

# Biennial Report

Major Activities  
2007-2008

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California  
Department of Justice



Edmund G. Brown Jr.  
Attorney General

September 15, 2008

Honorable Arnold Schwarzenegger  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I am pleased to submit to you the Biennial Report on the major activities of the Attorney General's Office, as required by Government Code section 12522.

This report covers calendar year 2007 and the first six months of 2008. The contents illustrate the significant cases and accomplishments of the California Department of Justice (DOJ), including its divisions of Law Enforcement, Criminal Law, Civil Law, Public Rights, Justice Information Services, and Administrative Support, as well as Executive programs.

DOJ's commitment to safeguarding California's human, natural and financial resources are highlighted, along with examples of our overall dedication to ensure justice, safety and liberty for citizens of the state through the fair and impartial enforcement of California's laws.

Sincerely,

  
EDMUND G. BROWN JR.  
Attorney General

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Department of Justice



Edmund G. Brown Jr.  
Attorney General

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***Gary Cooper, Director  
Division of Criminal Justice  
Information Services***

## ROLE OF THE ATTORNEY GENERAL



**EDMUND G. BROWN JR.**  
**ATTORNEY GENERAL**

As chief law officer of California, the Attorney General is responsible for ensuring that state laws are uniformly and adequately enforced. The Attorney General carries out this constitutional responsibility through the programs of the Department of Justice. The Attorney General's specific charges are threefold: to provide legal representation, to support common law enforcement, and to protect consumers and the environment.

The Attorney General represents the People of California before trial, appellate and supreme courts of California and the United States in criminal and civil matters; serves as legal counsel to state officers, boards, commissions and departments; and assists district attorneys in the administration of justice.

To support California's local law enforcement community, the Attorney General coordinates statewide narcotics enforcement efforts, participates in criminal investigations, and provides identification and information services and telecommunication support.

In addition, the Attorney General establishes and operates projects and programs that protect Californians from fraudulent, unfair and illegal activities that victimize consumers or threaten public safety, and enforces the laws that safeguard the environment and natural resources.

## EXECUTIVE SUMMARY HIGHLIGHTS OF 2007 AND 2008

This report represents a compendium of major issues, significant cases and improvements in the operations of one of California's most complex and far-reaching state agencies.

The first two years of the administration of Attorney General Edmund G. Brown Jr. brought new priorities to the California Department of Justice. Particular consideration was given to important public issues such as the reduction of carbon emissions and global warming and protection of the environment. Attorney General Brown emphasized the fight against crime, gang violence and drugs while advancing other issues affecting the lives of Californians, such as fighting corporate fraud and protecting workers' rights.

### FIGHTING AGAINST GLOBAL WARMING

The Attorney General is leading the effort to attack the serious problem of global warming.

***Mileage Standards.*** California led a group of states in successfully suing the federal government leading to a landmark decision in the U.S. Ninth Circuit Court of Appeals. In this 2008 case, the light-truck mileage standards of the National Highway Traffic Safety Administration (NHTSA) were challenged. The states insisted that NHTSA evaluate the global warming impact of its proposed new standards as part of its environmental review. All new mileage standards will now need to consider and evaluate their impacts on global warming. (*California v. National Highway Traffic Safety Administration.*)

***Auto Emissions.*** The Attorney General filed two lawsuits in federal court challenging the U.S. EPA's unreasonable delay in ruling on California's waiver request to implement its own greenhouse gas auto emissions standards. (*California v. U.S. EPA.*)

***Carbon Dioxide and Clean Air.*** The Attorney General filed multiple petitions with the U.S. EPA under the Clean Air Act. The federal agency has refused to control greenhouse gases even though carbon dioxide and greenhouse gases are considered pollutants.

**Offset Refinery Emissions.** The Attorney General reached agreement with ConocoPhillips to offset emissions from its refinery in the Bay Area. ConocoPhillips' expansion of its refinery would have resulted in an increase of carbon dioxide emissions by 1.25 million metric tons per year.

## PRESERVING CALIFORNIA'S RESOURCES

The Attorney General not only protects California's environment, but also its natural resources, including fish and wildlife, water, parks, timberland, agricultural resources and environmentally sensitive lands.

**Mining Site Clean Up.** Asarco, a mining, smelting and refining company, filed the largest environmental bankruptcy proceeding in the nation's history. The case involved contamination and environmental liability at over 90 sites. The Attorney General reached a \$34 million settlement for remediation of environmental problems at the site of the former lead smelter located on the Carquinez Strait in Contra Costa County. (*In re Asarco.*)

**Restriction of Colorado River Water.** A Colorado River quantification settlement agreement was reached with the State of Arizona. This agreement reflects a historic effort by California to reduce its water usage from the Colorado River by meeting its allocation requirement imposed by the U.S. Supreme Court. (*Arizona v. California.*)

**Sand Royalties.** Sand-dredging companies deprived the state of millions of dollars by failing to pay royalties and by illegally removing sand from Suisun Bay. After extensive litigation and negotiation, the trial court approved a settlement that required these companies to pay \$42.2 million. (*People of the State of California ex rel. Bill Lockyer v. Hanson Building Materials, Inc.*)

## STANDING UP FOR CONSUMERS

The Attorney General protects Californians and businesses by enforcing consumer protection and fair competition laws. Through these efforts, millions of dollars are recovered each year on behalf of consumers.

**Mortgage Deception.** The Attorney General sued Countrywide Financial Corporation and affiliates for mortgage fraud. Borrowers who obtained certain types of home loans experienced dramatic increases in monthly payments without regard to whether they could afford them. The allegations claim that Countrywide pushed its borrowers to serially refinance. Countrywide's deceptive practices contributed to a dramatic increase in the number of home loan defaults and foreclosures. The complaint filed in June 2008 seeks restitution, civil penalties and an injunction barring the company's successor, Bank of America, from continuing these practices. (*People v. Countrywide Financial Corporation.*)

**Deceptive Drug Advertising.** California and 30 other states filed final judgments against pharmaceutical company Merck for its deceptive promotion of Vioxx, a COX-2 inhibitor drug. Among other restrictions, the judgment prohibited deceptive direct-to-consumer advertising and deceptive use of scientific data when marketing to doctors. Merck was ordered to pay \$59.5 million to the states. (*People v. Merck & Company.*)

**Collusive Delays of Generic Drugs.** The Attorney General filed several lawsuits challenging improper agreements between pharmaceutical manufacturers to delay the launching of generic equivalent drugs. One such lawsuit was settled in 2008 for substantial penalties and injunctive relief. (*In re Ovcon Oral Contraceptives.*)

**Lead in Jewelry.** The Attorney General sued major retail chains for selling costume jewelry that contained lead and failing to provide a warning, a violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. The California Legislature subsequently passed a law that incorporated the lead reduction standards into statute, making them binding on any company selling jewelry in California. (*People v. Burlington Coat Factory.*)

**Lead in Toys.** In 2007, several companies were forced to recall millions of toys that were imported from China and sold in California. The toys exceeded California's Proposition 65 lead level warnings and, in many instances, the federal Consumer Product standards. The Attorney General sued 15 companies for selling toys that contained lead without providing a warning, and is currently negotiating additional settlements. In 2008, Congress passed new legislation tightening federal standards on chemicals present in toys. As a result, the state can now rely on federal law to provide additional restrictions on products sold in California. (*People v. Mattel.*)

**Insurance Fraud.** Over \$1.2 million was seized from an insurance broker and restitution made to 420 California victims. The insurance broker sold liability insurance for concerts, sporting events and other large, public event venues, collecting over \$2 million in insurance premiums for fraudulent policies. The broker was convicted of 63 counts of insurance fraud, theft and forgery, and was sentenced to state prison. (*People v. Hall.*)

## PROTECTING WORKERS

The Attorney General enforces California laws that require fair business practices to protect its workers and to ensure a level playing field in which all businesses adhere to the same rules.

**Workers' Pay.** The Attorney General sued a drywall contractor for using several different corporate shells to avoid its obligations to workers. The contractor failed to provide overtime pay, rest breaks, workers' compensation premium payments, and prevailing wages for public works projects. (*People v. Interwall.*)

**Workers' Compensation Fraud.** The Attorney General sued a construction contractor for illegally creating a model in which rank-and-file employees were portrayed as officers and shareholders in order to qualify for an exemption from workers' compensation laws. (*People v. PacifiStaff.*)

**Wage and Hour Violations.** The Attorney General sued a contractor for paying employees in cash and for failing to pay minimum wages, overtime and Employment Development Department taxes. The contractor also failed to provide workers with rest periods as required by law. The final judgment included restitution, civil penalties and a permanent injunction. (*People v. Brinas.*)

## ADVANCING DNA TECHNOLOGY

The DOJ provides forensic sciences, forensic education, narcotics investigations, criminal investigations, intelligence and training.

**Elimination of DNA Data Bank Backlog.** Proposition 69 required all convicted felons to submit a DNA sample to the CAL-DNA Data Bank. An executive order issued by the Governor also required all incarcerated felons and parolees to submit DNA samples. This created a backlog of 295,000 DNA samples. The DOJ implemented an aggressive project that eliminated this formidable backlog.

**CAL-DNA Data Bank.** By the end of 2008, the DOJ's DNA database will contain approximately 1.16 million offender profiles, making it the third largest DNA database in the world.

**DNA Partial Match Policy.** A new DNA search policy will expand local law enforcement's ability to investigate leads in unsolved violent crimes by revealing the identity of a close relative of a suspect.

## CRACKING DOWN ON CRIME

**General Fund Recoveries.** In Fiscal Year 2007/2008, the Bureau of Medi-Cal Fraud and Elder Abuse recovered \$38 million for the state's General Fund.

**The Bureau of Medi-Cal Fraud and Elder Abuse** was recognized by the federal Health and Human Services Agency as the premier Medicaid fraud control unit in the nation.

**Gang Suppression Enforcement Teams.** In response to California's escalating gang problems, the Bureau of Narcotic Enforcement established Gang Suppression Enforcement Teams (GSET) throughout California. In 2007, GSET investigations resulted in the arrest of over 169 subjects, including several who are now serving life sentences.

**Operation Summer-Sweep.** In 2007, DOJ coordinated a major enforcement operation targeting 1,000 of California's most dangerous people who illegally possessed firearms. Operation Summer-Sweep resulted in 16 arrests, referral of 82 cases to local district attorney offices for prosecution, and the seizure of 423 firearms, 32 of which were assault weapons.

**Black Liberation Army Suspects Arrested.** DOJ assisted the San Francisco Police Department in investigating a decades-old case involving the conspiracy of the Black Liberation Army to kill law enforcement officers. As a result of this cooperative endeavor, seven former members of the Black Liberation Army were arrested and charged with the 1971 murder of a San Francisco police sergeant and conspiracy to commit murder of police officers. The investigation is ongoing and the defendants are being criminally prosecuted.

**Organized Crime.** California's Medi-Cal program was defrauded of more than \$20 million as a result of the activities of an organized crime ring. Consequently, through the efforts of the Attorney General, the kingpin in the crime ring received a prison sentence of more than 18 years, the longest sentence ever for a healthcare fraud conviction. (*People v. Saeed.*)

**Dog Mauling.** In a notorious San Francisco dog-mauling case, a jury convicted defendants of second-degree murder and involuntary manslaughter for allowing their two large dogs to attack and kill a neighbor. After a superior court judge reduced one defendant's murder conviction to manslaughter, the Attorney General successfully appealed to the California Supreme Court, which sent the case back to the superior court for reconsideration of the ruling. On remand, the superior court reinstated the murder conviction. (*People v. Knoller and Noel.*)

**Sentencing Reform.** In a landmark case on sentencing, the U.S. Supreme Court struck down certain aspects of California's determinate sentencing law pertaining to judicial discretion to impose upper terms. In response, the California Legislature quickly modified the law to permit greater sentencing discretion by trial judges. (*Cunningham v. California.*)

**Federal Court Review.** The Criminal Law Division obtained a unanimous decision from the U.S. Supreme Court that addressed the standard of review of state court convictions on habeas corpus when reviewed by federal courts. The court agreed with the Attorney General that a prisoner may succeed on his habeas corpus petition only if he shows that a constitutional error at his state trial had a "substantial and injurious effect" on the outcome of his trial. (*Fry v. Pliler.*)

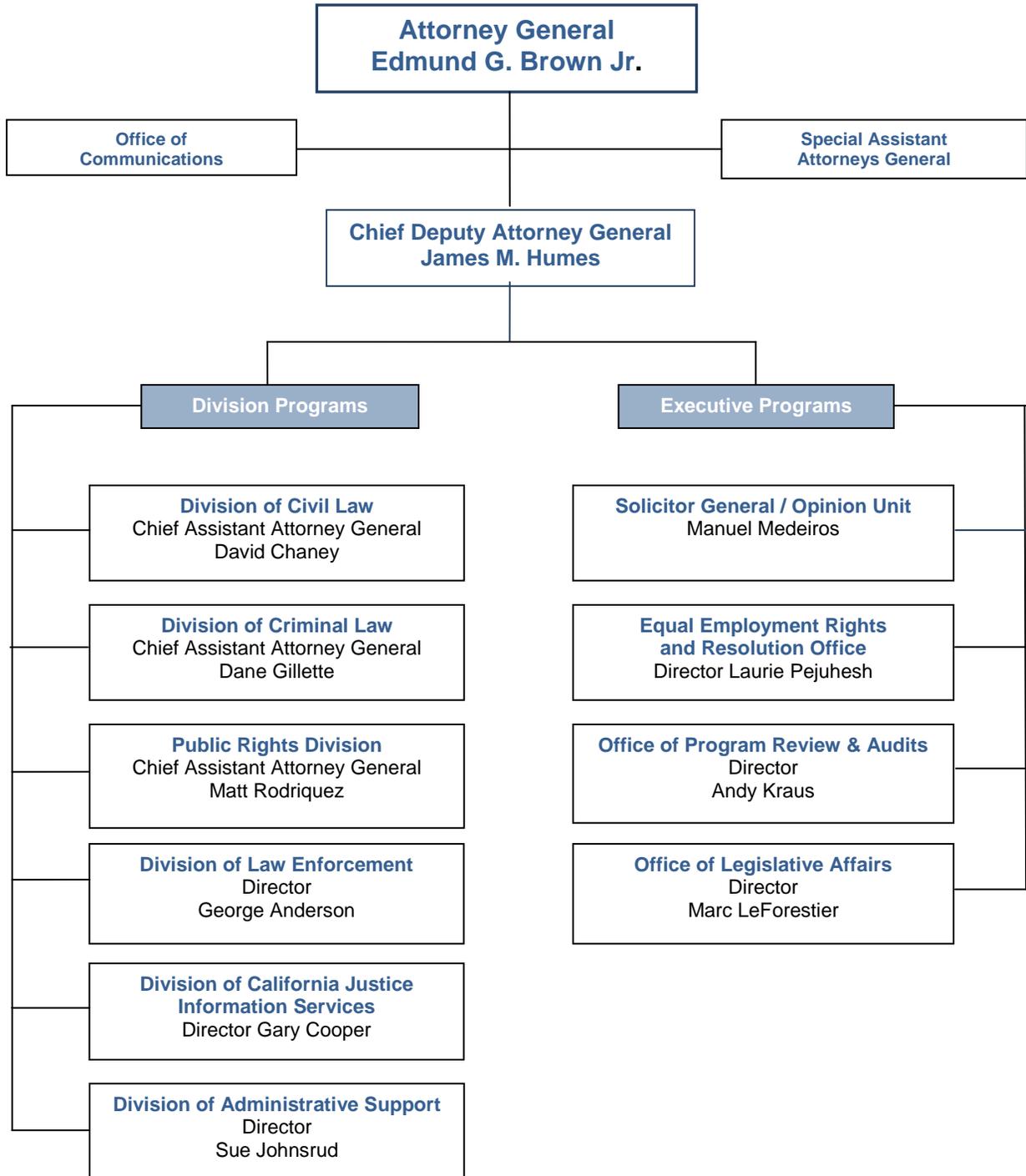
## STREAMLINING THE DEPARTMENT

The biennial period was a time of reorganization to increase operational and administrative efficiency. Attorney General Brown significantly reduced the number of management positions and integrated a number of programs. This allowed the DOJ to return to the General Fund approximately \$17 million in savings.

- **Eliminated Positions.** Approximately 250 positions were eliminated, including five Special Assistant Attorney General positions and one of two Chief Deputy positions. These reductions simplified the reporting structure and increased efficiency.
- **Consolidated Support Divisions.** The Administrative Services Division and the Division of Legal Support and Technology were merged to create the Division of Administrative Support, thereby placing all DOJ support functions in one reporting structure. State processes and procedures were subsequently simplified and consolidated.
- **Merged Enforcement Divisions.** The Division of Gambling Control and the Division of Firearms were placed under the Division of Law Enforcement, ensuring consistent management of all law enforcement activities.
- **Reorganized DOJ Sections and Bureaus.** Similar work functions were consolidated to strengthen the knowledge and expertise of staff and to ensure consistent management:
  - A new Corporate Fraud Section in the Public Rights Division was created by merging the Energy and Corporate Responsibility and False Claims Sections;
  - The Division of Law Enforcement's Bureau of Investigation and the Criminal Intelligence Bureau were merged to form the new Bureau of Investigation and Intelligence;

- The Division of California Justice Information Services' Computer Operations Bureau and Infrastructure Support Bureau were combined to create the new Infrastructure Support Bureau.
- The scope of the Criminal Law Division was expanded to include prevention efforts and outreach programs. The Crime and Violence Prevention Center, Office of Victim Services and Office of Native American Affairs were redirected from Executive Programs to the Criminal Law Division.

# DEPARTMENT OF JUSTICE



## DEPARTMENT OVERVIEW

The Attorney General's responsibilities are fulfilled through the diverse programs of the Department of Justice, which has over 5,000 employees, six divisions, and an annual operating budget of over \$800 million.

<u>Division</u>	<u>Authorized Positions</u>	<u>2007-2008 Budget</u>
Division of Law Enforcement (DLE)	1,632	\$260,766,000
Public Rights Division	355	\$ 74,081,000
Civil Law Division	617	\$117,317,000
Criminal Law Division	679	\$105,441,000
Calif. Justice Information Services (DCJIS)	1,394	\$179,294,000
Division of Administrative Support	1,025	\$ 84,608,000
<u>Executive Programs</u>	<u>130</u>	<u>\$ 14,108,000</u>
<b>Total</b>	<b>5,832 positions</b>	<b>\$835,615,000</b>

Through its dedicated employees, the Department represents the people in matters before the appellate and supreme courts of California and the United States, serves as legal counsel to state agencies, coordinates efforts to fight crime, provides identification and information services to criminal justice agencies, and pursues projects designed to protect the people of California from fraudulent, unfair and illegal activities.

The breakdown of DOJ employees by Division includes:

- Law Enforcement at 28 percent
- Administrative Support at 19 percent
- DCJIS at 23 percent
- Criminal Law at 12 percent
- Civil Law at 11 percent
- Public Rights at 6 percent
- Executive Programs at 1 percent

Major issues, significant cases, and improvements in the Department's operations are highlighted on the following pages.

## DIVISION OF LAW ENFORCEMENT

The Division of Law Enforcement, through its 1,632 employees, provides services in forensic sciences, forensic education, narcotics investigations, intelligence and training. The division also ensures that the state's firearm laws are fairly administered and vigorously enforced, and regulates legal gambling activities to ensure they are conducted honestly and are free from criminal and corruptive elements. In addition, the division provides a wide range of support services to law enforcement agencies, and manages several of its own crime suppression programs through the Bureau of Forensic Services, the Bureau of Narcotic Enforcement and the Bureau of Investigation and Intelligence.

The division is at the forefront of crime fighting and works with local law enforcement agencies and state and federal agencies. The division's Western States Information Network coordinates information sharing with California and other states.

The primary components of the Division of Law Enforcement include:

- Forensic Services
- Narcotic Enforcement
- Investigation and Intelligence
- Gambling Control
- Firearms
- Western States Information Network

### Bureau of Forensic Services

The Bureau of Forensic Services provides forensic services to state and local law enforcement, district attorneys and the courts. The bureau is tasked with establishing and maintaining the California convicted offender and forensic databases used for criminal investigations. The bureau also maintains several specialized programs including forensic toxicology, latent prints, questioned documents and the DNA laboratories.

Through DOJ's 11 regional forensic laboratories, including the state-of-the-art DOJ Jan Bashinski DNA Laboratory in Richmond, forensic services are provided to 46 counties in California.

<b>BFS Casework Completed in 2007-2008</b>	<b>Completed</b>	<b>Percentage of Workload</b>
Forensic Analyses	141,691	50%
Breath Tests	47,640	17%
Blood/Urine Analyses	32,177	11.3%
Controlled Substance Analyses	29,758	10.4%
Toxicology Analyses	20,768	7.5%
Biology Analyses	2,728	.9%
Latent Print Analyses	2,471	.9%
DNA Analyses	1,980	.7%
Criminalistics Cases, incl. 194 investigations	1,688	.6%
Firearms Analyses	1,325	.5%
Clandestine Labs	290	.1%
Questioned Document Analyses	226	.1%
<b>Total</b>	<b>282,742</b>	<b>100%</b>

**Fast Track Forensics Program.** The DOJ Jan Bashinski DNA Laboratory now performs rapid analysis and database searches of DNA profiles obtained from sexual assault evidence. Established in January 2007, the new Fast Track Forensics Program is a cooperative effort with the DOJ, the Santa Monica UCLA Medical Center, the Los Angeles Police and County Sheriff's Departments and local police departments. In addition to the standard samples collected in sexual assault evidence kits, extra samples, such as swabs from other areas of the body, are collected and sent directly to the DOJ DNA laboratory for immediate processing. Within five days, the DNA profile is searched in the convicted offender and forensic DNA databases, and police investigators are notified of a "cold hit." Since 2007, the DNA laboratory has identified 47 "cold hit" cases. (A "cold hit" refers to an instance where a DNA profile developed from evidence in a suspectless crime is matched to an offender in the DOJ data bank.)

**CAL-DNA Data Bank Program.** In 2007 and 2008, an estimated 460,000 offender DNA profiles were added to the CAL-DNA Data Bank as mandated by Proposition 69. Proposition 69 requires DNA profiles on all convicted felons and all registered sex and arson offenders, including juveniles. It is estimated that by the end of 2008, the DOJ CAL-DNA database will contain approximately 1.16 million offender profiles, making it the third largest DNA database in the world. In preparation for the significant increase in DNA samples each year, the laboratory was expanded and a high-volume analysis system established.

**DNA Partial Match Policy.** There are many unsolved crimes when an offender cannot be identified from the DNA profile obtained at the crime scene. In 2008, the DNA Partial Match Reporting and Modified Combined DNA Index System (CODIS) search policy was developed to provide law enforcement with investigative information in these unsolved cases. If an offender's DNA profile is close, but not an exact match to the perpetrator's profile, and there is a high likelihood of the match being related to the actual perpetrator, detectives can now follow-up on the investigative lead. In order to use this process and to ensure privacy,

strict protocols are followed, including advanced DNA typing and review of all pertinent information prior to releasing names to case investigators.

**California Criminalistics Institute – Los Angeles.** The California Criminalistics Institute (CCI) is a nationally recognized provider of forensic science training for scientists from the DOJ Bureau of Forensic Services and California's local government crime laboratories. In 2007, CCI facilitated classes for 769 students. To meet increased demands for training, CCI partnered with the California Forensic Science Institute and the Los Angeles Regional Crime Laboratory to offer additional classes in the Hertzberg-Davis Forensic Science Center in Los Angeles.

## Bureau of Narcotic Enforcement

The Bureau of Narcotic Enforcement enforces state and federal controlled substance laws through the investigation and apprehension of violent criminals. The bureau handles complex problems associated with arresting and prosecuting major drug dealers, violent career criminals, clandestine drug manufacturers and prescription drug violators.

**Gang Suppression Enforcement Teams.** In response to California's escalating gang violence, the bureau established four Gang Suppression Enforcement Teams (GSET) through-out California. These teams provide leadership to local law enforcement in suppressing multi-jurisdictional violent crimes by using innovative investigative techniques to disrupt criminal gang activities and dismantle their membership. The GSETs are unique in that they target the leadership and organizational structure of criminal street gangs, rather than foot soldiers that are easily replaced. In 2007, GSET investigations resulted in the arrest of 169 subjects. Several subjects are serving life sentences.

**Special Investigations Unit.** In 2007, the Special Investigations Unit was created to provide specialized investigative expertise to law enforcement agencies statewide. The unit tracks and apprehends suspects, and locates victims and at-risk citizens in high-priority investigations. In 2007, the unit assisted in 73 investigations resulting in 59 felony arrests for crimes, including homicide, attempted homicide, rape, robbery and assault with a deadly weapon.

**Controlled Substance Utilization Review and Evaluation System.** The Controlled Substance Utilization Review and Evaluation System (CURES) assists in the reduction of pharmaceutical drug diversion by capturing specific controlled substance data from over 155,000 practitioners and 6,266 licensed pharmacies. CURES provides patient activity reports to the medical community, investigative referrals to the bureau's regional offices, and specialized reports and statistical data to researchers to identify drug trends. The program currently maintains information on approximately 83 million controlled substances. In 2007, 35 million prescriptions were written and 53,232 patient activity report requests were processed.

***Diversion Program.*** The diversion program deters, prevents and reduces drug diversion to illicit markets. DOJ Special Agents investigate and assist in prosecuting licensed medical professionals and others who are illicitly prescribing, dispensing or administering controlled substances, as well as individuals who are printing, stealing, or forging fictitious prescriptions. Agents also train the medical community to identify schemes used to obtain controlled substances. In 2007, investigations led to 61 arrests, and the seizure of 12,289 dosage units of controlled substances or narcotics.

***Campaign Against Marijuana Planting.*** Funded by state and federal agencies, the Campaign Against Marijuana Planting (CAMP) program is a multi-agency task force comprised of local, state and federal agencies that assist counties in eradicating illegal marijuana cultivation and trafficking. In 2007, CAMP eradicated 2.9 million plants, with a street value of \$11.6 billion. CAMP conducted 472 raids, which resulted in 53 arrests, and the seizure of 41 shotguns, handguns, assault rifles and other firearms.

## Bureau of Investigation and Intelligence

The DOJ's Bureau of Investigation and Criminal Intelligence Bureau were merged to form what is now the Bureau of Investigation and Intelligence. The new bureau provides expert investigative and intelligence services to the DOJ and allied law enforcement agencies throughout the state.

***Sexual Predator Program.*** The Sexual Predator Program enforces state and federal laws that pertain to registered sex offenders and sexual predators. In 2007, the program made 1,118 arrests. Additional enforcement activities included 500 undercover Internet operations, 1,300 parole and probation searches, and 7,000 contacts with registered sex offenders to ensure compliance with state law and to update the offenders' status on the DOJ's Megan's Law website.

***Suspect from Saudi Arabia Arrested.*** The Sacramento Valley Federal Safe Streets Task Force was involved in a multi-country child exploitation investigation whereby the suspect, identified as a psychiatrist from Saudi Arabia, traveled from his homeland for the sole purpose of engaging in sexual activities with a 2½-year-old child. The sting operation, conducted by members of the Safe Streets Task Force and with the assistance of the Federal Bureau of Investigation and Immigration, Customs and Enforcement, arranged a meeting in California where the psychiatrist was arrested. He was charged and convicted of federal crimes, including travel in interstate or foreign commerce to engage in unlawful sexual conduct with a minor and distribution of child pornography. He was sentenced to seven years in federal prison.

**Los Angeles County Regional Criminal Information Clearinghouse (LA CLEAR).** LA CLEAR is an information management system that supports various narcotic and law enforcement agencies. In 2007, LA CLEAR posted 61,000 critical events, an increase of 19 percent from the prior year. Additionally, in 2007, the LA CLEAR Electronic Surveillance Center supported 54 cases in which 700 electronic intercepts were conducted, including 500 audio intercepts and 220 dialed number recorder intercepts.

**Investment Scam in Riverside County.** After receiving a tip from private investigators in Florida, DOJ Special Agents investigated a suspect who was believed to be fraudulently collecting investment money from unsuspecting victims who thought they were investing in the development of a storage facility in Riverside County. The suspect allegedly collected \$330,000 from his "investors," despite the fact that he did not own the land, nor did he provide receipts or any transaction records. DOJ agents captured recorded conversations in which the suspect acknowledged taking possession of the money. The suspect was arrested and charged with grand theft.

**California Witness Relocation and Assistance Program (CAL WRAP).** Since 2007, the California Witness Relocation and Assistance Program (CAL WRAP) assisted 1,700 witnesses and their family members. In one case, the CAL WRAP provided assistance to the San Bernardino County District Attorney's Office to safely relocate a witness. The defendant in the case was upset that his girlfriend was sold a "lemon" vehicle and went on a two-day shooting spree, killing three people and injuring three others. When police arrived at his apartment complex, the defendant resisted arrest and shot at a police officer. The defendant was shot and subsequently arrested. The defendant, who is also a gang member, made threats to kill anyone who testified against him. The district attorney's office used the relocation services of CAL WRAP to make it possible for the witness to safely testify at trial. As a result of the testimony provided by the protected witness, the defendant received three consecutive sentences — the death penalty, life without the possibility of parole, and 25-years-to-life.

**Madera County Homicide Case Solved.** In 1987, the body of a prominent dairy farmer was discovered in a hay field in rural Madera County. After exhausting all leads, the case was considered to be a cold-case homicide. In early 2000, the Unsolved Violent Crime Team reopened the investigation, focusing on a dairy foreman as the suspect. DOJ agents discovered that the victim's wife masterminded the murder to collect \$880,000 from insurance companies and inherit an estate valued at over \$2 million. The wife died of natural causes before being brought to justice. The victim's son reported that the victim's wife and the dairy foreman plotted to murder his father, and he was present the night his father was murdered. With this new information, an arrest warrant was issued for the dairy foreman.

**Unsolved Violent Crime Team.** The Unsolved Violent Crime Team, assisted by the Sexual Predator Apprehension Team and the Investigative Support Team, worked with the Fresno County Sheriff's Department on a wiretap in the double-murder investigation of an elderly couple who were killed in their home in 2005. There were no suspects in these murders and investigators had exhausted all leads. The information derived from the wiretap led to the arrest of the victim's son and an accomplice, who were arrested and booked for the murder of both victims.

**Black Liberation Army Suspects Arrested.** In 1971, armed with shotguns, rifles, semi-automatic rifles and handguns, members of the Black Liberation Army (BLA) attacked the San Francisco Police Department (SFPD) Ingleside Police Station, killing Sergeant John Victor Young. The BLA conspiracy to kill law enforcement officers began in October 1968 and extended through 1973 with four attempted murders of law enforcement personnel, the bombing of a police officer's funeral at St. Brendan's Church in San Francisco, the murder of two New York City police officers, the attempted bombing of Mission Police Station in San Francisco, and three armed bank robberies. In 2000, the SFPD reopened its investigation into the bombing of the Park Police Station and requested investigative assistance from the DOJ. The DOJ's Bureau of Forensic Services was also assigned to identify a latent print collected from the original crime scene. In 2007, seven former members of the BLA were arrested and charged with the murder of Sergeant Young and conspiracy to commit murder of police officers.

**Environmental Crimes Team Uncovers Fraud.** DOJ Special Agents assigned to the Environmental Crimes Team investigated the owners of Los Nachitos Recycling Center for fraud against the California Redemption Value Fund. The suspects in this case were defrauding the California Department of Conservation by transporting ineligible materials from Nevada into California and then illegally submitting these materials as recyclables for reimbursement. Agents conducted numerous surveillance operations and served five search warrants during the course of this investigation. As a result, DOJ agents uncovered over \$350,000 in fraud. Both suspects pled guilty.

## Bureau of Gambling Control

The Bureau of Gambling Control investigates gambling license applicant qualifications, monitors licensee conduct, and assists Indian tribes to ensure that tribal gaming activities are crime-free.

**Criminal Intelligence Unit.** The unit issued 29 time-sensitive intelligence bulletins to the law enforcement community, stakeholders in the cardroom industry and Tribal casinos. These

bulletins primarily focused on cheating scams, counterfeit \$100 bills and American Express gift checks, and were used by local law enforcement agencies to develop probable cause in several arrests.

Investigations Completed in 2007-2008	Individuals Investigated
Tribal Casino Key Employees	
Tribal Casino Gaming Suppliers/Vendors (16 cases)	
Cardrooms (8 cases)	
Cardroom Work Permit Holders	
Banking Service Providers (15 cases)	
<b>Total</b>	<b>1,800</b>

**Games Review Unit.** The unit approved 609 new or modified games and gaming activities. To help the public better understand the variety of games offered, the Attorney General's website provides information on the rules and collection rates for approved games offered at 91 card rooms currently operating in California.

## Bureau of Firearms

The Bureau of Firearms ensures that the state's firearms laws are administered and enforced fairly and uniformly.

**Implementation of the Armed and Prohibited Persons System Database.** In 2007, working with DOJ's Division of California Justice Information Services, the bureau implemented the Armed and Prohibited Persons System (APPS) database. APPS is used by criminal justice agencies and contains firearm registration information and data on those who are prohibited from possessing a firearm as a result of felony convictions, domestic violence restraining orders, being a danger to themselves or others, or an involuntarily commitment to a mental health facility. It is estimated that over 70,000 armed people who are prohibited from possessing a firearm reside in California.

**Operation Summer-Sweep.** In 2007, relying on information in the APPS database, the bureau helped to coordinate a major enforcement operation targeting 1,000 of California's most dangerous and armed people who illegally possess firearms. Operation Summer-Sweep resulted in 16 arrests, referral of 82 cases to local district attorney offices for prosecution, and the seizure of 423 firearms, of which 32 were illegal assault weapons.

**Transfer of California Mental Health Records to the FBI National Instant Criminal Background Check System (NICS) Index.** In 2007, the bureau electronically transferred over 200,000 mental health records for inclusion in the federal NICS index, increasing the federal NICS index database by 30 percent. The Federal Bureau of Investigation and other states use the NICS index to determine the eligibility of a gun purchaser to own or possess firearms.

## Western States Information Network

The Western States Information Network (WSIN) was established by Congress as one of six regional information-sharing systems in the United States. WSIN responds to the intelligence needs of over 1,200 law enforcement agencies in Alaska, California, Hawaii, Oregon and Washington. As of 2007, nearly 20,000 officers have used WSIN's services.

***Deconfliction of Law Enforcement Operations.*** WSIN's 24-hour Watch Center electronically monitors law enforcement activities to detect dangerous conflicts in operations by identifying multiple agencies that are engaged in surveillance, service of search warrants, undercover activities, arrests and probation/parole searches. In 2008, RISSafe, a deconfliction software mapping program, will be available to law enforcement officers nationwide. This first-of-its-kind system prevents operational conflicts with multiple law enforcement agencies, ensuring officer safety. The WSIN Watch Center serves as an after-hours fail-safe deconfliction monitoring contact for the entire nation.

***Hawaiian Smuggling Operation.*** In 2006, a Hawaii High Intensity Drug Trafficking Area (HIDTA) Task Force that was comprised of the DEA, the FBI and the Honolulu Police Department, investigated a major Mexican organization that was shipping methamphetamine monthly from Las Vegas to Hawaii. WSIN provided funds for drug purchases. The drug purchases and information obtained from an FBI informant were sufficient to warrant a federal wiretap. The investigation ultimately revealed that drugs were being smuggled from Mexico and routed to the Hawaiian Islands through Nevada. Twenty defendants currently face federal and state charges of drug distribution. Over \$250,000 was forfeited, and over eight pounds of methamphetamine "ice" was seized.

***WSIN Criminal Intelligence Database.*** Regional Information Sharing Systems (National Criminal Intelligence Database RISSIntel) is a criminal intelligence database that contains records on criminal activity, including narcotics, gangs and terrorism. This database has a seamless search capacity with 14 intelligence databases and is governed by federal regulations. Before subjects and businesses are added to the database, there must be a reasonable suspicion of involvement in a criminal activity. In 2007, WSIN member agencies made 640,500 database inquiries and 96,000 database submissions. The database contains information on over 1.34 million subjects, vehicles, locations, gangs, and weapons.

***Retired Probation Officer Slain.*** A retired probation officer and his wife were brutally beaten, tied to a 66-pound anchor and thrown overboard from their yacht to die. WSIN conducted a call record analysis of the primary suspects' telephones. Working closely with law enforcement, WSIN analyzed over 20,000 call records and produced 28 charts depicting calls placed between the suspects before, during and after the crime. The DOJ's supporting evidence helped convict the wife of one of the suspects. She was convicted of two counts of murder with special

circumstances involving financial gain and later sentenced in 2007 to two life-terms in prison without the possibility of parole.

**Corvallis Drug Trafficking Organization.** After a two-year investigation by more than 20 agencies, a Mexican drug-trafficking organization in Corvallis, Oregon was dismantled in mid-2007. Corvallis City Police Department, the lead agency, received \$12,000 in funding from WSIN to pay informant and drug-purchasing costs. WSIN also provided funding to purchase 30 Nextel cell phones for the Oregon DOJ to coordinate operations in five counties. The investigation resulted in the arrest of 19 defendants, issuance of 22 search warrants and seizure of firearms, a residence, a business, cash, drugs and vehicles.

**Suspect Linked from Cold File.** In 2005, the Olympic Peninsula Narcotics Enforcement Team (OPNET) Task Force was notified of a marijuana-growing operation in their county. Since the primary suspect had fled the county, the case was placed in a "cold" file in the WSIN database. In 2007, while working on a major drug organization operating in Washington State, the Seattle Drug Enforcement Administration received a "hit" on the suspect, connecting him to a case submitted by OPNET. Arrests were subsequently made, and the investigation resulted in the seizure of property in Montana and several loads of drugs, including marijuana, mushrooms and Ecstasy.

## PUBLIC RIGHTS DIVISION

The Public Rights Division, through its 355 employees, serves Californians by safeguarding the state's environment and natural resources, protecting state lands, maintaining competitive markets, preventing fraudulent business practices, protecting consumers against misleading advertising claims, preserving charitable assets and protecting civil rights. The division is currently handling 2,815 legal cases.

The primary sections of the Public Rights Division include:

- Environment Law
- Natural Resources Law
- Consumer Law
- Antitrust Law
- Civil Rights Enforcement
- Corporate Fraud
- Indian and Gaming Law
- Land Law
- Tobacco Litigation and Enforcement
- Charitable Trusts

### Environment Law Section

The Environment Law Section enforces state and federal environmental laws affecting California's natural resources, its communities and public health. The attorneys investigate and litigate matters concerning global warming, hazardous waste, air and water pollution, and natural resources conservation. The section both enforces and defends Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, which prohibits contaminated or illegal discharge to sources of drinking water and undisclosed exposures to toxins and carcinogens. The section also represents the Department of Toxic Substances Control in its enforcement of federal and state hazardous waste control laws and the "Superfund Law." (The Superfund Law was created to protect people and communities from heavily contaminated toxic waste sites.)

The Attorney General has broad independent authority to bring environmental actions under the California Constitution, the Government Code and case law. The section investigates and litigates both state and federal cases.

Significant cases include the following:

***California v. National Highway Traffic Safety Administration (NHTSA).*** The Attorney General has identified global warming as the single greatest environmental threat facing California. In a 2008 U.S. Ninth Circuit Court of Appeals' decision, California led a group of states in successfully suing the federal government. Under the Energy Policy and Conservation Act, NHTSA must determine national mileage standards for cars and trucks. In this case, California and other states challenged NHTSA's new mileage standards. The states insisted that NHTSA evaluate the global warming impact of its proposed new standards as part of its environmental review. As the result of this decision, all new mileage standards must consider and evaluate the impact on global warming.

***Clean Air Act Petitions.*** In the landmark case of Massachusetts v. EPA, the U.S. Supreme Court held that carbon dioxide and other greenhouse gases are "pollutants" under the Clean Air Act. Despite that ruling, the U.S. EPA has failed to control greenhouse gases. As a result, the Attorney General is seeking to force U.S. EPA to regulate greenhouse gas emissions from numerous sources, including power plants, ocean vessels, aircraft and off-road vehicles.

***ConocoPhillips Refinery Expansion.*** In 2007, ConocoPhillips sought approval from Contra Costa County to expand its refinery and increase its hydrogen capacity. The county estimated that the expansion would increase carbon dioxide emissions by 1.25 million metric tons per year. The Attorney General raised concerns about the emissions in a comment letter. As a result, in a first-in-the-nation settlement, the Attorney General reached agreement with ConocoPhillips to offset greenhouse gas emissions.

***People v. Home Depot.*** Following a coordinated investigation with eight district attorney offices and the Los Angeles City Attorney, the Attorney General reached a \$30 million settlement with Home Depot reforming how the chain handles hazardous materials and waste. The case revealed that Home Depot routinely combined incompatible waste, disposed of waste improperly, poured waste down drains and failed to follow basic waste-handling requirements. The settlement includes civil penalties and costs, payment for training programs and over \$10 million for environmental projects at Home Depot stores.

***People v. Pilot Travel Centers.*** Along with four district attorney offices, the Attorney General reached agreement for a detailed injunction addressing long-standing and pervasive violations of underground tank laws. These violations included tampering with leak-detection sensors for large gasoline tanks located at Pilots' truck stops throughout the state. The settlement included total liability of \$7.5 million, with \$4.4 million in civil penalties, credit for supplemental environmental projects, fees, costs and other actions.

***In re Asarco.*** Asarco, a mining, smelting and refining company, filed the largest environmental bankruptcy proceeding in the nation's history. The case involves contamination and environmental liability at over 90 sites in the United States. Representing the Department of Toxic Substances Control, the Attorney General obtained a court-approved settlement totaling \$34 million for remediation of environmental problems at the site of the former lead smelter located on the Carquinez Strait.

***California v. U.S. Forest Service.*** Continuing years of efforts to protect the state's national forests, the decision in this lawsuit required environmental review of the U.S. Forest Service's 50-year management plan for all aspects of the Sequoia National Monument, including the removal of trees. In two other cases, a nationwide injunction was obtained protecting wilderness areas in national forests. A federal court struck down regulations that severely limited public review of the Forest Service's planning decisions. (*California v. U.S. Department of Agriculture*; *Citizens for Better Forestry v. U.S. Department of Agriculture*.)

***People v. Burlington Coat Factory.*** The Attorney General sued major retail chains for selling costume jewelry that contained lead and for failing to provide a warning, a violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. After the court approved a consent judgment requiring the companies to reduce or eliminate lead in costume jewelry, the California Legislature passed a law that incorporated the lead-reduction standards into statute, making them binding on any company selling jewelry in the state.

***People v. Alpro Alimento Proteínicos.*** In this case, the Attorney General settled with 37 companies that manufacture or distribute candy containing lead. The candy is imported from Mexico and sold in California. The settlement requires candy suppliers to meet stricter lead standards, test their products, undergo inspections and audits of their facilities, and pay penalties and the cost of enforcement and inspection.

***People v. Mattel.*** In 2007, several companies were forced to recall millions of toys imported from China and sold in California. The toys exceeded California's Proposition 65 lead-level warnings and, in many instances, the federal Consumer Product standards. The Attorney General sued 15 companies for selling toys that contained lead without providing a warning. In 2008, Congress passed new legislation tightening federal standards on chemicals present in toys. As a result, the state can now rely on federal law to provide additional restrictions on products sold in California.

***Department of Toxic Substances Control v. Burlington Northern.*** A developer of agricultural chemicals operating in the Central Valley contaminated its site. The U.S. Ninth Circuit Court of Appeals determined that Shell and Burlington Northern were jointly and severally liable for the entire clean-up of the Superfund site. The decision is worth tens of millions of dollars to the state. This case could potentially modify the joint and

several liability standard, a rule that currently governs and provides litigation advantage to the government in most CERCLA cases.

**California Environmental Quality Act (CEQA) and Climate Change Workshops.** In 2008, the Attorney General, in conjunction with the Local Government Commission, planned a series of regional workshops for local government officials throughout the state. The workshops focus on local government responses to greenhouse gas emissions and the requirements of AB 32 and CEQA.

## Natural Resources Law Section

The Natural Resources Law Section represents the majority of state agencies responsible for natural resources management or pollution control. The section's clients include the State Water Resources Control Board, the Regional Water Quality Control Boards, the Department of Fish and Game, the Department of Parks and Recreation, the Science Center, the Department of Conservation, the Air Resources Board and the Department of Forestry and Fire Prevention. The section also represents the Department of Food and Agriculture and the 58 District Agricultural Associations.

Significant cases include the following:

**Central Valley Chrysler-Jeep, Inc. v. Goldstene.** (Pavley Regulations.) The Attorney General is defending the Air Resources Board in a lawsuit filed by automakers and car dealers challenging California's regulations to reduce vehicle emissions of greenhouse gases. In 2007, a federal judge rejected the automakers' challenge to California's regulations, finding that the regulations are not preempted by federal law. This victory for California cleared the way for its regulations to become effective upon the grant of a waiver under the federal Clean Air Act by the U.S. EPA.

**State of California, by and through Governor Schwarzenegger, the California Air Resources Board and the Attorney General v. U.S. EPA.** In 2007, the Attorney General filed two lawsuits in federal court challenging the U.S. EPA's unreasonable delay in ruling on the state's waiver request to implement its greenhouse gas auto emissions standards for model years 2009-2016. Fifteen states and 13 environmental groups intervened in support of California in one or both of the cases. The U.S. EPA Administrator announced he was denying the waiver request, and California filed a challenge in the U.S. Ninth Circuit Court of Appeals.

**State of California v. U.S. EPA.** The Attorney General filed this case in federal court on behalf of himself, the Governor, and the Air Resources Board, challenging the U.S. EPA's decision and accompanying legal opinion not to regulate greenhouse gases under the federal Clean Air Act. The matter, which was consolidated with similar cases filed by other states and environmental organizations, went to the U.S. Supreme Court. The court required the U.S. EPA to decide whether greenhouse gas emissions contribute to "air pollution which may reasonably be anticipated to endanger public health or welfare." When the U.S. EPA delayed making such a determination, the state petitioned the D.C. Circuit to enforce the Supreme Court's mandate. The case is pending before the D.C. Circuit.

***People of the State of California ex rel. Edmund G. Brown Jr., Attorney General of California, the State Air Resources Board, and the Placer County Air Pollution Control District v. Sierra Pacific Industries, Inc.*** The Attorney General, on behalf of himself, the Air Resources Board and Placer County, prosecuted an air pollution enforcement case against a timber operations company, Sierra Pacific Industries, California's largest private landowner. The company agreed to settle the civil complaint and undertake projects for a total of \$12,985,000.

***Fire Suppression Cost Recovery Actions.*** The Attorney General represents the Department of Forestry and Fire Prevention to recoup the costs of fire suppression for the many wildland fires that occur in California each year. Cases in 2007 through June 2008, included the following:

<u>Fire Suppression Cases</u>	<u>Fire</u>	<u>Amount Recovered</u>
<i>Forestry v. PG&amp;E</i>	Powerhouse Fire	\$578,900
<i>Forestry v. Southern CA Edison</i>	Airport Fire	\$492,500
<i>Forestry v. Jeralds</i>	Stage Fire	\$329,895
<i>Forestry v. Kaiser Trucking, Inc.</i>	West Fire	\$315,000
<i>CDF ex rel. People v. U.S.</i>	Camino Fire	\$240,000
<i>Forestry v. Rosasco</i>	Rosasco Fire	\$160,000
<i>Forestry v. Rupp</i>	Bear Fire	\$100,000
<i>CDF v. Jay K., a minor</i>	Brandy Fire	\$100,000
<i>Forestry v. Fawnmeade</i>	Mountain Fire	\$100,000
<i>Forestry v. PG&amp;E</i>	Penn Fire	\$ 96,318
<i>Forestry v. Rankin</i>	Rankin Fire	\$ 87,500
<i>Forestry v. Southwest Cement Co.</i>	LeHigh Fire	\$ 86,000

***Colorado River Board.*** The Attorney General provides advice and counsel to the Colorado River Board of California in its effort to protect California's rights to, and interests in, water in the Colorado River System. Most recently, the Attorney General's efforts have concerned the development of plans on the 2007 storage of water for droughts.

***Arizona v. California.*** A Colorado River quantification settlement agreement was reached in a lawsuit with the State of Arizona. This agreement reflects a historic effort by California to reduce its water usage from the Colorado River by meeting its allocation requirement imposed by the U.S. Supreme Court.

***Natural Resources Defense Council v. Kempthorne; Pacific Coast Federation of Fishermen's Association v. Gutierrez.*** The Attorney General represents the Department of Water Resources (DWR), which operates the State Water Project in cases filed under the federal Endangered Species Act. The Act ensures that the coordinated operations of the federal Central Valley Project and the State Water Project protect the delta smelt and salmon, two endangered fish species. The U.S. Bureau of Reclamation and the DWR have historically operated and coordinated the federal and the state projects to divert water from the South Delta for export throughout California. In the delta smelt case, the

court imposed specific limits on project pumping operations and ordered the U.S. Fish and Wildlife Service to complete a new biological opinion by September 2008. In the salmon case, the court will hold a trial in 2008 on the limits for protecting salmon.

***People of the State of California ex rel. Regional Water Quality Control Board, San Diego Region v. Carlos Marin, Commissioner of International Boundary and Water Commission, U.S. Section.***

(International Border Treatment Plant lawsuit.) In 2001, the Attorney General, on behalf of the San Diego Regional Water Quality Control Board, sued a federal agency in federal court to enforce secondary treatment requirements contained in a discharge permit issued to the agency for sewage originating in Mexico. The sewage is treated at a wastewater treatment plant in the United States and is discharged into the Pacific Ocean in California's waters. In 2004, the federal court issued a compliance order under which the agency must implement secondary treatment for these discharges. Compliance issues are ongoing.

***Alameda County Flood Control and Water Conservation District Zone 7 v. Department of Water Resources.***

The Attorney General is defending a suit filed by 14 water agencies in Northern California against the Department of Water Resources (DWR) for breach of contract for water supplied from the State Water Project to 29 water agencies throughout California. The other contracting water agencies, all of which are in Southern California, have joined the lawsuit to support DWR's interpretation of the contracts. Trial is expected in late 2008.

***ARCO v. State Water Resources Control Board and Lahontan Regional Water Quality Control Board.*** (Leviathan Mine case.) The Attorney General is defending a case brought by Atlantic Richfield (ARCO) against the Lahontan Regional Water Quality Control Board alleging that the regional board should be responsible for the U.S. EPA-mandated investigation and cleanup of contamination at a state-owned Superfund site. The parcel is the site of Leviathan Mine, a defunct sulfur mine that was operated by a predecessor-in-interest to ARCO. Beyond ARCO's claims, there is also potential liability for U.S. EPA's costs and for natural resource damages.

***Environmental Protection Information Center v. Department of Fish and Game; United Steel Workers v. California Department of Forestry.***

(Headwaters Litigation.) The Attorney General represents several state agencies in defending their approval of environmental documents for timber harvesting by Pacific Lumber Company in Northern California. After the trial court ruled against the state agencies, the California Court of Appeal reversed the trial court's decision. In 2008, the Supreme Court found that the Department of Forestry did not approve a sustained yield plan as required by the Forest Practice Act, and that the Incidental Take Permit was inconsistent with the mitigation requirement of the California Endangered Species Act. The court also found that the agencies had complied with CEQA and that the Department of Fish and Game had properly approved the Streambed Alteration Agreement.

## Consumer Law Section

The Consumer Law Section works to solve marketplace fraud in areas such as:

- Predatory lending, home mortgage, refinance, and foreclosures;
- Living trusts, annuity sales and fiduciary abuses;
- Travel agents and travel industry;
- Telecommunications, including junk faxes and unauthorized charges on cell phones;
- Sweepstakes;
- Identify theft;
- Household movers;
- Credit repair, debt collection and consolidation;
- Health fraud, nutrition, prescription drug advertising and health care;
- General advertising, retail sales and warranties;
- Automobile sales, leases and repairs;
- Immigration consultants;
- Vocational schools;
- Privacy and e-commerce.

In these cases, the Attorney General seeks restitution to consumers, civil penalties, and injunctive relief to halt the continuation of illegal activities.

Significant cases include the following:

***People v. Countrywide Financial Corporation.*** In 2008, the Attorney General filed a complaint against Countrywide Financial Corporation, its Chief Executive Officer, its President, and its lending affiliates. The complaint alleges that Countrywide's loan officers and brokers misrepresented or obfuscated the fact that borrowers who obtained certain types of home loans, such as pay option adjustable rate mortgages (ARMs) and other ARMs would experience dramatic increases in monthly payments and that Countrywide made these loans without regard for whether the borrowers could afford them. According to the complaint, Countrywide also paid greater compensation to brokers for loans with higher interest rates and prepayment penalties in order to sell those loans for higher prices on the secondary market. Additionally, Countrywide pushed its borrowers to refinance serially, repeatedly urging borrowers to obtain new Countrywide home loans to pay off their current loans. These deceptive business practices contributed to a dramatic increase in defaults and foreclosures. The complaint seeks restitution, civil penalties and an injunction barring defendants from continuing to engage in these practices.

***People v. Merck & Company.*** (Vioxx.) California and 30 other states filed final judgments against Merck for its deceptive promotion of Vioxx, a COX-2 inhibitor drug. Among other restrictions, the judgment prohibits deceptive direct-to-consumer advertising and deceptive use of scientific

data when marketing to doctors. Merck was ordered to pay \$59.5 million to the states.

***People v. Family First Advanced Estate Planning.*** This case involved a living trust mill scheme, in which non-attorneys solicited seniors for in-home visits to explain living trusts or to review their existing trusts. The visits were used to give legal advice unlawfully in connection with selling trusts and annuities. The judgment enjoined the continuation of these illegal activities and required defendants to pay \$5.5 million to consumers who were charged surrender penalties, \$1 million for civil penalties and \$700,000 to the state.

***People v. AT&T Mobility.*** This case alleged that AT&T Mobility (formerly Cingular Wireless) improperly charged customers for calls made after their cell phone was lost or stolen. The final judgment stopped the company from using an automatic billing practice. Under the judgment, if a customer alleges that charges were unauthorized and incurred after their phone was lost or stolen, the customer has the right to an investigation and to submit corroboration that the calls were unauthorized.

***People v. Jackson Hewitt, Inc.*** A judgment in this case resolved an investigation into a variety of unlawful and unfair practices involving Jackson Hewitt's marketing of high-cost "refund anticipation loans" (RALs) to its tax-preparation customers. The company's advertisements portrayed RALs as "refunds" instead of loans, and discouraged customers from asking for direct tax refunds from the IRS for free. Further, the company targeted its loans to the working poor – people eligible to receive the "Earned Income Tax Credit" (EITC) – then charged those same customers an extra \$10 for a loan because they received the EITC. Under the terms of the judgment, Jackson Hewitt, the nation's second-largest tax preparer, stopped its practices and paid \$4 million in restitution to customers who purchased RALs and "accelerated refund" products, and \$1 million in civil penalties and costs.

***People v. Corinthian Schools, Inc. and Titan Schools, Inc.*** Private vocational schools, Bryman College, Everest College, and National Institute of Technology, charged from \$7,000 to \$27,000 for several courses that students financed by a combination of federal guaranteed and private student loans. The Attorney General alleged that Corinthian and Titan misrepresented the percentages of students who obtained employment after completing courses offered by the schools, failed to meet the minimum standards required under California law, and engaged in false advertising and unfair competition. The final judgment required Corinthian to stop offering 11 substandard programs and to stop making misrepresentations, including the likelihood that students would find employment and the amount of potential wages they would earn. Corinthian and Titan provided \$5.8 million in restitution, and paid \$700,000 to the state in civil penalty fees, expenses and costs.

***People v. Walgreens.*** Walgreens failed to properly safeguard and destroy the personal financial information of its consumers in violation of California law. Walgreens had no written policies and no specific training for its employees regarding safeguarding confidential customer

information. The Attorney General obtained a judgment under which Walgreens will comply with state laws, implement adequate retention and disposal policies, implement a training program, and designate a privacy officer to ensure that their policies are properly implemented.

## Antitrust Law Section

The Antitrust Law Section is responsible for civil and criminal enforcement of California's antitrust laws and has authority to file civil actions under federal antitrust law. The section works closely with other states and with federal antitrust enforcement agencies to ensure that anti-competitive and unfair business practices, such as price-fixing, are prevented and stopped.

The section investigates potential antitrust violations, analyzes mergers and acquisitions, litigates cases in both state and federal courts, and prosecutes criminal cases.

Significant cases include the following:

***United States v. Microsoft.*** In 2007, after five years of the California Attorney General and the U.S. DOJ jointly monitoring the Microsoft Corporation and its competitors, California and several other states presented the court with an effectiveness report. In 2008, the states were chosen to take the lead in monitoring Microsoft's compliance with the consent decree for an additional two years to restore competition.

***California v. Infineon.*** This California-led multi-state case concerns price-fixing by manufacturers of computer memory chips. Several of the companies, including major manufacturers with domestic headquarters in Silicon Valley, pled guilty to price-fixing in federal court. In late 2007, two settlements, totaling over \$90 million, were filed. Litigation against the remaining defendants is ongoing, and the case remains pending in the federal court.

***California v. Safeway.*** This federal lawsuit challenged a profit-sharing agreement among the major supermarket chains in connection with a major 2003-2004 Southern California strike and lockout of union employees. In early 2008, an earlier ruling that the profit-sharing agreement was not exempt from the antitrust laws by virtue of its collective bargaining context was reaffirmed and reinforced by a new judge. This matter is now on appeal.

***In re Ovcon Oral Contraceptives.*** This is one of several lawsuits filed by the Attorney General challenging agreements between pharmaceutical manufacturers to delay the launching of generic equivalent drugs. This multi-state litigation, brought in 2005 jointly with the Federal Trade Commission, was settled against Warner Chilcott in 2007 and against Barr Pharmaceuticals in 2008 for substantial civil penalties and injunctive relief.

## Civil Rights Enforcement Section

The Civil Rights Enforcement Section enforces civil rights on behalf of state agencies and on behalf of the Attorney General in his independent capacity. The section concentrates on matters in which there is a pattern or practice of legal violations or where there is an important issue. The section investigates and files civil actions and amicus briefs in state and federal courts.

Significant cases include the following:

***People v. County of Marin.*** In 2007, the Attorney General completed his oversight of a settlement reached with the County of Marin to improve its compliance with state disabled access regulations. The county substantially improved its performance in this area and voluntarily continued to implement the reforms mandated by the settlement.

***People v. County of Kern; People v. County of Santa Cruz.*** In 2007, settlements in these two cases were reached to improve physical access to polling sites for people with disabilities. These cases were the first of this type ever filed by the Attorney General. Both counties agreed to take measures to ensure that all polling sites are accessible and agreed to a timetable to accomplish this goal.

***Chamber of Commerce v. Brown.*** The Attorney General vigorously defended a state law that prohibited employers from using state funds to support, oppose or deter union organizing of their employees. Although the Attorney General obtained a favorable ruling from the U.S. Ninth Circuit Court of Appeals, the decision was reversed. In 2008, the U.S. Supreme Court concluded that the state law was preempted under the National Labor Relations Act.

***North Coast Women's Medical Group v. Superior Court.*** In 2007, the Attorney General filed an amicus brief in the California Supreme Court in support of a woman who was allegedly refused fertilization services by a medical practice because she was an unmarried lesbian. The medical practice asserted that its actions were protected by the constitutional right to free exercise of religion. Our amicus brief argues that a religious objection defense is unavailable in a state civil rights enforcement action under the Unruh Act. A decision is pending.

***People v. Home Improvement, Inc.*** In 2007, the Attorney General filed an Unruh civil rights case and secured a settlement against a large kitchen-remodeling contractor who refused to do business with certain racial and ethnic minorities. The contractor was enjoined from discriminating in the future and required to conduct training and pay civil penalties, attorney's fees and costs.

***Californians for Disability Rights, Inc. v. Mervyn's Department Stores.*** In 2007, the Attorney General filed an amicus brief in the California Court of Appeal in this suit against Mervyn's for its failure to provide adequate aisle space between its movable clothing racks to

ensure that customers who use wheelchairs can access the merchandise. The Attorney General argued that the state disability laws provide a more comprehensive standard of liability than the federal Americans with Disabilities Act. The case is pending.

***Von Saher v. Norton Simon Museum of Art.*** The California Legislature passed a law opening its courts to claims for the recovery of artwork looted during the Holocaust currently held by art museums and galleries. The Legislature revived and extended the state statute of limitations to file such claims through December 31, 2010. A lower federal court ruled that this law is unconstitutional because it violates the foreign affairs doctrine which grants the federal government broad and exclusive powers over foreign affairs. In 2008, the Attorney General filed an amicus brief arguing that the state law is constitutional because it does not run afoul of the foreign affairs doctrine.

## Corporate Fraud Section

The Corporate Fraud Section was created by merging the Energy and Corporate Responsibility Section and the False Claims Section. The section investigates and prosecutes corporate fraud, underground economy issues and other financial wrongdoing. The section may prosecute cases jointly with the U.S. DOJ or with local governmental agencies. Most false claims' cases are initially filed by qui tams (whistle blowers) who have inside knowledge about fraud against the government.

Significant cases include the following:

***People v. American Fund Distributors.*** This securities fraud lawsuit was brought against the distributor and investment advisor for the American Funds family of mutual fund. The defendants failed to disclose to investors their revenue-sharing agreements with brokers who were selling shares of the fund, and paying hundreds of millions of dollars in exchange for certain preferential marketing opportunities. The defendants argued that our state enforcement action was preempted by federal law. In early 2007, the California Court of Appeal, in a landmark published decision, ruled that the Attorney General's action was permissible. The case settled after the defendants agreed to make the required disclosures and to make other corporate governance reforms.

***People v. Edward D. Jones and Co.*** This securities fraud action was filed against a large, national securities broker-dealer doing business in California that failed to disclose to investors its revenue-sharing agreements with seven mutual fund entities. Hundreds of millions of dollars were exchanged for providing preferential marketing opportunities, such as inclusion on the firm's "preferred" list of mutual funds. The defendants argued that the case was preempted by federal law, but in 2007 the California Court of Appeal, in a published decision, ruled that the Attorney General's action was permissible. This case was settled in September 2008. Jones paid \$7.5 million in civil penalties, costs and attorneys fees.

***Department of Water Resources (DWR) v. Powerex Corp.*** In 2007, the California Supreme Court denied a petition for review filed by wholesale energy marketer Powerex. In doing so, the court rejected Powerex's argument that the DWR's state contract formation action alleging duress and undue influence over \$1 billion worth of electricity transactions during the California energy crisis was preempted by federal law. The Supreme Court's ruling clears the way for this case to proceed.

***State of California ex rel. Kevin Bartoo v. Hanson Aggregates Mid-Pacific.*** A qui tam plaintiff sued Hanson Aggregates and its predecessors alleging that Hanson under-reported royalties owed to the state for sand that it mined from submerged state lease sites in the San Francisco Bay and Suisun Bay beginning in the early 1990's. Hanson was also accused of over-mining its state lease sites, mining vast amounts of sand from areas in the Suisun Bay where they did not have leases, and filing false reports with various state agencies to hide their illegal mining operations. In 2007, the Attorney General settled the case for \$42 million. An additional \$6 million was paid by Hanson based on a higher royalty rate while the litigation was ongoing.

***State of California v. RMC.*** The Attorney General filed suit against RMC, a large sand-mining operator, alleging that RMC under-reported royalties owed to the state for sand it mined from submerged state lease sites in the San Francisco Bay and Carquinez Straights. RMC was also accused of over-mining on its state lease sites, mining sand from areas in the Suisun Bay where they did not have leases, and filing false reports with various state agencies to hide their illegal mining operations. In 2008, our office settled the case for \$1.1 million.

***People v. PacifiStaff, Inc.*** In 2007, the Attorney General filed a civil complaint against PacifiStaff, alleging unfair competition for promoting a business model that encouraged construction contractors to portray rank-and-file employees as officers and shareholders in order to qualify for an exemption from workers' compensation. PacifiStaff's scheme promoted appointing sham officers and issuing worthless shares. The settlement in this case included a permanent injunction, civil penalties, costs and attorney fees.

***People v. Brinas.*** This case involves numerous wage and hour violations by a contractor, including failing to pay minimum wages, overtime, and Employment Development Department taxes. The contractor also failed to provide workers with rest periods as required by law. A final judgment included a permanent injunction, restitution, and civil penalties.

***People v. Interwall.*** This case involves a drywall contractor who underpaid its workers. The employer used several different corporate shells in order to avoid its obligations to its workers by denying overtime pay, rest breaks, workers' compensation premium payments, and prevailing wages for public works projects. The complaint was filed alleging multiple violations of wage and hour laws, and the case is pending.

## Indian and Gaming Law Section

The Indian and Gaming Law Section provides legal representation and counsel to the Governor's Office, the DOJ Bureau of Gambling Control, the California Gambling Control Commission and other officers and agencies of the state in litigation and transactional matters involving issues of federal Indian law. Because issues of federal Indian law and state gambling law intersect in matters of gaming by Indian tribes, the section also provides counsel on a variety of matters in connection with Indian gaming. The section also provides legal representation and advice to the California Horse Racing Board and the State Lottery Commission.

**Gaming Compacts.** The Attorney General assisted the Governor in negotiating new compacts and compact amendments with a number of California's federally recognized Indian tribes. These compacts enhance environmental, consumer and employee safeguards to California's citizens in the expansion of the California Indian gaming industry, and ensure that the state receives a fair share of revenues from tribal gaming.

**Tribal Litigation.** The Attorney General defends the state in cases brought under the Indian Gaming Regulatory Act and gaming compacts negotiated by the Governor. The Attorney General also represents state court judges, state tax entities and others in cases contesting the exercise of state authority over tribal matters.

**Administrative Adjudication.** The office represents the Bureau of Gambling Control in administrative licensing matters to ensure that the controlled gambling industry complies with applicable laws.

## Land Law Section

The Land Law Section represents and advises the state in land use litigation and in certain cases involving lands owned and administered by the state for resource conservation or development. The section attorneys are authorities on laws pertaining to land use and resource regulation, real property, the public trust doctrine, oil and gas development and administrative procedure. The agencies represented by the section include the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the Resources Agency, and the state's nine conservancies and agencies implementing the CALFED Bay-Delta Program.

Significant cases include the following:

***In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings.*** The Attorney General has long been involved in efforts to address the severe resource problems facing the Sacramento-San Joaquin-San Francisco Bay Delta. These efforts have included defending the programmatic environmental impact report (PEIR), prepared for the state and federal CALFED Bay-Delta Program, in litigation before the California Supreme Court. CALFED was intended, among other things, to provide for the restoration of the Delta ecosystem,

to improve Delta water quality and to increase the water supply. In 2008, the California Supreme Court issued a decision upholding the PEIR.

***Casitas Municipal Water District v. United States.*** The Attorney General plays a significant role in developing "Takings Law" in both state and federal matters. In *Casitas*, the plaintiff claimed that a biological opinion which required water to be left instream to protect the endangered Southern California steelhead amounted to a physical taking of its water rights. On behalf of the State Water Resources Control Board, the Attorney General filed amicus briefs in the federal trial and appellate courts arguing that a restriction on water use cannot be deemed a physical taking of a water right under California law. The case is pending.

***Natural Resources Defense Council, Inc. v. Donald Winter, Secretary of the Navy.*** The Natural Resources Defense Council (NRDC) sued the Navy to challenge the use of sonar in training exercises because it was concerned about the effect of sonar on marine mammals. The lawsuit alleges violations of the National Environmental Policy Act, the Coastal Zone Management Act (CZMA) and the federal Endangered Species Act. Representing the California Coastal Commission, the Attorney General also sued the Navy for violating the CZMA and eventually intervened in NRDC's case. The federal court issued an injunction that allowed the Navy to continue to use sonar subject to conditions recommended by the Coastal Commission. The injunction, with modifications, was affirmed by the federal Court of Appeals. The Navy subsequently filed a petition for certiorari with the U.S. Supreme Court. The petition was granted and oral argument is scheduled for Fall 2008.

***Feduniak v. California Coastal Commission.*** The Attorney General represents the California Coastal Commission in cases that enforce the Coastal Act of 1976. In *Feduniak*, the California Court of Appeal upheld the Commission's authority to enforce a permit condition requiring the restoration of dune habitat. The Attorney General has also settled other Coastal Act enforcement cases involving either violations of coastal permit conditions or development without a permit which have resulted in over \$1 million in penalties and attorney fees.

***Neilson v. City of California City.*** California law authorizes redevelopment agencies to designate and rehabilitate blighted areas. To finance these activities, the agencies are allowed to capture increases in property tax revenues from the redevelopment area. These revenues would otherwise go to the state and to various local entities. In *Neilson*, the Attorney General intervened in a suit to challenge a local agency decision to designate 15,000 vacant acres in the Mojave Desert as "urban and blighted" to benefit the Hyundai Motor Company. The city and its redevelopment agency used the law to facilitate the construction of a test track facility for Hyundai. The California Court of Appeal agreed with the Attorney General's argument that this property did not qualify for redevelopment.

**Governor's Delta Vision Blue Ribbon Task Force.** In 2007, the office was asked to provide legal advice to the Governor's Delta Vision Blue Ribbon Task Force. The task force was established by the Governor to develop a strategic plan for managing the resources of the Delta by Fall 2008.

**Central Valley Flood Protection Board.** The Attorney General recently assumed responsibility for providing legal services to the Central Valley Flood Protection Board (formerly called the Reclamation Board). In recent legislation, this board was given expanded authority over flood control measures along the Sacramento and San Joaquin Rivers and their tributaries.

## Tobacco Litigation and Enforcement Section

The Tobacco Litigation and Enforcement Section enforces California's interest under the nationwide Master Settlement Agreement (MSA). Over the past ten years, tobacco companies have paid more than \$7.6 billion to California, its counties and four largest cities, under the terms of the MSA. Not only does the MSA require the tobacco companies to make annual settlement payments in perpetuity, but it also: (1) bans the targeting of minors in the advertising and promoting of cigarettes and smokeless tobacco; (2) limits outdoor advertising, brand-name sponsorships and brand-name merchandise; and (3) prohibits companies from misrepresenting the facts about the health risks of tobacco use. The MSA also bans conspiracies to prevent the dissemination of information about the health hazards of tobacco use and to suppress research into the effects of tobacco use on health and the development of new, possibly safer, tobacco products.

In addition to enforcing the MSA, the section enforces laws regulating the marketing and sale of tobacco products, such as the state law that outlaws cigarette giveaways on property that is open to the general public, laws restricting the sale of tobacco over the Internet, and financial-responsibility laws for cigarette manufacturers.

Significant cases include the following:

**Sanders v. Brown.** The Tobacco MSA was successfully defended in a federal antitrust challenge. The plaintiff, filing on behalf of all smokers who purchased cigarettes in California over the past four years, claimed that the MSA created a massive price-fixing scheme that allows the tobacco companies to charge ever higher prices without fear of competition. In a significant victory, both the federal district court and the appellate court resoundingly rejected these claims.

**People v. U.S. Smokeless Tobacco Co.** In this action, U.S. Smokeless was sued over several alleged MSA violations arising out of the company's Skoal brand name sponsorship of drag racing sanctioned by the National Hot Rod Racing Association (NHRA). The company sponsored events in which minors competed, sponsored more than one series of races, and sponsored more than one entrant in the POWERade

racing series. In 2007, the NHRA changed its rules to bar drivers under the age of 18 from competing in national events that are part of the POWERade racing series. The state and U.S. Smokeless reached a settlement in which the company agreed to pay \$1.5 million and to sponsor only one race car beginning with the 2008 season.

***Tobacco Retailing Agreement with Kroger.*** The Attorney General led multi-state negotiations with Kroger, the nation's largest grocery chain, regarding its retailing practices covering youth access to tobacco products. In 2007, an agreement was reached between the company and 42 Attorneys General affecting 2,468 supermarkets in 31 states and 779 convenience stores in 15 states. Nearly 500 Kroger stores are operating in California under the Ralph's, Food 4 Less, Foods Co. and Quik Stop banners. The agreement requires Kroger to implement comprehensive retailing practices to prevent youth access to tobacco products in its stores and franchise outlets. This is the 11th such agreement produced by an ongoing, multi-state enforcement effort. Previous agreements cover all 7 Eleven, CVS, Walmart, Walgreens and Rite Aid stores, and all gas stations and convenience stores operating under the Conoco, Phillips 66, 76, Exxon, Mobil, BP, Amoco, ARCO and Chevron brand names in the signing states. Including a separate litigation settlement between our office and Safeway, these agreements cover over 80,000 retail outlets across the nation.

## Charitable Trusts Section

The Charitable Trusts Section provides oversight of approximately 90,000 charities and 400 fundraising professionals. The section is responsible for three principal functions: (1) identifying, registering, collecting and maintaining public records for California charities and their fundraisers; (2) prosecuting charity fiscal abuse, including fraud, diversion and mismanagement; and, (3) reviewing sales of non-profit hospitals.

Millions of dollars for charities have been recovered through negotiated settlements and civil judgments. More than 250 investigations and cases are currently pending, involving self-dealing, illegal loans to directors, excess compensation and other losses or threats to charitable assets. During the biennial period, the section reviewed 150 transactions and 1,500 dissolution waivers, and responded to 12,000 requests for information.

***People v. Aaron Tonken.*** In this lawsuit, the Attorney General recovered \$2 million in donations from major Hollywood fundraising events that had been illegally diverted to a charity that was used for the defendants' personal gain.

***Estate of James Johnson.*** In this lawsuit, over \$1 million was recovered by the Attorney General and restored to the Johnson Charitable Trust, after trustees and their advisors had diverted funds for their personal use.

**Investigation of Noah's Wish.** Noah's Wish was formed to provide for the needs of animals affected by natural and human-caused disasters. Immediately after Hurricane Katrina, the organization issued press releases seeking donations and leading donors to believe that their donations would directly benefit animal victims. The Attorney General's audit revealed that approximately \$8 million was raised, but only \$1.5 million was spent on hurricane relief. A settlement was entered whereby Noah's Wish paid \$4 million to the Greater New Orleans Foundation for its intended purpose. The Attorney General imposed new fiscal and governance controls and obtained an agreement prohibiting the executive director from serving in a fiduciary capacity on behalf of any California charity for five years.

**Charitable Trusts Website.** The Attorney General's Charitable Trusts website provides guidance regarding charitable laws and regulations, information on making wise donation choices and information on cases and settlements.

**Registry Automation.** The Registry of Charitable Trusts is in its final phases of implementing automated processes that will enhance its ability to address compliance issues, allow public access to all documents filed with the registry, and permit registrants to file documents and pay registration and filing fees on-line.

## DIVISION OF CIVIL LAW

The Civil Law Division, through its 617 employees, is comprised of eight sections. Most of the work of the division is non-discretionary, client-directed and defensive. In addition to client work, the division represents the Attorney General and the state in civil matters, including elections, initiatives and referendums, along with prosecutorial or plaintiff-oriented work. The division is presently handling over 18,286 cases.

The primary sections of the Civil Law Division include the following:

- Business and Tax
- Correctional Law
- Employment, Regulation and Administration
- Government Law
- Health, Education and Welfare
- Health Quality Enforcement
- Licensing
- Tort and Condemnation

### Business and Tax Section

The Business and Tax Section protects the state's treasury by defending the validity of California's tax structure. The section represents three major state taxing agencies:

- Franchise Tax Board (personal and corporate income taxes);
- Employment Development Department (employment taxes);
- Board of Equalization (sales and use taxes, and utility and property taxes).

The section helps to protect citizens' insurance, real estate and financial interests, and the interests of members of the labor and business communities by representing major business regulatory agencies and their officials. Clients include the Insurance Commissioner, the Commissioner of the Department of Financial Institutions, the Real Estate Commissioner and the Industrial Welfare Commission. The section appears in all levels of state and federal courts.

Significant cases include the following:

***Small v. Superior Court.*** This class-action lawsuit involved construction workers seeking unpaid overtime wages and other benefits. The Attorney General intervened on behalf of the Industrial Welfare Commission (IWC) to challenge a trial court ruling against the workers and to defend an IWC wage order. The wage order required that construction, logging, drilling and mining workers receive California's wage and hour benefits. The case involved millions of dollars in potential back wage claims for unpaid overtime, meal periods, rest periods and other benefits. The California Court of Appeal ruled that the IWC the wage order was invalid.

***Northwest Energetic Services, LLC v. Franchise Tax Board;***  
***Ventas Finance I, LLC v. Franchise Tax Board;***  
***Bakersfield Mall, LLC v. Franchise Tax Board.*** These class-action cases challenge a fee imposed upon limited-liability companies registered in California, alleging that the fee discriminates against interstate commerce and violates the U.S. Constitution. Potential claims for refunds are estimated to exceed \$1 billion.

***Allstate Insurance Co. v. Poizner.*** This lawsuit defended the California Insurance Commissioner's order requiring Allstate Insurance Company to reduce its California automobile insurance rates by approximately 17 percent, which will result in a savings of \$200 million for California drivers. The Attorney General successfully opposed Allstate's request for a stay of the Insurance Commissioner's order. The denial of Allstate's stay request has resulted in a prompt reduction of its automobile insurance premiums for California drivers. After our win on the stay motion, Allstate dismissed its writ petition challenging the rate reduction order.

***Equilon Enterprises v. State Board of Equalization.*** This action successfully defended a claim by Shell Oil Company that the gasoline industry bears a disproportionate share of the fees that support California's childhood lead-poisoning prevention program. Potentially at stake was over \$200 million in fees and the very existence of the program.

## Correctional Law Section

The Correctional Law Section serves as litigation counsel for the Governor, the Department of Corrections and Rehabilitation (CDCR), the Division of Juvenile Justice, and the Board of Parole Hearings, the Department of Finance and the Department of Mental Health in civil actions brought by state prisoners regarding prison conditions and certain aspects of parole proceedings. Over 165,000 prisoners, 125,000 parolees, and 2,500 youthful offenders are under the jurisdiction of the section's client agencies.

The section is currently defending state officials in several thousand individual lawsuits brought by prisoners. Successful defense of these

cases saves millions of taxpayer dollars in potential liability. The Attorney General is defending 21 class-action lawsuits that include the following:

- ***Farrell v. Tilton***. Challenges many policies and practices of the CDCR, Division of Juvenile Justice.
- ***Armstrong v. Schwarzenegger***. Questions the Board of Parole Hearings and CDCR's compliance with the Americans with Disabilities Act and the Rehabilitation Act.
- ***Coleman v. Schwarzenegger***. Challenges system-wide mental health care.
- ***Harrington-Wisely v. CDCR***. Contests the use of sensitive x-ray scanning devices on visitors at prisons.
- ***Plata v. Schwarzenegger***. Challenges system-wide medical practices.
- ***Morales v. Tilton***. Opposes the lethal-injection procedures used to carry out the death penalty.
- ***Valdivia v. Schwarzenegger***. Challenges the parole revocation procedures for adult offenders.

## Employment, Regulation and Administration Section

The Employment, Regulation and Administration Section provides legal representation to state agencies and state officials in court and administrative proceedings involving personnel matters and claims of employment discrimination, harassment and terms of employment. The section also provides advice, training and outreach programs on a variety of employment matters so that client agencies and their employees can better detect, remedy and prevent discrimination and harassment in the workplace. In addition, the section represents specific law enforcement and regulatory state agencies in matters affecting public safety, such as vehicle licensing, liquor licensing and attempts by criminal defendants to obtain personal information of peace officers.

Significant cases include the following:

***Green v. State of California***. The Attorney General's representation before the California Supreme Court in this disability discrimination case settled an important legal issue, providing that the employee — and not the employer — has the burden of establishing that the employee can perform the essential functions of the job.

***Troppman v. Valverde***. In this case, the California Supreme Court found that the Department of Motor Vehicles (DMV) did not have to prove that a person arrested for "driving under the influence" was caught in the act of

engaging in driving in order to suspend a person's driver's license for refusing to submit to chemical testing after a lawful arrest, so long as there was evidence demonstrating that he had been driving. The issue divided appellate courts for over 20 years. This decision aids the DMV in its mission to protect the public from drunk drivers.

***Commission on Peace Officer Standards and Training v. Superior Court.*** This case addressed the delicate balance between the right of the public to receive information about peace officers, and the rights of peace officers to keep personal information private. The Attorney General's work before the California Supreme Court resulted in a decision that provided guidance to public employers when responding to requests from the public.

***Department of Motor Vehicles and People of State of California v. Cars 4 Causes.*** In this action brought on behalf of Californians, the Attorney General is seeking to enjoin unfair business practices relating to the sales of unsmogged vehicles for export and false advertising related to those sales. The Attorney General's efforts will protect consumers and ensure that such vehicles do not negatively impact the environment.

## Government Law Section

The Government Law Section represents the state's constitutional officers, including the Governor and the Attorney General, in civil litigation. The section defends state statutes against constitutional challenges, carries out the Attorney General's role in preserving the integrity of the electoral process through the preparation of titles and summaries for proposed initiatives, serves as counsel to the State Treasurer and various state agencies with regard to the issuance of bonds, assists state agencies in handling contract and procurement disputes, and advises clients on issues relating to public records, open meeting laws and conflicts of interest.

Significant cases include the following:

***In re Marriage Case.*** In a landmark decision in 2008, the California Supreme Court held that the Constitution protects same-sex couple's right to marry. This case decided the constitutionality of the state's law limiting marriage to the union of a man and a woman. In May 2008, the Supreme Court held that the laws limiting marriage to the union of one man and one woman violated the fundamental right to marriage safeguarded by the California Constitution. The court held that the state's interests in maintaining the common and traditional definition of marriage and in deferring to the ongoing legislative efforts to protect same-sex couples through the domestic partner laws did not constitute a compelling governmental interest. Separately, the court also held that the marriage laws discriminated based on sexual orientation.

***Bowen v. Election Systems & Software, Inc.*** On behalf of the Secretary of State, the Attorney General sued a voting system vendor for unauthorized changes to the AutoMARK A200 ballot-marking device. The Secretary of State contends that the vendor made unauthorized changes to its AutoMARK A200 and then sold those altered machines to five California counties.

***County of San Diego v. San Diego National Organization for the Reform of Marijuana Laws (NORML)***. This matter presented two issues: (1) whether the state's medical marijuana laws are in conflict with the federal Controlled Substances Act (CSA) and thus preempted under the federal supremacy clause; and (2) whether the California Legislature improperly amended Proposition 215 when it created the Medical Marijuana Card Program (MMP). In a published opinion, the Court of Appeal gave the counties limited standing to challenge only the statutory provisions of the MMP that impose specific obligations on them. The court held that the provisions that the counties could challenge do not conflict with the CSA. The court further found that the challenged provisions of the MMP did not amend Proposition 215 in violation of section 10(c) because the MMP provides separate protections for persons engaged in the medical marijuana programs.

***Legal Services for Prisoners with Children v. Bowen***. The central issue in this case is whether the California Constitution and statutory provision that prohibit felons on parole from voting, violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. This case is pending in the California Court of Appeal.

***Shaw v. John Chiang***. This case challenges certain provisions of the 2007 Budget Act and related legislation. Plaintiffs assert that approximately \$1.2 billion in sales and use taxes collected on vehicle fuel was improperly appropriated: (1) to make current and reimburse past debt service payments on various transportation bonds; and (2) to fund various transportation programs. The trial court concluded that the \$409 million reimbursement to the General Fund from the Public Transportation Account for past debt service payments was illegal and the remaining \$779 million in challenged appropriations was lawful. The case is pending in the California Court of Appeal.

***Taxpayers for Improving Public Safety v. Schwarzenegger***. This lawsuit alleges that the revenue-lease bonds authorized by the Public Safety and Offender Rehabilitation Services Act of 2007 violate the constitutional limit on state borrowing without voter approval. Plaintiffs contend that the lease-revenue bonds constituted "debt" that would require approval by a public vote. The trial court ruled in favor of the state's motion to dismiss the case. The case is pending in the California Court of Appeal.

***Video Software Dealers' Association v. Schwarzenegger***. The case addresses whether a law making it unlawful to sell extremely violent video games to minors under the age of 18 violates the First Amendment of the U.S. Constitution. In 2007, a permanent injunction was issued prohibiting

enforcement of the law. This case is pending in the U.S. Ninth Circuit Court of Appeals.

## Health, Education and Welfare Section

The Health, Education and Welfare Section represents over 40 state agencies in trials, writs, and administrative hearings, and appears in all federal and state courts. A number of cases concern challenges to statewide programs with fiscal impacts ranging from \$100 million to \$1 billion. Issues include: free and low-cost medical care (Medi-Cal, Healthy Families), statewide educational testing programs, welfare and food stamps, mental health and services for persons with developmental disabilities, public health programs, nursing home regulations, adoptions, and child support enforcement.

Significant cases include the following:

***Biomedical Patent v. Department of Health Care Services.*** This patent-infringement case involves an assertion of sovereign immunity by the California Department of Public Health (formerly the Department of Health Services). The federal court dismissed the action in the state's favor, concluding that: (1) the department had not waived its sovereign immunity by earlier intervening in a virtually identical case involving the same parties; and (2) the state has not constructively waived its sovereign immunity in all patent-infringement cases by virtue of invoking a federal forum to protect its own patent rights. Following a lower court affirmance from the U.S. Ninth Circuit Court of Appeals, Biomedical Patent filed a petition for writ of certiorari. The U.S. Supreme Court has invited the U.S. Solicitor General to offer an opinion on whether certiorari should be granted.

***Brothers v. Kern.*** In a published decision, the California Court of Appeal found that the right to counsel in a capital murder case was not violated when remaining funds in a client trust account were withdrawn to pay child support rather than to pay defense counsel. The court found that the Sixth Amendment to the U.S. Constitution does not protect a criminal defendant's assets from a prior valid claim, especially an existing child support obligation. The court also found that the trial court properly ordered child support based on imputed interest income (as if defendant's funds had been invested), and had discretion to order the defendant to post the funds as a security deposit to secure future support payments.

***Capitol People First v. Department of Developmental Services.*** This lawsuit alleges that individuals with developmental disabilities are being unnecessarily institutionalized in violation of the Americans with Disabilities Act, the State Lanterman Act, the Medicaid Act and several constitutional provisions. Plaintiffs seek changes to the developmental center system that could potentially cost the state over \$1 billion. The case is pending.

***Independent Living Center v. Bonta.*** In this case, "dual eligible" recipients under Medi-Cal and Medicare challenge the federal Medicare Drug Prescription Modernization Act and seek to reinstitute California's

previously expansive list of drugs covered by Medi-Cal. The new federal drug program eliminated many drugs formerly authorized under Medi-Cal. The case is pending.

***Katie A. v. Bonta (Department of Health Care Services).*** This statewide class action against the Departments of Health Care Services and Social Services seeks to expand Medicaid-covered services under the Early and Periodic Diagnosis, Screening and Treatment Program for children in foster care – and those at imminent risk of foster care placement – who have a mental illness or condition. Plaintiffs allege that expansion of these services are required in order to comply with the Americans with Disabilities Act, the Medicaid Act, the Rehabilitation Act and other constitutional and statutory provisions. The potential fiscal liability to the state ranges from several hundred million dollars to over \$1 billion.

***Coachella Valley Unified School District v. State.*** This case challenges the California Standards Test and the California high school exit exam, alleging that the testing system violates the California Constitution's educational guarantees, constitutes an illegal expenditure of taxpayer funds and violates the federal No Child Left Behind (NCLB) Act. The superior court entered judgment in the state's favor on the taxpayer and CLUB claims. The plaintiffs appealed the court's judgment regarding the NCLB claims and the dismissal of the state and Governor. The appeal is pending.

***Valenzuela v. O'Connell; Chapman v. Department of Education.*** Representing the Superintendent and the Department of Education, the Attorney General successfully defended two separate class action-styled lawsuits that sought to enjoin or fundamentally alter the California high school exit exam.

***Guillen v. Schwarzenegger.*** In this case, plaintiffs sought a cost-of-living increase, retroactive to October 2003, for all CalWORKs beneficiaries due to changes in the vehicle license fee program. An appellate court ruled on behalf of the state, saving it over \$500 million.

***Hydrick v. Davis.*** Sexually violent predators who are or were civilly committed to Atascadero State Hospital brought a class-action lawsuit alleging that their conditions of confinement violate constitutional standards. Plaintiffs seek wide-ranging changes at the hospital and monetary damages with potential liability of \$10 to \$50 million.

***People ex rel. Brown v. PuriTec.*** This action was filed by the Attorney General on behalf of California against a Nevada company that sold water-treatment devices to California consumers over the Internet. The company made substantiated performance- and benefit-related health claims for uncertified water treatment devices on its website. The trial court granted judgment for the state, imposed civil penalties against the company and ordered the company to make changes to its website. The California Court of Appeal held that California laws relied upon by the state were consistent with unfair competition statutes relied upon by the

Dormant Commerce Clause of the First Amendment of the U.S. Constitution.

***Sexually Violent Predators Conditional Release Cases.*** Sexually violent predators (SVPs) who are committed to state mental hospitals may be conditionally released into the community as the final phase of their treatment. The Attorney General assists the Department of Mental Health and local courts on a number of SVP-release cases around the state to ensure that the SVPs are properly and safely placed in local communities.

***Willmer v. Willmer.*** The Attorney General prevailed in a rare California decision regarding enforcement of an international child support order, an issue of increasing importance in family law. In a published California decision, the Court of Appeal concluded that the Uniform Interstate Family Support Act (UIFSA) authorized enforcement of a foreign judgment for child or spousal support in California, and that Germany was a “reciprocating state” for purposes of UIFSA by virtue of a declaration of the Attorney General.

## Health Quality Enforcement Section

The Health Quality Enforcement Section prosecutes disciplinary proceedings against physicians who are licensed by the California Medical Board and provides ongoing review of the board's investigative activities. It also prosecutes disciplinary cases for other allied health boards. Additionally, the section seeks temporary restraining orders and interim suspension orders when emergency relief is necessary to prevent imminent harm to public health, safety and welfare.

Significant cases include the following:

***People v. Bernard N. Bass, M.D.*** This case was one of many actions brought to suspend or restrict the license of medical practitioners during the pendency of criminal charges. In this case, Dr. Bass was charged with writing 406 prescriptions without a valid DEA license during a two-month span. He surrendered his license to prescribe controlled substances after Ventura County Sheriff's detectives searched his office and home.

***In the Matter of the Accusation Against Jeffrey R. Beck, D.O.*** This action was brought to revoke the medical license of Dr. Beck whose Maryland license had been suspended after he was caught on tape during a nationally televised *Dateline* pedophile sting operation. After being suspended by Maryland, Dr. Beck relocated to California where he reactivated his medical license. After a four-day administrative hearing, his California medical license was revoked.

***In the Interim Order of Suspension Against Marcia McCulley, L.M.*** This case was brought against McCulley, a licensed nurse-midwife, based on numerous complaints from Simi Valley Hospital. McCulley

allegedly provided grossly substandard care, allowing several women to nearly bleed to death during childbirth and causing one fetal death.

## Licensing Section

The Licensing Section provides legal services to regulatory agencies that were created to protect consumers from harm from over one million licensed businesses and professionals operating in California.

The clients of the Licensing Section are responsible for the regulation of:

- Accountants
- Architects
- Electronic and Appliance Repair Persons
- Boxers
- Shorthand Reporters
- Appraisers
- Trainers of Service Dogs
- Geologists
- Cemetery and Funeral Business
- Dentists
- Osteopathic Doctors
- Chiropractors
- Registered and Vocational Nurses
- Behavioral Therapists
- Optometrists
- Barbers and Cosmetologists
- Pharmacists
- Psychiatric Technicians
- Real Estate
- Veterinary Doctors
- Engineers
- Dental Hygienists
- Contractors
- Private Investigators
- Martial Arts Fighters and Promoters
- Pest Exterminators
- Automotive Mechanics
- Smog Check Technicians
- Landscape Architects
- Yacht and Ship Brokers
- Pharmacies
- Suppliers of Home Furnishings
- Real Estate Appraisers

Significant cases include the following:

***National Association of Optometrists and Opticians (NAOO), LensCrafters v. Edmund G. Brown Jr.*** The section is defending a constitutional challenge to the California law that prohibits financial arrangements between optometrists and opticians. In 2002, the optical industry sued, alleging that the laws violate the Commerce Clause of the U.S. Constitution because they only allow in-state optometrists examinations in one location, but prevent out-of-state companies from offering the same service. The case remains pending before the federal Court of Appeals.

***People v. Cole National Corporation.*** In 2007, after six years of litigation, this case settled. An order was issued enjoining Pearle Vision from advertising optometrist services and resulted in a payment of \$2.5 million. The lawsuit was filed to stop Pearle Vision from controlling optometrists' prescriptions and to prevent it from running misleading eye exam advertisements. The case established important law in 2006 when the California Supreme Court held that California's Health Maintenance Organization (HMO) law, the Knox-Keene Health Care Service Plan Act of 1975, does not create an exemption for HMO providers from requirements imposed under California law.

**California Department of Consumers Affairs Bureau of Automotive Repairs v. EZ Lube, Inc.** This case involved disciplinary action against 76 EZ Lube shops in Southern California for numerous violations of the Automotive Repair Act. The violations included charging for unnecessary parts and services, making false or misleading statements, and departing from accepted trade standards. EZ Lube was found to have violated the law and was ordered to reimburse the Department of Consumer Affairs for hundreds of thousands of dollars in investigative costs.

## Tort and Condemnation Section

The Tort and Condemnation Section defends the state, its agencies and employees in civil actions for personal injury and property damage brought in both state and federal courts. In addition, the section handles litigation relating to the direct acquisition of property necessary for public projects (eminent domain) as well as defending against claims that a public project resulted in a taking or damage to private property (inverse condemnation). The section also defends the state in mass tort and inverse condemnation claims arising from natural disasters such as California floods, earthquakes, dust and fire storms, and complex construction litigation cases.

Significant cases include the following:

**Department of Corporations v. Superior Court of San Diego County.** Forty-four plaintiffs sued the Department of Corporations alleging a loss of \$7.7 million because Corporations rescinded desist and refrain orders against the issuers of securities. In a published opinion, the California Court of Appeal held that Corporations has broad discretion with respect to the issuance and termination of desist and refrain orders and that private rights of action against Corporations is precluded in these situations.

**Terry Blankenbaker v. Janet Ingram.** After six weeks of trial and 13 days of deliberation, a jury returned a verdict in favor of the California Highway Patrol (CHP) regarding a 1997 auto accident caused by a blinding dust storm near Barstow. The accident resulted in one death and serious injuries. Plaintiffs contended that the CHP was aware of the dust storm and failed to take timely protective measures. The case was previously tried in 2004 with a jury awarding \$4.7 million to plaintiffs. The state Court of Appeal reversed the decision and ordered a new trial. The jury in the second trial concluded that the CHP did not have notice of the dust storm condition in time to warn or protect the motoring public.

**Marck Vaught v. State of California.** In this case, the "bunkhouse rule" prevented plaintiff from recovering damages outside the limits of workers' compensation benefits. Workers' compensation is the exclusive remedy for injuries arising out of and in the course of employment. In this first published Court of Appeal decision applying the bunkhouse rule in over 25 years, the court concluded that the phrase "arising out of" encompasses injuries to an employee who is engaged in reasonable and expected use of

the residence, even if the activity is purely personal. The court concluded that "course of employment" is shown if the employment contemplates that the employee resides in employer-furnished housing.

## DIVISION OF CRIMINAL LAW

The Criminal Law Division, through its 679 employees, represents the People of the State of California in criminal cases, as mandated both constitutionally and statutorily. It coordinates and assists in the investigation and prosecution of large-scale, multi-jurisdictional investment frauds and business crimes, and investigates and prosecutes healthcare fraud and elder abuse. The division is presently handling 17,310 legal cases.

The division provides statewide leadership in crime prevention, responds to victims of crime and serves as a liaison to California's 107 Native American Tribes.

The primary sections and programs in the Criminal Law Division include:

- Appeals, Writs and Trials Section
- Correctional Writs and Appeals Section
- Special Crimes Unit
- Bureau of Medi-Cal Fraud and Elder Abuse
- Crime and Violence Prevention Center
- Office of Native American Affairs
- Office of Victim Services
- Spousal Abuser Prosecution Program

### Appeals, Writs and Trials Section

The Appeals, Writs and Trials Section is the core unit that carries out the Attorney General's responsibilities in criminal cases. Section duties include:

- Representing the People's interest in all criminal appeals;
- Representing the People's interests in state and federal habeas corpus proceedings attacking criminal judgments;
- Handling criminal trials and investigations where local prosecutors cannot proceed due to conflicts or recusal;
- Advising the Governor on extradition and clemency matters;
- Providing criminal law advice to local, state and federal law enforcement and prosecutorial agencies, and state legislators;

***People v. Dennis Nelson.*** In 1976, the body of a 19-year-old female was found in a ditch. Seminal fluid was recovered from her body, but no suspect was arrested. Eighteen years later, the DNA sample recovered from the victim was run through the DOJ DNA database and matched Nelson. Nelson was charged and convicted of rape and murder. On appeal, Nelson challenged the reliability of the DNA database methods. In Spring 2008, the Attorney General argued to sustain the conviction before the California Supreme Court. The decision remains pending.

***People v. Eric Leonard.*** In 1991, Leonard executed two people during a robbery of a convenience store. The following week, he executed three more people during the robbery of a pizza parlor. The killings appeared to be gratuitous, and he was dubbed by the local press as the infamous "Thrill Killer." After he was convicted by a Sacramento jury, Leonard appealed. In 2007, the California Supreme Court upheld the conviction.

***In re Dwayne McKinney.*** In 1980, McKinney allegedly shot and killed a Burger King manager during a strong-armed robbery. Several eyewitnesses identified McKinney, and a jury convicted him of murder. While serving a life term, a fellow inmate who was housed next to McKinney claimed that McKinney was innocent. Despite the fact that the inmate's story was inconsistent and that two eyewitnesses remained certain that McKinney was the killer, McKinney was released from prison in 2002. McKinney then filed a claim with the state, demanding that the state pay him approximately \$1 million under a statute that provides compensation for those who did not commit the crime for which they were convicted. Our office opposed McKinney's claim in a contested hearing. The Victims' Compensation and Government Claims Board agreed with our office and denied the claim.

***People v. Michael Pizarro.*** In 1989, Pizarro was convicted of raping and killing his 13-year-old half sister. On appeal, the California Court of Appeal determined that the trial court erred in admitting the results of DNA testing and the use of a genetic statistical database. Now, almost 20 years after the murder, the re-trial is underway.

***People v. Robert Cissna.*** In May 2006, Kimberly E., concerned for the well-being of her daughter, read 14-year-old Sarah's diary. An entry stated that Sarah's grandfather had been raping her since she was 9-years-old. Three days later, Sarah was interviewed by a social worker and disclosed that her grandfather had committed various lewd and lascivious acts upon her over a period of five years ending when she was about 12-years-old. Our office handled the case because Sarah's father is a deputy district attorney and was chief of the juvenile branch office when the molestation was disclosed. The Attorney General filed charges against Sarah's grandfather, Robert Cissna, and a jury convicted Cissna of continuous sexual abuse of a child under the age of 14. Cissna, who is 79-years-old, faces a prison term of between six and 16 years.

***People v. Chandler Cardwell.*** In August 2007, the Riverside County District Attorney sought an injunction against members of the East Side Riva (ESR) gang. Approximately 90 members of the gang were served a summons and complaint. Cardwell, an associate of the ESR gang, placed an advertisement in the local newspaper that included the District Attorney's home address and personal cell phone number. As a result of the newspaper ad, the District Attorney and his family were concerned for their safety and feared retaliation by the ESR gang. Within days, the defendant was arrested and his residence searched. Law enforcement found a .45-caliber Glock semi-automatic handgun, and a 12-gauge shotgun inside his residence. The Attorney General filed charges against Cardwell and he pled guilty to making a criminal threat.

***Albert Brown v. S.W. Ornoski.*** Brown ambushed, raped and strangled a 15-year-old girl on her way to school, and then made taunting telephone calls to her home and her frantic mother. On direct appeal in the 1980's and 1990's, the case went to the U.S. Supreme Court once and to the California Supreme Court three times. This case has been in federal habeas litigation since 1996, and was last argued in 2007 before the federal Court of Appeals. In May 2008, Brown filed for a writ of certiorari in the U.S. Supreme Court. This case has now been overseen by the last four California Attorneys General.

***John Visciotti v. Robert Ayers, Warden.*** Visciotti killed one man and shot a second man during a robbery and was sentenced to death. His conviction was affirmed by the California Supreme Court in 1996, and he sought collateral relief in the federal court. The U.S. Supreme Court denied his application for relief in 2002, yet Visciotti convinced a federal court to give him another evidentiary hearing in 2007. Our office brought this to the attention of the U.S. Supreme Court and was successful in asking the court to stay the proposed hearing.

***Mexican Mafia Investigation.*** In 2005, while incarcerated in San Diego, Mexican Mafia member Richard Buchanan arranged for Patrick Ponce to run the Mexican Mafia's narcotics and extortion activities in Imperial County. Ponce enlisted several local gang members, including a confidential informant, to sell heroin and extort money from drug dealers and alien smugglers. In 2006, the federal DEA and California Department of Corrections and Rehabilitation jointly launched *Operation Gangland* to infiltrate Ponce's organization. Through confidential informants, surveillance and wiretaps, the investigation revealed that Ponce ran a highly organized operation, with extortion and heroin trafficking as its primary activities. In 2007, the Imperial County District Attorney asked the Attorney General to assist in prosecuting the case. Buchanan, Ponce and 29 others were indicted on 46 felony charges, including conspiracy to commit extortion and narcotic crimes, torture, attempted murder, solicitation of murder, kidnapping, assault, extortion and attempted extortion, selling heroin and methamphetamine, and illegally possessing and selling

firearms. Approximately half of the defendants have pled guilty, and the others are scheduled to stand trial in late 2008.

***People v. Alfredo Valencia.*** In 1993, Valencia stabbed Roberto Cruz to death while robbing him. Valencia admitted that he murdered Cruz, but asserted that he did not rob him. He claimed he acted in the actual, but unreasonable belief in the need to defend himself while on methamphetamines. The California Supreme Court affirmed the imposition of the death sentence against Valencia.

***People v. Richard McKee.*** In a case of first impression, the California Court of Appeal held that Jessica's Law, which mandates indeterminate civil commitments for sexually violent predators, does not violate constitutional protection of due process, ex post facto and equal protection.

***Thomas Carey v. Matthew Musladin.*** The U.S. Ninth Circuit Court of Appeals ordered a new murder trial for Musladin after concluding that his constitutional right to a fair trial was violated when family members of the victim wore buttons at trial that bore a photograph of the victim. In 2007, the Attorney General appealed the decision to the U.S. Supreme Court, which unanimously reversed the Ninth Circuit's decision and reinstated the murder conviction.

***John Fry v. Cheryl Piller, Warden.*** The Attorney General obtained a unanimous decision from the U.S. Supreme Court in this noteworthy case which addressed the standard of review of state court convictions when reviewed by federal courts on habeas corpus. In 2007, the Supreme Court held that a prisoner may succeed on his habeas corpus petition only if he shows that a constitutional error at his state trial had a "substantial and injurious effect" on the outcome of his trial.

***John Cunningham v. California.*** In this landmark case on sentencing, the Attorney General defended California's determinate sentencing law (DSL) before the U.S. Supreme Court. In 2007, a majority of the court concluded that the DSL violated the U.S. Constitution because a trial court lacks the discretion to impose an upper term unless it found an additional aggravating factor not found by the jury. Relying on the Attorney General's advice, the California Legislature quickly modified the DSL to permit greater sentencing discretion to trial judges.

***People v. Marjorie Knoller and Robert Noel.*** In this notorious San Francisco dog-mauling case, a jury convicted Knoller of second-degree murder and Noel, her husband, of involuntary manslaughter, after their two large dogs attacked and killed a neighbor. The trial judge granted Knoller's request for a new trial, but our office successfully appealed that ruling to the California Supreme Court. In 2007, the Supreme Court ruled that the trial court applied the wrong standard in reducing Knoller's murder conviction. The Attorney General also successfully defended Noel's conviction.

***People v. Ronald Bell.*** Bell is one of the longest-serving inmates on death row, sentenced there after his 1979 conviction of the robbery and murder of a Richmond jeweler. The Attorney General successfully resisted his most recent challenge to his death sentence, in which he claimed his now-dead brother was the real killer. A referee appointed by the California Supreme Court took evidence and rejected Bell's claim. The court unanimously upheld the referee's findings in late 2007.

***People v. Ramon Salcido.*** In a case drawing international attention, Salcido was convicted and sentenced to death for the murder of his wife and six others, including two of the couple's young daughters. The Attorney General successfully defended Salcido's convictions and death sentence before the California Supreme Court.

***Dwayne Giles v. California.*** Giles killed his girlfriend to prevent her from testifying at his trial. In a case interpreting the U.S. Confrontation Clause, the U.S. Supreme Court held that a defendant forfeits his right to cross-examine a witness only when his "wrongdoing" was intended to keep the witness from testifying. The case was remanded for further proceeding in light of this holding.

## Correctional Writs and Appeals Section

The Correctional Writs and Appeals Section defends the policies and actions of prison officials and the executive branch, ensures that convicted felons properly serve their sentences under the conditions prescribed by law, and defends against legal challenges brought by parolees, juvenile offenders and persons committed to state hospitals. The majority of the section's work involves state and federal petitions for writs of habeas corpus, as well as related appeals challenging parole denials, parole revocations, and conditions of confinement in prisons, state hospitals and state juvenile facilities. Section cases may also arise from Probate Code petitions seeking conservatorship for medical care of inmates and from quasi-class action lawsuits by groups of inmates seeking non-monetary relief, such as the invalidation of a prison regulation or a change to the parole system.

Significant cases include the following:

***In re Sandra Lawrence.*** In 1971, Lawrence murdered her lover's wife after the lover told Lawrence that he would not get a divorce. Lawrence lived as a fugitive for 11 years, but in 1982, she turned herself in and was convicted of first-degree murder. She was sentenced to life with the possibility of parole. In 2005, the Board of Parole Hearings found Lawrence suitable for parole release. Governor Schwarzenegger, however, denied Lawrence's parole. Lawrence successfully challenged the Governor's decision in the California Court of Appeal and the Attorney General sought review in the California Supreme Court. The court will consider the extent and scope of judicial review of parole decisions by the Governor. The court has granted review in 11 other

parole cases. This case was argued in June 2008, and a decision is pending.

***In re Ronald Hayward.*** In 1978, Hayward fought with a man in a bar, stabbing the man 12 times and killing him. He was convicted of second-degree murder. In 2002, the Board of Parole Hearings found that Hayward was suitable for parole, but then-Governor Gray Davis reversed the board's decision. Hayward challenged the Governor's decision in the federal Court of Appeals, which ordered it vacated, concluding that there was no evidence demonstrating that Hayward poses a risk to the public and that the Governor's reliance on an unchanging factor, such as the crime, may amount to a violation of federal due process. The Ninth Circuit granted the Attorney General's petition for rehearing and heard argument in June 2008. A decision is pending.

***In re Nathan Pope.*** In 2002, Pope killed his victim while driving under the influence of alcohol and cocaine. He pled guilty to vehicular manslaughter, a non-violent felony, and two counts of alcohol-related driving causing great bodily injury, a violent felony. Although the five-year sentence on the alcohol-related driving offenses was stayed, prison officials determined that Pope was subject to a 15 percent limitation on the credits he could earn against his sentence because he had been convicted of two violent felonies. Pope successfully challenged this determination in a habeas corpus petition on the ground that he was not subject to the limitation because the sentences on his violent felonies were stayed. The Attorney General filed an appeal in the California Court of Appeal and prevailed. The appellate court analyzed the matter in accordance with the principles of California's three-strikes law and determined that Pope was subject to the limitation because without it, he could potentially serve less time than he would have if he had not caused the death of his victim. The California Supreme Court granted review and the case is pending.

***In re Leslie Van Houten.*** In 1969, Van Houten, a former Manson family member, participated in the brutal murders of Leno and Rosemary La Bianca. Van Houten was convicted of two counts of first-degree murder and received the death penalty. However, when California's death penalty was abolished in 1972, her sentence was commuted to life with the possibility of parole. The Board of Parole Hearings has never found Van Houten suitable for parole, and she has challenged her parole denials numerous times over the past several years. Van Houten is currently challenging her 2004 parole denial in federal court and the Attorney General is opposing her petition on behalf of the parole board.

### Special Crimes Unit

The Special Crimes Unit assists federal, state and local law enforcement agencies in the investigation and prosecution of large-scale, multi-jurisdictional investment frauds and business crimes. The unit also handles high-tech computer crimes where the scope and

complexity exceed the investigative and prosecutorial resources of the law enforcement agencies.

Significant cases include the following:

***People v. Michael Vousden.*** Vousden sold medical malpractice insurance to women's health clinics. After several clinics filed malpractice claims, an investigation revealed that Vousden was diverting insurance premiums for his personal gain. After a five-week jury trial, Vousden was convicted of grand theft and tax infractions.

***People v. Theodore Swain.*** Swain sold over \$13 million in investment mortgage certificates to investors. He failed to invest this money in legitimate real estate transactions. Following a six-week trial, a San Diego jury found Swain guilty of securities fraud and grand theft.

***People v. Clarence Joseph Hall III.*** Hall sold special event liability insurance for large, public events. He collected over \$2 million in insurance premiums for policies he failed to deliver. Hall was convicted of 63 counts of insurance fraud, theft and forgery, and was sentenced to state prison. Over \$1.2 million was seized by search warrant and distributed to over 420 California victims.

***People v. Charles Merritt-Osborne.*** Six defendants engaged in an intricate conspiracy to steal identities for the purpose of creating and incorporating fictitious corporations with falsified financial statements. Once they established corporate credit lines, defendants purchased gift cards, cellular phones and computer components to sell over eBay. Defendants failed to repay their purchase loans. The total loss to the victims exceeded \$2 million. Three defendants have entered guilty pleas and are awaiting sentencing. The remaining three defendants are awaiting trial.

***People v. Terrance Malone and Varee Hayes.*** Malone and Hayes, both Texas residents, were convicted of conspiracy and theft for their scheme of "refunding" stolen merchandise at upscale retailers, such as William-Sonoma. In four years, they traveled through 34 states returning merchandise and receiving credit in excess of \$250,000 from William-Sonoma alone. Evidence showed they engaged in over 2,000 return transactions in five years. They both entered guilty pleas and are awaiting sentencing.

## Bureau of Medi-Cal Fraud and Elder Abuse

Recently recognized by the federal Health and Human Services Agency as the premier Medicaid fraud control unit in the nation, the Bureau of Medi-Cal Fraud and Elder Abuse is a vertically integrated program where criminal and civil prosecutors work in close partnership with sworn law enforcement personnel and forensic auditors to fulfill its two-pronged mission: (1) to protect the state's \$38 billion Medi-Cal program from provider fraud and abuse; and (2) to investigate and prosecute elder abuse, as well as neglect and poor quality of care

occurring in health care facilities, such as hospitals, skilled nursing facilities and residential care facilities.

Significant cases include the following:

***People v. Tahir Saeed.*** Saeed, a kingpin in an organized crime ring that defrauded California's Medi-Cal program of more than \$20 million, received a prison sentence of more than 18 years. The sentence is the longest in United States' history for a healthcare fraud conviction.

***People v. Beverly Enterprises, Inc.*** The Attorney General sued the nation's largest provider of nursing home care, Beverly Enterprises, Inc., for providing substandard care. In addition to paying more than \$2.5 million in criminal and civil fines and penalties, all 60 Beverly facilities doing business in California are bound by a permanent injunction, requiring court-enforceable improvements in the quality of care they provide to more than 13,000 California patients.

## Crime and Violence Prevention Center

The Crime and Violence Prevention Center (CVPC) develops policy, programs and resources for crime prevention in areas such as, domestic violence, gangs, hate crimes, child abuse, elder abuse, human trafficking and illegal drug use. It partners with local, state and federal agencies and community organizations.

Significant highlights include the following:

***Safe Passage Partnerships to Reduce Gang Violence Around Schools.*** CVPC's community relations unit spear-headed a safe passage program partnership at 16 high schools in Southern California that were experiencing gang-related problems. More than 30,000 students facing gang-related threats were helped by this program. CVPC also participated in the California Multi-City Gang Prevention Network which works to reduce gang violence.

***Report on Human Trafficking.*** In 2007, CVPC released, *Human Trafficking in California, the Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*. This legislatively mandated report recommended: (1) to increase awareness of human rights abuse in California; (2) to bolster support for victims; (3) to provide better tools for law enforcement and prosecutors to combat this problem; and (4) to launch new programs to prevent human trafficking in California.

***Campaign Against Providing Alcohol to Minors.*** In 2007, CVPC launched the *Responsible Adults – Safe Teens*, a multi-media public awareness campaign to inform parents and others about state laws against providing alcohol to minors.

**Grant Awards to Strengthen School Safety.** The School/Law Enforcement Partnership, a joint effort of the California Department of Education and the Attorney General's Office, allocates over \$18 million annually through a grant process to support school violence prevention and school safety. In 2007, 36 California schools were awarded grants.

**Children Exposed to Domestic Violence.** In 2007, CVPC released a statewide law enforcement protocol, *Children Exposed to Domestic Violence*. This report was published to help law enforcement, child protective services and other organizations respond to incidents of domestic violence involving children. The report recommends procedures for protecting these at-risk children.

**Domestic Violence and Firearms Project.** The San Mateo and Butte County Sheriffs collaborated with CVPC and the Bureau of Firearms to implement the Firearms Domestic Violence Education and Intervention Pilot Project. The goal of this project is to protect family members from people who are prohibited from possessing firearms.

**Initiative to Protect Children from Violence.** Through the *Safe from the Start Project*, CVPC sponsored POST-certified training sessions, radio spots, and other public awareness activities to protect children from violence.

**SafeState Website.** CVPC's award-winning website, [www.SafeState.org](http://www.SafeState.org), which was developed to protect children from violence, received 750,000 visitors and distributed over 67,000 CVPC publications.

**Publications and Media Productions.** CVPC provided over 200,000 copies of its 60 publications to the public. CVPC also produced a dozen new publications and co-produced a DVD for the Division of Law Enforcement's recruitment of DOJ Special Agents.

**Child Abuse Prevention.** CVPC provided child-abuse training on state laws pertaining to identifying and reporting child abuse and neglect. CVPC assisted the State Child Death Review Council, which supports local child death review teams in their efforts to prevent fatal child abuse and neglect. The legislatively created council meets quarterly to discuss legislation, data collection and prosecution of child abuse and neglect cases.

## Office of Native American Affairs

The Office of Native American Affairs was established to coordinate with California's 107 federally recognized tribes. The office assists Native American communities by fostering good relationships between the DOJ, the Tribal governments, and state and local law enforcement agencies.

***Tribal Public Safety.*** The office assists and trains many California tribes as they develop police agencies and justice systems. To facilitate this effort, the office collaborates with tribes, sheriffs and district attorneys.

***Tribal and State Justice Conference.*** The office facilitates semi-annual Tribal and state justice summits on justice issues. The co-sponsors include state agencies, the California State Sheriffs' Association, Tribal governments, federal justice agencies and the International Association of Chiefs of Police.

## Office of Victim Services

The Office of Victim Services was created to respond on a statewide level to victims of crime and to ensure that victims are notified of criminal proceedings as required by the California Constitution.

***Capital Cases.*** The office notifies the families of victims in death penalty cases on the status of their case. When an execution is scheduled, the office prepares a press packet providing a detailed account of the victim's life and the impact of the murder on the family and the community. In the weeks leading up to an execution, staff work with the family and respond to their questions and concerns. Representatives from the office attend the execution and provide support to the family.

***Non-Capital Cases.*** The Attorney General is responsible for prosecuting all non-capital case appeals. The Office of Victim Services notifies victims on the status of these appeals.

***Community Outreach and Response.*** The office receives many calls from victims on a daily basis through its toll-free telephone number. It issues publications on victim issues, victims' rights, the appeal process, clemency and execution. These publications serve as a resource to victims, district attorneys, probation officers, and witnesses. The Attorney General also sponsors an annual Victims' Rights Conference which provides training and information to victims, law enforcement, district attorneys, and victims' rights groups.

## Spousal Abuser Prosecution Program

In 2007-2008, the Spousal Abuser Prosecution Program (SAPP) provided grants totaling \$3.27 million to 43 counties/district attorneys and four city attorneys for vertical prosecution, investigation, and counseling services for the most difficult family violence cases. These grants helped counties to review 37,919 cases of domestic violence. Of these cases, 17,924 cases of domestic violence were prosecuted and 11,930 defendants were convicted of domestic violence.

## DIVISION OF CALIFORNIA JUSTICE INFORMATION SERVICES

The Division of California Justice Information Services (DCJIS), through its 1,394 employees, provides accurate, timely and comprehensive criminal history and analysis data to police and sheriffs, district attorneys, and local and state regulatory agencies.

The bureaus within the Division of California Justice Information Services include:

- Application Development
- Criminal Identification and Information
- Criminal Information Analysis
- Infrastructure Support
- Departmental Services
- Computer Operations
- Operations Support

### Application Development Bureau

The Application Development Bureau develops and supports computer applications that are used by the DOJ and other law enforcement agencies. Significant developments on two of these systems are as follows:

***Automated Criminal History System.*** The Automated Criminal History System, the largest and most complex DOJ application, provides comprehensive information about people who have been arrested or convicted of a crime. The bureau is currently upgrading this application to improve the exchange of data with other agencies.

***Child Support Information System.*** The California Parent Locator Service, part of DOJ since 1953, was moved to the newly created Department of Child Support Services (DCSS). During the transition, DOJ maintained the Child Support Information System, processing over 2 million cases. In 2007, DCSS deployed its own statewide child support system, and the DOJ child support application was decommissioned.

### Bureau of Criminal Identification and Information

Comprised of eight programs, the Bureau of Criminal Identification and Information is the central repository of fingerprints and criminal history information used by local, state and federal law enforcement agencies, courts, regulatory agencies and the public.

***Automated Subsequent Arrest Notification Service.*** Since December 2007, the DOJ has been required to notify employers and regulatory agencies of an arrest of an employee or a licensee. New automation has enabled the bureau to more quickly notify employers and regulatory agencies of an arrest. Timely notification of arrests is essential for public safety because many employees hold positions of trust involving vulnerable citizens, such as children, the disabled and seniors.

***Automated Disposition Reporting.*** Case dispositions from county agencies are submitted electronically to the bureau for processing and updating in its Automated Criminal History System. In 2007, there were 1.1 million case dispositions submitted.

***Automated Fingerprint Identification System.*** CAL-ID, an Automated Fingerprint Identification System (AFIS), is the second largest fingerprint identification system in the nation, containing over 20 million criminal and applicant fingerprint records. In 2007, CAL-ID's AFIS increased its storage capacity to process a growing number of electronic fingerprint transactions. It processed approximately 1.5 million criminal and 1.6 million applicant transactions, and added 1.7 million new records.

***Automated Latent Print Section.*** This section compares finger and palm prints obtained at crime scenes with the DOJ's known criminal offender database. In 2007, the bureau installed new software to enhance matching compatibilities. In 2007, 3,000 suspects were identified, an increase "hit" rate of 10 percent.

***Live Scan Technology.*** Live scan technology electronically transmits fingerprints and up-to-date criminal history information for both criminal and applicant purposes. As of 2008, there are now 2,400 live scan devices installed throughout the state. The key benefit of this technology is that the response time to agencies submitting fingerprint data has dramatically shortened.

***Integration Efforts in 2008.*** The bureau automated its process for the collection and indexing of DNA samples in anticipation of the increased number of cases as a result of Proposition 69. Proposition 69 requires the collection of DNA samples from anyone arrested for a felony. Automation of the formerly manual process is projected to significantly reduce labor hours of local agencies.

## Bureau of Criminal Information Analysis

The Bureau of Criminal Information Analysis maintains several important automated systems, including: Missing and Unidentified Persons, Sex and Arson Offender Registrants, Wanted Persons, Domestic Violence and Restraining Orders, Stolen Vehicles, and Automated Property. The bureau also collects, maintains and publishes criminal statistical data, and maintains the Child Abuse Central Index.

Significant projects include the following:

**Violent Crime Information Network Renovation.** The Violent Crime Information Network is being upgraded to a web-based application to permit law enforcement agencies to access and update information on violent crime registrants. The project is scheduled to be completed by July 2010.

**Live Scan Registration Type-of-Transaction.** In July 2007, DOJ released a new live scan registration that is directly linked to the Violent Crime Information Network. This new system, called Registration Type-of-Transaction (REG TOT), is used by law enforcement agencies statewide to register both sex and arson offenders as required by the Penal Code.

### Infrastructure Support Bureau

The Infrastructure Support Bureau designs, coordinates, installs and supports networks that connect California's law enforcement community, DOJ, and national criminal justice systems.

### Departmental Services Bureau

The Departmental Services Bureau develops and maintains the DOJ Internet/Intranet, the Consolidated Firearms Information System and other computer and technology applications. The bureau also protects the systems from viruses and ensures privacy.

Significant projects include the following:

**Electronic Recording Delivery System.** The Electronic Recording Delivery system is used by county recorders to electronically record real estate transactions. The system became effective in 2007 and is overseen, certified and regulated by the Attorney General.

**Prescription Monitoring Program Information Exchange.** Misuse of controlled substances is a serious problem throughout the United States. The Prescription Monitoring Program (PMP) information exchange is a web-based service that was created to identify and prevent drug diversion by prescribers, dispensers and patients. The DOJ's PMP is being used as a model by other states.

**Armed and Prohibited Persons System.** The Department is tasked with determining the eligibility of people to purchase firearms in California. In 2002, the bureau created the Armed Prohibited Persons System (APPS), which made California the first state to use an automated system to track the owners of handgun and assault weapons and others who are ineligible to possess a firearm.

**Case Information Management System.** This computer technology helps law enforcement and agents fight crime by managing the enforcement and investigation of cases. The system encourages and supports cross-sharing and cross-case analysis.

## Computer Operations Bureau

The Computer Operations Bureau is responsible for 24-hour technology support to over 800 criminal justice agencies statewide. The bureau protects the confidentiality and integrity of the Department's sensitive and confidential data, checks for vulnerabilities, and detects intrusion into the DOJ network. In addition, the bureau monitors employees' use of the Internet and e-mail systems.

**CJIS Technology Refresh Project.** The CJIS Technology Refresh Project includes updating and installing: a mainframe for the Hawkins Data Center, a virtual tape system, storage area networks in Sacramento and Orange County, a disaster recovery mainframe system, and backup and recovery storage systems.

## Operations Support Branch

The Operations Support Branch provides training and operational advice to law enforcement agencies that use the DOJ communication systems and databases.

**Applicant Agency Compliance and Training.** The branch advises law enforcement agencies on policies, procedures and requirements regarding the California Law Enforcement Telecommunications System (CLETS) and the Criminal Justice Information System (CJIS).

**Law Enforcement Zone Meetings.** The branch coordinates the Attorney General's law enforcement meetings with local police chiefs, sheriffs, district attorneys and other law enforcement personnel in the eight law enforcement zones in California. The meetings provide an opportunity to collaborate and coordinate on law enforcement activities.

## DIVISION OF ADMINISTRATIVE SUPPORT

The Division of Administrative Support, through its 1,025 employees, assists in the day-to-day operations of the DOJ and provides support to programs in administrative and technical areas, such as accounting, budgeting, personnel, asset management, facilities, procurement, contracting, conferencing, recycling, project management, training, law library services, legal case management, time reporting, litigation support, and legal operations support.

The primary components of the Division of Administrative Support include:

- Fiscal Programs
- Office of Departmental Services
- Personnel Programs
- Office of Professional Development
- Legal Support Operations
- Information Support Services
- Management Analysis and Policy Development

**Green Office.** In January 2008, the Department embarked on a statewide effort to identify, reduce and mitigate any harmful environmental effects of its operations. A green charter was established to set forth key objectives and authorize the establishment of a committee to carry out those objectives. The committee addressed projects such as: increasing and improving sustainable business practices; informing and educating employees about pollution prevention, greenhouse gas emissions, energy conservation and solid waste reduction; and increasing recycling efforts.

A desktop power management software is being tested to make the DOJ more environmentally responsible. This software may save up to 50 percent in computer and monitor electrical usage. Utility rebates could offset an initial investment by as much as 80 percent.

### Fiscal Programs

**Accounting Office.** The office is comprised of two programs: the Account Payment Program and the Financial Accounting Program. These programs collaborate to maintain centralized records of appropriations, expenditures, revenues, reimbursements and legal case billing information. Additionally, these programs provide cash flow analysis and an accurate accounting of DOJ activities to state control agencies.

- **Laser Check Pilot Project.** The Department operates with one primary revolving fund unit in Sacramento, and 25 sub-revolving fund liaisons in the field offices statewide. A new laser check project will streamline the check process by allowing immediate input by the field offices into the Department's accounting system. The new process will also provide detailed information on employee travel activities. In late 2008, the Sacramento office will begin the pilot project, with implementation in all DOJ offices in 2009.
- **California Automated Travel Expense Reimbursement System (CALATERS).** In late 2008, the Department, working with the State Controller's Office, will implement the CALATERS automated travel expense claim system. This new system will allow employees to prepare travel claims on-line and send them through an electronic approval process.
- **Fi\$CAL Project.** Fi\$CAL, a multi-year project sponsored by the Department of Finance and other control agencies, will standardize fiscal reporting among all state agencies. The DOJ Accounting Office and Information Support Services have worked on the initial system requirements for the past two years. The Department is scheduled to be one of the first agencies to use this new financial reporting system, with implementation projected for 2010.

**Budget Office.** The Budget Office is responsible for DOJ's annual financial plan and provides technical direction and support to program managers in the preparation, negotiation and maintenance of the Department's annual budget. For Fiscal Year 2007/2008, the DOJ annual budget was \$834 million.

## Office of Departmental Services

The Office of Departmental Services provides a wide range of business support services to statewide programs throughout DOJ, including facilities management, telecommunications services, contracting, purchasing, warehousing, printing and mail/delivery operations.

**Release of DOJ Procurement Information.** DOJ implemented new protocols for public inspection and duplication of documents, such as contracts for services, consultants and commodities. The new protocols ensure management oversight in registering public procurement documents in the state's contracting and procedure system, and justifying information that is confidential and statutorily exempted (e.g., DOJ strategic litigation, attorney-client privilege, officer safety, and law enforcement mission information). The new procedures improve the transparency of DOJ procurement documents to the public, while also protecting DOJ's critical missions.

**Facilities Planning and Management and Telecommunications Section.** The section manages over 90 DOJ facilities statewide, including 20 anti-crime task force offices, 11 forensic crime laboratories, 10 regional law enforcement offices, 6 legal offices, 3 aircraft hangers, the Hawkins Data Center, multiple field offices and radio sites.

- **New Crime Laboratories.** In 2007, the section completed bond-financed construction of two new DOJ-owned forensic crime laboratories in Santa Barbara and Santa Rosa, and a large expansion and upgrade of a state-of-the-art DNA laboratory in Richmond. These facilities are now occupied and fully operational.
- **Regional Law Enforcement Offices.** The Department reduced facility costs by consolidating five DOJ crime-fighting bureaus into a new 27,000 square foot regional law enforcement office in Riverside. Additionally, the Redding Regional Law Enforcement Office was expanded by 2,500 square feet to accommodate three bureaus that were previously housed separately.
- **Expansion/New Office Space.** The section expanded office space for the Bureau of Medi-Cal Fraud and Elder Abuse in San Diego and Burbank to accommodate a growing staff. Additional Narcotic Enforcement Task Force office space was acquired in Stockton, Bakersfield, Hayward, San Bernardino, South Lake Tahoe and Palm Springs to assist local law enforcement agencies in combating drug crimes.

## Personnel Programs Section

Personnel Programs is responsible for all facets of employment for the DOJ's 5,832 positions. The section is comprised of five units that handle classification and pay, labor relations, risk management, testing and selection, and personnel transactions.

**Hiring and Appointments.** The Hiring and Appointment Unit oversees the hiring and promotional process by providing direction and training to managers/supervisors department-wide. In 2007, the unit worked closely with the Equal Employment Rights and Resolution Office to develop the Department's new hiring policy. As a result of this effort, a comprehensive hiring manual was developed for all DOJ managers and supervisors.

**Reorganization Implementation.** The reorganization of the Department's divisions and programs under the Brown administration improved administrative efficiency and effectiveness. The Personnel Section assisted with the consolidation.

**Recruitment Program.** The Testing and Selection Unit has completed several web-based endeavors, including:

- Implementing an exam recruitment survey;
- Using search engines and social networking tools to target more candidates;
- Posting job recruitment videos;
- Using executive search techniques for senior management and high-level positions.

**JOB System.** Through collaboration with the DOJ's Hawkins Data Center, the Department established an automated job announcement system to streamline the advertising process for vacant positions and to ensure consistency in job advertising. To date, over 1,500 job announcements have been posted statewide through this new automated system.

**Testing and Selection.** The Testing and Selection Unit administered 173 examinations – 8,400 applications were reviewed for these exams and 4,000 eligible candidates were placed on employment lists. The unit also issued 1,242 certification employment lists to managers and supervisors for hiring and recruitment purposes.

**Continuous Testing.** In the past, applicants for employment frequently lost interest in employment because of significant delays. The Department now offers continuous testing in jobs requiring specialized skills and for positions in remote and high-cost locations.

#### **Continuous Exams Offered by DOJ**

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- **Attorneys:** Deputy Attorney General, Deputy Attorney General III, and Supervising Deputy Attorney General.
- **Analysts:** Associate Budget Analyst, Associate Governmental Program Analyst, Associate Personnel Analyst, Legal Analyst, and Staff Services Analyst (transfer exam).
- **Criminalists:** Criminalist, Senior Criminalist, Criminalist Supervisor, and Criminalist Manager.
- **Special Agent**
- **Investigative Auditor III**
- **Legal Secretary**

**State Contract Negotiations.** In 2007/2008, memoranda of understanding expired with the Service Employees International Union, Local 1000, the California Statewide Law Enforcement Association, and the California attorneys' union (CASE). These three collective

bargaining organizations represent the majority of DOJ employees and the DOJ's Labor Relations Office is currently in contract negotiations with these entities.

**Health and Safety Program.** The Risk Management Unit upgraded its automated electronic defibrillators in all DOJ-occupied facilities. The unit coordinated training on the updated devices for all DOJ CPR/First Aid monitor staff.

**Personnel Automation.** The Transactions Unit, in partnership with the Accounting Office, improved its method for releasing \$83 million in monthly pay warrants via electronic format. The unit also developed an electronic process for distributing and retaining employee catastrophic time bank information. The unit uses the Department's new human resource management system, which provides real-time information, thus expediting services for DOJ employees.

## Office of Professional Development

The Office of Professional Development (OPD) provides professional development and training opportunities to all DOJ employees. Course offerings include: new employee orientations, mandatory training and critical job skill classes, desktop applications, continuing legal education for attorneys, legal secretarial training, basic supervision training, and case management and time reporting training for legal staff. Since mid-2007, 2,300 DOJ employees attended 300 OPD facilitated training courses.

**Continuing Legal Education Classes.** In 2007, OPD contracted with the National Institute for Trial Advocacy (NITA) to provide multi-day training on deposition and trial advocacy skills to 300 deputy attorneys general. Over 20 experienced DOJ attorneys volunteered as facilitators to assist the NITA faculty, which consisted of prominent judges, law professors and practicing attorneys.

**Basic Supervision Training for Supervising Deputy Attorneys General.** As a result of the new supervising deputy attorney general classification, OPD facilitated a customized in-house basic supervision training to 240 supervising attorneys in 2007.

**Word 2007.** In late 2008, the entire Department will change its word processing application from WordPerfect 8 to Word 2007. OPD will provide Word training to all DOJ employees to ensure a smooth transition from WordPerfect.

**Paralegal Development Program.** The Department established a paralegal development program in 2007. The goal of the program was to create a training curriculum for all DOJ paralegals and establish guidelines for attorneys on the effective use of paralegals. The first phase of training will be offered in late 2008.

## Legal Support Operations Branch

Consisting of 625 staff statewide, the Legal Support Operations Branch provides administrative services to the Attorney General's six regional law offices. Services include legal secretarial and clerical support, business and office services, digital printing and reprographics, docketing and records management, procurement and facilities management.

The branch provides legal secretarial support to over 1,200 attorneys and paralegals in 24 sections and assists in preparing and filing legal documents in all state and federal courts.

**Legal Office Administrator II Reclassification.** In 2007, the responsibilities of the Legal Office Administrator II staff who manage the operations in the Sacramento, Los Angeles, San Diego and Bay Area legal offices were increased to include facility management. This change in duties resulted in an upgrade for these staff to the Staff Services Manager II classification.

**Paperless Offices of the Future.** The branch assists in converting hundreds of thousands of paper documents to an electronic, paperless format. It initiated a "paperless legal office" program to expand digital imaging technology for case docketing and records management. Since late 2006, close to one million pages of legal documents have been converted to electronic format and uploaded to the legal case management system. This has increased efficiency and reduced costs.

## Information Support Services

Information Support Services provides technical and support services in the areas of litigation support, legal knowledge management, case management and time reporting functions, and strategic administrative projects.

**Strategic Planning Office.** The office provides project oversight and control to improve integration of projects. The office has two significant projects underway:

- **New Asset Management System.** In 2007, DOJ implemented the Asset Management System (AMS) in which all DOJ assets (furniture, computers, equipment, etc.) are managed through one centralized, secure database. AMS tracks and manages department assets from procurement through salvage. AMS simplifies accounting tasks by eliminating the manual asset and labor intensive accounting reconciliation process.
- **New Human Resources Management System.** In 2008, the DOJ implemented a new Human Resources Management System to replace an antiquated personnel system. This new single system now ensures more reliable employee data.

**Litigation Support Section.** The section provides automated litigation support services, including a wide range of professional services and software applications to help attorneys and paralegals acquire, organize, develop and present evidence in litigation.

- **Electronically Stored Information.** The unit purchased new hardware and software to increase by 50 percent its ability to process and review electronically stored information.
- **Knowledge Management System Overhaul.** The unit supports three office-wide knowledge management systems: the Civil/Public Rights brief banks, the mediator database, and the expert witness database. These systems provide DOJ legal staff with access to colleague work-product and a directory of mediators and experts. In 2008, these systems were revamped and updated.
- **Technological Improvements.** The unit recently upgraded several applications used for document management and trial preparation, including *Adobe Creative Suite 3, Illustrator* and *Photoshop*. These applications provide options for creating visual aids for exhibits and trial presentations. Video hubs were also purchased to create digital and analog videos.

**Staff Services Unit.** The unit provides technical assistance to legal support staff in creating, formatting and filing legal documents, and in supporting word processing and desktop applications used in the legal divisions. The unit manages the content on the legal divisions' Intranet and researches, tests and recommends new technology. The unit also facilitates video conferences in the legal offices.

- **Electronic Case Filings.** The unit provides technical assistance to legal staff on converting documents and exhibits for electronic filing in the federal district courts.

**Law Library Services Section.** This section manages the law libraries in the legal offices statewide and provides research services to executive, legal, administrative and law enforcement staff. Librarians obtain books from on-line resources, document delivery services or inter-library loans from across the country. The libraries also furnish and maintain frequently used codes and court rules books and manage Lexis/Nexis and Westlaw accounts. The Law Library's Intranet provides access to a catalog of holdings in the Department's law libraries and links to useful resource websites.

- **Legislative Histories.** The Law Library staff compile 25 to 30 legislative histories each month, providing attorneys with documents that shed light on the intent of statutes.

***Case Management Section.*** The section is responsible for developing, implementing and maintaining the legal case management and time reporting system (ProLaw) used by the legal staff. The section operates primarily as a technical and business services unit that works with the Accounting Unit, Budget Office and the legal divisions.

The section's current projects include prioritizing reimbursable work, identifying and assisting with billing or client changes, preparing monthly legal billing, processing cost of suit, analyzing legal division workload, and preparing reports to managers, clients and others.

The section is working to upgrade to ProLaw Version 11 and to transition from WordPerfect 8 to Word 2007 word processing programs.

### **Management Analysis and Policy Development**

The Management Analysis and Policy Development Unit provides support to the Division of Administrative Support on policy and administrative and analytical projects that have department-wide significance.

## EXECUTIVE PROGRAMS

The Executive Programs function as a support network for the Attorney General and includes those functions not directly related to the office's litigation or law enforcement responsibilities. The primary components of the Executive Programs include:

- Office of Communications
- Special Assistant Attorneys General
- Office of Legislative Affairs
- Office of Program Review and Audits
- Equal Employment Rights and Resolution Office
- Solicitor General / Opinion Unit

Under the Brown Administration, the cost and number of Executive Programs was greatly reduced.

### Office of Communications

The Office of Communications oversees media relations through the Press Secretary, departmental publications through the Media and Publication Resource Center, and public inquiries through the Public Inquiry Unit. The office organizes news conferences for the Attorney General, provides the media with information on activities of the Attorney General and the DOJ, conducts research, prepares news advisories, news releases, opinion editorials and other departmental publications, and responds to daily inquiries.

**Public Inquiry Unit.** The Public Inquiry Unit is the primary public point-of-contact for persons who seek assistance and information from the Attorney General's Office. The unit annually receives and responds to approximately 200,000 written and telephone inquiries from the public, elected officials, law enforcement agencies and other governmental entities on a wide variety of subjects and issues.

**Alternate Dispute Resolution Program.** The office takes a leading role in helping consumers resolve their disputes with California businesses. In many instances, after a complaint is received by the Public Inquiry Unit, the company or individual is contacted and the consumer issue is resolved to the satisfaction of both parties. Through this informal mediation process, over 1,000 disputes are resolved by the Public Inquiry Unit each month.



**Correspondence Storage, Tracking and Response (C-STAR) System.**

An average of 40,000 letters, e-mails and faxes are sent to the Attorney General's Office each year and are routed through the Public Inquiry Unit. The unit has implemented an automated system (C-STAR) to manage all aspects of handling constituent correspondence. C-STAR has enabled staff to respond to inquiries within 10 days of receipt.

**Consumer Protection.** The Public Inquiry Unit takes a leading role in helping consumers resolve their disputes with California businesses. The unit works closely with attorneys in the Consumer Law Section on consumer issues and provides the attorneys with monthly reports that identify complaints the Attorney General has received against specific companies. The unit flags violations of California law that may warrant further action. The consumer complaint information may be used to support investigations and lawsuits and may be shared with consumer protection divisions of other governmental and law enforcement agencies, such as district attorneys, the Federal Trade Commission and the U.S. Postal Inspector.

**Telephone Hotline.** Each year, more than 140,000 constituents call the Attorney General's public telephone hotline. The telephone system provides automated responses to frequently requested information, and constituents are also given the option to speak to an analyst.

**Accessibility for All Constituents.** The unit has the ability to respond to telephone and written queries in foreign languages. In addition, the unit provides reasonable accommodation to disabled constituents by offering services such as complaint transcription and materials in alternative language formats.

## Special Assistant Attorneys General

The Special Assistant Attorneys General are appointed by the Attorney General to focus on the priorities of his administration, such as global warming, consumer issues and law enforcement. Special Assistants also serve as the Attorney General's designee on task forces, commissions and committees and serve as liaisons with local, state and federal agencies, associations and advocacy groups. Under the Brown Administration, the number of Special Assistant positions has been greatly reduced.

## Office of Legislative Affairs

The Office of Legislative Affairs is the Attorney General's liaison on legislative matters, especially those that affect the Department. The office is responsible for coordinating DOJ's communications with Congress and seeks federal earmark funding for DOJ's law enforcement programs.

The Attorney General sponsored 16 bills during the biennial period, most of which had a direct connection to the work of the department. Included among these sponsored bills are:

**AB 1975 (Solario).** This bill would make permanent a \$2 fee on death certificates to fund the DOJ's Missing Persons DNA Program.

**AB 2801 (Carter).** This bill would add an additional remote-interest exception to the conflict-of-interest law to allow public bodies in limited circumstances to enter into settlement agreements in which a member has a financial interest.

**SB 1164 (Scott).** This bill would amend the Penal Code to allow DOJ investigative auditors to serve search warrants.

**SB 1615 (Florez).** This bill would provide the Attorney General with the discretion to appoint employees of the DOJ to various boards and commissions that require a representative for the Attorney General.

### Office of Program Review and Audits

The Office of Program Review and Audits is the DOJ's primary internal audit organization. The office ensures that the Department meets Government Code requirements for accounting and internal control.

The office reduces departmental risk by providing information and recommending solutions to DOJ programs to improve operational efficiency. The office also conducts internal control and program audits, program evaluations, and management reviews. The office coordinates external audit requests and responses from the Bureau of State Audits (BSA), Department of General Services, U.S. DOJ and various other state and federal agencies, and assists in defending the Department's policies, processes and practices. The office coordinates responses to "whistleblower" complaints filed with the BSA and acts as a liaison with the BSA.

The office serves as the Department's Privacy and Information Security Office and works closely with the DOJ's Network Information Security Unit to develop policy and procedures to ensure compliance with state and federal laws.

### Equal Employment Rights and Resolution Office

The Equal Employment Rights and Resolution Office ensures equal employment opportunities within DOJ, consistent with state and federal laws. The office administers the Department's discrimination complaint process, monitors departmental employment processes, provides training and works to provide a workplace free of discrimination and harassment.

The office manages several programs and services including: the Employee Assistance Program, the State Employee Mediation Program, the Bilingual Services Program, the Upward Mobility Program, the Equal Employment Opportunity Counseling Program, the Career Counseling Program, and the Wellness Program. The office

also helps DOJ employees identify and resolve potential workplace issues and works with the DOJ employee advisory committees.

**Training Programs.** The office conducts Harassment and Discrimination Prevention classroom training to over 1,500 DOJ employees annually. It also provides diversity and inclusion awareness training, upward mobility skill-building workshops and EEO counselor development.

**Law Enforcement Programs.** The office provides a custom-designed employee-assistance program orientation to DOJ Special Agents to address the unique stressors inherent in law enforcement work. The orientations also cover procedures for critical incident debriefings.

**Bilingual Services.** The office provides translation services in 41 languages. The service now includes in-house translations of legal and law enforcement documents.

## Solicitor General Unit

The Solicitor General's Unit promotes a high level of quality in the Attorney General's Office legal practice, particularly in the California Supreme Court and the U.S. Supreme Court. The unit helps to determine whether to seek review of a case in the state or federal supreme court, assists deputy attorneys general in writing petitions and briefs, consults with deputies in preparing for oral argument, and provides general instruction regarding Supreme Court procedures. The unit also coordinates and participates in the supervision of amicus curiae briefs filed by the Attorney General in the Supreme Courts and the U.S. Court of Appeals for the Ninth Circuit.

The Solicitor General is the Attorney General's liaison to state and federal appellate courts in matters relating to the conduct of the Attorney General's litigation efforts. The Solicitor General is also the Attorney General's liaison with Solicitors General of other states and with the National Association of Attorneys General concerning matters relating to litigation before the U.S. Supreme Court. The Solicitor General is the statutory designee for receipt of service of all briefs filed in the California Supreme Court or specific civil rights' violations cases filed in the state appellate courts. The unit was recently expanded to include and oversee the Attorney General's Opinion Unit.

**Opinion Unit.** The Opinion Unit prepares and distributes formal, written opinions in response to legal questions from legislators, state agencies, district attorneys, county counsel, city prosecutors and county sheriffs.

The unit also responds to requests for permission to bring quo warranto actions (disputes over the right of public office-holders to serve their term). Opinions published by the Attorney General may be cited by courts as persuasive authority.

Of the 23 opinions issued by the Attorney General since January 2007, the following were of particular interest:

- A person appointed as an unpaid, volunteer investigator by a district attorney may qualify as a “peace officer” provided that he or she is assigned to perform investigative duties and otherwise meets all standards imposed by law. **Opinion No. 06-204 (90 Ops.Cal.Atty.Gen. 7 (2007))**.
- A sheriff’s gift of an honorary badge to a private citizen violates California law if: (1) the badge falsely purports to be authorized or would deceive an ordinary reasonable person into believing that it is authorized for use by a peace officer; or (2) the badge indicates membership in an organization whose name would reasonably be understood to imply that the organization is composed of law enforcement personnel when, in fact, less than 80 percent of the members of the organization are law enforcement personnel, active or retired, and the sheriff has knowledge of such fact. **Opinion No. 06-307 (90 Ops.Cal.Atty.Gen. 57 (2007))**.
- The Native American Heritage Commission may delegate to its executive secretary those powers and duties that do not require the exercise of the special judgment and discretion conferred upon the commission by statute. Such delegable powers include: the authority to investigate claims of damage or threatened damage to a Native American sanctified cemetery or of removal or threatened removal of artifacts from a Native American grave; to prepare preliminary reports, hold hearings and make recommended findings subject to the commission’s review and approval; and to recommend that the commission bring an action, through the Attorney General, to prevent such damage or such removal. **Opinion No. 07-103 (90 Ops.Cal.Atty.Gen. 89 (2007))**.
- The Department of Alcohol and Drug Programs may not deny an application for licensure or suspend or revoke the license of an alcoholism or drug abuse treatment facility because the particular community already has more than a sufficient number of treatment facilities to meet the local need.

Additionally, a city may not limit the establishment of alcoholism or drug abuse treatment facilities serving six or fewer persons because the particular community already has more than a sufficient number of treatment facilities to meet the local need. **Opinion No. 07-601 (90 Ops.Cal.Atty.Gen. 109 (2007))**.

- Although the issue is not entirely free from doubt, under the current state of the law, a court could invalidate as contrary to state law, a city’s compromise settlement of a suit for damages that was brought by a city council member before his election to the council, against the city and its employees for alleged

wrongful conduct committed against him as a private citizen.

**Opinion No. 07-104 (91 Ops.Cal.Atty.Gen. 1 (2008)).**

- A law enforcement agency must disclose names under the California Public Records Act of peace officers involved in a critical incident if it serves the public interest. **Opinion No. 07-208 (91 Ops.Cal.Atty.Gen. 11 (2008)).**
- Where a county maintains a comprehensive database of property-related information that contains the home addresses and telephone numbers of elected or appointed public officials, but who are not identifiable as such from the data, the law does not require the county to obtain permission from those officials before transmitting the database over a limited-access network, such as an “intranet,” “extranet” or “virtual private network.” **Opinion No. 06-802 (91 Ops.Cal.Atty.Gen. 19 (2008)).**
- A person designated by a regional open space district as a park ranger has peace officer powers under the terms of the Penal Code anywhere in the state for the purpose of performing his or her primary duty, or when making an arrest involving an immediate danger to person or property or an escape. **Opinion No. 07-302 (91 Ops.Cal.Atty. Gen. \_\_\_ (2008)).**

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