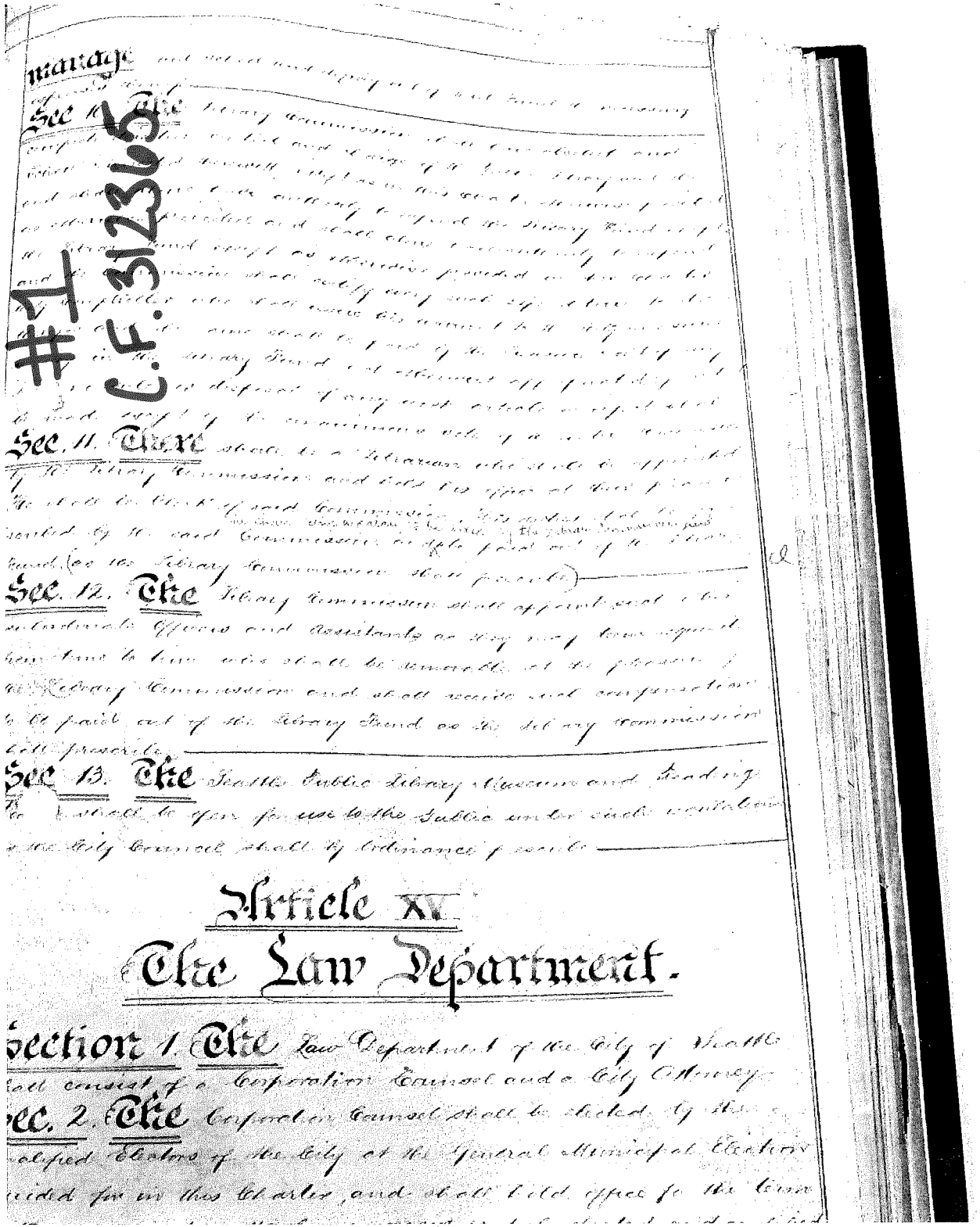

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Sec 10. The Library Commission [illegible]

[illegible]

Sec. 11. There shall be a Librarian who shall be appointed by the Library Commission and hold his office at their [illegible] He shall be Clerk of said Commission [illegible] by the said Commission [illegible] 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 have required 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 Room shall be open for use to the Public under such regulations as the City Council shall by Ordinance prescribe

Article XV

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 Com[illegible]

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Seattle City Attorney

Annual Report 2011

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STATEMENT FROM THE CITY ATTORNEY

Police accountability dominated much of 2011 as we eliminated the no-bid, monopoly contract for police action defense services; hired in-house counsel to represent the City and police officers in civil rights cases; oversaw the production of thousands of documents in response to the Department of Justice investigation of the Seattle Police Department; filed criminal assault charges against two Seattle police officers, and settled civil rights claims stemming from the shooting death of Native American John T. Williams. At the same time, continued budget pressures, medical marijuana, Alaskan Way Viaduct litigation and the Race and Social Justice Initiative consumed considerable office bandwidth.

Peter S. Holmes
Seattle City Attorney

Seminal issues for CAO in 2011

The Civil Division played a critical role in the aftermath of the shooting death of John T. Williams by Police Officer Ian Birk: We provided outside counsel to represent Birk at the shooting scene and during the King County inquest, and engaged in settlement talks between the City and Williams' family so as to provide swift justice and avoid an expensive and prolonged lawsuit in federal court.

A decade of indecision and angst over a state-financed deep bore tunnel to replace the Alaskan Way Viaduct came to a head when the state and City entered into three agreements to proceed with construction after completion of the environmental review process. In response, tunnel opponents launched a referendum and an initiative. The City Attorney's Office filed a declaratory judgment action to clarify the legality of the referendum and initiative effort to undo the agreements and stop the tunnel. King County Superior Court judges ordered most of the referendum as well as the entire initiative off the ballot. Our office also successfully defended Council President Richard Conlin in a tunnel opponent's effort to recall him from office.

Considerable time was spent working with bipartisan state legislators on a comprehensive regulatory framework for medical marijuana. Gov. Chris Gregoire vetoed the guts of the bill, leaving local communities confused about the path forward. The City Attorney's Office devised a way to simultaneously balance state law and local needs, and honor the federal prohibition. With interested stakeholders, City departments and the elected officials, our office forged a workable medical marijuana ordinance—for dispensaries and qualified patients.

STATEMENT FROM THE CITY ATTORNEY

The Occupy Seattle movement created public safety and First Amendment issues for Seattle and cities across the nation. We advised numerous City departments on how to achieve the delicate balance between protecting the First Amendment rights of Occupy Seattle protesters and maintaining public safety over the course of several weeks and in several locations. Several misdemeanor charges were filed against protesters who broke the law.

For the first time in many years, the City Attorney's Office filed criminal assault charges against police officers. The first case involving excessive force during an arrest was dismissed when an expert witness retained during the Washington State Patrol investigation changed his opinion. The other case, involving an off-duty officer in a bar fight, continued to trial and ultimate acquittal in 2012.

Government Affairs and Torts attorneys managed the City's production of hundreds of thousands of pages of records sought by the Department of Justice from SPD as it conducted a 10-month "patterns and practices" investigation. At the end of the year, DOJ released its findings that SPD officers too often resort to excessive use of force. 2012 will be spent responding to the findings, negotiating an agreed resolution to the investigation or possibly defending the City against a federal lawsuit.

We hired two in-house lawyers to defend police officers in civil rights actions, terminated an exclusive contract for outside counsel on police action matters and completed a Request for Proposals process for that work. The goal is to save $750,000 a year in outside counsel costs and return control of police action litigation—previously outsourced to a private law firm—to the City.

Aside from the banner headlines at City Hall, where the Civil Division is based on the fourth and fifth floors, and adjacent Seattle Municipal Tower, where the Criminal Division is housed on the 53rd floor, the CAO staff created positive change for many other people who call Seattle home—whether they live north or south of the Ship Canal, east or west of Interstate 5.

Responding to an outcry from merchants, schools and neighbors, Land Use and Government Affairs lawyers successfully sued to shutter Jiggles, an illegal strip club at 5220 University Way NE. A Superior Court judge rejected Jiggles' First Amendment arguments, saying that as long as the City's zoning rules were reasonable, it had a right

John T. Williams
Painting by Elizabeth Miner

to disperse adult cabarets. The City demonstrated that the location of Jiggles violated a zoning buffer requirement because it was located within 800 feet of a school, child care center, community center and public park. The case continues in the Washington Court of Appeals.

Nearby, the Roosevelt neighborhood benefitted from a decision by the Court of Appeals to affirm $615,000 in penalties on notorious slumlord Hugh Sisley. The City's Department of Planning and Development has pursued nearly 200 code enforcement cases relating to properties owned by Hugh and Martha Sisley dating to the 1980s. The cases included housing code violations, exterior maintenance and junk storage violations, emergency orders, and unfit vacant buildings subject to demolition. City attorneys have filed more than 25 cases against the Sisleys in Seattle Municipal Court to gain compliance with City codes.

Fifteen miles to the south, residents of the Pritchard Beach neighborhood turned out en masse one August night to celebrate the closure of a notorious drug house in their midst. In a rarely used move, our vice liaison attorney and the Government Affairs Section used the state's drug-abatement authority to end felon Sharon Stone's long drug operation out of her home. After a Superior Court judge agreed to a one-year closure, the City moved to seize the house permanently.

In efforts to improve the quality of life in neighborhoods across Seattle, we drafted legislation for the Council that eased the land use regulations for religious groups to host tent cities; continued the legal fight for the City's authority to ban guns in parks and public places where children are likely to be present, and worked with the Animal Shelter and the Council to strengthen laws regarding dangerous animals that bite and seriously injure a person or another animal.

The City Attorney's Office advanced Seattle's Race and Social Justice Initiative in 2011 by: successfully advocating for 364-day sentencing statewide; pushing for reform of DWLS-3; joining SPD on the Task Force on Race and Criminal Justice System, and implementing anti-racism ethics trainings for lawyers.

Pete S. Holmes

Seattle City Attorney

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

CIVIL DIVISION

The Civil Division provides legal advice and representation to the City and its many departments on the complex array of legal issues. Through the use of in-house counsel, CAO saves the City many millions of dollars in outside counsel fees each year. More than 50 attorneys and 20 support staff provide full legal services as the City's own law firm.

Civil Division lawyers practice in many specialized areas of law such as:

Constitutional law, including free speech, due process and police action standards;

Environmental law, including federal and state superfund laws, Endangered Species Act, Federal Clean Water Act, SEPA and NEPA laws requiring environmental impact statements;

Land Use law, including enforcement of land use codes, housing and development, landmark preservation, and Growth Management Act;

Tort law, including highway and road design, complex property damage cases caused by landslides and drainage, defense of personal injury and other tort actions;

Contract law, including real estate acquisition, leasing, construction, condemnation, insurance, Women and Minority Business Enterprise (WMBE) and franchise agreements;

Government regulation, including public disclosure, ethics and elections, ordinance drafting and interpretation;

Finance, including bonds, taxes, local improvement and business improvement districts;

Labor and employment, including disability accommodation, discrimination claims and investigations, civil service, wage and hour laws, and collective bargaining;

Utilities law, including energy regulation, purchase and transmission, utility finance, rates and water supply contracts.

In 2011, the Civil Division defended the City in many types of cases, ranging from traffic accidents involving City vehicles to a lawsuit that asked a court to decide whether the City and state agreements regarding the Alaskan Way Viaduct Replacement Project were subject to referendum.

2011 marked the year in which the Civil Division began to defend police action cases in-house. For 40 years the City had employed a private law firm to defend police officers accused of excessive force and other constitutional violations. In 2011, we secured funding from the City Council to hire two experienced attorneys to defend those cases. This change will not only save the City money in attorneys fees, it will also assure better risk management for the police department as assistant city attorneys advise on training programs and policies that better reflect the City's values.

As the City embarks on ambitious projects such as replacing the seawall and improving the central waterfront, Civil Division attorneys are available to advise on all the complex aspects of those projects, from financing to environmental impacts and review. In 2011, Civil Division lawyers and paralegals recorded 103,584 hours on legal problems. Attorneys logged 85,376 of those hours. Employing in-house counsel saved the City more than $12.8 million in attorney's fees.

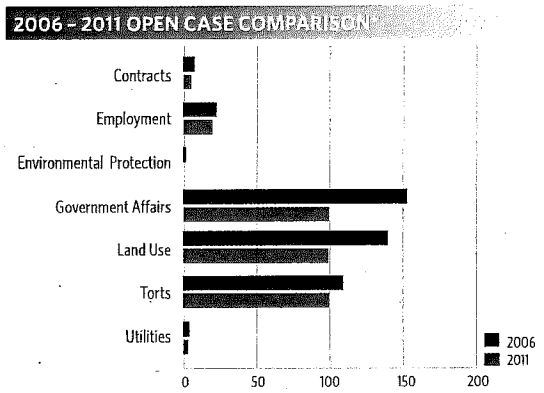
Civil Division lawyers protect the City from liability by advising on ways to conduct business to avoid lawsuits and vigorously defending the City when cases are filed. In 2011, 354 cases were filed against the City.

Civil Division lawyers represent the City in collecting money as well. In 2011, lawyers collected $753,732 on behalf of City departments. Tax lawyers won rulings for $3.2 million in disputed taxes. Land use lawyers won judgments for penalties of more than $2.6 million and approximately 15 abatement orders against housing and land use code violators. And contract lawyers collected $1.98 million in disputed contract payments.

CONTRACTS AND UTILITIES

During 2011, CAO merged its Contracts Section and its Utilities Section. The Contracts and Utilities Section now consists of 11 attorneys, including one who also works in the Environmental Protection Section.

The Contracts and Utilities Section provides legal advice, handles litigation, drafts agreements and legislation for all City departments in support of capital projects, real property transactions, purchasing, and intellectual property matters. Its utilities lawyers also provide advice to the water, electric, drainage and solid waste utilities—Seattle City Light and Seattle Public Utilities. Clients



*removing admin/claims files

frequently draw upon the practical and business experience of section lawyers as well as their particularized knowledge to support the complex operations of the City.

LITIGATION

Inverse Condemnation

On behalf of City Light (SCL) and Seattle Public Utilities (SPU), CAO successfully defended against a claim by land developers that SPU owed them hundreds of thousands of dollars because the land they purchased contained underground utility lines. The land had been acquired by the Washington State Department of Transportation for the I-90 widening project in the 1980s. When WSDOT sold the property in 2005, it failed to disclose to the purchasers the existence of the City's utility lines. The court found in favor of the City, allowing it to maintain the utility lines on the property, and denied all of the plaintiffs' claims for damages. The case is on appeal.

SPU Beacon/Myrtle Litigation

To assure a safe drinking water supply, SPU initiated a program of covering its reservoirs. The contracts called for the covers to be waterproof. Soon after completion of two of the reservoirs, it was determined that their covers were not waterproof. The City initiated a lawsuit against the designers, contractors, subcontractors and insurers on the projects, and successfully negotiated settlements to cover the cost of repairing the reservoir covers.

West Seattle, Myrtle, Maple Leaf Reservoir Construction/Design Defects

Two of SPU's reservoirs developed leaks from the containment basins, while a third reservoir that is presently under construction developed significant concrete cracking. Section attorneys helped SPU organize and manage investigation of the problems, and furnished legal advice on potential claim and contract issues.

Woodland Park Zoo elephant case

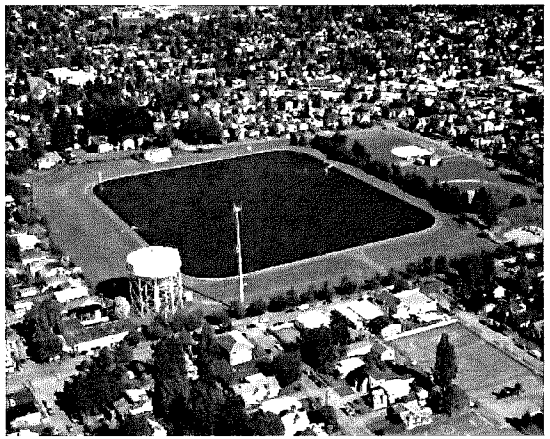
A taxpayer lawsuit sought to enjoin the City from continuing to make contractual payments to Woodland Park Zoo for managing and operating the zoo. The complaint alleged that the zoo's care of its elephants violated state and local animal cruelty laws, and that the City's funding of the zoo amounted to an illegal expenditure of government funds. The allegations were dismissed, and the lawsuit is on appeal from the Superior Court.

Traffic Safety Camera Litigation

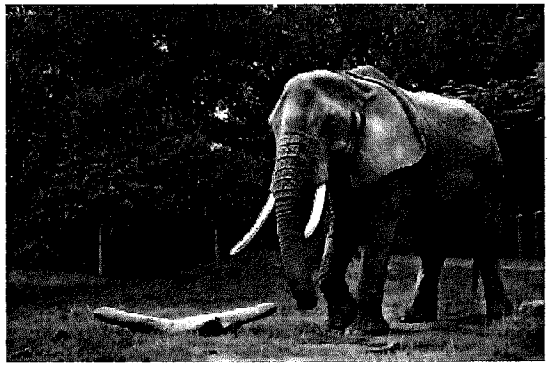
The 9th Circuit Court of Appeals affirmed the dismissal of a class-action lawsuit challenging various aspects of traffic safety camera enforcement by cities in the state. Other state legal challenges to Seattle's traffic safety camera program were also defeated.

Building 11 at Magnuson Park

The development of Building 11 at Magnuson Park spawned a lawsuit by the developers upset with the City Council's requirements as part of amendments to their contract. The Contracts and Utilities Section is defending that lawsuit.



Maple Leaf Reservoir. City of Seattle Photo Archives.



Female African elephant Watoto is shown in Woodland Park Zoo's Elephant Forest. Photo credit: Ryan Hawk, Woodland Park Zoo

2000-2001 West Coast Energy Crisis Refunds
Although the energy crisis of 2000-2001 is more than a decade past, litigation continues over its causes and effects. Our attorneys continue to represent City Light in the appeal of Federal Energy Regulatory Commission's denial of refunds to City Light and others for energy purchases at inflated prices during that time. City Light's claims currently exceed $100 million.

Oregon Tax
City Light challenged the Oregon law removing the City's municipal exemption from certain property taxes in Oregon; the case is pending.

Bonneville Power Administration
Section attorneys have represented City Light in several 9th Circuit Court petitions arising out of the Bonneville Power Administration's (BPA) Residential Exchange Program and related power rate decisions that have unfairly affected City Light. In 2011, a majority of parties to the consolidated 9th Circuit petitions reached a settlement resulting in BPA issuing a Final Record of Decision for the REP-12 case in July. The REP-12 Record of Decision is now subject to multiple petitions for review in the 9th Circuit.

PROJECTS AND CONTRACTS

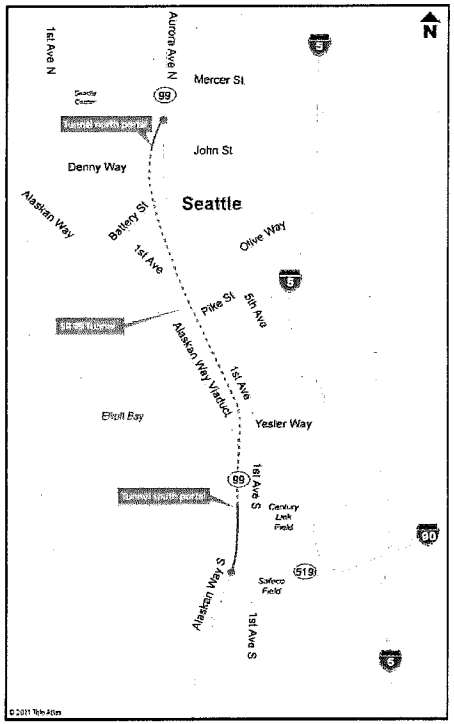
Power and Renewable Energy Credit purchases
Legal issues continue related to the purchase and sale of energy, renewable energy credits and transmission, including counterparty credit issues requiring CAO advice.

Integration and Exchange Agreement
In 2011, City attorneys advised City Light on a 10-year agreement for integration and exchange of energy services relating to its purchase of output from the Stateline Wind Project in Walla Walla County, Washington and Umatilla County, Oregon.

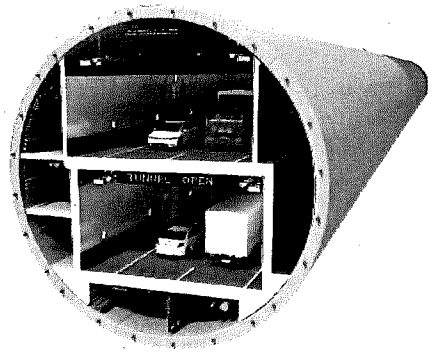
Alaskan Way Viaduct/Bored Tunnel
Section attorneys participated in the Civil Division's cross-specialty attorney team, helping to negotiate and prepare agreements between the City and the state related to the Alaskan Way Viaduct Replacement Project. The three agreements, which the City Council finalized and approved in 2011, addressed the parties' responsibilities for utility relocation, deep bore tunnel work, and deformation mitigation, among many other issues. Advice is ongoing as the project proceeds.

Central Waterfront – City Light Transmission Line Relocations
The City's Central Waterfront Project requires City Light to relocate two large transmission lines. The complex relocation work began in late 2011. In preparation, City attorneys advised on the timing and coordination with state transportation projects, and assisted with interdepartmental agreements and cost allocation, among many issues.

City Light Appeals of State Department of Labor & Industries Citations
Section attorneys negotiated the settlement of three appeals by City Light involving eight L&I citations.



SR-99 tunnel map. Source: wsdot.wa.gov



SR-99 tunnel cross section. Source: wsdot.wa.gov.

The Children's Museum Lease
The Children's Museum entered into a new 10-year lease with the Seattle Center, which commenced Jan. 1, 2012. City attorneys drafted many provisions of the new lease, advised clients about legal issues, and assisted in the negotiations. The new lease resolved outstanding debts to the City concerning overdue rental payments.

Boundary Dam Hydraulic Turbine Runners
City attorneys assisted City Light in negotiating and collecting more than $1 million in liquidated damages when the test turbine runner units for Generators 55 and 56 at Boundary Dam failed to meet performance specifications. The contract, which was written with the help of City attorneys, contained a strong liquidated damages provision.

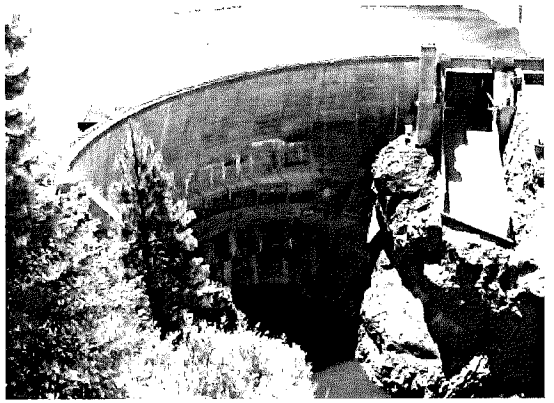
SPU Combined Sewer Overflow (CSO) Project
The CSO Project has an estimated cost of $750 million and is projected to take more than 15 years to complete. The project will construct several facilities to capture and manage storm water runoff during significant storm events. City attorneys provide advice related to facility siting and project procurement decisions and serve on the CSO steering committee. Construction of the first project (Windermere) will begin in the first quarter of 2012 with an estimated total construction cost exceeding $30 million. City attorneys have also provided advice and assistance for the Genesee CSO project (which has an estimated cost of more than $20 million), including the selection of the General Contractor/ Construction Manager (GC/CM) and drafting of contract documents. The Henderson drainage basin CSO is also approaching GC/CM selection.

South Recycling and Disposal Station
SPU's construction of this new transfer and recycling station commenced in November 2010. The project delivery approach is design-build, a method in which a contractor/design team is hired before significant design work. During 2011 City attorneys assisted SPU in resolving a complex dispute with the design-build contractor and provided project advice and claims management.

North Recycling and Disposal Station
The existing SPU North Recycling and Transfer Station will be demolished and a new state-of-the-art facility will be constructed on the site. The project was originally going to employ design-build as the project delivery method, with design-build contractor selection scheduled to occur in the last quarter of 2011. City attorneys played a crucial role in helping SPU change the project to a GC/CM procurement method, while remaining close to the original schedule. SPU plans to select a GC/CM in the first quarter of 2012.

Landsburg Facilities and Chlorination Project
City attorneys provide legal advice and other support to SPU for the Landsburg Facilities and Chlorination Project. This $10.1 million project will replace existing water quality and fish operations facilities on the Cedar River with a new hyperchlorite system, and new fish operations, security and

Children's Museum at Seattle Center. Photo: seattle.findsell.com


Boundary Dam. Photo: Seattle City Photo Archives.

control facilities. The existing facilities will remain in operation and the contractor will have to schedule work around an uncertain "fish window." The GC/CM method was selected because of significant project site constraints, a complex and technical work environment, as well as complex coordination, phasing and scheduling issues.

Mercer Corridor Project

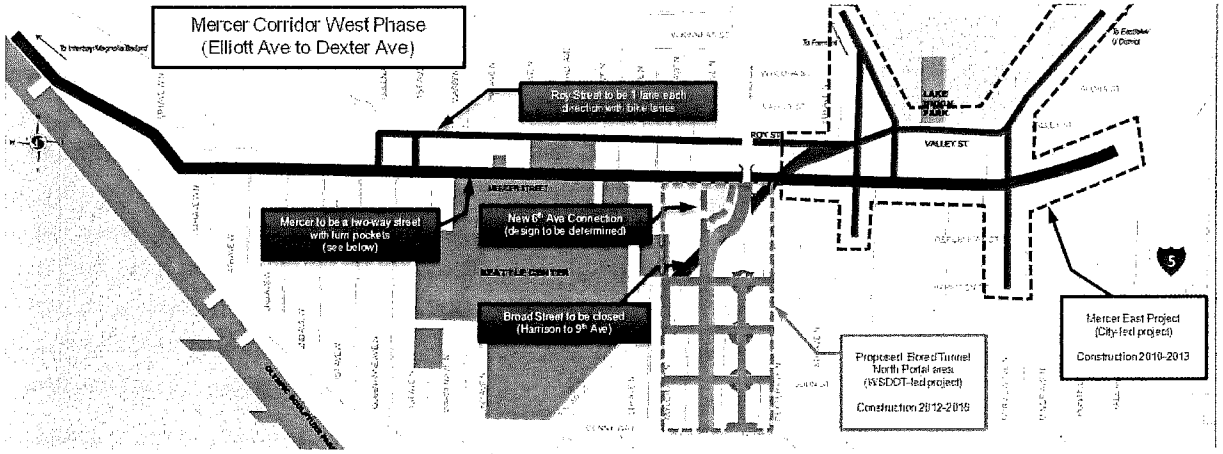
The Mercer Corridor Project is a Seattle Department of Transportation (SDOT) project consisting of eastern and western segments. At present, the eastern portion is under construction at an estimated cost of $62 million. The western section is in design and right-of-way acquisition. City attorneys advise on numerous aspects of this project, including construction, utilities relocation and undergrounding, and interim property use rights. The western segment will include integral parts of the Alaskan Way Viaduct Replacement Project.

Emergency Management

City attorneys support emergency management, including the training and coordination of Law Department Emergency Responders; drafting of documents to be used in an emergency, including emergency proclamations and orders, and by appearing at activations of the City's Emergency Operations Center on 5th Avenue south of City Hall.

Seventh Avenue South Pump Station

SPU plans to construct a flood control pump station in what is presently street right-of-way along the Duwamish River. City attorneys have been providing advice and guidance to the project team in pursuing a street-vacation and obtaining a necessary agreement from an abutting property owner.



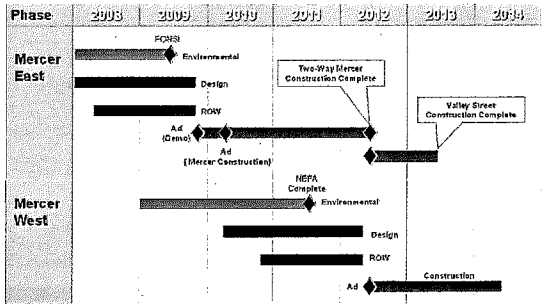
Mercer Corridor Project

Pro-Parks Levy

Seattle voters extended the Pro-Parks Levy, enabling the City to leverage funds to purchase property to develop neighborhood parks in underserved areas. City lawyers advised on purchase agreements and strategies as well as condemnation representation.

Women and Minorities (WMBE) Public Works Program

City lawyers provided legal advice, analysis and drafting of the new WMBE Inclusion Plan for public works projects. The revision of the WMBE inclusion goals promotes the City's RSJI goals by assuring that contractors are using their best efforts to reach out to WMBE subcontractors when doing construction projects for the City.



Mercer Corridor Project. Images: seattle.gov/transportation/mercercorridor

Department of Justice ADA Audit
A cross-section team of attorneys worked with City departments in 2011 to respond to an audit of City program and facilities by the Project Civic Access arm of the Department of Justice. Negotiations with the Department of Justice are ongoing.

1961 Basic Agreement
City attorneys provided advice, negotiation and drafting to complete transfers of certain property to King County previously agreed to by the City in the 1961 agreement with METRO, King County's predecessor, as well as advice on King County's utility rights on City property, including City street right-of-ways.

Side Sewer Code Enforcement
Section attorneys advised SPU on enforcing the City's Side Sewer Code, including issuance of Notices of Violation and Director's Orders, related to compliance with the federal Clean Water Act.

Greenhouse Gas (GHG) Offset Contracts
City Light continues to receive advice related to purchase of GHG Offsets, or carbon credits, to reduce the utility's overall carbon footprint.

Real Property
City attorneys gave advice on purchases, dispositions, and leases of real property related to utility operations, and land management. Such projects include:

A new 20-year lease by The Boeing Co. of the former Georgetown Steam Plant flume property, as well as advice on City Light's grant of an easement to Boeing to construct an underground drainage pipe related to its storm water treatment facility at North Boeing Field to protect the Slip 4 Superfund cleanup site from recontamination.

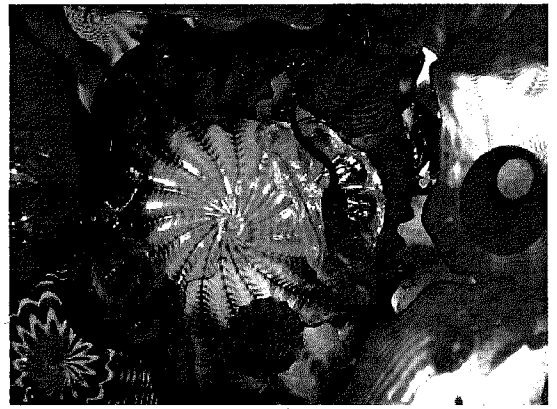
City Light's purchase of fish and wildlife habitat conservation properties in the Skagit, Sauk and Nooksack river floodplains as part of FERC license mitigation requirements and to reduce potential Endangered Species Act liability.

City Light's pilot program for sales of numerous surplus utility properties, including developing authorizing legislation for such a program from the City Council.

Franchise Issues
City attorneys provide advice and contract negotiations for SPU's franchises with other jurisdictions, including utility tax issues, and design and construction to relocate electric utility infrastructure required under City Light's franchise with the City of Burien.

Seattle Center Revitalization Leases
Seattle Center revitalization efforts required legal assistance including the negotiating and drafting two long-term lease agreements: 1) an agreement with Center Art, LLC for the development of a Chihuly Museum at the former Fun Forest site and 2) an agreement with KEXP radio station for the Northwest rooms. Both tenants will bring significant investment to the Seattle Center.

King Street Station
City attorneys assisted SDOT with construction issues, Amtrak lease negotiations, and negotiating and finalizing a grant agreement that



Dale Chihuly installation titled "Persian Ceiling" at the DeYoung Museum in San Francisco, 2008. Photo Credit: Wikimedia Commons.

provides more than $19 million in grant money for renovations to the King Street Station.

Families and Education Levy
City attorneys provided advice and support to the Office of Education as it develops new contract forms and procedures for implementing the voter-approved Families and Education Levy, which allows the City to collect and invest up to $231 million in educational services.

Mayor's Broadband Initiative
City attorneys worked with multiple departments to provide advice and support regarding the Mayor's goal to improve and expand high-speed internet services to Seattle businesses and residents. The work included providing legal advice and strategy, and the development of a contract with Comcast that will facilitate better service in the Pioneer Square area, as well as work with the Department of Information Technology to develop proposed legislation that will allow the City to lease excess fiber and infrastructure to third parties.

State Route 519 Project
The City continues to negotiate agreements with the State for the transfer of infrastructure improvements and real property to the City with the help of the City's contract attorneys.

King County Jail Agreement
City attorneys provided legal advice, participated in negotiations, and assisted with drafting a long-term agreement with King County to house City inmates. The new agreement will run from 2012 through 2030, and it will not only provide stability for the City's jail needs, but will do so at substantial savings over the previous contract amounting to $4.3 million annually.

Cable Television Franchise Transfer from Broadstripe to Wave
The transfer of Broadstripe's cable television franchise to Wave on terms favorable to the City was facilitated by City attorneys' legal advice, negotiations and assistance with drafting agreements and legislation.

Cascade Water Alliance
City attorneys provided advice and assistance in negotiation of a potential extension of the declining block water supply contract to Cascade Water Alliance.

Port of Seattle
With the help of its attorneys, the City completed utility-related agreements and real estate transactions involving Port of Seattle requests for street vacations at Terminals 25 and 105. Attorneys continue to provide advice, negotiation and drafting to resolve the remaining requests for street vacations at Terminals 5 and 18, where SPU has major utility infrastructure, as well as other related agreements with the Port.

Sound Transit
City attorneys provided advice and assistance in negotiation and drafting of real property exchanges related to Sound Transit's Central Link project.

Energy Delivery
City Light requires advice on compliance with the mandatory reliability standards implemented

Families $ Education Levy Logo. Courtesy of WinPower Strategies.

by the North American Electric Reliability Corp. and enforced by the Western Electricity Coordinating Council. City attorneys also negotiated settlements with the Western Electricity Coordinating Council of self-reported violations that resulted in notices of alleged violations.

Puget Sound Area Interconnection Agreement
City attorneys advised City Light on an agreement with Puget Sound Energy and BPA regarding the construction of several system projects designed to reduce congestion.

EMPLOYMENT

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

Advice
We have an employee who wants to telecommute as an accommodation for a disability—what should we do? The union has asked us to withdraw a disciplinary recommendation—what are our chances if they take the matter to arbitration? An employee believes he is being harassed—should we call in an investigator, and who should it be? Can we change our work shifts so that we can cause fewer disruptions for the public? Is it legal to require Seattle employers to provide sick leave to their employees?

As the eight employment attorneys work with human resources professionals, managers and department directors, they continually strive to provide legal advice that allows City operations to proceed efficiently and fairly. The Employment Section attorneys monitor developments in diverse aspects of employment and labor law. With a collaborative approach within the section, the attorneys take advantage of a deep well of expertise on such topics as the Americans with Disabilities Act, the Washington Law Against Discrimination, wage and hour laws, personnel rules, and the Washington and U.S. constitutions.

As a general rule, managers in the City are dedicated, conscientious public servants who face difficult challenges in navigating restrictions posed by contracts, rules, policies and changing laws. Employment attorneys often serve as trusted advisors over the long term. For example, during 2011, one attorney conducted a management review for a client, drawing upon lessons learned from arbitration cases over the past 10 years. Another provided assistance when a department's employees were accused of failing to exercise their oversight responsibilities regarding City contracts. The attorney provided balanced advice that recognizes employee interests in due process as well as departmental interests in preventing and redressing improper use of City funds and other resources.

Litigation
Employment disputes sometimes lead to litigation, and the section attorneys continue to represent the City in federal and state courts—from the initial response to lawsuits, through extensive discovery, in motion practice, through trial, and all appeals. The attorneys provide services in administrative forums, including the Public Employment Relations Commission, both of Seattle's Civil Service Commissions, in arbitration, and in any other arena that employees or unions might press their claims. A few examples:

Police Officer v. Seattle Police Department
A discipline case from the Seattle Police Department provides a good example of the section's work—from beginning to end—in litigation. SPD received information that a police officer took a polygraph examination when he applied for a job with another law enforcement agency. When the officer admitted lying in an internal SPD report, he passed the other agency's polygraph. He did not get the job, however, and SPD initiated an investigation. In the end, SPD terminated the officer for dishonesty.

The officer appealed his termination to Seattle's Public Safety Civil Service Commission, which has jurisdiction to hear appeals regarding discipline of police officers and firefighters. The section represented the department in a lengthy, adversarial hearing. This involved prehearing discovery, preparation of witnesses, and motions. Attorneys presented witnesses for the City, cross-examined the police officer's witnesses, and prepared post-hearing briefing. In subsequent appeals and related proceedings, section attorneys prepared at least six briefs and presented five oral arguments.

The Washington Court of Appeals eventually upheld the termination, and the case has been returned to the PSCSC. Two and a half years later, the case nears a conclusion. The section's lawyers, paralegals and legal assistants have devoted significant time, effort, and tenacity, seeking to uphold SPD's interest.

Seattle Fire Department v. IAFF Local 2898

Local 2898 of the International Association of Fire Fighters represents battalion chiefs and deputy chiefs. In preparation for an arbitration hearing, an assistant city attorney interviewed two deputy chiefs regarding the facts of the case. The union filed an Unfair Labor Practice Complaint, asserting that any interviews must be voluntary, not mandatory, and in the presence of union officials. The case, once again, followed a lengthy and twisted path.

Following an evidentiary hearing, a PERC hearing examiner ruled in favor of the City. The full PERC reversed, and the City appealed. Employment Section attorneys obtained reversal of PERC in Superior Court. The Court of Appeals affirmed, and the Washington Supreme Court declined to review. The resolution of the case—allowing public employers to interview employees privately—is important for all public entities in Washington.

Employment discipline

Of course, not every case involves important legal issues or takes several years to complete. In one disciplinary hearing, the employment attorney persuaded an arbitrator to uphold a one-day suspension for an employee who had forwarded a YouTube link that included racially insensitive and offensive material. Pursuant to the department's policy, the disciplined employee was also precluded from consideration for promotions (permanent or temporary) for one year.

Significantly, the arbitrator recognized a right to set standards of conduct based on the City's Race and Social Justice Initiative. In fact, the arbitrator specifically noted that the City has given "extensive emphasis . . . on preventing racial, ethnic and religious slights, insults, and derogatory references" as a factor in determining that the discipline was appropriate.

Alternative Dispute Resolution

Employment attorneys fully recognize the significant value in alternative dispute resolution, which can lead to results acceptable to both the employees and management. They are thus frequently engaged in mediation efforts, both prior to and during litigation. For example, two attorneys who represented the City in a lawsuit by a contractor worked for years as the case proceeded in federal court and on to the 9th Circuit Court of Appeals. The case implicated novel and difficult questions of law. Through extensive mediation, the case was resolved on favorable terms.

Before litigation, section attorneys helped a department negotiate a settlement with an employee who had raised whistleblower retaliation, discrimination and other claims. For a modest amount, they obtained an agreement

Seattle Fire Department containing a house fire, 2011. Photo from seattle.gov/fire/photoGallery/structureFires. Photo by John Odegard.

that resolved the employee's and department's issues. This type of resolution can aid both the employee and management as they seek the best way to move forward after conflict.

Training

Employment attorneys had increasing opportunity in 2011 to lead and assist with training for other City employees. Two section attorneys conducted a multi-session training program for more than 50 City human resources representatives regarding the Americans with Disabilities Act. The section also assisted the City investigator as she presented multiple sessions regarding best practices for internal investigations.

ENVIRONMENTAL PROTECTION

Attorneys in the Environmental Protection Section advise and represent the City in the complex area of environmental protection. Many City functions have environmental impacts from drainage to construction. These attorneys assist departments complying with state and federal laws and negotiate with businesses and others over apportioning clean-up costs. Their work in 2011 included:

Slip 4

In 2011, dredging began to clean up Slip 4 of the Duwamish River, culminating a decade of work by City attorneys with other City staff to clean up this environmental hot spot. The Boeing Co. is paying for two-thirds of the roughly $8 million cleanup costs due to a 2009 settlement of a lawsuit brought by the City. For many years, City attorneys have helped navigate regulatory requirements, negotiate agreements with adjacent landowners, and resolve liability for the contamination around Slip 4.

Lower Duwamish

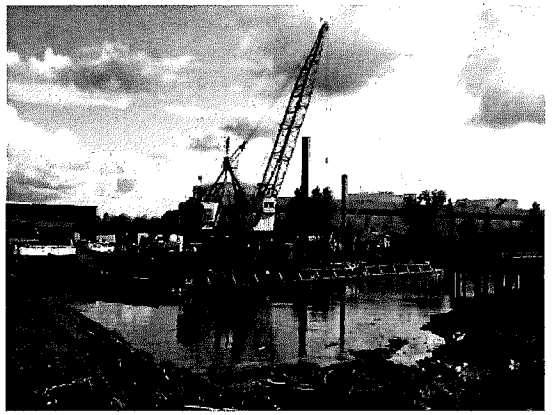
The gateway to Seattle's industrial heart is through the Duwamish River. While industry has fueled Seattle's economy over the past 100 years, it has also polluted the river. In 2011, City attorneys continued work with department staff to determine how contamination in the river sediments should be addressed and how to prevent further contamination through current discharges into the river. Looming in the background of these questions is the additional issue of who will pay the costs of cleaning up the river, currently estimated to be in the range of $350 million.

Seawall

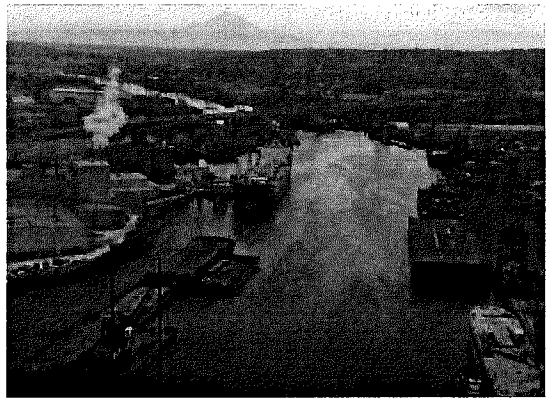
A tangle of legal issues must be unraveled before the seawall along Seattle's central waterfront can be replaced. Initially constructed in 1934, the seawall has deteriorated and is no longer structurally sound. Instead of the current straight vertical wall, the new structure will include benches to create habitat for marine critters. City attorneys are working with staff to move the project forward expeditiously while making sure the environmental issues are thoroughly addressed.

Environmental Compliance Issues

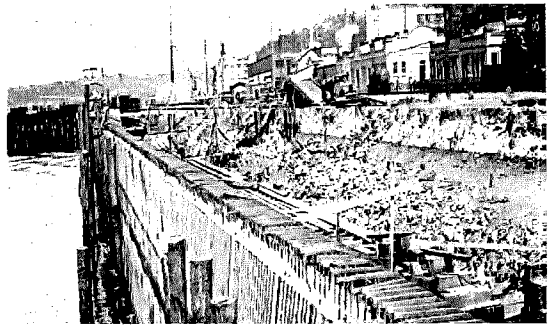
The City must comply with state and federal environmental regulations that apply to many City operations, including provision of drinking



Slip 4 of the Duwamish River. Photo Credit: City of Seattle



Mouth of the Duwamish River. Photo Credit: Seattle Municipal Archives Photograph Collection



Seawall being constructed in 1934.. Photo Credit: Seattle Municipal Archives Photograph Collection.

water to more than a million people, hydroelectric dams that generate much of the state's electricity, a maze of pipes that collect and carry storm water, and urban parks where contamination is sometimes discovered. City attorneys are on the front lines advising department staff how to comply with these regulations. Attorneys also help the departments identify creative solutions that resolve environmental problems while providing additional public benefits.

Cedar River Hatchery
Environmental attorneys worked on the interdisciplinary team that assisted the City in completing a new hatchery for sockeye salmon in the Cedar River watershed. City attorneys ably defended the project during years of litigation by hatchery opponents. Thanks to creative legal strategies by the City's attorneys, the project finally moved forward.

GOVERNMENT AFFAIRS

The 10 attorneys in the Government Affairs Section work on a wide variety of legal matters related to the City's governmental and enforcement powers. Below is a sampling of some of their work in 2011.

Public Safety
DOJ Pattern or Practice Investigation: In March 2011 the Civil Rights Division of the Department of Justice announced it was launching a "pattern or practice" investigation of SPD. City attorneys represented the department in this matter and coordinated the production of more than 200,000 pages of documents. DOJ issued its finding in December 2011 and City attorneys will be negotiating a settlement agreement over the next several months or face a federal lawsuit.

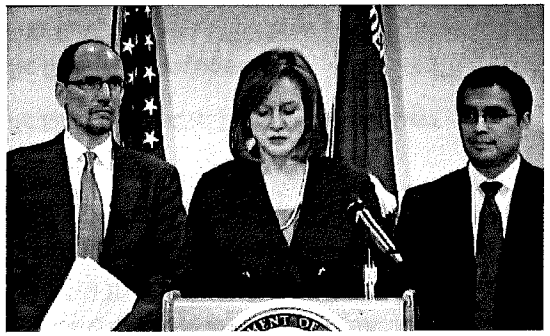
Occupy Seattle Protests: From October to December 2011, Occupy Seattle protesters staged various rallies and occupations around the City, including Westlake Park, City Hall, Seattle Central Community College, the Port of Seattle and private property. City attorneys advised SPD on enforcement strategies and assisted City departments with permitting and code enforcement issues.

Nightlife: City attorneys are members of the City's Code Compliance Team that monitors and regulates liquor establishments. When objections to liquor licenses are made, City attorneys represent the City before the Washington State Liquor Control Board and in the subsequent appeals process. City attorneys also advise the Mayor's Office on the development of an extended hours proposal.

Taxes

Westmount Financial
The City's ability to scrutinize related-party transactions to determine whether they reflect market value for purposes of taxation was upheld in this case. The Hearing Examiner affirmed that a subsidiary's receipt of more than $5 million from a parent company to cover operating expenses was not an arm's length transaction and was taxable as gross income.

New Building at the Cedar River sockeye hatchery.. Photo: City of Seattle.



Department of Justice press conference with Assistant Attorney General Thomas Perez, U.S. Attorney Jenny Durkan, and J. Michael Diaz

Classmates Online
Gross receipts taxes are apportioned to the City of Seattle based on two factors: (1) payroll; and (2) income producing activity, which is the total income of the taxpayer in the City during the tax period. The City is required to employ this two-factor apportionment scheme under state law, even though the state uses a different formula. The legitimacy of the City's two-factor formula was tested and upheld in this case, when the Hearing Examiner agreed that the vast majority of the taxpayer's payroll and costs of performance were incurred in Seattle, not on out-of-state servers or widespread locations where customers logged onto a social networking site. Although the state apportioned taxpayer's gross income differently, the City's two-factor apportionment scheme was upheld.

Getty Images (Seattle) LLP
The taxpayer appealed a tax assessment of $1,552,000. The Superior Court and the Court of Appeals ruled in favor of the City. Getty has appealed to the Washington Supreme Court.

City Light v. Washington Department of Revenue
City Light was awarded a state sales/use tax refund of $1.7 million that the Washington Department of Revenue had assessed for the installation of custom software in City Light's computer system, used to run both utility operations as well as its ratepayer account and billing system. The ruling held that 1) the purchase of services to customize pre-written software is exempt from the sales/use tax, and 2) to be awarded the exemption, complex City contracts containing both taxable and tax-exempt items need not be "bifurcated" as long as City can identify the tax-exempt items.

Referendums and Initiatives

City of Seattle v. Seattle Citizens Against The Tunnel
The initiative sought a vote to prohibit the construction, operation or use of City of Seattle right-of-way(s) or City-owned property for a tunnel replacing that portion of State Route 99 commonly known as the Alaskan Way Viaduct. The City asked the Superior Court to determine whether the initiative was beyond the scope of the initiative power. The City prevailed at the trial court, and the Washington Supreme Court declined review.

Washington State Department of Transportation vs. Protect Seattle Now
In early 2011, the City Council passed an ordinance that accepted on behalf of the City three agreements offered by the state Department of Transportation related to preliminary work on the Alaskan Way Viaduct Replacement Project. The ordinance also provided these agreements could be finally approved by the City Council after the final environmental impact statement was completed. A referendum petition was filed seeking a vote on whether the ordinance should become law. The City asked a court to determine whether the referendum was lawful. King County Superior Court Judge Laura Middaugh held that only the provision related to future action by the City Council to continue the agreements was subject to referendum. A referendum vote was held on Aug. 16, 2011 and this provision was approved by the voters.

In Re Recall of Council President
Several pro-tunnel activists filed a petition to recall Richard Conlin for his position in support of replacing the Alaskan Way Viaduct. The City Attorney's Office successfully defended Conlin. The Superior Court denied the recall petition and concluded that it lacked both factual and legal sufficiency to proceed.

Public Disclosure and Constitutional Law

Public Records Requests
In 2011, CAO handled 108 Law Department Public Records Act requests mostly related to civil and criminal matters pending in the office. 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.

Sargent v. Seattle
This case involved multiple issues, including the fundamental questions of (1) whether an open and active criminal investigative file is subject to disclosure; and (2) whether an agency is required to keep a request "open" and "pending." The Court of Appeals reiterated prior case law holding that open and active criminal investigative files are not subject to disclosure and that an agency is not required to keep a request pending

while the investigation is still open. This holding relieved the City and other public agencies of the significant burden of maintaining a records request as pending, and requiring that some portions of open and active criminal investigative files be disclosed.

Arnold v. City of Seattle
The City successfully defended a third-party lawsuit brought by the subject of a misconduct investigation. The individual sought to stop release of the records, arguing that the investigation had not been completed because disciplinary action against the individual had been recommended but the pre-disciplinary hearing had not occurred. The Superior Court held that the City correctly interpreted the PRA's obligation to release the records.

Helton v. SPD
The City is defending SPD's initial denial of a public records request based on privacy and essential to effective law enforcement exemptions. Through the course of litigation, SPD eventually disclosed the records as a result of a new Supreme Court decision. The Superior Court awarded $45 per day in penalties, which are on appeal. The court also ordered approximately $130,000 in attorney's fees based upon block-billed entries.

Training
Government Affairs Section lawyers provided multiple training sessions on Public Records Act compliance to Public Disclosure Officers from all City departments. Topics included basic response procedures, recent court interpretations of public records disclosure law, and applicable City policies. The Section also continued publishing periodic *Public Disclosure Officer's Newsletter* to provide clients citywide with up-to-date information on how to respond to public records requests.

ATL v. City
The U.S. District Court for the Western District of Washington held that Seattle's 120-day time limit to process an application for a multiple use permit under the City's Land Use Code is constitutional when applied to an application for permission to operate a strip club. The court ruled that the First Amendment does not give strip clubs priority over other building or land use applications and that the 120-day limit, which is mandated by state law and designed to streamline the multi-faceted building/land use permit process, is reasonable for First Amendment purposes.

Seattle Music & Film Commission & Sea-Tac International Airport
The City Attorney's Office provided advice and counsel to the Seattle Music & Film Commission in entering into an agreement with the Sea-Tac Airport to provide local music content at the airport. Attorneys negotiated contracts with the airport and a third-party vendor. The airport will air music and videos from local artists on its overhead stereos, televisions and website.

Collections
In response to the unprecedented number of referrals received in 2010, the section adjusted its referral policies and procedures to bring them in line with staffing restraints. As a result, the section opened 62 collection files, two project files and collected $753,732.37 in 2011. Some examples of successful collection efforts in larger cases are:

900 Fourth Ave.
This case involved damage to City Light electrical facilities that occurred when a vault inside a building flooded through a shared drain. A settlement was reached prior to the filing of the lawsuit and the City received $66,000. The amount represents the highest single case recovery in 2011. City Light filled the drain to prevent future flooding.

600 Wall St. Development
This case involved unpaid Department of Planning and Development charges related to a building that was never constructed. After the City sued, the parties entered into a settlement agreement that requires the responsible party to pay the City in excess of $53,000 over the next 16 months. The settlement also contains provisions that adequately protect the City in case of default.

LAND USE

The Land Use Section supports 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 finance transactions.

Because land use law permeates so much of the City's activities, the Land Use Section works with elected officials and a wide range of departments, with DPD, SDOT, Neighborhoods, and Parks being among the most active. The Land Use 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

Davis. Secured a permanent injunction from the King County Superior Court halting operation of Jiggles, the University District strip club, and continues to defend against the subsequent appeal.

Salmon Bay Sand & Gravel. Before the Hearing Examiner and in Superior Court and the Court of Appeals, successfully defended the City's SEPA review related to the Burke-Gilman Trail "missing link" project.

Strickland. After securing victories in the Western District of Washington and the 9th Circuit Court of Appeals, successfully opposed a petition for review to the U.S. Supreme Court in a suit claiming 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.

Fremont Neighborhood Council. Successfully defended in the Washington Court of Appeals against a challenge to SPU's decision that an environmental impact statement was not required for its proposed reconstruction of the North Transfer Station in Wallingford. By working with the plaintiffs to craft a set of enhancements for the project, SPU ultimately resolved the dispute without the need for further litigation.

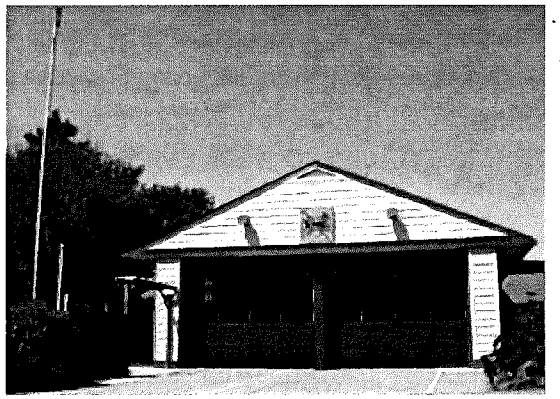
Ballard Preservation Association and Jackson Place Alliance for Equity. In separate matters, defended DPD against LUPA petitions challenging the issuance of interpretations and building permits to construct a "housing first" facility in Ballard and a crisis diversion facility in the Atlantic neighborhood.

Save the Trees. Defended the City against a LUPA petition that asserted that the City failed to exercise its discretionary SEPA substantive authority by failing to prevent the Seattle School District from felling any trees in a grove on the grounds of Ingraham High School.

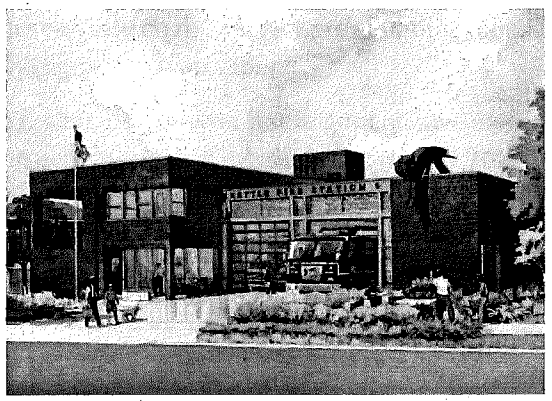
Johnson. Defended LUPA petitions challenging the City's issuance of citations for parking more than three inoperable vehicles on petitioner's residential lot. Prevailed on a motion to dismiss for lack of jurisdiction.

Litigation in administrative tribunals

In re Fire Station No. 9. In response to motions to dismiss Hearing Examiner challenges to the SEPA determination of nonsignificance for the



Old Seattle Station 9, Fremont. Photo from seattle.gov/fleetsfacilities



New Seattle Station 9, Fremont. Image from seattle.gov/fleetsfacilities. Rendering by Mike Kowalski.

redevelopment of Fire Station No. 9 in Fremont, the petitioners dismissed their own appeal.

Tooley. Secured dismissal of two successive appeals to the Growth Management Hearings Board that challenged various aspects of the Alaskan Way Viaduct Replacement Project.

First Student. Obtained summary judgment against a school bus company that appealed to the Hearing Examiner SPU's decision to pay all of the relocation expenses claimed by the company.

Enforcement actions

Enforcement matters involve a specialized type of litigation that usually begins in Seattle Municipal Court. The three Land Use Section attorneys who currently handle an enforcement docket advise the Section's primary enforcement client, DPD, regarding code enforcement issues, review and file enforcement actions, coordinate settlement negotiations, conduct trials, and defend appeals in Superior Court and beyond.

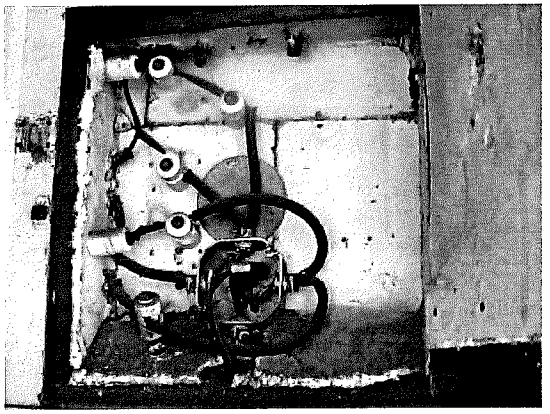
In 2011, the section reviewed roughly 115 cases referred by DPD for possible action, and filed 71 actions. The section won judgments in excess of $2.6 million and approximately 15 abatement orders. Because DPD places a premium on bringing property into compliance, most judgments are settled for compliance and a greatly reduced payment. In 2011, the section collected roughly $160,000. The following are examples of some of the issues addressed in the section's high-volume enforcement practice:

- unpermitted uses and structures within Lake Union;
- unpermitted structures encroaching on parks property;
- structures built improperly on a steep slope;
- drug-nuisance property left unsecured and posing hazards to the neighborhood;
- junk storage and unpermitted construction in a residential zone;
- additional dwelling units created in violation of housing and land use codes; and
- construction of over-water and roof-top decks without permits on the Lake Washington shoreline.

Enforcement appeals

Appeals of City enforcement judgments have the potential to set precedent that could affect the ability of Washington cities to enforce their land use laws. Three appeals in 2011 are noted, all of which involve the notorious Roosevelt area landlord Hugh Sisley:

- Secured a published decision from the Washington Court Appeals rejecting Sisley's contention that the Municipal Court may impose not penalties greater than $75,000.
- Convinced the Washington Supreme Court to deny Sisley's motion for discretionary review in another case, letting stand rulings that the challenged inspections were lawful, separate penalties can be assessed for separate areas within a building, and the judge did not violate



Code violation at Sisley property. Photo Credit: City of Seattle.

the appearance of fairness doctrine.

- Won a ruling from the Superior Court affirming penalties for violating the City's emergency relocation assistance ordinance and holding that the assistance program provides adequate due process protections.

Ordinances

At least half of the Seattle Municipal Code comprises land, street, and park use regulations. The section reviews all amendments to these code sections. The section remains the primary point of contact for work on building and maintaining the Code Drafting Manual and conducting training on its use. Ordinances reviewed by the Land Use Section in 2011 dealt with a number of topics, including: shoreline regulation; essential public facilities; encroachments on parks property; citywide and neighborhood-specific design review guidelines; sign regulation; rights-of-way (tree permits, dedications, term permits, street vacations, vending, and "festival streets"); historic preservation; incentive zoning; site-specific and area-wide rezoning, including station area rezoning; and unit lot subdivisions.

Transactions

The following are examples of some of the section's projects supporting the City as the owner of property and a funder of low-income housing projects:

Multiple financing projects for the Office of Housing, including: Gesthemane (Dekko); Columbia City Station; 12th and Jefferson; McKinney Manor; Sunset House; and Rose Street Housing.

Low Income Elderly and Handicapped Housing. Negotiated an agreement with Seattle Housing Authority to authorize property transfers.

2008 Parks Levy acquisitions. Acquired developed commercial property that will be redeveloped for parks as more funding becomes available.

Ship Canal Trail. Capped years of efforts with the successful opening of the trail.

Burke-Gilman Trail. Resolved title issues.

Smith Cove. Negotiated letter of intent with King County and the Port of Seattle that will serve the county's needs while allowing future acquisition for park purposes.

TORTS

The dozen attorneys in the Torts Section handle the defense of tort lawsuits against the City. They opened 98 cases and 36 project files in 2011. The section also engages in an extensive and wide-ranging advisory practice, which focuses on loss prevention and litigation avoidance.

Risk Management

The section has provided legal support for risk management activities in operating departments such as the Seattle Public Utilities, Seattle Department of Transportation, Seattle Police Department, Seattle City Light, the Human Services Department and the Seattle Center. The section's attorneys have provided legal support

Ship Canal Trail. Photographer: Erik Stuhaug, Seattle Municipal Archives Photograph Collection

Sunset over Smith Cove and Elliott Bay. Photo Credit: Seattle Municipal Archives Photograph Collection

regarding a host of incidents, exposures, programs and opportunities. They have also provided direct training to operating departments on risk management techniques and approaches.

Personal Injury and Property Damage Litigation

In 2011, the section's cases ranged from allegations of wrongful death and catastrophic brain damage cases to minor personal injuries and property damage cases. The underlying facts include allegations of injuries resulting from negligent road design, injuries from contact with high-voltage power lines, sidewalk trip and falls, and automobile accidents and excessive use of force by police officers. Property damage cases include allegations of surface water flooding, sewer backups and landslides. No torts cases (other than police action cases discussed below) were tried to a jury during 2011.

Dismissals and settlements

The section obtained dismissals and favorable settlements in numerous cases, including:

Estate of John T. Williams: A settlement of $1.5 million was reached in an early mediation in this police action case where Williams was shot and killed by Seattle Police Officer Ian Birk.

Chen: In 2009 Division I of the Court of Appeals reversed the trial court's dismissal of this pedestrian/road design case and remanded the case to the trial court for trial. The pedestrian was in a coma for two years after the accident and then died as a result of his injuries. Claims in the amount of $27 million for this accident were settled for $2.75 million during 2011.

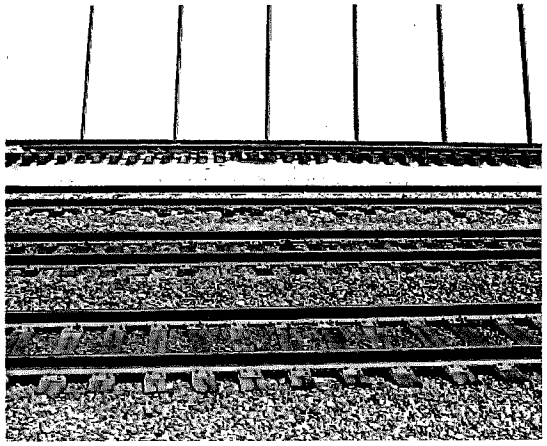
Clark (Holgate overpass): The City was dismissed on summary judgment in this case involving injuries sustained by a driver who was injured when an unknown person threw a heavy object off an overpass onto the freeway below.

Nucor Steel Seattle, Inc.: A settlement was reached in which the City paid nothing in this case involving flooding of plaintiff's property during a major storm event.

Stabler/Megrey; City of Seattle v. Darwin Insurance Co.: The *Stabler/Megrey* bicycle cases involving multiple plaintiffs alleged that various bicyclists fell while attempting to cross railroad tracks owned by the Ballard Terminal Railway Co. (BTR) and operating under a franchise agreement with the City. During the litigation, the City began a separate action against Darwin Insurance Co., the insurance company for BTR under which the City is an additional insured. This lawsuit forced Darwin Insurance Co. to accept the City's defense. The *Stabler* and *Megrey* cases were settled without payment by the City.

Tarutis (Messenger): In 2009 this pedestrian/road design case was dismissed on summary judgment. After the Court of Appeals reversed the dismissal, the City sought review by the Washington Supreme Court. The Supreme Court denied review and remanded the case for trial. This $10 million claim settled for $1.5 million during 2011.

Kenley: A $120,000 settlement resolved a lawsuit where the plaintiff claimed damages of more than $1.5 million. The plaintiff received a strong



Railway tracks along Seattle's waterfront. Dreamstime.com.

electric shock and fell from the tree he was trimming. He alleged City negligence in failing to keep the tree trimmed back from power lines.

Knight: A $150,000 settlement was reached in this case where a Seattle police officer slipped on icy steps and injured his knee while entering his workplace. Generally, employers are immune when the employee is covered by workers' compensation. However, the LEOFF statute allows police officers and firefighters to both recover workers' compensation benefits *and* sue their employer for negligence.

Meyer: A patrol car slid on ice, crossed the center line and crashed into an oncoming car. The other driver's head hit the windshield resulting in a mild brain injury. He also received a neck injury resulting in a cervical fusion. The City settled this case for $650,000.

Tilson: This property damage case resulting from flooding due to a blocked storm drain that had been buried by debris for years was settled for $155,000.

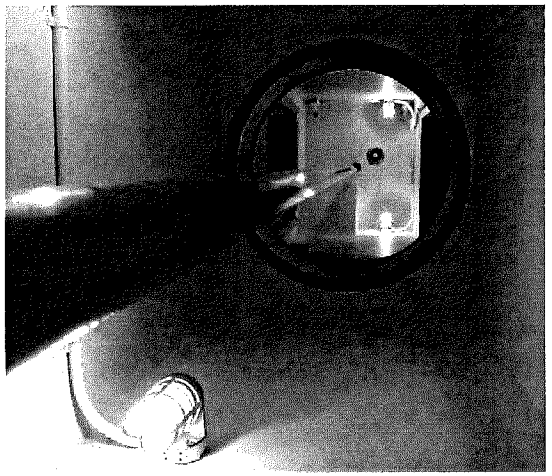
Laskowski: A $195,000 settlement was reached in a sewer backup case involving multiple sewer backups at a residence.

Lee: A settlement was reached in the amount of $160,000 in this personal injury case involving an automobile accident between the plaintiff and a patrol car.

Montano: A settlement was reached during 2010 in the amount of $370,000 where 12 households alleged damages in excess of $2 million. The case arose out of flooding during a significant storm event. Payment was made during 2011.

APPEALS

The *Jones* case (firefighter fell down a pole hole and was seriously injured) remained pending at the Court of Appeals. The City's insurance company took over the case before trial. After a seven-week trial in 2009, the jury found liability against the City and awarded $12,752,094 in damages. While the case was on appeal to the Court of Appeals, the insurance company lawyers filed a motion for a new trial based upon newly discovered evidence obtained by surveillance. That motion was denied by the trial judge. A notice of appeal was filed from that denial, and that appeal has been consolidated with the original appeal.



Looking down a firepole. Photo courtesy of Wikimedia Commons.

TOTALS BY DEPARTMENT FOR CASES SETTLED OVER $100,000 IN 2011

DEPARTMENT	TOTAL PAYMENT	COMMENTS
SDOT	$ 4,860,000	Includes three cross-walk cases, two with severe injuries
SPD	$ 3,048,000	Includes John T. Williams settlement and three police vehicle accidents as well as final payouts for Shantz/Clemmons house
Parks	$ 1,216,485.05	Includes environmental clean-up cost not usually paid out of JCF
SPU	$ 350,000	Two sewer backups and flooding cases partially traceable to design and maintenance issues
Personnel	$ 235,000	Discrimination and retaliation complaint of terminated employee
SMC	$125,000	First Amendment case
SCL	$120,000	Electrocution case
Total	**$9,954,485.05**	

The first *Struthers/Otrubova* case (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. A second *Struthers/ Otrubova* case was dismissed by the trial court. The City prevailed on appeal in both cases.

The *Robb* case is a wrongful death action in which the estate alleges police should have prevented a murder. After the trial judge refused to dismiss the City on summary judgment, the City sought discretionary review with the Court of Appeals, which accepted review and affirmed the decision of the trial court. The City sought review by the Washington Supreme Court, which was accepted during 2011.

In *McKibbin*, 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 to the Court of Appeals, which reversed and remanded for trial.

Advice

The Torts Section routinely provides advice to City departments on numerous issues to try to reduce liability exposures and to assist in anticipation of litigation. Two unusual incidents in the City generated assistance by the section (1) a tragic fire in the Fremont neighborhood resulting in the loss of human life; and (2) a gas explosion that destroyed a house and caused personal injuries in the Pinehurst neighborhood.

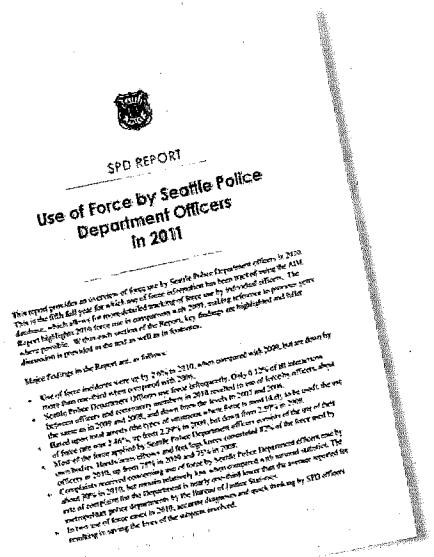
Workers' Compensation Litigation and Advice

The section represents the City in workers' compensation litigation before the Board of Industrial Insurance Appeals and in the courts. During 2011, 18 workers' compensation cases were opened, down from the exceptionally high number of 39 from the 2008 year and 26 from 2009. In addition, three workers' compensation projects were opened. The section's workers' compensation attorney and paralegal continue to work at maximum capacity as a result of the high numbers from 2008-09. The section's workers' compensation attorney also provides legal advice to the workers' compensation unit of the Personnel Department and monitors legislative developments affecting the City's workers' compensation programs.

Police Action Litigation

The City's defense in police constitutional litigation has historically been handled by outside counsel. The City Attorney's decision to handle most of the police action in-house came to fruition during 2011 and has been extraordinarily successful. In May 2011, the City Attorney added two attorneys plus a half-time paralegal whose time is devoted to handling this work. Twenty-one police action cases and six projects were opened in 2011. Seventeen of the 21 new cases are being handled completely in-house.

The police action defense program had a successful year, achieving numerous dismissals and advantageous settlements. Four cases filed in prior years were tried to juries by outside counsel during 2011:


SPD REPORT

Use of Force by Seattle Police Department Officers In 2011

Anderson – Plaintiff sued the Mariners and the City, claiming that he was wrongfully arrested and prosecuted for selling Mariners tickets contrary to law. The case resulted in a defense verdict.

Rutherford – Plaintiff alleged that he was wrongfully detained and that excessive force was used against him. The jury found against one officer on one issue but awarded $0 in damages. The trial judge increased the award of nominal damages to $1 and awarded approximately $90,000 in attorneys' fees. The City is appealing the judgment.

Brumfield – Plaintiff alleged that he was wrongfully arrested after striking the mirror on a police car. The case resulted in a defense verdict.

Weed – Plaintiffs alleged they were wrongfully arrested and that excessive force was used against them. The case resulted in a defense verdict.

Sargent – Plaintiff alleged that excessive force was used against her. The case was tried to an arbitrator in a binding arbitration. The case resulted in a decision in favor of the City and officer.

The program also oversaw four inquests into shooting deaths resulting from police fire – John T. Williams, Ariel Rosenfeld, Christopher Wright and Vu Wuach. All resulted in favorable findings by the inquest juries and declines to prosecute by the King County Prosecuting Attorney because the evidence did not establish criminal violations by the officers in connection with the deaths.

Appeals in Police Action Cases

Brooks – In this case a pregnant woman was tased while resisting arrest. The federal trial court declined to dismiss the case on grounds of qualified immunity. The City appealed to the 9th Circuit. An *en banc* panel of the 9th Circuit held that the officers were protected against federal claims by qualified immunity although the Court also held that the plaintiff stated a claim for a constitutional violation based upon excessive force. The 9th Circuit remanded the state claims for trial, and Police Chief John Diaz decided, in consultation with the City Attorney, to not appeal to the U.S. Supreme Court. A separate petition by the officers is pending.

Kita – The plaintiff alleged excessive force during an arrest. The trial court declined to dismiss the case on grounds of qualified immunity. The City appealed to the 9th Circuit.

Anderson – Plaintiff claims he was wrongfully arrested and prosecuted for selling Mariners tickets. The case was tried to a jury, resulting in a defense verdict. The plaintiff filed an appeal to the 9th Circuit.

Bear – Plaintiff's claim that he was wrongfully arrested and that excessive force was used against him was dismissed by the trial court. He filed a notice of appeal to the 9th Circuit.

Hays – Plaintiff filed two actions, one in federal court for excessive force in connection with an arrest and one in state court alleging assault and battery arising out of the same incident. Both actions were dismissed by the trial courts. He appealed the federal action to the 9th Circuit. The City prevailed on appeal and plaintiff moved for reconsideration.

Tolsma – Plaintiff alleges that an arrest was made without probable cause. His case was dismissed on summary judgment. Plaintiff filed a notice of appeal to the 9th Circuit.

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. The section's attorneys aggressively asserted the City's interests in insurance coverage in the face of denial or delay.

Goitom – Plaintiff sued the City along with the University of Washington and Sound Transit, alleging injuries resulting from tripping on a piece of rebar sticking out of a sidewalk. The City tendered the defense. Sound Transit accepted the tender.

Stabler/Megrey – These multi-plaintiff cases arose out of various bicycle accidents that occurred while plaintiffs were attempting to cross railroad tracks. The cases were successfully tendered. Ultimately, the cases settled with the City paying nothing.

Berkell – This trip and fall case was successfully tendered under a permit issued by Seattle Center. The case settled for $250,000 with the City paying nothing.

City of Seattle Emergency Operations Center. Photo: City of Seattle.

Kuchciak – An employee of a subcontractor reached into a Seattle City Light hand hole during an SDOT project and was injured after receiving an electric shock. Our tender was accepted.

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 section provides review and legal advice to individual City employees and client departments regarding those issues, including trial and deposition subpoenas and required witness appearances, requests for production of documents, public disclosure requests and other non-City litigation related issues.

DISASTER PLANNING AND EMERGENCY OPERATIONS CENTER LEGAL SUPPORT

Civil Division attorneys provide legal support to SPD's emergency management section and also help staff the City's Emergency Operations Center to provide legal support during emergencies. The increased focus on disaster tabletop exercises has required significant legal work by Civil Division attorneys.

CITY INVESTIGATOR

The City Investigator provides investigative services for the City primarily when City employees complain of discriminatory or retaliatory treatment. The City Investigator also trains human resources professionals and others in the City on how to conduct investigations and best practices. Through the use of the City Investigator, the City's use of contract investigators has declined significantly, which saves hundreds of thousands of dollars annually.

Seattle
Emergency Management

CRIMINAL DIVISION

Emphasizing public safety and restorative justice, the Criminal Division prosecutes misdemeanors, gross misdemeanors and some traffic infractions that occur within the City.

Highlights for 2011 included implementing the state's new 364-day maximum sentences for all gross misdemeanors, establishing proportional sentence guidelines, further reducing criminal filings for Driving While License Suspended in the Third Degree (DWLS-3) and advocating for the funding of a full-time infraction attorney.

Our office continued to establish and perfect protocols for incorporating new technology into the case preparation workflow. We continued to work 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.

CASE HIGHLIGHTS

In 2011, the Criminal Division reviewed more than 15,000 referrals and prosecuted more than 9,000 cases, including Thefts, Driving Under the Influence, Patronizing Prostitutes and Assaults. High-profile cases included:

City v. James Lee

The City Attorney charged SPD Officer James J. Lee with one count of Fourth-Degree Assault, a gross misdemeanor, following a criminal investigation by the Washington State Patrol. Lee was videotaped kicking a 17-year-old boy in a downtown convenience store on Oct. 18, 2010 during an arrest for an undercover drug operation.

When determining whether Lee's use of force was reasonable under the circumstances, the Criminal Division relied on the State Patrol investigation, which included an expert opinion by Robert Bragg of the Washington State Criminal Justice Training Commission. In preparing his opinion, Bragg reviewed the related police reports, witness statements, audio recordings and visual recordings. SPD did not provide Bragg with Lee's use of force statement, which was prepared as a result of the department's separate and internal investigation.

Without reviewing Lee's statement, Bragg opined: "Using the facts currently available to me and viewed in the light most favorable to Officer Lee, the force used to apprehend Suspect [D'Vontaveous] Hoston was reasonable and necessary as well as within the teachings of the Criminal Justice Training Commission except for the 3rd and final kick delivered to Suspect Hoston's head." Because Bragg concluded that the third kick was not reasonable and necessary, our office filed the assault charge against Lee.

Lee's use-of-force statement was unavailable to Bragg because under the "Garrity rule," named after a U.S. Supreme Court decision (*Garrity v. New Jersey*, 385 U.S. 493 (1967)), SPD may compel an officer to make a statement in a workplace investigation even if the officer invokes his right against self-incrimination. Statements made after invoking Garrity may be used for internal police purposes, including discipline, but not for a criminal prosecution.

After the charge against Lee had been pending for several months, Criminal Division attorneys reached an agreement with the officer's defense attorney to provide the use-of-force statement to the prosecution's expert witness. On Nov. 11, Bragg was supplied additional information by the defense, including Lee's Garrity statement. As a result of that review, Bragg issued a supplemental opinion on Nov. 21, as follows: "In short, and using the additional evidence viewed in the light most favorable to Officer Lee, I now believe that the force in question, the third and final kick, used to control Suspect D'Vontaveous Hoston was reasonable and within the teachings of the Criminal Justice Training Commission (albeit not the best tactic available)." As a result of the expert witness changing his opinion, the City Attorney felt compelled to dismiss the assault charge to spare the City the cost of a

CRIMINAL DIVISION OVERALL: 2011	2011 compared to 2010
2010 Reports Rec'd	19,184
2011 Reports Rec'd	**15,476**
Diff 2011-2010	(3,708)
% Change	-19%
2010 Cases Filed	13,421
2011 Cases Filed	**9,345**
DIFF 2011-2010	(4,076)
% Change	-30%
2010 Reports Declined***	3,232
2011 Reports Declined	**5,829**
DIFF 2011-2010	2,597
% Change	80%
2010 % Reports Received were Declined	17%
2011 % Reports Received were Declined	**38%**
2010 Avg. # Days From Date Rec'd to Dispo	380
2011 Avg. # Days From Date Rec'd to Dispo	**450**
2010 In Custody Arrg.	10,550
2011 In Custody Arrg.	**7,745**
DIFF 2011- 2010	(2,805)
% Change	-27%
2010 Total # Bookings	6,451
2011 Total # Bookings	5,551
DIFF 2011-2010	(900)
% Change	-14%
2010 Total Booked w/Case Declined at ICA	578
2011 Total Booked w/Case Declined at ICA	**936**
DIFF 2011-2010	358
% Change	62%
2010 % Total Booked w/Case Declined	9%
2011 % Total Booked w/Case Declined	**17%**
2010 Intake	10,161
2011 Intake	**6,007**
DIFF 2011-2010	(4,154)
% Change	-41%
2010 PTH Setting	15,803
2011 PTH Setting	**16,030**
DIFF 2011-2010	227
% Change	1%
2010 Jury Trial Settings	1,135
2011 Jury Trial Settings	**1,186**
DIFF 2011-2010	51
% Change	4%
2010 Jury Trials with Finding	144
2011 Jury Trials with Finding	**158**
DIFF 2011-2010	14
% Change	10%

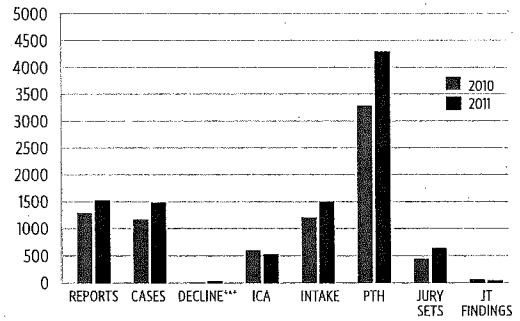
*** Decline code not used until 7/1/2010. 2010 only reflects numbers for 6 months.

prosecution in which the City's "expert" witness had become a defense expert instead.

City v. Garth Haynes

The City Attorney charged SPD Officer Garth Haynes with one count of Fourth-Degree Assault, a gross misdemeanor, following an SPD investigation of a Dec. 12, 2010 fight outside a Ballard bar. A dash-cam video showed the off-duty officer kicked a suspect in the head while the suspect was handcuffed and laying face down on the ground. While responding on-duty officers appropriately reported Haynes' head-kick to their SPD superiors, the King County Prosecuting Attorney's Office initially charged the prone suspect and two companions with felony assault of a police officer. When Officer Haynes refused to testify without a grant of community from prosecution, however, those felony charges were dismissed with prejudice. CAO brought the charge against Haynes after the King County Prosecutor's Office declined to charge him with a felony. The trial date was scheduled for spring 2012.

DUI - 2011



*** Decline code not used until 7/1/2010. 2010 only reflects numbers for 6 months.

Occupy Seattle

The City Attorney's Office charged several Occupy Seattle protesters with gross misdemeanor crimes for their behavior during the Occupy Seattle protests. During the protests, the City Attorney emphasized that "protesters were offered the option to be peaceably arrested and released without going to jail; understand that only those who refused this path were booked into jail."

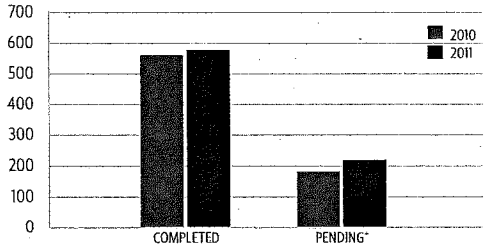
Holmes stressed that he respects the First Amendment rights of the protesters. "To the extent they are decrying the widening gap between the Have's and Have-Not's in this country, I sympathize fully with that message and will continue to do all that I can to promote economic and social justice."

The trial dates for many of the protesters were scheduled into 2012.

DUI PROSECUTIONS & TRAFFIC INFRACTIONS

According to Mothers Against Drunk Driving, Washington rates as one of the worst states for fatalities associated with DUI. This City Attorney

DUI - 2011 AVERAGE DAYS TO DISPOSITION



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

DUI 2011	2011 compared to 2010
2010 Reports Rec'd	1,292
2011 Reports Rec'd	**1,504**
Diff 2011-2010	212
% Change	16%
2010 Cases Filed	1,207
2011 Cases Filed	**1,498**
DIFF 2011-2010	291
% Change	24%
2010 Reports Declined**	19
2011 Reports Declined	**33**
DIFF 2011-2010	14
% Change	74%
2010 % Reports Received were Declined	1%
2011 % Reports Received were Declined	**2%**
2010 Avg. # Days From Date Rec'd to Dispo	562
2011 Avg. # Days From Date Rec'd to Dispo	**576**
2010 In Custody Arrg.	624
2011 In Custody Arrg.	**528**
DIFF 2011- 2010	(96)
% Change	-15%
2010 Total # Bookings	262
2011 Total # Bookings	279
DIFF 2011-2010	17
% Change	6%
2010 Total Booked w/Case Declined at ICA	3
2011 Total Booked w/Case Declined at ICA	**2**
DIFF 2011-2010	(1)
% Change	-33%
2010 % Total Booked w/Case Declined	1%
2011 % Total Booked w/Case Declined	**1%**
2010 Intake	1,201
2011 Intake	**1,499**
DIFF 2011-2010	298
% Change	25%
2010 PTH Setting	3,105
2011 PTH Setting* **	**4,295**
DIFF 2011-2010	1,190
% Change	38%
2010 Jury Trial Settings	463
2011 Jury Trial Settings* **	**648**
DIFF 2011-2010	185
% Change	40%
2010 Jury Trials with Finding	44
2011 Jury Trials with Finding	**43**
DIFF 2011-2010	(1)
% Change	-2%

** Decline code not used until 7/1/2010. 2010 only reflects numbers for 6 months.
*** SPD DUI Squad Investigation conducted 3/2011 through 6/2011. CAO was notified of findings on 7/25/2011.

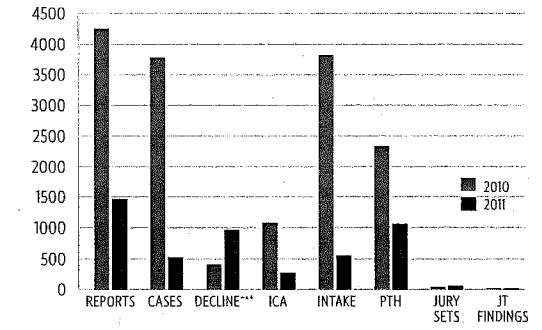
remains committed to the prevention of these avoidable injuries and deaths.

DUI cases are highly technical and involve a specialized defense bar that attempts to suppress important evidence with scientific and procedural motions. The Criminal Division maintains a designated prosecutor to respond to DUI specific issues and motions. This prosecutor also coordinates with SPD to provide specialized advice and training. This attention has been effective in safeguarding the community. The number of DUIs reviewed by the City has grown in the last year, a challenge met with redeployed resources. In managing the increasing caseload we began changing our DUI standards and procedures to improve their effectiveness.

Two significant issues arose in DUI prosecution in 2011. First, there are several new scientific and procedural challenges to breath test evidence brought by a well-funded defense bar. The City, with the help of the Washington State Toxicology (WSP) laboratory and WSP breath test technicians, has consistently overcome these challenges and admitted this important evidence at trial while some jurisdictions experienced mass suppression of this evidence. Secondly, SPD temporarily reassigned some members of its DUI squad amid an internal investigation into alleged mishandling of drunken driving arrests. Still, there was nominal impact on the prosecutions of DUIs as a whole.

The City also staffs contested infraction hearings with the exception of parking violations. In 2011, this was accomplished by relying on 10 volunteer attorneys and Rule 9 law students. These dedicated volunteers have been supervised by two assistant city attorneys and aided by a full-time paralegal. The City Council approved the hiring of a full-time paid infraction attorney. This attorney will be charged with all aspects of infraction prosecution, including negotiation, hearings, appeals and briefing.

DWLS-3 2011



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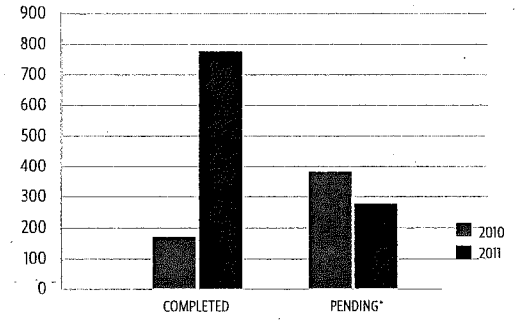
DWLS-3 2011 AVERAGE DAYS TO DISPOSITION



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

DWLS-3 2011**	2011 compared to 2010
2010 Reports Rec'd	4,245
2011 Reports Rec'd	**1,479**
Diff 2011-2010	(2,766)
% Change	-65%
2010 Cases Filed	3,879
2011 Cases Filed	**522**
DIFF 2011-2010	(3,267)
% Change	-86%
2010 Reports Declined***	441
2011 Reports Declined	**969**
DIFF 2011-2010	528
% Change	120%
2010 % Reports Received were Declined	10%
2011 % Reports Received were Declined	**66%**
2010 Avg. # Days From Date Rec'd to Dispo	172
2011 Avg. # Days From Date Rec'd to Dispo	**774**
2010 In Custody Arrg.	1,131
2011 In Custody Arrg.	**356**
DIFF 2011- 2010	(775)
% Change	-69%
2010 Total # Bookings	360
2011 Total # Bookings	194
DIFF 2011-2010	(166)
% Change	-46%
2010 Total Booked w/Case Declined at ICA	17
2011 Total Booked w/Case Declined at ICA	**30**
DIFF 2011-2010	13
% Change	76%
2010 % Total Booked w/Case Declined	5%
2011 % Total Booked w/Case Declined	**15%**
2010 Intake	3,886
2011 Intake	**538**
DIFF 2011-2010	(3,348)
% Change	-86%
2010 PTH Setting	2,360
2011 PTH Setting	**1,073**
DIFF 2011-2010	(1,287)
% Change	-55%
2010 Jury Trial Settings	103
2011 Jury Trial Settings	**123**
DIFF 2011-2010	20
% Change	19%
2010 Jury Trials with Finding	4
2011 Jury Trials with Finding	**4**
DIFF 2011-2010	-
% Change	0%

** As of 10/1/10 DWLS 3 policy change went into effect

*** Decline code not used until 7/1/2010. 2010 only reflects numbers for 6 months.

DRIVING WHILE LICENSE SUSPENDED IN THE THIRD DEGREE

In 2011, the number of cases that SPD and other local law enforcement agencies referred to CAO decreased by 65 percent from 2010. As a result, the volume of cases filed decreased by about 86 percent. This sharp decrease was primarily due to the change in filing policy for Driving While License Suspended in the Third Degree (DWLS-3).

In response to budget cuts and a reduction of attorneys and other staff in 2010, the Criminal Division adjusted its overall workload. We partnered with SPD, and the crime of DWLS-3 was deemed a low public safety priority for prosecution. In fact, the previous policy was to not file DWLS-3 charges against most first-time offenders, 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 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.

In analyzing this issue through the lens of the City's Race and Social Justice Initiative, we further determined that the crime of DWLS-3 has a disproportionate impact on Seattle's African-American community. Although the current census data shows Seattle's African-American population is roughly 8 percent, the past 5-year statistics show they have been charged with DWLS-3 at rate of 40+ percent of the overall charges filed.

DOMESTIC VIOLENCE UNIT

Domestic violence is a high priority in the Criminal Division. The DVU effectively prosecutes cases and provides coordinated victim advocacy to advance the goals of increasing victim safety and maximizing offender accountability. The DVU prosecutes all cases involving domestic violence between intimate partners as well as child and elder abuse cases.

Defendants and victims are men and women representing all racial groups and religions, all ages from child victim to elder victims and offenders,

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

"I want to thank the domestic violence advocate for being there for me and explain things to me that I wouldn't understand, as well as than the prosecutors for being able to help. The criminal justice system is a long process, but all worth it especially for women who are victims of domestic violence or anyone that's assaulted or harassed in any way. But once again I thank you and thanks for taking the time out to read this and help me."

"Thank you so much for making all this much more pleasant than I thought it would be. I really appreciate how you always kept me informed and helped me with every question I had. It means a lot."

Another victim called her victim advocate eight years after her case in SMC, saying that she thinks of her every year at this time of year. She thanked her again for her help and told her how her life had been positively affected by the advocate's compassion and diligent help so long ago.

Another victim advocate was stopped in the lobby of our building by a woman who recognized her and thanked her for her help with a case. They chatted for a while, although the advocate found it odd that she did not remember the woman or her case. She returned to the office and looked the case up, and it was from 1998!

immigrants and refugees, sexual orientation and all socio-economic circumstances. The diversity of the people involved in our cases presents unique challenges and opportunities.

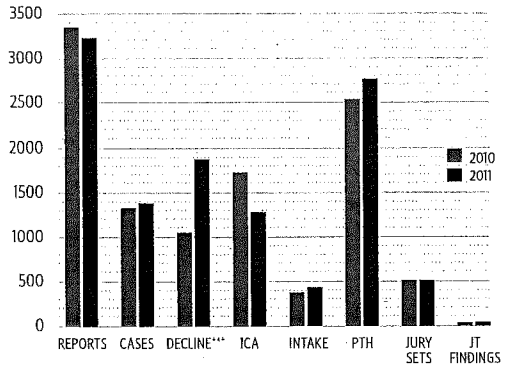
The DVU strives to refer victims to community-based DV services that are culturally appropriate and language-accessible. We are fortunate to have many such services in Seattle and King County, and the DVU has excellent working relationships with these providers. In addition, our DV Court and probation staff refer defendants to treatment agencies or domestic violence batterers' treatment programs that ensure that each defendant's probation experience is productive and serves the purposes of safety and accountability. The DVU is honored to serve such a diverse community, and we endeavor to serve it in a way that helps victims and their families thrive.

Changes in the Law

The DVU has worked to incorporate the new requirements of SHB 2777 (effective June 2010), which modified many of the procedures and requirements for domestic violence prosecution in the state. The City Attorney's Office views the changes to state law to be extremely positive steps for victim safety and offender accountability, and we have enthusiastically embraced the opportunity to improve our practices by implementing these procedures.

The DVU began using new documentation to "plead and prove" the domestic violence designation of our cases. This practice involved modifying our criminal complaints, jury instructions and all court documents relating to domestic violence sentencing. This change will enable Superior Courts to impose an appropriately enhanced sentence if a defendant commits a DV felony in the future. The DVU also began presenting each defendant's domestic violence order history to the court at the arraignment hearings, and reviewed our No Contact Order lift/modification calendar procedures with the court to ensure that the recommendations of the Office of the Administrator of the Courts are reflected in our practices.

DV 2011



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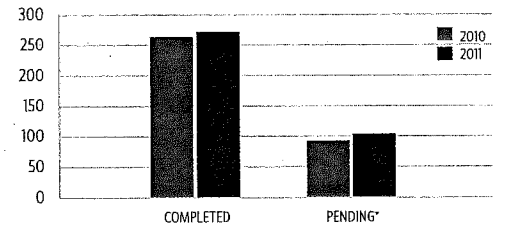
DV - 2011 AVERAGE DAYS TO DISPOSITION



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

DV UNIT 2011	2011 compared to 2010
2010 Reports Rec'd	3,302
2011 Reports Rec'd	**3,254**
Diff 2011-2010	(48)
% Change	-1%
2010 Cases Filed	1,366
2011 Cases Filed	**1,394**
DIFF 2011-2010	28
% Change	2%
2010 Reports Declined**	1,039
2011 Reports Declined	**1,887**
DIFF 2011-2010	848
% Change	82%
2010 % Reports Received were Declined	31%
2011 % Reports Received were Declined	**58%**
2010 Avg. # Days From Date Rec'd to Dispo	263
2011 Avg. # Days From Date Rec'd to Dispo	**271**
2010 In Custody Arrg.	1,726
2011 In Custody Arrg.	**1,287**
DIFF 2011- 2010	(439)
% Change	-25%
2010 Total # Bookings	1,573
2011 Total # Bookings	1,473
DIFF 2011-2010	(100)
% Change	-6%
2010 Total Booked w/Case Declined at ICA	297
2011 Total Booked w/Case Declined at ICA	**455**
DIFF 2011-2010	158
% Change	53%
2010 % Total Booked w/Case Declined	19%
2011 % Total Booked w/Case Declined	**31%**
2010 Intake	388
2011 Intake	**433**
DIFF 2011-2010	45
% Change	12%
2010 PTH Setting	2,525
2011 PTH Setting	**2,763**
DIFF 2011-2010	238
% Change	9%
2010 Jury Trial Settings	502
2011 Jury Trial Settings	**513**
DIFF 2011-2010	11
% Change	2%
2010 Jury Trials with Finding	23
2011 Jury Trials with Finding	**31**
DIFF 2011-2010	8
% Change	35%

*** Decline code not used until 7/1/2010. 2010 only reflects numbers for 6 months.

DVU Staff

The DVU is staffed with five trial prosecutors, one of whom handles high-risk (STOP) cases and elder abuse at all times. The unit has eight victim advocates; two specialize in child abuse cases while two provide advocacy in elder abuse cases. In addition, the unit has an investigator/assistant paralegal and an administrative assistant.

Filing Cases

When no arrest is made—an "out of custody" report—the DVU still strives to make decisions quickly, as undue filing delays can jeopardize victim safety. Advocates attempt contact with victims in all cases prior to filing, and prosecutors consider the information obtained from those contacts in each filing decision.

Vertical Prosecution

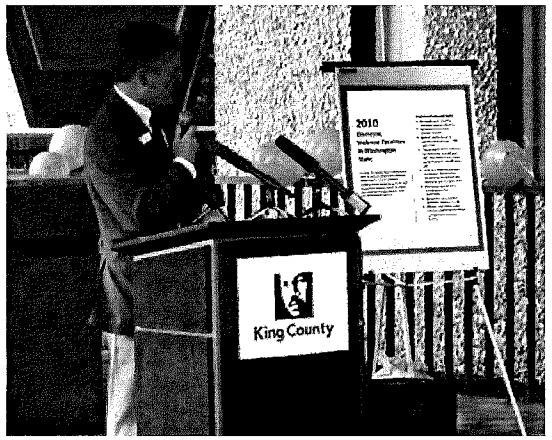
The DVU continues to use a model in which the same prosecutor litigates the case from filing to sentencing. This practice encourages thorough and consistent preparation of each case and benefits victims by limiting the number of staff they have to deal with. Calendar coverage and workloads have been carefully balanced so that each prosecutor has the ability to devote sufficient time to case preparation. The court also made changes to its calendar structure that have required staffing modifications between attorneys and victim advocates to maintain an effective vertical prosecution model that is both fair and efficient. The DVU has worked hard to maintain this model and keep the process as optimal as possible in light of structural changes in the court's schedule.

Evidence and Discovery

Domestic violence cases typically involve more follow-up documentation and supplemental evidence than other misdemeanor cases. This evidence can include photographs, 911 recordings, recorded statements, medical records, and court records from cases in other jurisdictions. DVU has continued streamlining the supplemental evidence process. We have continued to maximize our use of SPD's electronic document transfer system to efficiently and consistently obtain supplemental documentation. We have also improved our acquisition of 911 recordings and other evidence by using an administrative position to centralize the unit's evidence management.

Coordination with the King County Prosecutor's Office

The DVU continued to have a co-located King County prosecutor working in the City Attorney's Office for 20 hours each week in 2011. Her presence has had an enormous impact on improving victims' safety and offender accountability. She reviews eligible cases for felony referral and coordinates prosecution efforts when an offender has pending cases or probation matters in both the Municipal and Superior Courts. Since these are often the most troubling cases and dangerous offenders that the DVU prosecutes, the value of this position to the safety of victims in Seattle cannot be overstated.



City Attorney Pete Holmes spoke at the joint Seattle-King County ceremony honoring Domestic Violence Month. Photo courtesy of the City of Seattle.

Coordination with Community-Based Agencies
The DVU continues to have a program, funded by the City's Human Services Department, in which a community-based victim advocate works in the City Attorney's DVU and SPD's DVU. She works part-time in both units, and facilitates expedited and proactive outreach to victims in immediate need of services such as housing and transportation.

All of the stakeholders in this program have seen success stories where victims were able to improve their safety by having their immediate needs met.

High-Risk Offenders
Since 2007, the DVU has devoted an attorney to prosecuting cases identified as having high risk factors for victim safety or a high risk of reoffense. These factors include the offender's criminal history, the offender's domestic violence history, and other factors such as violence toward children and stalking. This prosecutor also litigates cases with unusually complicated facts or evidence. These attorneys' work was extremely valuable to the DVU, as the special attention they gave to these cases increased the likelihood of prosecution success for especially dangerous offenders, including significant jail sentences where appropriate. Analysis of case data from recent years shows that cases handled in this program have much stronger positive outcomes than other DV cases.

Elder Abuse
The attorney in this high-risk offender position also prosecutes all elder abuse cases, so that one prosecutor with special training and experience handles these matters consistently. These cases include those with vulnerable adult victims who are not elders, and they can include cases involving neglect or abuse by a caregiver, financial exploitation, or domestic violence where the victim is uniquely vulnerable due to age or disability.

MENTAL HEALTH COURT

Seattle's Mental Health Court, dating from March 1999, was the first municipal mental health court in the country and the fourth mental health court overall. The court treats defendants who suffer from a major mental illness such as schizophrenia or bipolar disorder.

The court serves two types of clients. A defendant must be able to both assist his lawyer and understand the nature of the proceedings. This determination is the competency side. Some clients are too ill to participate in the legal process. For those clients, Mental Health Court expedites the competency evaluation process and has partnered with King County to help connect homeless clients with housing and treatment.

The second group of clients includes individuals who are able to participate in the court process. This is the therapeutic side. These individuals voluntarily opt for two years of probation, coupled with housing and treatment provided by King County's Criminal Justice Initiative and other community partners. Clients begin receiving services as soon as their case is heard in court. A clinical mental health expert works with clients initially to assess needs and provide connections to treatment. Probation counselors then meet with clients individually on a regular basis for up to two years. Regular reviews in court are opportunities for the judge to monitor progress and provide praise, guidance and direction.

Defendants are still held accountable although the court takes a therapeutic approach with sanctions and oversight. Mental Health Court serves a vital role providing mentally ill individuals facing criminal charges an opportunity to connect or reconnect with treatment, secure housing, and develop stability to maintain an appropriate level of independence after graduation. As budget cuts at the state and county level result in fewer services for individuals with mental health issues, particularly those with few resources, the court has seen some increase in mentally ill defendants in the system.[3]

In Mental Health Court, the judge, defense, prosecution, probation counselors and a mental health clinician work as a team to improve the client's life. In addition, the court works directly

[3] KC reports: "The state Department of Social and Health Services' proposal is to cut mental health services by 16 percent, effective before the end of the state fiscal year (June 30, 2011). **The estimated cut to the King County mental health system is $5.2 million for the remainder of this biennium.** Reductions are also proposed to substance abuse services, developmental disabilities services, aging services and a range of health and economic supports for low-income individuals and families. With the accumulated cuts taken over the last few years, (King County) is down to basic services provided with these funds such as crisis services, crisis clinic, screening for inpatient services, inpatient beds, evaluation treatment units, residential support services, etc. What is left, after the cuts have been taken between December 1, 2010 and June 30, 2011, is about $24 million. DCHS must cut an additional $5.2 million of that amount: a year's worth of cuts in the next seven months.

with SPD's Crisis Intervention Team police officers. This team has had marked success in achieving the court's stated goals of:

- improved public safety
- connections, or re-connections, for mentally ill persons with needed mental health services
- improved likelihood of ongoing success with treatment, access to housing or shelter, and links with other critical support for mentally ill persons
- reduced use of jail and interaction with the criminal justice system.

In 2011, Mental Health Court welcomed a new judge, Willie Gregory. The court served more than 500 defendants throughout the year. Slightly more than half of all those defendants had an issue with competency to stand trial at some point during their court process. On a typical Monday through Thursday afternoon, the court will adjudicate about 20 hearings for defendants, keeping the team very busy. Every year, approximately 30 to 40 individuals graduate, while nearly 100 more either begin the program or continue for their second year.

Mental Health Court - A Competency Court and/or a Therapeutic Court

Efforts by MHC team members have improved the competency evaluation process, saving thousands of jail days for clients, thousands of hospital bed days, and hundreds of thousands of thousands of dollars in jail costs.

Clients who graduated from the court more than doubled their accessing of mental health services in the 12 months after graduating, as compared with the 12 months before entering probation.[1]

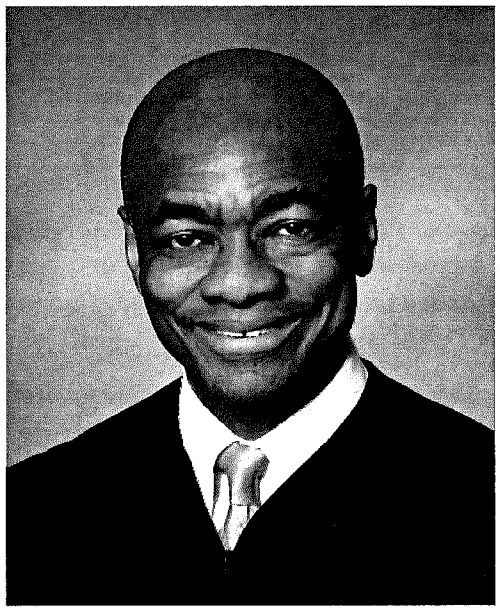
Graduates are arrested less after they finish the program. More than 70% of clients who graduated in 2008 had fewer criminal charges in the 18 months after completing the program.[2]

Mental Health Court Improved Processes

Video Conferencing: This procedure, initiated in 2010, was used a number of times in 2011 for defendants hospitalized in a mental health facility during the pendency of the case. When deemed appropriate by the team, the video conferencing allows the defendant to make an "appearance" in Mental Health Court without disrupting his mental health treatment.

Truncated Initial Competency Evaluations: The wait time for competency evaluations increased substantially in 2011. To combat the delay, the resulting financial cost to the court, and the destabilizing impact on the defendant, City Attorney's Office, defense, the court and Western State Hospital started a work group to address the issue. The parties agreed that under certain circumstances some sections of the initial competency evaluation could be waived if 1) the current charge is a non-serious offense; 2) the client has been evaluated by WSH in the past; 3) the competency issue is "clear"; 4) the City and defense agree that the case is

[1] Based on MHC's 2001 Evaluation and continued monitoring by Probation staff
[2] Recidivism research based on statewide data, conducted by SMC analysts.



Judge Willie Gregory

appropriate for a truncated report; 5) the client is in custody; and 6) the case will automatically be referred to the DMHP for evaluation for civil commitment. When used, this procedure has shortened the evaluation process from 21 days at its peak to less than five days.

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. Defendants entering the program voluntarily complete 8 to 56 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. Defendants also undergo a needs assessment that identifies a variety of comprehensive social service links to help address the root cause and underlying issues of repeated criminal behavior.

Specialized Sanctions

Community courts are in a unique position to tailor sanctions to best meet the needs of defendants. In 2011, SCC developed a program for defendants with limited physical capabilities by partnering with organizations that provide light duty community service projects. About 25% of defendants entering SCC have limited physical capabilities, demonstrating the need for places that can accommodate their situations. For instance, a defendant entered SCC on his third and final opportunity on June 8, 2011. He failed to comply on both previous cases. His initial assessment indicated that he was actively using heroin but wanted to consider a methadone program – something he had never tried before. He entered a methadone program about five weeks prior to his appearance in SCC. The defendant had some serious medical complications that would prevent him from performing traditional service hours. He was given an opportunity to complete his hours at Seattle Education Access, where he performed light office work and answered phones. Being there also provided him with an opportunity to obtain information regarding educational opportunities. When he returned for his two-week review hearing, he had successfully completed all obligations and showed the court a very complimentary letter from the service site. It indicated that he was reliable, punctual, kind and a pleasure to have in their office. The letter further noted he had demonstrated he was committed to making positive changes in his life. The defendant is currently attending college at Seattle Central Community College.

SCC also strengthened its program around defendants entering with theft charges. Cases involving thefts make up about 70% of all new SCC cases. SCC extended its dispositional continuance sanction (agreement to continue case for dismissal upon compliance with certain conditions) to theft up to $499. The court also added a requirement

Expressing gratitude for Theft Awareness Class:

"This class is really helpful on helping me reflect on all aspects of my life not just thefts"

"I wish I had attended something similar years ago."

"This was an extremely valuable class."

"Community court is the best program I have ever had."

"I really feel like I got a lot out of this class."

that all defendants attend an innovative theft awareness class. The class was created, with support from the Midtown Improvement District, by AmeriCorps members and a retired principal volunteering with the law department.

It is designed to enable defendants to look at the reasons why they steal and develop tools to encourage them to make successful choices. The class is approximately six hours and includes a community panel discussion. Defendants are required to make one commitment for change at the end of the class.

Community Engagement

Community engagement is essential to any community court. SCC ensures active community involvement through its community and social service partnerships and its Community Advisory Board. In 2011, SCC added three neighborhood partners (Neighborhood House, Real Change and Rainier Valley Food Bank) and three specialty partners (Mary's Place Day Shelter for Women, Seattle Education Access and Filipino Community Center). SCC personnel made presentations to the retail industry regarding support and promotion of the theft awareness class.

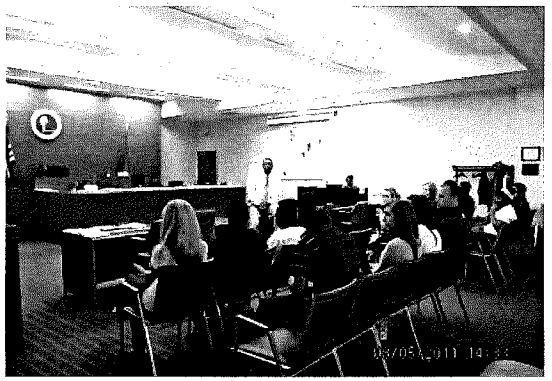
SCC held two Community Advisory Board meetings in 2011. The board meets periodically to advise the court around possible sanctions, community services projects and how SCC can best serve the larger community. In 2011 the court focused on adding more continuity to the board by inviting specific individuals from each organization identified in the SCC charter to commit to board participation.

Mentor Court Assistance

As a mentor court, SCC provides peer support to other emerging community courts across the nation. In 2011, SCC hosted 10 visitors and provided monthly site visits to all its community partners. The court provided technical assistance to a court in Washington, D.C. and responded to 16 inquires for additional information. SCC was featured in an article by the Center for Court Innovation, a New York-based clearinghouse for all community court programs. The article highlighted the strength and viability of the program. SPD's retail theft program also received national recognition through its work with SCC and is currently part of a national team of law enforcement professionals creating best practices around the enforcement and prosecution of theft cases. SCC members provided technical assistance regarding the principles and structure of community courts at Enhancing Your Skills for Criminal Practice in Municipal and District Courts, a CLE sponsored by the Washington State Bar Association. Members also provided training for new Northwest Defender Association defense attorneys. SCC continues to work with other local municipalities to create their own community court program.

Veterans Treatment Court

Washington has a growing veteran population. There are approximately 623,000 veterans in the state (the 8th state in terms of highest concentration of vets), with 143,000 in King



Criminal Division Chief Craig Sims talking with students in Criminal Court

County. In fact, Joint Base Lewis-McChord, the largest military installation on the West Coast, has deployed more than 70,000 service members in the last 10 years in support of Operation Noble Eagle, Operation Enduring Freedom and Operation Iraqi Freedom. Service members, including Active Duty, Reserve and National Guard, have seen longer deployments as well as multiple deployments. It is expected that 1,000 veterans will return to King County each year.

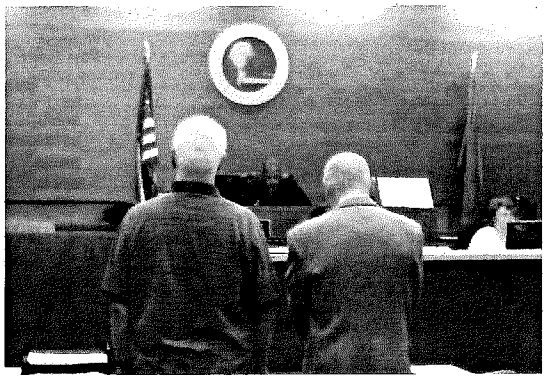
Advances in medicine and military equipment mean soldiers are more likely to survive their injuries, especially those sustained from improvised explosive devices. The lingering Traumatic Brain Injury (TBI) and Post Traumatic Stress Disorder (PTSD) present many challenges for veterans as they attempt to reintegrate into civilian society. Many veterans return with PTSD and do not seek the critical services they may need to address their mental health or substance abuse issues. This often results in increased interactions with the criminal justice system.

Since Buffalo City Court Judge Robert Russell presided over the nation's first veterans court docket in January 2008, approximately 80 Veterans Treatment Courts have formed across the country. Russell created the specialty court after he noticed an increased number of veterans on the court's mental health and drug court calendars and that the veteran defendants reacted positively to the two court employees who had served in the military. The high number of people with unique needs certainly justifies the specialty court.

Until very recently, Seattle Municipal Court did not have sufficient coordination with outside agencies to provide comprehensive services to veteran defendants. The Seattle Veterans Treatment Court was the product of collaboration among SMC, CAO, the Associated Counsel for the Accused, the King County Department of Community and Human Services, the Washington State Department of Veterans Affairs, and the U.S. Department of Veterans Affairs.

On Sept. 20, 2011, SMC followed Thurston County, Clark County, Pierce County and Snohomish County to become the fifth court in the state and the first in King County to hold a specialized calendar for veterans involved in the criminal justice system. Seattle's court is a voluntary court-monitored therapeutic program tailored to address the mental health and/or substance abuse issues unique to the veteran defendant. Defendants are held accountable with sentences based on the severity of the crime and defendant's history but, similar to mental health court and drug court, with a specific focus on rehabilitation rather than punishment. In addition to addressing addiction and mental illness, the therapeutic court model enlists a coordinated community response to address other issues, such as homelessness, unemployment and depression.

Defendants must seek entry on their own accord. If they wish to be considered for the program, they must sign releases of information and apply through the court liaison. Through the combination of structured support provided by the court, health care and other social services



Veterans Treatment Court case in progress.

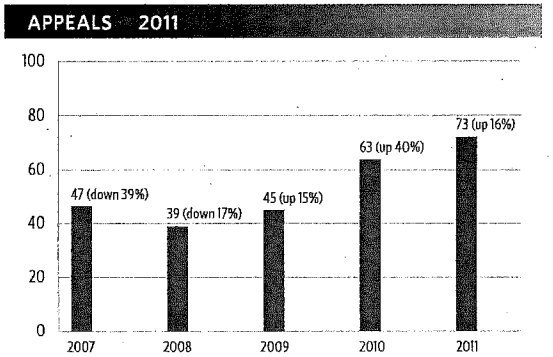
provided by the state and federal departments of veterans affairs, the City expects recidivism to decline.

Criminal Appeals

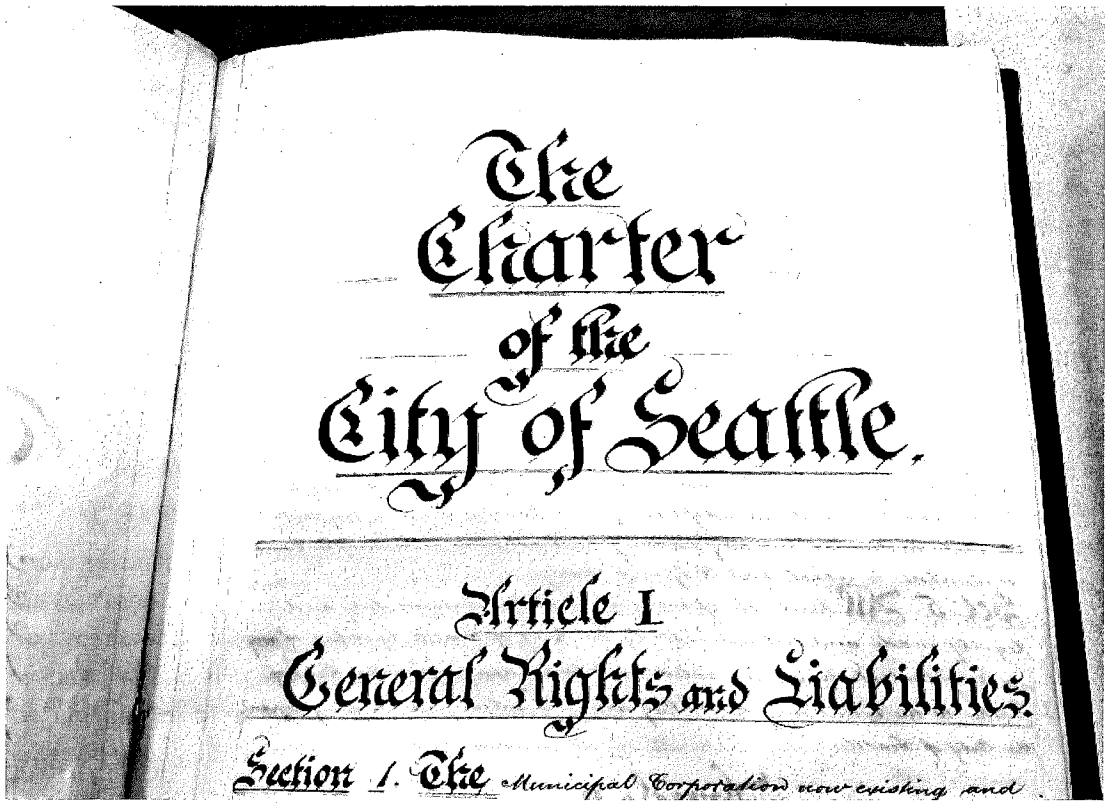
The Criminal Division's appellate unit prepared and argued 60 writs and appeals during 2011. This figure does not include traffic infraction appeals, five *Anders* briefs, 12 appeals that were withdrawn by the defendant or dismissed based on the defendant's failure to pursue the appeal. The number of appeals increased a total of 16% from 2010.

In 2011, the Washington Supreme Court decided two criminal law cases involving the City. In *Harris v. Charles*, the court held that a municipal court judge is not required to give a defendant credit against his jail sentence for time he was on electronic home monitoring prior to trial. Although a felon is entitled to such credit, the court rejected the defendant's arguments that giving him such credit was required by the equal protection clause or the double jeopardy clause of the constitution. In Harris, the defendant was charged with DWLS-3 and driving without a required ignition interlock device. He was released from jail after posting bail, but was required to be on electronic home monitoring pending trial. Eighty days later, he pleaded guilty to both charges and asked that his sentencing be continued for another 60 days, during which time he remained on electronic home monitoring. The trial court declined to give him credit against his 90-day jail sentence for the 140 days he had been on electronic home monitoring. On a writ of habeas corpus, the Superior Court ordered the Municipal Court judge to give defendant credit for all the time he was on electronic home monitoring. The Court of Appeals reversed the Superior Court's decision, and the Supreme Court affirmed the Court of Appeals decision.

In *Seattle v. May*, the court held that a defendant charged with violating a domestic violence order could not challenge the validity of the order in the criminal case. In *May*, the Superior Court in 1996 issued a permanent no-contact order prohibiting defendant from having contact with his ex-wife. In the written order, the court found that an order of less than one year would be insufficient to prevent further acts of domestic violence. The applicable statute authorizes such a permanent order if the court finds that the respondent is likely to resume acts of domestic violence against the petitioner. The defendant twice violated the no-contact order in 2005, was charged in Municipal Court with violating a domestic violence order and argued that the order was not valid because its language did not comport with the language required by the statute. The court held that such a challenge to the validity of the order could not be brought in the criminal case, but must be raised before the court that issued the order in the first place. Moreover, the language in the order implicitly satisfies the statutory requirement.



ADMINISTRATION DIVISION



The Administration Division provides executive leadership, communications and operational support for the roughly 155-employee department as well as manages numerous 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 developed a bi-monthly external newsletter in 2011. In September, the City Attorney's Office distributed its first issue via email to more than 2,300 subscribers. The newsletter updates the public on new legislation, current events, significant cases and news links.

Budget

The Administration Division was vital in helping the office achieve its budget goals for 2011. One of the first major projects of the year was to hire two lawyers, a paralegal and a legal assistant to defend police officers in civil rights cases. Previously, the City had depended solely on outside counsel in these matters but determined significant savings and management benefits could be realized by bringing these cases in-house. Adding staff required additional office space. The division was able to remodel existing library space within City Hall to create sufficient room for new staff and avoid the need to rent additional space.

The entire Administration Division staff responded to numerous requests from City Council members for special reports required to answer financial questions during the 2012 budget review process. The accounting staff continued to provide excellent management of the 2011 operating budget and ongoing support for the development of the 2012 budget. In the 2012 budget, CAO received funding for an infractions attorney and a collections attorney to assist the City with collecting revenue, and for the first time in several years, found a way to balance its budget without the use of furloughs. The 2012 budget also provides funding for four new precinct liaison attorneys. One will be located in each of the north, south, east and west police precincts.

Human Resources

Human Resources staff continued its commitment to the Race and Social Justice Initiative in 2011 by forming a partnership with a telephone translation service. This service allows non-English speaking callers to use a translator during telephone communication with the office. This service has been particularly helpful in the Criminal Division, where crime victims and witnesses need to communicate clearly and effectively with staff in the office.

Another accomplishment in 2011 was the department's migration to the City's online job application system. In the past, applicants to the City Attorney's Office submitted paper applications and filled out lengthy forms. With the adoption of the City's program, applicants apply electronically, saving paper and allowing the department to process applications more quickly and efficiently. In addition, Human Resources made arrangements for staff to be trained in emergency personal preparedness as well as numerous other City-sponsored trainings and wellness events.

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 justice system. Law students work side by side with lawyers to learn the basics of case preparation, filing and trial work. During 2011, the Criminal Division had a total of 32 volunteers who provided more than 6,100 service hours, or the approximate equivalent of three full-time employees. (For comparison, in 2010 a total of 33 volunteers contributed a total of 8,700 hours for the year.) Of the 32 volunteers, 18 were female (9 white, 4 Asian, 3 African American and 2 Hispanic) and 14 were

City Attorney's Office employees enjoying themselves at the annual picnic.

male (12 white, 1 Hispanic and 1 Asian). Twelve volunteer legal interns assisted the Civil Division on employment, environmental protection, land use, government affairs and torts cases.

Due to budget cuts in 2010, the department began using qualified volunteers to staff the infraction prosecution program in Seattle Municipal Court. That program continued in 2011, relying on many skilled individuals throughout the year. Funding is restored in 2012 for one full-time attorney who will continue to be assisted by trained volunteers.

Information Technology

On a daily basis, the IT staff supports 180 computers for staff in the Civil and Criminal divisions and five 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 implement improvements to citywide data systems and security.

In 2011, the primary focus of the IT team was on electronic records. First, the office migrated electronic file storage from a Novell platform to a Microsoft platform. This move saved licensing costs and increased throughput. In addition, due to the lack of archiving systems supporting the Novell platform, the new platform allows for the next step in indexing electronically stored files.

The IT staff continued efforts to roll out citywide email "eDiscovery" (electronic discovery of relevant materials stored in electronic form) and record retention. To develop a more efficient and manageable system for responding to public disclosure requests and eDiscovery, the IT team worked closely with the software vendor on security and honed the office procedures to develop a more streamlined approach to the process. This step forward, along with efforts launched in 2010 to retain email according to retention schedules, will result in a more effective means of finding and producing responsive records going forward.

An ongoing challenge for both the Criminal and Civil Divisions has been physical storage of paper case files. Efforts to store and retrieve documents in an electronic form were further developed using scanners and other tools. In 2012, we will be examining additional methods to save more documents in an electronic form.

Historical Record of City Attorney Opinions

In 2011, the City Attorney's Office contracted with a document imaging firm to electronically scan approximately 65 years' worth of printed City Attorney opinions. This involved roughly 148 volumes dating to 1916. The imaging process took all year and will be completed in early 2012. As soon as the scanning is finished and the indexing is completed, the opinions will be posted on the website of the City Clerk's Office and will be available to the public for viewing.

Seattle City Attorney Annual Report 2011

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