Olson discussed having sexual relations with her. The police then set up a sting and arranged for the "15-year-old girl" to meet Olson at a local hotel room. When he showed up carrying condoms, he was arrested for online enticement.

Kodiak

The presence of methamphetamine has substantially increased prosecutions. This includes probation revocations due to probationers found to be using methamphetamine.

State troopers responded to a report of a break-in where approximately \$13,000 worth of goods,

including coins, were stolen. A local man, already facing prosecution on a first degree forgery charge, deposited the coins at a local bank where an alert teller took notice because the man had previously tendered counterfeit 20 dollar bills. The homeowner identified the coins received by the teller. Search warrants revealed stolen property and methamphetamine. The evidence obtained in the searches resulted in the arrest of another local man and woman also found in possession of stolen property and methamphetamine. They were successfully prosecuted for offenses related to the burglary and a separate credit card theft.

With information gleaned from the prosecution of the burglary, state troopers developed a case resulting in a search warrant for a third residence. That search warrant resulted in the seizure of more than an ounce of methamphetamine, cocaine, and approximately \$22,000. A Kodiak man and woman were subsequently charged with possession of narcotics with intent to distribute. The man's prosecution was taken over by the United States Attorney's Office in California where he and a California man were charged with conspiracy to distribute and possess with intent to distribute methamphetamine and cocaine from California into Alaska. The man remains in custody pending the federal prosecution.

The local Safeway pharmacy reported the theft of approximately 20,000 opiate pills by an employee. The employee is currently awaiting trial on felony charges of scheme to defraud, falsifying business records, and misconduct involving a controlled substance.



Jovie DeLuna (center) was named Paralegal of the Year. Pictured with her are attorneys in the Anchorage Sensitive Crimes Unit, (from left) Tali Henry, Brittany Dunlop, Aaron Jabaay, and Joe Kovac.

Kotzebue

Kotzebue continues to have over 900 criminal cases per year. This caseload has become somewhat manageable with the creation of a second attorney position in 2011.

Nome

Lawrence Kobuk was convicted of sexually assaulting a woman who had passed out after drinking with him. This was Kobuk's third sexual felony conviction, and a three-judge panel found no manifest injustice in imposing the prescribed 99-year sentence.

Robert Williams was convicted of third degree assault for threatening the Village Public Safety Officer of White

Mountain with a butcher knife. The trial took only one day, but getting to trial took two years as the parties litigated Williams' competence. The Alaska Psychiatric Institute agreed with the public defender that Williams was incompetent but the judge held otherwise and found him competent for trial.

Delight Aukon was convicted of felony forgery for her role in helping a friend duck a minor consuming alcohol conviction. This was the second felony conviction arising from this misadventure. Aukon's friend, Heodora Katcheak, had given Nome police the name of her cousin when she had been caught underage with alcohol. Katcheak could not make her court date because she was in jail on other charges. Aukon, also jailed at the time but due soon for release, agreed to appear by phone as Katcheak's cousin and pled guilty to the charge. Several weeks later, Katcheak's cousin learned about her false conviction and called state troopers. Katcheak also pled to felony forgery.

A Unalakleet jury convicted Albert Sarren of reckless endangerment for setting large Conibear-type traps in his yard. Sarren's yard sits well within the village and is well-traveled by children. Sarren purportedly set the traps, constructed to kill wolves and wolverines instantly, to catch rabid foxes or a fuel thief. Sarren instead caught two neighborhood pets, killing one of them, which prompted the investigation leading to his trial and conviction.

Two parents in the Bering Straits region received jail time for failing to get their children to school. In both cases, the children had effectively missed years of school, the parents had refused help from the school to fix the problem, and prior court involvement had proven unsuccessful. Both parents pled guilty to contributing to the delinquency of a minor.

Palmer

Palmer prosecutors handled 23 felony jury trials, obtaining guilty verdicts in 19 with a trial conviction rate of 82.6%. In one hung jury felony trial the defendant pled guilty to a misdemeanor charge. Palmer prosecutors conducted 21 misdemeanor trials, obtaining guilty verdicts in 16 with a trial conviction rate of 76.1%. The vast majority of felony and misdemeanor cases were resolved by guilty pleas to the highest offense charged.

The office continues to have numerous Driving Under the Influence (DUI) trials. Drug DUI cases and repeat felony DUI cases are increasing. Nathan Adams was convicted of felony DUI for driving while under the influence of prescription medications. Jeremy Clay was convicted of misdemeanor DUI for being in control of a vehicle

after shooting up heroin. Ernest Geisler was convicted of felony DUI, felony eluding, and felony vehicle theft. Geisler had five prior felony DUI convictions and was driving in excess of 90 miles per hour during the state trooper pursuit on the Parks Highway during the busy Labor Day weekend. George Lewis was convicted of felony DUI after driving while he was three times over the legal limit and had two prior felony DUI convictions. Craig Stacks was convicted of first-degree assault, second-degree assault, third-degree assault, and DUI for driving drunk and causing a paralyzing injury to the victim. Lydon Fyfe was convicted of felony DUI, despite claiming necessity in driving to the hospital to visit his daughter.

The Palmer Office has followed Governor Parnell's lead in holding persons who commit acts of domestic violence, sexual assault, or sexual abuse of a minor accountable. Albert Escholt was convicted of attempted murder and assault for shooting a rifle at his girlfriend, narrowly missing. Zebulon Whisler was convicted of multiple counts of sexual assault for sexually assaulting five women over a period of six years. Kelsey George was convicted of multiple counts of sexual abuse of a minor. George victimized three girls and was sentenced to 34 years in prison. Renee Ellison was convicted of endangering the welfare of a child for leaving a child alone with a sex offender.

A disturbing trend has emerged in the number of cases involving attacks on law enforcement officers or resisting arrest. James Grim was convicted of multiple counts of assault, resisting arrest, and violating conditions of release. Grim was high on drugs and tried to take a gun from a state trooper. It took three state troopers to arrest him after a dangerous scuffle. Matthew Taplet was convicted of being a felon in possession of a firearm. Taplet held a gun to his head and then jumped out of a second story window in an attempt to escape state troopers who were arresting him on a warrant. Ronald Lavigne was convicted of disorderly conduct for inappropriate conduct during a police stop.

Consistent with previous years, Palmer prosecutors conducted multiple marijuana grow trials this year. Gary McCormick was convicted of four counts of misconduct involving a controlled substance. Michael Ellis was convicted of misconduct involving a controlled substance. These cases typically involve extensive motion work, often dealing with search issues, and take a long time to get to trial. McCormick's case originated in 2009, and Ellis was charged in 2006.

The citizens of the Matanuska-Susitna Valley remain concerned about the number of residential burglaries; thus, the Palmer office continues its policy of not reducing or dropping residential burglary cases. For



The new 12 x 24 foot Sitka mural was designed by Eliseo Art Silva of Corona, California and former Sitkan Sonessa Lundmark of Cottonwood, Idaho and painted with the help of community volunteers.

example, after three years of litigation, Eric Carlson pled guilty to first-degree burglary and felony drug possession. Carlson, along with others, burglarized several cabins in the Sutton and Chickaloon area in 2008. He will serve six years in prison, followed by four years of felony probation. Michael Dyas was convicted of first-degree burglary. Dyas had prior convictions for theft and burglary and will serve nine years in prison.

The Palmer office vigorously prosecuted methamphetamine cases in past years to deter methamphetamine production and use in this jurisdiction. Methamphetamine cases have declined, but heroin and prescription drug cases appear to be increasing. Vladimir Bochkovsky was convicted of misconduct involving a controlled substance. In July 2010 the Mat-Su Drug Unit intercepted a Fed-Ex package containing 129 oxycontin pills (street value of over \$10,000) addressed to a "Mikey Sheeby" at a Wasilla address. A controlled delivery was made, and Bochkovsky accepted the package. It was later found opened in a bedroom where state troopers also located Bochkovsky. Bochkovsky was sentenced to serve six years. In another example, Thor Williamson was convicted of methamphetamine manufacturing and sentenced to serve 10 years.

The Community Resources Project, also known as the Palmer mental health court, had an average of 22 participants per month, but the number of defendants who decided to opt into the demanding

program is down from previous years. Eight people graduated from the program in 2011. Nine people were remanded to jail for violations of the rules.

The office has a representative on the Mat-Su Multidisciplinary Team, which consists of representatives from local law enforcement agencies, Office of Children's Services, The Children's Place, Division of Juvenile Justice, counselors, and medical professionals.

Sitka

Sitka's paralegal, as a member of Sitka's Domestic Violence Task Force, participated in bringing a new mural to Sitka (pictured above). Months of planning and hands-on work went into selecting the artist, the content, and the place of display, as well as actually painting the mural. The mural is a colorful and intricate homage to the diverse cultures of Sitka, and reflects progress in our interactions with each other, as well as hidden stories and pain still to be addressed, with the theme "Choose Respect."

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. Child protection attorneys provide legal assistance to the Department of Health and

Social Services, Office of Children's Services (OCS). Attorneys advise social workers at OCS before initiation of legal action to remove children from abusive or neglectful homes and, if necessary, litigate whether children should be in state custody. Child protection attorneys also assist OCS in implementing plans to safely return children home or take legal action to terminate parental rights, allowing for placement of children in adoptive or other permanent homes.

The Child Protection Section worked with OCS establishing procedures to ensure timely compliance with the requirements of Title IV-E of the Social Security Act. Their efforts are expected to increase reimbursement rates for foster care and administrative expenses. To obtain federal aid for children in foster care, OCS and its attorneys must obtain a finding at the first hearing in a case that it is "contrary to the welfare of the child to remain in the home." OCS and the Child Protection Section have obtained these findings consistently.

To directly engage and assist parents of children with CINA petitions, the section continued to participate in the Family CARE (Community Assisted Recovery Efforts) Court in coordination with the Office of Public Advocacy (OPA), the Public Defender, and the Court System.

The section continued to participate in Family Preservation Court (FPC), a therapeutic court for CINA cases in which substance abuse is the primary issue. The FPC provides immediate, front-loaded services to families with minimal child protection history, with a goal of treatment completion and dismissal within six months. The FPC "team" consists of a judge, a court-employed project coordinator, an assistant attorney general, a guardian ad litem, an assistant public defender, two conflict attorneys, and several treatment providers.

The section continued to work towards the successful implementation of the Family Contact Protocols, aiming to improve the quality and quantity of contact children and families experience. Research indicates that increased quality and quantity of family contact has significant impact on improving the rate of successful reunifications and reducing foster care time. This ongoing process was a collaborative effort between the Attorney General's Office, OCS, the Public Defender Agency, the Office of Public Advocacy, and the Court Improvement Project. Anecdotal information indicates that some families are experiencing increased family contact which is leading to better decision making and better outcomes for children and families.

The section participated in the Children's Justice Act Task Force, the Court Improvement Project, the CINA Rules Committee, and several other

groups and committees formed for the purpose of improving the child protection system.

Protecting Alaska's Consumers

The Consumer Protection Unit of the Commercial and Fair Business Section enforces consumer protection and antitrust laws, investigating and bringing enforcement actions against businesses that engage in unfair and deceptive trade practices.

In 2011 the unit received and processed over 400 consumer complaints, the majority related to used-car sales, automobile repair, debt collection and credit practices, and tourism-related issues. Most complaints were resolved through an informal process resulting in either direct or indirect assistance to consumers, commencement of a formal investigation, or referral to other appropriate state and federal agencies.

The unit also participated in many multi-state enforcement actions facilitated by the National Association of Attorneys General (NAAG) that often resulted in sizeable recoveries for the state and affected Alaska consumers. NAAG-related multistate efforts and local enforcement actions resulted in collections of about \$1 million in 2011. In addition, the unit pursued claims in larger, complex litigation by engaging outside counsel. These efforts resulted in collections totaling over \$13 million in 2011, primarily as a result of settlements in Medicaid related pharmaceutical litigation.

Multi-state Actions Benefiting the State and Consumers

GlaxoSmithKline and SB Pharmco

In June 2011 the State of Alaska and 36 other state attorneys general reached a \$40.75 million settlement with GlaxoSmithKline, LLC and SB Pharmco Puerto Rico, Inc. arising from alleged substandard manufacturing processes at a plant in Cidra, Puerto Rico. Alaska received \$536,905 under the settlement.

Hollywood Video

Movie Gallery, which owned Hollywood Video, operated seven stores in Alaska before filing for bankruptcy in 2010. Former customers complained that a third-party collection agent reported negative credit information to credit bureaus about debts the customers allegedly owed to Movie Gallery, without giving the customers prior notice or opportunity for challenge. These actions allegedly damaged customers' credit ratings. Alaska, with 49 other state attorneys general and the District of

Columbia, joined a settlement with Movie Gallery, Inc.'s bankruptcy trustee giving immediate relief to customers who may have had problems with the now-defunct movie rental company. Movie Gallery was required to rescind all previously filed negative credit reports. The agreement also prohibited Movie Gallery from reporting non-payment of alleged debts to any credit reporting agencies, and prohibited Movie Gallery, and anyone collecting past due amounts on its behalf, from charging interest or collection fees on any future collections.

Local Consumer Protection Enforcement Actions

Average Wholesale Price Litigation

The state settled its claims against six pharmaceutical manufacturers, recovering over \$13 million in calendar year 2011 (Mylan – \$1.5 million; Schering – \$1.5 million; Forest – \$800,000; BMS – \$3.9 million; PAR – \$900,000; AstraZeneca – \$4.5 million). The state initiated this litigation in 2006 against 41 pharmaceutical companies, claiming they had reported false drug prices, known as “average wholesale prices” (AWPs), which providers then used to determine reimbursement rates for insurers and Medicaid agencies. The false AWPs led the state's Medicaid agency to reimburse pharmacies and other providers more than they actually paid for the drugs. The state has settled with 14 of the 41 original defendants.

Risperdal and Seroquel Litigation

The state alleged Janssen Pharmaceuticals and AstraZeneca Pharmaceuticals illegally promoted their respective antipsychotic drugs Risperdal and Seroquel, causing damage to the state's Medicaid program. The state reached a tentative settlement with AstraZeneca. The state is continuing to pursue Janssen for claims related to Risperdal, with a trial anticipated in 2013.

Vioxx Litigation

The state filed a lawsuit against Merck & Co., the manufacturer of Vioxx, alleging that Merck knew about potential side effects of Vioxx but failed to warn physicians while still promoting the drug for off-label use. The case has been consolidated with a proceeding in Louisiana, where it currently awaits a remand back to Alaska for trial.

Used Car Dealer Investigations

The Consumer Protection Unit investigated and resolved a case against a used car dealer in Anchorage alleged to have fraudulently sold vehicles on consignment without paying the vehicles' owners or transferring

titles to the vehicles, and taking vehicles on trade and selling them without paying lienholders or transferring title. Another used car dealer sold over 300 vehicles without transferring titles or paying liens, in part due to a bookkeeper who embezzled thousands of dollars. The Consumer Protection Unit is working with the dealers, lenders, and Department of Motor Vehicles to facilitate vehicle sales, recover money for consumers, and complete title transfers. The unit is also negotiating a consent agreement with the first dealer that will include civil penalties and injunctive relief.

Protecting the Vulnerable

The Human Services Section prosecuted hundreds of involuntary commitment cases and assisted hundreds of vulnerable adults by establishing guardianships or conservatorships.

The section prosecuted all licensing actions related to the operation of assisted living homes, foster homes, and day care providers in the state to ensure the proper care and treatment of the vulnerable populations in those environments.

The section represented the Department of Health and Social Services (DHSS) in numerous lawsuits (currently there are fourteen) challenging the administration of public assistance programs, such as food stamps, foster care payments, and Medicaid. The section worked with DHSS on due process compliance programs, notices, and hearing processes to mitigate ongoing litigation and avoid future litigation.

The section provided day-to-day advice to DHSS related to the Health Insurance Portability and Accountability Act (HIPAA), including when it was alleged that the state or its contractors improperly disseminated protected health information. The section centralized its procedures for representing and advising its client on Medicaid provider audits.

The Human Services Section increased collections by improving procedures for subrogation and third-party recoveries and taking over the estate and trust recovery programs from a third-party, collecting more than \$2.23 million dollars in 2011.

Fostering the Conditions for Economic Opportunity and Responsible Development and use of Our Natural Resources

The department worked to ensure Alaska's ability to responsibly develop its natural resources. Article VIII of the Alaska constitution requires that the state "encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." A corollary responsibility is that the state "provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people." The state's ability to achieve these objectives is being challenged by the federal government (principally through regulations) and by special interest groups (through litigation). The department defends against these challenges by actively participating and commenting during the regulatory process and by aggressively engaging in litigation.

Natural Resources

Tongass Timber

Roadless Rule

Timber sales from the Tongass, vital to the economic health of Southeast Alaska, are significantly hindered by the federal Roadless Rule which prohibits road building and logging in 58.5 million acres of national forests. The Natural Resources Section asserts the Roadless Rule is invalid nationally, and for separate reasons invalid in Alaska. The Roadless Rule and the rushed manner in which it was adopted violates federal law, including the Administrative Procedure Act and the National Environmental Policy Act, and creates de facto wilderness areas without required congressional approval. Specific to Alaska, the Roadless Rule violates Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act. The section is aggressively litigating these issues.

Tongass Exemption

The U.S. Forest Service exempted the Tongass from the Roadless Rule as part of a settlement when the Roadless Rule was first adopted. This would have allowed timber harvest and road building on approximately 300,000 acres of roadless area in the Tongass. The U.S. District Court later reinstated the Roadless Rule, a decision currently on appeal to the Ninth Circuit.

Central Kupreanof Harvest

The U.S. Forest Service informally adopted the Tongass Transition Framework to end all old growth logging in the Tongass as soon as possible by transitioning all timber sales to young second growth areas of the forest. The Forest Service applied the Framework to a new timber project on Central Kupreanof Island. The Natural Resources Section filed an administrative appeal of the Forest Service's Central Kupreanof decision, which was



Leilani Tufuga was awarded the Civil Division Support Staff Employee of the Year Award.

denied by the Regional Forester. The section plans to file an action in federal court challenging the decision, focusing on the U.S. Forest Service's long-standing failure to comply with the Tongass Timber Reform Act requirement to seek to meet timber demand.

Logjam Timber Project

The U.S. Forest Service authorized the logging of 3,422 acres in the Tongass National Forest, and the construction of five miles of permanent roads and 17 miles of temporary roads on Prince of Wales Island. The Natural Resources Section intervened in a court case challenging the authorization, successfully defending the project in the Ninth Circuit.

Pebble Project Exploration

Permitting

Opponents of Pebble Project exploration activities challenged Alaska's permitting authority. Two superior courts affirmed Department of Natural Resources' (DNR) permit decisions.

1. The superior court affirmed DNR's power to issue Miscellaneous Land Use Permits and Temporary Water Use Permits under Article VIII of the state constitution. The decision affirmed the state's right to make permitting decisions as necessary to advance Alaska's comprehensive strategy of responsible resource development.

2. The superior court additionally confirmed that DNR had taken the proper steps in permitting Pebble Project exploration activities. The decision affirmed Alaska's right to establish a permitting process that efficiently and effectively provides needed access to Alaska's valuable natural resources.

Planning

Opponents of Pebble Project exploration also challenged Alaska's land use planning process. Alaska's ability to adopt land use plans is critical to ensuring that Alaska's natural resources are managed in a responsible manner, consistent with the state constitution. Opponents argued that DNR's Bristol Bay Area Plan - a comprehensive land use plan that applies to approximately 12 million acres of state-owned uplands and lands lying beneath rivers and lakes in the Bristol Bay drainages, as well as 7 million acres of state-owned tidelands - was invalid because it should have been adopted as a regulation. The Natural Resources Section opposed this novel theory before the Alaska Supreme Court. The court ruled in favor of DNR that the plan was not a regulation.

Save our Salmon Ballot Initiative

Voters in the Lake and Peninsula Borough passed a local initiative (by a slim margin of 34 votes) giving the borough authority to prohibit any large-scale resource extraction project that, in the view of the borough's planning commission, would have a "significant adverse impact" on any waters that serve as habitat for salmon.

The department filed a lawsuit alleging that the initiative unconstitutionally usurps the state's authority to permit and regulate development.

RS 2477s

Congress understood the vital importance of access to lands and the correlation between access and the ability to settle lands in the western United States when it passed Revised Statute 2477 (RS 2477) as part of the 1866 mining law. RS 2477 contained one simple sentence: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The grant promoted the goal of providing access to natural resources by allowing access across federal public lands that had not yet been slated for other uses.



Attorney General John Burns presents Civil Division Chief Nancy Gordon with the Leadership Award.

In 1993 the federal government's policy regarding RS 2477 recognition changed dramatically. Where once such rights-of-way were liberally recognized by the federal government, the Department of Interior adopted a policy of refusing to act on requests for recognition of RS 2477 rights-of-way. Most recently, in 2009 the Department of Interior issued an Order to its state Bureau of Land Management (BLM) directors to refrain from processing or reviewing any further RS 2477 claims. This means the only way to definitively establish the existence of an RS 2477 right-of-way is through very fact-specific litigation.

The Natural Resources Section in conjunction with DNR is aggressively pursuing the establishment of RS 2477 rights-of-way. In 2011 the section filed the required 180-day notice with the BLM notifying it of Alaska's intent to sue to quiet title to RS 2477 rights-of-way in the Fortymile region. Additionally, the section recently hired a new attorney whose primary focus will be litigating RS 2477 claims.

North Slope Borough Selections

Over the last two years the department has worked extensively with DNR in deciding whether to approve portions of the North Slope Borough's municipal entitlement land selections. DNR issued a Final Finding and Decision and Site Specific Plan approving conveyance of 7,885.43 acres, rejecting conveyance and retaining in state ownership approximately 14,099.46 acres, and postponing adjudication of the borough's selection on approximately 1,651.54 acres. BP Exploration, Alaska and ConocoPhillips requested reconsideration. The department continues to work with DNR on a decision on reconsideration.

The Chuitna River

Two significant types of issues arose in the Chuitna River region: access to rivers and the authority to consider permitting a potential surface coal mine.

Access

Under Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA), easements were reserved to allow the public to cross private Native corporation property to reach public lands and major waterways. ANCSA 17(b) easements were reserved to the Chuitna River, west of Anchorage, draining into Cook Inlet. The BLM and the Tyonek Native Corporation proposed terminating the ANCSA 17(b) easements around the popular Chuitna River. The BLM also issued an internal non-navigability finding for a portion of the Chuitna River, without providing notice to the state. If finalized, these actions would severely limit



Children attending the Governor's Family Picnic in Anchorage have fun trying on translated "Choose Respect" bracelets.

the ability of Alaskans to access the Chuitna River system. The Natural Resource Section is working with DNR in opposing the BLM's proposals.

Permitting

With counsel from the Environmental Section, the Commissioner of DNR denied a petition that sought to designate the entire Chuitna River region as unsuitable for surface coal mining. DNR determined there was insufficient evidence to support a finding that reclamation throughout the Chuitna watershed is technologically infeasible, and therefore concluded it would be inappropriate to categorically and prematurely deny any potential surface coal mining. At the petitioners' request, the Commissioner has ordered reconsideration, which is underway.

As reflected in DNR's decisions, any project proposed in the Chuitna River region would be required to go through a rigorous permitting and mine planning process involving multi-agency regulatory review by several state, federal, and local agencies. That permitting process may ultimately prohibit, curtail, or modify coal mining activities based on whatever activity is being proposed. The state will continue to make balanced decisions when evaluating the nature of any proposed natural resource development projects.

Navigable Waters

Navigable waters are of significant importance in Alaska because they often serve as the primary transportation corridors for much of rural Alaska. Because only a fraction of the state is connected by a road system, it is important that Alaska aggressively defend navigability issues to ensure access for Alaskans.

Submerged Land and Public Water Issues (Including Disclaimers of Federal Interests in Navigable Waters)

The department, with DNR and ADF&G, co-chairs the state's Navigability and Public Access Team, which focuses on anticipating and responding to actions affecting the state's public water and access interests. Efforts also focus on obtaining recordable disclaimers of interest (RDI) from the United States to the beds of specific navigable waters throughout Alaska. The issue of navigability typically involves the BLM and other interested parties including Alaska Native corporations. The Navigability and Public Access Team's efforts resulted in the state receiving RDIs from the BLM in 2011 to 72 river miles and about 10,000 acres of lakes.

National Park Service Water Regulations

ANILCA was passed in 1980. The law provided for the creation or expansion of 15 National Parks and Preserves, and set aside other public lands for the United States Forest Service and United States Fish and Wildlife Service. In all, the act increased the federal land set aside for conservation purposes to 148 million acres, including 58 million acres set aside as wilderness. As part of the agreement established in ANILCA, Congress made clear that federal regulations that are applicable solely to federal conservation system lands do not apply to state-owned land, including submerged land and navigable waters, within or adjacent to national parks or preserves. Additionally, the "no more" clause in ANILCA requires congressional notice and ratification for executive branch "withdrawals" of more than 5,000 acres of public lands in Alaska.

Recently the National Park Service asserted regulatory authority over certain navigable waters within Alaska. In 2010 the department filed a petition for rulemaking asking the National Park Service to repeal or amend regulations purporting to govern activities on these lands and waters. To date the federal government has not substantively responded to that request.

Alaska moved to intervene in litigation recently filed by an individual, John Sturgeon, to assert that ANILCA precludes the National Park Service from regulating activities of Alaskans on the Yukon and Nation

ivers because both rivers are state-owned navigable waterways and thus not subject to park regulations. The federal government's recent actions on the Yukon and Nation rivers purport to prohibit activities that are allowed under state law. The Sturgeon case focuses on the question of jurisdiction and Alaska's authority over its navigable and submerged waters.

Katie John

The Natural Resources Section urged the Ninth Circuit, in *Katie John v. U.S.* and *State of Alaska v. Salazar*, to invalidate federal regulations establishing federal reserved water rights and asserting federal subsistence jurisdiction in Alaska waters through an administrative rulemaking process and to substantively invalidate regulations over-extending federal subsistence jurisdiction into waters beyond the boundaries of federal refuges and reserves. The section also urged the Ninth Circuit to reject the Katie John plaintiffs' claims that federal subsistence jurisdiction should be extended even farther, for example along the entire Yukon River. A decision from the Ninth Circuit is pending.

PPL Montana v. Montana

The department works with other states on issues that impact multiple states. For example, the department joined a multistate amici brief submitted to the U.S. Supreme Court in support of Montana's rights to the beds of its navigable waters. In *PPL Montana v. Montana*, the State of Montana asserted that hydroelectric facilities



Deputy Attorney General Jim Cantor explains his experience as an Iditarod musher to student interns during a special lunch presentation.

on navigable waterways were located on Montana's property and thus their owners must enter leases with and pay rent to Montana. Alaska joined other states supporting Montana because the Court's decision could impact Alaska's ownership of navigable waters.

New 3 Nautical Mile Baseline

Setting nautical baselines is critical in determining the extent of Alaska's jurisdiction over marine waters and Alaska's authority to regulate fishing and natural resource development. The U.S. Baseline Committee is remapping the 3-mile line separating state and federal jurisdiction in Alaska. The suggested baseline changes may result in substantial reductions in waters previously considered to be under state jurisdiction. Based on Alaska's comments, the National Marine Fisheries Service agreed to preserve the status quo for fisheries enforcement purposes for the 2011 season. The department continues to assist the Alaska Department of Fish and Game (ADF&G) and DNR to address the state's objections to the proposed new determinations.

Endangered Species Act Issues

The department assists ADF&G in preparing comments, submitting data, reviewing regulations and recovery plans, and other matters arising under the Endangered Species Act. Once a species is listed as "endangered" or "threatened," activities that may impact its recovery and habitat receive very stringent scrutiny. Listings and the designation of critical habitat can affect shipping; transportation; oil and gas development; mining; commercial, sport, and subsistence fishing and hunting; and many other activities. The department and ADF&G have been actively involved in issues surrounding the listing of, and in some cases critical habitat designation for: Polar Bear, Beluga Whale, Stellar Sea Lion, Ribbon Seal, Bearded Seal, Ringed Seal, Pacific Walrus, Northern Sea Otter, Pacific Herring, and Alexander Archipelago Wolf.

Environmental

Clean Water Act

Alaska contains over 174 million acres of wetlands, comprising approximately 43 percent of the surface area of the state. The rest of the U.S. contains approximately 103 million acres of wetlands, comprising approximately four percent of the surface area. The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed draft guidance that, if adopted, would significantly expand the

amount of wetlands protected by the Clean Water Act as "waters of the United States." The Environmental Section, in coordination with the Governor's Office, DNR, Department of Environmental Conservation (DEC), and Department of Transportation and Public Facilities (DOT&PF), developed and submitted comments to both the EPA and the Corps opposing the draft guidance.

The EPA is now moving to promulgate the draft guidance as a regulation. The section actively opposed basing any new regulations on the criteria proposed in the draft guidance document.

Sackett v. EPA

Because the extent of federal jurisdiction over wetlands is of significant importance to Alaska, the Environmental Section took the lead in drafting and filing a multistate amici brief with the U.S. Supreme Court in *Sackett v. EPA*. In the Sacketts' case, the EPA ordered the Idaho couple to remove fill material they had placed on their property and restore their lot to its original pre-improved condition. Alaska's amici brief argued that the Sacketts and others similarly situated deserve an opportunity before they are forced to comply with the EPA's demands to judicially contest the EPA's conclusion that their property is a wetland subject to federal jurisdiction.

State Assumption of Permitting under the National Pollutant Discharge Elimination System

In order to more directly manage Alaska's natural resources and environmental concerns, the state obtained EPA's approval to assume the National Pollutant Discharge Elimination System permit program. The Ninth Circuit Court of Appeals affirmed the transfer of the permitting process. The Environmental Section is now helping DEC establish its permitting program.

EPA's Silvicultural Rule

For over three decades, federal and state agencies, courts, and private parties have understood the EPA's Silvicultural Rule to exempt runoff from forest roads from the permit requirements of the National Pollutant Discharge Elimination System. The Ninth Circuit reversed this understanding in a case involving log hauling along forest roads on lands owned by Oregon. The court's decision effectively invalidated EPA's Silvicultural Rule by determining that storm water runoff from forest roads that is collected in ditches and culverts is a point source of pollution, and that timber harvesting and the forest roads supporting harvests constitute an "industrial activity" under the EPA's storm water permit program, subject to permit requirements. The department worked with other states to edit a

multistate amici brief petitioning the U.S. Supreme Court to review and reverse the Ninth Circuit's decision in *Decker v. National Environmental Defense Fund*.

Carbon Emissions

Acting through individual litigants, national environmental organizations filed suit in all 50 states attempting to force states to reduce carbon dioxide emissions; *Davis v. DNR* is the Alaska case. The plaintiffs requested the court to: (1) order DNR to reduce Alaska's carbon dioxide emissions by at least 6% per year from 2013 through at least 2050 and (2) order DNR to prepare a full and accurate accounting of Alaska's current carbon dioxide emissions and to do so annually thereafter. The Environmental Section moved to dismiss the claim and is working with the NAAG, who is coordinating information-sharing among the states targeted by these plaintiffs.

Oil and Gas

Alaska Region of the Federal Outer Continental Shelf

The department is actively involved in supporting responsible development in the Alaska Region of the Federal Outer Continental Shelf (FOCS).

Shell 2012 Exploration Plan for Camden Bay

The U.S. Bureau of Ocean Energy Management (BOEM) issued an Environmental Impact Statement and decision approving an Exploration Plan for Shell to drill exploratory wells in the Camden Bay area of the Beaufort Sea in the summer of 2012. Several native and environmental groups appealed BOEM's decision. The Oil, Gas & Mining Section filed motions to intervene in both appeals, which were granted. The parties will be briefing these appeals in 2012.

Lease Sale 193 (Point Hope v. Salazar)

BOEM authorized Lease Sale 193 in the Chukchi Sea portion of the FOCS. A suit was filed in January 2008 challenging BOEM's decision. Plaintiffs claimed the decision and the environmental impact study supporting the decision violated the Administrative Procedures Act, the National Environmental Policy Act, and the Endangered Species Act. The state intervened and participated in summary judgment proceedings that resulted in a limited remand to BOEM. On remand, BOEM addressed the issues raised by the court and reaffirmed Lease Sale 193. Plaintiffs then filed a supplemental complaint and summary judgment motion. The Oil, Gas & Mining Section opposed this motion in early

December. Meanwhile, the court lifted its injunction, which means that BOEM may proceed to consider exploration plans filed by Shell and ConocoPhillips.

Beaufort Sea Area Wide Lease Sale

DNR issued a best interest finding approving the Beaufort Sea Area Wide Lease Sale. Two appeals of this decision were filed in superior court. The department successfully defended one appeal, and the other, filed by Resisting Environmental Destruction on Indigenous Lands (REDOIL) and other organizations, was remanded back to DNR on a discrete issue affecting future phases. The department successfully petitioned the Alaska Supreme Court to review the superior court's order remanding the REDOIL matter, a review that is currently pending.

Point Thomson

Lessees declined to produce unit reservoirs containing more than seven trillion cubic feet of gas and hundreds of millions of barrels of oil for more than two decades. The dispute has been briefed before the Alaska Supreme Court and oral argument is scheduled for February 8, 2012. There are other pending Point Thomson proceedings including three superior court appeals arising from the permit denial, termination of the expansion leases, and an Alaska Oil and Gas Conservation Commission decision denying compulsory unitization; an Alaska Supreme Court appeal from the superior court dismissal of the producers' damage suit; and a damage claim before the Office of Administrative Hearings (OAH). All of these proceedings are stayed pending final decision in the underlying unit termination case. Parallel to these proceedings, DNR is working on a settlement with the working interest owners that would resolve all pending litigation and the underlying development issues.

Underground Coal Gasification

In Underground Coal Gasification (UCG), coal is converted *in situ* through a controlled combustion process into synthetic gas (syn gas) for a variety of fuel uses. Cook Inlet Region Inc., its partner Laurus Energy Inc., and Linc Energy of Australia, a newer participant in Alaska's resource development, are interested in UCG development. The department is advising DNR on a Best Interest Finding for a lease sale involving coal that could be developed by UCG.



Acting Deputy Attorney General John Skidmore as Safety Bear during the Governor's Family Picnic in Anchorage.

Transportation

Building and Promoting Alaska's Infrastructure

The Transportation Section provided advice on infrastructure and transportation projects for state agencies, including the Alaska International Airports System, Statewide Aviation System, Marine Highways System, the 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 will provide continuing advice on planning, permitting and right-of-way acquisition for upcoming roads-to-resources projects throughout Alaska.

The department also:

- Gave legal advice to state agencies on issues related to infrastructure projects such as the Kulis Air Force Base redevelopment, the Fairbanks fish hatchery, Glacier Highway extension, Juneau access, a Knik Arm crossing, natural gas pipeline and propane projects, and vehicle ferries;
- Helped DOT&PF acquire property from willing sellers and through eminent domain for projects such as Trunk and Seward Meridian Roads near Wasilla, the Dowling extension in Anchorage, and Fairbanks' Illinois Street;
- Pursued a lawsuit against the builders of the state's fast ferries to correct engine defects or recover money damages;
- Provided legal support for the Governor's Coordinated Transportation Task Force, which is working to increase the benefit derived from a wide variety of currently fragmented transportation programs around the state;
- 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;
- Assisted DOT&PF employees to comply with state ethics standards; and
- Helped draft regulations governing procurements, weights and measures, and rural airport leasing.

Protecting the Fiscal Integrity of the State

The department plays a significant role in collecting funds owed to the state and in defending the state against fiscal liabilities. Most of the state's operating revenues are derived from oil and gas corporate income taxes, production taxes, and royalties on Alaska North Slope crude oil. The value of that crude oil for production tax and royalty purposes is largely determined by the price that 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. The state closely monitors transportation costs, because they affect state tax and royalty revenues.

Some of the department's major 2011 efforts in support of this core service are detailed below.

Northstar

This matter involves a complicated dispute over allocation of production between state and federal leases from the Northstar unit and participating area. Murphy (Exploration) Alaska appealed DNR's decision to reject an allocation of production that would have increased the federal share of production in a manner that DNR considered inconsistent with the data. The hearing will take place before the DNR commissioner in February 2012.

Royalties

The department is working on a large number of pending royalty disputes with Alaskan oil and gas producers to ensure that the state gets its fair share of production; this includes a limited reopener with ConocoPhillips, which will be resolved through arbitration as required under the terms of the 1990 ARCO Royalty Settlement Agreement. ConocoPhillips has consistently argued for a destination value that is less than its proceeds, the current Royalty Agreement formula, and spot price. ConocoPhillips is trying to link the reopener with other issues.

Corporate Income Taxes

Tesoro Corporation appealed a superior court decision upholding an OAH ruling that in turn upheld most of DOR's assessment against Tesoro for additional corporate income tax liabilities and penalties for tax years 1994-1998. At issue is about \$12.5 million in

additional taxes, penalties, and interest to the state. The case is before the Alaska Supreme Court.

Trans Alaska Pipeline System

Property Taxes

DOR conducts annual Trans Alaska Pipeline System (TAPS) property tax assessments, which are reviewed by the State Assessment Review Board. The TAPS owners (BP, ExxonMobil, Unocal, ConocoPhillips, and Koch Alaska) appealed the State Assessment Review Board's 2006-2011 assessments, claiming that they were too high. Affected municipalities (North Slope Borough, Fairbanks, and Valdez), which receive over 50% of TAPS property taxes collected by the state, also appealed the State Assessment Review Board's assessments, claiming that they were too low. The appeal of the 2006 assessment is before the Alaska Supreme Court. A recent decision by the superior court on the 2007-2009 assessments, issued after a nine-week trial, will also likely be appealed to the Alaska Supreme Court.

Tariff Cases

The state is party to TAPS tariff litigation matters at the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, and the U.S. Court of Appeals – D.C. Circuit. One of the tariff cases relates to the TAPS owners' decision to embark on the Strategic Reconfiguration Program for the TAPS. The owners initially estimated that the program would cost \$250-300 million, but revised estimates concluded that it would cost more than three times as much. The department filed protests before the Federal Energy Regulatory Commission (FERC) and the Regulatory Commission of Alaska (RCA), arguing that the project costs should be excluded from the tariffs because they were imprudently incurred. Inclusion of the costs in the tariffs could result in a substantial reduction in Alaska's revenues. Because the factual bases and legal standards for the Strategic Reconfiguration project imprudence challenge are substantially the same before the RCA and the FERC, the two agencies are holding a concurrent hearing, rotating the hearing location between Anchorage and Washington, D.C. Hearing on remaining issues will be held after the imprudence hearing.

The state also has open protests on rate methodology grounds of the TAPS intrastate and interstate rates

before the RCA and the FERC. The rate methodology issues, unlike the prudence issues, involve substantially different methodologies at the FERC and the RCA, and will therefore involve separately filed testimony and hearings before the two commissions. The hearings are currently in abeyance pending completion on the Strategic Reconfiguration protests and associated 2009 and 2010 cost-of-service issues.

Collection of Debts Owed to the State of Alaska

The efforts of the Collections Unit generate a positive return on investment. In FY 2011, the unit collected more than \$10.5 million, a 43.8 percent increase over FY 2010. Of the total collected, about \$8.6 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.

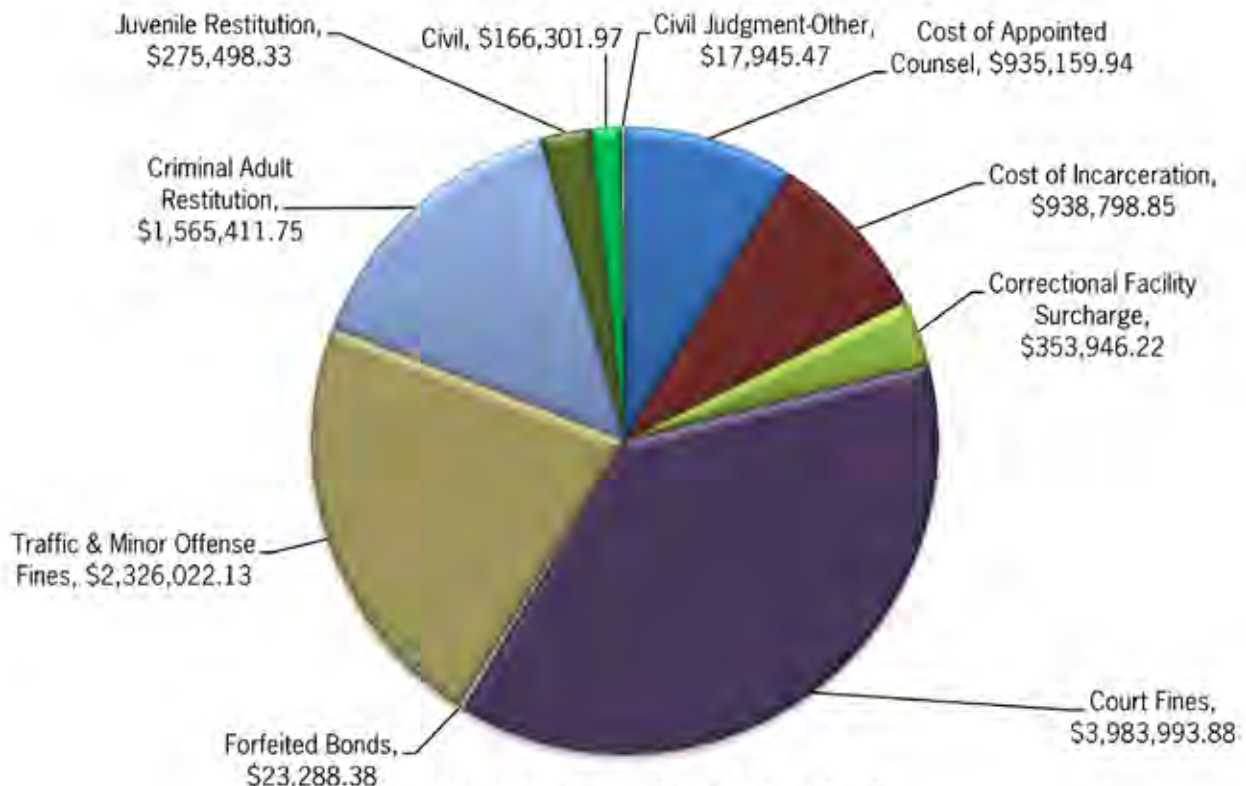
One component of collections is restitution payments owed to crime victims (\$1.8 million collected). The unit also collects surcharges and incarceration costs for the Department of Corrections (\$1.3 million); costs of appointed counsel judgments for

the Public Defender Agency (\$900,000); and more than \$6.5 million in court fines, minor offense fines, forfeited bonds, and civil attorneys' fee awards.

Defense of Torts and Workers' Compensation Cases

The Torts and Workers' Compensation Section provided 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 2011 the section successfully defended the state in three jury trials. In the first case, the state conceded negligence in a snowplow collision, but disputed the injuries caused by the collision. The jury verdict of less than \$5,700 was below the anticipated range of damages; because the defendants were found to be prevailing parties, the state was awarded partial attorney fees and costs. The second case was a wrongful death action against DOT&PF, involving a collision between a car and a federal postal vehicle. Following a two-week trial, the jury found the state had no liability for the



**Collections Unit FY2011
Total \$10,586,366.92**

accident and reached a defense verdict. Plaintiffs have filed an appeal. Another wrongful death case resulted in a hung jury verdict after two and a half weeks of trial. The issue was whether Department of Corrections was negligent in physically controlling a newly booked inmate. The case has been set for retrial in 2012.

Individually-sued employee defendants are dismissed and the state is substituted as the defendant when certification is appropriate under AS 09.50.253. Whether certification is judicially reviewable is the subject of a pending appeal before the Alaska Supreme Court. Meanwhile, some trial courts have permitted plaintiffs to challenge the attorney general's certification determinations in court proceedings. The department successfully defended certification in a week-long bench trial in Anchorage against a prison correctional officer accused by multiple inmates' of sexual assault and/or harassment. The court found that plaintiffs failed to present credible evidence to support their claims or prove that the officer had acted outside the scope of his employment. Consequently the court acknowledged the certification of the officer under AS 09.50.253, substituted the state as the sole defendant, and issued two legal rulings dismissing the entire case. In another case, the department successfully opposed a plaintiff's attempt to depose the attorney general about the basis of his certification decision. The plaintiff had the burden of showing by a preponderance of evidence that the individual defendant, a state trooper, was not acting in the scope of his employment when arresting and transporting the plaintiff. The court has not yet issued a decision on that certification challenge.

The section actively pursued summary dismissal of lawsuits by filing dispositive motions in many tort cases. The section succeeded in obtaining summary judgment and dismissal in a number of cases, including a civil rights case against law enforcement officers stemming from a house search during a drug investigation, and medical malpractice cases in which plaintiffs' claims were not supported by expert medical testimony. Motion practice also narrowed issues for trial, enabling the department to negotiate many favorable resolutions.

The section received favorable decisions in four appeals in tort cases - two in the Ninth Circuit Court of Appeals and two in the Alaska Supreme Court.

The section represented the state as an employer before the Alaska Workers' Compensation Board and the Alaska Workers' Compensation Appeals Commission. The section defended the state as employer in over 10 hearings before the Alaska Workers' Compensation Board, and resolved and closed over 100 workers' compensation files.

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

Advancing the Public Interest in Utility Matters

The Regulatory Affairs & Public Advocacy (RAPA) Section performs the attorney general's statutory responsibility for advocacy on behalf of the public interest in utility and pipeline carrier matters before the RCA.

Matters of First Impression

Cook Inlet Natural Gas Storage Alaska (CINGSA) License

After investigation and analysis, RAPA supported CINGSA's application for a new certificate of public convenience and necessity to provide natural gas storage service in Cook Inlet. The project involves the development of an underground natural gas storage facility on the Kenai Peninsula for use by public utilities. CINGSA's storage availability will allow public utilities to purchase gas supplies during low demand summer months and store them until needed during peak winter demand periods to enhance the deliverability of natural gas, the primary source of electric generation and home heating in the Railbelt. RAPA participated in two separate evidentiary hearings before the RCA and formal mediation prior to hearing. The RCA granted the certificate and the project continues to move toward completion.

Chugach Electric Association (Chugach) Wind Power Contract

The Fire Island wind power project was the first of its kind brought before the RCA for approval. RAPA's experts did not agree with Chugach's conclusions that the proposed contract would provide a net economic benefit to Chugach ratepayers over the long term, leading RAPA to propose that the project be approved together with ratepayer protections designed to limit ongoing cost recovery to amounts below Chugach's avoided power generation costs. After an expedited public hearing, the RCA approved the contract largely as filed.

Rates and Refunds

Alaska Electric Light and Power (AEL&P)

AEL&P requested a 24% across-the-board rate increase for electric service in Juneau. Although some ratemaking issues were settled with the utility after RAPA investigation

and analysis, the remaining disputed issues went to an evidentiary hearing before the RCA: the appropriate return on utility equity, the level of allowance for funds used during construction of the Dorothy Lake hydroelectric project, and the correct test year rate base to be used in setting rates. After hearing, although the RCA approved AEL&P's requested rate increase, it agreed with RAPA that the utility's return on equity should not be as high as AEL&P proposed.

Beluga Pipeline Co. (BPL)

BPL, owned by Marathon Oil Co., filed a request to increase its existing rates from \$0.2544/Mcf to \$2.5416/Mcf and to redesign its transportation rates for shipments of natural gas on the west side of Cook Inlet. Because ENSTAR Natural Gas Co. and Chugach Electric Association are shippers on BPL, rate changes impact both utilities and their consumer end-users. The parties, including RAPA, engaged in a mediation process and eventually reached a stipulated agreement in which BPL withdrew its proposed rate revisions and agreed to maintain existing rates in exchange for firm shipping commitments from utility shippers.

Bethel Utilities Corp. (BUC)

BUC requested an across-the-board 5.23% rate increase for electric service in the Bethel service area. The RCA granted an interim and refundable increase of 3.6% pending the outcome of the proceeding. After investigation, RAPA and the utility stipulated to a settlement that resulted in a 2.37% rate increase and a refund of approximately \$165,000 to utility customers.

Homer Electric Association (HEA)

HEA proposed to increase its revenues by \$1.5 million to build equity to finance new generation, and to redesign its rate structure. Land's End Acquisition Corp., a major commercial customer of HEA in Homer, intervened in the case. Prior to hearing, the parties filed a stipulated settlement reducing the overall requested rate increase from \$1.5 million to \$587,000, and redesigning rates by including a "minimum energy charge" designed to more closely match the "cost causer" with the "cost payer."

Inside Passage Electric Cooperative (IPEC)

IPEC sought a 10.62% permanent rate increase to its energy and demand charges for providing electricity in the Angoon service area. The RCA granted the utility's request for an interim and refundable increase pending the ultimate outcome of the proceeding. After investigation and prior to hearing, RAPA and IPEC reached a settlement resolving all disputed ratemaking issues that resulted in a 7.96% rate increase to



Attorney General John Burns presents Allen Bailey with the 2011 Attorney General's Pro Bono Service Award.

demand and energy charges and a one-time refund of approximately \$2,300 to utility customers.

Kake Tribal Corp. (KTC)

KTC requested a 152% rate increase for electric service from its Pelican Utility Division in Southeast Alaska, and proposed a new rate design for its cost of service. The City of Pelican, KTC's largest customer, intervened. After investigation, RAPA and KTC entered a settlement that resulted in a 110% rate increase. The City of Pelican did not support the settlement. The RCA found that the resultant rates were just and reasonable and accepted the settlement.

Regulatory Rulemaking

Electronic Filing Regulations

The RCA opened a docket to develop regulations governing the filing of documents by electronic means. The RCA previously implemented a new case management system and a corresponding website, including features which allow the general public and regulated utilities and pipeline carriers to make electronic filings (e-filing) in lieu of hardcopy paper filings. In April 2011 RAPA filed comments on the rules proposed by the RCA to govern e-filings that generally supported the draft regulations, except for the provision that made e-filing mandatory (as opposed to optional). The RCA adopted e-filing regulations which will become effective when signed by the Lieutenant Governor.

Promoting and Defending Good Governance

Rural Education Support and Oversight

The Labor and State Affairs Section litigated important governance matters and resolved long standing cases. In *Moore v. State*, filed in 2004, the National Education Association-Alaska, three rural school districts, a school districts' organization, and individual plaintiffs claimed the state's public education system is inadequate and underfunded under the Alaska Constitution's education clause (Article VII, § 1, requiring the legislature to "establish and maintain a system of public schools open to all children in the state") and due process clause (Article I, § 7).

Plaintiffs sought to double education funding—an additional \$1.3 billion—and for the court to adopt standards for a constitutional education, determine the cost of an adequate education, and order the legislature to adequately fund education. In 2007 after a month-long trial, the court found that rural education was adequately funded, and that the funding formula met constitutional requirements. But the court also found that public education in some districts in rural Alaska, although adequately funded, did not provide children

a sufficient opportunity to learn the standards. The court required the legislature and the Department of Education and Early Development (DEED), rather than the school districts, to address this failure.

In 2008 the legislature adopted SB 285, which gave DEED more authority to intervene in poorly performing school districts. But after taking evidence in June and October 2008 on the adequacy of the state's identification and intervention in five underperforming districts, the court issued a decision in February 2009, finding that the identification was adequate but that oversight and assistance was inadequate. In March 2010 the court found continuing deficiencies in the department's support and oversight of underperforming school districts.

In October 2010 the state filed a report documenting DEED's support, assistance, oversight, and intervention in the districts in intervention status during the previous year. Plaintiffs responded, arguing that the state was still not providing the support necessary for the districts to provide an adequate education. The parties continue in settlement negotiations.

In a separate 1997 education lawsuit, *Kasayulie v. State*, plaintiffs claimed that the state's method of financing school construction was unconstitutional and that the state violated its trust duties in managing public school trust land and funds. In 1999 the superior court ruled against the state on both portions of the case and ordered that school trust lands be valued before the court would address a remedy. Since that ruling, the legislature has spent hundreds of millions of dollars on rural school construction. The 2010 legislature created a rural education attendance area fund and adopted a formula for identifying money available for appropriation for rural school construction. Determining land value to settle the trust aspect of the lawsuit has been problematic. The parties finally reached a settlement, pending legislative appropriation of funding for rural school construction projects over the next four years.



Attorney General John Burns serves food at the Governor's Family Picnic in Anchorage.

Key Elections Developments

During the 2011 legislative session, assistant attorney generals who advise the Division of Elections provided testimony and legal analysis to legislative committees on SB 31, a bill that amended the statutes governing the counting of write-in ballots. This legislation was passed in response to the November 2010 U.S. Senate general election write-in ballot counting process and court decisions from the resulting lawsuits.

Department attorneys monitored the 2011 Redistricting Board's consolidated lawsuits filed by the City of Petersburg, the Fairbanks North Star Borough, and a group of private citizens who challenged certain districts created in the board's final redistricting plan. In addition, the department works closely with the division in the development of precinct regulations to conform to the new redistricting plan, ensuring that they are in place for the 2012 elections.

The department also provided assistance on the legal review of several initiative applications, as well as a recall petition seeking to recall a representative in the Alaska Legislature.

Kruse, et al v. Div. of Elections and Alaska Judicial Council

In October 2010 a group of registered Alaskan voters sued the state Division of Elections, the Alaska Judicial Council (Council), and those agencies' respective directors, challenging the validity and constitutionality of

the November 2, 2010 retention election in which former Anchorage District Court Judge Richard Postma was not retained. In December 2010 former Judge Postma entered into a stipulation with the Council agreeing never again to seek or hold judicial office in Alaska. The Alaska Supreme Court accepted this stipulation and disposition. In October 2011 the superior court found that former Judge Postma's stipulation mooted four out of five of plaintiffs' claims, and it dismissed those claims. The constitutionality of the Council's statute and the Council's conduct under that statute is still being litigated.

Employment and Labor Cases

The Labor and State Affairs Section provided legal advice on labor relations and employment matters and defended agencies in employment litigation. The section also represented the Alaska State Commission for Human Rights in litigation concerning its decisions. In 2011, after 17 years of delays, a four-day hearing was held in *Ward v. State of Alaska* addressing the claims of an exempt employee who was terminated in 1994 for disloyalty and disruption of the Governor's Office. This employee alleged she was terminated by the Governor's Office in retaliation for supporting a subordinate's sexual harassment claim. A decision is pending.

Alaska Energy Authority

The department provided legal advice to the Alaska Energy Authority with respect to its energy grant and loan programs and advice on power projects, including



Deputy Attorney General Jim Cantor (right) speaks at the Governor's Denali Peak Performance Awards. The Senate Election 2010 Response Team received the Exceptional Performance Team Award. From left: Laura Fox, Mike Barnhill, Mags Paton-Walsh, Joanne Grace, Shelly Growden, and Gail Fenuniai.

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the acquisition of the Susitna River power project authorized by the legislature in 2011 in SB 42.

Drafting and Reviewing Legislation and Regulations

The Legislation and Regulations Section provided legal advice and reviewed constitutional and statutory requirements in the preparation of multiple pieces of state legislation and regulations, both civil and criminal. During the summer of 2011 the section conducted in-person classes for over 100 state agency employees and 25 assistant attorney generals on regulation preparation and adoption processes. The section regularly conducted in-person training on legislative procedures, including training in computer resources necessary for the legislative process.

Increasing Internal Efficiency

The Administrative Services Division provided financial management, forecasting, budgeting, accounting, procurement, time-management, and computing mail services. In 2011 the Information and Project Support Section maintained the ProLaw database, which the Civil Division uses to store and organize information and records and for time entry, billing, and accounting, and began deploying ProLaw's case management application.

The section trained employees on the use of the database and monitored compliance with data-entry protocols.

Promoting Transparency and the Responsible Management of Information

The Information and Project Support Section advised the department and other agencies on legal issues regarding the management, inter- and intra-agency sharing, and disclosure of information. In 2011 the section continued to advise other agencies in responding to Alaska Public Records Act requests. The section also provided advice on the implementation of the Email Retention Policy, the implementation of legal holds, the use of social media by public agencies for outreach, and the personal use of social media by public officers and contractors.

Outreach

In 2011 the Information and Project Support Section prepared department publications, including Russian, Spanish, Korean, and Tagalog translations of the department's Victim-Witness Assistance Program brochures. The department distributed the brochures and "Choose Respect" bracelets at the governor's Anchorage family picnic; at events in Bethel, Dillingham, Barrow, Kotzebue, and Nome; and at the statewide district attorneys' conference.



The Department of Law booth at the Governor's Family Picnic in Anchorage. Pictured from left: Monica Jenicek, Vivien Noll, Cindy Drinkwater, John Skidmore, Patti Runyan, Jessica Sparks, Kelly West and Attorney General John Burns.



Photo © Sheena Scott