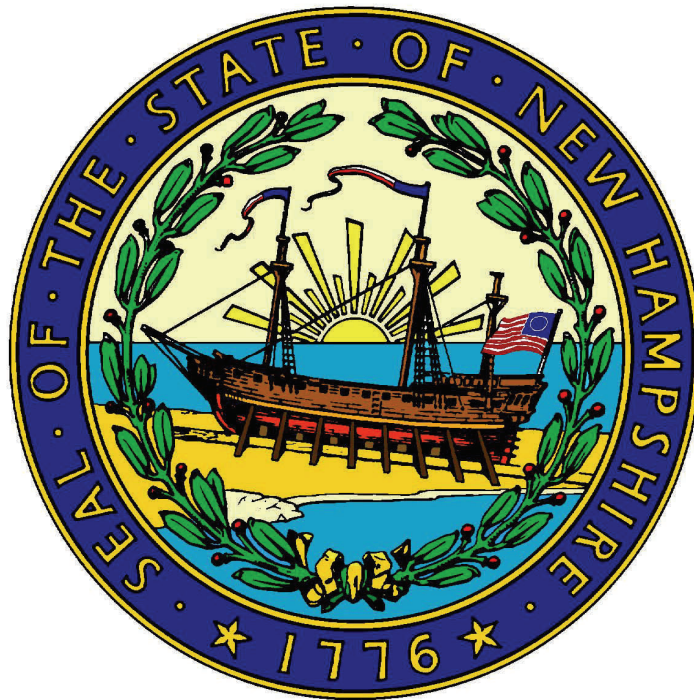


STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE



BIENNIAL REPORT
July 1, 2005—June 30, 2007

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL



To the People of New Hampshire, Governor John H. Lynch, Members of the Executive Council, and Members of the General Court:

I proudly present the biennial report for the Attorney General's Office detailing the work and accomplishments of my Office during the 2006-2007 biennium. It is a privilege to serve as Attorney General and an honor to lead the men and women who achieved the significant successes summarized in this report.

The members of this Office have established excellence as the standard of performance as we carry out our mission:

To serve the people of New Hampshire with diligence, independence and integrity by performing the constitutional, statutory and common law duties of the Attorney General as the State's chief legal officer and chief law enforcement officer;

To seek to do justice in all prosecutions;

To provide the State with legal representation and counsel of the highest quality;

To protect the State's environment and the rights of its consumers; and

To provide supervision and leadership of New Hampshire law enforcement.

Throughout the 2006-2007 biennium I have lead initiatives focused on ensuring the children of New Hampshire remain safe. Working with Governor Lynch and the General Court, new laws have been enacted protecting the people of the State from sexually violent predators. With assistance from law enforcement, schools, and parent groups throughout the State, the office has provided education for children, parents, and educators on internet safety. The Attorney General's Cybercrime Initiative brought training, leadership, and support for multi-agency task force efforts to detect, arrest, and prosecute those who prey on our children using the internet.

The pages of this report detail extraordinary efforts by the attorneys and staff of the Attorney General's Office to protect the people of New Hampshire and their environment through criminal and civil prosecutions, defense of civil claims, legal advice to departments, oversight of charities, and public education on subjects ranging from consumer protection to the Right-to-Know law. This work would not be possible without the support of Governor John H. Lynch, the Members of the Executive Council, Members of the General Court, members of law enforcement from across the state, and leaders across State and municipal government. Thank you all.

As we enter the next biennium I am confident that the exceptional men and women who serve at the Attorney General's Office will again be successful in meeting the legal needs of the State while ensuring that people of New Hampshire enjoy the rights and privileges guaranteed by our Constitution and laws.

A handwritten signature in cursive script that reads "Kelly A. Ayotte".

Kelly A. Ayotte
Attorney General

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Leadership

Kelly A. Ayotte.....*Attorney General*

Orville B. Fitch, II.....*Deputy Attorney General*

M. Kristin Spath.....*Associate Attorney General*
Chief of Staff

Rosemary Faretra.....*Director of Administration*

Dr. Thomas A. Andrew.....*Chief Medical Examiner*

Timothy Brackett.....*Supervisor, Grants Unit*

Paul E. Brodeur.....*Chief Investigator*

Michael K. Brown.....*Senior Assistant Attorney General*
Chief, Client Counseling

Jeffrey S. Cahill.....*Senior Assistant Attorney General*
Chief, Medicaid Fraud Unit

Michael S. DeLucia.....*Senior Assistant Attorney General*
Director, Charitable Trusts Unit

Dr. Jennie V. Duval.....*Deputy Chief Medical Examiner*

Anne M. Edwards.....*Associate Attorney General*
Chief, Litigation Unit

Stephen D. Fuller.....*Senior Assistant Attorney General*
Chief, Criminal Appellate Unit

Suzanne M. Gorman.....*Senior Assistant Attorney General*
Chief, Civil Appellate Unit

Richard W. Head.....*Associate Attorney General*
Director, Division of Legal Counsel
Chief, Environmental Protection Bureau

Mark P. Hodgdon.....*Senior Assistant Attorney General*
Chief, Transportation and Construction Bureau

Leadership (continued)

Terry M. Knowles.....Assistant Director, Charitable Trusts Unit

Sandra Matheson.....Director, Office of Victim/Witness Assistance

*Lauren J. Noether.....Senior Assistant Attorney General
Chief, Consumer Protection and Antitrust Bureau*

James R. Norris.....Commander, Drug Task Force

*Ann M. Rice.....Associate Attorney General
Director, Division of Public Protection*

Bette Jane Riordan.....Director, Victim's Compensation Unit

*Nancy J. Smith.....Senior Assistant Attorney General
Deputy Chief, Litigation Unit*

*Jeffery A. Strelzin.....Senior Assistant Attorney General
Chief, Homicide Unit*

*Jane E. Young.....Senior Assistant Attorney General
Chief, Criminal Justice Bureau*

The Criminal Justice Bureau (CJB) investigates and prosecutes major criminal cases throughout the State. In addition to prosecuting all homicide cases, the CJB also investigates and prosecutes cases of drug trafficking, economic crime, Medicaid Fraud, and matters of public integrity. The CJB also represents the State on all criminal appeals before the Supreme Court. On a daily basis, the CJB provides legal guidance to law enforcement agencies on various criminal issues, and routinely responds to questions and concerns raised by members of the public.

The CJB is staffed by twenty-three attorneys, four investigators, three financial analysts, three paralegals and seven secretaries. During the biennium the attorneys continued to teach criminal law classes at each of the academies conducted for new law enforcement officers at the Police Standards and Training Academy. Further, attorneys taught at regional trainings on topics such as search and seizures, DWI laws, and asset forfeiture. Also, attorneys taught at Domestic Violence Conferences and Child Abuse & Neglect Conferences, both of which were sponsored by the Attorney General's Office of Victim/Witness Assistance.

The Attorney General recognized a need for more concentrated efforts to combat DWI and other traffic offenses. To address this need, a Traffic Safety Resource Prosecutor (TSRP) was added to CJB. This prosecutor is responsible for assisting local and state prosecutors with all traffic safety related offenses with a particular emphasis on DWI. The TSRP conducts regular

trainings for police and prosecutors both at regional events and at local police departments.

With support from Governor John H. Lynch, a general litigation prosecutor was added to the Office to focus on the growing trend of utilizing the internet to commit crimes. As part of this heightened effort to fight cybercrime, the Attorney General's Office issued a subpoena to MySpace.com, an on-line social networking site, to obtain the names of those users who are registered sexual offenders. The names obtained from MySpace were given to the Department of Corrections to ascertain whether any of those individuals violated their conditions of parole or probation by being on this website. The Attorney General's Office continues to pressure MySpace to establish protocols such as oversight and minimum age requirements in an effort to ensure the safety of all the minors who frequent this popular website. In addition, the Attorney General is currently involved in a vigorous educational outreach program to inform children, families and schools throughout New Hampshire of the dangers associated with the use of computers.

During the biennium, the Attorney General was one of the catalysts for the Government Leaders Methamphetamine Task Force. This Task Force was created in response to the increase in methamphetamine labs located in New Hampshire. The areas that the Task Force addressed included public awareness, environmental protection, treatment, prevention, protection of children and incapacitated adults, law enforcement, and legislation. The Attorney General's Office was

successful in sponsoring new laws that not only provided punishment for those who manufacture and traffic in methamphetamine in this State but also laws that will protect the environment, the first responders who are called to methamphetamine labs, and laws that will protect children and incapacitated adults who are helplessly exposed to the harms posed by the production and sale of methamphetamine.

The Attorney General and her staff participated in public forums and discussions with editorial boards across the State to inform the public of the emerging methamphetamine problem. As part of this public awareness campaign, the Attorney General's Office partnered with the Retail Merchants Association of New Hampshire and the New Hampshire Grocers Association to alert the public of the dangers associated with methamphetamine use and protection. The Attorney General provided the merchants and the grocers with posters for placement in stores alerting the public to the signs of methamphetamine use and signs of a methamphetamine lab.

Below is a more detailed description of the specialized units which comprise the Criminal Justice Bureau.

The Homicide Prosecution Unit

The major functions of the Homicide Prosecution Unit are to assist law enforcement officers with legal issues that arise during the investigation of suspicious deaths and homicides and to prosecute homicide cases. The Unit is staffed by six lawyers, two paralegals, one full-time secretary and one

part-time secretary. Ten other attorneys assigned primarily to other units within the bureau also serve as co-counsel on homicide investigations and prosecutions.

At the beginning of the biennium, the Unit had fifteen active homicide prosecutions pending, one of which involved multiple victims. Of those fifteen cases, five went to trial during the biennium, resulting in five guilty verdicts; nine were resolved by guilty pleas and one was resolved by a plea of not guilty by reason of insanity.

During the biennium, the Unit supervised the investigation of forty-one declared homicides and twenty-six suspicious death cases. Prosecutions were initiated in connection with twenty-four of the homicides, sixteen of which are pending. One guilty plea was obtained in connection with one of the homicides. Of the seventeen that did not result in criminal charges, five involved a murder followed by the suicide of the perpetrator. Two were police officer-involved shootings, which the Criminal Justice Bureau determined were the result of the officer's legally justi-

fied use of deadly force. Four were cases in which no charges were brought based on the facts of each case and the conclusion that the homicides were justified. In one case, the grand jury indicted the defendant for a less serious, non-homicide charge, which is now being prosecuted by the Grafton County Attorney. In another case, the perpetrator was killed following the homicide. Four homicides remain unsolved.

The Unit has two capital murder cases pending. The trials are scheduled to begin in August and September of 2008, respectively.

The Economic Crime Unit

The Economic Crime Unit (ECU) investigates and prosecutes complex theft cases, primarily cases that involve a theft of more than \$100,000 or thefts that occur in multiple counties. In the investigation of these cases, various financial documents are reviewed and analyzed. Grand Juries are often utilized to secure testimony of witnesses and/or to secure financial documents

such as bank records. These financial investigations are labor intensive and typically require the work of multiple investigators, prosecutors, and paralegals. They often take 12 to 24 months to complete. Two recent convictions are described below:

The ECU prosecuted James Hobbs, a former attorney, for forgery and theft of over \$1,000,000. Upon his conviction, the Court imposed a sentence of 10-20 years at the New Hampshire State Prison. He was sentenced to additional suspended time and was ordered to pay restitution.

Lawrence Stokes, Jr. and Bayview LLC pled guilty to felony counts of making a false tax return. Bayview LLC received a suspended fine. The court ordered the liquidation of its assets and that its Seabrook property not be used for a crematory or any other corpse-handling purpose. Mr. Stokes received a suspended New Hampshire State Prison sentence and a \$2,000 fine that he was ordered to pay to the Department of Revenue Administration. Linda Stokes pled guilty to three felonies, two counts of making a false tax return and one count, approximately \$250,000, of theft by deception. She received a suspended New Hampshire State Prison sentence, a \$4,000 fine, and along with Mr. Stokes, was ordered to satisfy the payment to the Department of Revenue Administration of approximately \$250,000.

The Public Integrity Crime Unit

The Public Integrity Crime Unit (PICU) investigates and prosecutes public officials who engage in criminal conduct during the course of their official duties. The conduct typically involves economic crimes, such as embezzling public funds, and the misuse of an official's position to obtain benefits to which the official would not otherwise be entitled. Crimes of violence or sexual misconduct by public officials are also handled by the PICU.



Police officers from all over New Hampshire and bagpipe players along with Attorney General Kelly Ayotte participated in the Police Memorial Service in May 2007.

Like economic crime cases, public integrity crime cases are typically complex and require substantial resources to investigate and successfully prosecute. The PICU routinely reviews financial records, makes presentations to investigative grand juries, and consults with various experts.

During the biennium, the PICU prosecuted the former Tax Collector and Town Clerk for the Town of Carroll, Louise Staples. Staples was charged with two thefts in excess of \$100,000. The charges stemmed from Staples collecting cash payments for various town fees, state motor vehicle registrations, and property taxes. The funds collected should have been deposited into town and State accounts. Through its investigation, the PICU determined that Staples used the funds to purchase various personal items and at various gambling casinos. After being convicted by a jury on each count, Staples was sentenced to the New Hampshire State Prison for 3½ -7 years with two years of the minimum sentence suspended on the first count. She was also sentenced to a consecutive suspended sentence and was ordered to pay \$117,255.38 in restitution, on the second count.

The PICU also prosecuted James McGonigle, the former Allenstown Police Chief. McGonigle pled guilty to stealing approximately \$2,000 from evidence at the police department and approximately \$5,000 from the Allenstown Police Association and the New Hampshire Police Cadet Training Academy. McGonigle received a sentence of 12 months at the House of Corrections with all but 90 days suspended. He also received a suspended State Prison sentence and was ordered to pay restitution.

The PICU is also responsible for investigating every incident in which a New Hampshire police officer uses deadly force in the course of his or her duties. These investigations typically involve several attorneys responding to the scene, participating in interviews with the officers

involved, and reviewing the forensic evidence. The PICU must determine whether the use of deadly force was legally justified under the particular circumstances. During the biennium, the PICU responded to three such events.

Drug Prosecution Unit

The Drug Prosecution Unit (DPU) prosecutes significant drug trafficking crimes. In addition, the DPU assists various law enforcement agencies during their investigations into large-scale drug traffickers. The DPU is comprised of three attorneys, a paralegal and a secretary. In addition to working closely with the Attorney General's Drug Task Force, the DPU also provides daily assistance to the State Police, the federal Drug Enforcement Administration and local police departments. The attorneys are on-call twenty-four hours a day not only to provide legal guidance but also to authorize one-party interceptions of telephone calls or other communications pursuant to RSA 570-A:2.

The DPU also prosecutes all forfeiture actions initiated under RSA 318-B:17-b and d. These forfeiture actions are intended to strip the drug traffickers of their ill-gotten gains and are also intended to strip the drug dealers of the implements of their crimes, including cars, cash, or weapons. Once forfeited, the value of the forfeited item is divided between the seizing agency (45%), the drug forfeiture fund (45%), and an account established to fund drug treatment programs (10%). During the biennium, the DPU initiated 43 forfeitures and forfeited approximately \$142,000 as well as several vehicles.

An example of a DPU case is the prosecution of Daniel Alger of Milan for possession of five ounces or more of cocaine with intent to sell, theft by receiving stolen property and felonious use of a firearm. During the search of Alger's property, the police located a laboratory that contained numerous ingredients for the manufacturing of methamphetamine. Alger pled guilty and was

sentenced to the New Hampshire State Prison for 4-10 years with one year suspended from the minimum sentence. In addition, Alger paid \$13,353.56 in restitution to the State of New Hampshire for the costs incurred by the Department of Environmental Services for the clean-up of the laboratory located at Alger's residence.

In another DPU case, William Cruz and Julio Israel Jiminez-Perez a/k/a Omar Morales were arrested in Salem for possessing cocaine with the intent to sell and conspiracy to sell a controlled drug. After trial, Cruz, who had prior drug convictions, was sentenced to 18 years to life at the New Hampshire State Prison. Jiminez-Perez a/k/a Morales was sentenced after trial to 12½ -25 years at the New Hampshire State Prison.

The Drug Task Force

The New Hampshire Attorney General's Drug Task Force (DTF) is a multi-jurisdictional task force whose primary mission is to enforce the state's drug laws and to provide leadership, coordination and support to all local, county, state, and federal law enforcement agencies in combating the drug problem in New Hampshire. The DTF is comprised of investigators from the Attorney General's Office and police officers from local, county, and state law enforcement agencies. The departments loan police officers to DTF for a period of several years to work as undercover investigators. The Attorney General uses federal grant money to subsidize a part of the officers' salaries. The DTF works out of four regional offices covering the seacoast, central, western and northern regions of the state.

During the biennium, DTF was involved in 1561 criminal cases (an 8% increase from the previous biennium), leading to 312 arrests.

The DTF seized or purchased 40 pounds of marijuana, making it the most prevalent drug purchased through undercover operations and

seized during investigations. In addition, undercover investigations also lead to the purchases of and seizures of cocaine, crack cocaine, heroin and prescription drugs. Methamphetamine seizures have remained very low due in large part to the Attorney General Office's methamphetamine initiative, which was designed to curtail the easy and very dangerous production of this potent drug.

In addition, DTF was involved in out-of-state investigations, which involved drug trafficking across the State's borders.

Over the course of the biennium, DTF investigators seized \$347,119 in cash proceeds of drug trafficking, 18 motor vehicles, and 118 weapons. DTF also made available thousands of hours of training to its investigators and local law enforcement officers. It jointly sponsored in-state regional training programs with the Drug Enforcement Administration and the United States Attorney's Office and provided funding for officers to attend training seminars and schools both in and out-of-state.

Appellate Unit

The Criminal Bureau Appellate Unit represents the State in the New Hampshire Supreme Court on all appeals from state criminal convictions,

and in the federal courts on petitions for habeas corpus brought by state prisoners. Approximately 92% of the Unit's work involves cases before the New Hampshire Supreme Court.

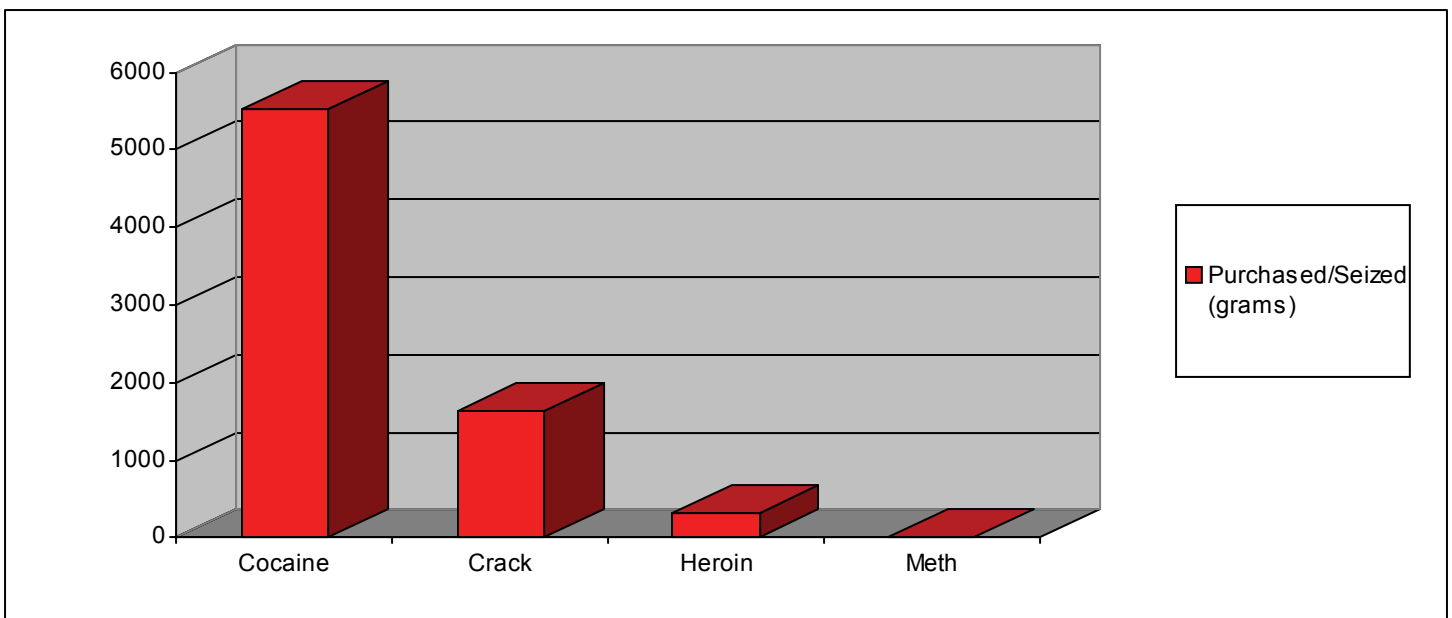
The work of the Appellate Unit is central to the development of the criminal law in this State. It regularly deals with issues such as the constitutionality of a criminal statute, whether a search conducted by a police officer violated a person's constitutional rights, or whether a trial court's decision to limit cross-examination of a witness, or to admit evidence, violated a defendant's constitutional right to confrontation. The opinions of the Supreme Court in these cases provide legal guidance to law enforcement officers, prosecutors, and lower courts throughout the State.

In every appellate case, an attorney in the Appellate Unit researches the applicable law and writes a legal brief or memorandum of law in support of the State's position. In most cases, the attorney also appears before the New Hampshire Supreme Court for oral argument. The issues raised in these cases range from the relatively straightforward to the highly complex and novel. Some cases require several weeks of concentrated work to research and draft the State's brief.

During the biennium, the Appellate Unit had a staff of three full-time assistant attorneys general. In that time, the Criminal Justice Bureau filed 256 briefs and 33 memorandums of law with the New Hampshire Supreme Court, and 4 briefs with the United States Court of Appeals for the First Circuit. It also filed answers or memorandums of law in support of motions for summary judgment in 22 habeas corpus cases in the United States District Court.

Some of the more significant cases briefed by the Appellate Unit during the biennium were:

- *State v. Ayer*: The Supreme Court held that statements made by a witness to a police officer at the scene of a murder that had taken place just moments earlier were not "testimonial" for purposes of the Confrontation Clause of the Sixth Amendment because the primary purpose of the officer's questions was to enable him to deal with an ongoing emergency, and not just to establish past events.
- *Duquette v. Warden*: The Supreme Court reaffirmed the trial court's common-law authority to impose consecutive sentences.
- *State v. Fichera*: The Supreme Court clarified the rule regarding the



sufficiency of the pretrial notice that a defendant must give when he intends to raise a defense of insanity.

- *State v. Horner*: Interpreting the time limitations set out in RSA 651:20, which governs when prison sentences can be suspended, the Supreme Court held that those limitations were mandatory and could not be waived, and that the minimum periods must be calculated separately with respect to each individual sentence being served by the defendant.

- *State v. Knickerbocker*: Where the indictment charging the defendant with second-degree murder was brought twenty years after the crime, the Supreme Court reversed the lower court's dismissal of the indictment, rejecting the defendant's argument that he suffered actual prejudice. The Supreme Court clarified the test to be used when deciding whether a defendant's right to due process has been violated because of a pre-indictment delay.

- *State v. O'Leary*: In a first-degree murder case, the Supreme Court held that it was error to give an "acquittal first" instruction with respect to manslaughter based on extreme provocation. The Court held that the instruction should have allowed the jury to consider the defen-

dant's claim of "provocation" manslaughter regardless of its findings on first- or second-degree murder.

Although the great majority of the Unit's work before the New Hampshire Supreme Court involves defending the State on appeals filed by criminal defendants, each year the Unit initiates several appeals on behalf of the State. These State appeals typically involve a challenge to a trial court's suppression of evidence or the dismissal of a criminal charge. During the last two years, 16 briefs were filed in cases in which the State was the petitioner or appellant.

In addition to their appellate responsibilities, the members of the Appellate Unit regularly consult with local prosecutors seeking assistance. They provide information on the current status of New Hampshire criminal law, suggest strategies to approach legal issues, and offer assistance in dealing with an adverse ruling of the trial court.

Medicaid Fraud Unit

The Medicaid Fraud Unit (Unit) has statewide jurisdiction to investigate and prosecute health care providers for fraudulent and abusive billing practices in serving New Hampshire Medicaid recipients. The Unit has a

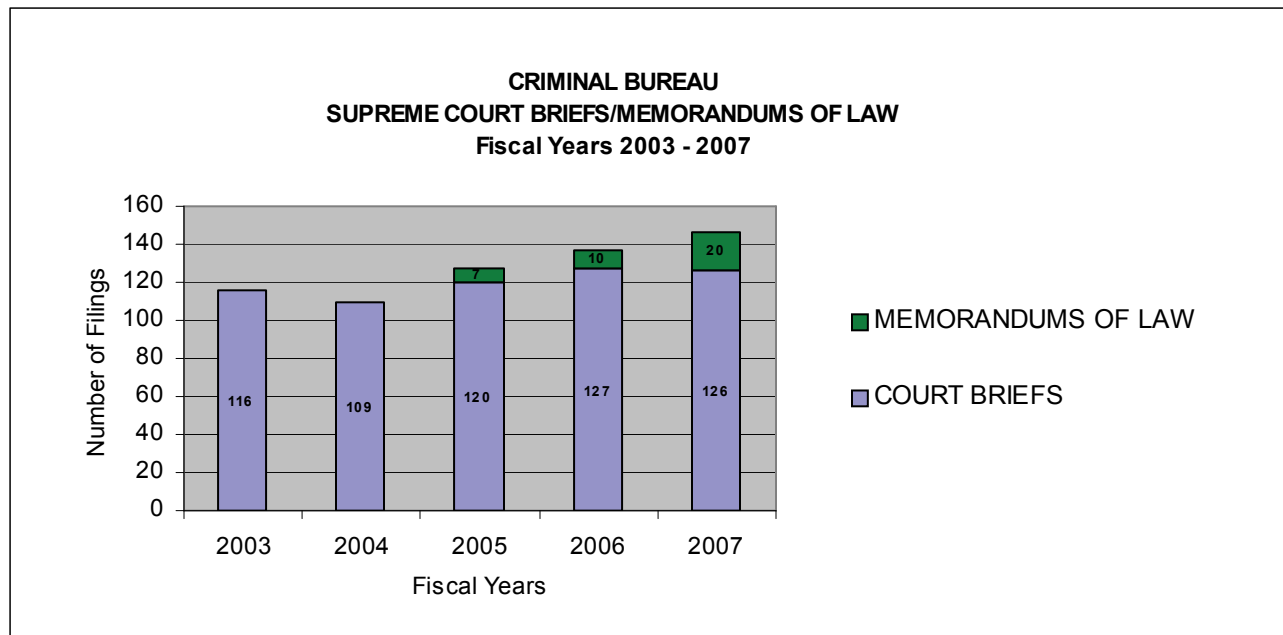
second important responsibility: the investigation and prosecution of crimes committed against residents of New Hampshire's nursing and assisted living facilities. Such cases encompass physical abuse, neglect, and financial exploitation.

The Unit consists of a seven-person team that includes attorneys, financial auditors, and investigators, as well as a legal assistant. The Unit receives 75% federal funding for its operations.

The Medicaid Program

The Medicaid program, which was created in 1965, covers three main low-income groups: (1) parents and children, (2) the elderly, and (3) the disabled.

Unlike Medicare, which is administered and financed exclusively by the federal government, Medicaid is a joint venture between states and the federal government. While the federal government must approve each state's Medicaid program, the states are responsible for day-to-day administration. The federal government's financial commitment to a state's Medicaid program depends on the state's per capita income. New Hampshire receives 50% federal funding, which is the minimum federal participation rate.



Medicaid Provider Fraud

The Unit has several statutory remedies available to prosecute fraudulent and abusive provider billing practices, ranging from criminal enforcement to administrative sanctions.

In January of 2005, substantial changes were made to the state's Medicaid fraud statute (formerly RSA 167:61). Under the new law (RSA 167:61-(b-e)), a private party ("relator") is authorized to sue on the state's behalf to recover damages and penalties based on the submission of false claims to the state Medicaid agency. The "relator's" suit must be filed under seal and served on the Attorney General to allow the state the opportunity to investigate and determine whether to intervene. The law encourages individuals to disclose Medicaid fraud to the state for investigation by allowing the "relator" to obtain a share of any recovery. Under the statute, the state can recover both restitution and punitive economic sanctions. Because many states have similar laws, this fraud enforcement statute has enabled the office to collaborate during the biennium with attorney general offices throughout the country on cases of national significance.

Patient Abuse and Financial Exploitation

There are 87 licensed nursing facilities and 145 assisted living facilities, which collectively represent home for almost 1% of the state's population. Of the more than 7,000 individuals residing in the state's nursing facilities, approximately 62% are covered under Medicaid. The Unit investigates and prosecutes cases of abuse, neglect, and financial exploitation of persons living in these settings.

The Unit's investigation of residential crimes usually originates with a referral from the New Hampshire Division of Elderly and Adult Services (DEAS). The Unit also investigates reports received directly from other

state agencies, law enforcement and private citizens.

Cases are also referred to the Unit from the twelve state district offices that review Medicaid applications for long-term care coverage. Applicants must provide financial disclosures so that the State can determine financial eligibility for Medicaid coverage. Often, the Medicaid application is prepared by the applicant's authorized representative under a durable power of attorney. If the eligibility review reveals information that the authorized representative has possibly exploited the applicant by diverting assets before seeking Medicaid, then the information will be referred to the Unit for further investigation.

In addition to investigating and prosecuting elder abuse in facility settings, the Unit was actively involved during the biennium in providing training to healthcare groups and local law enforcement officials on recognizing and reporting suspected elder abuse. As an example of its public awareness efforts, the Unit published recommended procedures for administrators of long-term facilities to follow when an employee is suspected of diverting narcotics from a resident.

Summary Of Medicaid Fraud Unit Activities

During the period July 1, 2005 to June 30, 2007, the investigation and prosecution efforts of the Unit resulted in the issuance of forty-one charges against nineteen individuals. Twelve were convicted during the same period and prosecutions are pending against six others.

For the biennium, monetary recoveries, fines, and penalties from all cases totaled \$1,630,959. Of that amount, \$900,738 represents recoveries to the Medicaid Program. Patient funds restitution in financial exploitation cases (civil and criminal) totaled \$252,988.

The following are examples of health care provider cases that the Unit concluded during the biennium.

- *State v. Community Developmental Services Agency*. The provider paid the State \$37,500 to reimburse the Medicaid program for alleged deficiencies with the residential care provided to an elderly and disabled Medicaid beneficiary over an eight-month period. The provider had used a subcontractor to furnish the services in question. The evidence supported a finding that the beneficiary's care needs exceeded the provider's available services and therefore a transfer to another care setting should have taken place.

- *State v. West Central Behavioral Health*. The provider paid the State \$221,320 to resolve a finding that it had submitted duplicate monthly claims for case management services as the result of faulty billing software. The provider serves as one of the State's twelve regional community mental health centers.

- *State v. Tessier*. The defendant pleaded guilty to the crime of Medicaid Fraud. The defendant, while employed as a medical assistant for a physicians' practice, ordered multiple fraudulent telephone prescriptions for controlled substances in the name of Medicaid beneficiaries. She then obtained the fraudulent prescriptions for her own use. The defendant was sentenced to ninety days in jail and a consecutive suspended sentence of 1½ to 3 years.

- *State v. King Pharmaceuticals*. The defendant, as part of a national settlement that the Department of Justice joined, paid the State \$268,000 for damages caused by the company's failure to accurately report its "best price" information for several of its generic drugs. Under federal law, companies that provide pharmaceutical products to Medicaid recipients must provide the best price information, which is used to calculate rebates payable to state Medicaid programs.

Examples of patient abuse and financial exploitation cases that the Unit handled during the biennium include:

• *State v. Clough*. The defendant, a licensed nursing assistant, pleaded guilty to abusing two nursing facility patients. The defendant stole pain medication patches that were administered to the residents' bodies. The defendant served forty-five days in jail with an additional seven months suspended, and was barred from working in healthcare.

• *State v. Marcus*. The defendant, a former nursing home bookkeeper, pleaded guilty to felony theft for taking more than \$10,000 from several resident trust accounts. The defendant paid full restitution and served thirty days in jail with an additional eleven months suspended.

• *State v. Hiers*. The defendant, who served as her mother's financial agent under a power of attorney, pleaded guilty to theft by misapplication for diverting her mother's assets to her own use instead of paying for the mother's nursing home care. The defendant served nine months in jail and was ordered to make restitution in the amount of \$93,000.

Office Of Victim/ Witness Assistance

The criminal justice system can be confusing and intimidating to people who are drawn into the system as a result of having been a victim of, or witness to a crime. The mission of the State Office of Victim/Witness Assistance (Office), within the New Hampshire Attorney General's Office, is to ensure that such individuals are treated with dignity and respect throughout their involvement in the system.

The Office is staffed by the Director, an administrative assistant, a criminal justice specialist and two

victim/witness advocates who are on-call 24 hours a day. Whenever a homicide occurs within the State one of the advocates is responsible for responding to the scene to notify the victim's family of the death of their loved one and to provide immediate crisis intervention and support to both family members and witnesses to the crime. The advocate continues to work closely with the family during the extremely painful and difficult aftermath, providing a wide range of services which may include arranging for the cleanup of the homicide scene, informing the family of the results of the autopsy, assisting them with funeral arrangements, and explaining in general terms the process of a death investigation.

The family will continue to receive support and services from the advocate as the case progresses through the criminal justice system. Those services include educating the family about the court process, providing case status reports, notifying the family of upcoming court hearings, accompanying family members to court and, if necessary, intervening with an employer, school, or creditor. The advocate's involvement with a family does not end with the disposition of the criminal case, but may continue for years, throughout

the post-conviction sentence suspension/review, and parole hearings.

In addition to working with family members, the advocates, as part of the prosecution team, also work with the witnesses involved in each case. They schedule court appearances so as to minimize any inconvenience to the witness, provide an orientation to the courtroom, explain the court process and assist the witness in obtaining their statutory witness fee. In the past biennium the advocates worked with 770 witnesses. The advocates also respond to numerous calls, complaints and requests from New Hampshire citizens by providing intervention and referral services.

From its inception in 1987 through June 30, 2007, the Office has been involved in 471 homicides. During the 2006-2007 biennium, advocates responded to 41 homicides, including two law enforcement officer deaths. They worked with 520 victims (family members) and made 9276 contacts.

In addition to the direct service responsibilities, the Office coordinates a variety of statewide initiatives aimed at standardizing the services and support to victims of crime and



Attorney General Kelly Ayotte, Governor John Lynch and Office of Victim/Witness Assistance Director Sandra Matheson join Americorp volunteers in commemorating National Victim's Day.

enhancing the systematic response to crime and crime victims through training, protocol, and policy development. The following are brief descriptions of the Attorney General's several initiatives in this area.

- The Attorney General's Task Force on Child Abuse and Neglect. This initiative is dedicated to improving the investigation and prosecution of child abuse and neglect cases in New Hampshire. The Task Force recently held its 15th annual multidisciplinary conference for 351 professionals. In April 2007, the Attorney General moderated the first *School Violence Summit*, bringing together 394 law enforcement and emergency services professionals, as well as educators and others concerned with creating a multidisciplinary solution to the problem of school violence, with reducing school bullying, and enhancing the civility of the school environment.

- The Attorney General, in an effort to establish Child Advocacy Centers (CACs) in each county, allotted \$1.5 million dollars in start-up funds from federal grants. As a result, in the last 2 years 5 new CACS were opened and 1 satellite office was set up. CACs ensure that children and families now have access to the high quality, comprehensive, specialized and culturally competent services. CACs are available in eight counties and the Attorney General is working to make them available Statewide. The Task Force continues to sponsor an Annual CAC Summit, as well as specialized forensic interview training for team members. More

information on Child Advocacy Centers can be found at www.cac-nh.com.

- The Governor's Commission on Domestic and Sexual Violence. This Commission, chaired by the Attorney General, continues to develop and implement programs to reduce the level and seriousness of domestic and sexual violence, and to increase public awareness of the issues. During the last biennium, the Commission introduced a *Faith Based Domestic Violence Protocol*, an *Interpersonal Violence Guide for the Media*, and updated the *Sexual Assault Medical Forensic Evaluation Protocol*. This protocol guides the work of law enforcement, first responders, and medical professionals. The Attorney General's Office also provides specialized state evidence collection kits for use by medical facilities statewide. The Commission developed and distributed *Law Enforcement Victim Notification Form* pads to every law enforcement agency in the state, in an effort to ensure that victims receive proper notification and referrals to services pursuant to the requirements of the domestic violence statute. In June 2007, the 13th Statewide Domestic and Sexual Violence and Stalking Conference was held, with 395 professionals attending.

- The New Hampshire Child Fatality and Domestic Violence Fatality Review Committees. Under the coordination of the Attorney General, these committees are responsible for reviewing cases of child deaths and all domestic violence related homicides in New Hampshire, and

for making recommendations for systematic improvements to prevent future deaths. These recommendations are published in annual reports to the Governor.

- The New Hampshire SANE (Sexual Assault Nurse Examiner) Program. This Program is a joint project of the Attorney General's Office and the New Hampshire Coalition Against Domestic and Sexual Violence. The Program trains and certifies medical professionals to provide statewide consistent care that respects the emotional and physical needs of the sexual assault/abuse victim, while collecting the best possible forensic evidence to promote the effective prosecution of the offender. In the past 2 years, 47 nurses were trained, bringing the total of available SANE nurses to 147.

- During the past two years, in addition to the annual two-day conferences, the Office's training unit coordinated 9 day-long trainings on issues such as stalking and technology, elder abuse, school bullying, domestic violence in the workplace, trauma, substance abuse and drug endangered children and a week-long forensic interviewing training for CAC team members. A total of 2215 professionals statewide attended these training programs.

- The Attorney General's Office is responsible for administering the New Hampshire Address Confidentiality Program (ACP), which was created in 2001 to enable people escaping from violent situations to hide

.....

The value of the advocates' services is reflected in the following excerpts from letters that the advocates have received from families of homicide victims:

.....

"You may say it is a part of your job but I want you to know that I felt you took the extra step to enable me to prepare for the pain. Thank you for being so empathetic and supportive to all of us."

.....

"There are rare occasions in life when we meet people who somehow touch and enrich our lives in such a way as to leave a lasting impression on us."

.....

"I will never forget the support and patience demonstrated through those tough times when I felt like I couldn't come to court another day."

.....

their location from their assailant. The ACP sets up a substitute address that participants can use to receive services such as obtaining a driver's license, registering a car or applying to vote as an absentee voter. Mail sent to this substitute address is then forwarded to the participants by the Office, thus keeping their location confidential. Since its inception, 154 people have registered with the program. In the last biennium, 43 new participants were enrolled and a total of 5219 pieces of mail were forwarded to program participants.

All protocols, reports, policies and other publications developed by the Office are available at www.doj.nh.gov/victim/index.html

The New Hampshire Office of the Chief Medical Examiner (OCME) must determine the cause of death and the manner of death for all deaths that fall under their jurisdiction. Cause of death is the illness or injury that caused the death. Manners of death are: natural, accident, suicide, homicide, undetermined, and pending. Undetermined is used when, after a thorough investigation, the manner remains unclear. For example, a known drug abuser who also has depression dies from an overdose. It can be difficult to determine if the manner is accident or suicide. Pending is a temporary classification that is used until the investigation and all of the laboratory test results are completed. The pie chart below summarizes the figures for the various manners of death.

The OCME is charged with investigating all non-natural deaths that occur in NH. OCME also investigates a significant number of deaths where the manner is determined to be natural. These deaths need to be investigated for various reasons, most commonly due to the fact that the decedent died at a

relatively young age with no known significant medical problems or had no doctor, or had a doctor who was unwilling to sign the death certificate. In addition, by law OCME must be notified of certain deaths but may decline jurisdiction when the death appears to be natural.

During this biennial period, OCME actively investigated 2200 deaths. Of the 2200 deaths, 820 were autopsied. The deaths that were not autopsied received a complete external exam. The external exam confirms that either the decedent had no injuries, or, if injuries are present, the injuries conform to the accident scene and the information given by witnesses.

The investigations are done by trained assistant deputy medical examiners (ADMEs). Thirteen new investigators received training in 2006 and have been added to the ADME roster. The training consisted of 160 hours of classroom lectures, viewing 20 autopsies and accompanying a current ADME on 20 investigations. These 13 new investigators have increased the number of total ADMEs to 24. ADMEs

are on call in every county in the state 24 hours a day/7 days a week.

A major goal of OCME is to reduce the number of preventable deaths by identifying risk factors and collaborating with other agencies. In this biennial period OCME worked with:

The Consumer Safety Products Commission to take a toddler bed in which a NH infant died off the market;

The Bureau of Behavioral Health, NH DHHS by sharing suicide data and sending informational packets to suicide survivors;

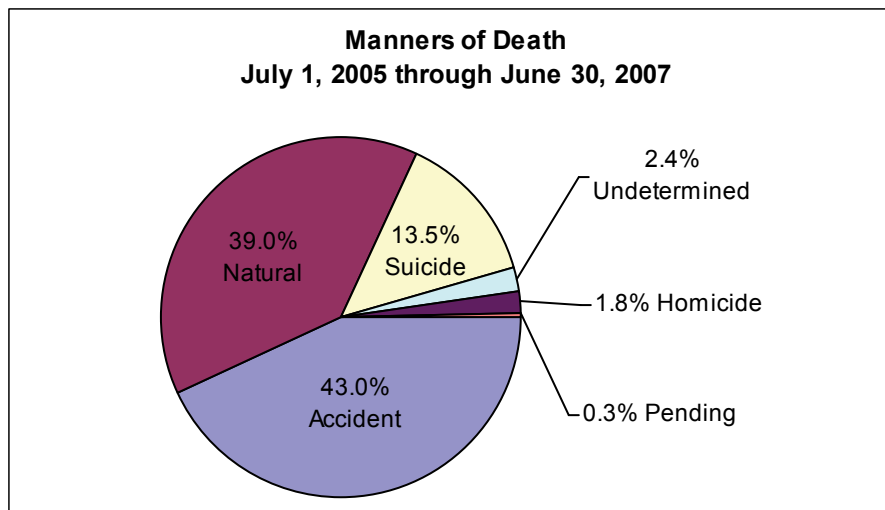
The Center for Disease Control by attending their Sudden Unexplained Infant Death Investigation training;

National media outlets to publicize the danger of the Choking Game, a popular and sometimes fatal "game" played mostly by children and young teens who use a ligature around their neck to cut off oxygen which creates the sensation of being high.

OCME also collaborates with the following agencies and committees:

- Youth Suicide Prevention Alliance
- NH National Association of the Mentally Ill
- Child Fatality Review Committee
- Domestic Violence Review Committee

OCME hosted several summer interns in this biennial period, most of whom were high school students with an interest in forensics. The students worked on individual data projects and



assisted in the office as needed. The data projects included: Sudden infant deaths, drownings, suicides, motorcycle crashes, and youth motor vehicle crashes.

At the end of their internships, the students presented their data to the DHHS Data Users workgroup, the NH Highway Safety Agency and the Sudden Unexplained Infant Death Investigation workgroup.

OCME is working to establish the identities of several unidentified human skeletal remains. Some of the deaths occurred before the office was founded in 1986. Three skulls have been sent to the National Center for Missing and Exploited Children where computerized facial reconstruction will be done by the Smithsonian Institute.

In 2006, an unidentified man died in NH. OCME contacted the National Center for Missing Adults and posted his information on its website. Fifteen months after his death, his family found his information on the website and came forward to claim his remains.

The Consumer Protection and Antitrust Bureau ("Bureau") is responsible for enforcing the consumer protection and antitrust laws of New Hampshire and ensuring that trades and businesses operating within the state comply with governing statutes. In addition to the investigation, regulation and enforcement of the Consumer Protection Act and the antitrust laws, the Bureau has responsibilities under more than thirty other statutes. The other statutes include laws such as Fair Debt Collection, Automated Telemarketing Calls, Security Breach Notification and the Condominium and Land Sales Full Disclosure Acts. In addition, the Administrative Prosecutions Unit ("APU"), the Insurance Fraud Prosecutor and the Elder Abuse and Exploitation Unit are attached to the Bureau.

The Bureau was first established in 1970. At the present time, there are 18 volunteers and 17 staff members, of which 7 are attorneys assigned as follows:

three attorneys specializing in consumer protection/antitrust matters, two prosecutors devoted to the Administrative Prosecution Unit, one Insurance Fraud Prosecutor, and one Elder Abuse and Exploitation Prosecutor.

Direct Citizen Services

One of the Bureau's primary responsibilities is directly assisting consumers with their questions and problems. The Bureau accomplishes this with a toll free Consumer Hotline, a voluntary mediation program, public education and outreach programs, informative brochures, a consumer guide called the *NH Consumer's Sourcebook*, on-line complaint filing, an informative website and direct intervention.

Telephone Hotline

The Bureau supports a Consumer Hotline dedicated to receiving telephone inquiries from consumers. The Bureau's para-

legals, secretaries, attorneys and volunteers responded to approximately 30,000 telephone calls during the biennium. The Consumer Hotline is staffed between 8:00 a.m. and 5:00 p.m. Monday through Friday and can be reached at (603) 271-3641 or 1-888-468-4454.

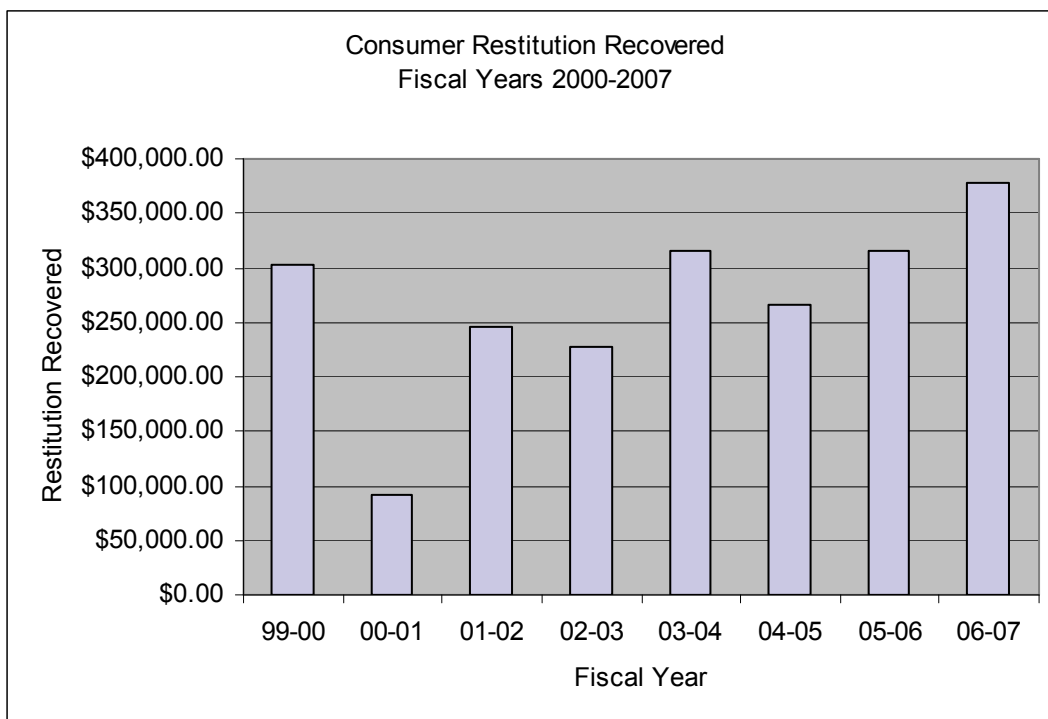
Consumer Complaints

The Bureau receives and responds to thousands of written complaints from consumers in New Hampshire and other states. As of October 12, 2006, on line complaint filing has become available for consumers. During the biennium, over 7,020 written complaints were received through the mail or via the internet and processed by the Bureau. Each is reviewed and a decision is made on how best to handle the complaint given the particular facts and circumstances. In the first instance, if appropriate, the complaint will be referred to the Bureau's Mediation Program. Cases are also investigated for civil or

criminal prosecution. If the Bureau is unable to assist a consumer, the complaint may be referred to other state or federal agencies, such as the Federal Trade Commission, Attorney General Offices in other states, or referred to small claims court.

The top complaint categories in the last biennium were:

1. Fuel and energy purchases
2. Building contractors and home repair
3. Debt collection
4. Used vehicle purchases
5. Health clubs
6. Credit cards



7. Internet goods and services
8. Motor vehicle repair
9. Travel clubs/agents
10. Cellular telecommunications

Mediation Program

The Bureau has utilized a voluntary Mediation Program since 1992. The Bureau recruits and trains qualified non-lawyer volunteers as Consumer Affairs Specialists. These volunteers help fellow citizens and businesses resolve a wide array of consumer complaints by informal mediation. The Bureau's paralegals work with the Consumer Affairs Specialists to handle the bulk of the cases in the Mediation Program. This program allows the Bureau to reach out to and assist thousands more consumers and businesses than it would otherwise be able to help. While the Mediation Program is voluntary on the part of the businesses, it is generally well received. In the biennium, 18 volunteers served in the Mediation Program, each working approximately six hours per week each, answering telephone calls and mediating individual cases.

In the biennium, approximately 3,200 cases were referred to the Mediation Program. The total restitution recovered for consumers in the form of money, goods or services for Fiscal Year 2005-2006 was \$315,628, and \$378,526 in Fiscal Year 2006-2007, for a total of \$694,155 in the last biennium. This represents an increase of nearly \$113,000 over the last biennium.

The work of the Bureau's volunteers is invaluable. Many consumers would not have received help but for the dedication, commitment and outstanding success rate demonstrated by the volunteers. Their work represents the equivalent of at least two additional full-time employees and has allowed the Bureau to positively impact the lives of many more individuals than

would otherwise be possible.

Public Education and Outreach

The Bureau has successfully continued its goal of increasing the number of outreach programs offered to New Hampshire citizens throughout the State. Often, the Bureau partners with local law enforcement and other agencies for its presentations. Bureau staff, with the help of trained volunteers, presented 76 outreach programs in this biennium. The Bureau's outreach includes specially tailored seminars for high school students, senior citizen groups, civic organizations and business leaders. With the increase in identity theft concerns, many of the Bureau's outreach programs focus on preventing identity theft and minimizing the harm done to victims. Bureau attorneys and staff have partnered with print, radio and television media in an effort to reach wider audiences on an array of consumer issues as well.

Consumer Protection Website

The Bureau maintains an informative website for consumers, <http://doj.nh.gov/consumer>. Not only does it contain the complete *New Hampshire Consumer Sourcebook*, but it also lists all of the press releases and consumer alerts issued by the Attorney General's Office. These press releases and alerts notify the public about prevalent scams and contain practical advice for consumers. The Bureau's website lists the security breach notifications received by the Attorney General's office and other noteworthy information for the public. Consumers may also download complaint forms and telephone log sheets to help them monitor telemarketing calls. Registration forms for condominium and land sales can be downloaded as well. Consumers may also reach the FTC's Do Not Call Registry from this site.



Consumer Affairs Specialist and volunteer, Harold Moldoff, educates consumers about the pitfalls of identity theft.

Enforcement

Administrative Subpoenas

Under the Consumer Protection Act, the Attorney General has the authority to subpoena businesses, documents and witnesses whenever it believes a violation of the Consumer Protection Act has occurred. During the biennium, the Bureau issued 23 subpoenas in an effort to investigate and resolve consumer protection cases.

Civil/Equity Actions

During the biennium, the Bureau filed 7 new consumer protection civil/equity suits and resolved a number of other cases involving a wide variety of unfair and/or deceptive trade practices. One major case, Simon Property Group Gift-Cards, resulted in a settlement of \$440,000 restitution for consumers whose cards were debited to pay fees the State claimed were illegal. (Please see sidebar for further details of this litigation.)

Criminal Prosecutions/Enforcement

Criminal prosecution of consumer protection violations continues to be a priority of the Bureau. The nature of the numerous complaints received by the Bureau has mandated that it focus its efforts particularly on home contractors. The following are a sampling of the criminal matters pursued by the Bureau:

- *State v. Allen Greene* (indicted Feb. 16, 2006)

Defendant, a contractor, pled guilty to one theft indictment and waived indictment to another felony theft indictment. He was sentenced to 12 months at the House of Corrections, stand committed and restitution in the amount of \$35,789.68 and a 1½-3 years suspended sentence at the New Hampshire State Prison, with restitution in the amount of \$387,859.20.

- *State v. Horizon Travel, et al* (indicted Feb. 8, 2007)

Defendant, a buying club selling travel services, was charged with 5 criminal violations of the Consumer

Protection Act. A total fine of \$500,000 was imposed.

- *State v. Michael Higgins* (charged Feb., April and May of 2006)

Defendant was charged with two misdemeanor charges of unfair or deceptive business acts or practices and was indicted on three felony charges of theft. Defendant pled guilty to two misdemeanor unfair or deceptive business acts or practices charges. He was sentenced to a deferred and suspended sentence and was ordered to pay restitution in a total amount of \$80,810.

- *State v. Tracy Dale Atwater* (indicted Dec. 1, 2005)

Defendant, a contractor, was charged with five felony charges of theft. After trial, a jury found the defendant guilty and the court sentenced him to 4-10 years at the New Hampshire State Prison. He was ordered to pay total restitution in the amount of \$26,425.

- *State v. James Moran* (Motion to Bring Forward Suspended Sentence of Incarceration filed July 26, 2007)

Simon GiftCards Case

The Consumer Protection Act regulates gift certificates and prohibits expiration dates and administrative fees that reduce their redeemable value.

Simon Property Group owns or manages the Mall of New Hampshire, the Rockingham Park Mall, and the Pheasant Lane Mall and sells gift cards that bore expiration dates and outlawed administrative fees. In late 2004, the Bureau contacted Simon and demanded that they comply with the law. In response, on November 12, 2004, Simon filed suit in Federal court claiming that state law does not apply because the cards were issued by Bank of America, a national bank that is not subject to state law. On November 15, 2004, the Bureau filed suit in Merrimack County Superior Court against Simon for violations of the Consumer Protection Act.

In early 2006, the federal district court ruled that preemption applied to the sales of GiftCards after September 1, 2006, when Simon had entered into a new arrangement with US Bank and Metabank and severed its ties with Bank of America. The State appealed this decision to the First Circuit Court of Appeals, which upheld the district court's ruling. The State sought a review of the decision by the United States Supreme Court; however, that request was denied.

On February 15, 2007, the State and Simon settled the suit related to GiftCards sold prior to September 1, 2005 and issued under Simon's prior arrangement with Bank of America. The State received a payment of \$440,000 as restitution for New Hampshire consumers whose cards either expired or were subject to administrative fees the State claimed were illegal. The Bureau is currently identifying eligible consumers and will distribute restitution accordingly.

Defendant contractor had previously received a suspended sentence of incarceration in 2004 conditioned specifically on not further engaging in a contracting business. This action alleges the defendant violated that ban and should be held answerable to the Court. The matter is currently pending.

Multi-State Litigation/Settlements

During the biennium, the Bureau participated in seven multi-state actions in conjunction with other states. The actions involved both antitrust violations and unfair and deceptive trade practices. The resulting Settlement Agreements secured close to \$131,369 in settlements and financial recovery, in addition to money paid directly to consumers as a result of the settlements.

Tobacco Activities

In 1998, New Hampshire, along with 46 other states and 4 territories joined in the Master Settlement Agreement (the "MSA") to end our litigation against the four major tobacco companies. The original participating manufacturers ("OPMs") agreed to reimburse the settling states for their costs in the treatment of tobacco-related illnesses. This results in payments of approximately \$40 million to New Hampshire every year. These payments, however, are not automatic. A complex formula is used every year to determine the amount that the State will receive. Among the factors that have an effect on the final payment are nationwide sales of tobacco products, the percentage of sales by OPMs compared to the sales by non-participating manufacturers ("NPMs"), or those small tobacco producers who did not join in the MSA, the rate of inflation and other factors.

The MSA requires each settling state to enact a statute which requires NPMs to establish an escrow account in favor of each state and to pay into the escrow account a certain amount, usually between one and two cents, for each cigarette

sold in the state. New Hampshire has enacted such statutes. Currently, over 455 different brands of cigarettes and roll-your-own tobacco are sold in New Hampshire, by 54 different manufacturers, and through 77 different wholesalers. Of these manufacturers, under 20 (down from 31 in the last biennium) are NPMs who we are required to ensure comply with New Hampshire's escrow statutes.

Master Settlement Agreement Compliance

Each quarter, all NPMs are required to report their sales in New Hampshire to the Consumer Protection and Antitrust Bureau. Wholesalers who sell in New Hampshire are likewise required to report NPM product sales in New Hampshire to the Bureau. The NPM and wholesalers' numbers are compared, and then they are compared with information from the Department of Revenue Administration regarding excise tax payments. If these numbers are not reasonably close, further inquiries are made to determine the cause of the discrepancy. Once the actual sales volume of each NPM is verified, the escrow funds are evaluated to ensure that adequate funds have been placed into escrow. If an NPM has failed to abide by its escrow obligations, a warning letter is issued. If the NPM does not respond adequately, the Bureau will file suit to enforce the escrow statute, or will remove the NPM's products from the directory of permissible tobacco products, thereby barring further sales into New Hampshire until such time as the NPM comes into compliance.

The ability to administratively remove noncompliant product from sale in the State has lessened the need for litigation to enforce the escrow statutes. This saves the State unnecessary expenditures of both time and money. Thus, litigation is no longer the Bureau's main means of MSA enforcement. In the past biennium, the State removed the products of seven manufacturers from the list for noncompliance or other reasons. Only one matter, NH

v. N.V. Sumatra, remains in litigation.

Assurances of Discontinuance

The State has entered into Assurances of Discontinuance pursuant to NH RSA 358-A:7 with several national retailers who sell tobacco products. Pursuant to these Assurances, the retailers have agreed to enhance their efforts to avoid tobacco sales to underage purchasers. Among the actions the retailers have voluntarily agreed to establish are mandatory training of all salespersons, the installation of software on cash registers that prompts the input of the purchaser's birth date when a tobacco product is sold, the placement of tobacco products and advertisements for such products away from products of interest to minors, mandatory compliance checks, and retraining/termination for employees who violate the sales policies of the retailer. In the past biennium, CVS and Conoco-Phillips entered into such Assurances of Discontinuance.

Corrective Legislation

The State's experience in enforcing the model escrow statute revealed defects in the statutory language that caused enforcement problems for all Settling States. For example, the original NPM Act only allowed the Bureau to take enforcement action after an entire year of noncompliance had passed. Then, the only avenue for enforcement was through a lawsuit, which would result in an award of damages and an order banning the noncompliant manufacturer from selling in New Hampshire. These were flaws in the model statute that hindered the ability to enforce the Act.

To correct these defects, the Legislature enacted RSA 541-D, which establishes the directory of tobacco products eligible for sale in New Hampshire due to their manufacturer being in compliance with either the terms of the MSA or, for NPMs, being in compliance with RSA 541-C, the Escrow Statute. Before a wholesaler may sell a product in the State,

that wholesaler is required to check the Directory to determine whether that product may legally be sold in the State. This is significantly more efficient and cost-effective than the prior system, which required the State to litigate after the fact when a wholesaler sold nonconforming product in the State.

The "Allocable Share Amendment" was passed to close a loophole in the Escrow Statute which served to encourage NPMs to identify one or two small states as the market for the bulk of their sales. Because ultimately the escrow obligation of each manufacturer was based upon the nationwide sales of the manufacturer's products, by concentrating sales in only one or two small states, a manufacturer could escape its obligation to escrow funds. One manufacturer in particular managed to reduce its overall escrow liability in New Hampshire from over \$3 million to less than \$30,000 by making use of the loophole contained in the law prior to the amendment.

Quarterly reporting requirements have greatly increased compliance with the MSA by allowing a "rapid response" by the State in the event a manufacturer fails to meet its obligations under the MSA. Prior to quarterly reporting, manufacturers and wholesalers were required to report their sales and escrow payments annually. Thus, the manufacturer could be behind on its escrow obligations for a year or more before the State would be alerted to the deficiency and take action. With quarterly reporting, such arrearages are detected before the year is out, creating a more efficient enforcement process.

The combination of the amendments to RSA 541-C and the addition of RSA 541-D has allowed the Bureau to bar the distribution of noncompliant product without the expense and delay of litigation. Simply by removing a noncompliant manufacturer's brand from the public directory, these products are eliminated from the marketplace in New Hampshire.

The NPM Adjustment and Diligent Enforcement

In late 2005, it was determined that a NPM Adjustment for the year 2003 was applicable to all state signatories of the United States. New Hampshire's April 15, 2006 payment was reduced by \$5.3 million. This pattern repeated itself in 2007 relevant to an NPM Adjustment for the year 2004, and New Hampshire's April 15, 2007 payment was diminished by just under \$4.3 million. New Hampshire filed suit in Superior Court, claiming that pursuant to the MSA, the NPM Adjustment would not apply to any State that had not been determined to have failed to diligently enforce its NPM Act for the year in question, and since no state - including New Hampshire - had been identified as having failed to do so, the PMs had no right to keep the funds from the States.

Rather than contest NH's diligent enforcement, the PMs challenged whether the Superior Court was the proper forum. They claimed that an arbitration clause in the MSA applied to this dispute. This Bureau vigorously defended its position in court, but the Superior Court agreed that the matter was subject to the arbitration clause. This Bureau appealed, and the New Hampshire Supreme Court affirmed the decision of the Superior Court. We are now preparing for the arbitration procedure.

Antitrust Activities

The Bureau's antitrust enforcement activities have generally been undertaken in concert with other state antitrust bureaus. Most antitrust actions are undertaken through the states' authority to enforce federal antitrust laws as well as native jurisdiction under state antitrust statutes. The scope of an antitrust enforcement action is nearly uniformly multi-state, as most violations and violators exist across state borders. By pooling resources states have found that they can prevail against large, even multinational, corporations when they violate antitrust statutes.

Actions Against Pharmaceutical Manufacturers

Much activity has recently taken place in the pharmaceutical field. The pharmaceutical industry consists of two types of manufacturers - those who are research-based and the generic manufacturers. The research-based manufacturers conduct research with the hopes of developing new and profitable drugs. The generic manufacturers wait for the patents to expire on new drugs and then make low-priced copies of those drugs.

Therefore, the research-based manufacturers' ability to earn a profit on their discoveries diminishes when their patent protection ends. As a result, attempts to extend patent protection beyond the patent's statutory time limit are increasing. Research-based pharmaceutical manufacturers have also paid generic manufacturers not to produce drugs when the patent expires. These activities are attempts to maintain a monopoly after the legal protection afforded by a patent expires. The resulting violations of antitrust laws have been vigilantly prosecuted by the states, along with the federal government.

The Bureau has participated in investigations involving the following drugs and manufacturers in the last biennium:

Cardizem Antitrust — Open
Purdue Pharma Antitrust — Open
Relafen Antitrust — Closed
Remeron Antitrust — Closed
Perrigo & Alpharma
antitrust — Closed
Taxol — Closed

Non-Pharmaceutical Antitrust Matters

The Bureau has also undertaken, on a multistate basis, antitrust investigations and actions, primarily based on charges of either price fixing or monopolization, against entities other than pharmaceutical manufacturers. These are:

Bentley Systems — Open
Casket manufacturers and funeral homes — Closed
Dairy Farmers of America — Open
First Data Bank — Open
DRAM Manufacturers — Closed

Antitrust Legislation

New Hampshire's Combinations and Monopolies Act, RSA 356, adopted nearly a century ago, has routinely been interpreted as being in agreement with federal antitrust law. Most federal antitrust law, however, is not legislative in nature, but is based on common law decisions and rulings by the federal courts. One issue that has been the subject of federal court rulings is the question of who has standing to sue for an antitrust violation. A number of U.S. Supreme Court opinions have established an unusually complex answer to that question related to indirect purchasers of goods or services where an antitrust violation has occurred somewhere in the chain of distribution. The U.S. Supreme Court has held that only the party who purchases directly from the violator is allowed to bring suit. However, the Court has also held that its rule on indirect purchasers only binds those states that have not legislatively provided indirect purchasers with the right to recover for antitrust violations.

This year, the New Hampshire Legislature amended RSA 356 to provide for a right of recovery for indirect purchasers. The need for this change was made fully apparent as this Bureau pursued a multistate antitrust action against manufacturers of dynamic random-access memory chips (DRAM). DRAM chips are components in nearly every electronic consumer item, from microwave ovens to computers to portable music players. That matter came about after several DRAM manufacturers pled guilty to criminal price-fixing charges brought by the U.S. Department of Justice. After that plea, many states filed a civil suit, seeking restitution for both their citizens who had paid inflated prices for DRAM and for the states them-

selves, who purchased untold number of items containing DRAM chips.

New Hampshire joined this lawsuit in hopes of recouping some of the excess payments made. However, the State and its citizens were, in almost all cases, indirect purchasers of the tainted goods. As the litigation progressed, it became clear that the Court was not sympathetic to any claim by any state that had not authorized recovery for indirect purchasers. New Hampshire ultimately withdrew from that lawsuit, and this Bureau concentrated on obtaining the amendment to the state Combinations and Monopolies Act that now allows suits by indirect purchasers.

Elder Abuse and Financial Exploitation Unit

The Elder Abuse and Financial Exploitation Unit was created in 2006 to raise awareness about elder abuse, train law enforcement officials in the identification and response to cases of suspected abuse or neglect, and to prosecute offenders state-wide on a consistent basis.

Currently, the Unit consists of one prosecutor and available support staff of paralegals and investigators, all of whom seek to accomplish the Attorney General's goals of increased awareness, prevention, and prosecution.

The term "elder abuse" encompasses both physical abuse and financial exploitation of persons 60 years of age or older. Physical abuse includes assaults, sexual abuse, neglect and psychological abuse typically in the form of physical threats of harm. Financial exploitation includes theft of personal effects (money, jewelry, or other valuable assets) typically committed by a perpetrator who has gained and then violated the victim's trust. Common examples of financial exploitation include telemarketing fraud such as bogus charities, investment scams, or the all-too-common fraudulent lotteries.

Since its inception in October 2006, the Unit has received over 110 referrals of elder abuse, neglect, self-neglect and financial exploitation. Referrals come from a variety of sources including law enforcement, the Bureau of Elderly and Adult Services at the New Hampshire Department of Health and Human Services, attorneys, phone calls from victims, or letters sent to the Attorney General's Office from victims, their friends, or their relatives. Approximately 70 percent of the referrals to the Unit involve some form of financial exploitation.

In December 2006, the Unit successfully prosecuted the first case of elder neglect in the State of New Hampshire under a 2002 statute that makes elder neglect in New Hampshire a felony. In *State v. Danna Folden*, a Goffstown woman was convicted of failing to provide her 91-year-old mother with the proper care necessary to maintain her life. The victim developed an ulcer on her back that became infected with meningitis and ultimately caused her death.

Other early successes of the Unit include the conviction of Manchester resident Adam Rossi for assaulting his grandmother in March 2007. In May 2007, the Unit also secured an indictment on a Tilton man for two counts of felony-level fraudulent use of a credit card. In that case, the defendant (a licensed nursing assistant hired to care for the elderly and disabled victim) stole the victim's credit cards and used them to make personal purchases throughout Belknap and Merrimack Counties.

In addition to prosecuting cases of elder abuse, neglect, and financial exploitation, the Unit is charged with improving the state's ability to respond to, and investigate cases of suspected elder abuse, neglect and exploitation. On May 2, 2007, the Unit hosted the first Elder Abuse and Neglect Investigation Conference, drawing 125 members of law enforcement, emergency medical services, and adult protective services from across the state.

Since October 2006, the Unit has conducted trainings at the NH Police Academy, the Office of the NH Medical Examiner, police and fire departments throughout the state, and for members of the Rockingham Ambulance Service. The Unit has also spoken to the Goffstown Rotary, senior groups and appeared on Derry Public Access Television.

In 2007-2008 it is anticipated that the Unit will be actively involved with the Incapacitated Adult Fatality Review Committee. The purpose of the committee is to study fatalities of incapacitated adults in NH to determine what, if any, systemic changes need to be made to prevent such deaths and to improve the state's ability to respond to the needs of incapacitated adults. The Attorney General's Office is charged with administering the committee and filing annual reports with the Governor's office.

Insurance Prosecution Unit

At the end of Fiscal Year 2005, the Legislature approved funding for a specialized Insurance Fraud Prosecutor. The Insurance Prosecution Unit was launched in February, 2006 with the hiring of this Prosecutor by the Insurance Department. While an employee of the Insurance Department, this prosecutor works under the supervision of the Attorney General's Office pursuant to RSA 7:13. The creation of this new position has been praised nationally by the insurance industry and others. The Prosecutor handles both Insurance Fraud and insurance related criminal activity. Insurance Fraud is defined by statute as a false material state-

ment to an insurance company by a claimant. Insurance related criminal activity includes crimes such as theft of premiums, forgery by insurance agents, perjury at workers' compensation hearings, theft of money by fake insurance companies, unlicensed producers, and forged workers' compensation insurance certificates. Many of these crimes have a more direct impact on consumers than claims fraud.

The Insurance Prosecutor has played an active role in developing legislation to strengthen insurance law protections and to ensure appropriate criminal sanctions. As this new unit was only recently opened, only one case was initiated during this biennium. This case, State v. David Burbine, involved an insurance producer (agent) who forged a client's name to a policy amendment document that eliminated the disability rider to the policy. The client did not find out about it until he was injured and attempted to collect on the disability portion of the policy. When questioned by a Insurance Department Fraud Unit investigator, the defendant admitted to signing the client's name. The defendant pled guilty.

Registration/Regulation

Condominium and Land Sales

During the biennium, the Bureau issued 196 certificates of registration or exemptions for subdivisions under the Land Sales Full Disclosure Act and 177 certificates of registration or exemption under the Condominium Act. The State derived \$287,500 in revenues from the application fees

collected by the Bureau in connection with these regulatory activities.

Health Clubs

The bureau registered 401 health clubs during the biennium. The Bureau aggressively sought out health clubs that were not complying with the statutory registration requirement. Fees from registration of health clubs totaled \$40,100. One gym, World Gym, closed unexpectedly and without notice to consumers. The Consumer Protection Bureau then filed a stipulated judgment in order to access the \$50,000 bond that the gym had posted. The bond was paid to the State, which has so far reimbursed approximately 100 consumers a total of \$19,167.

Other Registrations

Fourteen automatic telephone dialers registered with the Bureau during the biennium. Those telemarketers using pre-recorded messages must file and pay a \$20 filing fee. Only one distributorship was registered during the biennium. The Bureau registered 241 independent living retirement communities this biennium.

RSA 151:31 requires all hospitals in the State of New Hampshire to file an annual report with the Bureau detailing the relationship between the hospitals and Physician Hospital Organizations. It also requires the Bureau to report a summary of the results annually to the legislature. Twenty-four New Hampshire hospital and health care provider institutions have filed reports. The Bureau submits an annual report to the leg-

<i>Number of New Cases Opened in the APU</i>	200
<i>Number of APU Cases Closed (including cases from previous term)</i>	237
<i>Number of APU Cases Resulting in License Suspension, Surrender or Revocation</i>	45
<i>Number of APU Cases Resulting in Confidential Letters of Concern</i>	49
<i>Number of APU Cases Resulting in No Discipline</i>	79
<i>Total Fines Issued in APU cases</i>	\$101,200

islature based on the information received from the hospitals.

Administrative Prosecutions Unit

The Bureau's Administrative Prosecutions Unit (APU) regularly investigates and prosecutes professional misconduct cases before the following New Hampshire licensing bodies: The Board of Allied Health Professions; the Board of Chiropractic Examiners; the Board of Dental Examiners; the Joint Board of Licensure and Certification; the Board of Mental Health Practitioners; the Board of Pharmacy; and the Board of Veterinary Medicine. During the biennium, the APU also investigated and/or prosecuted cases for the Board of Accountancy, the Board of Registration in Podiatry and the Real Estate Appraisers Board.

Two attorneys, an investigator and a paralegal staff the Administrative Prosecutions Unit. In those cases that were heard by an administrative Board at which an APU attorney acted as hearing counsel, two resulted in a reprimand or required the licensee to take remedial measures; eight resulted in license denial, suspension or revocation; and two resulted in dismissal. In some cases, multiple hearings were necessary to reach a final disposition.

Settlements after investigation resulted in 45 license suspensions, surrenders or revocations; 49 confidential letters of concern; and 79 findings of no discipline warranted. In addition, the boards assessed \$101,200 in fines in the biennium in cases prosecuted by APU lawyers and investigators. \$29,000 of the assessed fines were conditionally stayed or suspended.

The APU opened 200 cases in fiscal years 2005 and 2006. The largest number were opened for the Board of Medicine (57), the Board of Dental Examiners (32), the Board of Pharmacy (29), and the Board of Mental Health Practice (27). The APU closed 237 cases during the biennium, including many cases

carried forward from the previous biennium.

A sample of the matters handled during the biennium by APU for their client boards follows.

Professional Engineers Board

APU negotiated three settlement agreements for unprofessional conduct by licensed engineers. One case involved an engineer who failed to follow statutory requirements after the Board's mandate. The engineer was reprimanded and fined \$1,000. A second engineer was disciplined for misuse of the engineer's professional stamp. The engineer was reprimanded and fined \$4,000. The third engineer was found to have misrepresented expenditures for reimbursement on company expense reports. He was reprimanded and fined \$10,000.

Board of Pharmacy

The Board disciplined several pharmacies, one pharmacy supply company, and numerous pharmacists and pharmacy technicians. Each business was reprimanded and fined. A medical supply company was fined \$29,000 for its part in an interstate cooperative that sent counterfeit medications into the marketplace.

Physical Therapy Governing Board

APU helped the Board investigate and prosecute a physical therapist who was practicing without a valid license. The Board also disciplined a physical therapy assistant who took medication from a client during a home visit. The physical therapy assistant's license was suspended and the completion of remedial education and substance abuse treatment was required prior to reinstatement.

Respiratory Care Practitioners Governing Board

A respiratory care practitioner was found to be practicing while impaired. The practitioner was placed on a leave of absence and cooper-

ated with the Board by providing documentation of treatment and follow-up support services until declared fit to return to part-time work. The practitioner was reprimanded but continued to practice under supervision and with conditions of ongoing follow-up care.

Board of Dental Examiners

APU assisted the Board with the investigation and prosecution of several dentists and dental hygienists. In one matter, the Board disciplined a dentist for improperly dispensing controlled medications and inadequate record keeping. The dentist also failed to secure the controlled medications. The dentist was required to pay a fine and participate in continuing education.

The Board disciplined a dentist for unprofessional, disruptive behavior in the work place. The dentist was fined and required to participate in remedial measures including arranging for sexual harassment training for his employees.

The Board held a hearing on a practitioner who failed to abide by the Board's orders and the conditions of a settlement agreement. APU communicated with the dentist to obtain his cooperation in following the Board's orders and the Settlement Agreement. The dentist failed to comply with the Board's orders in full, resulting in his license being suspended after two further hearings.

Board of Medicine

APU helped the Board investigate and prosecute six case involving violations of the physician/patient relationship.

Three of these cases involved sexual misconduct with a patient. In two of the cases, the Board issued Emergency Orders suspending the physicians' licenses for five years, and requiring each to participate in extensive remedial education and treatment. The Board held a hearing in the third case in a case where a physician developed a romantic relationship with a patient. His license

was suspended for five years and he was fined.

Two physicians were found to have violated the physician/patient boundary by allowing a personal relationship with the patient to blur their professional judgment. In the first boundary violation case, the physician's untreated alcohol dependence contributed to the misconduct. After significant education and treatment, his license was suspended for two years and specific practice conditions and supervision were ordered prior to the Board's consenting to a return to practice. In the second case, the physician was found to have prescribed controlled substances for a friend and colleague without maintaining an appropriate record of the treatment. This physician was reprimanded, fined, and required to complete continuing education.

Board of Mental Health Practice

The Board accepted a voluntary surrender of license from two practitioners. In one case the practitioner was found to have breached the therapist/patient relationship by extensively involving the patient in the

practitioner's home life by engaging the patient in activities with the practitioner's family members while the therapeutic relationship was on-going. This practitioner received a five-year suspension and requirements for mental health treatment. In another case, a practitioner was alleged to have taken controlled, prescription medications belonging to a client during the practitioner's home visit. The matter had been investigated by the local police department and a not guilty verdict had been returned after trial. The Board's investigation revealed that the practitioner was suffering from substance addiction and the licensee surrendered her license.

Board of Veterinary Medicine

APU prosecuted a licensee whose misconduct resulted in the death of two animals. In the first instance, the licensee failed to conduct an adequate preoperative work up on a small animal who had a fatal reaction to anesthesia. In the second case, the practitioner failed to document preoperative findings and employed a less common method of administering anesthesia prior to surgery. The Board reprimanded

the licensee, required an appropriate log of all animal deaths, required participation in continuing education and imposed a fine.

Board of Chiropractic Examiners

APU assisted the Board in the prosecution of a practitioner who failed to maintain adequate patient records. The licensee signed a Settlement Agreement and agreed to provide the Board with documentation of remedial measures and to obtain further education. In a second case, it was discovered that the same licensee failed to provide records to patients in a timely fashion. During the investigation, it was learned that the licensee engaged in sexual misconduct with a patient. In addition, the practitioner failed to abide by the prior settlement agreement. The practitioner agreed to a second settlement suspending her license for five years. Additional terms of the settlement require that the licensee complete a psychological evaluation prior to reapplying for licensure.

APU prosecuted a licensee who failed to respond to the Board's inquiry about a complaint. The under-

**Consumer Protection and Antitrust Bureau
Biennium At-A-Glance**

Number 1 Consumer Complaint	Fuel oil and energy sales
Consumer Hotline	30,000 calls
Written Consumer Complaints	7,000
Outreach programs	76
Consumer Restitution in Mediation Program	\$694,155
Restitution Obtained From Multi-State Actions	\$131,569
Number of Criminal Prosecutions Initiated	8
Condominium and Subdivision Applications Processed	373
Condominium and Subdivision Fees Collected	\$287,500
Health Clubs Registered	401
Distributorships Registered	1
Automatic Telephone Dialers Registered	14
Number of Cases Opened in APU	200
Total Fines Issued in APU Cases	\$101,200

lying complaint was that the licensee failed to release patient x-rays and failed to reimburse the patient for gift certificates for services purchased before the licensee closed the practice. The licensee provided the x-rays and reimbursed the patient. The Board accepted a Settlement Agreement reprimanding the licensee for her conduct.

The Board reprimanded a practitioner for inappropriate commentary and conduct while examining a patient. The practitioner was required to pay a fine and participate in continuing education.

Land Surveyors Governing Board

APU negotiated two settlement agreements with land surveyors. The first case involved incompetent surveying and inadequate record keeping. The licensee was fined, ordered to take continuing education, and subjected to periodic record review.

In the second case, the licensee billed for unauthorized services, misused his professional stamp and produced substandard work. He was ordered to take continuing education and adhere to supervision requirements.

The Environmental Protection Bureau ("EPB") is comprised of six attorneys, two paralegals, and a legal secretary. Among its many roles in state government, the EPB enforces environmental laws and rules through administrative, civil, and criminal actions. It also provides legal counsel and representation to state agencies for the protection, control, and preservation of the State's environment and to protect human health associated with hazardous environmental conditions. Some agencies represented by the EPB are the Department of Environmental Services ("DES") and the Fish & Game Department. EPB attorneys also represent other state agencies in bankruptcy matters, including the Department of Revenue Administration, the Liquor Commission, and the Department of Labor. The cases and matters cited in this Report are only a sampling of the work performed by the EPB on a daily basis.

Environmental Enforcement in New Hampshire

The General Court has provided the Attorney General and the Department of Environmental Services (DES) with legal authority to protect public health and the environment and to preserve the natural resources of the State of New Hampshire. Rules promulgated by the Commissioner of DES pursuant to environmental statutes have the force of law and, in addition to the statutes, are enforced by the Environmental Protection Bureau. There are provisions in the law that provide for administrative, civil and criminal enforcement of environmental laws. The EPB also has authority to use the Attorney General's common law authorities to pro-

tect the public interest and to bring public nuisance actions in the name of the state. During the last biennium, the EPB has taken an active role in multi-state initiatives to protect air and water quality in New Hampshire, and in consultation with the client agencies, has pursued violations of federal and state laws and rules regarding air pollution, storage and disposal of septage, solid waste and hazardous waste, oil discharges, ground and surface water quality rules and other laws designed to protect human health and the environment.

Environmental Crimes

The EPB investigated seventeen criminal cases in the biennium. With the assistance of DES, state, county, and local law enforcement, and the United States Environmental Protection Agency, the EPB prosecuted numerous environmental crimes, some ending with plea agreements and others ending after trial and conviction.

Successful prosecution of environmental crimes is a vital part of the EPB's work. Not only does sentencing provide for incarceration, fines, or both, but generally the sentence will also provide for remediation or restoration of the affected area. Mitigation of environmental injury is crucial in order to protect New Hampshire's wetlands, forests, groundwater and shoreland. Also, a guilty verdict in an environmental case sends a strong message to the public that violations of environmental law will ultimately result in significant penalties and even incarceration.

• State v. Edward Shaughnessy and Black Oaks Laconia, LLC

In 2005, Edward Shaughnessy,

both as an individual and under the name of Black Oaks Laconia, LLC, erected a road through wetlands on land owned by Ori Ron of Saugus, Massachusetts without first obtaining a dredge and fill permit from DES. He also clear-cut more than 100,000 square feet of land owned by Black Oaks Laconia, LLC, without obtaining a site-specific permit from DES. The EPB, in conjunction with the Belknap County Attorney's Office, pursued criminal charges against Shaughnessy and Black Oaks Laconia. Following a jury trial, Shaughnessy was found guilty of two Class A misdemeanors (Unpermitted Terrain Alteration, RSA 485-A:17 and 485-A:22 and Unpermitted Fill in Wetlands, RSA 482-A:3, I and RSA 482-A:14, I). Black Oaks Laconia, LLC was found guilty of one felony charge of Unpermitted Fill in Wetlands and one Class A misdemeanor (Unpermitted Terrain Alteration).

On July 2, 2007, the Court sentenced Shaughnessy to one year in the house of corrections, forty-five days to be served, and the balance suspended for five years, a \$2,000 fine and two years of probation. Black Oaks Laconia, LLC, received a \$100,000 fine with \$50,000 of that fine suspended for a period of ten years on the wetlands conviction. Both defendants were ordered to remediate the harm done to the wetlands caused by the construction of the road. On the terrain alteration convictions, the Court sentenced Shaughnessy to one year in the house of corrections, which he suspended for a period of five years, and a \$2,000 fine, which was also suspended, and two years of probation. Black Oaks Laconia, LLC was sentenced to a \$10,000 fine, which was suspended in full for a period of five years on the terrain

alteration conviction. During the sentencing hearing, the Court noted that the violations were “not insignificant” and that they were “deliberate and extensive”.

• *State of New Hampshire v. Richard Porter*

On November 2, 2005, a Grand Jury indicted Richard Porter on eleven felony counts of forgery, one felony count of fraudulent handling of recordable writings, and seven misdemeanors, all of which have elements of fraud. Mr. Porter had used another individual's signature stamp to execute five checks totaling \$329,500. Those checks were drawn on closed accounts. He also falsified subdivision plot plans to be recorded at the Rockingham County Register of Deeds and DES, made a false report to law enforcement personnel, misused a surveyor's stamp, and failed to deliver a valid title to the buyer of a motor vehicle he purported to own. Mr. Porter is a fugitive from justice and has not been tried.

• *Falsification of Asbestos Abatement Training Documents*

Samuel E. Rosario Moreta and Carlos A. Williams Miranda were both charged with certifying on DES asbestos abatement license applications that the information they submitted with the application was true to the best of their knowledge and belief. Both defendants knowingly submitted falsified training certificates with their applications.

Miranda pled guilty to one felony count of certifying a false statement and one felony count of identity fraud. He was sentenced to two concurrent terms of six months in the house of corrections with five months suspended for a period of one year. Moreta pled guilty on February 22, 2007 to one misdemeanor count of Tampering with Public or Private Records and was sentenced to six months at the house of corrections, which sentence was suspended in full for a period of two years, and fined \$1,000. Both defendants were ordered not to perform any asbestos

abatement without being properly licensed to do so. As of the end of the biennium, a third person, Celso Gervacio, faced trial for one felony count of certifying a false statement.

Civil Enforcement of Environmental Laws

During the biennium, the EPB opened approximately 47 new civil environmental enforcement matters. EPB attorneys filed contempt motions in at least nineteen cases during the biennium to enforce the terms of settlements or other court orders.

Not only does the EPB litigate matters in the State's Supreme and Superior courts, EPB attorneys often appear in front of administrative adjudicatory bodies that are appointed by the Governor. When a citizen disagrees with a decision that an agency has made, the applicable board or council may hear the appeal with EPB attorneys often representing DES.

Waste

The EPB's waste management enforcement cases were brought under the Hazardous Waste Management Act, RSA chapter 147-A, the Hazardous Waste Cleanup Fund, RSA 147-B, the Solid Waste Management Act, RSA chapter 149-M, as well as the Oil Discharge or Spillage Act, RSA chapter 146-A and the Underground Storage Facilities Act, RSA chapter 146-C.

Pursuant to RSA 149-M:9, the EPB conducts comprehensive background investigations on companies and key personnel who apply for solid or hazardous waste permits. The purpose is to ensure that those entrusted to store, transfer, treat or dispose of solid waste are law-abiding citizens who have sufficient integrity and honesty to hold a disposal permit from the State. In the biennium, the EPB conducted and reported to DES on eight background investigations.

• *State v. Elementis Chemical*

On August 15, 2001, DES personnel inspected an abandoned facility owned by Elementis Chemical and found significant violations of the Hazardous Waste Act. The facility was not secured from trespassers or vandals. They found acetic acid, combustible waste, and various tanks, drums and containers potentially containing hazardous waste. They immediately issued an Imminent Hazard Order, stating, “[Elementis], as the owner and operator of the Facility where the waste is located, has liability under RSA 147-A:9. By abandoning this waste, [Elementis] has created an imminent threat to human health and the environment pursuant to RSA 147-A:13.” The EPB then filed suit against Elementis to comply with DES' orders. Following lengthy court proceedings, including two appeals to the Supreme Court, on April 30, 2007, Elementis was found responsible for violations of the hazardous waste laws, and remitted a check for \$95,100 in payment of civil penalties.

Water

Many of the EPB's enforcement cases involve the illegal dredging and filling of wetlands or the construction of unpermitted facilities over or adjacent to state waters, both governed by the Fill and Dredge in Wetlands Act, RSA chapter 482-A. The EPB also brought actions under the Comprehensive Shoreland Protection Act, RSA chapter 483-B, the Water Pollution and Waste Disposal Act, RSA chapter 485-A, and the Safe Drinking Water Act, RSA chapter 485.

• *State of New Hampshire v. Joseph and Rose Marino*

State of New Hampshire Department of Environmental Services v. Joseph and Rose Marino went to trial on August 24, 2006. The trial court found that the defendants constructed a fully functional single-family home on Back Lake in Pittsburg, New Hampshire without any State approvals. The defendants

did not seek, nor did they receive, a septic system permit from DES. The defendants also violated the State Shoreland Act by constructing a primary residence within fifty feet of the shoreline. The trial court noted that when DES informed the Marinos that they needed to cease construction immediately, they did not stop. Instead, they told their builder to “rush to completion”. Following the two-day trial, Judge Vaughan ruled that the Marinos had knowingly disregarded environmental laws. The order required the Marinos to obtain septic system approval from DES, to obtain a wetlands permit for work on the bank, and to obtain authorization under the Shoreland Act. Any component of the home that could not be approved was subject to removal. The court also fined the defendants \$65,000. The Court specifically noted that the Mr. Marino’s conduct “showed a callous disregard for the rule of law”. The Superior Court’s decision was appealed by the defendants to the New Hampshire Supreme Court where it was upheld.

• *State v. Badger’s Island*

In 2006, the EPB filed a complaint against the owners of a 100 foot long barge holding a 3 bedroom 2-story house that was sunk and abandoned on the bank and bottom of the Piscataqua River in Newington. A settlement was reached and the barge was removed in the summer of 2007 at the expense of the owners, Badger’s Island, LLC.

• *State of New Hampshire v. Waste Management of NH, Inc.*

On February 28, 2006, the Environmental Protection Bureau received court approval of a landmark settlement with Waste Management of New Hampshire (“WMNH”) regarding federal and state air violations at the Turnkey Landfill in Rochester. The settlement represented the largest civil penalty in the state’s history for environmental violations. The Petition filed by the state alleged that WMNH had failed to meet its federal and state air pollution obligations, including failure to collect landfill gases at a sufficient rate, and

sought an order to correct exceedances of methane and other emissions, to expand the landfill gas collection system in a timely manner, to maintain cover integrity, to timely install sufficient density of gas collectors, to report exceedances and to properly monitor gas collection wells. The Petition also alleged federal and state New Source Review violations. The negotiated settlement required WMNH to pay a total civil penalty of \$1,750,000 and to exceed minimum environmental requirements for controlling and monitoring landfill gases. The settlement monies were used to fund part of the University of New Hampshire’s landfill gas-to-energy project and to fund energy efficiency projects in the cities of Rochester and Dover.

Multi-State Air Litigation

During the biennium, the EPB continued its active involvement in multi-state litigation to enforce the critical provisions of the federal Clean Air Act, which protect New Hampshire’s citizens from air pollution transported from upwind states. For example, in 2006, the EPB joined other states in challenging rules adopted by the United States Environmental Protection Agency (“EPA”) to regulate mercury emissions from power plants (*New Jersey, et al. v. EPA*). The states allege that the rules are too lax, adopt an illegal cap and trade program for mercury and do not protect citizens that live near power plants from mercury hotspots. The case has been submitted to the United States Court of Appeals for the District of Columbia Circuit and a decision is pending.

Another example is the recent multi-state challenge to a revised national ambient air quality standard for fine particulate matter. In *State of New York, et al. v. EPA*, filed in December 2006, twelve other states, the District of Columbia and the South Coast Air Quality Management District joined together to sue EPA for failing to strengthen the national air quality standard for fine particles because doing so could save thousands of lives every year. The small

particles come to New Hampshire from coal-burning power plants located in upwind Midwestern states, as well as from motor vehicles. The small particles can cause severe illness, especially in children and those with respiratory ailments. The case is in its early stages before the U.S. Court of Appeals for the District of Columbia.

The EPB has also been actively participating in enforcement and EPA rulemaking initiatives regarding “New Source Review” or “NSR,” a Clean Air Act requirement that major emitters update their pollution controls when they make any changes that could affect their emissions. After years of litigation, New Hampshire, along with the other plaintiff states, citizen plaintiffs, and the federal government, reached settlement with American Electric Power, the nation’s largest utility, resolving the claims filed in U.S., et al. v. AEP. The settlement requires AEP to reduce emissions from power plants by as much as 800,000 tons per year. To accomplish this, AEP will reduce emissions from many plants whose emissions reach New Hampshire. The cost of the equipment needed to achieve these reductions will cost as much as \$4.5 billion. In addition, AEP will pay \$15 million in civil penalties and \$60 million towards environmental mitigation projects. The federal district court for the Southern District of Ohio must still approve the settlement. An important victory was handed down from a federal appeals court in a multi-state challenge to EPA reforms to the “routine maintenance exemption” to the federal NSR rules (*NY, et al. v. EPA*). The EPB has also participated in submission of public comment to additional proposed reforms to the NSR rules.

Administrative Appeals

• *Appeal of Stephen Andrews and John Carpenter*

In early 2006, two neighbors who lived on Canobie Lake filed a request for a waiver of the “no-swim” rule that applies to Canobie Lake. Canobie Lake is the main source of

water for the Salem Water Department, which supplies drinking water to 20,000 people. DES denied the request, and two individuals filed an appeal with the Water Council. A two-day hearing ensued, where an EPB attorney presented evidence that human bathing in a public water supply poses significant health risks to those who consume the water. Witnesses included a nationally renowned infectious disease physician who testified that parasites called cryptosporidium enter the water from human waste and cause severe illness when ingested by humans. These parasites are immune to chlorination and can only be removed by filtration. He cited an example where hundreds of thousands of people fell ill in Milwaukee in the early 1990s due to failure of the city's water filtration system. The Town of Salem also presented evidence in support of DES's decision to deny the waiver request. The Water Council upheld DES's decision to deny the waiver request, thus preserving a valuable water supply source and protecting the health and safety of consumers.

• *Appeal of Regensis Corp.*

The Environmental Protection Bureau defended DES in a solid waste permit revocation appeal during the last biennium. In 2005, DES revoked a solid waste permit issued to Regensis Corp. after learning that one of its former directors was a convicted felon. Under the solid waste statute, RSA 149-M, a permit cannot be issued to an organization if there is a felony conviction within the 5 years preceding an application. Regensis has obtained a permit to burn construction and demolition debris, which is a solid waste, at its Hopkinton plant. When it was revoked, Regensis appealed to the Waste Management Council, which held a hearing in which evidence was submitted by both sides, as well as several intervenors. The Waste Management Council upheld the permit revocation in 2006. Regensis subsequently appealed to the Supreme Court, and that appeal is still pending.

• *Petroleum Fund Appeals (Oil Discharge and Disposal Fees)*

State law requires all oil importers to pay environmental fees to be used for oil spill cleanups through the Oil Discharge and Disposal Cleanup Fund, which is administered by the Oil Fund Disbursement Board and collected by Department of Safety, both of whom are represented by the Attorney General. The first challenge to payment of oil importation fees was made by C.N. Brown Company, a fuel oil distributor, on grounds that fuel oil used in off-road equipment and to generate electricity was exempt from the fees. The Department of Safety had performed an audit, as it does for all fuel/heating oil distributors for the purpose of determining if the distributors have paid the fees. In the case of C.N. Brown, the audit concluded that some of the diesel fuel sold by the distributor had been converted to fuel oil but that fuel oil fees had not been paid. In April 2006, City Fuel appealed the audit findings through the Department of Safety Bureau of Hearings. The Environmental Protection Bureau represented the State's position that insufficient fees had been paid and on May 12, 2006, the Report of the Hearings Examiner upheld the State's position on the fees. C.N. Brown did not pursue its case further. A related appeal filed by City Fuel, another distributor, was withdrawn as a result of the decision.

A second appeal of the fuel oil fee was filed by Halle Fuel, Inc. on grounds that the fuel sold was used for exempt purposes. The Environmental Protection Bureau again represented the State's position that insufficient fees had been paid. A second favorable decision was issued by the Department of Safety Hearings Examiner after a hearing was conducted and no further appeal was taken.

Fish and Game Department

EPB attorneys have provided the Fish & Game Department advice

and representation in numerous matters involving wildlife management, licensing of hunters, land acquisitions, legislation, complex personnel appeals, and marine fisheries regulation and litigation.

• *Massachusetts and New Hampshire v. Gutierrez, et al.*

In November 2006, EPB attorneys, working in cooperation with the Massachusetts Attorney General's Office, filed suit against Secretary of Commerce Gutierrez and others to block the implementation of new marine fisheries regulations concerning the groundfish fishery in the Gulf of Maine. The new scope of regulation would count fishing days at 2 days used for every one actually fished for nearly all New Hampshire fishermen. This counting is expected to have a devastating impact on the small boat fishery that comprises the bulk of New Hampshire's fleet. The suit seeks to have the Secretary reconsider the regulations in light of flaws in the scientific model used and the availability of a regulatory exception, among other reasons. The case is pending in the federal court in Boston. A ruling is expected by Spring of 2008.

Agency Counsel, Cost Recovery and Defense

Apart from its enforcement responsibilities, the EPB also plays a significant role in representing the interests of its client agencies. In situations where client agencies have spent State funds to address environmental or natural resource-related problems, the EPB pursues cost recovery against responsible parties. During the biennium, the EPB recovered a total of \$2,145,751 in costs incurred by the State against responsible parties. In addition, the EPB reviewed 1,136 agency contracts prior to their submission to Governor and Council. The EPB also represents its client agencies in personnel matters and, on occasion, in litigation relating to such matters. The EPB defends the legality of environmental statutes

and the agency rules promulgated pursuant to the laws.

When the Department of Fish & Game sought to copyright the “Licensed Guide” and “Fish & Game” logos, it turned to the EPB for assistance. EPB staff re-researched copyright laws and led the Department through the process.

• *Oil Fund Disbursement Board v. ExxonMobil Corporation*

The EPB represented the Oil Fund Disbursement Board in seeking repayment of more than \$2 million in petroleum fund reimbursements from ExxonMobil as a result of an insurance settlement between the company and its private carriers. Because the petroleum funds under RSA 146-D are excess insurance, the EPB alleged that ExxonMobil should repay all cleanup cost reimbursements made to its New Hampshire gas stations. A negotiated settlement was reached under which ExxonMobil repaid \$ 2.1 million to the petroleum funds.

• *NCES v. State of New Hampshire*

In July 2006, North Country Environmental Services, Inc. (“NCES”), owner and operator of the Bethlehem landfill filed a lawsuit against the State alleging that a recent change to a tax exemption statute was unconstitutional.

The Legislature adopted House Bill 1429 on June 15, 2006, which removed privately owned landfills from eligibility for pollution-related tax exemptions. NCES challenged the constitutionality of the provision, citing violations of the equal protection and the due process clauses of the federal and New Hampshire Constitutions. The EPB prevailed in Merrimack County Superior Court, where the court agreed with the State’s argument that there was a rational basis for treating landfills differently from other types of facilities in that landfills were the least-preferred method of solid waste disposal. NCES has appealed the Court’s order to the New Hampshire Supreme Court and the case is still pending.

• *Regenesis v. State*

In 2006, Regenesis sued the State for requiring compliance with New Source Review requirements before resuming operations at its Hopkinton plant. The State filed a motion to dismiss the action and, in 2007, received a partial victory from the Merrimack County Superior Court. Regenesis can pursue its NSR claims but cannot preclude the State from applying federal NSR policies absent agency rulemaking. The case will now proceed to trial on whether Regenesis can resume operations without complying with NSR requirements.

In 2007, the State prevailed in defending DES against a challenge to new septage rules filed by Gerald Bell, a septage hauler located in Swanzey. Bell filed a petition in Merrimack County Superior Court several years ago, claiming that the rules were unconstitutional because his open septage lagoons would have to meet new buffer rules or be enclosed to protect abutters from odors. The Superior Court rejected Bell’s challenge and found that the rules were reasonable. Bell has appealed the decision to the Supreme Court and the case is still pending.

• *State v. Pontook Operating Limited Partnership*

Pontook Operating Limited Partnership (“Pontook”) owns a hydroelectric dam in Dummer, New Hampshire. The facility is located on land owned by the State. Pontook pays the State rent based on its gross revenue from the sale of electricity. The State believed that Pontook was selling electricity to a related company for an artificially low price. The State also believed the lease terms entitled it to a portion of the money that Pontook received in a bankruptcy settlement with USGen. After extensive negotiations, Pontook agreed to pay the State an additional \$1.2 million dollars for discrepancies in rental payments.

Land Use and Acquisition

The EPB reviews and approves property acquisitions, most often for conservation purposes, by client programs including Fish & Game and the Land Conservation and Heritage Investment Program (“LCHIP”). At times, EPB attorneys become involved in litigation defending state property interests, as in the case of *Klein v. Fish and Game* where an owner of property claimed to have a right-of-way over conservation land. The State prevailed. Over the past biennium, hundreds of acres have been preserved as conservation land with assistance from EPB staff.

The EPB acts as legal counsel to the State Conservation Committee, the Conservation Land Stewardship, the Rivers Management Advisory Committee, and the Lakes Management Advisory Committee. Also, EPB attorneys review property transfers for the Land Conservation and Heritage Investment Program (“LCHIP”), as well as review all proposed deed, chain of title and boundary descriptions and when necessary, negotiate with other landowners on behalf of state interests.

MTBE Litigation

The EPB has continued to successfully pursue the state law claims it filed in 2003 against oil companies for contaminating state waters with the gasoline additive methyl tertiary butyl ether, or “MtBE.” New Hampshire was the first state to file such an action. In January 2006, the Supreme Court agreed with the State that, under its sovereign authority to represent the interests of all state citizens, individual municipalities could not seek recovery against the oil companies for MtBE damage to water supplies and had to yield to the State’s lawsuit. *State v. City of Dover, et al.*

Also, in May 2006, a federal appeals court agreed with the State that its claims should be heard in state court rather than in federal court. *NH v.*

Amerada Hess, et al. The case has been remanded to the Merrimack Superior Court from a federal district court in New York, which was hearing the case after defendants removed it in 2003. It is significant that the Second Circuit Court of Appeals ruled that there was no federal jurisdiction over the case, in large part because the federal government did not mandate the use of MtBE as a gasoline additive. This environmental case with statewide significance will now proceed forward in state court, to be tried before a jury of New Hampshire citizens.

Energy Efficiency Initiatives

During the last biennium, the EPB continued to pursue the United States Department of Energy (DOE) in multi-state litigation initiatives directed towards requiring the agency to comply with Congressional mandates to update energy efficiency standards. In 2006, New Hampshire and thirteen other states, New York City, and consumer and environmental groups filed suit against DOE for failing to meet deadlines set by Congress for updating energy efficiency standards for more than twenty consumer products. The lawsuit resulted in a consent decree requiring DOE to adopt energy efficiency rules for manufacturers of certain products, including furnaces and air conditioners, under a binding schedule.

Counsel For The Public

In mid-2006, Community Energy, LLC and Lempster Wind, LLC, applied to the Site Evaluation Committee for permission to construct a wind powered generation project on a prominent ridgeline in Lempster. The Attorney General appointed a EPB attorney to represent the interests of the citizens of New Hampshire in the matter. Several public meetings and a three-day evidentiary hearing were held in which citizens and representatives of various towns and businesses had the opportunity to testify to either their support or rejection of the project. Also,

counsel for the public was able to ask questions of the parties involved in order to ensure that the public's interests were protected. Counsel to the public reached an agreement with the project's owners that protects avian species, protects nearby residences from noise impacts, and preserves land for conservation purposes. Recently, the Site Evaluation Committee, having heard all parties and deliberated, approved the project.

Bankruptcy Matters

During the biennium, a bankruptcy attorney in the Environmental Protection Bureau handled most bankruptcy matters affecting State interests. In addition to litigating bankruptcy matters, the bankruptcy attorney devoted considerable time to assisting other attorneys and other agencies with settlements, consent decrees and other transactions. Significant bankruptcy matters during the biennium include the following:

- *Collins & Aikman*

Collins & Aikman filed for Chapter 11 bankruptcy on May 17, 2005. It is a prominent manufacturer of automobile components with plants around the country. At the time of the bankruptcy, the Department of Environmental Services was in the process of investigating Collins & Aikman for violating environmental law at their plants in New Hampshire, including three in Dover and one in Farmington. The violations involved chemical contamination of groundwater, including a Town of Farmington well. The costs for past and future cleanup totals more than \$91,000,000. Collins & Aikman began a complete liquidation in January 2007 which will likely result in no recovery for holders of \$42 billion in unsecured claims. Nevertheless, the EPB was able to secure in the bankruptcy proceeding \$3,600,000 and a plant and land in Farmington assessed at more than \$5,500,000.

- *In re: St. Jude's Residence*

On April 3, 2004, pursuant to a search warrant, law enforcement personnel searched the St. Jude's Residence, an unlicensed facility for the treatment of drug and alcohol addiction. The search resulted in, among other things, the seizure of approximately \$341,000. Following the investigation, the two principals at St. Jude's Residence, Mr. Kim Tari and Mr. Joseph San Giovanni, were each indicted on fifteen counts of theft by deception for leading fifteen different individuals to believe that they were going to be treated for alcohol or drug addiction, charging each person between \$3,400 and \$43,000. Shortly after the indictments, St. Jude's Residence filed for Chapter 11 bankruptcy. The trustee, Tim Smith, then filed suit against Attorney General Kelly Ayotte for return of the money to the debtor. The EPB negotiated a settlement with the trustee so that the Attorney General will maintain in a trust account for the victims the amount of \$231,000 and the trustee distributed approximately \$25,000 to some of the victims.

Environmental Protection Bureau
Bureau At-A-Glance

ENVIRONMENTAL ENFORCEMENT	Environmental Program	Amount Recovered (Total Dollar Value)*	
	Air Pollution	\$118,000	
	Air Pollution/Solid Waste	\$1,750,000	
	Asbestos Abatement	\$337,000	
	Dams	\$1,200,000	
	OHRV License Fees	\$12,000	
	Hazardous Waste	\$95,000	
	Oil Fund Reimbursement	\$2,141,438	
	Safe Drinking Water	\$10,000	
	Septic	\$1,282	
	Solid Waste	\$382,000	
	Wetlands/Shoreland/Water Pollution	\$571,500	
	TOTAL		\$6,618,220
BANKRUPTCY	Case	State Agency	Dollars Recovered
	Atlantic Paper & Foil	Environmental Services	\$100,000
	Collins & Aikman	Environmental Services	\$3,600,000 plus ownership of facility and land valued at \$6,575,890
	Merrimac Paper	Environmental Services	\$4,507
	Peter & Beverly Smith	Environmental Services	\$131,000 (Paid to Plymouth Village District for Hazardous Waste Damage)
	Troy Mills; State v.	Environmental Services	\$25,000
	Venture Holding	Environmental Services	\$64,395
	Baldwin's on Elm	Liquor	\$4,050
	Car Components Technology	Labor	\$100,000 (Collected for worker benefits)
	D'Abre, Kathleen Therese	Health & Human Services	\$16,000
	Foss Manufacturing	Revenue Administration	\$346,992
	Jillian's	Liquor	\$534
	Pittsfield Weaving	Revenue Administration	\$20,000
	Snyder, Theodora Simpson	Liquor	\$3,500
	St. Jude's Senior Residence	Justice	\$231,000 (Money held in trust for victims)
	Tillotson Healthcare Corporation	Labor	\$5,064 (Collected for worker benefits)
	TOTAL		\$4,652,042
Combined Criminal Sentences Imposed	3.5 years, \$151,000		
Agency Contracts Reviewed	1,136		

* Environmental Enforcement Data does not include additional restoration or cleanup ordered.

The mission of the Charitable Trusts Unit (the Unit) is to protect the public's interest in the property and assets committed to charitable purposes in the State of New Hampshire through effective registration, education and enforcement. During the biennium, the Unit registered the highest number of charities in its history; and the value of the charitable assets in New Hampshire was in excess of \$13.6 billion dollars. The charitable sector in New Hampshire remains strong, diverse and responsive to the growing demands placed upon the sector.

Recent Developments

During the biennium, the Unit dealt with a series of cases involving museums, religious entities, colleges and universities, land trusts, and public libraries, among others. In addition, the Unit handled matters involving (a) the implementation of the Uniform Trust Code, the first major modernization of trust law in New Hampshire; (b) cooperation with the Legislature and the Pari-Mutuel Commission on the nonprofit gambling statutes; (c)

review of New Hampshire's community benefits statute; and (d) scrutiny of mergers, consolidations and affiliations involving nonprofit entities.

Proliferation of the Nonprofit Sector

During the biennium, the number of charities registering with the Unit reached the highest levels since the creation of the Unit in 1943. As of June 30, 2007, the total number of charitable trusts registered in New Hampshire was 6,236, a figure that does not include testamentary trusts (e.g. those trusts created by means of a will). If the testamentary trusts (of which there were approximately 539 registered) are added, the total number of registered charities was approximately 6,775. If the municipal trustees are added, the total number of registered charitable trusts is approximately 7,000. The proliferation of charities that began in the mid-1990's and accelerated rapidly after 2001 continued uninterrupted during this biennium.

Statistically, during the period 2001-2007, there were approxi-

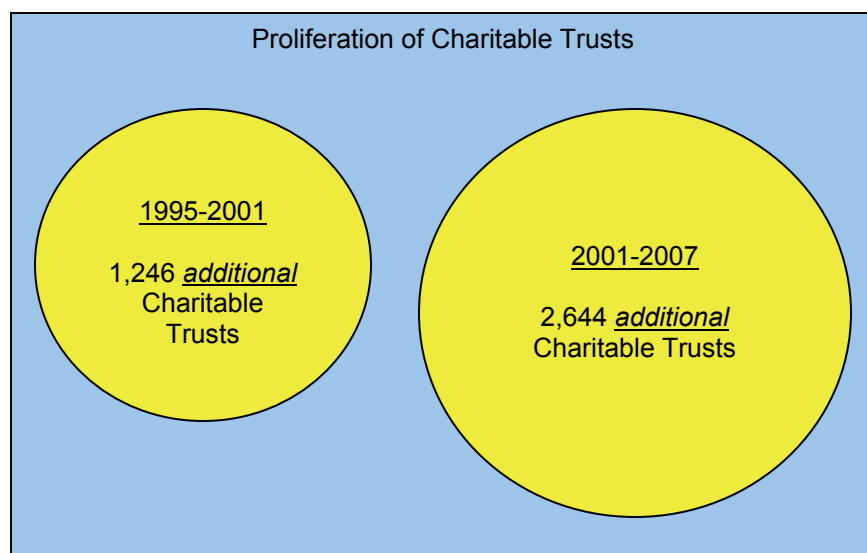
mately 2,650 *additional* charitable trusts registered with the Unit – or approximately 440 *additional* charitable trusts per year. This proliferation, uninterrupted and unparalleled in New Hampshire history, underscores two important trends. First, a healthy, diverse, mature and dynamic charitable sector now exists in this state, ranging from the smallest youth sport leagues to the largest private universities and most sophisticated nonprofit hospitals. Second, from a regulatory perspective, the demands on the Unit for its expertise, time and skills have increased proportionally.

The increase in the number of charities in New Hampshire has accelerated during the last 6 years, with an additional 440 charities being registered each year with the Unit. Each charitable entity must file a copy of its Federal IRS Form 990 or Form 990 PF with the Unit, as well as New Hampshire forms. In addition, charities with revenue in excess of \$1,000,000 per year must file audited financial returns. These documents are publicly available.

The value of the registered charities native to New Hampshire is estimated by the Urban Institute to be \$13.6 billion dollars. This figure understates the real value of the nonprofit sector in New Hampshire. It does not include the value of assets held by (i) religious organizations, (ii) municipal trusts, and (iii) the smallest charities in this state, all of which would significantly increase the valuation of charitable assets well beyond \$13.6 billion.

Transparency and Accountability

A major objective of the Unit is providing accurate and timely



information to donors in order to help them make informed decisions about the charities to which they contribute. In this era of transparency and accountability, New Hampshire donors are entitled to have as much information as possible before supporting a charity; consequently, the Unit provides links on its website to assist donors in making informed giving decisions (www.doj.nh.gov/charitable/index.html). The Unit also provides Guidebooks and other publications that allow donors to understand the laws that govern charitable trusts.

To carry out its core missions, the Unit is staffed with one attorney (the Director of Charitable Trusts), one Assistant Director, two investigative paralegals, and one records control clerk to carry out its statutory mandates.

Chief Justice Frank Kenison

Chief Justice Frank Kenison origi-

nally conceived of a Charitable Trust Unit when he served as Attorney General of New Hampshire. In 1943, New Hampshire became the first state in the nation with a Charitable Trust Unit and the Unit has served as a model for other states. The statute creating the Charitable Trust Unit (RSA 7:19) provides the Attorney General's Office with common law and statutory authority to enforce charitable trust laws.

Outreach

Given the proliferation of charities (2001-2007), the Unit has maintained its commitment to educating boards of directors on their fiduciary duties, ethical behavior, internal controls, and other major issues.

The Unit has engaged the public in a variety of ways, including: (i) educational forums for the trustees of cities and towns, (ii) educational forums for Selectmen and Tax Assessors on charitable exemptions

from the real estate tax; (iii) sessions sponsored by the NH Bar Association or the National Association of Attorneys General (NAAG) on the Uniform Trust Code, the Federal IRS Form 990 issues, and charitable regulation generally; and (iv) workshops offered with the New Hampshire Center for Nonprofits, the Governor's Annual Conference on Volunteerism, the United Way, and the National Business Institute. In addition, the Unit has published articles in the "NH Bar Journal," the "Nonprofit Quarterly," and "NH Town and City."

Members of the Unit have met with the CEOs, governing boards, audit committees and staff members of nonprofit entities to discuss fiduciary responsibilities, community benefits, governance, best practices, mergers, and other issues.

The Charitable Trusts Unit has presented workshops to New Hampshire's municipal trustees for over 20 years. Nearly 400 cemetery trustees, library trustees, and trustees of trust funds were in attendance at the 2007 sessions held in Gorham and Concord.

The Legal Structure

The laws governing charitable trusts in New Hampshire are complex and the Director of Charitable Trusts (the Director) is responsible for the supervision and enforcement of charitable trusts and charitable solicitations. The Director is a necessary party to all judicial proceedings that affect the purposes of a charitable organization, whether in Probate Court or Superior Court.

In terms of statutory mandates, the principal functions of the Unit include:

- Enforcement of charitable trusts in New Hampshire (RSA 7:19-32 and the common law);
- Review of all nonprofit healthcare mergers (RSA 7:19-b);
- Licensing of professional fundraisers soliciting charitable donations



Chief Justice Frank Kenison

from New Hampshire citizens (RSA 7:28);

- Monitoring the issuance of charitable gift annuities (RSA 403-E);
- Cooperating with the Pari-Mutuel Commission in enforcing gaming laws relating to Bingo and Lucky 7's;
- Cooperating with the Criminal Bureau in investigating allegations of criminal activities by officers and directors of charitable trusts.

Major Transactions

The Unit is mandated to appear as a necessary party in the ten Probate Courts in New Hampshire on charitable trust issues. During the reporting period, a number of these cases involved novel or significant issues, including the following:

(1) the dissolution of the Sargent Museum in Manchester and the distribution of its collection of Native American artifacts to a successor organization; (2) the resolution of several cases involving youth sports leagues, including breaches of fiduciary duties; (3) the dissolution of the Gentle Wind Project in cooperation with the Attorney General of the State of Maine; (4) the sale of the Centennial Senior Center building in Concord; (5) the sale of the Chandler library in Nashua; (6) the sale of the Ivie Chapel in Bethlehem; (7) the sale of St. Francis Xavier Church land and buildings in Nashua; (8) the expansion of the NH Institute of Art to include additional dormitory space in Manchester; and (8) the Candia Lions Club investigation into improper use of assets and the redirection of those funds to other Lions' Clubs charities. Finally, the Unit was involved in the working group that resulted in the original enactment of - and later amendments to - the Uniform Trust Code.

Mediation

The Probate Court continues to encourage parties to litigation involving charitable trusts to attempt to mediate their differences prior to litigation. The mediation program is voluntary, not mandatory. The Unit has actively engaged in the mediation process and has entered into a number of successful resolutions, including the Chandler Library in Nashua and the Sargent Museum in Manchester.

The Sargent Museum mediation involved 900 boxes of Native American artifacts as well as a collection of records and journals kept by New Hampshire's most recognized archaeologist, Howard Sargent. The collection will be conveyed to the Mount Kearsarge Indian Museum; and the photo, taken in the summer of 2007, shows a Native American powwow at the Museum.

Interagency Collaboration

The Unit has collaborated with the Department of Revenue Administration (DRA) and the Local Govern-

ment Center to present educational sessions on the critical property tax exemption issue. The Unit also continues to collaborate with the Department of Health and Human Services in identifying emerging trends in public health care in the state. This Interagency Work Group is now in its fifth year of the collaborative effort and has received a major grant dealing with the community benefits statute.

Civil Enforcement

The Unit has the authority under RSA 7:24 and 7:25 to issue Notices to Attend Investigation whenever a question arises regarding the operation of a charity. During the biennium, the Unit issued 10 Notices and conducted 16 hearings, for a variety of reasons, including failure to register or failure to report or failure to comply with RSA 31:28 or 287: D-5. The Unit referred 6 cases to the Criminal Bureau during the relevant period, resulting thus far in one indictment.

The Unit's work includes enforce-



Mt Kearsarge Indian Museum Powwow 2007 - Native Dancers in Full Regalia

ment of the charitable solicitation law.

During fiscal year 2006, the Unit reviewed 443 solicitation notices and registered 206 professional fundraisers. During fiscal year 2007, the Unit reviewed 395 solicitation notices and registered 204 professional fundraisers.

Registration and Licensing

In fiscal year 2006, the Unit collected \$442,295 in registration and filing fees from charitable trusts and \$144,800 in filing fees from professional fundraisers. In fiscal year 2007, the Unit collected \$455,435 in registration and filing fees from charitable trusts and \$130,875 in filing fees from professional fundraisers.

By the end of the reporting period, there were 6,236 charities and 539 testamentary trusts registered with

the Unit. During fiscal year 2006, the Unit reviewed 3,634 annual reports filed by charities and 365 probate accounts filed by testamentary trusts. During this period, reports were received from the 243 towns and cities having custody of trust funds for the benefit of cemeteries, libraries, parks, and other public purposes. These reports were reviewed to ensure compliance with applicable statutes.

The Unit has installed the FileNet Optical Character Recognition system and is now in the process of scanning financial reports into the Unit's database and capturing selected data elements. The ultimate goal of the FileNet system is to make scanned images of the financial reports, community benefits reports, and other information relating to charitable organizations available to the public on the Internet. The Unit continues to explore the possibility of electronic filing in conjunc-

tion with the Internal Revenue Service's Fed/State Retrieval Project. The Unit works with the Pari-Mutuel Commission to enforce the Games of Chance, Bingo, and Lucky 7 statutes. As part of its application review, the Commission ensures the charities involved are registered with the Unit. This involves monthly reports from the Unit to the Commission and frequent telephone contact between the two state entities.

Litigation and Estates

The Director is a necessary party in any litigation involving charitable trusts. During fiscal year 2006, the Unit opened 52 cases. In fiscal year 2007, 42 new cases were opened. These cases range from extensive involvement by the Unit to monitoring the case for status and developments. They include reformation of trust instruments, removal of trustees, determination of beneficiaries, petitions for cy pres (that is, the redi-



In January 2007, the Charitable Trusts Unit successfully recovered and returned approximately \$230,000 to the NH Lions, a nonprofit organization, after it had been misappropriated. \$115,000 was disbursed to the Lions Camp Pride, a handicapped accessible facility that benefits special needs children, and \$115,000 was disbursed to NH Lions Sight & Hearing, which provides services to deaf and visually impaired low-income NH residents.

rection of charitable assets for charitable entities that can no longer be maintained), and investigations into allegations of wrongdoing by charities and their officers, directors and professional fundraisers, as well as the various cases mentioned earlier in this report.

Pursuant to statutes and court rules, the ten Probate Courts send the Unit a copy of any will that mentions a charity or trust. These wills are reviewed and information is entered into the Unit's database. When the estate is closed and distributions are made to the charities, that information is also entered into the database, making it easier to retrieve financial information as well to satisfy requests from charities regarding their responsibilities in holding trust funds. In fiscal year 2006, the Unit processed 310 wills and recorded \$22,231,003.00 in bequests to charity, in fiscal year 2007 the Unit processed 257 wills and recorded \$22,813,003.56 in bequests to charity.

The Civil Law Bureau (Civil) is responsible for providing legal advice and representation in superior court, federal court and appellate court civil matters for 115 executive branch agencies, boards, commissions and councils. Civil provides legal advice and representation in civil lawsuits to 38 State agencies, many of which have multiple divisions with varied duties and functions. Civil also provides legal advice and representation to 53 licensing/regulatory boards and 24 councils/commissions. During this biennium the bureau was staffed by 14 to 16 attorneys, 2 of whom are part-time, 2 part-time contract attorneys, 3 paralegals and 4 secretaries.

Civil does both trial and appellate court litigation for all its clients and provides legal advice through formal written opinions, informal memoranda and by telephone. Civil continues to see a marked increase in both the number and complexity of cases and legal issues. In mid-2006, Civil began a reorganization into a Client Counseling Unit and Litigation Unit, each led by a

separate chief. A Civil Appellate Chief position was also created to oversee all civil appellate briefs. Civil attorneys now have a primary focus in client counseling or litigation. In 1999 Civil had formed a sub-unit within the bureau to handle the increased number of complex federal cases. The Federal Litigation Unit (FLU) continues to function with attorneys that specialize in federal court procedure; however, these attorneys also provide client counseling and handle State court matters as well. The Attorney General's Office has a permanent seat on the Federal Court Advisory Committee that makes recommendations to the United States District Court on policy and local rules.

Civil is a dynamic bureau that addresses a wide variety of challenging legal issues. In any given week, a Civil attorney may be arguing a First Amendment case in federal court, defending an agency and its employees in State court, briefing and arguing a case in the New Hampshire Supreme Court or at the First Circuit Court of Appeals, review-

ing or assisting in negotiations of State agency contracts, researching a question of statutory authority for an agency, investigating an elections complaint, or advising an administrative licensing board.

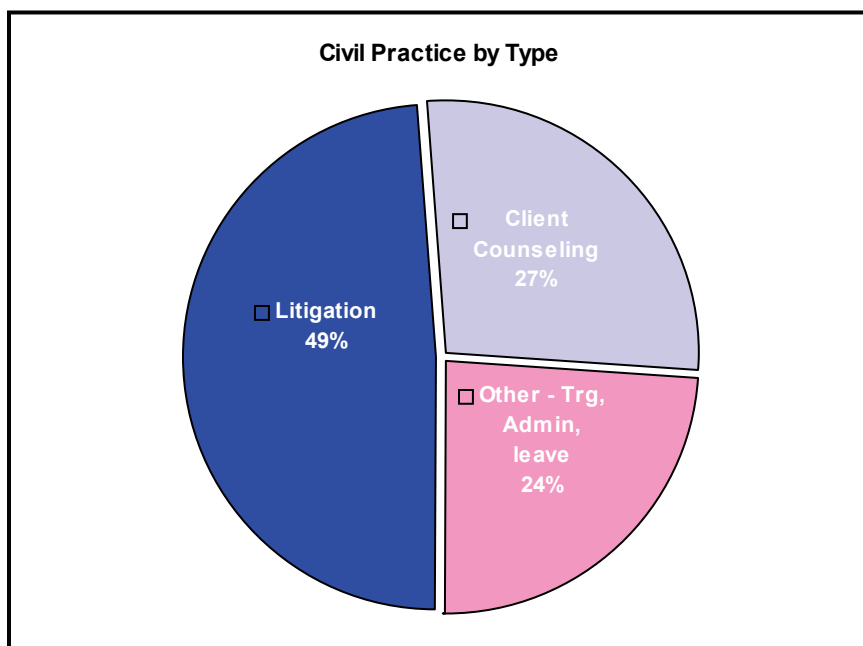
Litigation

Civil spends more time in litigation than in client counseling. Approximately forty-nine percent (49%) of Civil's legal practice time is now devoted to litigation, compared to twenty-seven percent (27%) for client counseling. Eighty percent (80%) of the litigation is in trial courts, seventeen percent (17%) is appellate and the remainder is administrative.

During this biennium, 362 new trial court litigation or administrative proceeding cases were opened, an increase of 21% over the prior biennium. Civil attorneys also worked on hundreds of other litigation matters still active from prior years. During the biennium, approximately 26 cases were settled and many cases were resolved judicially. The nature and complexity of the litigation varied significantly. Some cases were resolved in a few months through written motions to the court or a single court hearing. Other more complex litigation will take a number of years to resolve and may span the biennium and beyond, including both a trial and an appeal.

School Funding

There have been a number of lawsuits related to school funding issues during the biennium. Four cases, encompassing 33 properties in Rye and Portsmouth, challenged the constitutionality of the Statewide education property tax. They alleged that the assessing practices



throughout the State are not uniform enough to ensure the constitutionally-required proportionality necessary for allocating the Statewide property tax between individual taxpayers in different communities. The State vigorously defended the property tax system and demonstrated the substantial improvements made to the system since the last constitutional challenge in 2000.

Following a four-day trial, the Superior Court issued two orders in November 2005, finding the property tax system unconstitutional for tax years 2002 through 2004. The State appealed to the New Hampshire Supreme Court. On August 17, 2007, the Supreme Court reversed the Superior Court's Order finding that the taxpayers had failed to meet their burden of proof.

In 2005, the State enacted House Bill 616, 2005 New Hampshire Laws Chapter 257, which provided funding to schools based on four types of aid and revenue from the Statewide enhanced education tax. Two lawsuits, *City of Nashua v. State* and *Londonderry School District, et al. v. State*, were filed challenging the constitutionality of Chapter 257. Both suits were initially filed in the Supreme Court, but were dismissed and refiled in Hillsborough County Superior Court, Southern District. Both suits included various claims challenging the constitutionality of Chapter 257. Londonderry also claimed that the State failed to define an adequate education.

The Nashua case was tried in mid-December 2005. The Londonderry case proceeded on a motion for summary judgment in early 2006. In March 2006, the Superior Court issued orders in both cases declaring Chapter 257 unconstitutional due to the State's failure to define an adequate education. The Superior Court also found that the State had failed to reasonably determine the cost of an adequate education and had not enacted a constitutional accountability system.

The State filed timely appeals of these orders with the New Hamp-

shire Supreme Court and, after an expedited appeal, on September 7, 2006, the Supreme Court found the State's definition of an adequate education unconstitutional. The Supreme Court gave the Legislature until June 30, 2007 to enact a constitutional definition of an adequate education. The Nashua case was stayed pending the outcome of the 2007 Legislative Session. During that Session, the Legislature debated many bills proposing to define an adequate education. HB 927 defining an adequate education, passed both houses and was signed by Governor John Lynch on June 29, 2007.

Class Action Lawsuits

During the last biennium, Civil attorneys have been involved in approximately 10 new complex class action or multiple party lawsuits in federal and State courts. They have also continued to handle several class action matters that remained pending from the prior biennium. Prior class action suits that have been resolved by consent decrees, such as *Cassandra Hawkins v. DHHS* (dental care for children) and *Holliday v. DOC* (inmate mental health and medication delivery), continue to be monitored by Civil. These matters require substantial attorney involvement in meeting reporting requirements and compliance meetings with class counsel.

The longstanding *Bryson et al. v. Commissioner et al.* class action was finally resolved during the biennium. In this lawsuit, a group of individuals with acquired brain disorders (or brain injuries) had challenged the State's administration of its Medicaid home and community-based care waiver for persons with acquired brain disorders. The plaintiffs were individuals who were on a waiting list for services funded by the waiver. The plaintiffs' claims included alleged violations of the Federal Medicaid Act, the Americans with Disabilities Act (ADA), and the Due Process Clause of the United States Constitution. In September 2006 the District Court ruled in favor of the State on the remaining ADA

claims, finding that while not complete, the State's commitment to the deinstitutionalization of those for whom community integration is desirable is genuine, comprehensive and reasonable.

There have also been several lawsuits, followed by appeals, involving Medicaid rates, including challenges to the rates for nursing homes (*Bel-Air* cases), pharmacies (*Maxi Drug* cases), two cases involving county reimbursement for Old Age Assistance ("OAA") or Aid to the Permanently and Totally Disabled ("APTD") recipients who are "in nursing homes" (*New Hampshire Association of Counties*), rates paid to residential child care facilities (*Chase Home et al.*) and payment of "direct medical education" subsidies to teaching hospitals for FY2006-2007 (*Mary Hitchcock Memorial Hospital et al.*). For example, in *Maxi Drug et al. v. Commissioner*, a group of pharmacies enrolled as providers in the State's Medicaid program sued the Department of Health and Human Services (DHHS) alleging that certain actions taken by DHHS regarding reimbursement rates constituted invalid rulemaking in violation of the State Administrative Procedures Act. The pharmacies also challenged DHHS' authority to obtain information regarding the acquisition cost of pharmaceuticals. The New Hampshire Supreme Court upheld DHHS' actions under State law, deciding that rules relative to rates of reimbursement are exempt from the Administrative Procedures Act, and affirmed DHHS' authority to review acquisition cost data in administering its Medicaid reimbursement program.

Another new class action suit, served in early 2007, seeks injunctive relief against the State for failure to make Aid to the Permanently and Totally Disabled ("APTD") determinations with the 90-day time limit set by federal regulations and also alleges that DHHS fails to provide a required notification that the applicant has the right to appeal the delay if the determination is not going to be made within 90 days. While this litigation was in its early stages,

a thorough review of the program confirmed that DHHS has not been able to make timely determinations for some time. Therefore, in order to avoid the extensive attorney's fees that could be claimed if the case were litigated, as well as to allow the agency to correct the process, the State has requested that an order be entered requiring the State to bring its APTD processing into compliance with federal law.

In 2003, several plaintiffs filed the case of *Planned Parenthood of Northern New England et al. v. Ayotte*, challenging the constitutionality of HB 763 that required physicians to notify by certified letter a parent or guardian of a minor who is seeking an abortion at least 48 hours before performing the procedure. The U.S. District Court and the 1st Circuit Court of Appeals subsequently struck down the entire law. The State appealed the rulings to the United States Supreme Court, arguing that the courts failed to give appropriate deference to the State legislative intent regarding the judicial bypass clause in the measure combined with other State laws that allow doctors to act in an emergency to protect a woman's health. The writ of certiorari was accepted. Civil attorneys worked with Attorney Gen-

eral Ayotte to prepare the brief, which was argued by Attorney General Ayotte. The Supreme Court, in January 2006, unanimously ruled that the lower courts should not have invalidated the entire measure and ordered the lower courts to review the legislative intent regarding exceptions to the law for medical emergencies. The case is over, as the State legislature in the 2007 session repealed the challenged section.

Tax Litigation

There were several significant tax cases where Civil attorneys defended the State's financial interests. In *General Electric Company, Inc. v. Commissioner, NH Dept. of Revenue*, General Electric ("GE") challenged a provision of the business profits tax statute (RSA 77-A:4, IV). In 2002, GE appealed a decision from the Commissioner of the Department of Revenue Administration (the "Department") to the superior court claiming that the dividends received deduction allowed under RSA 77-A:4, IV should be invalidated because the statute discriminates against foreign commerce in violation of the Commerce Clause of the United States Constitution and results in unfair taxation out of por-

portion to GE's activities in New Hampshire in violation of the Due Process and Commerce Clauses of the United States Constitution. In 2005, the Department prevailed at the trial court. The superior court granted the State's motion to dismiss the case because the Court found that GE did not have standing to bring the lawsuit. The court also granted the State's motion for summary judgment, ruling on the merits in favor of the State, finding that even if GE had standing, GE failed to demonstrate how the statute is unconstitutional. GE then appealed to the New Hampshire Supreme Court.

In 2006, the New Hampshire Supreme Court reversed the trial court's order granting the State's motion to dismiss because the court found that GE had standing to challenge the constitutionality of the statute. Nevertheless, the Department prevailed in that appeal because the Supreme Court affirmed the trial court's grant of summary judgment, thereby upholding the constitutionality of the statute and finding that RSA 77-A:4, IV does not facially discriminate against a dividend-paying foreign subsidiary that does not conduct business in New Hampshire. In 2007, GE sought review of the New Hampshire Supreme Court's decision in the United States Supreme Court. The parties filed their briefs regarding certiorari, and the Solicitor General has filed a brief expressing the views of the United States, which supports the State's position. The supreme court denied certiorari, leaving the New Hampshire Supreme Court decision as the final outcome.

In a second case, Oracle Corporation appealed the Department's assessment of over \$7 million in business profits taxes, interest, and penalties, arising out of an audit of Oracle for the tax years 1999 and 2000. The primary issue was whether capital gains Oracle received on the sale of stock in two of its subsidiaries constitute unitary income to Oracle for NH business profits tax purposes, subject to the statutory method of apportionment. The par-



Attorney General Ayotte, with Civil attorneys Mullen and Lombardi, answering press questions at United States Supreme Court following oral argument on the *Planned Parenthood* case.

ties settled one claim in November 2006 in which Oracle paid the State \$1,001,680, and settled the remaining claims in May 2007 with Oracle paying the State an additional \$5,339,971.

In a newly filed tax case, New Hampshire Internet Service Providers ("NHISPA") and Destek claim that Verizon and other carriers collection of the Communications Services Tax on T-1 and T-3 services/lines is illegal as it is pre-empted by federal law. The Department believes that collection of the tax is legitimate because the Department's right to collect the tax is grandfathered under federal law. This has been an ongoing concern since 2005. There were various legislative and rule-making activities in the last session which ultimately did not address the issue. While the original lawsuit filed in federal court has been dismissed, the suit has been re-filed in State court. In a report to the Legislature in 2003, the Department stated that the estimated loss of revenue if the tax were declared invalid or the grandfathering provision were repealed would be between \$1,000,000 and \$3,000,000 in regards to T1-T3 services and other similar lines. If broadband and ISP Access telephone were also included, the amount of lost revenue could be an additional \$3,000,000 to \$5,500,000.

Right to Know Litigation

There were several significant court cases involving the New Hampshire Right to Know law. In *Murray v. State Police Special Investigation Unit*, the New Hampshire Supreme Court refined the test for determining whether active law enforcement investigation files are available to the public. Following an evidentiary rehearing, the Superior Court, applying the new standard again upheld the State's withholding of the majority of the investigative file. The Court found that the State had made an adequate showing that production of the requested records would jeopardize the investigation and the State's ability to pursue potential charges in a young woman's disap-

pearance. The father of the missing woman has again appealed the determination to the New Hampshire Supreme Court. In a second case at the Superior Court level, the successful bidder for the State contract for the DHHS Medicaid Management Information System obtained a court order preventing the release of proprietary portions of its bid proposal.

Insurance

In re: Liquidation of The Home Insurance Company is a multi-billion dollar insurance liquidation proceeding commenced in State Superior Court in 2003. The Home Insurance Company specialized in complex liability insurance for large, international corporations. By statute, the Insurance Commissioner acts as the Liquidator and is charged with marshaling assets, processing claims and administering the estate. With estimated assets of \$2 billion, gross undiscounted liabilities of \$5.1 billion and 20,000 proofs of claim, many of which deal with several thousand claimants and involve asbestos, environmental and mass tort liabilities, The Home is one of the largest and most complex insurance liquidations ever filed. Because the liquidation required the attention of at least one full-time attorney, in 2005 the Department requested and received authority to hire a temporary attorney to work exclusively on The Home matter, the expense of which is paid for by The Home estate.

In addition to the ongoing litigation of disputed claims in the Superior Court, the Liquidator has pursued or defended cases in the New Hampshire Supreme Court, the United States District Court, the First Circuit Court of Appeals, State and federal courts in various other States, and the High Court of Justice in England. Ancillary receiverships for The Home are pending in Idaho, Oregon, New York, Massachusetts, and New Mexico in addition to a Scheme of Arrangement in the United Kingdom and separate liquidation of The Home's Canadian branch.

In May of 2006, the Supreme Court

upheld the Liquidator's defense of a challenge to the constitutionality of a provision in the liquidation statute that allows third party claimants to file direct claims against an insolvent insurer but requires claimants to release the policy holder. In December of 2006, after a difficult 3-year contest that involved two previous appeals to the Supreme Court and extensive proceedings in England, the Supreme Court upheld an agreement that the Liquidator had entered into with certain United Kingdom-based insurers. The agreement is a novel application of the insurance liquidation statute and stands to significantly add to the assets of the estate.

The liquidation of The Home has become a model in the industry for its successes in collecting assets, providing early distributions to State guaranty funds, establishing a website to provide parties and the public with access to pleadings, reports and other information and providing detailed and frequent reporting to the Court, creditors and the public.

In *In the Matter of the Rehabilitation of ACA Assurance*, on October 11, 2006, Civil, on behalf of the Commissioner of the New Hampshire Insurance Department, filed a Verified Petition for Rehabilitation of ACA Assurance, a fraternal benefit society domiciled in Manchester, which provides a variety of insurance products to its members. The Petition, filed pursuant to RSA 402-C, was based on the failure of ACA to timely file certain financial disclosures, and on the Commissioner's belief that accounting and management irregularities were jeopardizing the financial stability of the Association.

A Special Deputy Commissioner was appointed to assume temporary day-to-day management of the Association, with the help of a rehabilitation team. The team reviewed the Association's financial and operational records, analyzed its strengths and weaknesses, and recommended a variety of measures designed to ensure the Association's long-term financial stability. The

Commissioner, the Special Deputy, Insurance Department personnel and Civil attorneys worked cooperatively with the Association's Board of Directors to implement these measures. Excess real property and capital equipment was liquidated; severance agreements were revised; underperforming product lines were eliminated or modified; and a one-time assessment against certain policies was instituted in order to achieve an appropriate operating surplus.

On July 6, 2007, the Superior Court granted the Commissioner's motion to terminate the rehabilitation, because the Association had been returned to a position reasonably certain to result in long-term financial stability. The Insurance Department continues to monitor the Association closely to ensure that this remains so. This successful rehabilitation prevented the serious financial impact on thousands of Association members, as well as creditors, that almost certainly would have resulted had the State not acted.

Inmate Litigation

The Department of Corrections (Corrections) accounts for 12% of the Civil's overall time and 26.5% of Civil litigation time. In addition to the lawsuits filed in federal and State courts, inmates also regularly file petitions for writs of habeas corpus in State court claiming that they are being held in prison unlawfully. Forty-one petitions were filed during the biennium. The State prevailed in the overwhelming majority of these cases. Habeas corpus petitions are usually resolved within a month after submission of a written pleading and a hearing in superior court.

Much more time consuming and lengthy are the inmate civil rights actions that are increasingly filed in federal court. Although the federal magistrate dismisses a small percentage of the cases prior to service, at least sixty-five federal cases were filed in the last biennium by inmates against State agencies, primarily Corrections, alleging civil rights violations or complaining of

prison conditions. Many of these cases have multiple claims and are filed against as many as forty individual State employees as defendants.

Tort Litigation

Civil defends State agencies and employees that are sued in negligence and civil rights suits, unless the Attorney General's Office determines that the employees' conduct was outside the scope of their duties and wanton or reckless. In the past biennium, this litigation ranged from simple slip and fall accidents to wrongful death cases involving drownings at Hampton Beach. Civil is also representing Corrections in connection with a series of cases involving two former corrections officers, both of whom are accused of sexually abusing multiple inmates. Civil is not representing the former corrections officers in these matters.

Appellate Litigation

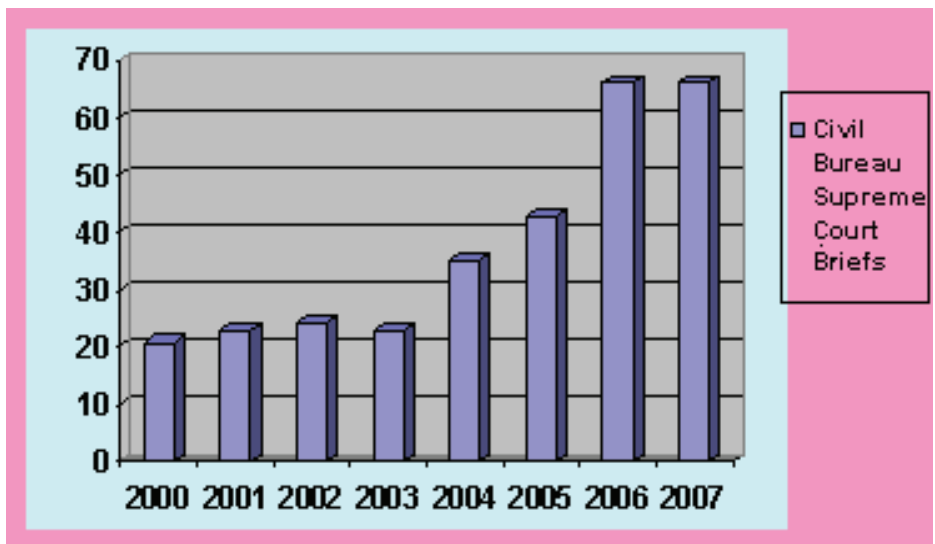
Under RSA 7:6, the Attorney General must act as attorney for the State in all civil cases in the Supreme Court where the State has an interest. During this biennium the Civil Bureau handled one hundred fifty-two (152) appeals. One hundred thirty-two (132) briefs were filed in the New Hampshire Supreme Court; twenty (20) were filed in the First Circuit Court of Appeals or the United States Supreme Court. One hundred forty-six briefs (146) were in

defense of State action and six (6) were State appeals. Juvenile abuse and neglect and termination of parental rights cases accounted for forty-two (42) of the appeals. These are the most common types of appeals.

This reflects an increase of sixty two percent (62%) in the total number of appellate matters handled by Civil from the prior biennium. In January 2004, the Supreme Court amended its rules and implemented a mandatory appeal system. This change has dramatically increased the Bureau's appellate practice. In 2003, the year before the mandatory appeal process was implemented, Civil filed twenty-three (23) briefs in the New Hampshire Supreme Court. In fiscal year 2005, the first full year of mandatory appeals, Civil submitted forty-three (43) New Hampshire Supreme Court briefs. This increased the Civil Bureau's appellate work by eighty-seven percent (87%). In this biennium, one hundred thirty two (132) State Supreme Court briefs were filed, for an average of sixty-six (66) briefs per year, an increase of fifty-three percent (53%).

Election Law

Part I, article 11 of the New Hampshire Constitution provides, in part, that "[a]ll elections are to be free, and every inhabitant of the State of 18 years of age and upwards shall have an equal right to vote in any election." To safeguard this consti-



tutional provision, and pursuant to RSA 7:6-c, the Legislature designates the Attorney General to enforce all election laws in New Hampshire. Civil fulfills this responsibility and provides legal counsel to the Secretary of State, who administers elections throughout the State. Civil attorneys defend the State or the Secretary of State in actions before the Ballot Law Commission, Superior Court and the Supreme Court. Approximately seven percent of the Civil Bureau's efforts address election law related legal issues and litigation.

Election Day Activities

During the November 2006 General Election, Civil responded to approximately 100 complaints, via the Attorney General's Election Line, a toll-free election phone line. Civil responded to and resolved each complaint on election day. To help facilitate this process, as with past Statewide elections, attorneys and investigators from the Attorney General's Office, and specially trained sheriffs' deputies, served as the Attorney General's representatives to assist in responding to election-day complaints where the Attorney General's physical presence at a polling place was necessary. In most cases, because these representatives were strategically positioned throughout the State, the Attorney General's Office could respond "in-person" to any polling place in the State within fifteen minutes. These representa-

tives also conducted on-site inspections of polling places throughout the State on election day.

Enforcement Activities

Civil receives and investigates election law complaints regarding State and local elections, town, school and village district meetings, and other alleged election law violations. Election law complaints include a wide range of issues including but not limited to: (1) the right to petition for warrant articles; (2) election day voter registration and absentee ballot use; (3) political advertising and automated pre-recorded political calls associated with State or municipal elections and town meetings; (4) electioneering; (5) preparation of the polling place – accessibility; and (6) counting votes.

The election law attorneys within Civil work closely with local election officials to assist in preventing election law violations and to provide guidance in interpreting New Hampshire's election laws to deter election law violations. While many election law complaints may be answered without conducting an official investigation, during the past biennium, Civil conducted one hundred twenty-three (123) election law investigations.

Help America Vote Act

The Help America Vote Act of 2002 ("HAVA") has imposed significant

legal demands upon Civil. Generally, HAVA requires the State to:

- Provide at least one voting machine in each polling place to enable most voters with disabilities to vote privately and independently;
- Create a new uniform centralized Statewide database of registered voters that shall be the source for the official checklist for each town and city;
- Assist towns and cities in ensuring their polling places are accessible for people with disabilities and the elderly;
- Ensure each qualified individual has an equal right to register and vote through Statewide uniform election procedures and standards;
- Provide voter and election official education; and,
- Maintain a Statewide complaint system for the uniform, nondiscriminatory investigation and resolution of complaints.

Civil continues to work closely with the Secretary of State, providing legal advice throughout the acquisition and development of the Statewide voter database of registered voters, the ongoing acquisition of technology to assist voters with disabilities and in developing and presenting the required election law training.

HAVA will continue to demand significant Civil attorney work hours while the HAVA programs are implemented and maintained in the State. Civil attorneys will continue to provide local election officials with election law training and continue enforcement efforts to ensure local compliance with HAVA.

Polling Place Accessibility

In fulfillment of the obligations imposed by HAVA and as part of an ongoing effort to enforce Part 1, Article 11 of the New Hampshire Constitution, which requires that polling places be accessible to person with



disabilities, during the biennium, Civil has conducted inspections of over 300 polling places in the State. To help facilitate this inspection process, deputy sheriffs from every county in the State conducted an initial survey of all polling places. Where deficiencies were identified, attorneys worked with accessibility specialists who conducted extensive inspections and worked with local officials to identify practical solutions to accessibility deficiencies. As a result of this process, currently, all New Hampshire polling places are accessible.

Educational Activities

Pursuant to RSA 652:22, Civil attorneys and the Secretary of State's Office published the 2006-2007 edition of New Hampshire's Election Procedure Manual (EPM) for New Hampshire's local election officials and citizens. The EPM provides an easy-to-read interpretation of New Hampshire's election laws. In September 2006, and prior to the November 2006 Statewide election, the EPM was sent to every town/city clerk, moderator and supervisor of the checklist in the State.

Civil attorneys routinely conduct or support election law training for local government officials and the public at large. During this biennium, the Civil Bureau election law attorneys presented election law training to over 1500 local election officials throughout the State.

Election Law Litigation

The New Hampshire Supreme Court rendered two decisions involving New Hampshire's election laws during this past biennium. *Libertarian Party of New Hampshire v. State of New Hampshire*, 154 N.H. 376 (2006) and *Akins v. Secretary of State*, 154 N.H. 67 (2006).

In *Akins*, the plaintiffs challenged the constitutionality of RSA 656:5 that specified the relative position of candidates names and the political parties with which they are affiliated on the general election ballot. The plaintiffs argued that RSA 656:5,

which gave first position to the candidates of the party that received the most votes in the prior election, provides those candidates with an impermissible advantage. They asked the Court to impose some form of name and party column rotation on ballots and/or random selection of which candidate or party is placed in the first position. The State argued in support of the statute stating that the State had a compelling interest in presenting voters with a clear and easy-to-read ballot, and that determining ballot structure is a prerogative of the Legislature. The Superior Court agreed and ruled that the statute is constitutional. On appeal, the New Hampshire Supreme Court reversed the Superior Court's decision, finding that the ballot position provided an impermissible advantage and that RSA 656:5 was unconstitutional. Since the 2006 General Election, the Secretary of State chooses a letter using a random selection process and reorders the names on the ballot according to that letter.

In *Libertarian Party*, the Libertarian party challenged the constitutionality of New Hampshire statutes which provide avenues for nominating a candidate to be placed on the general election ballot. Generally, these statutes require third parties or independent candidates to demonstrate a minimal level of support, by obtaining petitions signed by a certain number of voters, in order to have their names placed on the ballot. The Libertarian party alleged that this minimum level of support for third parties and independent candidates violated their "equal right to be elected" under Part 1, article 11 of the New Hampshire Constitution. Civil argued that the State has a compelling interest in keeping the ballot free from confusing or deceptive or frivolous candidates and that this issue is settled under the United States Constitution with courts consistently upholding more onerous ballot access requirements than those imposed by New Hampshire law. The Superior Court ruled in the State's favor and dismissed the claim. On appeal, the New Hampshire Supreme Court upheld the Su-

perior Court decision, thus rejecting the Libertarian Party's claim that the State's ballot access laws violated its Equal Protection rights.

Campaign Contributions and Expenditures, Gift Reports, Lobbyist Reports, Ethics Reports

The Civil Bureau also fulfills the Attorney General's statutory duties to monitor public disclosures related to campaign finance, gifts to public officials or employees, lobbyist income and expense reports, and ethics reports.

Client Counseling

Providing legal advice to State agencies, boards and commissions is a core function of Civil and represents approximately 33% of Civil attorney legal practice time for the biennium. Agencies require legal assistance interpreting and implementing the laws that define their obligations. The type of legal assistance varies depending on the nature of the issue. Some questions have broad applicability throughout State government, involve significant legal research and require a written analysis by the assigned attorney. Other questions can be answered by a brief memoranda to the agency. Civil attorneys also consult with their clients informally and frequently through telephone contact or e-mail. The goal is to be accessible to the client agencies and provide them with the legal tools they need to carry out their missions.

Each of the 115 State agencies or boards has a miscellaneous matter, where the day-to-day questions and answers are documented. However, if substantial research or multiple meetings are required, a client counseling matter is opened. Two hundred fifty-eight (258) client counsel matters were opened during the biennium.

Examples of some of the significant client counseling topics in which Civil was involved during the biennium include advice concerning federal audit findings, effects of the new civil union statute, agency reorgani-

zations, personnel issues, collective bargaining issues, contract review and approval, assistance with legislation, real property issues including land conservation, implementation of the sexually violent predator act and various teaching and training activities.

Land Conservation

The Legislature charged the State to protect land, through purchases of conservation easements or fee interests, in order to sustain traditional forest uses, such as logging; ensure multiple use conservation purposes, such as limiting development but allowing public access for recreational use; and to protect and to sustain traditional agricultural uses. During the past biennium, Civil attorneys assisted with conserving thousands of acres of land in the State through several conservation projects including: acquiring 7200 acres in Berlin for purposes of constructing a multi-use recreational park; the Beaver Falls conservation easement in Colebrook; the 13 Mile Woods conservation easement in Errol; the Moose Mountain conservation easement in Middleton; the Willard Pond – Bald Mountain conservation easement in Antrim; the Willard Pond – Robb Reservoir conservation easement in Stoddard; the Rossvie Farm conservation easement in Concord; the Scribner-Fellows State Forest; and the Allen State Forest property in Concord.

Additionally, following extensive negotiations, Civil attorneys, working with the Department of Resources and Economic Development, negotiated with the Cog Railway to obtain the easement rights necessary to lay electric power cables to the summit of Mount Washington. This project will provide much needed power to the summit and eliminate the need to operate power generators at the summit.

Civil attorneys continued to provide assistance on management of the Connecticut Lakes Headwaters property, which consists of approximately 172,000 acres of property in Pittsburg, Clarksville, and Stewarts-

town. Toward that end, Civil attorneys negotiated additional trail easements over private property abutting the Connecticut Lakes Headwater property near Lake Francis in Clarksville.

Civil attorneys also worked with the Department of Agriculture, Food and Markets, which acquires and manages agricultural land preservation easements. New Hampshire, like many other States, is facing population growth resulting in the development of large tracts of land traditionally used for agricultural purposes. In order to protect some of these properties, the Legislature established the Agricultural Land Preservation Committee and authorized it to purchase or accept gifts of easements that preserve land for agricultural uses. One of the highlights of this program over the past biennium was the acquisition of an agricultural land preservation easement over the Rossvie Farm in Concord, in which Civil attorneys were actively involved.

The benefits to the State, as a result of the conservation of these properties, will continue for generations to come and work on further conserva-

tion continues. During the past biennium, Civil attorneys began work on significant land conservation projects that will be finalized this biennium. Specifically, the State is working toward acquiring a fee interest in a 330-acre parcel surrounding Jericho Lake in Berlin, as well as a fee interest in the old Temple Mountain Ski Area in Temple.

Representation Of Professional Licensing Boards

Civil represents and provides legal advice to licensing boards and other executive branch agencies whose statutory duties include adjudicative, prosecutorial and investigative functions. These boards are comprised primarily of volunteers from the licensed professions and the general public. The role of Civil attorneys is to assist each board to effectively and lawfully carry out its statutory duties.

In an effort to provide broad support for the boards, the Civil and Consumer Protection Bureaus have presented annual training seminars for board members and staff. In 2006 over 160 board members and staff attended the full day training and in



The 376 acre Bald Mountain conservation easement, part of the Willard Pond Forest Legacy Project, was completed on March 21, 2007. The property, owned by NH Audubon, will continue to be managed as a working forest and is open to the public for recreational uses such as hiking, hunting, and fishing.

2007 over 173 attended. Training topics include a presentation by Supreme Court Justice Gary Hicks, writing orders, ethical issues, how to conduct an administrative hearing, the applicability of the Right-To-Know Law, principles of due process and mock hearings. The goal of Civil's work with the boards is to ensure due process, prevent problems from occurring and minimize the potential for appeals by assisting boards in all stages of proceedings.

A recent trend is the increased complexity and litigious nature of the proceedings before the boards. Parties to contested cases are now more likely to be represented by counsel, file more sophisticated motions and demand more extensive discovery—resulting in longer hearings. Civil has been fortunate in having the services of two part-time contract attorneys that have been dedicated to assisting the boards.

Contract Review

Review of contracts and leases is an important aspect of providing legal assistance to State agencies. Every contract for services for more than \$5,000 must be approved by the Attorney General's Office. Over the last two-year period, Civil reviewed and approved more than 3500 contracts and leases. Most of these contracts are reviewed and returned to the agencies within one week. All executive branch agencies submit contracts and leases to their assigned attorney for review to ensure legal sufficiency prior to submission to Governor and Council. In addition to reviewing final contract documents, attorneys also frequently consult with agency staff regarding contract and bid related questions. Civil attorneys also assist State agencies with Information Technology procurement projects and review numerous Information Technology contracts. The complexities of these contracts have required substantial legal resources.



New Hampshire Supreme Court Justice Gary Hicks addressing participants at 2007 administrative board training.

The Transportation Law Bureau (Bureau) acts as legal counsel for the New Hampshire Department of Transportation (NHDOT). The Bureau represents the NHDOT and Department of Administrative Services, Bureau of Public Works in a broad array of legal matters, including eminent domain, real estate, contract, construction, administrative, personnel and personal injury cases related to the State's transportation systems and public works projects. Its role encompasses a wide range of trial and appellate advocacy in state and federal courts, as well as hearings before a variety of administrative boards. The legal workload generated by the breadth of the NHDOT's and Public Works' responsibilities resulted in 409 new files being opened by the Bureau during the two-year period. This represents an increase of 84 new cases over the previous biennium. At the same time, the Bureau resolved 250 matters. The Bureau performed critical legal roles in major projects, including the Conway Bypass, Manchester Airport Access Road, the Granite Street Extension, the implementation of E-ZPass, and the I-93 Expansion Project, as well as a multitude of smaller projects throughout the State. Public Works' improvements included new courthouses and the major construction of a new Emergency Operations Center. In addition, severe weather brought new legal challenges for emergency operations, disaster response and property damage claims.

Eminent Domain

Land acquisitions continue to be one of the central functions of the Bureau. Prior to condemnation, the Bureau routinely advises the NHDOT on land title issues, document preparation

and legal issues effecting the proper valuation for the acquisition of property necessary for transportation or public works improvements. After the initiation of eminent domain proceedings, the Bureau represents the State during the litigation striving to reach a fair and equitable resolution for the public. The eminent domain process remains an essential tool in completing the public projects necessary to improve the safety and efficiency of the State's infrastructure network. During the last biennium, 100 new eminent domain cases were opened and 59 were resolved. The number of new cases increased from 70 in the previous two-year period in part due to unusually large projects including the I-93 Expansion and Airport Access Road reaching fruition.

Not only has the number of acquisitions increased, but there has also been a marked rise in the complexity of the State's acquisitions. For example, this biennium saw the State complete the purchase of an entire timeshare condominium complex, Cranmore Place Condominiums, the first eminent domain action of its kind in the nation. More than 550 separate unit owners interests had to be acquired and negotiations completed. This presented groundbreaking challenges in title research, document drafting and valuation. Because no other state has acquired a complete timeshare complex, each issue has presented new challenges that no other jurisdiction has confronted.

Environmental and Legal Challenges to Major Projects

The State's transportation improvement projects have en-

countered diverse legal challenges, which threaten their completion. Legal challenges to transportation improvement projects continued throughout the biennium, with more anticipated. The Conservation Law Foundation (CLF) filed actions against the State water quality certificate and federal environmental approvals for the I-93 improvements. The challenge to the State's water quality approvals was successfully defended. CLF's other challenge to the project under the National Environmental Policy Act (NEPA) was filed in federal district court. The suit raised more than 22 alleged deficiencies with process and involved analysis of some 29,000 pages of documents. The suit remained ongoing at the close of the biennium. Moreover, landowners have filed challenges to other projects at an unprecedented rate. The Manchester Airport Access Road and the reconstruction of Route 111 in Windham faced claims. These claims have been successfully defended.

Personal Injury and Property Damage Claims

Tort claims handled by the Bureau encompass a variety of claims of death, personal injury and property damage allegedly caused by the negligent design, construction or maintenance of the State's transportation system. In the last biennium, the Bureau defended against 94 tort claims, a slight decrease over the previous biennium's 105. A total of \$25,268.79 was awarded against the NHDOT and settlements totaling \$178,700 were paid out from State funds during the two-year period. Despite the slight decline in total claims, the resulting sum of \$203,968.79 in payments to claimants repre-

sents a significant increase from the total of \$129,622 paid during the previous biennium.

Contract Law

The Bureau reviewed and approved 781 State contracts and leases during the recent two-year period. Many of these contracts were unique or highly complex in nature. Implementation of E-ZPass, for instance, continued to require substantial legal work overseeing its implementation, customer service program and enforcement. The Bureau has also addressed requests for E-ZPass records and ensuring proper protection of private information.

Human Resources

The Bureau has provided risk management advice regarding disciplinary actions including warnings and terminations and participated in investigations of suspected misconduct. The Bureau has also conducted training for senior management on issues ranging from sexual harassment to the new Conflict of Interest law enacted by the Legislature.

While the number of hostile work environment claims has declined in the last biennium from 27 to 16, the number of disciplinary reviews has increased to 238 separate cases, a 10 percent increase. In fiscal year 2007 alone the Bureau defended 12 actions at the Personnel Appeals Board including claims regarding non-selection for promotion, suspensions without pay, and terminations. The Board denied or dismissed each action.

Construction Issues

The Bureau successfully resolved a number of claims related to construction disputes. A significant victory came in the case of *Audley Construction v. Department of Transportation*. In that case, the Merrimack County Superior Court found that the State's contractual language should be interpreted

strictly and that delays related to utility installations were not controlled by the state and thus liability would not be borne by the taxpayer.

Weather Related Legal Issues

The last biennium saw no less than 3 storm events of historic proportion. The epic amounts of rainfall which resulted from these 3 separate storms resulted in widespread flooding and water damage to State infrastructure and private property. These exceptionally heavy rainfalls washed away roads, bridges, culverts and even many homes. In the immediate aftermath, Bureau personnel assisted the NHDOT in obtaining permission to enter onto private land to remove debris or repair roads and arrange for private contractors to help when necessary.

After the events, at legislative direction, the Bureau assisted the NHDOT in purchasing the properties of many displaced persons. In many cases, this required the acquisition of lands that no longer physically existed due to the rerouting of water courses. This provided these citizens some compensation for their horrific losses.

The unusual flooding also has resulted in numerous claims against the NHDOT for flooding damage. These claims are primarily related to culverts or other drainage structures which were overwhelmed causing water damage to private property. While the State is vigorously defending against the claims, the damages alleged are in the millions of dollars.

Program Administration

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system. These programs are supported by federal, state and dedicated funds and are administered by the following units:

Witness Payment Unit

Since 1992, this agency has had the responsibility for paying all law enforcement and civilian witnesses who are subpoenaed by the state in criminal cases. In State Fiscal Years (SFY) 2006 and 2007, the office processed witness payments totaling \$1,927,945 for over 70,000 witnesses. The Business Office processes the Witness Payments.

Victim's Compensation Unit

In 1990, New Hampshire embarked on a program to financially assist innocent victims of violent crime by providing compensation to them and to immediate family members for losses incurred due to personal injury or death of the victim. The economic losses must be directly related to an eligible misdemeanor or felony crime. This program is funded by money collected through penalty assessment on criminal fines and by a federal grant. A Victims' Assistance Commission was also established and consists of five individuals who are nominated by the Attorney General and confirmed by the Governor and Council. These individuals volunteer their time and currently consist of a victim of a home invasion, a dentist, an Emergency Room trauma physician, a licensed mental health

professional and an attorney. The Commission meets once a month with the two staff members from the Attorney General's Office to review the applications, award claims and process the payments.

In SFY 2006-2007, the Victims' Compensation Unit paid \$1,189,991 in total compensation to victims involving over 839 claims. As of June 30, 2007, the program has experienced both an increase in the number of survivors of violent crimes who have received benefits, as well as an increase in the amount of compensation paid to the victims and families.

The funds allowed for relocation of 80 families in life-threatening, domestic violence situations, paying a total of \$152,365. The allowable amount for relocation has increased from \$4,000 to \$5,000 per claim. This benefit allows for security deposits, two months rent, start up utilities expenses and moving and storage costs. Victims are required to sign a one-year lease, and payments are made directly to their landlord. Other payments are made to the service providers, except when the victim has documentation to show an out-of-pocket expense, and in those situations the Office reimburses the victim directly. In addition to relocations, these funds benefited others in areas of lost wages, dental, mental health, funeral, and medical expenses as well as other types of eligible support.

The program has experienced a marked increase in the number of families of homicide victims who have applied for and been awarded financial assistance, as well as an increase in the amount of compensation paid to these survivors of homicide crimes. Included in the applica-

tions are requests for assistance from family members of a victim of negligent homicide and drunk driving. Portions of funeral expenses, loss of economic support for dependent family members, uninsured medical costs, and crime scene clean up are examples of expenses eligible for assistance.

The Internet has played a significant role in the increase of sexual abuse cases against children, thereby increasing applications for assistance. Financial awards have been made to families whose needs included mental health counseling both for their child as well as themselves and other siblings; reimbursement for the parents' lost wages for time missed due to court appearances, attending counseling and bringing their child to therapy appointments; and payment of any uninsured, crime-related medical costs.

The following are examples of how the Victims Compensation funds have benefited people in New Hampshire:

- Marla had been a long-term victim of domestic violence by her husband of seventeen years, and had been subjected to both physical and emotional abuse, which resulted in court proceedings. The offender threatened to kill her, intimidated and subjected her to obscene physical treatment, often in front of their young daughter. The offender violated Protective Orders, began stalking his victim, and escalated in abusive actions, causing the victim to seek assistance from a crisis center and their victim advocates. The crisis center referred Marla and her daughter to our program and the Commission awarded compensation, allowing our program to provide mental health therapy for both victims; lost wages to

Marla, as well as relocation assistance for their move to another state. Marla was fortunate to have the cooperation of her employer who also assisted with the moving expenses, and provided her with a job in their out of state office. Marla was able to obtain counsel to represent her in divorce proceedings and child custody issues. She has also taken advantage of our Address Confidentiality Program, which will aid in keeping her exact whereabouts confidential.

- Deborah's husband was murdered. Through the efforts of the Criminal Bureau's Victim Witness Advocate, Deborah filed applications on behalf of her deceased husband and received compensation toward the cost of the funeral. She also filed applications on behalf of herself and the surviving dependent children. Another adult family member was able to receive assistance on his own application, and received lost wages as well as counseling. The program paid for mental health counseling for Deborah, each of her children, as well as mileage costs for therapy and medical appointments. It also provided reimbursement for lost wages for the adult victims and loss of economic support for the minor children of the victim.

- Elizabeth is the mother of a twelve-year-old child, a victim of sexual assault by the next-door neighbor. Elizabeth and her husband learned of the assaults through their daughter's computer, reported it to police, who intercepted a phone conversation and arrested the offender in his home. The offender had used Instant Messaging and the Internet to communicate with the victim to convince her to meet him at his home. The offender was convicted of five separate crimes. The program assisted in paying for mental health counseling and after-insurance medical expenses, and the victim's father for lost wages incurred as a result of the crime.

The program is the payer of last resort after all free care, health insurance, workers compensation, proceeds from settlements or other

available financial resources have been made available. Two individuals staff the unit.

Grants Management Unit

The Grants Management Unit exists to make a difference in the lives of the citizens of New Hampshire by ensuring the proper use of federal funds for criminal justice purposes. This unit began in 1985 with the Crime Control Act of 1984. Currently this unit administers twenty different grant program units with expenditures over the last biennium of \$21,635,679.93. The Unit operates with just four grant administrators. As the graph indicates, there are four main purpose areas focusing on crime prevention and justice. These four purpose areas are: Corrections, Victims, the Multi-Jurisdictional Drug Task Force and Other Criminal Justice Areas.

There were a total of 263 separate grants awarded over the two-year period. These awards went to city/towns (74), non-profit agencies (93), county agencies (57) and state agencies (39). These figures reflect the recipient of each of those grants, although some organizations may have received multiple grants during this period.

Because of grant dollars, New Hampshire's citizens receive many services that would not otherwise be available. A partial list of programs benefiting from these grant dollars follows:

Programs in the Correctional Arena \$3,068,171.25

- Completion of the new Sununu Youth Services Center in Manchester
- Substance abuse treatment for youth at the Sununu Youth Services Center
- Substance abuse treatment for male and female offenders at four county correctional facilities.

Programs for Victims \$8,836,708.19

- Child advocacy centers for victims of child sexual assault and child abuse. These centers are designed to minimize the trauma inflicted on child victims through multidisciplinary teams who assist in the investigation of child abuse and recommend and ensure follow-through with the best course of treatment for the child.

- Victim/witness units exist in all the County Attorneys' Offices and DOJ grants fund the 6 in the rural counties.

- Funding for various programs with the NH Coalition Against Domestic & Sexual Violence; funding for crisis centers and shelters.

- Seven family visitation centers across the state are supported with grant funds. Studies have shown that the risk of violence is often greater for victims of domestic violence and their children after separation from an abusive situation. These centers provide a safe environment for the safe visitation and exchange for NH families with a history of family violence.

- Seven domestic and sexual violence prosecutors located in the counties of Belknap, Cheshire, Coos, Grafton, Hillsborough, Merrimack and Rockingham.

- Court appointed special advocacy programs; also, funding for Ameri-corps and CASA.

- Victim-offender mediation programs.

- Prosecution and law enforcement based victim advocacy programs.

- Ongoing comprehensive training for advocates, law enforcement, prosecutors, and various members in the field.

- Support for Domestic Violence Units in the communities of Manchester and Nashua.

- Support for efforts by NH colleges to end violence against women by building strong consortiums.

- Emergency legal services to victims seeking protective orders against abusers.
- Training for the Courts in the area of domestic and sexual violence.

Drug Task Force Programs
\$2,472,324.61

- The Attorney General leads a multi-jurisdictional drug task force of approximately 30 individuals from many police departments across the state (see Criminal section for details). Grant funds reimburse part of the costs for local law enforcement agencies who send an officer to the task force.

Other Criminal Justice Programs
\$3,629,237.94

- Development of strategic cyber-crime efforts in NH.
- Ongoing efforts with J-One—a comprehensive criminal justice information system involving the courts, state police, and corrections.
- Funding to combat underage drinking through aggressive enforcement of underage drinking laws by local police departments, county sheriffs, campus police, and the Bureau of Liquor Enforcement. Funds are also used for public education and media campaigns.
- Funding from the New Hampshire Highway Safety Agency for a Traffic Safety Resource Prosecutor to conduct regional trainings and provide technical assistance to law enforcement and prosecutors in the area of impaired driving and alcohol-related motor vehicles crimes.
- HAVA funding from the Secretary of State to assist with the Help America Vote Act requirements.

After September 11th, 2001 and the creation of Homeland Security, a number of justice related grant programs were either eliminated or have received reduced funding. Those that continue are always at risk from competing funding needs at the federal level.

More details as to the level of funding and grant type are as follows:

Grant Types	FY06	FY07	Total
Drug Task Force – Byrne	1,152,676.90	1,319,647.71	2,472,324.61
<i>Other Criminal Justice</i>			
Byrne	11,617.01	14,845.17	
Byrne Evaluations	88,004.22		
Byrne – CJ Information Systems	227,798.48	307,674.86	
Byrne Youth-At-Risk Programs	65,106.44	16,503.75	
Bulletproof Vests		5,285.51	
Domestic Preparedness	284,594.14	0	
Enforcing Underage Drinking Laws	380,454.57	378,553.20	
Help America Vote Act	433,784.91	164,995.87	
Natl. Criminal History Improvement Program	454,537.67	278,394.63	
Natl. Forensic Science Improvement	17,115.00	46,909.68	
Project Safe Neighborhoods	156,522.48	126,621.95	
PSN Anti Gang		14,685.97	
Statistical Analysis Center	27,199.74	43,906.36	
USAO DTF	33,946.29	47,450.58	
Prescription Drug Monitoring	2,577.92	151.54	
Total:	2,183,258.87	1,445,979.07	3,629,237.94
<i>Corrections</i>			
Residential Substance Abuse and Treatment	58,544.01	140,775.11	
Violent Offender Incarceration/Truth in Sentencing	2,643,033.38	225,818.75	
Total:	2,701,577.39	366,593.86	3,068,171.25
<i>Victims</i>			
Children’s Justice Act	102,274.08	111,924.84	
Rural Domestic Violence & Child Victimization	112,024.27	140,248.83	
Safe Havens Visitation Centers	86,236.17	314,689.99	
State Victim Fund – Victim Compensation State Portion	361,549.58	389,017.30	
State Victim Fund Grants to Victim Programs	369,335.00	581,060.50	
Victims Compensation – Federal	128,674.35	296,652.36	
Victims of Crime Act	1,981,421.55	1,975,317.68	
Violence Against Women Act	930,015.34	956,266.35	
Total:	4,071,530.34	4,765,177.85	8,836,708.19
<i>Totals</i>			
Drug Task Force – Byrne	1,152,676.90	1,319,647.71	2,472,324.61
Other Criminal Justice	2,183,258.87	1,445,979.07	3,629,237.94
Corrections	2,701,577.39	366,593.86	3,068,171.25
Victims	4,071,530.34	4,765,177.85	8,836,708.19

Appendix A

Reports Required Under RSA 570-A:10, III and RSA-B:7 (Authorized Recordings)

During the biennium, the Attorney General filed zero petitions for authorization to intercept telecommunications under RSA 570-A:7. The Attorney General applied for and received zero orders to install and use pen register devices under RSA 570-B:4. The Attorney General, or designated Assistant Attorneys General, authorized 591 interceptions pursuant to RSA 570-A:2.

Appendix B

Personnel Data

Current Number of Positions	6/30/06	6/30/07
1. Unclassified	69	69
2. Classified	62	62
3. Temporary	1	1
TOTAL	132	132

PHYSICAL PLANT AND PROPERTY APPRAISAL

	6/30/06	6/30/07
1. Equipment	\$2,153,315.50	\$2,263,186.68
2. Physical Plant	0	0
3. Farm	0	0
4. Highway	0	0
TOTAL	\$2,153,315.50	\$2,263,186.68

Appendix C

Receipts And Expenditures

	SFY 06	SFY 07
Receipts		
1 Federal Funds	\$11,288,435	\$8,876,855
2 Fees, Registrations, Fines, Forfeitures - restricted	1,069,133	1,193,586
3 Transfers from Other Agencies	1,808,248	2,105,739
4 Health Club Registrations - unrestricted	22,530	19,260
5 Consumer Land/Condo Registrations - unrestricted	176,060	118,990
6 Judgments and Recoveries - unrestricted	415,947	134,972
7 Tobacco Settlement	38,961,255	40,780,640
8 All Other Sources	8,983,762	10,271,353
Total	\$62,725,370	\$63,501,395
Expenditures		
1 Permanent Personnel	\$6,749,579	\$7,390,540
2 Current Expense incl Rent and Trfr General Services	449,696	478,768
3 Equipment	78,070	72,221
4 Benefits incl Retirees Benefits	2,666,042	2,789,868
5 In State Travel	114,087	149,545
6 Out of State Travel	68,048	80,539
7 Litigation	654,275	596,962
8 Witness Fees	799,931	1,128,014
9 Autopsy Expense	239,150	311,466
10 Miscellaneous	394,529	467,130
Total	\$12,213,407	\$13,465,053
Disbursements to Cities, Towns, Non-Profits and On Behalf of Victims		
1 Towns	\$845,816	\$838,565
2 Counties	985,265	609,660
3 Non-Profits	3,668,352	4,814,103
4 Victim's Compensation Payments/Victim's Assistance Grants	1,178,692	1,385,979
Total	\$6,678,125	\$7,648,307
Disbursements to State Agencies		
1 Department of Justice	\$168,194	\$105,957
2 New Hampshire Multi-jurisdictional Drug Task Force	527,922	745,097
3 Department of Corrections	335,636	514,949
4 Division of Alcohol and Drug Abuse Prevention	13,254	4,677
5 Department of Safety	449,778	103,840
6 Admin. Office of the Courts	477,151	363,829
7 DHHS - YDC facility	2,600,666	124,416
8 New Hampshire Liquor Commission	144,859	159,124
9 Police Standards and Training	0	15,922
10 Department of Administrative Services	0	9,471
11 Office Information Technology (OIT)	273,383	351,209
12 Miscellaneous to State Agencies	5,720	21,065
13 University	90,217	72,913
Total	\$5,086,781	\$2,592,467
Total of all Expenditures	\$23,978,313	\$23,705,828

Appendix D

OPINIONS

July 1, 2005 - June 30, 2007

There were no opinions issued during this biennium.

Appendix E

Expenditures Pursuant to RSA 7:12

SFY 2006

December 2005 to Fiscal Meeting

RSA 7:12 request for \$75,000 for autopsies increasing the total to \$225,000.

March 2006 Fiscal Meeting

RSA 7:12 request for \$300,000 for litigation increasing the total budget to \$650,000.

SFY 2007

October 23, 2006 letter to Fiscal and G&C

RSA 7:12 not to expend funds of \$420,000 for litigation costs in the case of State v. Michael Addison.

February 16, 2007 Fiscal Meeting

RSA 7:12 request for \$450,000 for litigation expenditures to address the balance of the year, thereby increasing the total budget to \$800,000.

February 16, 2007

RSA 7:12 request not to exceed \$360,000 for witness fees increasing the total budget to \$1,160,000.