





# Annual Report 2002

New Mexico Attorney General  
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# A Message from Attorney General Patricia A. Madrid

## *To the People of New Mexico:*

I greatly appreciate the fact that I have been given the opportunity to serve New Mexico as Attorney General for a second term. It is an honor and a great responsibility to represent the interests of the people of New Mexico. I believe I have brought together a staff both talented and dedicated, and they have given exemplary service to the state. We look forward to four more years of service to this great state.

As I reflect on my first term, I am grateful to the skilled prosecutors in my office for what they have achieved. I consider obtaining justice for crime victims to be one of the most important responsibilities of my office. In one case, we were able to put David Parker Ray in prison so that he would never again prey on women. Animal biologist Patrick Ryan was brought to justice for the repeated rapes of a co-worker. We helped bring Robert Fry to justice for killing a Navajo mother in Farmington, and will be trying him for the murder of two other victims.

Water is likely to be one of the most pressing issues in the state's future. While we continue to suffer drought conditions, in 2002 the Texas legislature approved millions of dollars to fight us over Rio Grande water. Our response to this has been to put together the best team of attorneys and experts to defend New Mexico's water.

Endangered species, including the Rio Grande Silvery Minnow and the Pecos River Bluntnose Shiner, have been central issues in a number of federal cases in which we represent the interests of New Mexico.

The protection of New Mexico's consumers has been a priority in my administration and will continue to be in the future. In October 2002, we reached an agreement with PNM that will bring \$35 million in electric rate decreases to residential and small business customers. In addition to the rate reduction, PNM has agreed to join with my office to repeal New Mexico's electric deregulation bill. This will be one of my priorities during the 2003 regular legislative session.

This year New Mexico was part of a nationwide effort that achieved the largest consumer settlement in history. This action was taken against Household Finance International for its unfair and deceptive lending practices in the sub-prime market. The settlement will bring \$2,140,000 in restitution to New Mexico consumers.

I am proud of what we have done for New Mexico. In this message, I have mentioned but a few cases. I invite you to read through this report and become familiar with the range of important work this office has accomplished.



Photo by Kim Jew

A handwritten signature in cursive script that reads "Patricia A. Madrid". The signature is written in dark ink and is positioned at the bottom center of the page.



# Report from Stuart Bluestone, Chief Deputy Attorney General

## *To the People of New Mexico:*



As this report reveals, the Attorney General's Office continued to enjoy great success in 2002. We all look forward to Attorney General Madrid's second term and the challenges we will face on behalf of New Mexico and its citizens.

Building on the significant revenues brought to the state from the national tobacco settlement (\$1.1 billion over 25 years), and Attorney General Madrid's significant \$91 million settlement with 10 of the 12 Indian gaming tribes, she also distributed throughout the state benefits obtained from the nationwide settlement with vitamin manufacturers charged with price-fixing at an international level. The settlement allowed Attorney General Madrid to distribute \$1.7 million to address the substantial unmet hunger and nutrition needs in New Mexico.

On the criminal front, the office helped secure more significant convictions. Plea agreements were obtained from a number of those involved in the tragic killing of guard Ralph Garcia at the Santa Rosa prison, and our office continues to prepare for trials, along with District Attorney Matt Sandoval's office, of the remaining defendants charged with Mr. Garcia's murder.

Water issues have been a major concern to this office. As litigation continues, we continue to seek long-term solutions to endangered species problems on the Rio Grande while protecting water rights and compact obligations by working with the Endangered Species Act Work Group. This year, the work group was successful in obtaining an \$11.2 million federal appropriation to fund the program's species recovery activities and water purchases for the next fiscal year. We continue to work with our congressional delegation to obtain recognition and a federal funding mechanism for the program.

Under Attorney General Madrid's leadership, the office continued to represent the state successfully in court on a wide range of matters and to render legal opinions that fairly interpret the law consistent with the legislature's directives.

All in all, throughout 2002 the office provided excellent legal representation for the state. Attorney General Madrid has set a precedent for professionalism and impartial decision-making that permeates throughout the office. I believe there is considerable trust in her leadership and values that we who work for her appreciate and respect. We look forward to more great victories in 2003 and beyond.

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

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# Report from the Special Counsels

Glenn Smith and Chris Coppin

## Tobacco Settlement Agreement and Environmental Matters

Special Counsel Glenn Smith is one of Attorney General Madrid's chief advisors on matters of policy and procedure. His duties include providing advice and counsel on the powers and authority of the attorney general and the operation and management of the office. He serves as the AGO project manager for the Bravo Dome Royalty Underpayment Litigation, which realized settlements in excess of \$30 million in 2002. In addition, Special Counsel Glenn Smith handles policy matters involving the operation and management of the Waste Isolation Pilot Project and is Attorney General Madrid's project manager for the South Valley Superfund Natural Resource Damages Litigation.



In 2002, Special Counsel Smith was also integrally involved in the fashioning of Attorney General Madrid's distribution of over \$1.7 million to New Mexico's most needy citizens pursuant to the settlement of an antitrust lawsuit against foreign vitamin manufacturers.

Finally, Special Counsel Glenn Smith is the state's senior tobacco contact, appointed by Attorney General Madrid under the Tobacco Master Settlement Agreement. He is charged with the responsibility to protect the state's interest in the \$1.2 billion dollar in settlement proceeds and with monitoring the tobacco companies' compliance with the Agreement's injunctive provisions directed toward eliminating the ability of the tobacco industry to promote its lethal products to our youth.

## Indian Gaming Lawsuit



In 2001, the Attorney General settled the Indian gaming lawsuit with 10 of the 12 defendants for \$91 million dollars to the state's general fund. The two remaining defendants, the Pueblo of Pojoaque and the Mescalero Apache Tribe, continue to litigate with the state over their legal obligation to make revenue-sharing payments to the state as required by the compact they entered into with the state. Pending in federal court is Mescalero's preliminary motion to force the state to arbitrate its claims against the tribes instead of suing them in that court. In the meantime, the New Mexico Supreme Court has stayed all arbitration proceedings regarding the revenue – sharing payments until a decision is rendered on whether arbitration is mandated by the compact.

# Public Information Office

Sam Thompson, Public Information Officer

## Overview

The Public Information Office (PIO) is responsible for the day-to-day relations with the media, including statewide and national bureaus. This office is both proactive and reactive. The primary goal of this office is to provide New Mexicans with useful information. This goal is accomplished through press releases, columns, opinion editorials, consumer alerts, as well as television and radio interviews. In addition, special projects are undertaken at the direction of the Attorney General, such as developing materials to promote Internet safety among New Mexico's youth.

The PIO coordinates Spanish language consumer features for New Mexico's Univision television station. In addition, the office coordinates a weekly radio program, "Know Your Rights," on KSFR-AM/1260 in Santa Fe. Featured on this program are a variety of topics, including consumer protection, victims' rights, child abuse and government compliance with acts governing open meetings and public records.



Dustin Sparks, Sam Thompson, Joyce Lincoln

The web site of the Attorney General's Office provides an efficient and easy-to-use method of making information available to the public and the press. Press releases are placed on the web site within 24 hours of release. A database containing information about hundreds of thousands of charitable organizations may be accessed via the web site to obtain details about charities.

An important, though less public, activity of this office is to provide assistance to divisions within the office. Assistance may take the form of research or it may be project assistance. For example, protecting New Mexico consumers' privacy is a priority of the AGO. The Public Information Office assisted the Special Consumer Projects Division with the "do not call study" undertaken at the direction of the Legislature, gathering important information from which to draw findings and recommendations for submission to the 2003 Legislature.

The PIO also focuses on protecting New Mexicans from "identity theft," a serious issue of growing concern nationwide. In collaboration with the AGO Consumer Protection Division, the PIO hopes to receive the funding necessary for creating and publishing an identity theft 'Handbook' for distribution throughout the state as part of the AGO's educational outreach to New Mexico consumers.

The PIO is committed to continuing improvement of our web site and other communications designed to inform and protect New Mexico's consumers. In this way, our Office carries out its contribution to the important mission of the New Mexico Attorney General's Office – to serve and protect all New Mexicans.

# Administrative Services Division

Elizabeth Kupfer, Division Director

## Overview

Under the capable leadership of its director, the Administrative Services Division (ASD) provides timely, courteous agency-wide support, enabling the AGO to continue its important work serving and protecting New Mexico and its citizens. The consistently excellent service this division provides is critical to the efficient operations of every other division in the agency.



## 2002 Brings AGO into Performance-Based Budgeting Process

In 2002, the Office of the Attorney General became integrally involved with Performance Based Budgeting (PBB) as required by the New Mexico Accountability in Government Act (AGA).



Barbara Gay

While developing appropriate PBB measures in any government service agency is a challenge, after many meetings with both the Department of Finance and Administration (DFA) and the Legislative Finance Committee (LFC), the PBB team in ASD successfully met the challenge defining three “programs”—the Legal Services Program, the Medicaid Fraud Program and the Guardianship Services Program.

## Annual Audit

For the third time in as many years, independent auditors scrutinizing the financial operations of the AGO reported no audit exceptions. The number of audit findings has decreased during the past few years as policies and procedures have been revised to more thoroughly incorporate statutory law and relevant DFA requirements. Achieving a clean audit involved a level of caring beyond ‘just processing the paperwork’ on the part of fiscal staff.



Standing: Dennis Martinez, Marlene Martinez, Paul Gonzales, Martina C’de Baca, Lyn Payne, Tammy Herrera, Paul Noskin, Freddie Arellano and Jeff Hughes; Seated: David Taylor, Pauline Valdez, Elizabeth Kupfer, Lisa Ortiz, Rick Rockman and Mark Guillen.

# Civil Division

Assistant Attorney General Albert J. Lama, Director

## Overview

The Civil Division of the New Mexico Attorney General's Office has 17 attorneys and three clerical staff positions. The attorneys in the Civil Division provide legal advice to administrative boards and commissions throughout the state. Division attorneys are also primarily responsible for preparing advisory letters and formal opinions for members of the state legislature, state officials and district attorneys. In 2002, the Division issued two formal opinions and 21 advisory letters.



## Inspection of Public Records Act and Open Meetings Act Seminars

By the end of 2002, attorneys in the Division had visited each corner of the state in order to educate and assist the public and state and local officials in understanding the provisions of these laws. Some of the communities visited in 2002 include Albuquerque, Tucumcari, Farmington, Carlsbad, Clayton, Raton, Alamogordo, Espanola, Taos, Los Alamos, Socorro, Los Lunas and Belen.

## Corporate Fraud Matters

Since December 2001, the Division has assisted Attorney General Patricia Madrid and several other AGO staff members on legal activities involving Enron, WorldCom and other corporate fraud matters. These activities have included: (a) giving regular briefings to the state investing and pension entities including the State Investment Council, Educational Retirement Board, Public Employees Retirement Association and Public School Insurance Authority; (b) receiving authorization from these entities to act on their behalf in Enron litigation; (c) participating in court filings in Enron litigation in conjunction with other state Attorney General offices; (d) coordinating with the state Securities Division to receive money from the New York Attorney General-Merrill Lynch settlement; and (e) providing requested information to the state legislature.

## Division Highlights, 2002

Responses to complaints of alleged Open Meetings Act and Inspection of Public Records Act violations	17
Responses to constituent complaints/inquiries	186
Open Meetings Act and Inspection of Public Records Act seminars conducted statewide	13
Reviewed over 260 pieces of legislation	
Analyzed over 158 pieces of legislation	

## Special Counsel for Indian Affairs

In 2002, the search for a candidate to fill the position of Special Counsel for Indian Affairs ended with the hire of Steffani Cochran. Ms. Cochran is a Chickasaw who was born and raised in Oklahoma. She has a Bachelor of Science degree from Oklahoma State University and a Master's of Public Administration from George Mason University. Her law degree is from American University in Washington, D.C., and she completed clinical work at the University of New Mexico. She is a former Associate Tribal Judge for the Pueblo of Isleta and a former Administrative Law Judge for the State of Oregon. Ms. Cochran's focus is to provide legal advice and assistance

on a variety of matters involving and affecting Native American communities throughout New Mexico.

### **Attorney General Opinions and Advisory Letters Opinions**

The office of the Attorney General has issued two Opinions and 21 advisory letters in 2002. The opinions covered a wide range of complex legal issues of concern statewide. A synopsis of each is provided below:

#### ***Attorney General Op. No. 02-01 (March 7, 2002)***

In an Opinion addressed to Secretary of State Rebecca Vigil-Giron, we concluded that a court would likely find constitutional a Campaign Reporting Act provision [NMSA 1978, Section 1-19-34.4] that provides for binding arbitration of alleged violations of that Act for which a penalty has been imposed, because the fact that the arbitrator's decision is subject to judicial review places no unconstitutional limits on a person's right of access to the courts. The Campaign Reporting Act requires that its arbitration procedures be governed by the Uniform Arbitration Act. Although the Campaign Reporting Act describes the arbitrator's decision as "final and binding," that decision is nonetheless subject to judicial review pursuant to the Uniform Arbitration Act to determine whether the arbitrator's decision was lawful, thus allowing the court, rather than the arbitrator, to be the final authority.

#### ***Attorney General Opinion 02-02 (June 16, 2002)***

The opinion approved a new innovative approach for local government economic development projects. The opinion was issued in response to Representative James Roger Madalena's questions about Rio Rancho's Gross Receipts Investment Policy (GRIP), which was adopted October 11, 2001. The GRIP is an effort by the home rule municipality to provide an incentive to encourage commercial development of retail business establishments (e.g. malls) in Rio Rancho. According to the GRIP, Rio Rancho and a developer will enter into a development agreement which will require the developer to build the

establishment and the necessary adjoining public infrastructure (i.e. improvements to roads, landscaping, connections to existing sewage lines). In exchange, Rio Rancho will reimburse the developer for its costs with the new gross receipts taxes directly attributable to retail sales within the project.

Representative Madalena asked the following four questions: (1) Does Rio Rancho have the statutory authority to grant itself the right to enter into a contract with a private developer in order to facilitate the construction of retail business establishments?

The answer is yes. (2) Does Rio Rancho have the constitutional authority to reimburse a developer consistent with the anti-donation clause of Article IX, Section 14 of the New Mexico Constitution? The answer is yes for these specified circumstances. (3)

Does Rio Rancho have the constitutional authority to reimburse a developer consistent with Article IV, Section 32 of the New Mexico Constitution? The answer is yes, Rio Rancho has the authority to exercise its powers to write an ordinance that allows a developer's impact fees to be reimbursed later. (4)

Does Rio Rancho have the statutory authority to reimburse the developer in accordance with the Bateman Act? The answer is yes, if Rio Rancho sets aside in a special fund dedicated for this special purpose, the funds attributable to retail sales within the project.

#### ***Advisory Letter to Tony Schaefer, Commissioner, PRC, from Elizabeth A. Glenn, AAG (July 9, 2002)***

Commissioner Schaefer asked whether the Public Regulation Commission was authorized to rescind the election of the Commission chairman and elect a new chairman. The request stemmed from provisions of the Public Regulation Commission Act requiring the Commission to "annually elect one of its members chairman, who shall reside at hearings." In the absence of applicable New Mexico case law, the advisory letter reviewed pertinent cases from other jurisdictions and concluded that, according to the majority rule, a statute like that governing the election of the PRC chairman, did not fix a term of office for the chairman. Accordingly, absent any contrary constitutional or statutory provision, the Commission

was not limited to one election each year, but had discretionary authority to remove its chairman and elect a new chair at any time.

***Advisory Letter to Senator Carroll H. Leavell and Representative Donald L. Whitaker, from Elizabeth A. Glenn, AAG (Mar. 28, 2002)***

Senator Leavell and Representative Whitaker asked what impact the licensing of a new racetrack with slot machines, as allowed under New Mexico law, would have on gaming agreements in effect between the State and Native American tribes, pueblos and nations. The advisory letter reviewed the applicable terms of the Gaming Compacts between the State and certain tribes that govern those tribes' permissible gaming activities on Indian lands in New Mexico. Based on that review, the letter concludes that the licensing of a new racetrack that would operate gaming machines as allowed under New Mexico law would not violate the Compacts or affect the parties' obligations under the Compacts.

***Advisory Letter to Representative Joseph Cervantes, from Sally Malave, AAG (August 14, 2002)***

Representative Cervantes requested an Attorney General opinion concerning the applicable deadline for nominations by the state major political parties for the vacancy on the general election ballot created by Judge Cornish's resignation in the spring 2002. Judge Cornish did not file a declaration of candidacy for retention by the statutory deadline and subsequently resigned from the bench before the June 4 primary election. Provisions in the state election code relating to vacancies on the general election ballot resulting from the death or resignation of an incumbent do not address or contemplate uncontested elections, such as retention elections. Based on our reading of *State ex rel. Noble v. Fiorina*, 67 N.M. 366 (1960), we believe it is reasonable to apply NMSA 1978, § 1-8-7 and not § 1-8-8 to the facts presented. Both provisions authorize the filing of vacancies on the general election ballot after the primary election is held for elective offices that otherwise must be nominated in the primary election. Both sections explain what procedure to follow when a vacancy on

the general election ballot occurs. The only substantive difference between §§ 1-8-7 and 1-8-8 appears to be when a vacancy occurs. If vacancy occurs before primary election is held, § 1-8-7 applies. If vacancy occurs after primary election is held, § 1-8-8 applies.

***Advisory Letter to S. Patricia McSherry, Board of Pharmacy chair, from Sally Malave, AAG (May 28, 2002)***

Ms. McSherry requested an Attorney General opinion concerning RLD's authority to charge administrative expenses to the board of pharmacy (1) that have no reasonable relationship to the services provided to the board, (2) that are based on the board's cash balances, and (3) for services that the board does not receive or utilize. Our analysis indicated that it is proper for RLD to utilize board monies to pay for administrative services provided by RLD to the board of pharmacy, provided that RLD's services are reasonably related to the board's licensing functions and common to all licensing boards. RLD has no legal authority to charge administrative expenses to the board for services not provided to or received by the board. RLD should utilize a system for calculating these expenses that is reasonably related to the services actually provided and consistent with the administrative planning and delivery of those services, rather than basing the administrative expenses solely on the size of the board's budget or its cash balances.



Standing: Laverne Roller, Corliss Thalley, Alvin Garcia, Lesley Lowe, Andrew Vallejos, Sondra Frank, Rosemary Maestas-Swazo; Seated: Salley Malave, Besty Glenn, Samantha Metheny, Marty Daly, Deborah Martinez, Zach Shandler, Lawrence Otero



# Consumer Protection Division

Assistant Attorney General Joel Cruz-Esparza, Director

## Overview

### Our Division: Open To The Public

The Consumer Protection Division is open to the public, and receives numerous inquiries each year about New Mexico's consumer protection laws. Most inquiries are handled directly by our staff, and we have developed a referral system to direct inquiries outside our jurisdiction to the proper agency. Thousands of written complaints are filed each year, alerting us to disputes between businesses and consumers. The complaints filed with our office are the "pulse" of the public trade and commercial activities in our state.

The New Mexico Legislature has given the AGO the authority to enforce the Unfair Practices Act. To do so, our Division provides multilevel services to the public to

accomplish protection of the consumer: mediation, prevention via legal education, legislation and litigation. First and foremost, the Division provides mediation services.

When the complaints are filed we immediately attempt mediation to resolve the dispute. Our preventive work involves distributing information to the public about applicable laws during presentations and seminars held throughout the year. We have available an extensive and updated leaflet library on numerous consumer issues. We participate in several radio and television segments throughout the year, discussing topics relevant to consumers and businesses. When we see a pattern or practice of unfairness affecting the public interest, we use litigation tools available through our statutes, such as Cease and Desist Letters, Civil Investigative Demands, Written Assurances and lawsuits seeking redress on behalf of consumers affected by any unfair or unconscionable trade practice. When the laws do not properly address the concerns of the consumers, we present to the legislature proposals for new and better laws.

### Our Referral System: To Avoid the 'Round Around'

Because we represent the public interest throughout the state, we receive calls involving every consumer concern imaginable. We have developed a sound referral system to assure that the person calling will get to the agency that can resolve his or her concern. Our Division works closely with many municipal, county, state and federal agencies in this process.



## Division Highlights 2002

### Top Ten Consumer Complaints Filed with Division:

- (1) Auto Sales
- (2) Auto Repairs
- (3) Credit Reporting
- (4) Collection Agencies
- (5) Home Repair/Construction
- (6) Retail Sales
- (7) Internet Goods/Services
- (8) Telemarketing
- (9) Lending/Mortgages
- (10) Mobile Home Sales

### Direct restitution to consumers:

Approximately 1.65 Million Dollars

Inquiries received: 85,000

Written complaints filed by consumers: 3,400

Educational presentations made: 70

Successful resolutions through mediation: 77%

### **Our Mediation Services: An Attempt To A Win-Win Resolution**

We ask consumers to make their complaints in writing. A complaint form is made available upon request to our toll free number. The complaint form can also be acquired by downloading it from our web site. Our staff also distributes the complaint at every public event we attend. However, we encourage consumers to attempt to resolve their dispute with the business before contacting us. Only after such an attempt fails do we encourage consumers to bring disputes to our attention.

Once the complaint is filed with our office, our staff reviews it and sends a copy to the business involved, giving the business an opportunity to respond to the allegations. The parties must accept our offer to mediate the dispute to reach a resolution avoiding litigation expenses and costs. When necessary, our advocates investigate and perform legal research to reach a conclusion on the allegations of the complaint and the response of the business.

Both parties have the opportunity to negotiate a settlement. Our Division, always attempting to reach a settlement agreeable to both parties, makes a recommendation. Our success rate in mediating disputes is very good: approximately 77% of complaints filed with our office are resolved through our mediation efforts. If the matter is not resolved or if any of the parties withdraw their consent for our office to mediate the dispute, our office will close its file and direct the parties to proceed independently and privately. With few exceptions, the complaints and responses and supporting documents remain a public record. If we see a pattern and practice of an unfair or deceptive practice, our Division takes appropriate legal action.



Bottom row: Jessica Romero, Barbara Ortiz Lujan, Pam Barrone, Joel Cruz-Esparza; Middle row: Tini Garcia, Helen Trujillo, Deborah DeMack; Top row: Casey Courtney, Linda Vigil, Anita Wolf

### **Legal Education: Our Preventive Work**

Ideally, in every trade or commercial transaction involving a business and a consumer, both parties enter into the relationship well armed with knowledge of their rights. A fair negotiation can be accomplished only under these circumstances. The reality is that businesses and their owners/managers are well versed in the industry, while consumers enter the relationship having little knowledge of how the industry works. This is expected, since the consumer may have never before needed to know how a particular industry works. Our preventive work involves informing the public and, for the reasons stated above, generally targeting consumers to inform them of their rights in various business transactions. We share this information with the public by giving in-person presentations or attending live radio shows. The Attorney General's Office hosts a weekly show, "Know Your Rights," at a local Santa Fe-Albuquerque radio station, and the Consumer Protection Division does the show twice a month. We also present brief television segments. This year, to reach the Spanish speaking population of New Mexico, we aired several two-minute segments on Univision. Finally, we have an extensive collection of leaflets and booklets addressing common consumer questions.

### **Litigation: To Change The Behavior Of Unfair Trade Practices**

When it is brought to the attention of our office that a certain pattern and practice may be affecting the public interest, the Consumer Protection Division has several tools available to stop an unfair trade practice. Our Division issues "cease and desist" letters to businesses involved in practices determined by our Division to be unfair or deceptive. The business is always given the opportunity to respond to any allegations of wrongdoing. Our Division may also conduct a thorough investigation of the alleged practices, and may serve the business with a Civil Investigative Demand asking to review pertinent documents that may lead to a final determination of whether the practice is unfair or deceptive. A Written Assurance Agreement may be entered by the business and our agency for the business to stop the



particular practice. Finally, if all this fails or if the business is unwilling to work with our office, our Division will file a cause of action against the business, asking a proper Court to interpret and enforce a particular law and stop the practice.



Consumer Advocate Diana Marquez and Joel Cruz-Esparza

## Some Examples

### *Ski Rio Resort*

In February of 2002, 13 different consumer complaints were filed in our office, complaining that Ski Rio Resort, run by a New Mexico company, failed to make refunds of reservation deposits for ski lift tickets and lodging even after the company announced that the resort would not be open for the 2001-2002 season. Despite our Division's mediation attempts, several months passed and the company failed to return the consumers' deposits. Our Division filed suit in the Second Judicial District Court, alleging a deceptive and unfair practice in receiving money and failing to provide the services offered. One of the defendants settled with our office and paid approximately \$6,400 to refund deposits to 11 of the consumers. Two of the consumers received credit from their credit card companies.

### *Mor Furniture*

In early 2002, consumers complaining of Mor Furniture's sale and delivery of furniture filed seven different complaints. The complaints alleged delays in the delivery, delivery of the wrong pieces of furniture or delivery of broken or defective furniture. At the same time, Mor Furniture had ongoing television commercials advertising a two-day express delivery. Furthermore, consumers complained that they were being referred to the business'

headquarters in San Diego, California. Reaching Mor Furniture's headquarters required a long distance call, and it was difficult, if not impossible, to reach anyone with the complaint.

Our Division intervened and asked representatives of Mor Furniture to meet with members of our staff to discuss a possible solution to these and other potential complaints. Mor Furniture agreed to meet in our office in Albuquerque. The meeting resulted in a Written Assurance Agreement in which Mor Furniture agreed to (1) cease television ads that advertised a two-day express delivery period for a three months; (2) establish a local complaint unit; (3) establish a policy of inspecting furniture before delivery of the furniture; and (4) work closely with our Division in resolving any future consumer complaints.

### *European Health Concepts-Magnetic Pads*

For some time we have had several unresolved complaints against businesses offering consumers a free dinner or lunch at a local restaurant if they would listen to a presentation related to magnetic mattress pads the companies were selling. The consumers who bought these products complained that they were dissatisfied with the product or that the companies' promises made during the sale had not been kept. The complaints had been unresolved because the companies, which were out of town, had disappeared, dissolved or filed bankruptcy.

Working together with AARP since most of the targeted consumers were senior citizens, our Division contacted the CEO of European Health Concepts in Florida. European Health Concepts had arranged several presentations in New Mexico. Upon inquiry and investigation, our Division discovered that the company did not have the proper business license to conduct its business activities in Albuquerque and that an improper notice of cancellation had been given to consumers under the Door-to-Door Sales Act of New Mexico. The company did not have a permanent business address. It was basically a "hit-and-run" or "in-and-out" operation, which is

advantageous for their scheme of sales. The company offered consumers a 180-day trial period. If after this period, and only after this period of trying the product, any consumer was not satisfied for whatever reason, the product could be returned for a full 100% refund. The reality was that after the six-month period, the company was nowhere to be found and the period during which a credit could be obtained through the consumer's credit card company had passed. The purchasing consumer was left holding an undesired and over-valued product. Filing a complaint with us also became fruitless because of the passage of time and because the companies had disappeared or failed to respond to our mediation attempts.

Our Division took a proactive approach and issued a cease and desist letter to the business, requiring the business to correct its three-day notice of cancellation. We asked if we could attend the presentations. Our Division also issued a press release alerting those consumers who had been invited to one of the various presentations scheduled. Ultimately, European health Concepts cancelled all its presentations. We will continue proactive approaches to protecting New Mexico consumers.

### ***Our Legislative Work: The Passing Of Better Laws And Regulations***

Because of our contact with the public through our various tasks as outlined here, our office is in a particularly good position to recommend the passage of better laws to improve the trade and commercial relationships in our state. Each year, but particularly during the legislature's 60-day sessions every other year, our advocates participate fully in the process to create better laws. During the year our advocates compile information relevant to addressing consumer concerns through legislative means. Additionally, the

Office of the Attorney General is authorized to promulgate rules and regulations to mirror the provisions of the state statutes related to consumer protection.

### ***An Example***

In May of 2002, members of our staff participated in a hearing held by the Manufacturing Housing Division (MHD) to determine the appropriate regulation related to deposits made by consumers when they purchase a mobile home. The MHD is charged with licensing mobile home dealers in New Mexico and with promulgating rules and regulations for the industry. Our intervention as advocates for consumers assured that a fair rule on deposits would be set in place. Our office had received several complaints by consumers in which mobile home dealers were not returning their deposits even after the sales transaction had been cancelled. The rule on deposits needed to be clarified. The MHD passed a temporary rule and asked the staff of the MHD, our Division and the dealer's association to meet and recommend a final rule by December of 2002.



Ernie Mills MCs annual LifeSmarts competition

# Special Consumer Projects Division

Assistant Attorney General Don Trigg, Director

## Overview

Attorney General Madrid created the Special Consumer Projects Division in the second half of 2002. The Division has a staff of attorneys and other professionals that represent the interests of New Mexico and its consumers in the areas of health care, insurance, charity regulation, antitrust, and multistate corporate conduct.



## Summary Of Selected Major Cases And Activities

### *Charity Search – N MAGO and GuideStar Collaboration*

During 2002, Attorney General Madrid engaged GuideStar, a national provider of Internet-based information about charitable organizations to better provide New Mexico consumers with immediate access to reports on thousands of charitable organizations located in New Mexico and around the United States. This information can be accessed through the Attorney General's Office web site. The web site also contains relevant educational resources for donors, for community leaders interested in forming a new nonprofit and for Boards of Directors who govern the nonprofit's charitable missions and oversee the charitable trust.

### *Northeastern Regional Hospital and the Northeastern Regional Medical Foundation*



Back row: Jessica Sutin, Don Trigg; Front row: Theresa Saenz, Theresa Martinez, Rosemary Maestas-Swazo, Becky Gonzales

Three years ago, Attorney General Madrid managed the sale of the Northeastern Regional Hospital and the dissolution of the Northeastern Regional Community Foundation. The primary consideration for the sale of the non-profit hospital to an out-of-state, for-profit company was the buyers' promise to build a new hospital facility within a designated time frame for the Las Vegas community. A groundbreaking ceremony for the new facility occurred in October 2002 and occupancy is expected in March 2004. The new hospital will be called the Alta Vista Regional Hospital.

In addition, the Attorney General approved a Memorandum of Understanding with the Northeastern Regional Medical Foundation, allowing the Foundation to transfer its charitable assets to the Northeastern Regional Community Foundation, which will be affiliated with the New Mexico Community Foundation. The Northeastern Regional Community Foundation will focus on healthcare related grant-making in the service area of the Hospital.

### *Banner Health System – Los Alamos Medical Center*

On May 29, 2002, Attorney General Madrid announced that she would not oppose the sale of Los Alamos Medical Center to Tennessee-based Province Healthcare following an \$11.5 million settlement with the two companies. Attorney General Madrid concluded that the sale was in the best interests of the communities served by the Medical Center. The new owner, Province Healthcare, committed to provide quality care to these communities and to make much needed improvements to the health care services available at the Medical Center.

The terms of the \$11.5 million settlement included:

1. Commitment by the seller, Banner, to fully satisfy its obligations on approximately \$4.5 million in debt issued by Los Alamos County;

2. Payment by Banner of \$4 million and by Province of an additional \$500,000 to health care charities to be selected by the Attorney General for a total charitable commitment of \$4.5 million, all to be used for the benefit of health care in the Los Alamos, Rio Arriba and Santa Fe county areas served by the Medical Center;

3. An increased commitment of approximately \$2.5 million by Province in capital expenditures to make improvements to the Medical Center (from \$2.4 million originally committed to \$5 million) in the first 18 months and an increased commitment to recruit physicians to Northern New Mexico; and

4. Dismissal with prejudice of pending litigation.

Because Province Healthcare is a for-profit company, it is estimated that Province will pay approximately \$1.2 million in New Mexico State and local taxes in its first year of operation and tax payments will continue each following year.

### ***St. Joseph Health System***

On July 19, 2002 Attorney General Madrid announced that she would not oppose the proposed sale of St. Joseph Healthcare Systems. Catholic Health Initiatives of Denver, owner of St. Joseph's Healthcare Systems, signed a letter of intent to sell the hospital to Ardent Health Systems of Nashville, Tennessee, in March 2002.

St. Joseph's Hospital has had a 100-year tradition of service to unmet health needs in the Albuquerque area. That charitable tradition will continue. Catholic Health Initiatives agreed to use an estimated \$21 million, the net sale proceeds of the sale, and an additional estimated \$7 million from the St. Joseph Foundation to charitably serve the health needs of the people of Albuquerque and New Mexico following the sale.

A Memorandum of Understanding between the Attorney General's Office, St. Joseph's Healthcare

System and Catholic Health Initiatives included the following:

1. A New Mexico nonprofit, tax-exempt corporation, called St. Joseph Health Ministries of New Mexico will be established to serve unmet health needs--in particular for the poor and medically unserved--in Albuquerque and across New Mexico, and will be funded with the \$28 million in charitable assets;

2. The exact mission and structure of the new health ministry will be determined through a planning process that will include public input;

3. The New Mexico Charitable Registrar of the Attorney General's Office will have oversight of the new health ministry's planning process; and

4. The governance board of the new health ministry will reflect the geographic, cultural and linguistic diversity of New Mexico.

### ***Ardent – Lovelace Acquisition***

In October 2002, Attorney General Madrid intervened as a party before the Superintendent of Insurance concerning his review of the proposed acquisition of Lovelace Health Systems, Inc. (Lovelace) by Ardent Health System (Ardent). The Attorney General intervened in the proceeding to protect the interest of consumers and to ensure there was no antitrust violation in the acquisition of Lovelace by Ardent. Following a public administrative hearing and consultation with the staff of the Federal Trade Commission, Attorney General Madrid submitted her proposed Findings to the Superintendent, who accepted them in approving the proposed transaction.

### ***Tobacco Retailing Assurances with Walgreen's, Exxon Mobile, and BP Amoco***

Attorney General Madrid entered into three Agreements to reduce the sale of tobacco to minors.

The first Agreement was an Assurance of Voluntary Compliance signed with the Walgreen's Corporation and the Attorneys General of 40 states concerning

tobacco-retailing practices in Walgreen's stores nationwide. The Agreement established retailing "best practices" and protections that are designed to reduce access by minors to tobacco products. The 40 states involved represent over 90% of all Walgreen's stores in the United States.

The second and third Agreements signed by Attorney General Madrid and 45 other Attorneys General across the United States were with Exxon Mobile and BP Amoco. These Assurances also sought to reduce the sale of tobacco to minors. In these Agreements, Exxon Mobile and BP Amoco, the largest oil companies in the United States, agreed to address the problem of minors obtaining tobacco products at gas stations and convenience stores bearing the Exxon Mobil or BP Amoco trade names. Exxon Mobil and BP Amoco agreed to standards for hiring, employment and training of its employees regarding the sale of tobacco products.

### ***Mylan Litigation***

This federal antitrust litigation was based on Mylan Pharmaceuticals' monopolization of the market for the active ingredients in the drugs lorazepam and clorazepate through illegal agreements. In New Mexico, approximately 1,600 consumers were injured by this monopoly and shared in its recovery from Mylan. New Mexico consumers received 100% of their verified out-of-pocket cost and no less than \$10 in any case. New Mexico also received \$70,000 in attorney fees to reimburse tax dollars spent in the proceeding and \$130,000 for a further distribution.

### ***Vitamin Price Fixing Settlement***

In August 2002, Attorney General Madrid announced the awarding of grants totaling over \$1.7 million to fight hunger and improve health in New Mexico. The grants are the proceeds of a settlement in a multi-state antitrust action brought against vitamin manufacturers. Three European companies, F. Hoffman-La Roche, BASF and Aventis (formerly Rhone-Poulenc), and three Japanese companies, Takeda Chemical Industries Ltd., Eisai Co. Ltd. and Daiichi Pharmaceutical Co. Ltd., agreed to the settlement.



AG Madrid, second from left, distributes vitamin settlement money to staff from Angel Depot

The price-fixing activity of the six vitamin manufacturers increased the cost of products New Mexicans use on a daily basis. The vitamins made by the settling companies were used in a wide range of products, from baby food and bread to livestock feed. The settlement created two distribution funds for New Mexico's consumers: the Consumer Class Settlement and New Mexico State Economic Impact Fund (SEIF). The Consumer Class Settlement fund allocation to New Mexico was \$1,742,000 and the SEIF was \$162,000.



AG Madrid, fourth from left, distributes vitamin settlement money to representatives of Farmington Inter-Tribal Indian Organization

The Consumer Class Settlement funds will be used to improve the health and nutrition of New Mexicans through statewide food programs administered by local non-profit organizations.

The SEIF Fund is intended to provide compensation for New Mexico economic activities likely to have been impacted by the vitamin overcharges. In New Mexico, the dairy and ranching industries were identified as significant users of vitamins and indirect

vitamin products. The Dairy Producers of New Mexico were awarded grants to study and enhance New Mexico dairy herd procedures and to foster nutrition in New Mexico children.

### ***Conoco Phillips Merger***

On August 30, 2002 Attorney General Madrid filed a consent judgment in federal court requiring divestitures and other conditions as a condition to granting clearance for the proposed Conoco Inc. and Phillips Petroleum Company merger. Attorney General Madrid required the companies to divest their New Mexico Permian Basin natural gas assets. The natural gas gathering lines divested in New Mexico and the adjoining areas of Texas represented one of the largest gathering pipeline divestitures required of companies seeking antitrust clearance for a proposed merger.

### ***Music Compact Disc Litigation***

Attorney General Madrid and 44 other state Attorneys General negotiated an antitrust price-fixing settlement with five large music distributors, including Warner Elektra Atlantic Corp (WEA), Bertelsmann Music Group (BMG), Sony, Universal and EMI. Separate settlement agreements were also needed with three retailers: Musicland, Trans World and Tower. New Mexico expects to receive more than 35,000 quality musical compact discs for distribution and individual consumers who submit claims are estimated to receive a total of \$318,000 in refunds. A distribution and refund process is under development.

### ***Household International, Inc.***

On October 11, 2002, Attorney General Madrid announced that New Mexico and at least 20 other states had reached an historic agreement with Household International, Inc. (Household) regarding the giant lender's predatory loan practices. New Mexico and other states had alleged that Household violated state laws by misrepresenting loan terms and failing to disclose material information to borrowers. Household agreed to change its lending practices and to pay up to \$484 million in consumer restitution nationwide. This amount is believed to be the largest

ever obtained in a consumer protection case. Household also agreed to accept strong injunctive terms that offer consumers important protections. Under the settlement, Household has agreed to stop selling single premium credit insurance, to stop the practice of loan "flipping" (refinancing loans for consumers in quick succession without providing any net tangible benefit to the consumer), to limit up-front points and origination fees and to reform and improve disclosures to consumers. New Mexico's proportional share of the restitution will be approximately \$2.139 million, which will be distributed to approximately 2000 New Mexico residents who obtained loans from Household between January 1, 1999 and September 30, 2002.

### ***Emergency Management Tri-Agency Work Group***

In 2001, the New Mexico Legislature enacted Senate Joint Memorial 62 and House Joint Memorial 34, asking the Office of the Attorney General, the Department of Public Safety and the Department of Health to assess New Mexico's statutory and regulatory framework in light of current events. The work group prepared a Final Report and Recommendations. The Final Report includes: a summary of the eight town hall meetings around the State that gathered public input on critical emergency management topics; two emergency management meetings with liaisons from virtually all state agencies; emergency management coordination among "other entities" as defined in the Joint Memorials; a statutory and regulatory review and recommendations to the New Mexico Legislature; and a summary of the State Emergency Management drills conducted on June 28, 2002 and on October 31, 2002.

The work group will recommend to the 2003 New Mexico Legislature an Emergency Powers Code, which will be a recompilation of current status directly related to emergency management and preparedness, and a new Act, the Public Health Emergency Response Act, that will provide for the care and well being of New Mexicans at a mass level in the event of a public health emergency while preserving civil liberties.

***Senate Joint Memorial 4***

In 2002, the New Mexico Legislature passed Senate Joint Memorial 4 (SJM 4). SJM 4 requested the Attorney General's Office to conduct an objective study of telemarketing practices in New Mexico and report its findings, and to make recommendations to the Legislature. As part of its study, the Attorney General's Office commissioned a professional statewide survey to collect information from New Mexico residents about their views and experiences with telemarketing practices. The Office also conducted a review of what other states are doing to protect individuals' expectations of privacy and solicited input from industry groups and New Mexico businesses that utilize telemarketing. The Office also closely monitored the efforts by the federal agencies – the Federal Trade Commission and the Federal Communications Commission – to create a national "do not call" registry that would provide limited protections for consumer privacy. The Office will use this information to report its findings and recommendations to the Legislature as to what measures can best be applied in New Mexico to address the issues raised by increased telemarketing activity. Finally, the Office hosted two meetings chaired by Senator Dede Feldman. The first meeting

was an evening town hall meeting held on December 12, 2002. The purpose of the town hall meeting was to solicit public input from consumers and consumer advocacy groups interested in or affected by telemarketing practices. The second meeting, also held on December 12, 2002, invited the telemarketing industry to discuss and comment on telemarketing business practices and techniques in New Mexico and how those practices and techniques impact consumers. The public input and the comments and recommendations from the telemarketing industry will be included in the Attorney General's Final Report to the Legislature.



Theresa Saenz, Becky Gonzales

# Criminal Appeals Division

Assistant Attorney General Artie Pepin, Director

## Overview

### Summary of Appeals Division Highlights in FY02

On the Attorney General’s behalf, the 15 attorneys in the Criminal Appeals Division represent the state in all criminal appeals filed in the state. In addition, the Division represents wardens in state and federal habeas corpus cases, represents the state’s interest in extraordinary writ cases, and also reviews every extradition and rendition arising from a governor’s warrant for a fugitive. A discussion of FY02 activities in these areas follows. The Division does not enter into settlements or generate funding for the Office. Most of the work of the Division is required by statute and is not discretionary.



### Criminal Appeals

The Division represents the state in every criminal appeal filed in New Mexico, including those filed by prosecutors from suppression of evidence as well as defendants challenging convictions. The appellate process includes the New Mexico Court of Appeals, the New Mexico Supreme Court, and can include the United States Supreme Court. Work by the Division in these courts includes Memoranda In Opposition, Briefs-In-Chief, Answer Briefs, Reply Briefs, Certiorari Petitions and their Responses and motions relating to the appeal. Any appellate case may also be scheduled for oral argument by the courts.

Many appeals last beyond a single fiscal year. In FY02 the Division opened 405 new appeals files in criminal cases.

### Federal Habeas Corpus

New Mexico prisoners who have exhausted avenues of relief in New Mexico courts can file federal habeas petitions. The Division litigates these claims in federal district court, the Tenth Circuit Court of Appeals and the United States Supreme Court. Pleadings include answers, motions, petitions and briefs. In addition, there can be evidentiary hearings in district court when evidence and witnesses are needed to resolve a claim, and there are oral arguments when scheduled by the district court (Albuquerque) and the Tenth Circuit (usually held in Denver). In addition to these actions by Division attorneys, our federal habeas corpus administrator is required

to accumulate and provide to federal courts the records from state court trials, state appeals and state habeas corpus proceedings relating to the prisoner who filed the federal habeas petition. The administrator must track down and get copies of records from every court in the state in order to provide these records to the federal courts.

These cases usually last beyond one fiscal year. In FY02 the Division opened 51 new federal habeas cases.

Briefs in State and Federal Courts	226
Memoranda in Opposition in New Mexico Court of Appeals	68
Petitions for Writ of Certiorari and other Non-Habeas Writs	66
Oral Arguments, State and Federal Courts	29
Evidentiary Hearings in State and Federal Courts	40
Federal Habeas Corpus Answers and Motions	78
State Habeas Corpus Responses	65
Extraditions Reviewed	234



### **State Habeas Corpus**

State habeas corpus cases are litigated in the New Mexico district courts and then appealed by writ to the New Mexico Supreme Court. Prisoners receive appointed counsel and, due to this factor and the dramatic limitations now imposed on federal habeas claims, state habeas corpus litigation has increased dramatically. Pleadings in these cases include responses to petitions, proposed findings of fact and conclusions of law, briefs and motions. State habeas cases often require a hearing in state district court and there may be oral argument in the New Mexico Supreme Court. These cases also span more than one year. In FY02 we opened 26 new state habeas corpus cases.

### **Extradition**

The Appeals Division reviews every governor's warrant, whether seeking extradition of a prisoner to another state or New Mexico seeking to have a prisoner held elsewhere returned to New Mexico. The Division also represents the state in all extradition litigation in the New Mexico Court of Appeals, the New Mexico Supreme Court and, on occasion, the United States Supreme Court. Pleadings include responses to writs, briefs and motions.

The number of briefs filed, 226, is at the historical average. The number of appeals opened is also average for the past several years. The work of the Division has been accomplished even though, for the past two months one attorney has been, and will be for some time to come, assigned full time to a single death penalty case that was affirmed on direct appeal and is now in the state habeas corpus phase. In addition, during the FY02 regular legislative session, several Division attorneys spent significant time at the legislature, with resources also being devoted to drafting legislation and analyses of bills. Most significantly, the trend toward more writ work continued in FY02. The 54% increase in FY01 over FY00 in non-habeas corpus writs was maintained with the total of 66 in FY02, while the dramatic increase in the number and complexity state habeas corpus writs continued. From FY98 to FY01, the

number of state habeas corpus cases handled by the Division increased 47%, while the number of hearings required for state habeas corpus cases more than doubled. In FY02 the number of state habeas corpus writs exceeded the historic high reached in FY01, and there was another substantial increase in evidentiary hearings. The New Mexico Public Defender now has three attorneys assigned full time to its state habeas corpus litigation unit. This Division has no position dedicated to state habeas corpus work, but the workload has required that one attorney be removed from appeals work to handle state habeas corpus writ work full time. A new attorney position will be sought for FY03 to allow an adequate response to the explosive increase in state habeas corpus cases.

In addition to the general statistical accomplishments of the Division, a summary of some of the specific, significant issues addressed this past year follows.

### **Death Penalty Cases**

#### ***State v. Martinez, 2002-NMSC-008 (March 12, 2002) AAG – Steve Suttle***

The New Mexico Supreme Court reversed conviction and sentence upon finding that the defendant, who pled guilty, should have been present when the court held a hearing to reconstruct the plea after it was discovered that a tape of the original plea was lost. In addition, the trial court's failure to tell the defendant that waiving a jury meant the judge alone could impose a death penalty, instead of requiring a unanimous agreement of twelve people, required a new sentencing proceeding. The case is now on remand to reconstruct the plea again and to conduct a new sentencing.

#### ***State v. Treadway, NMSC No. 26,218 (unpublished) (May 6, 2002) AAG – Victoria Wilson***

The New Mexico Supreme Court reversed the death penalty on the ground that there was insufficient evidence that Treadway killed the victim to prevent him from calling the police. The victim, a store proprietor, was shot with the phone in his hand as Treadway robbed the store. The conviction was affirmed and Treadway is serving a life sentence.

***State v. Tim Allen, No. CR-95-143 (pending)******AAG – Victoria Wilson***

After Ms. Wilson succeeded in having Allen's conviction and sentence affirmed by the New Mexico Supreme Court, and after a delay of more than a year, Allen filed a 250-page habeas corpus petition. The District Attorney's office asked for assistance and Ms. Wilson has been working on the state's response in district court to dozens of issues claiming there are grounds to upset the capital sentence and grant a new trial. This is a monumental task, in which Ms. Wilson's experience in dealing with death penalty issues will be of material assistance to the trial prosecutors. If the case is upheld in district court, Ms. Wilson will handle the appeal that will follow.

***State v. Robert Fry, NMCA No. 22,669 (pending)******AAG – Artie Pepin***

This is the second death penalty case against Fry, the first having resulted in a conviction and imposition of the death penalty by the AGO Prosecutions Division in March 2002. In this case, the state is also seeking the death penalty. The appeal concerns whether the site of the crime is in state or federal jurisdiction. The case has been briefed and is pending a decision by the court that would allow the case to proceed to trial.

***Terry Clark v. LeMaster, No. D-09011-CR-2001-0057 AAG – Bill McEuen***

Two attorneys, acting on Clark's behalf but without his permission, sought to pursue a state habeas corpus petition challenging Clark's death sentence, which had been affirmed on direct appeal. Bill McEuen, who worked on Clark's various convictions and appeals for 15 years, assisted the District Attorney of the Fifth Judicial District in handling Clark's state habeas corpus petition. In August 2001, the District Court held a four-day hearing on Clark's competence to waive further challenges to his death sentence and found Clark competent. The New Mexico Supreme Court refused to overturn that finding. In the first execution in New Mexico in forty years, Clark was executed on November 6, 2001.

**Other Cases****Search and Seizure*****State v. Romero, 2002-NMCA-064 (April 18, 2002)******AAG – Jacqueline Medina***

The trial court correctly admitted evidence found when the police officer opened a car door to look for the secondary vehicle identification number (VIN) after a check of the VIN visible on the dash showed it belonged to another car. When the officer opened the door he saw drugs in the car. Opening the door was a legitimate and permissible attempt to confirm the car's VIN where the officer suspected it might be stolen, thus his discovery of the drugs while doing so was not unconstitutional.

***State v. Garcia, 2002-NMCA-050 (March 13, 2002)******AAG – Victoria Wilson***

The trial judge correctly found there was cause to permit a night execution of a search warrant where the stolen items, trees taken from a nursery, could be readily disposed of or their stolen character disguised.

***State v. Rubio, 2002-NMCA-007 (January 15, 2002)******AAG – Katherine Zinn***

The search warrant was not stale although the informant had seen the cocaine 48 hours earlier, since the information indicated sales that were ongoing, that the quantity was large enough to still be present and that the location was a home and not a transitory site such as a hotel. The court also rejected the claim that the defendant's waiver of his right to remain silent was coerced by the presence of several officers searching his home at the time he gave a statement.

**Evidence Issues*****State v. Urioste, 2002-NMSC-023 (July 24, 2002)******AAG – Ann Harvey***

Information from an anonymous tip given to a police officer, who relayed it to another police officer, was sufficiently corroborated to support the stop of a car to investigate for drugs. The tip accurately described the vehicle, its location and direction of travel. This type of prediction of conduct demonstrates the anonymous informant was reliable and so could be relied upon regarding the presence of drugs in the vehicle.

***State v. Barrera, NMCA No.22,230 (June 27, 2002)***  
***AAG – Elizabeth Blaisdell***

In a prosecution for false imprisonment, the State has to prove the defendant actually knew he did not have authority to restrain or confine his wife. That burden was met where he slapped her after she refused to have sex, then when she asked if she could leave to visit a neighbor and the defendant told her no. This left the wife in fear that he might hurt the baby if she left, so she remained until he went to work the next day.

***State v. Toney, 2002-NMSC-003***  
***AAG -- Joel Jacobsen***

Statement against penal interest is a firmly rooted hearsay exception in New Mexico, although not recognized as such under federal law. It was proper for the trial court to admit the statement of a confederate that the defendant commanded him to take the wounded victim to the river and leave him there to die.

**Juries**

***State v. Rico, 2002-NMSC-022 (July 17, 2002)***  
***AAG – Max Shepherd***

A juror has a right to serve regardless of his inability to understand English, and the court must provide an interpreter for the juror's language or at least continue the trial for a reasonable time as an interpreter is sought. Because a Navajo juror was excused due to an inability to understand English, the defendant is entitled to a new trial.

***State v. Mann, 2002-NMSC-001***  
***AAG – Artie Pepin***

The New Mexico Supreme Court affirmed the conviction and sentence of a man who killed his son by stabbing him with a screwdriver and then claimed the boy fell on the implement twice. The decision greatly limits the ability of defense attorneys to attack jurors after trial and the circumstances under which the verdict may be questioned. It is appropriate for jurors to employ their life experiences, education and training when evaluating the evidence.

***State v. Lihosit, 2002-NMCA-006***  
***AAG – Max Shepherd***

In another attack on jurors, the court held there was no error in giving the jurors a calculator to use during deliberations to evaluate evidence of 148 embezzlement counts.

**Miscellaneous Cases**

***State v. Frank, 2002-NMSC-026 (July 24, 2002)***  
***AAG – Artie Pepin***

After two published opinions in the Court of Appeals indicating the state did not have jurisdiction, the Supreme Court finally clarified the standards to be applied to "Indian Country" jurisdiction and upheld Frank's six 1995 vehicular homicide convictions. The decision should resolve many questions of state/federal jurisdiction in such cases.

***State v. Gonzales, 2002-NMCA-071 (May 14, 2002)***  
***AAG – Max Shepherd***

The trial court dismissed a prosecution because the defendant had been tried twice to hung juries. The appellate court reinstated the prosecution for first-degree murder because it found that the defendant failed to show prejudice from the prosecutor's failure to fully disclose the nature of its relationship with a key witness. The severe sanction of dismissal should be applied only in extraordinary circumstances, which were not present here.

***State v. Arevalo, 2002-NMCA-062 (April 2, 2002)***  
***AAG – Artie Pepin***

Collateral estoppel does not run against the state in a criminal case. The acquittal of a codefendant in an earlier trial does not bar the state from taking the second defendant to trial.

***State v. Ira, 2002-NMCA-037 (January 24, 2002)***  
***AAG – Jim Bell***

Juvenile who repeatedly raped his younger stepsister over a two-year period was sentenced to 91 years after pleading guilty to 10 counts. The court held this was an appropriate and authorized sentence for these crimes and was not cruel and unusual.

***State v. Morales, 2002-NMCA-016 (December 18, 2001) AAG – Pat Gandert***

This is the first published case to address the EMDA, an amendment to the sentencing laws that allows a judge to restrict a prisoner's ability to earn good time if his crime was particularly violent. The court upheld the EMDA against a constitutional challenge, but remanded for more findings about why this crime warranted the restriction on earning good time.

***State v. Guillen, 2001-NMCA-079 (September 10, 2001), AAG Kathy Zinn***

Conditions of pretrial electronic monitoring program that required the defendant to stay home except to attend alcohol treatment, work and religious services constituted "confinement" for which he was entitled to credit against the mandatory sentence required by the DWI statute upon his conviction for a felony DWI (fourth offense).

**Additional Division Activities**

At the end of 2001, Bill McEuen retired after 15 years in the Division. He was replaced by the previous AAG Ralph Trujillo, who then took over state habeas corpus cases from Jacqueline Medina, leaving her free to work on appeals instead of habeas cases. A new attorney position has been requested to provide adequate resources to respond to the increased workload in state habeas cases. The Public Defender has three attorneys working on these cases full time in their Habeas Corpus Litigation Unit.

Victoria Wilson continued to oversee production and revision of the Search & Seizure Manual for use by prosecutors and police agencies. Victoria and Artie Pepin used the Manual to conduct training for several police agencies in late 2001, and revisions of the Manual were given to prosecutors at the March 2002 District Attorneys Conference. Division attorneys participated in training of prosecutors at the conference in Las Cruces and at trainings in Albuquerque. In federal court, Pat Gandert won a case argued *en banc* to the entire Tenth Circuit, while Ann Harvey had a motion for reconsideration granted in a rape case where the Tenth Circuit reversed itself and reinstated the conviction.

As usual, the extremely valuable contributions to the Appellate Division by our support staff must be acknowledged. Claire Welch in Albuquerque handles all the federal habeas corpus work as well as keeping a handle on the state habeas corpus files. Tina Atencio keeps the Santa Fe office running. Without Claire and Tina, the work of the Appeals Division would grind to a halt. All of the attorneys, and especially the Director, greatly appreciate all their hard work.



Claire Welch

# Litigation Division

Assistant Attorney General, David Thomson, Director

## Overview

The Litigation Division performs legal work in three areas: general litigation, administrative prosecutions and the representation of judges on civil writs. As requested, the Division also provides co-council and litigation support to other divisions or state agencies. The Division consists of 11 lawyers and three legal assistants.

The Division is also the designated point of receipt for all service of process. Every action taken against any state agency must first be served upon the Office of the Attorney General.

### General Litigation

The Division represents all boards, agencies, judges and state officers when sued in their official capacities in non-tort related claims.

The Division also prosecutes and defends any appeals on cases in which the Division was involved. In FY01-02, the division has been involved in approximately 20 appeals, both in the state and the federal courts. Year 2002 was an election year, and the Attorney General represented the Secretary of State in election year challenges in both state and federal courts as well as in all redistricting matters.

### Administrative Prosecutions

The Division serves as administrative prosecutor to 30 boards and commissions. A majority of the prosecutions are for violations of the Uniform Licensing Act. Sanctions range from fines to revocation of state-issued licenses. Additional prosecutions are for notary public violations. The Division also sought injunctions in state court against individuals or organizations that refuse to become licensed by the appropriate state agencies.

### New Bankruptcy Section

Bankruptcies are playing an increasingly prominent role in the economics of both the nation and the state and merit greater attention. An experienced bankruptcy counsel has been hired to advise and represent the state in these matters. A determination will be made on the claims the state and its various agencies may have in the Enron and WorldCom Bankruptcies. The AGO will be filing the pleadings in the appropriate bankruptcy courts needed to protect the state's interests in these and other national cases. The AGO has entered into an inter-agency agreement with the Taxation and Revenue Department to represent that department in matters pending before the New Mexico Bankruptcy Court. It is anticipated that more than 8,000 New Mexico taxpayers will seek relief in 2002 and the coming years because of these kinds of increased national bankruptcies.



### Division Highlights, 2002 (Partial Year Only 1/1/02 – 10/15/02)

Service received and distributed to appropriate agencies for representation	1,006
General Litigation matters opened	70
Administrative Prosecutions opened	202
Pending prosecutions (opened 01/2000 – 10/15/02)	504
Representations of judges	23

### **The Handling of Miscellaneous Complaints**

The Division receives and responds to miscellaneous complaints or inquiries by private citizens or inmates.

In addition to the services mentioned above, the Division serves as a resource on state-related issues to all state departments. When special commissions for legal counsel are given to other state agencies, the Division monitors all special commission assignments to make sure the interests of the state are being adequately protected. The Division oversees 278 attorneys, who have been specially commissioned to handle legal work on behalf of certain boards or agencies.

The Division also serves as counsel to the Labor and Industrial Commission on all labor appeals.

### **Notable Litigation Cases**

The job of this Division is to litigate on behalf of the state. The Division highlights, then, are best expressed through a summary of important cases.

#### ***Las Cruces School Board***

The five former members of the Las Cruces School Board were charged with violating the Open Meetings Act. The charges arose out of contracts entered into by the School Board in 2000 and 2001 with the former School Superintendent. These contracts, together with similar prior arrangements, cost the School District almost \$400,000 in addition to the regular salary and benefits received by the Superintendent. The Criminal Complaint filed by the AGO charged each former school board member with several counts of violating the Open Meetings Act, a misdemeanor. All defendants were tried together in Alamogordo, having obtained a change of venue from Las Cruces. Following a four-day trial, the defendants were found guilty of one or more of the charges and were each fined \$500. The deadline for filing a notice of appeal by any defendant was October 31, 2002. None filed. This is only the second Open Meeting Act violation ever taken to trial.

#### ***Concealed Handgun Law***

New Mexico law has long allowed citizens to carry firearms, as long as they are exposed, except in certain locales, such as bars. Last year, Governor Gary Johnson signed concealed-carry legislation into law, which was later struck down by the New Mexico Supreme Court. The court found the law unconstitutional because it allowed municipalities to impose local bans on carrying concealed weapons.

#### ***State of New Mexico v. UU Bar***

This case, brought by the AGO in 1998 and later joined by the State Game Commission, involves disputed ownership of a former state road that gives the general public access to approximately 45,000 acres of state trust land located in Colfax County. The adjacent landowner blocked the road, which was originally part of the historic Santa Fe Trail. A trial in July 2001 resulted in a decision handed down in early 2002 by District Judge Peggy Nelson. The decision gave control of the road to the defendants, citing difficulties in the transfer of the property by the two state agencies. The AGO is appealing this decision.

#### ***Cumbres & Toltec Railroad Corporation v. Bartholomew***

A former operator of the Cumbres & Toltec Railroad brought this case for breach of contract. The Commission, in turn, filed certain counterclaims. After extensive discovery, this office, in conjunction with the Colorado Attorney General's Office, was able to whittle down the issues through various pretrial motions and, just prior to trial, the Plaintiffs agreed to withdraw their claims and dismiss this matter. This was a victory for the states that jointly own the railroad, and saved New Mexico approximately \$29,000.00 in costs to take the case through trial.

#### ***Starko, Inc. v. NM Human Services Department et al.***

This is a class action brought by retail pharmacies claiming that they have been under-reimbursed for

filling Medicaid prescriptions. This suit, which is in its sixth year, is based upon a state statute plaintiffs claim requires a higher reimbursement level than they have been receiving. Plaintiffs recently amended their complaint. Several significant motions by defendants, including motions to dismiss the complaint, to decertify the class and for immunity for the individual defendants are currently pending. If the plaintiffs' claims are successful, the additional costs imposed on the fragile Medicaid system would be significant.

### ***Redistricting***

Redistricting is a process the New Mexico Legislature undertakes every 10 years in order to accommodate shifts in state population by changing the boundaries of the affected election districts. A number of redistricting scenarios were presented for consideration to the legislature this year during its regular legislative session. Ten lawsuits ensued over the various political interpretations involved in changing the boundaries of these election districts. All redistricting issues were resolved in time to properly conduct the 2002 elections.

### ***The Zuni and Gallup Public School Districts v. The State of New Mexico***

The State Department of Education was gratified to receive a ruling from the Special Master, former Chief Justice McKinnon. Contrary to the plaintiffs' demands, the Special Master declined to find that the state's newly revised system for funding capital outlay in schools was unconstitutional or to find the state in contempt regarding its progress. Instead, the Special Master highlighted the progress the New Mexico Legislature had made in reforming the system. Later, Eleventh Judicial District Judge Rich elected to adopt the Special Master's ruling in its entirety.

### ***Jackson v. Bakas et al.***

This is a class action against the Secretary of the Department of Public Safety, the Chief of the State Police and others, alleging they improperly forfeited cash and property without an adequate nexus to drug

trafficking. A motion to dismiss the complaint was granted. Defendants filed an amended complaint. On October 11, 2002, the court granted a motion to dismiss the Secretary of DPS. The claim is that there is not sufficient evidence linking the money and the property forfeited with drug trafficking.

### ***In Re Barry A. Burns***

This case involved an attorney who was disruptive and disrespectful in court and who was fined \$1,000 and held in contempt. The contempt was challenged on appeal. The judge who ordered the contempt charge was represented in court by a Division attorney. The ruling, now a precedent for suspension of an attorney by a judge, is being published soon. This decision sets parameters for attorney conduct in court and upholds the trial court's authority to discipline offending attorneys.

### ***Attorney General Patricia Madrid, ex rel v. Gallup Indian Plaza***

Collectors of Indian jewelry should take satisfaction in the Attorney General's victory this year. A staple of New Mexico's economy, the sale of Native American arts and crafts is often fraught with cheap, imitation knock-offs that resemble the true article in price only. Unsuspecting consumers and the entire Southwestern Native American community are the victims of this deceit. In this case, a dealer in Indian jewelry sold an AGO undercover agent a necklace it claimed was "old pawn" and "handmade," but which the state's expert in Indian arts and crafts easily identified as a mass-market product. The judge decided a verdict was due the AGO on this point without the necessity of trial, saving the public this expense.

### ***Taos Charter School v. Michael Davis, State Superintendent of Schools***

The Attorney General again strove to support the public education system against a challenge, this time in the realm of operational funding. Here the school advanced an interpretation of the operational "funding formula," which the State Department of Education believes is contrary to the legislative intent

and injurious to districts statewide. The Attorney General currently is representing the State Department of Education in an appeal of this case .

#### **Notable Administrative Prosecution Cases**

##### ***Law Enforcement Academy Board v. Danny Valdez***

This case involves a Santa Fe police detective on assignment with the violent crimes unit, who was charged with aggravated stalking, battery upon a household member and violation of a protective order. The officer was fired from the Santa Fe Police Department and prosecuted by the Office of the Attorney General for moral turpitude. His license was revoked in September of 2002.

##### ***Board of Veterinarians v. Reigger***

This case was brought by the Board of Veterinary Medicine against a veterinarian who was accused of gross negligence and cruelty to animals in the death of a horse. The hearing officer ruled that the veterinarian was guilty of cruelty to animals and gross negligence in the post-operative care of the

horse. The Board voted on disciplinary action to include probation for one year pending the following: Reigger must complete continuing education courses in several areas of equine pain and anesthesia, including writing reports to the Board on the classes, and he must pay costs of more than \$22,000 within six months.

##### ***PetMed Express, Inc.***

A Pharmacy Board prosecution that addressed improper filling of veterinary prescriptions over the Internet. PetMed utilized “an alternative veterinary process” in which, if unable to reach the customer’s veterinarian for approval of the meds, or if the veterinarian did not approve them, PetMed would consult another veterinarian who had no patient relationship with the animal, and who would then authorize the prescription. As a result of the Pharmacy Board prosecution, PetMeds agreed to discontinue the alternative veterinary process, submit quarterly reports on meds dispensed in New Mexico and pay \$5,900 in fines and costs.



Back row: Ginger Maes, Pamela Herndon, Darlene Montoya, Cindy Cordova, Kathleen O'Dea, Jerry Marshak, Front row: Mike Jones, Frank Weissbarth, Claudia Ravinelli, David Thomson, Peggy Wikle, Jack Clough, Jim Jacobsen, David Stevens



# Medicaid Fraud Control Unit

Assistant Attorney General Kathy Vincent, Director

## Overview

The Medicaid Fraud Control Unit is a criminal law enforcement unit within the Attorney General's Office that enforces the Medicaid Fraud Act and the Resident Abuse and Neglect Act, with an authorized staff of 13 and 75% funding from a Federal grant and 25% matching funds from the state legislature. The federal grant mandates that the Unit investigate and prosecute Medicaid providers who commit fraud and resident abuse, neglect and exploitation in long-term care facilities. The Unit has statutory authority to pursue other criminal offenses, provided there is a nexus to Medicaid program funds. The Unit pursues civil monetary repayment of Medicaid program funds when a Medicaid provider does not provide adequate or appropriate services to recipients. The Unit also participates in global, or multistate, settlement agreements in those cases where a nationwide Medicaid provider has inappropriately used Medicaid funds. The Unit has new statutory authority to pursue board and care facilities and Medicare cases when connected to Medicaid program funds.



Back row: Marie Estrada, David Hughes, Virginia Mondragon, Daniel Rodarte, Tom Buckner, Elaine Moore; Front row: Glory Cochrane, Jim Stokes, Bob Baca, Jessica Sierra, Seated: Eddie Pacheco

### Law Enforcement Training

During the past year, the Unit continued to support the first statewide initiative to train law enforcement officers in investigating crimes against the elderly and residents of long term care facilities. Medical Care Investigator Glory Cochrane is the only certified law enforcement instructor for elder abuse and crimes against the elderly in the state. Glory routinely teaches at the New Mexico Law Enforcement Academy, the Albuquerque Police Department Academy and other police departments and organizations throughout the state, and participates on the Developmentally Disabled Multi-Disciplinary Team (DD MDT) with the Albuquerque Police Department, the Bernalillo County Sheriff's Office, the District Attorneys and Resources, Inc. to insure cases involving developmentally disabled

victims are fully investigated and prosecuted. Information regarding crimes against the elderly, choosing a nursing home and elder abuse can be obtained through the AGO web site or by calling the division at 505-222-9066 or 1-800-525-6519.

### Federal HHS Program/Financial Audit

The Unit also accomplished another milestone during 2002. In August 2002, the Unit participated in a program and financial audit by the U.S. Department of Health and Human Services, Office of the Inspector General (HHS-OIG). All aspects of the Unit operations were reviewed by the auditors, including performance and procedures. Grant expenditures, purchasing and financial controls were also examined, along with financial documents from previous grant years. An onsite review and site certification is required every five years in order for the Unit to be eligible to apply for grant funding. The final report issued by HHS-OIG found that the Unit operated in an "exemplary manner."

Unit Highlights, 2002	
<b>Active Cases and Prosecutions</b>	
New Cases	30
(2 fraud; 8 abuse, neglect and exploitation)	
Cases indicted	12
(2 fraud; 10 abuse, neglect and exploitation)	
Convictions from pending cases	6
(2 fraud; 4 neglect, abuse and exploitation)	
<b>Monetary Recoveries</b>	
Identified fraudulent activity by Medicaid providers—restitution ordered but not yet recovered	\$21 million
Recovery in 11 other actions	\$781,234

# Prosecutions/Investigations Division

Assistant Attorney General Michael Cox, Director

## Overview

The Prosecutions/Investigations Division continues to respond to complaints involving alleged criminal activity, responding to over 212 such complaints in 2002.

The Attorney General placed emphasis on violent crimes prosecution, including capital litigation and crimes against women and children, while continuing efforts to enhance victim's services, foreign prosecutions and statewide law enforcement training and coordination.

## Capital Crimes Litigation Unit

The Capital Crimes Litigation Unit, in partnership with the District Attorney in Farmington, New Mexico, secured the conviction of Robert Fry for his murder of Betty Lee. Fry was convicted at the conclusion of a month-long trial; following a sentencing hearing the jury sentenced Mr. Fry to death. The Unit and the Farmington District Attorney are also preparing to try Mr. Fry in two other murder cases. In one of those in which the victim was Donald Tsosie, the Unit has worked to resolve a jurisdictional issue in the Court of Appeals.

The Unit continued prosecution of the individuals indicted for the murder of Ralph Garcia during the Santa Rosa prison riot in 1999. Of the original 15 defendants, six had entered into pleas with trials pending for the remaining 9 defendants. The cases, which are being prosecuted in partnership with the Fourth Judicial District Attorney, include three death penalty cases.

## Crimes Against Women and Children

Patrick Ryan was finally convicted at trial in Reserve New Mexico, in July for the drug-induced rapes of his female colleague during a bear study in 1995 and 1996. In another sexual assault case, former Moriarty Police officer, Jonathan King, pled guilty to multiple counts of child sexual abuse of two young girls. Sentencing is pending. Also in August, Charles Taylor was sentenced to 18 years in prison for his part in the death of three-year-old Cameron Anderson.

Work continued with the New Mexico Committee on Internet Crimes Against Children, a federally-funded group consisting of approximately 30 local, state and federal law enforcement agencies from around the state who have banded together to combat the growing use of the Internet to sexually exploit children. The federal grant provides \$47,000 for equipment, training and coordination to improve the investigation and prosecution of these cases. The Attorney General's Office administers the grant and acts as the New Mexico point of contact for a nationwide database tracking sexual exploitation of children on the Internet.

## Environmental Crimes Prosecution

The Attorney General's commitment to prosecution of environmental crimes resulted in the successful prosecution of four individuals involved in the dumping of millions of pounds of Texas rendering plant waste in New Mexico, near Las Cruces. Richard Jerome, owner of the Texas plant, pled guilty to environmental crimes in a global



settlement which requires him to pay the new Mexico Environmental Department \$200,000 in damages.

Jerome's environmental consultant, Hector Villa, was convicted at trial on multiple counts of environmental crimes, and two others, landfill owner Hector Medina and dairy operator Larry Gorzeman, also entered into pleas in the case.

### **Pyramid Scheme Prosecution**

In 2002, pyramid scheme prosecution continued at an accelerated pace. In February, Estevan Apodaca, promoter of a scheme called "La Familia Grande," pled guilty to two counts of violating the Pyramid Schemes Act. Apodaca avoided prison by making full restitution to the victims of the scheme.

An additional 39 individuals were indicted in other unrelated Pyramid Scheme cases in Albuquerque, Belen and Santa Fe. The Pre-prosecution Diversion Pilot program, established in 2001 in partnership with the First, Second and Thirteenth Judicial District Attorneys, proved to be an excellent means of dealing with a number of the lesser players in these schemes, and along with training in the area of pyramid scheme litigation provided for New Mexico magistrates, helped victims obtain restitution for their losses. Using these approaches, over \$147,000.00 in restitution has been ordered paid to the victims of pyramid schemes.

### **Educational Efforts**

The Division provided training on criminal justice issues to law enforcement agencies throughout the state. Members of the Division traveled to Grants, Las Cruces, Santa Fe and Albuquerque to present seminars and workshops on a variety of topics including sexual assault prosecution, drug induced rape, child sexual exploitation on the Internet, foreign prosecution and pyramid schemes.

Under the auspices of the federally-funded S.T.O.P. Violence Against Women Law Enforcement Technology Grant, the Attorney General provided both training and technology to local law enforcement agencies throughout the state to improve

the investigation and prosecution of domestic violence.

Training materials are being developed for crime victim advocates statewide to help them work with disabled victims of domestic violence, sexual assault and stalking.

### **Interagency Efforts**

The Attorney General committed resources to address the issue of terrorism, continuing the full-time participation of one investigator to the Joint Task Force on Domestic Terrorism, and a second, part-time investigator to the Weapons Of Mass Destruction Task Force.

Divisional participation in the Region One Drug Task Force resulted in the initiation of 257 drug cases, the seizure of \$7,286,600.00 in illicit drugs, and \$912,841.00 of assets.



Jose Arguello



Will and Vicki Duran

Members of the Prosecutions/ Investigations Division are active participants in a variety of entities to keep abreast of issues in the area of criminal justice including the following:

The New Mexico Domestic Violence Advisory Group  
 The Financial Institutions Security Officers Association  
 The Women's Community Association  
 The New Mexico Coalition of Sexual Assault Programs  
 The MADD Task Force on Underage Drinking  
 The Challenge 2005 Prevention of Teen Pregnancy Project  
 The Multidisciplinary Team of the Safehouse  
 The Domestic Terrorism Working Group and Joint Task Force  
 The Weapons of Mass Destruction Working Group  
 Drug Enforcement Advisory Council  
 The New Mexico Criminal and Juvenile Justice Coordinating Committee  
 The Female Intimate Partner Death Review Team  
 The National Association of Attorneys General Violence Against Women Project  
 New Mexico Police Athletic League  
 New Mexico Gang Task Force  
 Children's Multidisciplinary Team  
 New Mexico Violence Against Women Implementation Team  
 Insurance Fraud Bureau-Advisory Group  
 International Association of Autotheft Investigators

Finally, in a stepped-up, expanded effort to address increasing child abuse, domestic violence and sexual assault, the Division is collaborating with the critical New Mexico players in violence against women work statewide and regionally to address gaps in current knowledge and strategies to address the problems associated with rape, stalking and domestic violence.

Assistant Attorney General Claire Harwell is heading up this project, which currently includes research, training, technical assistance and collaborative investigation and prosecution. National experts have agreed to work with two teams from the AGO to do either professional training or consultation on individual cases. The training emphasis is on identifying, training and supporting local multidisciplinary teams of local trainers in medical, investigative, advocacy and prosecutorial roles.



Claire Harwell

# Water, Environment and Utilities Division

Assistant Attorney General Stephen R. Farris, Director

## Overview

The Water, Environment and Utilities Division was created in 2002 by consolidating the former Environmental Enforcement Division and the Regulatory Law Division. The Division has a small, dedicated staff of attorneys who are specialists in water, environmental and utility law as well as paralegals and a special investigator. Attorneys in this Division regularly appear in state and federal court on behalf of the state and in administrative hearings representing residential consumers before the Public Regulation Commission (PRC).



The Division's main areas of work this past year included (1) representing the State in Endangered Species Act Litigation; (2) representing New Mexico in water litigation; (3) oversight of environmental regulation of Los Alamos National Laboratories and the Waste Isolation Pilot Project (WIPP); (4) representing the Office of the Natural Resources Trustee in litigation and negotiations; (5) investigation of environmental crimes; (6) negotiations with the State of Texas regarding the lower Rio Grande; and (7) representing residential and small business rate payers before the PRC in gas, electric and telecommunications cases. In addition, the Division provides testimony to the New Mexico legislature and the United States Senate on matters relating to the areas of its expertise.

## Water Resource Matters

### *Endangered Species Act (ESA) Litigation*

#### *State v. Norton*

The protected species is the Rio Grande Silvery Minnow. The state prevailed in this case in both District Court and on appeal before the Tenth Circuit. The FWS was ordered to re-designate critical habitat for the Minnow taking economic and other consequences into consideration. The state has submitted its comments to the proposed re-designation.

#### *Forest Guardians v. United States*

The protected species is the Pecos River Bluntnose Shiner. The federal defendants have agreed to issue a biological assessment and biological opinion prior to the 2003 irrigation season, and the case is on hold pending completion of these documents. The state, on behalf of the Attorney General, the New Mexico Interstate Stream Commission and the State Engineer, has intervened in the case.

#### *Minnow v. Keys (formerly Minnow v. Martinez)*

The protected species is the Rio Grande Silvery Minnow. A number of environmental groups brought suit against the U.S. Bureau of Reclamation and the Army Corps of Engineers under the ESA. In conjunction with the New Mexico Interstate Stream Commission and the State Engineer, the Attorney General intervened on behalf of New Mexico to protect the water rights of New Mexicans and to ensure that compliance with the ESA by the federal agencies was also in compliance with state law and did not violate New Mexico's interstate stream compacts. The relief requested by the environmental plaintiffs, keeping the Rio Grande flowing bank to bank at all times between Cochiti Reservoir and Elephant Butte Reservoir, would have drained all of New Mexico's reservoirs, which hold the

water supply for New Mexico's municipalities and farmers. In addition, even if the reservoirs could be drained, keeping the river constantly wetted is not hydrologically sustainable.

After more than a year of contentious litigation and a failed court-ordered mediation, the Attorney General and the Interstate Stream Commission proposed an innovative settlement agreement with federal agencies that avoids jeopardy for the endangered Rio Grande Silvery Minnow and provides protection from liability under the ESA for all New Mexico water users on the Rio Grande. The resulting landmark agreement, "Conservation Water Agreement," succeeded in protecting the endangered species as well as in protecting water rights, complying with state law and not impairing New Mexico's interstate stream compact obligations until the drought of 2002. Due to a record drought, the water available from the Conservation Water Agreement ran out and drying of the Rio Grande was anticipated. As a result, the environmental plaintiffs filed an emergency motion that requested that federal defendants meet the flow requirements in the June 2001 Fish and Wildlife Service biological opinion by releasing water from upstream reservoirs, including San Juan-Chama Project water in Heron Reservoir.

The court granted plaintiffs' motion and ordered that certain portions of the Rio Grande receive a minimum continuous flow from the last remaining stored water, including San Juan-Chama Project water and that the entities whose water was taken be compensated. This decision, the taking of trans-basin water for an endangered species in another water basin, has been appealed by the state, and the Tenth Circuit stayed the district court's order pending its decision on appeal, and ordered expedited briefing at the state's request. Briefing has been completed and a decision is expected from the Tenth Circuit before the next irrigation season begins in March of 2003.

#### ***Endangered Species Act Work Group***

The Attorney General is a principle and founding member of this group of stakeholders –

environmental interests, state and federal agencies – which seeks to find a long-term solution to endangered species problems on the Rio Grande while protecting water rights, state law and compact obligations. A program has been developed and a Memorandum of Understanding signed. This year, the work group was successful in obtaining an \$11.2 million federal appropriation to fund the program's species recovery activities, water purchases, etc. for the next fiscal year. In addition, the work group is working with New Mexico's congressional delegation to draft federal authorizing legislation that will recognize the collaborative program and provide the mechanism for continued federal funding.

#### ***Lower Rio Grande Discussions with the State of Texas***

The New Mexico Attorney General's Office has been meeting with the Texas Attorney General's Office to discuss potential interstate controversies between the two states on the lower Rio Grande. These discussions continue with the goal of avoiding litigation between the states, if possible. While the New Mexico Attorney General's Office is pursuing these discussions in good faith, we are aware that the Texas Legislature has appropriated \$6.2 million to its Attorney General to "vigorously represent Texas in all litigation involving water rights disputes with New Mexico, including but not limited to issues relating to the Elephant Butte Reservoir" and, therefore, are taking prudent measures to defend against litigation brought by Texas should the discussions fail.

#### **Department of Energy (DOE) Matters**

##### ***Waste Isolation Pilot Plant***

The State regulates the Waste Isolation Pilot Plant (WIPP) through a permit issued under the Hazardous Waste Act. The DOE from time to time seeks to amend that permit, usually to change methods of waste characterization and management. Procedures authorize the Attorney General's Office to comment on such proposed modifications. In 2002 the following requests have been made, on which we commented:

On June 20, 2002, we commented on a proposed modification to allow removal of underground fans, which are part of the ventilation and the fire control system, pointing out that the modification deserved more thorough review than the abbreviated process used by DOE. The proposal was later withdrawn by DOE.

In June and July 2002, we submitted comments on a Drum Age Criteria modification, pointing out that the existing waste characterization system did not provide the information on the basis of which DOE proposed to adopt shortened time intervals for sampling of waste container gas. DOE thereafter modified its proposal to eliminate the objectionable parts. The proposal has gone to hearing, and that process is continuing.

On October 3, 2002, our office submitted comments on several proposed modifications, including major changes in WIPP data management procedures, adoption of classification rules for certain characterization data, the addition of new waste containers, adoption of the HalfPACT shipping container, use of radiography for newly generated waste and addition of a new waste code for hydrofluoric acid. The comments generally sought further information on the scope of and need for the modifications and sought to reduce the circumstances in which waste containers would need to be opened at the WIPP site. These proposals are still pending.

Major modifications still pending involve (a) the introduction of remote-handled transuranic (RH-TRU) waste and (b) adoption of a central characterization facility at the WIPP site. Our office has attended several sessions with DOE at which the RH-TRU proposal was discussed, and the proposal has been modified in response to our comments. Further comments are due on October 30, 2002.

We regularly attend quarterly meetings with DOE and other state agencies, which are useful for planning and discussion of concerns as to WIPP operations. There is, for example, a pending issue concerning

apparent leaks of waste drums within the TRUPACT-II shipping containers, which we expect to be explored during the next quarterly meeting.

### ***Los Alamos National Laboratory***

The Attorney General's Office focuses primarily on issues of the environmental restoration (i.e., cleanup) of Los Alamos National Laboratory (LANL). LANL is regulated by a Hazardous Waste Act permit issued by the Environment Department (NMED), which is in the process of being reissued. Cleanup is covered by the Hazardous and Solid Waste (HSWA) module of the permit. Simultaneously, NMED has issued a proposed Corrective Action Order to LANL, directing a multi-year process of remediation of historical contamination. Both processes are ongoing. In this context, the AGO has engaged LANL in the following ways:

1. We have discussed with NMED the fact that certain disposal sites-including the principal site, Area G-lack authorization to operate under the Hazardous Waste Act and must be closed. NMED has agreed and has required submittal of closure plans;
2. Our office has retained an expert consultant to comment on hydrologic issues raised by the remedies proposed for various contaminated sites. He has filed initial comments on the modeling approaches taken by LANL;
3. We attend quarterly sessions of the Groundwater Integration Team, which is overseeing the drilling and completion of 32 regional aquifer wells, which will characterize the regional aquifer and equip LANL to monitor groundwater contamination. The GIT also oversees modeling of flow and transport of contaminants, and we have given input on that important process;
4. We have reviewed the actions called for by the proposed Corrective Action Order for various contaminated locations and filed comments on the proposed order; and



5. We have researched the legal issues raised by LANL in comments on the Corrective Action Order and are prepared for the possibility of litigation on such matters.

### **Natural Resource Damages Matters**

The Attorney General represents the Office of Natural Resources Trustee (ONRT), which is empowered to seek recovery for injury to natural resources under the federal CERCLA statute. Working with the ONRT staff, we have formed a cooperative relationship with the U.S. Department of the Interior and the U.S. Department of Agriculture Forest Service, under which the three agencies will jointly pursue natural resource damage claims in cases where they are involved

#### ***Molycorp, Inc. Questa Mine-Mill site***

The state and federal trustees are negotiating an agreement with Molycorp, Inc., under which it is hoped Molycorp will be able to finance a large part of the cost of assessing damages to natural resources at this Questa site.

#### ***Southwest New Mexico mining sites***

Initial contacts have been made with certain mining companies active in southwest New Mexico to explore the possibility of a cooperative approach to assessment of natural resource damages from mining operations. With our assistance, the ONRT intends to pursue a watershed-based approach to natural resource damage assessment, involving all significant responsible parties and incorporating input from all sectors of the affected communities.

#### ***Los Alamos National Laboratories***

The trustees group has made plans to convene a trustees council for LANL, to pursue a cooperative assessment of the nature and extent of natural resource damages from operations by DOE. One of the initial issues will be financing of investigations.

### **Environmental Matters**

#### ***Regional Haze In New Mexico***

The Division is representing the Environment Department in the development of the New Mexico

Regional Haze State Implementation Plan. This Plan is the result of a directive from Congress under the Clean Air Act Amendments of 1990, which requires states to develop long-term strategies to improve visibility on the haziest days and to ensure no degradation occurs on the clearest days in Class I areas. Class I areas are national parks, wilderness areas, national memorial parks and international parks. There are nine Class I areas in New Mexico. In conformance with the federal Regional Haze Rule, States must develop long-term strategies, including enforceable measures designed to meet reasonable progress goals. The first strategy plan will cover 10 to 15 years, with reassessment and revision of the goals and strategies in 2018 and every 10 years thereafter. The ultimate goal is aimed at reaching background conditions in 60 years. State strategies are to address the state's contribution to visibility problems in Class I areas both within and outside the state.

#### ***Valley By-Products***

The Division in cooperation with the Prosecutions Division received its first litigated criminal conviction for violations of the New Mexico Water Quality Act in its prosecution of individuals involved with Valley By-Products, a Texas animal rendering plant located near the New Mexico/Texas line.

Illegal disposals in New Mexico of rendering plant wastes from the Texas plant resulted in convictions of four individuals in 2002. The AGO prosecuted the illegal dumping of rendering plant waste placed in the Elephant Butte Irrigation District ditch behind a dairy owned by Larry Gorzeman, and at a disposal site operated by Henry Medina west of Las Cruces. Richard Jerome, the president of Valley By-Products; Henry Medina, the owner of Southwest Septic Service; and Larry Gorzeman, owner of Gorzeman Dairy, pleaded guilty to felonies in February, 2002. Jerome pleaded guilty to three felony counts and received a sentence of five years probation. In addition, he received a \$200,000 fine, which will go to the New Mexico Environment Department. Medina entered a no contest plea to one felony count of illegal disposals at his landfill and Gorzeman entered



a guilty plea to one felony in connection with the illegal dumpings into the Elephant Butte Irrigation ditch behind his dairy near Las Cruces. The illegal disposals occurred over a span of four years at the two locations, and involved more than 700,000 gallons of rendering plant wastes. The state dismissed criminal charges against Natalie Jerome, Richard Jerome's daughter.

The last defendant, Hector Villa III, went to trial in Las Cruces in late February, 2002. A Third Judicial District jury convicted Villa, an environmental consultant doing business as Frontera Environmental, of eight felonies in connection with the dumping of the rendering plant waste at the disposal site west of Las Cruces. Villa was given a suspended 15-year sentence, and is now serving a five-year probation. Villa was also assessed a fine of \$40,000. Villa has appealed his conviction, which is now before the New Mexico Court of Appeals.

This conviction and appeal gives the state the opportunity to develop New Mexico case law for criminal prosecutions brought under the Water Quality Act. Important areas of environmental law can be articulated by the courts.

#### ***Rio Rancho Waste Water Treatment Plant***

Prosecution of the principals involved with the illegal discharge of hundreds of thousands of gallons of untreated sewage into the Rio Grande is still under consideration. A decision concerning these matters is contemplated in the near future.

### **Utilities Matters**

#### ***Electricity***

In October 2002 the Attorney General, along with the Public Regulation Commission (PRC) staff, the New Mexico Industrial Energy Consumers, the City of Albuquerque, the University of New Mexico and the United States Executive Agencies (Kirtland AFB and other federal agencies) reached agreement with PNM on a variety of issues, including a rate decrease of approximately \$35 million that, if accepted by the PRC, will determine the path for electric utility regulation in New Mexico for at least the next five years.

First, the parties agreed to support repeal of the Electric Utility Industry Restructuring Act of 1999 (62-3A-1), which mandates deregulation of electric utility rates beginning in 2001. The Act had previously been delayed by the New Mexico Legislature, and the agreement with PNM means that most of the parties, including the other New Mexico investor-owned utilities and the Attorney General, will ask the legislature to repeal electric deregulation – returning the state to a regulated utility model.

In conjunction with the \$35 million rate decrease for PNM customers, repeal of restructuring will position New Mexico well in relation to other states' utility rates, particularly California, whose retail rates will be approximately double those agreed to in the settlement. Moreover, repeal of electric competition will help stabilize the electric generation market in New Mexico and the West.

The settlement also provides that the Public Utility Act, which governs utility regulation by the state, and is scheduled to sunset in 2003, be extended. Finally, the settlement provides guidelines for PNM to finance and construct non-utility generation within the utility, as permitted by recent legislation.

The utility division has also been active on federal electric issues. The office filed lengthy comments opposing the formation by the Federal Energy Regulatory Commission (FERC) of Regional Transmission Organizations (RTOs) and Independent Transmission Providers (ITPs). FERC's initiatives in this area are designed to terminate state regulation of utilities and move electric pricing to a market model, which New Mexico and many other states oppose. The office also filed comments opposing FERC's Standard Market Design (SMD) and also opposed provisions of the electric title of the proposed federal energy legislation that would have transferred condemnation authority for transmission lines from the states to the federal government.

## Telecommunications

### ***PRC Case 3269 and 3537 – Qwest’s Application for Long Distance Approval***

Pursuant to the federal Telecommunications Act of 1996, if Qwest can demonstrate that the local market is irreversibly open to competition, it can offer long distance service. In this docket, the AGO intervened, filed testimony and participated in hearings that, among other things, evaluated the level and sufficiency of competition in New Mexico, Qwest’s operational support systems, and the performance assurance plan to help assure that the market would remain open to competition.

### ***PRC Case 3495 - Costing of Unbundled Network Elements (UNEs)***

UNEs establish the price a competitor pays to lease parts of the Qwest network. Properly priced UNEs encourage competition while improperly priced UNEs act as a barrier to entry. A hearing is scheduled to begin November 2002 and estimated to take up to six weeks.

### ***PRC Case 3215 / 3812 - Qwest’s AFOR***

Under the alternative form of regulation plan for Qwest, Qwest is obligated to meet certain performance benchmarks or it will incur a fine. In addition, Qwest must invest at least \$788 million over the five years of the plan to improve the telecommunications infrastructure in New Mexico. Qwest filed its first annual report on June 30, 2002, and the AGO reviewed the report to ensure Qwest complied with its obligations. The annual report is being audited and the audit should be complete by December 31, 2002. At that time, the AGO will review the audit and determine what actions, if any, need be taken.

### ***PRC Case 3750 - Unfiled Agreements***

The docket was opened to review the legal implications of Qwest’s failure to file with the PRC certain agreements between it and competitive local exchange carriers. Failure to file the agreements may be a violation of state and federal law. The AGO intervened, filed testimony, participated in hearing and filed post-hearing briefs.

### ***PRC Case 3786 – Variance for telephone orders on Navajo Nation Land***

Qwest sought to be temporarily excused from filling service requests because it could not obtain right-of-ways from the Navajo Nation. The AGO intervened, participated in a hearing and continues to work to ensure Qwest diligently pursues obtaining right of way.

### ***PRC Case 3788 – Variance for telephone orders in Chupadero***

Similar to PRC Case 3786, however, service was not timely provided to Chupadero because of failure to obtain right of way from the Tesuque Pueblo. The AGO intervened, participated in a hearing and understands that Qwest is now providing service through a microwave tower.



David Mittle



Jeff Taylor

**FY 02 Case List**

- PRC 3106 Utility Code of Conduct Rulemaking, filed 7/99, AGO filed comments and participated in workshops. AGO joined in Staff motion for rehearing of rule.
- PRC 3109 Standard Offer Service Rulemaking, filed 7/99, AGO filed motion for rehearing on rule and supplemental comments when Commission granted rehearing.
- PRC 3137 PNM Transition Plan, docket opened 9/99, was bifurcated into 3 phases. In each, the AGO conducted discovery, filed testimony, participated in hearings, filed post-hearing briefs and exceptions to Recommended Decision.
- PRC 3145 Customer Protection Rulemaking, filed 9/99, AGO filed comments, participated in hearing.
- PRC 3167 Competitive Power Supplier Rulemaking, filed 7/99, AGO filed comments, participated in hearing.
- PRC 3170 El Paso Electric electric deregulation transition plan, filed 10/99, AGO conducted discovery, filed testimony, participated in hearing, signed settlement in Part I, filed briefs and participated in hearing in Part II, filed exceptions to recommended decision and motion to reopening.
- PRC 3215 Qwest's Alternative Form of Regulation Plan (AFOR)-AGO intervened and continues to monitor Qwest's performance to ensure benchmarks established in Plan are met or exceed.
- PRC 3220 Southwestern Public Service Co. electric deregulation transition plan, filed 12/99, AGO participated in hearing, filed briefs.
- PRC 3223 Rural Universal Service Fund - The AGO intervened, filed testimony and participated in the hearing that was held in 2001. A recommended decision was issued 2002. AGO reviewed the recommended decision, exceptions thereto and filed response to the exceptions.
- PRC 3224 Federal Universal Service Support, filed 12/99, AGO filed comments.
- PRC 3269 Qwest's §271 Application – AGO intervened, filed testimony and briefs.
- PRC 3295 PNM Underground Tariff – filed 3/00, AGO intervened then monitored.
- PRC 3349 Generation Source Rulemaking – docketing 4/00, AGO filed comments and monitored proceeding.
- PRC 3378 Texas New Mexico Power Co. electric deregulation transition plan, filed 6/00, AGO intervened, participated in hearing.
- PRC 3495 Teleco Costing and Pricing Rules - AGO intervened, retained experts, filed testimony, and continues to participate in the proceedings.
- PRC 3463 Zia Natural Gas Declaratory Order/Service Termination - AGO intervened and monitored case.
- PRC 3503 Declaratory Interpretation of Zia Natural Gas Company's rates and tariffs - AGO intervened and monitored case.
- PRC 3567 Notice of Inquiry on Customer Service and Quality of Service Rules Enacted in 3437 - AGO filed comments and supplemental comments.
- PRC 3603 Texas-New Mexico Power Company Affiliate Transaction – filed 4/01, AGO intervened and monitored case.
- PRC 3606 El Paso Electric Rate Case filing – Order issued 1/02, AGO participated in negotiations and signed settlement agreement.

**FY 02 Case List**

PRC 3619	Renewable Energy Rulemaking -AGO filed comments and response comments and participated in public hearing
PRC 3639	Qwest's Waiver Petitions for Primary Service Period 1 – AGO intervened, filed discovery requests.
PRC 3640	Qwest's Waiver Petitions for Designed Services Period 1 – AGO intervened.
PRC 3643	Texas New Mexico Power Rate Case filing - AGO intervened, retained experts, participated in mediation and signed settlement agreement.
PRC 3750	Unfiled Agreements - AGO intervened, participated in hearings, filed post-hearing briefs and proposed findings.
PRC 3761	Qwest's Local Service Freeze - AGO monitored proceedings and successfully helped lobby to have Qwest's local service freeze withdrawn.
PRC 3783	Raton Natural Gas Company Rate Case - AGO intervened and is monitoring case.
PRC 3786	Variance for telephone orders on Navajo Nation Land - AGO intervened, participated in hearing and monitors Qwest's efforts to provide service on the Navajo Nation.
PRC 3788	Variance for telephone orders in Chupadero - AGO intervened, participated in hearing and monitors Qwest's efforts to provide service on the Tesuque Pueblo.
PRC 3822	Sale of QwestDex - AGO filed petition asking PRC to investigate effect of sale by Qwest on rates and infrastructure investment. PRC opened investigation.??
SCT 25,560	Appeal of SCC 96-115-TC (US West Held Orders) - Because of resolution of held orders in AFOR case (3215), AGO agreed to joint dismissal.
SCT 26,298	Appeal of PRC 3152, Qwest/US West Merger by AGO - Supreme Court issued opinion 3/02.
SCT 26,756	Appeals of PRC 3437, brought by AGO & AT&T - consolidated into SCT 26,811
SCT 26, 811	Supreme Court Consolidated Docket 26,756 and 26,811 - Appeal of PRC 3437 and 3438 (brought by AGO) on order on telecommunications rulemaking. AGO filed brief in chief.
FCC WC 02-89	Qwest's Petition for Declaratory Relief - AGO filed comments.
FERC EC01-51	Xcel Energy Services Inc./SPS Application to Transfer Control of Jurisdiction Assets – AGO intervened on behalf of rural electric cooperatives
FERC ER01-841	Xcel Energy Services Inc./SPS Amended & Restated Agreements Regarding Cooperative Contracts - AGO intervened on behalf of rural electric cooperatives, filed protest brief
FERC RM01-12	Electricity Market Design and Structure - AGO intervened on behalf of rural electric cooperatives, filed comments

# Year-End Highlights

## Financial Highlights

In 2002, the AGO's Consumer Division continued to work for New Mexico citizens by taking action against unscrupulous companies seeking to take advantage of consumers and by working with the principles in the sales of two medical facilities to ensure New Mexico citizens served by the facilities would not be harmed.

As a result of the **vitamin settlement distribution**, we were able to award **\$1.7 million in grants to fight hunger and improve health in New Mexico, and an additional \$162,000 to be distributed to the New Mexico State Economic Impact Fund. The AGO received \$87,400 for the consumer protection fund**, which was used for consumer services and education.

The **federal Mylan litigation** resulted in reimbursement of 100% of consumers' verified out-of-pocket costs and, in addition to the **\$130,000 distribution to New Mexico consumers, the State received \$70,000 in attorneys fees.**

Through the **sale of Los Alamos Medical Center to Tennessee-based Province Healthcare, \$4.5 million was committed to health care charities to be selected by the Attorney General, to be used for the benefit of health care in the Los Alamos, Rio Arriba and Santa Fe County areas serviced by the hospital.** An additional commitment of \$5 million was made for improvements to the medical center, and a commitment to recruit physicians to Northern New Mexico. In addition, because Province is a for-profit company, it is estimated that it will pay approximately \$1.2 million in New Mexico state and local taxes its first year of operation and tax payments will continue each year thereafter.

The **sale of St. Joseph's Healthcare Systems will result in an estimated \$21 million from net proceeds of the sale, and an additional estimated \$7 million from St. Joseph Foundation assets to serve the health needs of the people of Albuquerque and New Mexico.**

Through the **dissolution of Northeastern Regional Medical Center Foundation, \$350,000 was transferred to the New Mexico Community Foundation.** These assets were restricted for health purposes, to be used in the service area of the Northeastern Regional Medical Center.

As a result of the **Music Compact Disc antitrust price-fixing litigation** brought by New Mexico and 44 other state attorneys general, New Mexico will receive more than 35,000 quality musical compact discs and those individuals who submit claims are estimated to receive a **total of \$318,000 in refunds.**

New Mexico and at least 20 other states reached an agreement with **Household International, Inc.** regarding its lending practices. Under the settlement, Household has agreed to change its lending practices and pay up to \$484 million in consumer restitution nationwide. **New Mexico's proportional share of the restitution will be approximately \$2.139 million**, which will be distributed to the approximately 2000 New Mexico residents who obtained loans from Household between January 1, 1999 and September 30, 2002.

The AGO's settlement with 10 of the 12 defendants in the Indian gaming lawsuit continues to feed the state's general fund.

### Agency Highlights

In 2002, our Consumer Protection Division collaborated with GuideStar, a national charity Internet search organization, to better provide visitors and New Mexico consumers with immediate access to reports on thousands of charitable organizations located in New Mexico and around the United States. Since inception of the web site, a substantial number of visitors have accessed this important information. Fifty-two percent returned to the site.

The Household International, Inc. settlement agreement requires that Household stop selling single premium credit insurance, stop the practice of loan “flipping” (refinancing loans for consumers in quick succession without providing net tangible benefit to the consumer), limit up-front points and origination fees, and reform and improve disclosures to consumers.

In 2002 the New Mexico Legislature passed Senate Joint Memorial 4 (SJM 4), which requested the Attorney General's Office to conduct an objective study of telemarketing practices in New Mexico and report its findings and make recommendations to the Legislature. As part of its study, the AGO commissioned a professional statewide survey to collect information from New Mexico residents about their views and experiences with telemarketing practices.

The Office also conducted a review of what other states are doing to protect individuals' expectations of privacy, as well as solicited input from industry groups and New Mexico businesses that utilize telemarketing. The Office also closely monitored the efforts by the federal agencies—Federal Trade Commission and Federal Communications Commission—to create a national “do not call” registry that would provide some limited protection for consumer privacy. The Office will use this information to base its findings and recommendations to the Legislature as to what measures can best be applied in New Mexico to address the issues raised by increased telemarketing activity.

Finally, the Office hosted two meetings chaired by Senator Dede Feldman. The first meeting was an evening town hall meeting held on December 12, 2002. The purpose of the town hall meeting was to solicit public input from consumers and consumer advocacy groups interested in or affected by telemarketing practices. The second meeting, also held on December 12, 2002, invited the telemarketing industry to discuss and comment on telemarketing business practices and techniques in New Mexico and how those practices and techniques impact consumers. The public input and the comments and recommendations from the telemarketing industry will be included in the Attorney General's Final Report to the Legislature.

In response to SJM 62 and HJM 34, the AGO worked with the Department of Public Safety and the Department of Health to create the New Mexico Emergency Preparedness/Report and Recommendations. The tri-agency work group recommended an Emergency Powers Code that will be a recompilation of current status directly related to emergency management and preparedness, and a new act, the Public Health Emergency Response Act, which will provide for the care and well being of New Mexicans at a mass level in the event of a public health emergency. The Act preserves civil liberties within the limits of state and federal constitutions.

We continue, through provisions of the tobacco litigation agreement to ensure reduced sales of tobacco to minors by establishing retailing “best practices” and protections. Agreements signed with Walgreen Corporation and Exxon Mobile, in particular, established standards for the hiring, employment and training of employees in connection with the sale of tobacco products. Attorney General Madrid has long recognized that underage access to tobacco products constitutes a severe and continuing threat to public health. These agreements are another example of the Attorney General's continuing efforts to curtail and hopefully eliminate underage tobacco use.

# Credits



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Special thanks to





BIRDS  
FLY  
IN...  
  
BUT THEY CAN'T  
FLY OUT





