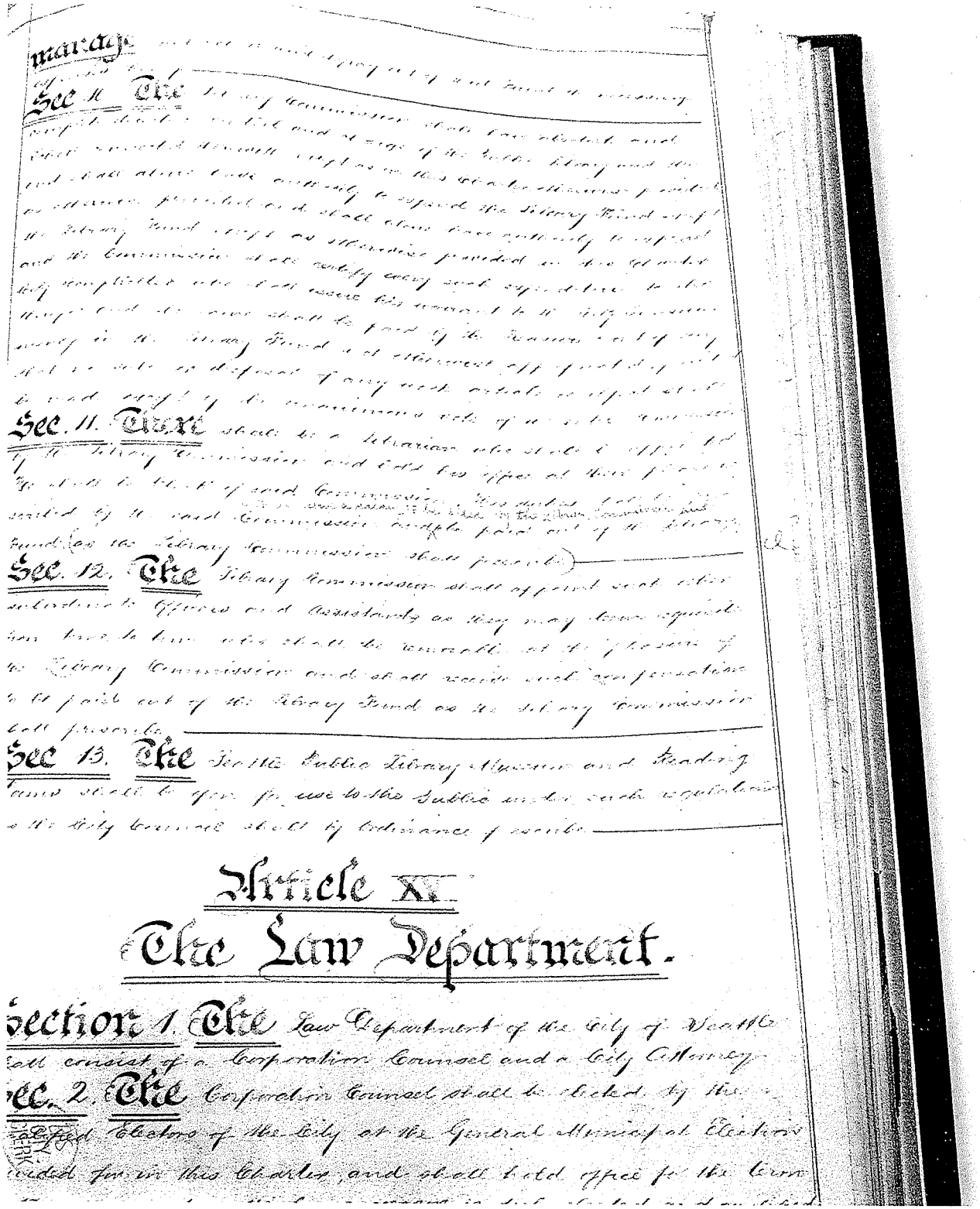

manage [illegible]

Sec 10 The Library Commission shall have absolute and complete [illegible] control and charge of the Public Library and the [illegible] remedied therewith [illegible] as in this Charter otherwise provided and shall alone have authority to expend the Library Fund except as otherwise provided and shall alone have authority to expend the Library Fund except as otherwise provided in this Charter and the Commission shall certify every such expenditure to the City Comptroller who shall issue his warrant to the City Treasurer [illegible] and the same shall be paid by the Treasurer [illegible] in the Library Fund [illegible] otherwise [illegible] [illegible] disposal of any such article [illegible] shall be made [illegible] by the unanimous vote of the [illegible] Commission

Sec. 11. There shall be a Librarian who shall be appointed by the Library Commission and hold his office at their pleasure. He shall be Clerk of said Commission. His duties shall be prescribed by the said Commission and be paid out of the Library Fund (as the Library Commission shall prescribe)

Sec. 12. The Library Commission shall appoint such other subordinate Officers and Assistants as they may deem requisite from time to time who shall be removable at the pleasure of the Library Commission and shall receive such compensation to be paid out of the Library Fund as the Library Commission shall prescribe.

Sec 13. The Seattle Public Library Museum and Reading Rooms shall be open for use to the Public under such regulations as the City Council shall by Ordinance prescribe.

Article XI

The Law Department.

Section 1. The Law Department of the City of Seattle shall consist of a Corporation Counsel and a City Attorney.

Sec. 2. The Corporation Counsel shall be elected by the Qualified Electors of the City at the General Municipal Election provided for in this Charter, and shall hold office for the term [illegible]

Seattle City Attorney
Annual Report 2010

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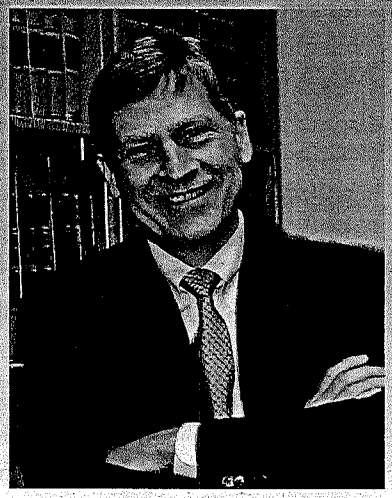
STATEMENT FROM THE CITY ATTORNEY

Seattle's Law Department is committed to providing the City and its people with the highest-caliber legal advice and advocacy to promote the public health, safety and well-being of our community, respecting the civil liberties of all. Building upon a top-to-bottom reorganization (the first in more than three decades) in the weeks following my November 2009 election, we hit the ground running on Jan. 1, 2010, to begin implementing key campaign promises. Guided by input from staff, clients, partners and community leaders, Law Department staffing, budget, policies and practices are now aligned to ensure more direct and responsive engagement with our clients, effective collaboration with our partners, cost savings, race and social justice equity, and greater transparency.



Peter S. Holmes
Seattle City Attorney

Priorities in the Economic Recession: Racial & Social Justice *and* Efficiency

The austere budget presented two primary challenges to the Law Department this year (1) deploying criminal prosecutors effectively to maintain public safety and (2) decreasing reliance on expensive outside legal counsel for civil matters. Budget shortfalls typically require staff and program cuts that can be counterproductive on many levels. So, we tried to use the budget constraints as a vehicle through which to refocus our resources in a manner that supports voters' priorities.

Seattle is justifiably proud of its Race & Social Justice Initiative. Early in my administration every Law Department employee was required for the first time to undergo RSJI training, and everything we do is now viewed through the RSJI lens.

Criminal Division

Cases prosecuted by the Criminal Division vary significantly in their impact on public health and safety, ranging from minor traffic infractions to gross misdemeanors. Real-life consequences also vary greatly based on race and economic status—key RSJI criteria. We implemented a number of policy changes to address the greatest threats to public health and safety and to achieve greater racial and social justice equity in the City. Highlights include:

- *Simple marijuana possession cases.* Consistent with the citizens' will as expressed in Initiative 75, we immediately stopped prosecuting simple marijuana possession cases altogether. This has enabled us to refocus diminishing resources to prosecute more serious crimes such as Domestic Violence and Driving Under the Influence.

- *364-day maximum sentencing recommendations.* The maximum permissible sentencing for a gross demeanor in Washington used to be 365 days. Once imposed (including mostly suspended jail time), many resident alien citizens are subject to mandatory deportation by federal Immigration and Customs Enforcement. By reducing our maximum sentencing recommendations by one day citizens and legal resident aliens are all treated alike. This common-sense initiative not only helped eliminate a manifestly unjust problem in Seattle, it served as the basis for a statewide statute in the 2011 Legislature that made 364-day sentences the maximum throughout Washington. I am building upon this success with broader, continuing efforts to review, and where appropriate, revise criminal sentencing recommendation policies to bring greater proportionality and fairness to our misdemeanors prosecution in Seattle.
- *Driving While License Suspended in the Third Degree (DWLS3).* DWLS3 criminalizes poverty by subjecting those who cannot afford to pay tickets to criminal sanctions. In partnership with the Seattle Police Department (SPD) and Municipal Court, the SPD now refers DWLS3 charges directly to the Law Department rather than filing them in Municipal Court; that enables us to sort the overwhelming majority of noncritical, non-public safety matters from those warranting criminal prosecution. This action not only frees up judicial resources and eliminates costly prosecutions, it also reduces the disproportionate impact on the working poor, opening the door to initiate a relicensing program. And, as with our 364-day sentencing policy, our DWLS3 policy served as a model for reform in the last session of the Legislature.

Civil Division

The Civil Division represents the City in civil lawsuits and advises City officials as they develop programs, projects, policies and legislation. Throughout 2010, we collaborated within and outside the Civil Division to protect the City's interests. We also relied less on outside counsel and took a more hands-on approach to managing and defending claims against the City. Through these efforts, I am pleased to report that the City's Judgment and Claims Fund expenditures were roughly one-third of that in the prior two years. Highlights include:

- Alaskan Way Viaduct Replacement. Twelve attorneys from the Contracts, Utilities, Environmental Protection, Governmental Affairs and Land Use sections worked many

hours on three agreements between the City and State on the Alaskan Way Viaduct replacement project and related issues in 2010. The interdisciplinary team advised on such issues as State and National Environmental Protection Act requirements, contract indemnities, permitting processes, utility relocation; reviewed thousands of pages of the Request for Proposal and Design-Build Contract that governs the legal relationship between the State and the Design-Build contractor; and participated in negotiating language in the City-State agreements in order to assure the best legal protection possible for the City.

- Government Affairs. This newly reorganized and strengthened section has expanded our advisory role with key City partners such as SPD, helping to resolve disputes and minimize future liability involving the public's right to know under the Public Records Act, for instance. We have avoided imminent civil rights litigation while preserving an important law enforcement tool in the City's trespass admonishment program, and successfully launched the new Chronic Nuisance Ordinance. Seattle's nightlife industry is on a new footing in the tenuous economic recovery through a more effective focus on genuine public safety concerns, closing notorious problem establishments while partnering more closely with the Washington Liquor Control Board. Infamous police stings such as "Operation Sobering Thought" are things of the past.
- Duwamish River litigation. 2010 saw the end of many years of litigation over which entities should pay for environmental remediation of the Slip 4 site on the lower Duwamish River (Slip 4 is part of a larger Duwamish River cleanup project). The upland properties that drain in to the slip include the historic Georgetown Steam Plant and North Boeing Field. A 100-year flume on the site carried cooling water from the plant, as well as drainage from adjacent areas of North Boeing Field, to the waterway. Historical uses of PCBs ended in the 1970s, but PCBs persist in the environment for many decades after use. The City sued Boeing in 2007 to force it to pay its fair share for cleaning up contamination of the site. Just before trial, Boeing settled, agreeing to 34% of responsibility for future cleanup costs at Slip 4 and the payment of $4.8 million in damages for past costs.
- Police Action. As with any major metropolitan area, civil liability arising out of police actions is a major focus of our work. For the past 40 years, all of this work was typically handled by the same private law firm on a non-competitive basis. In 2010,

we laid the groundwork to bring this work in-house and establish competitive bidding for a smaller percentage of police action cases that must be handled by outside firms. As a consequence, the Law Department is better able to represent SPD management and help it bring change to the department.

SERVING COLLABORATIVELY AND WITH GREATER TRANSPARENCY

Staffing and systemic changes were made to achieve greater transparency in the Law Department. We hired a professional communications director dedicated to proactive outreach and response to the media and community. Through her efforts, all Department lawyers received training in 2010 on media interactions, including a formal presentation by a federal judge, appellate lawyer and two investigative reporters.

Lending support to causes that resonate with Seattle's elected officials and residents, the CAO filed several amicus briefs with various courts. We supported the Washington Secretary of State's position in Doe V. Reed (U.S. Supreme Court) that initiative and referendum signature petitions are subject to public disclosure under the state's Public Records Act. Also, amicus briefs were submitted in a PRA case involving metadata (supporting the City of Shoreline), litigation on red light cameras (City of Mukilteo) and the Arizona immigration lawsuit.

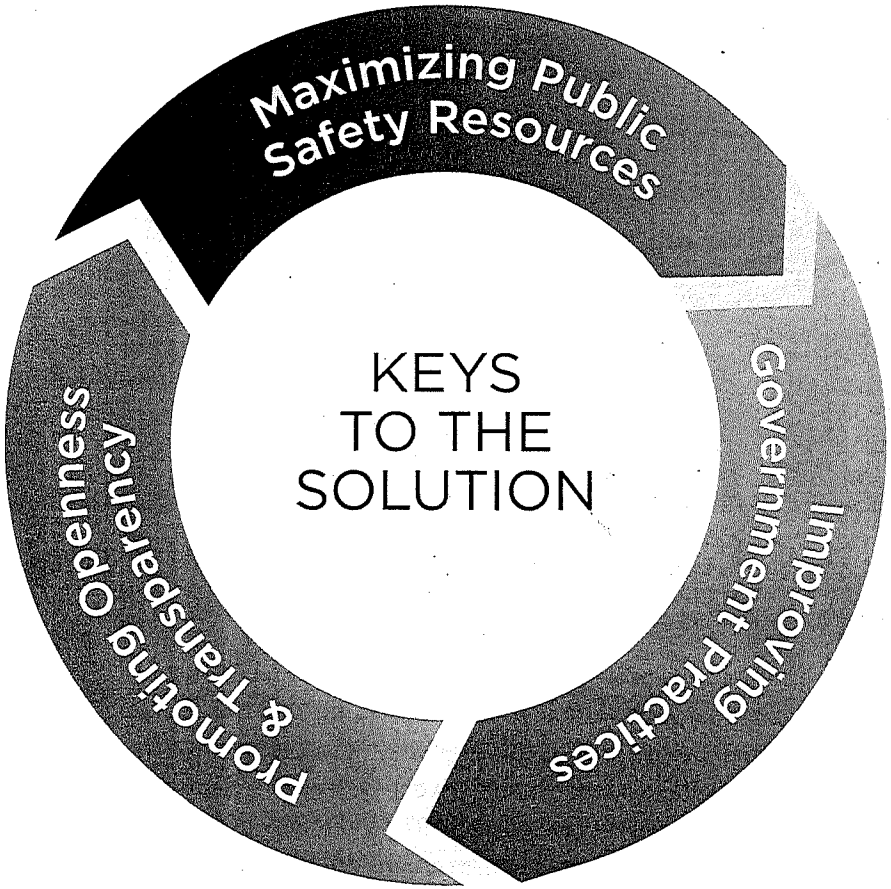
To demonstrate Seattle's goal of being a good neighbor, CAO helped lay the groundwork for LEAD, a pre-booking diversion program for low-level drug offenders, and collaborated with regional stakeholders to pull back from the brink of building a new jail.

I'm proud of CAO's efforts in so many areas in 2010 and view our progress as a springboard to even more in 2011 and beyond. The City Attorney, as an elected official, is accountable to the people of Seattle. As your City Attorney, I take this responsibility to heart and strive to ensure that my office always represents the public's interest.

Seattle City Attorney

FROM RIGHT:
Jean Boler, Civil Division Chief
Pete Holmes, City Attorney
Darby Ducomb, Chief of Staff
Craig Sims, Criminal Division Chief

Seattle City Attorney | Peter S. Holmes



Maximizing Public Safety Resources

- Chronic Public Nuisance Ordinance
- Community Court
- Decriminalizing Simple Marijuana Possession
- DWLS3

Improving Government Practices

- Risk Management
- Race & Social Justice Initiative
- Minimizing Outside Counsel Costs
- Amicus Briefs

Promoting Openness & Transparency

- Best practices In Public Records Requests
- Posting Contracts, Requests for Proposals
- Communications Office

CRIMINAL DIVISION

The Criminal Division prosecutes misdemeanors, gross misdemeanors and some traffic infractions that occur within the City of Seattle. It emphasizes public safety and restorative justice. Highlights for 2010 included de-prioritizing possession of marijuana prosecutions, focusing liquor license objections on public safety problems, implementing 364-day maximum sentences for gross misdemeanors, updating Driving Under the Influence policies, further reducing filings for Driving While License Suspended in the Third Degree, changing the leadership of the Domestic Violence Unit, and integrating the infraction program into the division.

Our office established protocols for incorporating new technology into the case preparation workflow. We are working with the Seattle Police Department as it expands this practice and implements a comprehensive digital evidence management system and electronic discovery. We continually strive to use SPD's technology to achieve optimal efficiency in our own case preparation. We have worked with SPD's records unit to use its electronic document transfer system to efficiently and consistently obtain supplemental reports and witness statements. Following are a few Criminal Division highlights for 2010.

MARIJUANA

During the campaign Pete Holmes promised to make prosecuting simple possession of marijuana the lowest priority of the City Attorney's Office in order to honor Initiative 75. With a backlog of out-of-custody domestic violence and other cases, he knew the office should not prosecute the crime of simple possession of marijuana. On the first day in office, he stopped prosecuting simple possession of marijuana cases, and with the exception of one case that accidentally got through, not one possession of marijuana case was filed all year. To the right is a chart for the years 2008-2010 that shows the number of referrals from the SPD and the number of filings by our office.

GOOD NEIGHBOR AGREEMENTS

During the campaign Holmes promised to reform the office's approach to liquor license objections and Good Neighbor Agreements. In the first year, he reformed the City's approach to liquor license objections, creating a policy team with the Mayor's Office, SPD, CAO and Office of Film and Music. This brought about citywide consistency in objections and allowed the office to focus on real public safety problems. Although it took some time to make significant progress with the state Liquor Control Board, it appreciates our focused efforts and is more willing to work with us on difficult nightlife issues and attach public safety conditions to the operation of nightlife establishments, which has eliminated the need for new Good Neighbor Agreements.

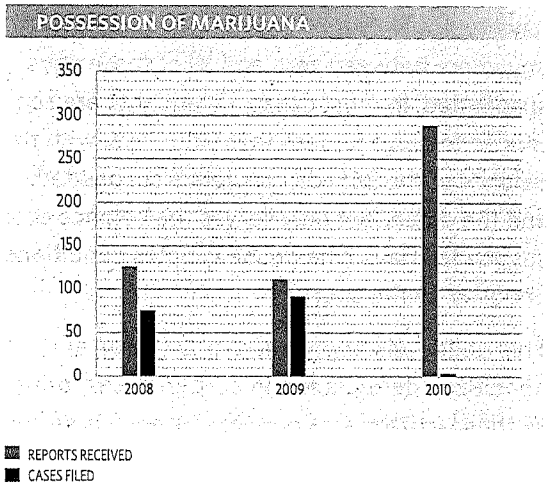
INFRACTION PROGRAM

At the start of 2010, the infraction project was staffed by three paid law students. These students spent 20 hours a week representing the city at contested infraction hearings. In 2009, the Civil Division provided supervision for these paid interns. In 2010 the Criminal Division began supervising the infraction project. Due to the 2010 budget deficit, the paid internship infraction program was ended. As a result, the office enlisted the aid of three volunteer attorneys and one volunteer law student. The project is supervised by two assistant city prosecutors and supported by one full-time paralegal.

MAXIMUM 364-DAY SENTENCES FOR GROSS MISDEMEANORS

As part of efforts to comply with the Seattle Municipal Code's "don't ask, don't tell" ordinance regarding citizenship status—and to treat citizens and noncitizens equally in criminal prosecution—CAO began asking the court to impose 364-day total sentences, rather than 365-day sentences, in most gross misdemeanor cases.

Although the law allows prosecutors to seek sentences of up to one year in jail and/or up to a $5,000 fine for gross misdemeanors, they



have typically sought 365-day sentences, with anywhere between zero and all of those days suspended. In most cases, defendants are sentenced to serve far less than 365 days, with the balance of the 365-day sentence suspended, and the defendant only serves the balance of the suspended days if he or she violates conditions imposed by the court.

This policy will apply equally to citizen and noncitizen defendants. In certain cases, primarily those instances where the offense is serious enough that CAO requests the maximum sentence of a full 365 days served in jail with none suspended, prosecutors will continue to ask for 365-day sentences for both citizen and noncitizen defendants.

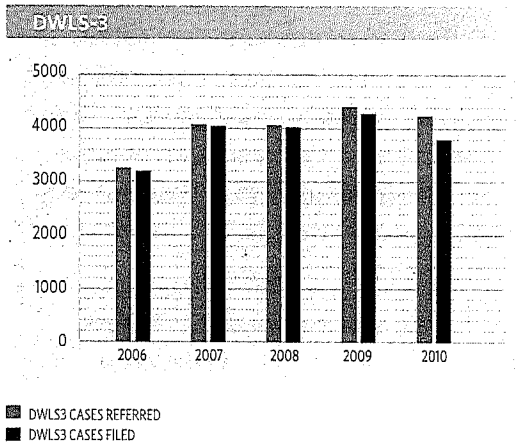
The policy change will not eliminate the immigration consequences of criminal convictions for all noncitizen defendants. The cases this new policy is likely to impact are those where (1) the defendant is in the United States legally or has an avenue for obtaining legal status and (2) a 365-day total sentence would be the sole factor triggering the defendant's loss of legal immigration status or loss of the defendant's avenue for obtaining legal status. Certain crimes, such as most domestic violence offenses, render a noncitizen defendant deportable regardless of the sentence. And others, including many misdemeanor traffic offenses, do not necessarily render a noncitizen defendant deportable even if the sentence imposed is 365 days or more.

These changes are part of CAO's broader ongoing efforts to review and, where appropriate, revise its criminal sentencing recommendation policies to bring greater proportionality and fairness to misdemeanor prosecution in the City.

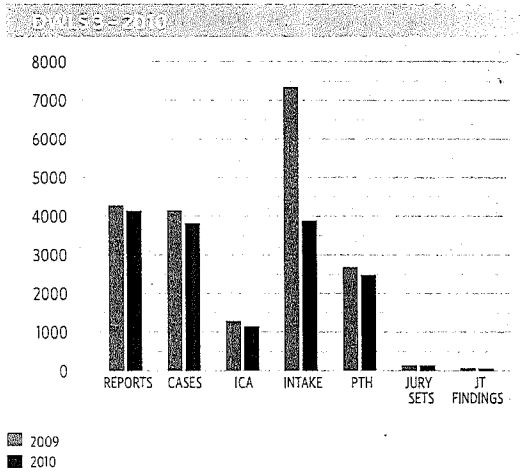
DRIVING WHILE LICENSE SUSPENDED IN THE THIRD DEGREE

In 2010, the number of cases that SPD and other local law enforcement agencies referred to the office remained about the same as in 2009. However, the volume of cases filed decreased by about 10 percent. This was primarily due to the change in filing policy for Driving While License Suspended in the Third Degree.

In response to budget cuts and a reduction of attorneys and other staff, the Criminal Division adjusted its overall workload. We partnered with SPD, and the crime of Driving While License



DWLS-3: YEAR 2010	2010
2009 Reports Rec'd	4,401
2010 Reports Rec'd	**4,245**
Diff 2010-2009	(156)
% Change	-4%
2009 Cases Filed	4,284
2010 Cases Filed	**3,789**
DIFF 2010-2009	(495)
% Change	-12%
2010 Reports Declined**	**441**
% of Reports Received	10%
2009 Avg. # Days From Date Rec'd to	189
2010 Avg. # Days From Date Rec'd to	172
2009 In Custody Arrg.	1,363
2010 In Custody Arrg.	**1,131**
DIFF 2010- 2009	(232)
% Change	-17%
2009 Total # Bookings	376
2010 Total # Bookings	**360**
2010 Total Booked w/Case Declined at ICA**	17
2010 % of Total Booked W/Case D	5%
2009 Intake	7,301
2010 Intake	**3,886**
DIFF 2010-2009	(3,415)
% Change	-47%
2009 PTH Setting	2,635
2010 PTH Setting	**2,360**
DIFF	(275)
% Change	-10%
2009 Jury Trial Settings	149
2010 Jury Trial Settings	**103**
DIFF 2010-2009	(46)
% Change	-31%
2009 Jury Trials with Finding	13
2010 Jury Trials with Finding	**4**
DIFF 2010-2009	(9)
% Change	-69%



Suspended in the Third Degree (DWLS-3) was deemed a low public safety priority for prosecution. In fact, the previous policy was to not file DWLS-3 charges against any first-time offender, and that policy continues. In addition, certain second-time offenders (failure to pay fines) now receive a No Valid Operator License (NVOL) infraction, with a penalty of $550 (SMC 11.20.010(B)). Second-time offenders who fail to furnish proof of treatment for chemical dependency, have uninsured accidents, or receive the charge in connection with a traffic accident or other criminal charge will still be charged with DWLS-3. And all third-time offenders will be charged with the misdemeanor crime of DWLS-3.

The data and experience regarding DWLS-3 cases clearly shows that prosecuting these offenses in the traditional manner required a great deal of time preparing the cases for filing and court hearings, assigning public defenders, and holding court hearings. Many of the cases set for hearings were either held over to allow defendants an opportunity to obtain their license or comply with court-imposed conditions. Additionally, many hearings were canceled because the defendants failed to appear, resulting in bench warrants being issued. This continuing cycle caused increased jail costs due to arrests from the bench warrants, multiple court hearings, and an inefficient use of personnel resources.

CRIMINAL DIVISION CASE HIGHLIGHTS

The Criminal Division reviewed more than 19,000 referrals and prosecuted more than 13,000 cases, ranging from Thefts, Driving Under the Influence, Patronizing Prostitutes and Assaults. High-profile cases during 2010 included:

City of Seattle v. Kevin Shigley-Munson

In November, the office obtained convictions on two counts of stalking against the "Queen Anne Creeper." Shigley-Munson terrified that neighborhood during April, May and June with repeated, unwanted and creepy contacts with solitary women joggers and walkers at all hours. Good police work and a strong community response enabled a jury to find that the defendant had stalked women under an unusual application of the Stalking Ordinance. We worked with more than 20 potential witnesses, many of whom were very reluctant to appear in open court with the

CRIMINAL DIVISION OVERALL: YEAR 2010	2010 compared to 2009
2009 Reports Rec'd	19,122
2010 Reports Rec'd	**19,184**
Diff 2010-2009	62
% Change	0%
2009 Cases Filed	14,883
2010 Cases Filed	**13,421**
DIFF 2010-2009	(1,462)
% Change	-10%
2010 Reports Declined**	**3232**
% of Reports Received	17%
2009 Avg. # Days From Date Rec'd to Dispo	314
2010 Avg. # Days From Date Rec'd to Dispo	380
2009 In Custody Arrg.	11,105
2010 In Custody Arrg.	**10,550**
DIFF 2010- 2009	(555)
% Change	-5%
2009 Total # Bookings	5937
2010 Total # Bookings	6451
2010 Total Booked w/Case Declined at ICA**	578
2010 % of Total Booked W/Case Declined**	9%
2009 Intake	14,431
2010 Intake	**10,161**
DIFF 2010-2009	(4,270)
% Change	-30%
2009 PTH Setting	16,405
2010 PTH Setting	**15,803**
DIFF 2010-2009	(602)
% Change	-4%
2009 Jury Trial Settings	1,307
2010 Jury Trial Settings	**1,135**
DIFF 2010-2009	(172)
% Change	-13%
2009 Jury Trials with Finding	181
2010 Jury Trials with Finding	144
DIFF 2010-2009	**(37)**
% Change	-20%

defendant present. Strong trial preparation and logistical work resulted in a guilty verdict. The defendant was sentenced to nine months in jail.

City of Seattle v. Dwight Benson

Dwight Benson was charged with two DUIs and Driving While License Suspended in the Second Degree, and Hit and Run Unattended. The first incident occurred on Aug. 22, 2007 and the other on Sept. 13, 2009. Benson had a history like almost no other defendant seen in SMC. Since 1984 he amassed more than 10 convictions for DUI or for a reduced crime of an alcohol-related driving offense. Benson was convicted on all charges in two jury trials. The courts sentenced him to three years in jail.

City of Seattle v. Robert Hill

Robert "The Traveler" Hill was convicted in what has been dubbed "The Porn Star Stalker Case." The ex-candidate for Tacoma City Council was found guilty of stalking adult film star Teagan Presley and her manager, Joshua Lehman. The defendant's justification for constantly contacting the victims and following them to their hotel room in Seattle was because he wanted Presley to endorse his campaign for Tacoma City Council. He believed she would be the perfect starlet to endorse his "sex-positive" platform that included de-criminalizing prostitution and bringing additional strip clubs to Tacoma.

City of Seattle v. Marilyn Levias

In June 2010, Marilyn Levias was charged with one count of Obstructing a Police Officer in a highly-publicized and controversial police stop for jaywalking. The incident was recorded on video and captured headlines across the country. The incident began when SPD Officer Ian Walsh approached Levias and her friends for jaywalking across a busy intersection. Levias refused to comply with Walsh's request to provide identification so that he could issue an infraction ticket. Walsh then tried to arrest Levias for failure to provide identification. Levias became combative as Walsh attempted to arrest her and the physical altercation was captured on video by several witnesses.

Levias was charged with a crime as her conduct reflected a dangerous refusal to observe the cardinal rule that civilians simply must comply with instructions from police officers. During City Attorney Holmes' years of service on the SPD's Office of Professional Accountability Review Board, he and other board members consistently admonished the public—and especially parents—of the critical importance of following police officer commands.

Levias entered into a dispositional sentence, which means the gross misdemeanor would be dismissed in a year if she has no new criminal law violations and completes 24 hours of community service. A separate jaywalking infraction was dismissed as part of the agreement on the obstruction charge.

City of Seattle v. Rep. Geoffrey Simpson

State Rep. Geoffrey Simpson was charged with one count of misdemeanor assault after an incident on May 22, 2010 in which he was alleged to have shoved his ex-wife at Seattle Children's Hospital. Simpson arrived at the hospital against his daughter's wishes. When Simpson arrived, he was told not to enter his daughter's hospital room. After being asked to leave, Simpson shoved his wife and barricaded himself in the room until security arrived. He left on his own volition and was told not to return. Simpson entered into a stipulated order of continuance and was ordered to undergo domestic violence treatment.

Investigation of Seattle Police Det. Shandy Cobane

This was a highly controversial police officer referral in which the officer used profanity during the arrest, telling a Latino suspect (Martin Monetti), "I am going beat the Mexican piss out of you."

Monetti was with other men who robbed a couple in the parking lot of China Harbor with a machete. Two men were detained at the scene, while Monetti and two others were detained about a half-mile away. Monetti and two other men were not handcuffed, and Monetti refused to obey police orders to lie still on the ground where officers could see his hands until the victims could come identify the suspects. After Monetti refused several commands, Cobane moved Monetti's hands with his foot and said, "I am going to beat the Mexican piss out of you," and then Monetti complied.

The case attracted enormous media scrutiny, and the King County Prosecutor found

insufficient evidence to file hate crime charges against Cobane. The matter was referred to CAO for a review of potential misdemeanor assault charges. As part of the decision process, we consulted with Det. Gregory McKnight of the Los Angeles Police Department to obtain an opinion as to the use of force used. McKnight concluded that although the use of racially charged language was not appropriate, the force that was used was lawful. Criminal Division Director Craig Sims concurred with McKnight's decision and declined to file criminal assault charges against Cobane.

APPEALS

The Criminal Division's appellate unit prepared and argued 63 writs and appeals during 2010. This figure does not include traffic infraction appeals, four Anders briefs, four appeals that were withdrawn by the defendant or three appeals that were dismissed based on the defendant's failure to pursue the appeal. The number of appeals increased a total of 40% from 2009.

City of Seattle v. O'Connor

In the Court of Appeals for Division One, Seattle v. O'Connor dealt with the revocation of the defendant's driver's license as a Habitual Traffic Offender, DOL's stay of that revocation on certain conditions and whether the defendant's failure to comply with those conditions reinstated the revocation.

City of Seattle v. Clewis

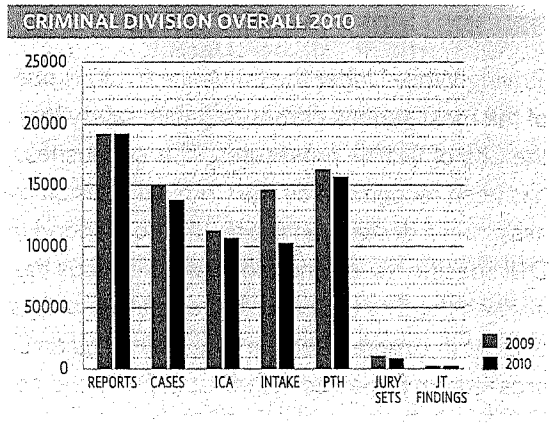
Seattle v. Clewis, also in the Court of Appeals, concerned a prosecutor's efforts to persuade a reluctant witness to come to court voluntarily, rather than pursue a material witness warrant, and whether the trial court properly continued the trial date to accommodate those efforts.

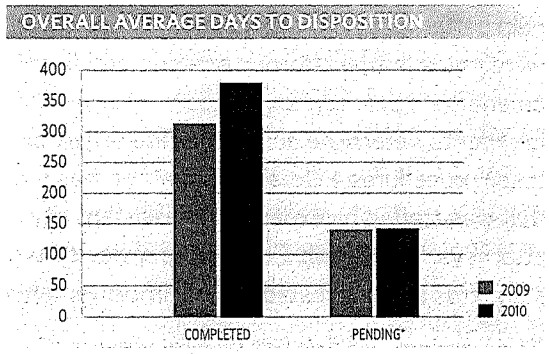
City of Seattle v. Holifield

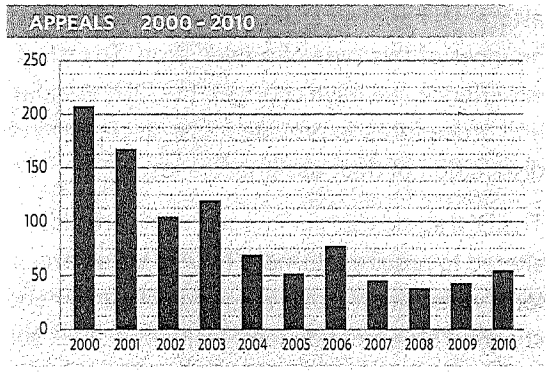
In the Washington Supreme Court, Seattle v. Holifield addressed whether the court rule that explicitly authorizes dismissal of a charge as the only remedy for government misconduct also authorizes suppression of evidence and the conditions under which the government can seek a writ of certiorari to seek review of a pretrial decision by a court of limited jurisdiction. Seattle v. May, also argued in the Supreme Court, concerned the level of specificity for a domestic violence order to provide permanent protection to the victim.

CRIMINAL DIVISION STATISTICS

Overall, the office processed 19,184 cases and filed 13,421. The reduction in filed cases is a direct reflection of the change in policies and filing standards. The policies not to file simple possession of marijuana cases and reducing the number of DWLS 3 cases account for a majority of the reduction.







* Pending disposition = start date of PTD, DP, SOC and DC

** Figures not available for 2009 because DECL code not used until 7/2010 and 2010 results are only for 6 months

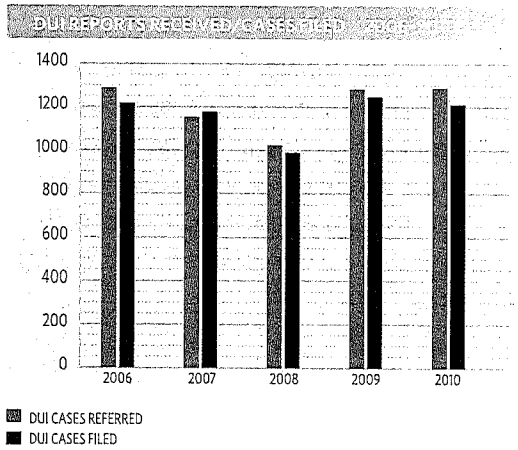
DRIVING UNDER THE INFLUENCE

Driving While Under the Influence (DUI) is one of the most serious crimes to public safety that the City of Seattle prosecutes. This seriousness has been recognized by the Criminal Division by assigning a designated prosecutor to respond to DUI specific issues and motions. This focus has allowed the City of Seattle to help safe guard its citizens in a more effective way. The focus on DUI prosecution remained steadfast in 2010 and new policies and procedures were implemented to help better focus this prosecution. These changes were made to trial attorney amendment discretion, amendment procedures, and sentencing practice. In order to determine an appropriate review of these procedures a Details Committee was formed that was staffed by experienced assistant city attorneys. The Details Committee reviewed these standards and suggested several improvements.

The Criminal Division has several veteran trial attorneys handling DUI cases who understand the nuances of this type of prosecution. To reflect this experience, we have changed the DUI standards and procedures to provide more discretion in the disposition of their assigned cases.

The DUI standards and procedures were also altered to require attorneys to prepare an exception form whenever a DUI is resolved with an amended charge. This exception form includes a short summary of the facts and information that explains why an amendment was appropriate. That has been accomplished by the attorney making notes in the file. In the new process, a separate form allows easier access to this information when required. It also creates a record of these amendments that may survive probation and retention of the file.

The final change in the DUI standards was pretrial conditions and post conviction sentencing recommendations. In review of these areas the prior standards were found to adequately support public safety in the vast majority of cases. However, several minor changes gave more discretion to the individual prosecutor. The policy of what the City considers a prior conviction for a DUI has also been redefined. While the law only counts an alcohol-related prior in the last seven years as a prior for mandatory minimums, the City will continue to consider those priors no matter how dated. This perspective allows the City to consider the whole picture when making sentencing recommendations.



DUI: YEAR 2010	
2009 Reports Rec'd	1,282
2010 Reports Rec'd	**1,292**
Diff 2010-2009	10
% Change	1%
2009 Cases Filed	1,226
2010 Cases Filed	**1,207**
DIFF 2010-2009	(19)
% Change	-2%
2010 Reports Declined**	**19**
% of Reports Received	1%
2009 Avg. # Days From Date Rec'd to	612
2010 Avg. # Days From Date Rec'd to	562
2009 In Custody	609
2010 In Custody	**624**
DIFF 2010- 2009	15
% Change	2%
2009 Total # Bookings	218
2010 Total # Bookings	**262**
2010 Total Booked w/Case Declined at ICA**	3
2010 % of Total Booked W/Case Declined**	1%
2009 Intake	1,225
2010 Intake	**1,201**
DIFF 2010-2009	(
% Change	-2%
2009 PTH Setting	3,092
2010 PTH Setting	**3,105**
DiFF	13
% Change	0%
2009 Jury Trial Settings	399
2010 Jury Trial Settings	**463**
DIFF 2010-2009	64
% Change	16%
2009 Jury Trials with Finding	37
2010 Jury Trials with Finding	**44**
DIFF 2010-2009	7
% Change	1

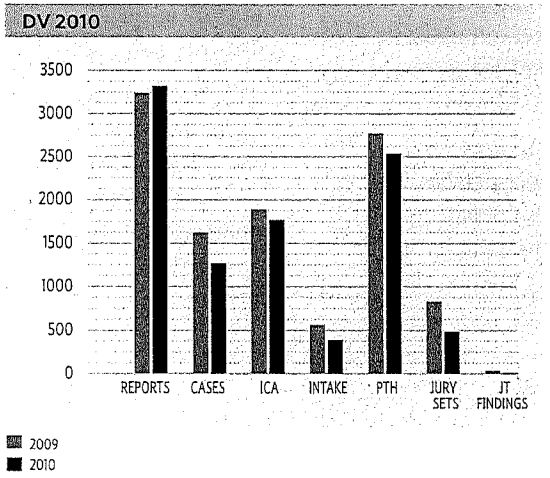
These changes to the DUI standards and procedures are intended to allow the City to rely on the experience and judgment of its prosecutors while also providing consistency in the prosecution of DUIs.

DOMESTIC VIOLENCE UNIT

The Domestic Violence Unit (DVU) serves victims of domestic violence and child abuse/neglect across Seattle's many diverse communities and neighborhoods. Our Domestic Violence Unit is comprised of a diverse staff that is sensitive to the unique needs of individual victims. Victim advocates and prosecutors also have excellent working relationships with many different domestic violence service providers in Seattle and greater King County. Victims are often also referred to community-based domestic violence services that are culturally appropriate and language-accessible.

One of the cornerstones of the DVU is its vertical prosecution practice. The attorney who reviews the case for filing handles the case through all court hearings and to completion. The case is kept with the same judge as well, which assures continuity for the victim. The DVU reduced the average time it takes to make a charging decision on an out-of-custody referral by almost a week in the first three quarters of 2010. Delays in this phase of the case can significantly impact a victim's safety and faith in the criminal justice system, so further improvements are planned in 2011.

Our office also recognizes a formal information sharing network with the King County Prosecutor's Office. Specifically, King County Deputy Prosecuting Attorney Kim Wyatt works as the domestic violence liaison. This position has an enormous impact on improving victim safety and offender accountability. Wyatt reviews eligible cases for felony referral, helps expedite the misdemeanor charging decision when the county prosecutor declines to file a felony, and also coordinates prosecution efforts when an offender has pending cases or probation matters in both the Municipal and Superior courts.



DV UNIT: YEAR 2010	
2009 Reports Rec'd	3,218
2010 Reports Rec'd	**3,302**
Diff 2010-2009	84
% Change	3%
2009 Cases Filed	1,606
2010 Cases Filed	**1,366**
DIFF 2010-2009	(240)
% Change	-15%
2010 Reports Declined**	**1039**
% of Reports Received	31%
2009 Avg. # Days From Date Rec'd to	230
2010 Avg. # Days From Date Rec'd to	263
2009 In Custody	1,865
2010 In Custody	**1,726**
DIFF 2010- 2009	(139)
% Change	-7%
2009 Total # Bookings	1374
2010 Total # Bookings	**1573**
2010 Total Booked w/Case Declined at ICA**	297
2010 % of Total Booked W/Case Declined**	19%
2009 Intake	582
2010 Intake	**388**
DIFF 2010-2009	(194)
% Change	-33%
2009 PTH Setting	2,721
2010 PTH Setting	**2,525**
DIFF	(196)
% Change	-7%
2009 Jury Trial Settings	829
2010 Jury Trial Settings	**502**
DIFF 2010-2009	(327)
% Change	-39%
2009 Jury Trials with Finding	41
2010 Jury Trials with Finding	**23**
DIFF 2010-2009	(18)
% Change-	44%

Domestic violence prosecutions are among the most challenging because the victim—whether 8, 48 or 88—must relive her, or his, trauma in preparation for trial and in the courtroom.

From those who expressed their gratitude to the DVU come these testimonies:

After a case was retried following a hung jury, the mother of a young victim thanked the prosecutors and the advocate. The mother wrote to say that the attorney, " . . . along with the court advocate, supported Mary to be courageous and to return to court for a second go at it. Through the course of both trials Ms. Brosius and Ms. Swope delivered thoughtful, strategic arguments to the jury, maintained a professional demeanor . . . and most of all helped Mary to heal from this assault by believing in her and making a stand against the violence. The teamwork of these two women made a huge difference in my daughter's life . . . I recognize the importance of your work and do not underestimate the value the court plays in the healing process. Thank you for all the work your office does on behalf of victims!"

Another victim wrote to her advocate: "Seeing you today in the courtroom and having you stand beside me when I went before the judge was really incredible — thank you so much for being there for me! I was pretty nervous and having you there helped me very much. It really meant a lot to me. Knowing I have 10 years of harassment-free life is like getting a chunk of my life back. I didn't realize it fully that I had lost my sense of safety, freedom and happiness, until you and your office and SPD got the ball rolling to give me back my life."

To her prosecutor and advocate, one victim said: "I want to thank you both for helping me have the courage to proceed with my case. Your insight handling domestic violence victims is just incredible, and your ability to handle everything in a fashion that allowed me not to compromise who I am as a person is so much appreciated. I felt very safe in your care. Thank you."

"I just wanted to thank you for all the time and hard work you gave in the case against (defendant)," **another victim wrote.** "You made the process so much easier for me and really gave me the confidence I needed to get through the past year. Thank you so much for making such a difference in my life."

MENTAL HEALTH COURT

The Criminal Division prosecutes cases in Mental Health Court (MHC), which strives to increase public safety and address the needs of defendants whose criminal activity is usually related to a major mental illness. MHC serves those defendants who suffer from a major mental illness such as schizophrenia and bipolar disorder. There is no "typical" defendant - he or she may be a first-time offender or a high utilizer of the court system. Defendants may have housing and be employed, or be homeless and on benefits. They may be using services quite well, or be in need of intervention. At whatever level, they have found themselves at a critical junction, charged with a crime. MHC is designed to get them connected, or reconnected, with services and back on a program that keeps them from offending.

MHC is a combined "competency court" and "therapeutic court." The cases of all defendants whose competency is questioned are transferred to MHC for a legal determination. The judge rules after considering the opinions of the MHC team and a forensic evaluation. Competent defendants, with a qualifying mental health diagnosis and amenability to treatment, may elect to participate in MHC. In exchange for agreeing to obligations such as mental health treatment, medication compliance and abstinence from alcohol and non-prescribed medication, a defendant receives help obtaining housing, treatment, funding and other important services. In most cases, the "opt-in" lasts two years, with a "graduation" upon successful completion.

MHC Growth in 2010

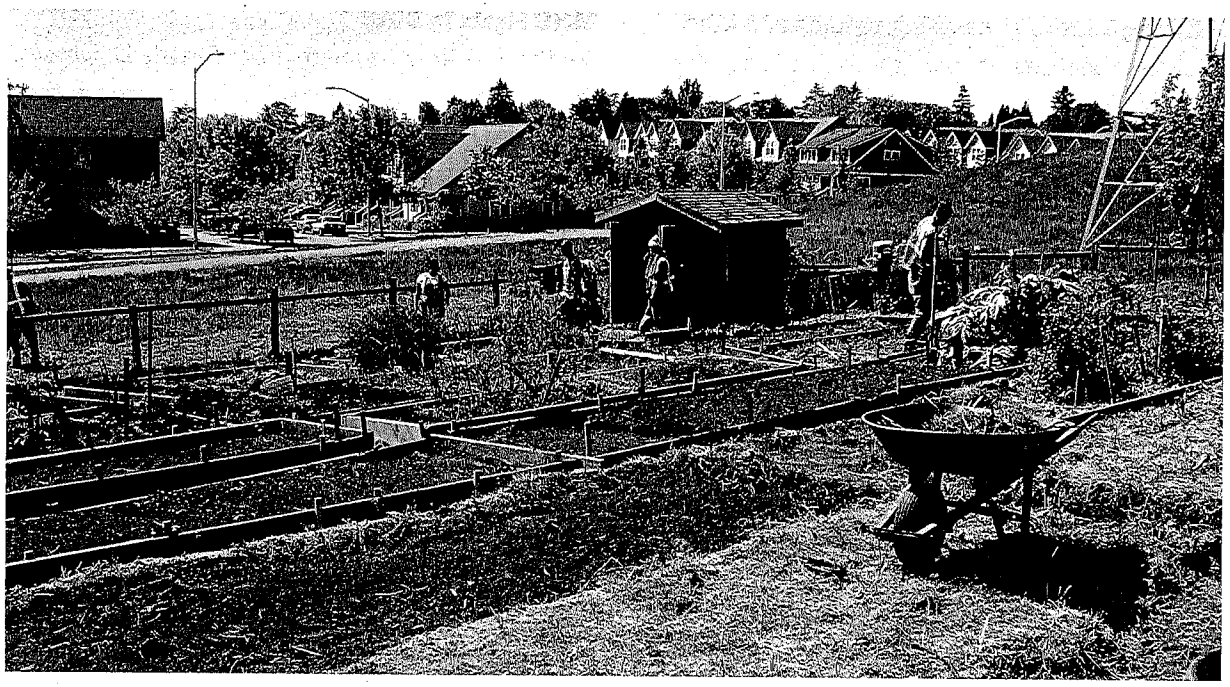
The MHC caseload grew in 2010, to 563 defendants with a total of 841 cases. Thirty-one defendants "graduated" from the program and were openly recognized in court for their accomplishment and presented with a certificate of achievement. MHC also saw expansion in its court staffing from special sales tax funding. A direct grant to the City for the purpose of enhancing or expanding MHC allowed SMC to hire a second court liaison. The additional court liaison helps screen defendants for competency and mental illness as well as screen additional potential defendants for MHC eligibility.

2010 also saw opportunities for our office to coordinate with the prosecutor's office to minimize duplication of effort. After a special sales tax grant to King County, the King County District Court's MHC program was renamed Regional Mental Health Court (RMHC) and expanded to allow referrals from the 38 surrounding suburban cities. CAO coordinates with the county prosecutor and defense counsel to make appropriate referrals to the RMHC for defendants who are already engaged in the RMHC on another matter. This collaboration benefits defendants who would otherwise report to two jurisdictions.

MHC Firsts in 2010

For the first time, students from Seattle University School of Law's Mental Health Court Clinic at the Ronald A. Peterson Clinic practiced in MHC. The clinic was the product of collaboration between Association Counsel for the Accused (ACA) and the law school. Teaching the clinic was the ACA's lead MHC attorney, a Distinguished Practitioner in Residence at SU law school. The office interacted with the students both on the record and during the pre-court meeting where the day's calendar is discussed in advance of the hearing.

SMC also held hearings by video conferencing for the first time. This accomplishment followed the office's participation in a Jail Holds work group. The group gathered to discuss alternatives to rebooking a defendant with a jail hold who is being released from a mental health facility due to its destabilizing effect. To safeguard public safety rather than simply agree to release when competency is a concern, the office recommended defendants appear before a judge prior to release or dismissal. The group learned that the treatment facility and SMC had compatible video conferencing equipment. After months of discussion and a trial run, the cases of numerous defendants were resolved while appearing before the court remotely.

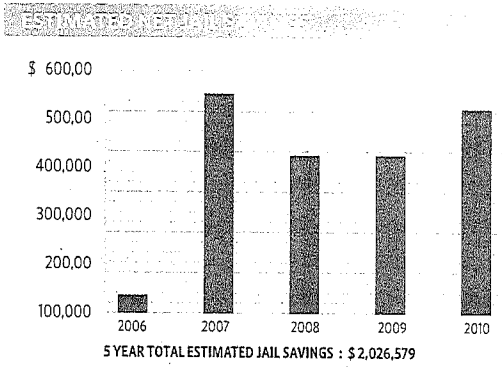


COMMUNITY COURT

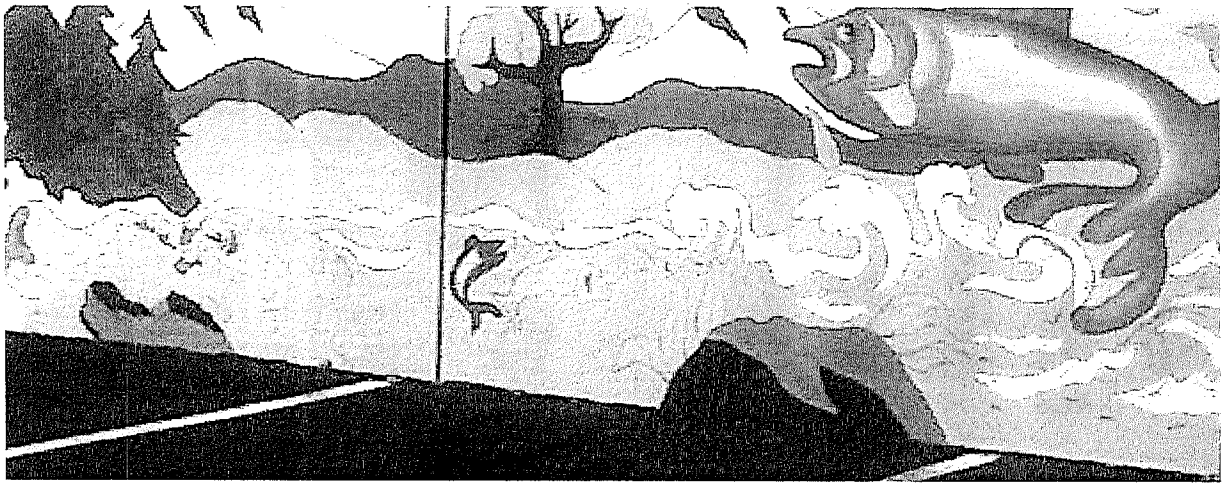
Seattle Community Court (SCC) is a problem-solving court that provides a nontraditional approach to criminal prosecutions. Rather than go to jail, non-violent misdemeanor offenders who enter the program can help overcome their own problems as they pay back the communities affected by their criminal behavior. Participants entering the program voluntarily complete 16 to 48 hours on a variety of community service projects that beautify neighborhoods, improve community gardens and support nonprofit agencies that work with the elderly, homeless and low-income individuals. Participants also undergo a needs assessment that identifies a variety of comprehensive social service linkages to help address the root cause and underlying issues of repeated criminal behavior.

Community Engagement

Community engagement is essential to any community court. SCC insures active community involvement through its community and social service partnerships and its Community Advisory Board. In 2010, SCC worked on 29 community service projects and 10 social service linkages . In 2010, SCC added two



Community Court offender crews labor at the New Holly P-Patch. Photo by Criminal Division staff.



neighborhood partners – the University District, through the University Christian Church, and the SODO District, through the SODO Business Association, and two specialty partners – Youthcare and New Horizons.

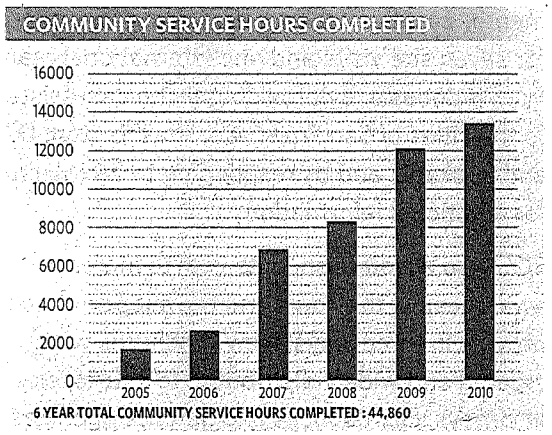
Seventy percent of SCC community service projects involve various environmental improvements to Seattle neighborhoods. SCC partners with several neighborhood P-Patches, Red Wagon Graffiti removal, Seattle Clean and Green, Seattle Adopt-A-Street and general neighborhood litter pick-up. Participants provide valuable support as they perform their hours alongside community volunteers.

In 2010, SCC implemented a promising project centered on the increasing number of young participants charged with prostitution-related offenses. The project's objective is to connect the participant to one specific agency rather than several different agencies, so that a more lasting relationship between the participant and agency will ultimately assist the participant in getting out of the industry.

SCC held two Community Advisory Board meetings in 2010. At the spring meeting, SMC Judge Fred Bonner was honored for his pioneering efforts during the court's initial start-up and his continued leadership. The fall meeting centered on a discussion around the community partner survey results. All partners praised SCC for the court's reliability and the diligence of each participant. Of note was the increased community attendance.

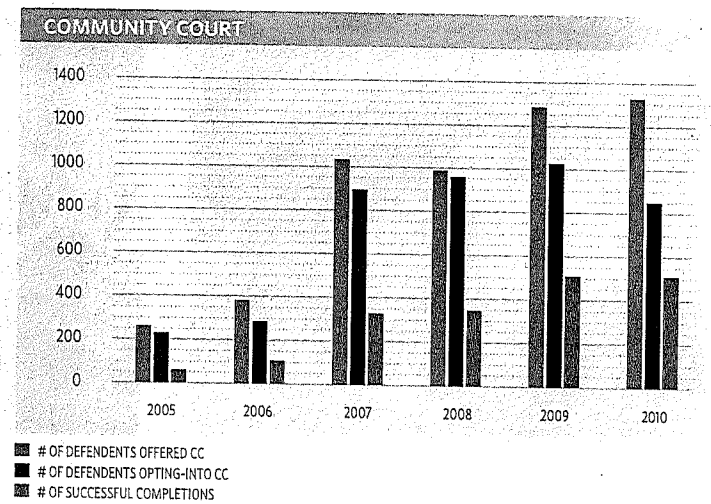
Mentor Court Assistance

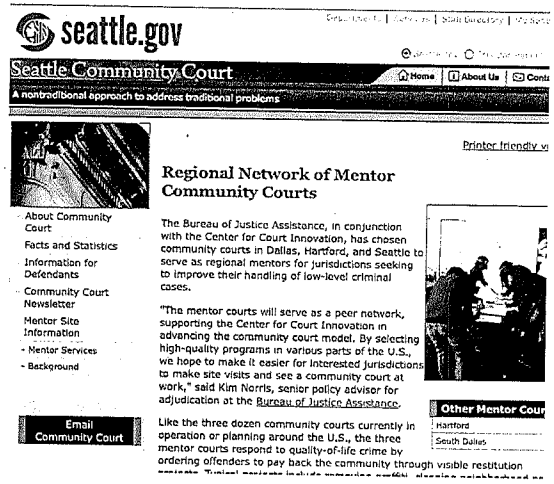
As a mentor court, SCC provides peer support to other emerging community courts across the nation. In 2010, it significantly increased its



Community Court offender crews painted a 90-foot mural on a concrete wall at the Lake City Community Center. Photos by Kimberly Mills.

SCC new logo





mentor courts

mentor court activities—by hosting 25 visitors for seven site visits and one international team from Indonesia; by providing technical assistance to the cities of San Francisco, Washington, D.C., and Spokane, and by responding to 26 inquires for additional information.

SCC also accomplished its goal to increase awareness of the court and the support it can provide in three ways. New brochures were created and widely distributed to courts, city attorneys, city councils and defense agencies throughout the region. More than 10,000 hits occurred on the website, which now enables an Internet search directly to SCC. Also, the court now has its own logo.

Members of SCC Steering Committee made presentations in 2010 at the precinct advisory council meetings and offered two training presentations. Several members were also presenters at the 1st International Conference for Community Court in Dallas. The conference provided SCC with a great opportunity to showcase its efforts to members of community courts throughout the country and world. SCC members provided technical assistance regarding the complications of running a community court, how the defense can adhere to its ethical obligations within a collaborative court structure and how to develop and maintain community engagement.

Saving money and lives

SCC continued expanding in 2010. The office made 2,000 Preliminary Community Court offers and managed 2,673 total court cases. Community service hours rose slightly from last year while jail savings nearly doubled.

PRECINCT LIAISONS

The Precinct Liaison Program is designed to:

- Reduce crime and enhance the quality of life in neighborhoods.
- Develop a more efficient and effective response to chronic public safety problems.
- Improve communication between the community, CAO, police and other City departments involved in problem solving efforts.

During 2010, the precinct liaisons worked extensively with SPD to resolve specific community issues. Here are examples of their work throughout the year:

- Attended Crime Prevention Councils to partner with community in response to complaints and concerns about crime prevention; problem liquor establishments; building bridges with ethnic communities; police and constitutional issues; and being a liaison with other City departments.
- Worked with community members and several bar owners to reduce noise impacts and public safety problems from several Fremont nightlife establishments.
- Worked extensively with businesses and community members in eradicating nuisance, liquor, and drug overdose issues associated with "rave" events.
- Worked with property owner to cease tenant's private club's illegal activities and impact on the surrounding neighborhood; allowing owner to avoid abatement proceedings.
- Participated in community discussions regarding an offender re-entry house.
- In association with the South Precinct, Georgetown community, Liquor Control and DPD, made numerous attempts to work with a long-time problem liquor establishment. The establishment received numerous building code violations and liquor control citations. The establishment's owner and management refused to comply. Based on precinct's and liaison's objections to liquor license renewal, owner withdrew application for a new liquor license.
- Informed Seattle Neighborhood Group and the community about small claims and nuisance property actions.
- Attended monthly meetings for the West Precinct Advisory Council, the Metropolitan Improvement District Clean and Safe committee, the MID board, the West Precinct Security Forum, the East Precinct Crime Prevention Coalition, the SPD African American Community Advisory Council, and the Joint Enforcement Team/Code Compliance Team.
- Worked with neighborhood block watches to combat graffiti and other vandalism.
- Worked with community as mediator bringing problem property owners and neighborhood representatives together at South Precinct.
- Initiated the first Chronic Nuisance Property action against the Fremont Inn, LLC, which led to foreclosure. The Italia and Isabella motels were closed pursuant to the disposition in the criminal tax violation cases (and then foreclosed upon). The Wallingford Inn (owned by the same problem owners) was also foreclosed upon.

Fremont street scene, courtesy of municipal archives.

- Negotiated and drafted a correction agreement for a chronic nuisance property.
- Served as legal advisor to precinct command staff and officers for search and seizure, liquor laws and recent court decisions.
- Advised SPD about various trespass program issues and worked on forms related to those programs.
- Represented the Department of Neighborhoods concerning the status of the neighborhood district councils.
- Provided input to the City Auditor regarding graffiti and illegal dumping.
- Worked with the City Council to draft changes

Graffiti Rangers work all over the City. Photo: Ian Edelstein, Municipal Archives.

to the Property Destruction Graffiti ordinance.

- Worked with Seattle Public Utilities to allow the agency to issue citations to businesses violating the ban on polystyrene (Styrofoam) food service products.
- Conducted drug traffic loitering trainings for police officers.
- Worked with Precinct Crime Prevention Specialist presenting workshops on crime prevention and reporting crimes.
- Facilitated a 911 supervisor appearing before community group to discuss 911 system and protocols.
- Visited Seattle Public Schools and discussed the function and procedures within the office and being a prosecutor in general.
- Presented a domestic violence seminar/workshop with Municipal Court judge and SPD at local church.
- Reviewed 294 liquor license applications for establishments that sell alcohol: mini-marts, grocery stores, restaurants, taverns, nightclubs. Reviewed 359 special occasion liquor license applications for functions sponsored by non-profit organizations that served alcohol.
- Prepared three liquor license objections to the state Liquor Control Board: Waid's, Sully's, and Cherry Corner Market.
- Prepared 10 petitions for public safety restrictions on nightclub liquor license applications to the Liquor Board.
- Entered and completed negotiations for one Good Neighbor Agreement: Rockstars (now I-Music).
- Prepared two cases for administrative hearing with the liquor board.
- Represented precinct in appeal of liquor license issue before administrative law judge.

VICE/NARCOTICS LIAISON

Asset Seizures and Forfeitures

- Handled all cases involving the seizure of assets pursuant to RCW 69.50.505 and RCW 10.105.010. Hearings were held on a monthly basis; Assistant City Attorney Beth Gappert presented the cases on behalf of SPD. The total value of assets forfeited to SPD in 2010 was $676,934.49.
- Represented SPD in all issues arising from the forfeiture cases and appeared in Superior Court on criminal cases from where the asset forfeitures arose, addressing issues of discovery, evidence handling, and suppression of evidence.
- Settled a large seizure case that involved $300,000 in U.S. currency, real property, cars and miscellaneous property. SPD received more than $200,000 U.S. currency and

miscellaneous cars and other property.

- Worked with SPD to draft agreements regarding shared asset forfeiture when the assets were seized by a task force, comprised of numerous law enforcement agencies.
- Provided training to several other units within SPD about asset forfeitures: what the status of the law is, what is needed to prove cases, what must be done in order to seize property.

Nuisance Abatement

- Proposed that the City begin using Drug Nuisance Abatement Laws (RCW 7.43) to address a long-standing drug house in the South Precinct.
- Worked with SPD's Narcotics Unit and South Precinct to develop a case establishing the drug nuisance at this particular residence. Also worked with the community to acquire necessary statements about the impact that this property has on their ability to enjoy their own property. The case was filed in Superior Court in 2011.

City Light Power Diversion

- Assisted SPD and City Light with developing protocols for addressing power diversion at properties where marijuana is grown.
- Researched case law involving privacy interest in power records, discussed confidentiality agreements between City Light and SPD, and reviewed the written protocol established by City Light for handling power diversion at marijuana grows.

Drug Market Initiative

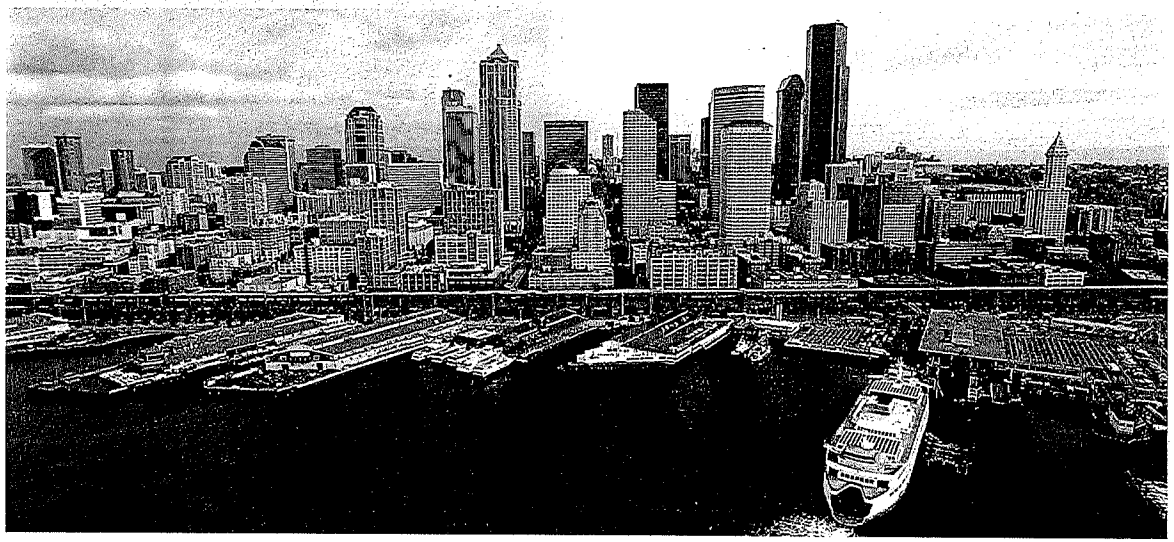
- Assisted SPD's Narcotics unit and South Precinct with a drug market initiative project (DMI) in the Columbia City neighborhood.
- Provided information regarding the previous DMI project in the City, and assisted with developing a neighborhood survey.

Vice Issues

- Filed all out-of-custody prostitution and prostitution-related charges for the office.
- Attended several trainings, conferences and round-table sessions that addressed commercially sexually exploited children.
- Assisted with developing protocols for impounding the vehicles of those arrested for commercially exploiting children.
- Worked with SPD to update the current Stay Out of Areas of Prostitution (SOAP) orders.
- Drafted a new order and presented it to the chief of the Criminal Division who will present it to the Municipal Court for adoption.

Pete Holmes and Judge Fred Bonner. Photo: Municipal Archives.

CIVIL DIVISION



Seattle waterfront and viaduct. Photo: Municipal Archives.

On any given weekday in 2010 the 56 attorneys in the Civil Division were scattered across Seattle's legal and geographic landscape, from:

- The second floor of City Hall, where an 11-member team of attorneys advised City Council members on negotiations with the Washington State Department of Transportation about replacing the decrepit Alaskan Way Viaduct with a deep bore tunnel, to
- The U.S. District Courthouse at 700 Stewart St., where an assistant city attorney who specializes in land use was successfully defending the City's strip club zoning requirements, to
- The Seattle Police Department, directly across from City Hall on 5th Avenue, where a lawyer from the division's Governmental Affairs Section consulted on a massive media request for police documents, to
- A busy intersection in the industrial district, where a Torts attorney researched road design issues while preparing to defend the City in an accident case.

"The civil staff that I have worked with on issues around the Alaskan Way Viaduct Replacement Project are professional, thoughtful, and creative. The kinds of issues that we deal with as legislators are often complex and do not have easy answers, and they explain the gray areas and provide options, which is what we need to hear."

Richard Conlin,
City Council President

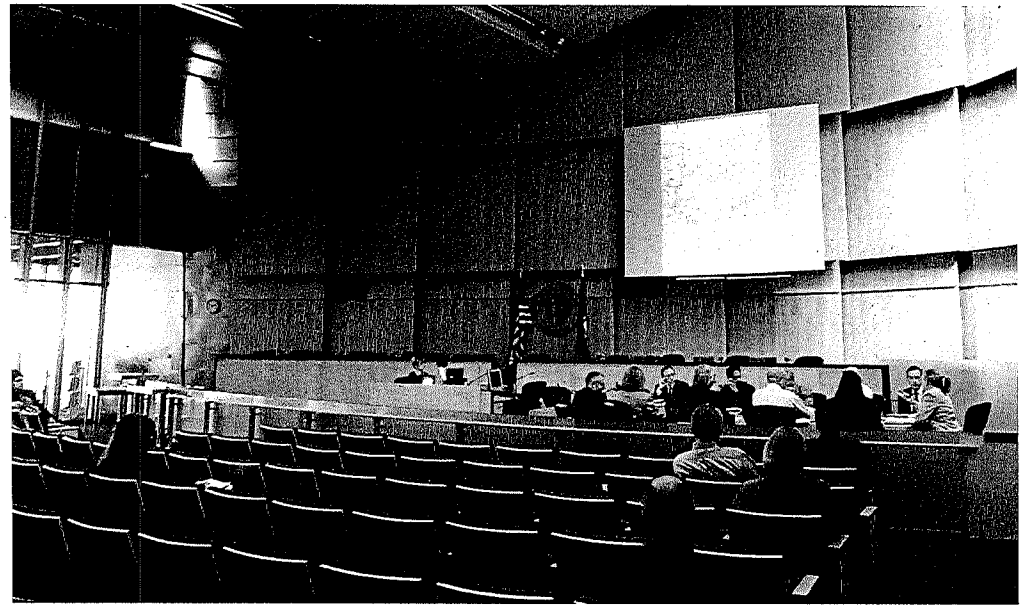
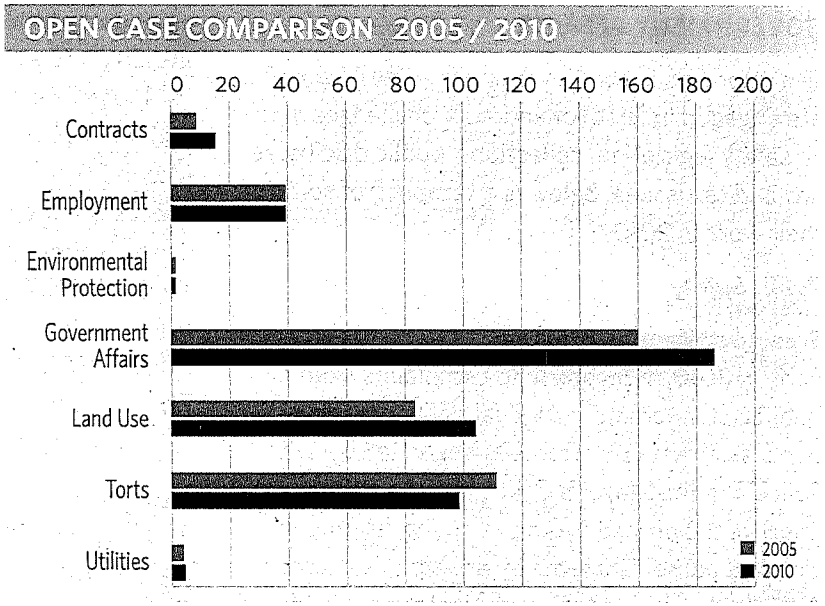


Photo: Municipal Archives.



Much of the division's most important work isn't done in the multimillion-dollar projects or settlements, but in the day-to-day advice and project support provided for the myriad of legal problems the City faces.

The attorneys plus 20 paralegals and legal assistants handle matters at a fraction of the cost of retaining outside counsel from law firms. The assistant city attorneys have expertise in specialized areas of law that impact the City, such as public works and design build contracts, real estate law, First Amendment protections, road design liability, public disclosure, the Growth Management Act and the State Environmental Protection Act, public labor, civil service and discrimination law, just to name a few. The division handles civil lawsuits ranging from defense of the City in multimillion-dollar flooding and catastrophic injury cases to upholding employee discipline.

The division also helps collect funds for Seattle as well as defends the City against claims. In 2010 —as a result of a lawsuit the division filed—the Boeing Co. reimbursed the City $4.8 million in environmental costs associated with the continuing effort to clean up the Duwamish Superfund site. Assistant city attorneys represented the City in tax appeals resulting in the collection of more than $2.5 million in taxes. In addition, division attorneys collected more than $880,000 on debts owed through collection actions, and judgments in land use enforcement actions topped $2.5 million.

Attorneys work on both projects and cases. Projects are matters that require legal advice, such as on particular contracts, ordinances or employment decisions. Cases are adversarial proceedings in state or federal court or before hearing officers. In 2010 the division opened 459 cases, up from 410 in 2009.

Civil Division attorneys and paralegals logged 99,174 hours in 2010; of those 82,879 were attorney hours. Employing in-house counsel saved the City more than $12 million in outside counsel fees.[1]

1 Assuming a very low rate of $250 per hour average for outside counsel and $100 per hour for in-house counsel including overhead.

GOVERNMENT AFFAIRS

Ten attorneys in the Government Affairs Section are engaged in First Amendment challenges, public safety legislation, collections, public disclosure law and tax issues. Below is a sampling of some of their work in 2010.

Public Safety

Trespass Warning Program
Early in 2010, in response to complaints from public defender and individual rights organizations, assistant city attorneys began talking with Police and the Mayor's Office about a strategy to improve the procedures and training relating to trespass admonishments by private businesses. An entirely new system was developed to address perceived legal deficiencies in the program while preserving the public safety policy objectives. The new trespass warning program was implemented in February 2011, with the support of Police and local businesses as well as the Racial Disparity Project, which is operated by The Defender Association, a public defender agency. Due to the widespread support of the trespass warning concept, the Parks and Recreation Department began revamping its admonishment program to incorporate a similar warning system.

Liquor Licensing and Nightlife Regulation
The City has an opportunity to review and object to liquor license applications or license renewals from businesses. Each year the Washington State Liquor Control Board (WSLCB) sends the city hundreds of licenses to review. In the past the City had a decentralized process for reviewing these licenses, which led to inconsistent and ineffective responses to the WSLCB. In March 2010 a new policy team was formed to coordinate the City's review and provide for a consistent decision-making process for objections. The Policy Team is currently working with the liquor board to develop standardized public safety restrictions for the new nightclub licenses. The result has been the need for no new Good Neighbor Agreements.

Nighttime Disturbance and Noise Ordinances
An assistant city attorney helped craft the new nighttime disturbance ordinance that the City Council passed in August 2010 as well as new noise regulations that were scheduled to go into effect in 2011. With the City Attorney's help, the nightlife industry in Seattle is getting clear and consistent messages from the City about the expected standards of conduct as well as technical assistance to help the industry meet those standards.

Public disclosure and constitutional litigation

ACLU v. Seattle
Seven years of litigation ended in 2010 when the Washington Supreme Court denied review of a Court of Appeals determination that an issues list exchanged between the Seattle Police Officers' Guild and the City was exempt from public disclosure as part of the City's deliberative process.

"Bob Scales has been fabulous to work with. I trust both his legal expertise and his judgment. Our trespass admonishment program represents a major area where we have worked together for many months. I appreciate that I am also able to discuss a wide range of issues and concerns with Bob, who has both legal and political experience and expertise. You are lucky to have him."

Mike Sanford,
assistant chief,
Seattle Police Department

The ACLU had twice appealed the ruling, arguing that once the lists were shared with the union, they were no longer exempt. The Court of Appeals held that sharing the list with the union did not affect its status as exempt from public disclosure as long as the list contained recommendations and opinions used in the pre-decisional process. *ACLU v. City of Seattle,* 121 Wn. App. 544 (Div. 1 2004).

Loper v. Seattle
A Real Change vendor sued the City alleging that he was not allowed to sell the paper on the City sidewalk because of improper use of the trespass admonishment. The case was settled as part of the overall review of the trespass admonishment program.

Giang v. Seattle
This was one of a series of lawsuits brought by Stafford Creek Corrections Center inmates who made multiple requests for records related to a police investigation over a decade earlier. The City prevailed on summary judgment.

Timbreza v. Seattle
The City won on a motion for summary judgment that dismissed plaintiff's allegations regarding violations of the Public Records Act by the Seattle Police Department. The case involved the extent of SPD's search for records and production of 911 tapes and in-car video.

Werner v. Seattle
The City defended a lawsuit filed by an SPD employee seeking to block the release of investigative records related to employee misconduct.

Sargent v. Seattle
The City is appealing a trial court order finding that SPD violated the Public Records Act when responding to a public disclosure request for a criminal investigative file The case presents several important issues that could have a wide-ranging impact on all public agencies, such as (1) whether an open and active criminal investigative file is subject to public disclosure; (2) whether an agency is required to keep a request "open" and "pending" indefinitely; and (3) whether witness identity in police files is subject to disclosure.

ATL v. City
The U.S. District Court upheld Seattle's adult entertainment zoning law in the face of a First Amendment challenge by a person who was denied a land use permit to operate a strip club within certain distances of parcels previously permitted for uses as a day care center and a former strip club, respectively. The court held that the City's ordinance provides ample opportunity for expression in the form of nude dancing.

The court, however, ruled that the City's separate strip club license requirement was invalid because it did not contain a time limit by which the City is required to issue or deny a license. The City Council amended the licensing ordinance to address the problem.

Guns in Parks

A Parks and Recreation Department administrative rule provides that people are not permitted to bring firearms into certain Parks and Recreation facilities at which children are likely to be present (including recreation centers, swimming pools and playgrounds). The section worked with pro bono assistant city attorneys to defend that rule in legal challenges brought in both state and federal courts. The federal court dismissed the challenge to the rule. The state court case is pending in the appeals court.

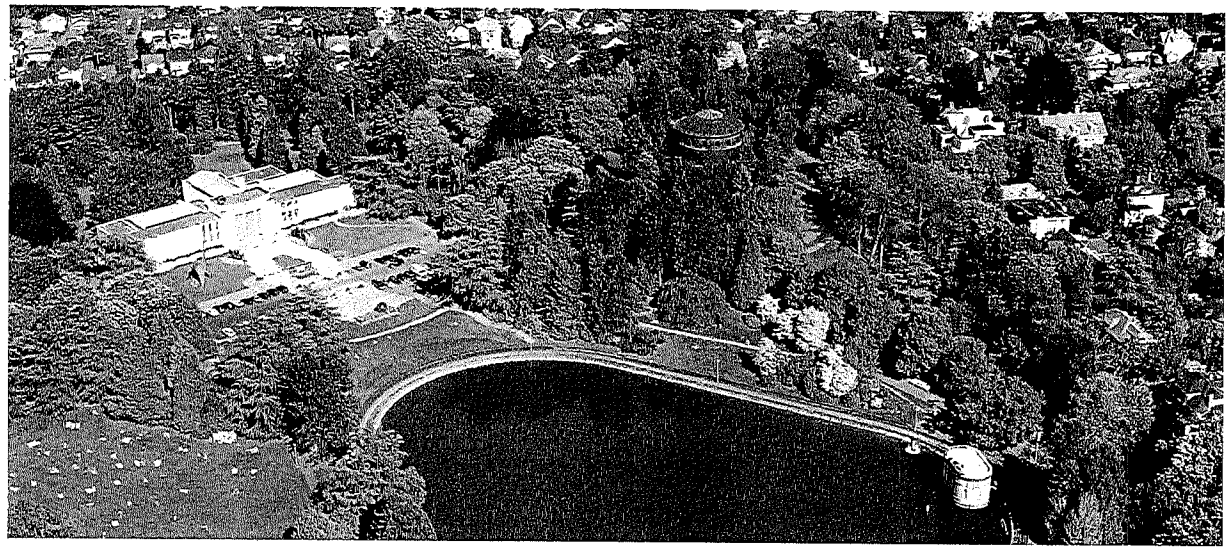
Taxes

Sprint Communications Co., L.P.

The City resolved a tax dispute with Sprint, which provides long-distance voice and data transmission services to residential and commercial customers in Seattle. Negotiations between the City and Sprint resulted in a $2.35 million settlement for the City.

American Honda, Jaguar, Land Rover

The taxpayers appealed tax assessments of about $500,000, claiming that they are exempt under the Import-Export Clause of the U.S. Constitution. The City prevailed on summary judgment. One of the taxpayers, American Honda, appealed to the state Court of Appeals.



Volunteer park and reservoir. Photo: Municipal Archives.

Getty Images (Seattle) LLP

The taxpayer appealed a tax assessment of $1.5 million. The Superior Court ruled in favor of the City. Getty has appealed to the Court of Appeals.

Keyport Foods

The taxpayer appealed a tax assessment of $170,000, contending that certain sales were made to out-of-state customers and should be exempt from the City's tax. The Superior Court ruled in favor of the City and the taxpayer did not appeal.

Seattle City Light Tax Appeal

Assistant city attorneys represented SCL in its appeal of the assessment of more than $965,000 in taxes, penalties and interest. A Washington Department of Revenue administrative law judge ruled in favor of SCL, reversing the assessment of state sales/use tax on the purchase by City Light of services to customize software for City Light's computer system. Final refund is pending final review by Department of Revenue auditors.

Collections

The section received an unprecedented number of referrals for collection in 2010. It opened 153 collection files and 3 project files, and collected $884,688.

Seattle Steam Case

Seattle City Light was attempting to recover costs it incurred in re-routing underground

facilities that were adversely impacted by two underground steam leaks. As part of the settlement, the City obtained a partial recovery for SCL and a Memorandum of Agreement outlining, among other things, the protocol the parties will use when responding to future steam leaks.

MZ Construction

This matter began as a collection of 45 unpaid and partially paid invoices due the Seattle Department of Transportation from a single company, MZ Construction, Inc. When resolved, SDOT received payment of 44 of the unpaid and partially paid invoices totaling $18,049.

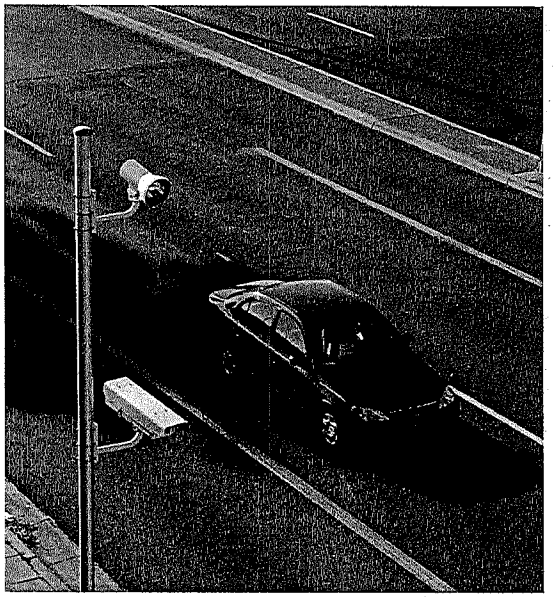
Amicus Briefs

The City prepared and filed an amicus curiae brief in the U.S. Supreme Court supporting the Washington Secretary of State's position in Doe V. Reed that initiative and referendum signature petitions are subject to public disclosure under Washington's Public Records Act. The high court agreed and determined the signatures were public records. In February 2010 CAO filed an amicus on behalf of Washington State Association of Municipal Attorneys (WSAMA) in support of Shoreline's case involving the Public Records Act and metadata before the Supreme Court. This was a landmark PRA case where the central question was whether metadata associated with electronic records is subject to disclosure under the act. Washington's court was only the second state supreme court in the nation to address the issue. We supported Shoreline's position that some metadata may be a public record, but argued that public agencies should not be required to produce multiple copies of identical electronic records simply because of slight differences in the metadata. The court disagreed.

We also filed an amicus brief in the City of Mukilteo's red light camera case. There, proponents of an initiative in Mukilteo argued that automated traffic safety cameras are subject to the local initiative and referendum process. We argued that legislation regarding automated traffic safety cameras was delegated by the state directly to local legislative authorities and is therefore not subject to the local initiative and referendum power. In the New York City Taxi Cab case, New York passed rules requiring taxi cab owners to buy hybrid vehicles. The U.S. Court of Appeals for the 2nd Circuit held that New York was preempted by federal emission control laws and could not enact such rules. We supported New York City's writ of certiorari to the U.S. Supreme Court seeking further review; review was denied.

Ordinance review

This section advises the City on legislative actions. For example, in 2010, the Council passed an ordinance that reorganized the former Department of Finance, Department of Executive Administration, and Fleets and Facilities Department and created the new Budget Office and Department of Finance and Administrative Services. The ordinance had



Red light cameras. Photo: Municipal Archives.

413 sections and was 421 pages long, not including attachments. For more than six months this section worked with the Mayor's Office and Council to modernize and improve the code with respect to these departments.

Training

Assistant city attorneys provide training on compliance with the Washington Public Records Act, Chapter 42.56 RCW, including in-house CLE sessions and client-training classes. The section also publishes a periodic *Public Disclosure Officer's Newsletter* to provide clients citywide with up-to-date information on how to respond to public records requests. In addition, section attorneys brief new elected officials on public disclosure, record retention, Open Public Meeting Act and other City and state law requirements.

CONTRACTS

Six assistant city attorneys comprise the Contracts Section (two are shared with the Utilities Section). During 2010, the section formally opened 102 project files and 17 case files.

This section provides legal advice, handles litigation, drafts agreements and legislation for City departments in support of capital projects, real property transactions, purchasing and intellectual property matters. Clients frequently draw upon the practical and business experience of section assistant city attorneys as well.

Alaskan Way Viaduct Replacement Program

The section participated in a cross-specialty assistant city attorney team, helping negotiate and prepare agreements between the City and the State for utility relocation, South End viaduct work, deep bore tunnel work, and each party's responsibility for the various parts of the project.

Boundary Dam Generator Project

The section assisted Seattle City Light along with outside counsel in planning, negotiation, contractor procurement and contract drafting for the reconstruction of two large electricity generators at the City's Boundary Dam hydroelectric plant. The total project cost exceeds $30 million. The contract documents for this complex project comprise three large volumes, with the contract itself more than 120 pages.

Utilities Combined Sewer Overflow Project

This project will construct facilities to capture and manage stormwater run-off during significant storm events. The total project's estimated cost is $750 million and is projected to take more than 15 years to complete. The section provided advice related to facility siting and project procurement decisions. The first construction project (Windermere), with an estimated cost of more than $25 million, is in the contractor selection phase, using the General Contractor/Construction Management alternative public works method of contracting. In the Genesee and Henderson drainage basins, SPU is working

Carkeek Park

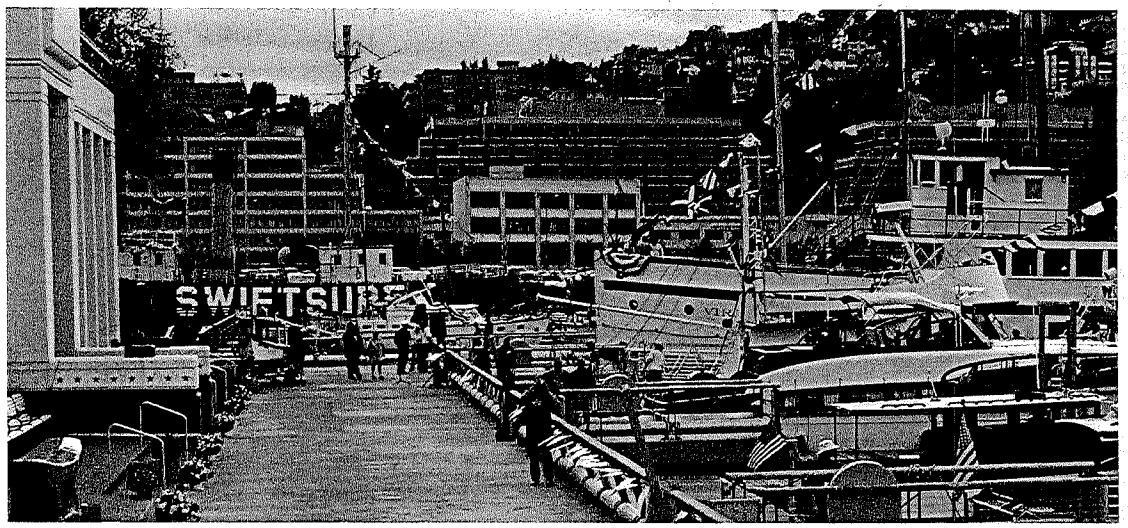
to identify potential sites suitable for the proposed new facilities in that area of the City.

South Recycling and Disposal Station
Construction of this new transfer and recycling station began in November 2010. This public works construction project delivery approach is "design-build," a method in which a contractor/design team is hired before significant design work is completed.

Seattle Center redevelopment
In 2012, Seattle Center will celebrate the 50th anniversary of the Seattle World's Fair. The Contracts Section has been assisting the Center with its plan to celebrate that anniversary, including the development of the Chihuly exhibit space, KEXP Radio space and other renovations to Center grounds.

King Street Station
The section provides legal support to the Seattle Department of Transportation (SDOT)/Office of Intergovernmental Relations (OIR) King Street Station re-building project. The project is contracted using the GC/CM alternative public works method. Significant funding sources include grants from a variety of federal, state and local funds. Long-term maintenance and lease issues are also present.

Highway 520 and MOHAI
The Highway 520 project requires relocating the Seattle Museum of History and Industry (MOHAI) from Montlake to a location in the redeveloped South Lake Union Park. The section has been assisting the Parks and Recreation Department in its negotiations and mitigation measures with the Washington State Department of Transportation. The project has created the opportunity for the creation of the Maritime Heritage Partnership. The section helped develop the agreements between Parks and Recreation and MOHAI.

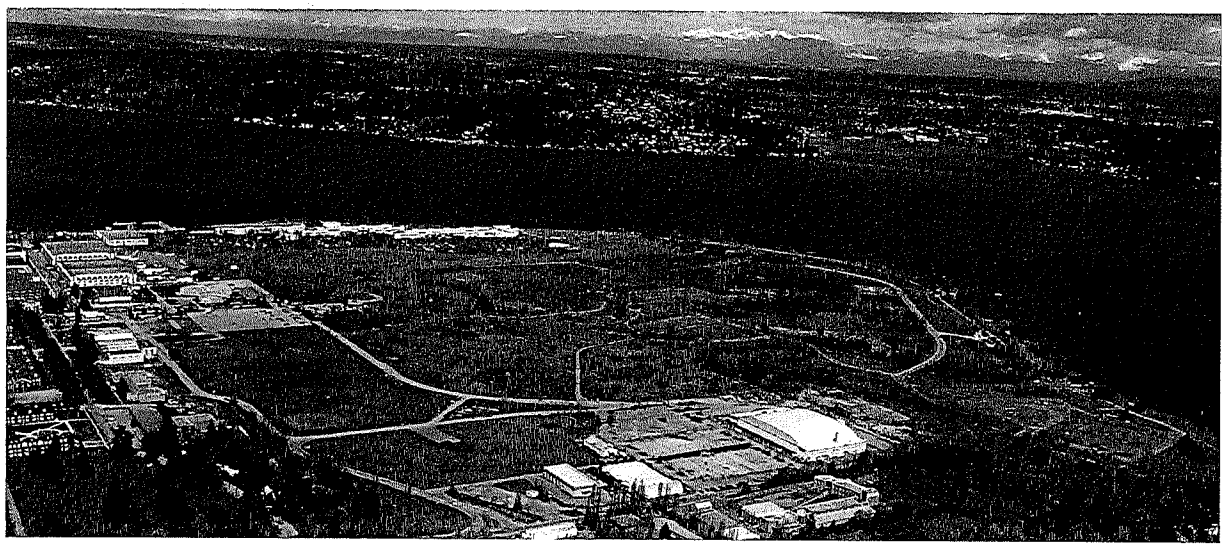


South Lake Union. Photo: Municipal Archives

Mercer Corridor Project
The Mercer Corridor Project consists of eastern and western segments. At present, Mercer East is under construction and Contracts, along with other sections, has provided legal advice, negotiation and contract drafting to SDOT on numerous aspects of this project, including the construction of the widened Mercer Street, environmental remediation, utilities relocation and undergrounding and interim property use rights. Early work on Mercer West has included helping negotiate agreements to secure the preferred alignment. Mercer West is an integral part of the Alaskan Way Viaduct Replacement Program.

Oracle Contract Dispute
Assistant city attorneys advised the City's Department of Finance and Administrative Services on a provision in a software contract that required the City to make an additional license payment based upon the increase in the size of the City's budget. Oracle claimed the City owed more than $700,000. The City and Oracle agreed to compromise for approximately half of the claimed amount, which the City was allowed to pay interest free over three years.

Magnuson Park
Assistant city attorneys assisted in further developing Magnuson Park's new athletic



Magnuson Park, Photo: Municipal Archives

facilities and agreements with Arena Sports and Seattle Court Sports Unlimited in Building 11 at Sand Point.

Emergency Management
The Contracts Section, in conjunction with the Torts Section, supports the Law Department role in emergency management. That includes the drafting of documents to be used in an emergency, including emergency proclamations and orders, and staffing emergency management activations of the City's Emergency Operations Center.

Seventh Avenue South Pump Station
Utilities intends to construct a flood control pump station in what is presently street right-of-way along the Duwamish River. Assistant city attorneys advised and guided the project team in pursuing a street vacation and necessary agreement from an abutting property owner.

Pro-Parks Levy
Seattle voters extended the Pro-Parks Levy in 2008, enabling the City to leverage funds to purchase property for neighborhood parks in underserved areas. Assistant city attorneys advised on purchase agreements, strategies, and condemnation.

City of Seattle Standard Specification Division 1
Every three years, the City publishes a multivolume standard construction specification for use by all departments in municipal construction. During 2010 Contracts assistant city attorneys assisted the departments in the overhaul of a significant portion of the old specification for publication in 2011.

Department of Justice ADA Audit
A cross-section team of attorneys helped respond to an Americans with Disability Act audit of City programs and facilities by the Justice Department's Project Civic Access.

EMPLOYMENT

Most of the City's 10,000 employees are represented by unions and protected by civil service. The eight assistant city attorneys in the Employment Section advise departments on legal requirements related to labor and employment law and represent the City in legal disputes with employees and labor unions.

Advice
Assistant city attorneys give day-to-day legal advice on issues such as disability accommodation, harassment and discrimination complaints, wage and hour laws, labor law, contract requirements, employee discipline, safety, employee classification and leave rights. By advising departments before decisions are made, assistant city attorneys are able to assure that legal standards are met and prevent litigation. At times, attorneys assist City departments as they respond to inquiries and investigations by agencies such as the U.S. Equal Employment Opportunity Commission.

Litigation
Assistant city attorneys represent the City in lawsuits, arbitrations, civil service appeals, other administrative proceedings, and settlement

negotiations. The litigation demands can range from complex class actions to hearings into employee misconduct before arbitrators and civil service commissions.

State and Federal Cases

The section litigated roughly 13 individual suits in state and federal courts in 2010. Among those requiring significant effort and investment by assistant city attorneys, paralegals and legal assistants were:

- *Johnson v. City* (SDOT), a harassment, gender- and race-discrimination case resolved on favorable terms in mediation in July;
- *Woodbury v. City* (SFD), a whistleblower action that was dismissed in King County Superior Court in December.
- *Mahoney v. City* (SPD), a Public Safety Civil Service officer discipline case that the police officer appealed to Superior Court. The City prevailed in April.
- *Ignacio v. City* (SPU), a race discrimination case settled for a modest amount in October;
- *Gonzalez v. City* (Personnel Dept.), an ongoing gender, national origin, and sexual orientation discrimination lawsuit in Superior Court.
- *Castello v. City* (SFD), an ongoing lawsuit that involves the recovery of damages for a paramedic who was disciplined by the Fire Department.
- *Miles v. City* (SPD), an action in which a terminated-but-reinstated police officer seeks recovery for emotional distress suffered when he was fired;
- *Smith v. City* (SPD), a defamation lawsuit brought by an officer who was criminally charged in South Dakota with perjury, aggravated assault, and carrying a concealed weapon. The lawsuit against the City and former Chief of Police was dismissed by the Superior Court in July.
- *Harris v. City* (SPU), a race discrimination case settled on favorable terms in December.

The section's appellate practice was quite active during 2010, with several significant cases addressed by the federal or state courts of appeals:

- *Clairmont v. City* (Municipal Court), a First Amendment retaliation case, in which the City obtained summary judgment. The decision in favor of the City was reversed on appeal, and the matter is returning to federal court for further proceedings.
- *Eklund v. City* (Municipal Court). A partial jury verdict for the employee plaintiff after a lengthy trial was vacated on appeal. The federal appeals court ruled that the City defendant should have been dismissed from the case. The case is ongoing, as the plaintiff is seeking rehearing before the 9th Circuit.
- *Roberson v. City* (SPD). The state Court of Appeals upheld a decision by the Public Safety Civil Service Commission to reinstate a police officer who had engaged in misconduct. The Washington Supreme Court denied the City's petition for review.
- *Werner v. City* (SPD). Following a lengthy hearing, the PSCSC reversed SPD's decision to terminate a police officer for dishonesty. The City sought review in Superior Court, and the judge reversed the PSCSC. The matter is now before the state Court of Appeals.

A number of other cases are at various stages of litigation in federal or state court. The section handles all such cases through the discovery, trial and appeal phases.

Arbitrations, Civil Service, and Unfair Labor Practice Hearings

Section attorneys also engage in a substantial litigation practice before arbitrators and administrative agencies, including the Seattle Civil Service Commission (SCSC), the Seattle Public Safety Civil Service Commission, and the Public Employment Relations Commission. The cases that have required significant work by the Employment Section included—

- *Anderson* (Seattle Center), in which the SCSC sustained an employee termination following a lengthy hearing.
- *Cunningham* (Parks and Recreation), in which the SCSC sustained a five-day suspension.
- *Taylor* (Seattle City Light), an ongoing appeal regarding alleged violation of the personnel rules related to performance reviews.

Seattle Public Utilities Science, Sustainability and Watershed. Courtesy of City Archives

- *McClure* (Seattle City Light), in which the SCSC sustained a one-day disciplinary suspension.
- Several arbitration proceedings concerned IAFF Local 2898, the union that represents the City's Fire Chiefs.

Many hearings are lengthy and complicated because City employees' due process and contract rights mean that full evidentiary hearings are common when a City employee is suspended or terminated. Proceedings before Public Employment Relations Commission are likewise full evidentiary hearings, and they encompass both routine and arcane interpretations of the Public Employment Collective Bargaining Act.

Training and Legislative Review

To the extent feasible given litigation demands, section attorneys also provide training to City departments. They also review ordinances and personnel rules related to labor and employment and advise the Personnel Director on programmatic changes.

ENVIRONMENTAL PROTECTION

The section's four attorneys advise and represent City departments on matters involving an array of environmental issues. Early and accurate advice from this section saves the City from penalties and the costs of cleaning up contamination. The litigation handled by section attorneys tends to be complex and to have multi-million dollar outcomes.

Storm Water Regulation

The section advises Utilities and other departments about how to comply with federal and state water quality regulations and permits for storm water discharges. Legal advice is provided regarding both the City's overall drainage system and individual construction projects. Regulators are requiring the use of a technique to reduce storm water discharges, called Low Impact Development (LID), which raises multiple legal issues.

CSO Reduction Projects

The section advises Utilities about environmental aspects of its capital projects to reduce overflows from the City's combined sewers, which carry both storm water and sanitary sewage.

Alaskan Way Viaduct

Replacement of the Alaskan Way Viaduct raises

Duwamish River, circa 1980 - subject of the City's settlement with Boeing. Courtesy of City Archives

many environmental issues, including liability for contamination, compliance with the State Environmental Policy Act (SEPA), and regulation of storm water discharges. The section is part of the multi-disciplinary team that advises the City staff working on the AWV project.

Seawall Replacement and Waterfront Redevelopment Central

The section advises SDOT and SPU on environmental aspects of replacing the seawall and also regarding planned improvements to the downtown waterfront.

Duwamish Superfund Site

Two attorneys in the section provide support to the City team involved in assessment and cleanup of the Lower Duwamish Waterway. The section also manages litigation with other liable parties to fairly allocate costs. In 2010, a settlement was reached that allocated 66% of the responsibility for future cleanup costs at Slip 4 to The Boeing Co. The City also received $4.8 million from Boeing for past costs.

Gas Works Park Sediments and Upland

An attorney in the section provides legal support to SPU and Parks and Recreation regarding contamination that remains at Gas Works Park in the upland and in lake sediments. EPA and the State Department of Ecology are both involved with this site, resulting in complex legal issues.

Gribbles—tiny marine wood-boring creatures—are damaging the seawall's wooden supports. Photo: Municipal Archives.

Jefferson & 12th
This site has been sold to the Capital Hill Housing Improvement Program (CHHIP) for the development of low-income housing. During the due diligence period, CHHIP discovered the property was contaminated with petroleum and advised the City's Office of Housing that the contamination would need to be remediated before the purchase was concluded. Cost of remediation was estimated to be $1.16 million. A section attorney negotiated a settlement with the operator of a former gas station on the site. The settlement capped the City's liability at $100,000 and obligated the former operator to pay the balance of the cleanup costs.

Kenyon Street Bus Barn
This is the future location of the new South Transfer Station. The site was contaminated with cement kiln dust. A section attorney negotiated the terms of a voluntary cleanup plan with the State Department of Ecology and provided legal advice to SPU during implementation of the plan, which was completed in 2010.

Hazardous Materials and Public Works Contracting
The section advised SPU, City Light, Transportation and Administrative Services about contract specifications and implementation measures to address the discovery of hazardous materials at construction sites.

Enforcement
Utilities and the Department of Planning and Development enforce the City's Storm Water Code at small and large developments. Section attorneys advise on these actions and also assist SPU with enforcement regarding illegal discharges into the City's system.

Sunny Jim
The former Sunny Jim plant is being considered as a site for a homeless encampment. The section provided legal advice regarding environmental issues at the site.

Magnuson Park
The section provided legal advice to Parks and Recreation and helped coordinate with the U.S. Navy to get the Navy to remediate radium contamination discovered in Hangar 27. The remediation was necessary so the building could be developed as an indoor sports facility.

South Park Landfill
An assistant city attorney is part of the City team addressing cleanup of the former South Park Landfill. He provides legal advice and helps in negotiations with other parties. In 2010, the City obtained Ecology's approval of the work plan for further investigation of contamination on the site and hired a consultant to implement the work plan and develop a final cleanup plan.

Bluefield Habitat Projects/Duwamish Natural Resource Damages
Many parties, including the City, are liable under federal law for damage to natural resources caused by contamination in the Lower Duwamish

"When we discovered that our development site had serious environmental contamination issues, we were pretty discouraged about the prospect of cleaning it up. Tad Shimazu's work in tracking down the responsible party and negotiating their cleanup work has been key to our project moving forward. We're excited to be breaking ground this May on a mixed-use building with 40 new affordable apartments at 12th & Jefferson!"

Betsy Hunter,
chief real estate development officer, Capitol Hill Housing

River. In 2010, a section attorney negotiated agreements and covenants that will allow a private entity, Bluefield, to construct habitat restoration projects on City-owned properties along the Duwamish River. The attorney also negotiated an agreement with Bluefield so that some of the habitat constructed by Bluefield will reduce the City's liability for damages to natural resources.

Fire Station No. 2

A section attorney successfully renegotiated an agreement with the owners of property adjacent to Fire Station No. 2 to allow the City to continue cleaning up underground gasoline contamination.

Slip 4

The City is preparing to commence the Environmental Protection Agency-ordered remediation at Slip 4 of the Duwamish River. A section attorney negotiated with adjacent property owners and tenants for access during the clean up.

Contamination in Rights-of-Way

Contamination is often discovered in City streets, usually when an adjacent property is being developed. An attorney in the section is assisting Transportation in developing appropriate protocols for dealing with contamination in street rights of way.

State and National Environmental Protection Acts

SPU has many programs and projects that require some level of environmental review under the State Environmental Protection Act and the parallel federal National Environmental Protection Act (NEPA). An assistant city attorney advises City departments on compliance with those statutes.

LAND USE

The nine attorneys in the Land Use Section support two primary City functions. First, as a regulator of land use, the City must plan for growth and development, adopt development regulations (from zoning codes to building and electrical codes, and from critical areas protections to historic preservation), make decisions on applications for land use permits, and enforce regulations. Second, as an owner of a significant amount of property (including rights of way) and a funder of low-income housing projects, the City must manage real property and engage in a host of real estate and financing transactions.

Because land use law permeates so many City activities, this section works with the Council and a range of departments; most active are Department of Planning and Development (DPD), Transportation (DOT), Neighborhoods and Parks and Recreation. The section assists its clients through a combination of advice and representation in litigation in venues from the City Hearing Examiner to the Washington Supreme Court to federal courts.

Litigation in state and federal court

- *Anderson v. City of Seattle.* Defended the City in federal court against claims arising from

"Judy Nevins' diligence and very hard work were integral to the success of the Discovery Park-Capehart Acquisition Project. This long-term project combined the usual acquisition related drafting and advice responsibilities with a large dose of coordination with multiple clients, Parks and SPU. This project could not have been completed as efficiently and with such overall satisfaction between all of the parties without Judy's hard work."

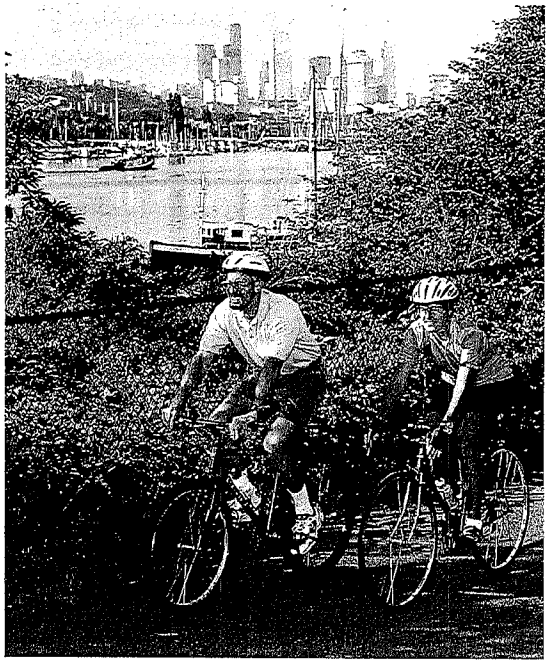
Terry Dunning,
Department of Parks and Recreation

enforcing the City's mobile vending code. Summary judgment was granted on those claims

- *ATL v. City of Seattle.* Working *with* the Government Affairs Section, Land Use attorneys defended the City in federal court against a challenge to the City's zoning and licensing ordinances for strip clubs.
- *Strickland v. City of Seattle.* With the Utilities Section, our attorneys defended the City in U.S. District Court and the 9th Circuit Court of Appeals against a claim that the City violated a marina owner's First Amendment rights by conditioning a shoreline permit on a requirement to distribute best management practices to his marina tenants.
- *Friends of Cedar Park v. City of Seattle.* In the Court of Appeals, defended the City's State Environmental Policy Act (SEPA) determination and approval of a short plat.
- *Fremont Neighborhood Council v. City of Seattle.* In the Court of Appeals, defended a SEPA determination and various Council decisions related to the proposed reconstruction of the City's North Transfer Station.
- *Salmon Bay Sand & Gravel v. City of Seattle.* In Superior Court and the Court of Appeals, defended the City's SEPA review related to the Burke-Gilman Trail "missing link" project.
- *Magnolia Neighborhood Planning Council v. City of Seattle.* Defended the City through the Court of Appeals against claims that the resolution adopting a federally-mandated recommendation to the federal government for the closure and redevelopment of Fort Lawton violated SEPA and a park plan.
- *Schroeter v. City of Seattle.* Defended the City against an attempt to enjoin the Gas Works Park fireworks celebration for failure to conduct SEPA review.
- *Trans4Media v. City of Seattle.* Defending the City in a lawsuit filed by an "advertising partner" of Washington State Ferries (WSF) alleging that the City's direction to WSF to remove an off-premise sign was statutorily preempted and damaged the plaintiff.
- *Rosema v. City of Seattle.* Defended a Planning and Development determination that a non-conforming duplex had not been discontinued based on permit history.
- *McBride v. City of Seattle.* Defended the City in a challenge to a rezone decision.

Administrative tribunals

- *Hamlin Shores v. City of Seattle.* Defended the City in an appeal to the Shoreline Hearings Board of a shoreline substantial development permit for a second-story addition to an existing floating home.
- *In Re. Tree of Life.* Represented the Pike Place Market Historical Commission in a Hearing Examiner challenge to a denial of a sculpture proposal for Victor Steinbrueck Park.
- *In Re. Fire Station No. 6.* On behalf of Fleets &



Bicyclists riding on Burke-Gilman Trail past downtown skyline and Lake Union. Photo: Municipal Archives.

Facilities, defended against, and then settled, a claim regarding the reconstruction of Fire Station No. 6 brought by a neighbor before the examiner.

- *In Re Lowrise Code amendments.* Defended a Planning and Development SEPA determination before the examiner.
- *In Re. Eitel Building.* Defended before the Examiner a recommendation of the Landmarks Preservation Board to impose controls and incentives on a landmark building.

Enforcement actions

Enforcement matters involve a specialized type of litigation that usually commences in Seattle Municipal Court. The four Land Use Section attorneys who currently handle an enforcement docket advise the section's primary enforcement client, Planning and Development, regarding code enforcement issues, review and file enforcement actions, coordinate settlement negotiations, conduct trials, and defend appeals in Superior Court and beyond. In 2010, the section reviewed about 150 cases referred by Planning and Development for possible action and filed 90 actions. On behalf of Planning and Development, the section won judgments in excess of $2.5 million and six abatement orders. Because Planning and Development places a premium on bringing property into compliance, most judgments are settled for compliance and a greatly reduced payment. In 2010, the section collected roughly $163,000 on judgments for Planning and Development and, to a lesser extent, Transportation. The following are examples of some of the issues addressed in the section's high-volume enforcement practice:

- defective sewer and drainage systems associated with a 43-single-family-unit development on Beacon Hill;
- construction of an addition to house a large compactor that was not enclosed, violated storage setback requirements and caused noise complaints;
- installation of advertising signs in historic districts without obtaining certificates of approval from the relevant historic review boards;
- installation and continued use of a retaining wall on a park boulevard and a City right-of-way without a use permit;
- repair work on a float without obtaining a shoreline exemption and use of a public right-of-way (an underwater street) without a use permit; and
- installation of boat storage racks and an office structure on property on Lake Union without obtaining the necessary permits.

Appeals

Appeals of City judgments have the potential to set precedent that could affect the ability of Washington cities to enforce their land use laws. Two appeals in 2010 year are worth noting:

- *City v. Sisley.* In the Court of Appeals, seeking reversal of a trial court determination that municipal court monetary judgments must be limited to $75,000.
- *City v. Vanzuela.* After defending a judgment on appeal to Superior Court, the City convinced the Supreme Court not to accept review of the defendant's appeal.

Ordinance review

At least half of the Seattle Municipal Code comprises land, street and park use regulations. The Land Use Section usually reviews any amendments to these code sections for both the Mayor's Office and Council. The section remains the primary point of contact for work on building and maintaining the Code Drafting Manual and conducting training on its use. In 2010, the Land Use Section reviewed, among other ordinances: revision of the City's Shoreline Master Program; amendments to South Downtown and Lowrise zone regulations; updates of City technical codes including the Building, Residential, Energy, and Fire Codes; off-premise sign regulations; streamlining housing and building maintenance code enforcement; modifying the general multifamily and neighborhood-specific design review guidelines; street term permits, right-of-way dedications, and street vacations; rezones; historic preservation; urban agriculture; and park fees.

Transactions

The following are examples of projects on which the section worked to support the City as the owner of property and a funder of low-income housing projects:

- Multiple loan projects for the Office of Housing,

including Sand Point Housing, Phase II; Claremont at Walden and Rose Street Housing.

- Capehart. Acquisition of property from the federal government for the expansion of Discovery Park.
- Mountains to Sound Greenway. Execution of a trail lease to build an extension of the Greenway on Parks and Recreation and state property.
- Burke-Gilman Trail. Completion of the Waterfront Property Trail easement and various leases in the Fremont neighborhood.

Other Advice and Action for Clients

Every day the Land Use Section receives a steady flow of requests for advice and action from clients. Many require quick responses; few merit the formal opening of a distinct project file. The following are examples of some of the areas of ongoing advice and action over the last year, organized by client:

- Council: quasi-judicial proceedings; and SEPA compliance.
- Planning and Development: permit processing requirements; critical areas covenants; sign code regulation and use of signs by the City; housing inspection administrative warrants; tree regulations; and noise regulation and enforcement.
- Transportation: street use and maintenance; vacations; and term permits.
- Parks and Recreation: property encroachments; and property use disputes.
- Neighborhoods: disputes with property owners regarding historic building maintenance and restoration issues; application and amendment of historic district guidelines.
- Utilities: reconstruction of the North Transfer Station; and SEPA advice.
- Multiple: Alaskan Way Viaduct replacement; tenant relocation; interdepartmental agreements regarding environmental mitigation; subdivisions of land; Yesler Terrace redevelopment; bonus and incentive zoning; Housing Levy; and North Highline Annexation.

TORTS

Unfortunately, injuries, accidents and property damage happen every day in Seattle, so the section engages in an extensive and wide-ranging advisory practice focused on preventing loss and avoiding litigation. The 11 attorneys in the Torts Section also defend tort lawsuits against the City. In 2010 they opened 100 cases and 21 project files.

Risk Management

The section provides legal support for risk management activities in Utilities, Transportation, SPD, City Light, Human Services and Seattle Center—regarding a host of incidents, exposures, programs and opportunities. They have also trained departments on risk management techniques and approaches.

Personal Injury and Property Damage Litigation

In 2010, the Torts Section's cases ranged from

"Over the past year I have primarily worked with Assistant City Attorney Becca Boatright in the Torts Section. In addition to her outstanding legal skills, I am impressed by her willingness to take on any challenge, her breadth of knowledge of departmental operations and her understanding of the multitude of factors involved in reaching a successful outcome and reducing risk. I consider the City Attorney's Office a valued partner in reducing accidental loss claims against the City."

Bruce Hori
Risk Management director

allegations of wrongful death and catastrophic brain damage cases to minor injuries in sidewalk trip and falls. Two significant cases were tried to juries:

- *Dykstra v. City,* in which the plaintiff sustained significant injuries, involved claims of negligent roadway design. After a three-week trial, the jury was unable to reach a verdict in connection with claims against the City. The court declared a mistrial and scheduled a second trial. The case was settled.
- *Boileau v. City,* a roadway maintenance case in which the plaintiff alleged brain injuries, the trial judge dismissed all claims against the City at the close of testimony after a two-week jury trial. The co-defendant has appealed from judgment against him and has included a challenge to the dismissal of claims against the City.

Dismissals and settlements

The section obtained dismissals and favorable settlements in numerous cases. Examples include:

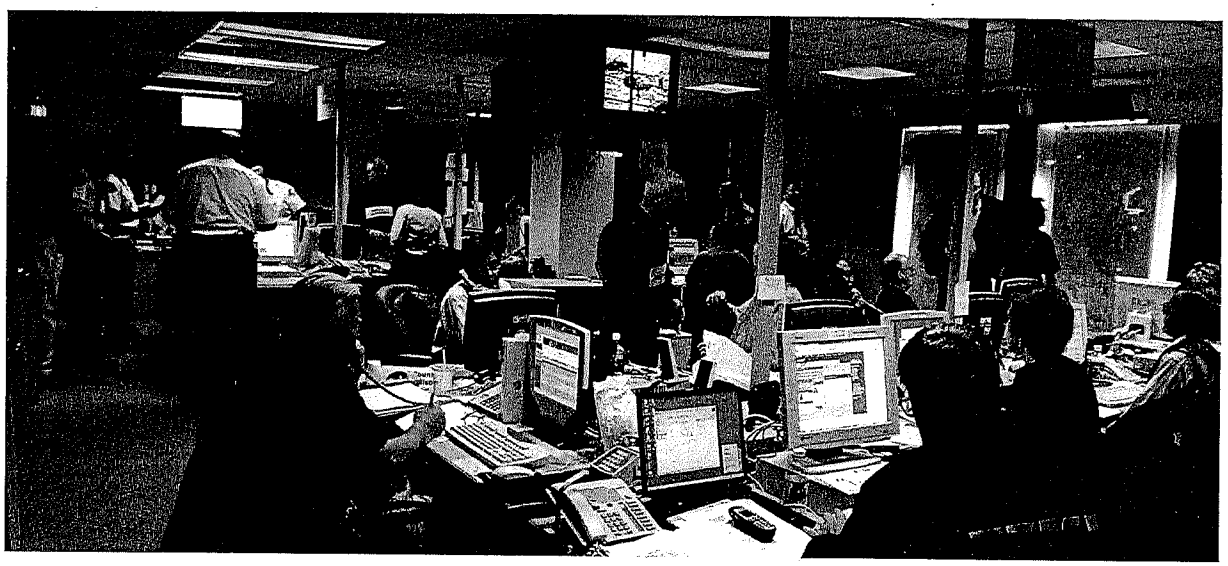
- *Bloch v.City*: A multiple-party flooding case in Madison Valley was settled for $2.5 million (of which the City paid $100,000; the remainder was paid by the City's insurers);
- *Montano/Pouley v. City*: These multiple-party flooding cases in the Meadowbrook Pond/Thornton Creek basin were settled for $370,000, with the various plaintiffs agreeing to obtain flood insurance;
- *Omosemofa v. City*: This pedestrian road design case was voluntarily dismissed by the plaintiff;
- *Blue v. City and Foster*: The plaintiff claimed she fell down a set of railroad tie stairs located in a planting strip. She sued the City and the abutting property owner. The trial court dismissed all claims against both defendants. The plaintiff appealed the ruling as to the abutting owners but not as to the City.

Appeals

- *Jones v. City* (firefighter fell down a station pole hole and was seriously injured) is pending at the state Court of Appeals. After a seven-week trial in 2009, the jury found liability against the City and awarded $12.7 million. While the case was on appeal to Division I of the Court of Appeals, the City filed a CR 60 motion for a new trial based upon newly discovered evidence obtained by surveillance. That motion was denied by the trial judge. The City filed a notice of appeal from that denial, and that appeal has been consolidated with the original appeal. The consolidated appeal is pending with Division I.
- *Struthers/Otrubova v. City,* case 1 (waterfront property damage case) was tried to a jury by outside counsel in 2009 and resulted in a jury verdict in favor of the City. That case is pending on appeal. A *Struthers/Otrubova v. City*: case 2 was dismissed by the trial court. That case is also pending on appeal.
- *Tarutis (Messenger) v. City* (a $10 million claim alleging negligent road design) was dismissed on summary judgment in 2009. Late in 2010, Division I of the Court of Appeals reversed the dismissal. The City is seeking review by the Washington Supreme Court.
- *Robb v. City* is a wrongful death action in which the estate of the decedent alleges SPD should have prevented a murder. After the trial judge refused to dismiss the City on summary judgment, the City sought discretionary review with Division I. Division I accepted and recently affirmed the decision of the trial court and held that the trial court correctly refused to dismiss the City. The City is seeking review by the Washington Supreme Court.
- In *Chen v. City,* a prior dismissal of a very serious personal injury lawsuit (now wrongful death action due to the death of the plaintiff after being in a comatose condition for two years) was reversed and remanded for trial by Division I. The $10 million claim was recently settled for $2.75 million.
- In *McKibbin v. City,* plaintiff fell through a wooden street drain cover and sued the City and a contractor who plaintiff alleged drove over the cover and broke it. The trial court dismissed both the City and the contractor. The plaintiff appealed the dismissal of the City. The appeal is pending.

Workers' Compensation Litigation and Advice

The Torts Section represents the City in workers' compensation litigation before the Board of Industrial Insurance Appeals and in the courts.



Employees from virtually all City departments, including Law, staff the Emergency Operations Center during drills.

Nineteen workers' compensation cases were opened, down from the exceptionally high number of 39 from the 2008 year and 26 from 2009. In addition, one workers' compensation project was opened. The section's workers' compensation attorney and paralegal continue working at maximum capacity as a result of the exceptionally high numbers from 2008-09. The workers' compensation attorney also provides legal advice to the Workers' Compensation unit of the Personnel Department. She also monitors legislative developments affecting the City's workers' compensation programs.

Police Action Litigation

The Torts Section Director works with outside counsel to manage the City's defense in police professional litigation. Twenty police action cases and seven projects were opened in 2010. The program had a successful year, achieving numerous dismissals and advantageous settlements. No police action cases were tried during 2010. Payouts in settlements were substantially lower during 2010 than in the previous several years.The program also handled one inquest into a shooting death resulting from police fire. After having shot and killed four Lakewood police officers on Nov. 29, 2009, Maurice Clemmons was shot and killed by a Seattle police officer on Dec. 1, 2009, after he, while armed, approached the officer in an aggressive manner. An inquest into Clemmons' death resulted in a favorable finding by the jury and resulted in a decline of prosecution by the King County Prosecuting Attorney, having concluded that no criminal laws were violated by the officer in connection with the death.

Insurance Coverage Tenders

One of the City's primary risk management tools is additional insured status under insurance policies issued to the City's contractors, concessionaires, vendors, permittees and those who hold events on City rights-of-way pursuant to street use permits. Section attorneys aggressively asserted the City's interests in insurance coverage in the face of denial or delay. In *DuBois v. City*, after Zurich of North American rejected our tender three times, the City convinced Zurich to belatedly accept it. That was followed by an agreement in 2009 by Zurich to pay the City $21,960 in attorneys' fees and costs.

Disaster Planning and Emergency Operations Center Legal Support

Torts attorneys provide legal support to Police's Emergency Management Division. They also help staff the City's Emergency Operations Center to provide legal support during emergencies. The increased focus on disaster tabletop and other exercises required significant legal work by the section's attorneys.

Non-City Litigation Advice

City employees are sometimes involved in work-related cases and issues where, even though the City is not a party to the litigation, the employees

need legal counsel. For example, employees are often subpoenaed for deposition in cases where, even though the City is not a party, the subpoena arises out of work-related issues. The Torts Section provides review and legal advice to individual City employees and client departments regarding those business-related non-City litigation issues, trial and deposition subpoenas and required witness appearances, requests for production of documents, public disclosure requests and other non-City litigation related issues.

UTILITIES

The City is unique in that it owns its own electric utility – the City Light Department (City Light), and its own water, drainage and solid waste utilities — and the Seattle Public Utilities Department (SPU). Utilities law is a highly specialized and complex area that requires the office to have specially-trained attorneys who support these complicated operations and the resulting litigation issues that arise. There are seven attorneys in the Utilities Section; two also work for the Contracts Section and one that also does work for the Environmental Protection Section.

Litigation:

Utilities litigation can arise before the Federal Regulation Commission or in state or federal court. In-house attorneys often team up with outside law firms that specialize in laws affecting Utilities when issues go to litigation.

2000-2001 West Coast Energy Crisis Refunds
Section attorneys provided ongoing representation of City Light in the appeal of Federal Energy Regulatory Commission's denial of refunds to City Light and others for energy purchases during the energy crisis. City Light's claims currently exceed $100 million.

Section attorneys also represented and helped settle certain California state court claims brought against City Light seeking refunds on transactions entered into during the energy crisis. This settlement resulted in no out-of-pocket costs for City Light despite facing a November 2010 trial date and potential exposure in excess of $6 million.

Oregon Tax
Section attorneys filed a lawsuit on behalf of City Light challenging the Oregon law removing the City's municipal exemption from certain property taxes relating to City Light's capacity share agreement for a portion of the Bonneville Power Administration's Third AC Intertie.

Water Reservoirs
Section attorneys represent SPU in relation to a series of faulty design and construction matters regarding SPU's Beacon and Myrtle water reservoir projects (See Contract Section description).

Bonneville Power Administration
Section attorneys have appeared and represented City Light in several 9th Circuit Court petitions arising out of the Bonneville Power Administration's Residential Exchange Program and related power rate decisions. The 9th Circuit petitions have been consolidated into two primary consolidated petitions: (1) challenging BPA's Record of decision in its WP-07S rate case; and (2) challenging BPA's Record of Decision in its Short Term Bridge Residential Purchase and Sale Agreement for the Period Fiscal Years 2009-2011 and Regional Dialogue Long-Term Residential Purchase and Sale Agreement for the Period Fiscal Years 2012-2028. Although not finalized, a potential settlement resolving this decades-long dispute was agreed to in principle in 2010 by most of the regional preference customers, all of the involved investor-owned utilities and their state commissions, and the BPA.

Section attorneys also have advised City Light in multiple administrative rate cases at the Bonneville Power Administration involving Bonneville's wholesale power rates.

Projects and Contracts:

Power supply sale and licensing
In 2010 section attorneys continued to advise City Light on the purchase and sale of energy, renewable energy credits and transmission, including counterparty credit issues.

Boundary Hydroelectric Project Relicensing
Section attorneys continued to advise City Light in the Boundary Hydroelectric Project FERC

relicensing proceedings. Attorneys worked with outside counsel in developing and reaching a settlement of City Light's long-term licensing rights with regulatory agencies and interested parties that is pending approval by FERC.

Statutory impact fees

Section attorneys advised and negotiated a long-term settlement of the statutory impact fees paid by City Light to Pend Oreille County in connection with City Light's Boundary Dam. This agreement included the resolution of all matters asserted by Pend Oreille County at FERC in connection with City Light's Boundary Relicensing action.

BPA Agreements

Section attorneys advised City Light in relation to multiple agreements required for the implementation of City Light's new power supply contract with the BPA, including agreements relating to interactions with similarly situated customers, software development and information services.

Dodd-Frank Act

Section attorneys advised City Light in relation to the Dodd-Frank Act and its implications on the public power industry that engage in swap transactions. This sweeping change has the potential to subject City Light and certain energy transactions to regulation by the Commodity Futures Trading Commission if no end-user exemption is provided under new regulations to be developed in 2011.

Energy Delivery

Section attorneys advised City Light with respect to the utilities' compliance with the mandatory reliability standards implemented by the North American Electric Reliability Corporation. They also negotiated settlements with the Western Electric Coordinating Council of self-reported violations that resulted in notices of alleged violations.

Solid Waste System

Section attorneys provided ongoing advice to the utility relating to the utility's Zero Waste program, the Yellow Pages ordinance and other various solid waste enforcement and contract issues.

Side Sewer Code Enforcement

Section attorneys provided advice on revising the Side Sewer Code and its enforcement provisions for Clean Water Act compliance.

Greenhouse Gas (GHG) Offset Contracts

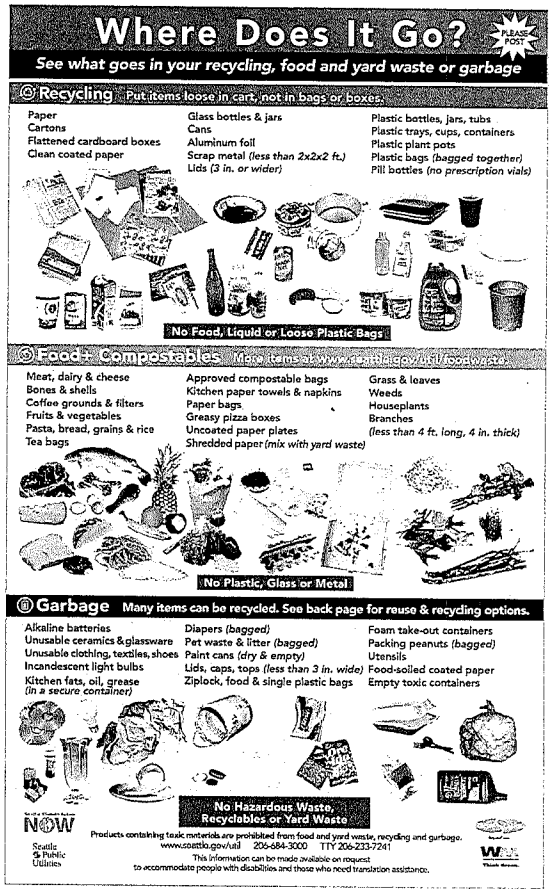
City Light receives ongoing advice related to purchase of GHG Offsets or carbon credits to reduce the utility's overall carbon footprint.

Cascade Water Alliance

Section attorneys provide ongoing advice and assistance in negotiation of an extension to a long-term declining block water supply contract with Cascade Water Alliance.

Port of Seattle

Section attorneys provide ongoing advice, negotiation and drafting to resolve Port of Seattle requests for street vacations at Terminals 5, 18, 25 and105, where Utilities has major utility infrastructure. They also negotiated a release and indemnity provision



agreement to allow SCL to assist the Port in an emergency repair of a Port substation facility serving cargo cranes on the East waterway.

1961 Basic Agreement
Section attorneys provided ongoing advice, negotiation and drafting to resolve King County's requests for transfers of certain property previously agreed to by the City in the 1961 agreement with King County.

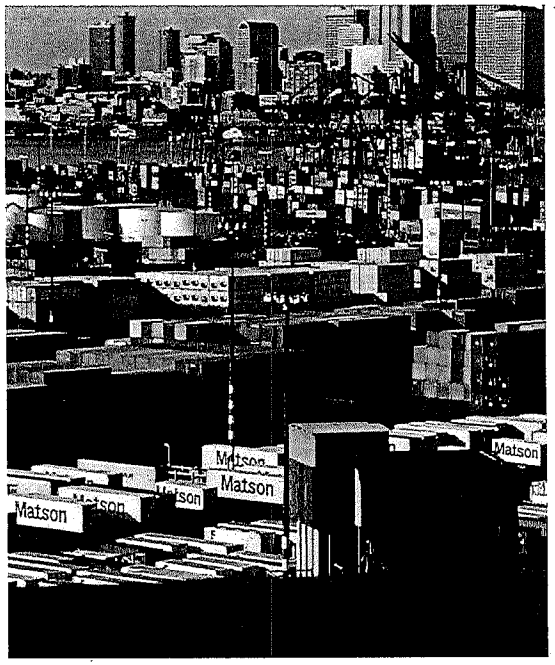
Alaskan Way Viaduct
Utilities attorneys participated on the multi-disciplinary team and advised City Light and Utilities on utility relocation necessitated by the Alaskan Way Viaduct project. This included negotiating and drafting two sets of agreements with the state for two of the AWV projects that involve relocating City Light and Utilities facilities south of the downtown area, as well as advising on the various legal issues related to the bored tunnel. They also advised on resolving an early dispute between the City and state involving a spliced cable failure, which ultimately resulted in the state paying for almost all of the repair costs.

Electric Utility Poles
Section attorneys provide ongoing advice and contract negotiation , including amendment of the Joint Use Agreements, regarding poles jointly owned by Qwest, City Light and King County, as well as poles jointly owned by City Light and Verizon. Attorneys also provided advice to City Light related to updating the terms and conditions for rental of space on poles (pole attachments), and assisted City Light in drafting legislation amending the Seattle Municipal Code to update and clarify provisions regarding pole attachments.

Bonds
City Light and Utilities receive ongoing advice on their respective bond issues, which included new bond instruments authorized under the American Recovery and Reinvestment Tax Act.

Real Property General
Assistant city attorneys provided ongoing advice on a myriad of real estate issues for City Light and Utilities, including land and easement acquisitions needed for utility operations, sales of surplus utility property, and for property management problems including encroachments, trespass and illegal dumping. Assistant city attorneys also provided advice regarding interdepartmental issues for multiple use real property, and advice on legislation related to real property transactions.

Long-Term Water Supply Contracts
Assistant city attorneys provide ongoing advice and contract negotiations regarding emergency interties and new long term wholesale water supply contracts with multiple municipalities and water districts. The provisions for a new long-term water supply contract for several wholesale customers were agreed to in December 2010.



Port of Seattle

Water Quality
Assistant city attorneys advised Utilities on an expanded street sweeping program designed to improve water quality.

Franchise Issues
Section attorneys provide ongoing advice and contract negotiations regarding various issues under Utilities' franchises including design and construction to relocate water utility infrastructure required under Utilities' franchise with the City of Shoreline and extension of the City of Lake Forest Park franchise.

ADMINISTRATIVE DIVISION

The Administration Division provides executive leadership, communications and operational support for the 160-employee department as well as interns and volunteers. The division is comprised of the City Attorney, his immediate staff and the Accounting, Human Resources and Information Technology sections.

In keeping with the City Attorney's commitment to ensuring that the office is transparent and accessible to the people of Seattle, the administration team revised its internal and external communication policies—resulting in extensive enhancements to the office websites. The public can now view the latest news and media releases and Seattle Municipal Courtroom schedules, and link to a variety of other City services from the office website. In addition, the office implemented a new web form for constituent inquiries.

Budget

The Administration Division was critical in helping the office achieve its budget goal to bring Police Action work in-house. Although the office had to cut almost 9% of its budget as a result of the recession, the office was successful in adding two lawyer positions so that it could defend police officers in civil rights cases. The City receives about 20 such lawsuits a year and had depended solely on outside counsel to represent the officers and the City in those matters. Now, those officers and the City will be represented by assistant city attorneys in the absence of a conflict.

Human Resources

Human Resources staff was instrumental in arranging for Race and Social Justice Initiative training and email retention and search program training for all employees in the department. In addition, Human Resources provided expertise in numerous hiring processes, supporting both divisions throughout the year. The accounting staff continued to provide excellent management of the 2010 operating budget and support for the development of the 2011-12 budgets.

The City Attorney's Office has a long history of providing opportunities for volunteers and student interns to learn more about the legal process and criminal justice system. Law students work side by side with prosecutors to learn the basics of case preparation, filing and trial work. During 2010, the Criminal Division had a total of 33 volunteers who provided more than 8,700 service hours, or the approximate equivalent of four full-time employees. (For comparison, in 2009 a total of 33 volunteers contributed a total of 7,609 hours for the year.) Of the 33 volunteers, 14 were male and 19 were female. Budget cuts prevented the department in 2010 from filling previously paid internships. One such program was the infraction prosecution program in Seattle Municipal Court. Instead of two paid interns, there are now three qualified volunteers staffing the court calendars. Ten volunteer legal interns assisted the Civil Division on employment, land use and torts cases in 2010.

Information Technology

The Information Technology staff has significantly contributed to the City's IT capabilities and supported the department's data systems applications and security.

On a daily basis, the IT staff supports 180 desktop computers for staff in the Civil and Criminal divisions and five Seattle police precincts. In addition, the IT team works collaboratively with the senior planning and management staff in the City's Department of Information Technology (DoIT) to plan and implement improvements to citywide data systems and security.

In 2010, the City Attorney's Office, in conjunction with other City departments, implemented a citywide email archiving system. Now City employees can browse, search, open and even forward archived emails. This allows departments to more effectively manage the retention and recovery of email while remaining in compliance with the applicable departmental and subject matter retention policies. Further, the system supports faster and more efficient collection and production of emails in response to Public Records Act requests and discovery processes related to litigation.

The City Attorney's Office has been working diligently to reduce the use of paper records. The IT staff joined with the management and staff in the Criminal Division to move to a paperless or near-paperless method of handling criminal case files in the courtroom. In 2010, net books (small laptops) were acquired and programmed for trial

team attorneys to electronically access scheduling data and case file records in Seattle Municipal Court. In addition, a secured network is being installed in the courtrooms that will eventually allow access to internal systems, providing real-time updates and remote availability of department records.

The entire Administrative Division staff responded to numerous requests from City Council members for special reports required to answer financial questions during the budget review process. In addition, the Administration team facilitated responses to 112 Public Records Act requests received by the City Attorney during the year. Also, assistant city attorneys provided extensive legal advice and compliance training regarding public disclosure requests to staff from other City departments, the Mayor's Office and the City Council.

Security

During 2010 great strides were made in the area of compliance with the Criminal Justice Information Services (CJIS) Security Policy. A process was initiated to fingerprint all non-City Attorney's Office personnel who access the Criminal Division; 149 individuals were identified and fingerprinted at SPD. Fingerprinting continues for all new staff, contractors and vendors seeking unescorted access to the Criminal Division.

Employee security in the workplace is a priority for Holmes. In 2010, due to a change in court rules, the Criminal Division office saw a significant increase in number of visits from the general public, many of whom had outstanding issues with the criminal justice system. After two incidents involving disgruntled citizens, it was apparent the office required additional security measures. In September, the office completed the installation of a new duress system, providing flashing lights and sirens to warn employees in case of an emergency (other than fire). Employees were trained in the appropriate response and the reception desk staff was trained in the proper use and activation of the system. Also, facilities were upgraded in the reception area and the elevator lobby.

Seattle City Attorney
Annual Report 2010

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