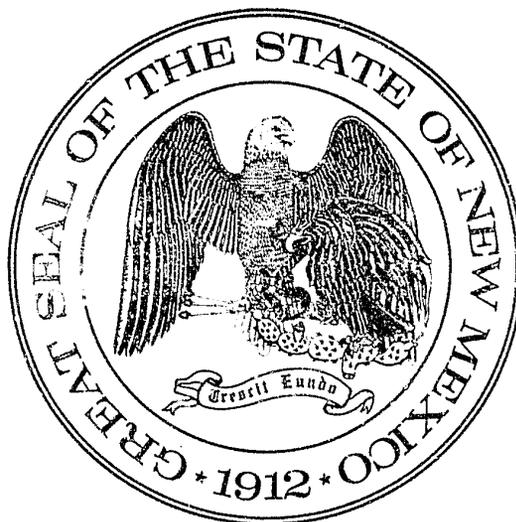


STATE OF NEW MEXICO  
**Office of the Attorney General**  
DEPARTMENT OF JUSTICE  
P.O. DRAWER 1508  
Santa Fe, N.M. 87501



# 1976 ANNUAL REPORT

58896

by Anaya, Attorney General  
January 1977



TONY ANAYA  
ATTORNEY GENERAL  
SHIRLEY SCARAFIOTTI  
DIRECTOR OF ADMINISTRATION

STATE OF NEW MEXICO  
**Office of the Attorney General**  
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DIRECTOR, WHITE COLLAR CRIME--  
CORRUPT PRACTICES DIVISION

January 20, 1977

The Honorable Jerry Apodaca  
Governor  
State of New Mexico

The Honorable Members  
New Mexico State Legislature

Dear Governor and Members of the Legislature:

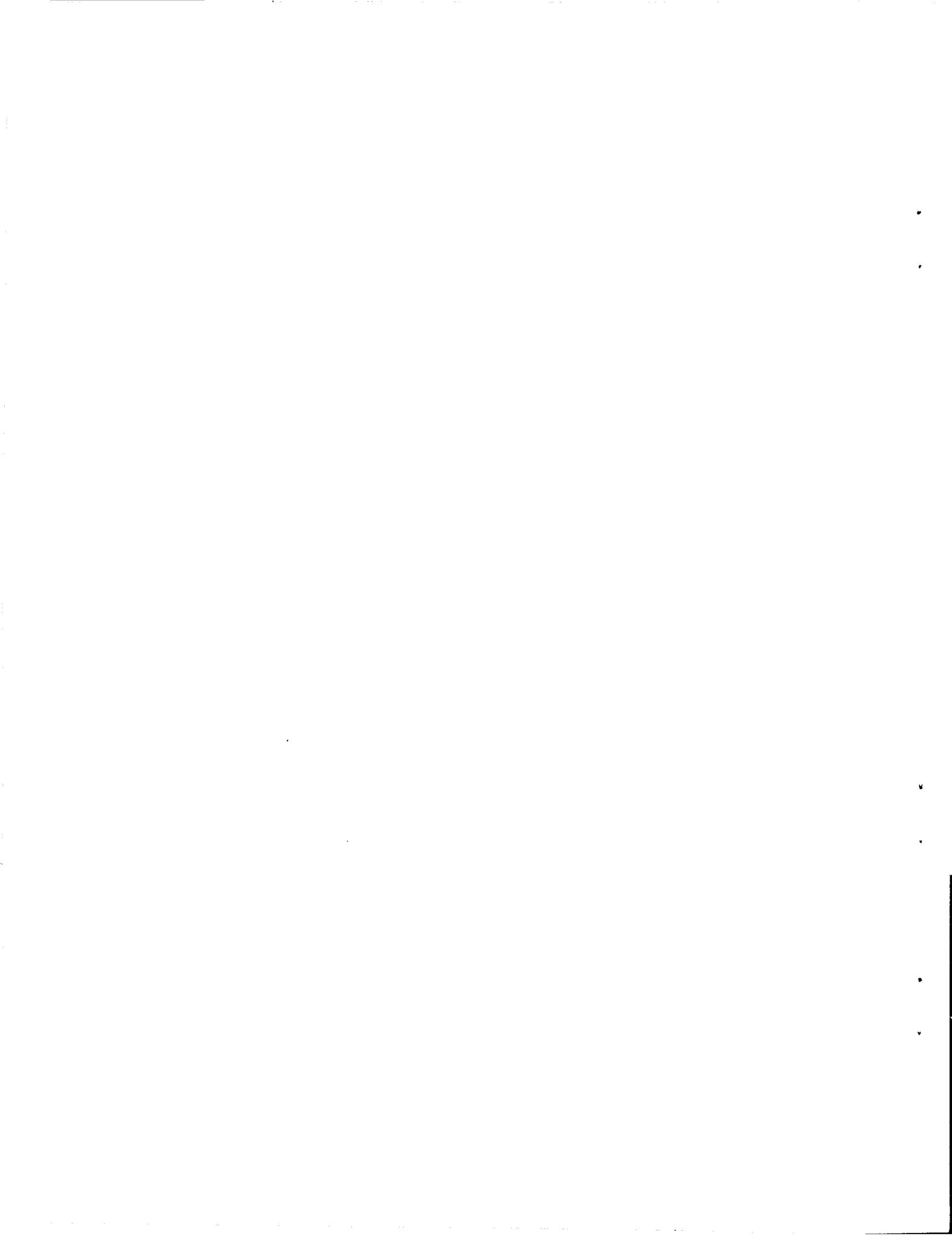
I am submitting herewith the 1976 Annual Report of the Office of the Attorney General pursuant to Section 4-3-2 (G), NMSA, 1953 Comp., which directs me to "report to the governor and the legislature the conditions of his office, the text of all opinions rendered and a summary of business transacted of public interest, which report shall be submitted each year."

Sincerely yours,

TONY ANAYA  
Attorney General

Enclosure

TA:dg



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1976 ANNUAL REPORT  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE  
STATE OF NEW MEXICO

This report is submitted pursuant to Section 4-3-2 (G), NMSA, which directs the Attorney General to "report to the governor and legislature the conditions of his office, the text of all opinions rendered and a summary of business transacted of public interest, which report shall be submitted each year."

I. INTRODUCTION

Calendar year 1976 saw a continuation of the dynamic changes which were initiated during 1975 in the Office of the Attorney General.

The Attorney General has continued with vigor, new initiatives, policies and procedures, including fulfilling his responsibilities of chief law enforcement officer of the State. The Attorney General has continued to give meaning to Section 4-3-1, NMSA, 1953 Comp. which states, "the department of justice be, and same is hereby created, with the attorney general as head thereof, which shall be located at the seat of government."

The Attorney General continues to be cognizant of and respect the jurisdiction, responsibilities and authority of the respective district attorneys, and continues to see the need for close cooperation and coordination between the Office of Attorney General and the district attorneys to improve our criminal justice system.

During 1975, the Office of Attorney General was reorganized to provide for two deputy level positions (administrative and legal), and four separate divisions with clear, distinct responsibilities (Civil, Criminal, Consumer Protection, and White Collar Crime/Corrupt Government Practices). This structure was continued during 1976. However in January 1977, the functions of the White Collar Crime/Corrupt Practices Division will be merged into the Consumer Division and the Criminal Division and the two divisions renamed. In January 1977 the office will thus be comprised of the following three divisions: Civil Division, Criminal and Special Prosecutions Division, and the Consumer and Economic Crimes Division. With anticipated consolidation of all legal services to state government under the Office of the Attorney General, the Civil Division will be further reorganized to create units within the division along functional lines e.g., education, fiscal, transportation, etc.

Activities of the Office of Attorney General during 1976 are discussed in the following reports of the various Divisions.

While some of the activities may transcend more than one Division, for purposes of reporting, the activities are set out within the Division which was most directly involved.

## II. NEW MEXICO CONSTITUTIONAL/STATUTORY AUTHORITY

The New Mexico Constitution and state statutes are replete with references placing responsibilities on the Office of Attorney General and granting the necessary authority to execute those responsibilities. The Attorney General is given broad and necessary powers and responsibilities. He is the chief legal officer of the state and has been granted an important and necessary role in fighting crime in the state. In the Attorney General resides, with minor exceptions, the authority and responsibility to provide for legal services to all of state government. Thus, the Attorney General will again propose to the 1977 Legislature, with the concurrence of the Governor, the consolidation of all legal services to state government under the Office of Attorney General.

Since previous Attorneys General had not fully carried out their responsibilities, many of the duties devolving upon the Office had either not been carried out or duties of the Office had been usurped by other entities. The Governor, the Legislature, the respective District Attorneys, other law enforcement agencies, criminals and the public had become accustomed to a relatively weak and ineffective Office of the Attorney General. Thus, when the present Attorney General asserted his full responsibilities under the constitution and laws of this state, he met with considerable support from the public and some public officials, but also met with considerable skepticism, criticism and charges of "power grab" from many quarters, including some influential public officials. This has hamstrung the effectiveness of the Office, but tremendous gains have been made nonetheless.

Because of the volume involved, only the major provisions are referred to here.

### (a) Constitutional Provisions

Art. V, § 1 - Creation of Office of Attorney General in the Executive Department. Elected for four year term. After having served one term is ineligible to hold any state office for four years thereafter. Pursuant to Section 4-5-1, NMSA, the annual salary for Attorney General is \$30,000.00.

- Art. V, § 3 - Qualifications for Attorney General. Citizen of the United States, at least thirty years of age, resided continuously in New Mexico for five years next preceding his election, and a licensed attorney of the New Mexico Supreme Court in good standing.
- Art. II, § 14 - Indictment and Information. No person shall be held to answer for a capital, felonious or infamous crime unless on a presentment or indictment of a grand jury or information filed by a district attorney or attorney general or their deputies, except in cases arising in the militia when in actual service in time of war or public danger.
- Art. V, § 7 - Succession to Governorship. The Attorney General, in the event of a disaster, is fifth in the line of succession to the governorship following the Lieutenant-Governor, Secretary of State, President Pro Tempore of the Senate, and Speaker of the House, in that order.
- and § 4-18-4, NMSA, 1953 Comp.

(b) Duties

The following sections of New Mexico Statutes Annotated are from the act creating a Department of Justice, fixing and defining the duties, rights and powers of the Attorney General.

4-3-1. Creation of department of justice.--  
The department of justice be, and same is hereby created, with the attorney general as head thereof, which shall be located at the seat of government.

4-3-2. Duties of attorney general.--Except as otherwise provided by law, the attorney general shall:

A. prosecute and defend all causes in the Supreme Court and court of appeals in which the state is a party or interested;

B. prosecute and defend in any other court or tribunal all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action or when requested

to do so by the governor;

C. prosecute and defend all actions and proceedings brought by or against any state officer or head of a state department, board or commission, or any employee of the state in his official capacity;

D. give his opinion in writing upon any question of law submitted to him by the legislature or any branch thereof, any state official, elective or appointive, or any district attorney on any subject pending before them or under their control with which they have to deal officially or with reference to their duty in office;

E. prepare drafts for contracts, bonds and other instruments of writing which may be required for the use of the state whenever requested to do so by any state officer;

F. promptly account to the state treasurer for all state funds received by him;

G. report to the governor and legislature the condition of his office, the text of all opinions rendered and a summary of business transacted of public interest, which report shall be submitted each year;

H. keep a register of all opinions rendered and all actions prosecuted and defended by him, and of all proceedings in relation thereto;

I. attend and assist in the trial of any indictment or information in any county on direction of the governor;

J. appear before local, state and federal courts and regulatory officers, agencies and bodies, to represent and to be heard on behalf of the state when, in his judgment, the public interest of the state requires such action or when requested to do so by the governor; and

K. perform all other duties required by law.

4-3-3. Action in civil and criminal cases.--  
Upon the failure or refusal of any district

attorney to act in any criminal or civil case or matter in which the county, state or any department thereof is a party or has an interest, the attorney general be, and he is hereby authorized to act on behalf of said county, state or any department thereof, if after a thorough investigation, such action is ascertained to be advisable by the attorney general. Provided, that the attorney general shall, upon direction of the governor, investigate any matter or matters in any county of the state in which the county, state or any department may be interested. After such investigation, the attorney general be, and he is hereby authorized to take such action as, in his opinion, conditions warrant. The cost of such investigation shall be paid out of the general fund of the county wherein such investigation shall have been made, and the costs of any prosecution arising out of such investigation shall be paid as are the costs in cases prosecuted by district attorneys.

4-3-4. Employment of legal assistance for departments.--No compensation shall be allowed to any person for services as an attorney or counselor to any department of the state government, or the head thereof, or to any state board or commission, except in cases specially authorized by law, but special legal assistance, may be employed by the attorney general, under his direction and control, at a reasonable compensation, in any pending action or proceeding to protect the interest of the state, with the consent and approval of the governor upon showing made by the attorney general that his department cannot for reasons stated perform such services. The costs of such special legal assistance shall be paid by the department out of which such suit or proceeding originated.

4-3-5. Assistant attorneys general--Appointment.--The attorney general may appoint a deputy attorney general, and as many other assistant attorneys general together with stenographic, clerical and other necessary employees on a full- or part-time basis, at salaries to be fixed by him within budget allowances and appropriation limits, as the business of the department shall require, and who shall hold office during the pleasure of the attorney

general. The deputy attorney general and the assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general.

4-3-6 through 4-3-15. Provide for preparation, distribution and sale of opinions and reports of the attorney general.

4-3-16. Representation of officer, deputy, assistant, agent or employee of state or state institution.--The attorney general of New Mexico is directed to act, if requested, as attorney for any officer, deputy, assistant, agent or employee of the state or of a state institution in the event such person is named as a party in any civil action in connection with an act growing out of the performance of his duty; Provided, however, this section shall not apply to any suits or proceedings on behalf of the state against such person.

In addition to the above, the following New Mexico statutes grant the Attorney General other powers and responsibilities in his relationship with District Attorneys and county officials.

17-1-9.2 and 9.3. District Attorney Removal Proceedings. The New Mexico Supreme Court is given exclusive original jurisdiction of removal proceedings brought against a district attorney, "upon presentment by the governor, the attorney general or any regularly empaneled grand jury." "All charges so presented to the court shall be prosecuted by the attorney general unless he should decline to act, or the governor, in the case of presentment by him, shall request the designation of another attorney; in either of which events the court will appoint another attorney."

17-1-12. No one except attorney general, district attorney or assistants to represent state or county.--No one shall represent the state or any county thereof in any matter in which said state or county is interested except the attorney general, his legally appointed and qualified assistants or the district attorney or his legally appointed and qualified assistants, and such associate counsel as may appear on order of the court, with the consent of the attorney general or district attorney.

17-1-14. Prohibits attorney general from aiding the defense of a defendant accused of any crime or misdemeanor in this state.

17-1-15. Grants the attorney general the power to compromise or settle any suit or proceeding, civil or criminal, or grant a release or enter satisfaction in whole or in part, of any claim or judgment in the name of the state, or dismiss the same, or take any other steps he deems proper in connection with such proceedings.

41-5-4 and 41-5-7. Grand juries. Provide access to grand juries by the Attorney General and his staff for presentment of criminal matters and for other lawful purposes.

(c) Other Legal Services Responsibilities

In addition to the above quoted statutes which make the Attorney General the chief legal officer of the state, there are countless of specific statutes dealing with particular state agencies including several enacted by recent legislative sessions, specifying that the Attorney General is to be the attorney for that particular agency. This gives additional weight to the Attorney General's contention that all legal services to state government must be provided by his Office, with minor exceptions.

Several of these agencies, which the legislature has specifically provided for the Attorney General to represent them as their attorney, presently do not receive their legal services directly from the Office of Attorney General. The Attorney General, with concurrence of the Governor, is seeking to change this during the 1977 Legislature. These agencies include, but are not limited to: State Engineer (Section 75-2-10), Interstate Streams Commission (Section 75-34-3), Commissioner of Revenue (Section 72-13-21), Property Tax Department (Section 72-28-5), State Police (Section 39-2-27), Energy Resources Board (Section 65-13-6), and Oil Conservation Commission (Section 65-3-4). Other agencies not receiving legal services from the Attorney General but which are covered by other provisions making the Attorney General their legal advisor, include: Health and Social Services Department, Environmental Improvement Agency, State Highway Department, Department of Hospitals and Institutions, Employment Security Commission, and Commissioner of Public Lands.

The Attorney General is also charged with cooperating with the Legislative Council and the Legislative Council Service and to render all legal services and service in the drafting of bills required when requested to do so by the said Council or its representatives (Section 2-3-10).

Section 68-4-9 also directs the Attorney General to advise, to represent, and to appear for the Public Service Commission in all actions and proceedings involving any question under the Public Utility Act or under any order or act of the Public Service Commission. While this statute provides a specific duty upon the Attorney General, a duty he will carry out, the Attorney General is not seeking to have funding for PSC attorneys transferred to his own budget at this time. An exception is being made because of the many interventions which the Attorney General has made in his own behalf before the PSC in its proceedings and, thus, to avoid any appearance of impropriety affecting proceedings before the PSC. It is the only state agency which the Attorney General intervenes before on his own behalf on a regular basis. The Attorney General, however, recognizes his responsibilities under Section 68-4-9, NMSA, 1953 Comp., and will seek to carry out said responsibilities without assuming jurisdiction over the PSC legal budget.

(d) Enforcement of Specific Statutes

The Attorney General has the responsibility for helping enforce the New Mexico Criminal Code (Section 40A-1-1 to 40A-29-25), assisting his clients (state and county government agencies) in carrying out their respective responsibilities under the thousands of current New Mexico statutes and the New Mexico Constitution, and fulfilling express and implied powers of the Office. The thousands of statutes the Attorney General must thus contend with are too numerous to list; however, the following represents some of the specific statutes that the Attorney General, as opposed to his clients, is directed to enforce:

Sections 9-15-1 to 9-15-120. Code of Military Justice. Provides certain responsibilities in the Attorney General in enforcing the Act.

Section 22-4-8. Attorney General to institute proceedings to compel child support and establish parentage of a child, if the child is or is likely to be a public charge.

Sections 22-19-28 to 22 19-68. Reciprocal Enforcement of Support Act. Provides certain responsibilities in the Attorney General in enforcing the Act.

Sections 33-2-1 to 33-2-24. Uniform Trustees' Accounting Act. Provides for documents required to be delivered to beneficiaries of charitable trusts to be delivered to the Attorney General.

Sections 41-19-1 to 41-19-30. Uniform Criminal Extradition Act. Attorney General provides all legal assistance to governor in carrying out provisions of the Act.

Sections 45-17-24 to 45-17-45. Fruit and Vegetable Standards Act. Provides certain responsibilities in the Attorney General in enforcing the Act.

Sections 49-12-1 to 49-12-7. False Advertising Act. Attorney General to enforce provisions of the Act.

Sections 49-15-1 to 49-15-18. Unfair Trade Practices Act. Attorney General to enforce provisions of the Act.

Sections 50-16-1 to 50-16-15. Retail Installment Sales Act. Attorney General to enforce provisions of the Act.

Sections 50-17-1 to 50-17-4. Debt Adjusters Act. Attorney General to enforce provisions of the Act.

Sections 50-20-1 to 50-20-18. Pyramid or Multi-Level Sales Act. Attorney General to enforce provisions of the Act.

Sections 54-6-26 to 54-6-51. New Mexico Drug and Cosmetic Act. Attorney General to enforce provisions of the Act.

Sections 54-1-1 to 54-1-19. New Mexico Food Act. Attorney General to enforce provisions of the Act.

Sections 58-14-1 to 58-14-40. Fraternal Benefit Societies Act. Provides certain responsibilities in the Attorney General in enforcing the Act.

Sections 64-27-1 to 64-27-81. Motor Carrier Regulation Act. Attorney General to enforce provisions of the Act.

Sections 64-31-1 to 64-31-13. Financing of Automobile Sales Act. Attorney General to enforce provisions of the Act.

Sections 67-31A-1 to 67-31A-11. Polygraph Act. Attorney General to assist in enforcing provisions of the Act.

Sections 67-33-1 to 67-33-49. Private Investigators Act. "The Attorney General through the Department of Justice shall enforce and administer the provisions of this Act."

Sections 70-3-1 to 70-3-9. Land Subdivision Act. Attorney General to enforce provisions of the Act.

Sections 70-5-1 to 70-5-29. New Mexico Subdivision Act. Attorney General to enforce provisions of the Act.

(e) Statutory Memberships

As with any constitutional officer, the Attorney General is designated from time to time to serve on various boards, commissions,

and other public bodies. Many of these are by statute, others by request of the Governor, or by invitation from local, state and national bodies. No effort will be made to list all such entities that the Attorney General serves on, except for those that are specifically provided for by statute. Following is such a listing; all statutory references are to sections of New Mexico Statutes Annotated, 1953 Compilation:

- (1) Compilation Commission (Section 1-1-2);
- (2) Land Commission created by Section 11 of the Enabling Act (Section 7-1-4);
- (3) New Mexico Mortgage Finance Authority (Section 13-19-4);
- (4) Law Enforcement Academy Board (Section 39-6-3);
- (5) Polygraph Board (Section 67-31A-4); and
- (6) State Commission on Public Records (Section 71-6-3).

### III. ADMINISTRATIVE DIVISION (Shirley A. Scarafiotti, Director)

#### (a) Introduction

The creation of a new, deputy level position, director of administration, which was created in 1975, has proven its merits beyond expectation in demonstrating the importance of good administrative practices and procedures. Experience has demonstrated that these tasks can best be handled by one trained for administrative responsibilities and has improved the efficiency of the office.

The new deputy is responsible for continued reorganization of the Office and for designing and implementing new office procedures. This Division is charged with improving the efficiency, accountability and responsiveness of the Office. It provides complete support services for the legal divisions, including secretarial, filing, mail distribution, docketing, accounting, budgets, media contact and personnel management.

#### (b) Duties

The Administrative Division is charged with the following responsibilities:

1. Budgeting and Fiscal Administration - budget preparation, financial control, accounting, payroll, financial reports and property inventory;

2. Planning - assisting policy makers and defining plans and goals for the agency and its components;

3. Office Services - responsible for personnel, purchasing, forms and office procedures, control, supplies, files, mail processing, and reception. Developing and maintaining routine forms, procedures manuals, and other written tools, with appropriate assistance from other staffs;

4. Support Staff - overseeing and supervising the assignment and supervision of support staff;

5. Supervising Physical Facilities - assigning space, supervising maintenance, and otherwise taking responsibility for the office;

6. Retrieval Systems - developing and supervising information retrieval systems; and

7. Work Flow - supervising maintenance of case dockets, work assignments, "tickler" files, statistical indices of performance and similar records.

This Division is also charged with continually evaluating and comparing actual with desired performance, on both the individual's and the organizational level. These evaluations are the basis for promotions, assignments, and all phases of personnel management.

In addition to being the chief administrative officer responsible for supervising all of the above functions, the Director of Administration acts as liaison on all questions of a non-legal nature between agencies, boards, commissions and other branches of local, state and federal government, acts as ombudsman for the public, is a liaison with the legislature, and is the Attorney General's personal liaison with the news media. The Director of Administration serves as the Attorney General's personal representative to national and regional organizations and represents the Attorney General on various state and local bodies and organizations.

### (c) Activities

An Affirmative Action Plan has been adopted and implemented for the first time in the history of the Attorney General's Office. The Affirmative Action Plan was submitted to, and approved by, the New Mexico Human Rights Commission. Four additional women attorneys were hired this year, bringing the total number of women attorneys to six. One additional Spanish-surnamed attorney, and a non-attorney American Indian were hired this year. Black and American Indian attorneys are actively being recruited although with little notable success.

A major effort was undertaken to provide for appropriate office space for the staff of the Office of Attorney General. The staff has been housed in cramped office quarters located in several office buildings throughout Santa Fe. This undesirable situation has existed at least since 1975. However, previous efforts to provide for better office space have met with no success. In 1976, as a result of funding provided by the Legislature to remodel the Bataan Building, and with the excellent cooperation of the Department of Finance and Administration and Department of Finance and Administration's Property Control Division, remodeled quarters were provided for in December 1976 for the Attorney General. Remodeling was to be completed early in 1977 at which time all staff under the immediate, full control of the Attorney General will be housed in the Bataan Building. This will provide for greater efficiency and eliminate duplication of various support services.

It is anticipated that during 1977 additional office space will become necessary as consolidation continues to take place and programs are expanded. It is doubtful that the necessary space will be available in the Bataan Building and thus problems of inadequate office space will again be confronted.

The Attorney General is again proposing to the 1977 Legislature that a new or remodeled office building be provided for a Department of Justice to house the Office of Attorney General, Corrections Department, Parole Board, Governor's Organized Crime Prevention Commission, Governor's Council on Criminal Justice Planning, State Public Defender, and other state agencies in the criminal justice system that do not already have their own state-owned building. This would centralize all related agencies and eliminate the present need of most of these agencies to lease office space in privately owned buildings at substantial costs.

As reported in the 1975 Annual Report, the Attorney General feels that the present arrangement of having attorneys physically located all over state government is totally undesirable for the efficient representation of the State in legal matters. It does not permit for strict accountability and supervision. Further, it is unnecessarily costly because of duplication of effort and support services. For example, the attorneys assigned to the central office staff have immediate and constant access to the Attorney General and other supervisory and legal support, they must account for their time, and are serviced by a secretarial staff of an approximate ratio of one secretary to five attorneys. In the case of those attorneys assigned to other departments the direct supervision is not available and the secretarial support required is usually one secretary for one attorney.

It is felt by the Attorney General that some attorneys must, of necessity, for the proper representation of the agencies they are assigned to, be located in-house within that agency. This, however, should be the exception as opposed to the rule, as is the present case.

In his plans for complete consolidation of legal services under the Office of Attorney General, the Attorney General recommends that eventually most attorneys working in state government be located in one building.

(d) Staff

As of December 31, 1976, 70 of the 73 authorized positions in the Office of Attorney General were filled.

In addition, several state policemen were assigned to the Office to assist in various investigations.

All eligible staff received merit increases, and promotions, and some staff received extra merit increases, in keeping with the Attorney General's efforts to upgrade all staff. A substantial majority of staff members are professionals or semi-professionals and are required by the Attorney General to work many hours in excess of the usual 40 hour workweek without overtime compensation. To attract, keep, and partially compensate such employees, the Attorney General believes that these employees should be compensated in line with a liberal policy of promotions. Even so, many of the staff are not adequately compensated in comparison with hours worked and productivity. The excellent record of productivity and integrity presently enjoyed by the Office would appear to justify such policy. This Division is responsible for fully carrying out the Attorney General's policy in this regard.

(e) Fiscal

During the 64th Fiscal Year, the Attorney General's Office operated with a budget total of \$1,445, 998.00 reverting only \$2,951.12 to the General Fund.

This involved seven different cash accounts, 11 different budget activities, three Law Enforcement Assistance Administration federal grants and eight joint powers agreements.

The 65th Fiscal Year presently has a budget of \$1,476,064.00 as of December 31, 1976. This does not yet reflect LEAA grants that have been just recently awarded. These are:

Data Brief Bank Continuation	\$ 41,280
Career Prosecutor Training Continuation	21,959
CGP - WCC Continuation - January 1977 through September 1977	271,890 (estimate)
CGP - WCC Continuation - October 1977 through June 30, 1978	271,890 (estimate)

In addition, an Anti-Trust grant package may also be receiving federal LEAA approval. The above amounts include federal funding and state matching funds.

The current fiscal operation includes eight separate cash accounts, 13 different budget activities, four LEAA grants and eight joint powers agreements.

During the period January 1, 1976 through December 31, 1976, the fiscal staff has drafted administrative memos and procedures for the Attorney General to insure fiscal integrity in areas dealing with automobile usage, agency purchasing procedures, postage meter control, copier control, usage and control of state telephone system and WATS calls, travel requests, per diem reimbursement and cash receipts/deposits and recording procedures.

The new fiscal section presently consists of three staff members, who are responsible for all fiscal matters including budgeting, purchasing, payment processing, property control, grants fiscal management and for all agency personnel matters.

In June 1976 the fiscal staff performed a brief internal audit of the agency to determine agency control needs. Based on its findings the section has in the past six months implemented:

A disbursements journal by activity for the 64th and 65th Fiscal years for the Attorney General, Private Investigators, Employment Agency and Polygraphy Boards;

An accounts payable and vendor filing system;

An accounts receivable and payer filing system;

A purchases control system;

Two investigatory funds: The Corrupt Government Practices/ White Collar Crime Evidence Fund and the Indian Arts and Crafts Evidence Fund and control procedures for these;

An up-to-date completely revised Table of Organizational listing to more accurately reflect the organizational structure of the agency;

An agency contracts control system;

A revision of the 65th Fiscal Year Operating Budget in an effort to make agency needs conform to the amounts appropriated by the legislature;

A new cash receipts/depositing and recording system to comply with State Treasurer and statutory requirements;

Procedures for managing, recording and reporting on the various LEAA grants utilizing the DFA process, and for filing quarterly financial status reports with LEAA as per their requirements;

A consumer suspense fund to control, receive and disburse funds awarded by the courts or through out-of-courts settlements to consumers through the Attorney General's Office;

Controls over telephone credit cards, centrex number codes, gasoline and car rental credit cards;

New per diem and travel reimbursement procedures and payee control system;

A control system over publications purchases; in the past, the agency received various expensive publications which are no longer needed and have been discontinued.

The fiscal staff prepared and submitted, with the Attorney General's approval, the 66th Fiscal Year Budget requests for the Attorney General, the Employment Agency Board and the Polygraphy Board.

Additionally, they have prepared and submitted to LEAA, project budget proposals for the Corrupt Government Practices/ White Collar Crime, Data Brief Bank and Career Prosecutor Training grants.

The Attorney General, in September 1976, assigned the fiscal section the responsibility for all personnel matters with a directive that all old errors and problems in that area be resolved. This has been done.

The fiscal section is currently in the process of computerizing the agency inventory of fixed assets through DADP. This will aid in making a determination on the adequacy of insurance coverage for the agency on a regular basis; of designing a centralized supplies control system; and of implementing a time/cost control and allocation system for agency staff.

#### IV. CIVIL DIVISION (Thomas L. Dunigan, Director)

##### (a) Introduction.

In my Annual Report to you last year, I described at length the functions and duties performed by the Civil Division of the Office of the Attorney General, and I explained that in discharging these responsibilities, the Office of the Attorney General, as a practical matter, furnishes comprehensive and continuous legal representation to all of the numerous departments, agencies, boards and commissions of the State of New Mexico, and their officials, officers, members and employees with respect to every aspect of their official performance. I likewise described to you the plans and ambitions I had with respect to improving the quality, efficiency, effectiveness and consistency of performance in the rendition of these legal services as well as the progress that had been made in the first year of my administration to achieve these objectives.

As I reported to you last year, a Civil Division was created within the Office of the Attorney General and the civil law functions performed by the Attorney General have been allocated accordingly. This internal organizational arrangement has afforded the opportunity for the attorneys assigned to each of these divisions to gain in knowledge, competency, effectiveness, quality and consistency of work performance with respect to the legal matters handled by the respective divisions.

To further foster this objective, I intend to introduce during the coming year an additional refinement in the organizational structure of the Civil Division of the Office of the Attorney General. This refinement will feature the creation of functional units or sections within the Civil Division to better coordinate the rendition of legal services within such general categories as education, financial affairs, natural resources and conservation, transportation, public liability, and civil litigation. The final form of this reorganizational arrangement must, of necessity, await the legislative response to the Governor's proposed organizational plan for the executive department of state government. It is contemplated that should the 1977 legislature enact the Governor's reorganization plan establishing a twelve department cabinet, that the Civil Division will be reorganized on the same functional basis.

##### (b) Consolidation of Legal Services

In my 1975 Annual Report I described my program of consolidation and coordination of legal services provided to the State of New Mexico, and I explained what I considered to be the significant advantages of such a program. In accordance with the directive

of the legislature expressed during the previous legislative session, I have not pursued the completion of the consolidation program during the past year. The present status of the program is as it was at the completion of the previous legislative session. I intend to propose jointly with the Governor, however, to the First Session of the 1977 Legislature, that the matter of consolidation of legal services rendered to the State of New Mexico again be considered and immediately accomplished. Accordingly, I have submitted to the Governor and to the Legislature, in my proposed budget as well as in other legislation to be proposed during the the 1977 Legislature, a plan to accomplish such consolidation in a fashion which should be agreeable to all concerned.

Other references to statutory authority for consolidation are covered in previous sections.

The following is a list of agencies, estimated number of employees, and requested 66th Fiscal Year Budget to be incorporated in the Attorney General's operation under this proposal:

Agency	No. of Attys	No. of other Employees	Total No. of Employees	Requested 66th Fiscal Year Budget (in Thousands)
Bureau of revenue	5	2	7	\$ 189.2
Employment security commission	2	1	3	80.4
State engineer and interstate stream commission	5	3	8	252.7
Health and social services and environmental improvement	20	23	43	727.0
State highway department	10	17	27	555.3
Department of hospitals and institutions	3	1	4	104.1
Oil conservation commission	2	1	3	68.1
State police	2	1	3	71.4
Property tax department	2	2	4	89.3
Commission of public lands	2	1	3	78.9
Energy resources board	<u>1</u>	<u>0</u>	<u>1</u>	<u>26.5</u>
Total	54	52	106	\$ 2,242.9

(c) Opinions of the Attorney General

A total of forty (40) official Opinions of the Attorney General were issued during calendar year 1976. These Opinions were attached to this report. The policy of the Attorney General with respect to the issuance of the Opinions of the Attorney General remains the same as that explained in my 1975 Annual Report and is discussed at the end of this report.

(d) Significant Achievements

Among the significant achievements of the Civil Division during the past year are the following:

1. Successful litigation in defense of a challenge to the Governor's authority to discharge political appointees without notice or hearing in accordance with Article 5, Section 5 of the New Mexico Constitution.

2. Successful litigation to exempt the State of New Mexico generally and, the Counties of Curry, Otero and McKinley specifically, from the provisions of the Voting Rights Act Amendment of 1975, an action that permitted the 1976 elections to proceed under existing state law without disruption.

3. Successful litigation in defense of a challenge to the constitutionality of the elk and antelope licensing system promulgated by the Game and Fish Commission.

4. Successful litigation in defense of various challenges to the constitutionality of state election laws.

5. Successful litigation to authorize the Game and Fish Commission to issue an additional two million dollars worth of fish and game bonds for the purpose of purchasing land for additional fish and game reserves.

6. Initiation of litigation against the United States to challenge proposed changes in the public school free lunch program.

7. Initiation of litigation and other claims procedures to collect delinquent loans owing to the New Mexico Student Loan Program Fund.

8. Highly advantageous settlement on behalf of the Museum of New Mexico of a long standing dispute with respect to the ownership and custody of certain valuable Southwestern art treasures.

9. Successful removal of the Otero County Treasurer for malfeasance in office.

10. Heightened scrutiny of public purchasing practices at the state and local level.

11. Increased enforcement of the State Public Purchases Act including successful litigation to nullify public purchases made in violation of the Act.

12. Increased enforcement of the Open Meetings Act.

13. Successful litigation in defense of the Department of Finance and Administration in connection with a challenge to the tax assessment of certain real property located in the Town of Cochiti.

14. Successful litigation in defense of the validity of certain contracts entered into by the Public Defender Department.

15. Advantageous settlement of a claim against the Subsequent Injury Fund maintained by the Superintendent of Insurance.

16. Successful litigation in defense of Magistrate Court rules preventing the unauthorized practice of law by large corporations.

17. Successful litigation to cancel the so-called "pocket liquor licenses."

18. Successful defense of numerous tort and civil rights claims brought against various public officers and employees.

19. Successful litigation in numerous cases involving challenges to the actions of various departments, agencies, boards and commissions of the State of New Mexico in the performance of their official duties.

20. As the office designated to coordinate all employment discrimination charges filed with the United States Equal Employment Opportunity Commission against all state agencies, this office successfully reduced 95 class actions against state agencies to four which are currently pending. These class action charges were filed by the American G.I. Forum, All Indian Pueblo Council, and the National Indian Youth Council, Inc. with the Equal Employment Opportunity Commission against 95 state agencies alleging employment discrimination on the basis of race, sex, religion and national origin. E.E.O.C. conducted investigations of all agencies charged with discrimination. However, as a result of procedural deficiencies documented by the Civil Division, E.E.O.C. had to dismiss 91 out of the 95 cases.

V. CRIMINAL DIVISION (Donald Montoya, Director)

(a) Introduction.

One of the more significant activities occurring within the Criminal Division is the handling of all criminal appeals from across the state. In my first year in office, I established a Criminal Appellate Unit within the Criminal Division in order to more effectively, efficiently, and professionally handle all criminal appeals. Prior to the time that I assumed office, all criminal appeals were either "farmed out" to various attorneys around the state on a contract basis, or were given to various attorneys within the office on an "as available" basis. With the establishment of the Criminal Appellate Unit within the Division, the Assistant Attorneys General handling the appeals have the opportunity to gain the expertise and experience needed to professionally handle as well as learn and practice the art of appellate advocacy.

Another significant responsibility assumed by the Criminal Division arose as a result of recent decisions in the New Mexico Court of Appeals which have defined and delineated those circumstances under which a District Attorney must either excuse himself or accept disqualification because of a potential conflict of interest. The Criminal Division has been responsible for handling all those dozens of cases where the District Attorneys are so disqualified. The seriousness of such cases has ranged from charges of first degree murder to misdemeanors. This responsibility is expected to be expanded with the swearing in on January 1, 1977 of several new District Attorneys which will have conflicts develop as a result of their previous private practices or that of their assistants. In the first two weeks of January 1977, already over 35 criminal cases have been referred by District Attorneys because of conflicts.

In conjunction with working with the various District Attorneys where conflicts exist, the Criminal Division has attempted to open up and to utilize the channels of effective cooperation and communication with the various District Attorneys. This has been accomplished by making available the research which this office has conducted in various areas of criminal law and criminal procedure, as well as appearing on behalf of the various District Attorneys from across the state in the New Mexico Supreme Court on a great number of occasions thus freeing the respective District Attorneys from the responsibility, time and expense of traveling to Santa Fe to argue matters before the Supreme Court when not absolutely necessary for them to personally appear.

On January 1977 the Attorney General will consolidate the Corrupt Government Practices Unit of the Corrupt Government Practices and White Collar Crime Division with the Criminal Division to form the Criminal and Special Prosecutions Division. The White Collar Crime Unit will be consolidated with the Consumer Protection Division to form the Consumer and Economic Crimes Division. This is expected to strengthen the overall efforts of the office.

(b) Appeals

In 1976 a total 228 criminal appeals were filed in both the New Mexico Court of Appeals and in the New Mexico Supreme Court. This is an average of about 18 criminal appeals per month. In addition, this figure does not include briefs which are required when certiorari is taken either by the State or by the defendant from a decision of the Court of Appeals to the Supreme Court. Regardless of which party takes certiorari, if it is granted, briefs are normally required. Some criminal appeals are summarily affirmed, in which case a memorandum supporting the Court's disposition to summarily affirm a particular case is filed instead of briefs. In many cases two separate briefs are required, one in the Court of Appeals and one in the Supreme Court. In addition, all motions filed in the respective appellate courts require memoranda in support of the motions unless the motions are directed to strictly procedural matters.

(c) Data Brief Bank/Career Prosecutors Grant

The office obtained a grant from the Governor's Council on Criminal Justice Planning for the purposes of developing and implementing a data brief bank project. Since the Criminal Division handles all criminal appeals from across the State, the Criminal Division has built up a brief bank composed of all the issues in criminal law and procedure which have been fully briefed in the appellate courts. The purpose of the brief bank was to develop and to implement a procedure whereby meaningful access could be obtained as to all the previous research conducted by the office, thus eliminating a great amount of time and effort and providing for consistency in preparing briefs on points and issues which have been fully briefed and argued previously. The brief bank system is now functional so that the appellate attorney handling any point or issue will be able to reap the benefits of the research conducted over the years by other Assistant Attorneys General on the same point or issue.

Avenues are currently being explored to make the brief bank available to all thirteen District Attorneys. We anticipate utilizing the funds from the data brief bank to make copies of

our briefs on various points and issues so that they could be sent to District Attorneys which will not only save time for the District Attorneys in handling their cases, but eliminate the possibility of a similar mistake being made again by a District Attorney in prosecuting a similar case.

In addition, the Criminal Division is currently handling the career prosecutors grant which was also obtained from the Governor's Council on Criminal Justice Planning. The purpose of the grant is to provide funds so that the various Assistant Attorneys General within the Criminal Division can take advantage of training seminars offered on the rules of evidence, rules of criminal procedure, and trial tactics and preparation. Attendance and participation at the seminars fulfills the need for the continuing development of expertise within the office to handle not only criminal appeals, but criminal trials when called upon to do so.

(d) Trials

The Criminal Division handled twelve criminal cases at the trial level, ranging in complexity from simple misdemeanors to first degree murder. The trials were handled in seven different counties across the State.

At present, there are approximately thirty five (35) criminal cases which have been referred to this division for prosecution because of conflicts of interest in the District Attorneys office. The reason for the profound increase in criminal cases being referred to this office is occasioned by the hiring of several former District Public Defenders by District Attorneys offices. Therefore, all cases in which those District Public Defenders were involved in defending, have been referred to this office for prosecution. The respective District Attorneys and their offices are legally disqualified from prosecuting any case where the District Attorney, or a member of his staff, was engaged as defense counsel. The onslaught of the criminal trials was not totally unanticipated, and the Criminal Division has been preparing itself to effectively handle these criminal cases. The difficulty, of course, arises in that these criminal cases must be tried in different counties across the State and, thus, much of the attorney's and investigator's time from the Attorney General's Office will be spent in traveling back and forth in order to interview witnesses, review reports, and prepare their case.

Although it is anticipated that the trials will place a great strain not only on the manpower of the Criminal Division, but on our budget, the total cost will be far less than would be incurred if each one of these cases were contracted out to a special prosecutor. In fact, using such comparison the cost will

be minimal. All the cases are felony cases and most involve multiple defendants, or multiple counts. If one were to ascribe even a modest cost estimate for the cost of a special prosecutor for each case, than the total cost involved could easily exceed \$125,000. The Office of the Attorney General is handling such cases with no addition in staff but with extra overtime hours being devoted by staff, and a reassignment and rescheduling of work assignments.

(e) Other Assignments

The Criminal Division is also responsible for reviewing all documents submitted to the office of the Governor for extraditions and requisitions. All applications for requisitions are submitted to a member of the Criminal Division for review and approval prior to submittal to the Governor. In like manner, all extradition requests from other states are reviewed and approved prior to their being sent to the Governor for the issuance of the Governor's warrant.

Other state agencies which the Criminal Division advises, include the Polygraph Board and the Private Investigators Board. A member of the Criminal Division sits on the Polygraph Board for the purpose of conducting business and rendering advice. In addition, all applications for private investigators licenses are reviewed by a Criminal Division attorney prior to approval by the Attorney General.

Members of the Criminal Division have also been called upon to aid county grand juries when an action or decision by a District Attorney has been questioned. In one such case, when the actions of a District Attorney were questioned, the District Attorney turned over a particular case to this office for prosecution and, upon trial before a jury, the individual involved was convicted of all charges on which he was indicted by the grand jury.

Further, attorneys from the Criminal Division have been called upon to aid the New Mexico Judicial Standards Commission on matters regarding complaints against members of the judiciary. The Attorney General has received letters of commendation from the Commission for the assistance granted by his office to the Commission.

Members of the Criminal Division have been called upon to serve as lecturers before various bodies in all areas of criminal law and have served as instructors at the New Mexico Law Enforcement Academy. Staff members are available to counsel, as appropriate, law enforcement officers throughout the State on particular problems affecting their agency.

(f) Proposed Activities

Because of the great number of disqualifications in various District Attorneys offices across the State, the handling of all the trials which have been referred to this office will receive major emphasis. With the expertise which the Criminal Division has gained over the previous two years, it is anticipated that the functions of handling these jury trials will be assumed without unduly compromising other functions within the Criminal Division, but it will necessitate considerable sacrifices on the part of all staff in the Division.

In conjunction with the brief bank grant, a complete appellate manual is being prepared for all the appellate attorneys within the Criminal Division which will delineate and specify all the procedures which must be employed in effectively representing the State in all criminal appeals.

In addition, with several new District Attorneys assuming office across the State, the Criminal Division plans to step up its efforts of effective communication and cooperation in criminal appeals, Rule 37 petitions, trials, legal research, and grand jury investigations. A new era of cooperation with District Attorneys is anticipated -- a cooperative spirit that should lead to a concerted attack against all criminal elements.

Efforts will continue to be exerted by the Criminal Division and the Office to assume its role of leadership in providing assistance to law enforcement agencies and prosecutorial offices throughout the State.

VI. CONSUMER PROTECTION DIVISION (Robert Hilgendorf, Director)

A. Introduction

The reorganization of the Division was completed during the year 1976, with the filling of all budgeted positions. The staff includes: six Assistant Attorneys General, one law clerk, four investigators, two secretaries, and three consumer advocates (federally funded). As a result of the reorganization described in the following paragraph, three additional attorneys, one additional secretary, and additional investigative assistance will be made available to the Division.

During January 1977, the White Collar Crime Unit of the Corrupt Government Practices and White Collar Crime Division will be consolidated with the Consumer Division to form the Consumer and Economic Crimes Division. The Corrupt Government Practices Unit will be consolidated with the Criminal Division to form the Criminal and Special Prosecutions Division. This is expected to strength the overall efforts of the Office.

The work of the Division can be divided into five basic areas. Although separate organizational units were not created, the separate functions of the Division were maintained by assigning attorneys and investigators to areas in which they had developed specialized skills. Also, the work of investigators in the Division was standardized, and incorporated into a manual of procedure. This completed the transition from consumer complaint handling to investigation and litigation, a process which was begun in 1975, and was necessitated by the increasing number of complaints, and the need to seek remedies for the class of injured consumers, not just individual consumers.

A branch office was maintained in Albuquerque, and the designation of "cooperating agency" was given to a number of consumer oriented programs throughout the State of New Mexico. Also, close coordination with the Governor's Service Centers, the Better Business Bureau, the New Mexico Retail Association, and other interested groups was maintained.

B. Unfair, Deceptive, And Unconscionable Trade Practices

The basic authority for the Attorney General in the area of consumer protection is found in two statutes, The Unfair Trade Practices Act 49-15-1 et seq. and The False Advertising Act 49-12-1 et seq. By these statutes the Attorney General is given primary jurisdiction throughout the state to take legal action to prevent and remedy unfair trade practices.

The manner in which this authority has been exercised is basically twofold. First, the office receives complaints from consumers, and assigns those complaints to consumer advocates who investigate a grievance, and attempt to resolve it informally. Those complaints which cannot be resolved and involve significant numbers of people or amounts of money, are assigned to a member of the legal staff for further investigation and prosecution. As a result of the efforts of the consumer advocates, the following cases were handled and satisfactorily concluded:

Consumer Complaints received	-	1,377
Cases Closed	-	1,296
Cash Refunds	-	\$ 83,328.62
Value of Articles Replaced	-	37,579.28
 TOTAL RESTITUTION	-	 \$120,907.90

With regard to cases which required legal action, the following indicate the results. The Division has been giving greater emphasis to use of "Assurances of Discontinuance" to settle complaints that might otherwise take months or years to bring to final court action. By such procedure the charged party agrees

in writing to discontinue the alleged unfair practice and to make agreed upon restitution. During a six month period following concentration on the use of "Assurances of Discontinuance", the following "assurances" were executed on behalf of a class of injured consumers under the Unfair Trade Practices Act only:

- |     |  |          |
|-----|--|----------|
| 1.  | Tom Young, DBA Egyptian Health Spa, Los Alamos<br>Failure to deliver services to residents of<br>Los Alamos.                         | \$ 2,736 |
| 2.  | H&A Life Insurance Company<br>Misrepresentations to Navajo Indians who<br>purchased life insurance.                                  | 10,000   |
| 3.  | James Financial Corporation<br>Illegal collections in real estate escrow<br>accounts.  | 1,000    |
| 4.  | Cibola Life Insurance<br>Misrepresentation in sale of life insurance.  | 2,000    |
| 5.  | First National Bank of Albuquerque<br>Misrepresentation and over-collection of<br>interest charges.                                  | 5,000    |
| 6.  | Shop Rite Food (Piggly Wiggly)<br>Illegal collection of sales tax.   | 9,600    |
| 7.  | Mobile Home Marketing de Santa Fe<br>Misrepresentation in resale of mobile homes.  | 500      |
| 8.  | Danetown<br>Failure to deliver mail order merchandise.   | 1,000    |
| 9.  | Three Star Company<br>Misrepresentation in door to door sales.   | 300      |
| 10. | American Studios<br>Misrepresentations in sale of photos.<br>Contempt Citation.  | 1,000    |
| 11. | Sam Knapp, Mobile Home Wholesale<br>Misrepresentations in sale of mobile homes.  | 5,000    |
| 12. | Dale Bellemah Corporation<br>Refunds for tax credits on new homes.   | 20,000   |
| 13. | Rex Financial Corporation and NM Auto Sales<br>Settled suit for \$3,000 for class of consumers<br>involved in mobile home purchases. | 3,000    |

14.	Foodway Availability of merchandise.	No money recovered
15.	Galles Chevrolet Misrepresentation of limited warranties.	No money <u>recovered</u>
TOTAL MONIES RECOVERED BY ASSURANCES (6 Months)		\$61,236.00

Some of the major cases that were filed during the past year include:

1. New Mexico v. Horizon Corporation - suit brought against largest land developer in New Mexico, alleging securities and unfair trade practices violations. Case is presently pending before District Court in Santa Fe.

2. New Mexico v. GEICO Inc. - suit against mail-order company which did not comply with New Mexico licensing and interest rate requirements. Suit seeks restitution for all New Mexico consumers who engage in transactions with companies.

3. New Mexico v. CAPCO, Inc. - suit filed for restitution to consumers who entered into long-term memberships, but company went out of business. Writ of Ne Exeat granted by District Court to prevent defendants from leaving the state or removing their assets. \$1,000 of refunds returned to consumers.

4. New Mexico v. Columbia Research, Inc. - suit on behalf of consumers who made payments for free vacation benefits, but failed to receive them. Suit is pending.

Since the Federal Trade Commission's Trade Regulations and Guidelines are incorporated by reference in New Mexico's Unfair Practices and False Advertising Acts, the Consumer Protection Division has taken an active role in providing comments and factual information to the FTC to assist it in its rule-making proceedings. Subject matters covered by such submissions include; used motor vehicle sales, fabric labelling, and vocational schools. Participation included testifying at FTC hearings on such rules.

### C. Land Subdivision and Land Fraud

The land fraud section of the Consumer Protection Division has the responsibility of investigating and prosecuting fraudulent land sales in New Mexico as well as violations of the New Mexico Subdivision Act and the Land Subdivision Act. This unit is currently staffed by one full-time attorney and one full-time investigator.

The land fraud section has engaged in the following significant litigation during the last year.

1. State v. Joseph S. Agers, et al.

This suit was filed against 28 defendants who were engaged in the subdivision and sale of 11,120 acres of ranch land in Hidalgo County, New Mexico. Over \$2,000,000 in sales were made through misrepresentation and fraud to numerous purchasers throughout the country. The suit seeks to enjoin all sales for failure to comply with the New Mexico Subdivision Act and all fraudulent sales practices. The suit further seeks restitution for all aggrieved purchasers.

2. State v. Longview Ranches, Inc., et al.

This suit was brought against a land give-away scheme in Luna County, New Mexico which violated the New Mexico Subdivision Act and the New Mexico Unfair Practices Act. The suit seeks to enjoin any further sales, obtain restitution for purchasers who paid for fraudulent survey services and the award of civil penalties.

3. In the Matter of the Petition of James C. Moon, et al. for the Organization of the Lakeshore City Sanitation District

In this litigation the Attorney General intervened in an attempt to reorganize the Lakeshore City Sanitation District near Elephant Butte, New Mexico. The Attorney General challenged the board of directors of the district as holding office illegally and was successful in having the entire board removed by the district court and a special election ordered. The Attorney General's Office was appointed election judge by the court and is currently conducting the special election for new board members.

4. State v. Milkman

This suit enjoined the sale of subdivided land in Dona Ana County for violations of the New Mexico Subdivision Act, state building codes, and Environmental Improvement Agency regulations. Settlement was reached whereby the developer agreed to stop all sales and return \$20,000 to aggrieved purchasers.

5. In the Matter of Colfax County Utility Company, Inc., and Tramperos Enterprises, Inc.

The Attorney General's Office obtained a cease and desist order from the Department of Banking's Commissioner of Securities stopping the sale of "time-shared vacation lots" in Colfax County, New Mexico for failure to register as a sale of securities.

6. State v. John Williams, et al.

This suit was filed in Eddy County, New Mexico seeking to enjoin the sale of subdivided land and requiring the defendants to insure delivery of good title to purchasers.

7. State v. Richard Cook

This suit was brought to enjoin the sale of subdivided land in Rio Arriba County for violations of the New Mexico Subdivision Act.

8. Miscellaneous

The land fraud section has been actively involved in the investigation of several major land fraud schemes and numerous violations of the New Mexico Subdivision Acts. The extent of such illegal conduct throughout the state has been found to be pervasive. A conservative estimate indicates that there are over 350 subdivisions in New Mexico representing over 1.5 million acres of subdivided New Mexico land that have generated over 1 billion dollars in sales within the last 15 years. 200 of these subdivisions are estimated to involve violations of state and federal law in some manner.

A significant effort has been made during the last year to assist the county commissions throughout the state which are charged with the duty of administering the New Mexico Subdivision Acts. The land fraud section provided advice to the commissions on the meaning and application of the Acts as well as appearing at hearings to oppose the approval of certain subdivisions.

The land fraud section also monitors all advertising and disclosure statements that are required to be filed with the Attorney General's Office by persons subdividing and selling land in New Mexico. The Attorney General's office is thus in a unique position to be the only central clearinghouse for information on all subdivisions throughout the state.

Proposed legislation amending various statutes governing land sales regulation have been drafted by the Office and members of the land fraud section have made themselves available to the legislature to offer advice and to testify at hearings on matters relating to subdivisions, land fraud and land sales legislation.

D. Utility Regulation and Energy Unit

During 1976 the Consumer Protection Division intensified its involvement in regulatory proceedings and other activities concerning energy. Our primary goal has been to advocate lower energy

costs for residential consumers, although not at the expense of adequate service or fair compensation to the providers of energy. Our authority to perform this function had derived from §§ 4-3-2 (B) and (J), NMSA, 1953 Comp., which authorizes the Attorney General to intervene in proceedings affecting the public interest.

Most of the work during 1976 in energy and utility consumer advocacy was performed by one staff attorney, with assistance on special projects from other staff attorneys. Two other attorneys were involved in the Palo Verde Nuclear Generating Station case as well (see below).

Specific projects during 1976, included:

1. Litigation

(a) Southern Union Gas Company Rate Case. Appeal to the Santa Fe County District Court, Docket No. 51069. Extensive briefing was required to respond to the Gas Company's appeals as to numerous points resolved unfavorably to it by the Public Service Commission, which resulted in the denial by the Commission of any of the requested rate increase.

(b) In Consolidated Oil & Gas Co., et al. v. Southern Union Gas Company, et al. gas producers in the San Juan Basin of New Mexico sued the Gas Company to recover higher prices pursuant to contractual "favored nations" clauses. The producers claimed they were entitled to the highest price paid by the Company to any producer, namely, the price established for the newest vintage of gas by the Federal Power Commission. The Consumer Protection Division had intervened in that suit to support the defense of the Gas Company that vintage of gas should be considered in invoking the clauses, and in addition, we assailed the favored nations clauses as violative of public policy and the anti-trust laws. A decision by the District Court, favorable to the Company and the intervenor solely on the issue of vintaging, was appealed to the Supreme Court. The case was then settled, and certain money that had been held in escrow by the Company was divided between the consumers and the producers.

2. Major Regulatory Proceedings before the Public Service Commission

(a) Arizona Nuclear Power Plant. The Attorney General's Office opposed participation by Public Service Company and El Paso Electric Company in a proposed nuclear generating station near Palo Verde, Arizona. Primary concerns were the uncertainties connected with the cost and availability of nuclear fuel, and construction costs of nuclear vs. coal-fired facilities. Decision is pending.

(b) Cost of gas adjustments: Several changes in this monthly adjustment were requested by the Gas Company, and most were opposed by the Attorney General, usually successfully.

### 3. Other Proceedings and Activities

(a) Federal Power Commission: The Attorney General intervened with the Energy Resources Board in proceedings to establish a nationwide rate for natural gas. The State's position was to oppose continued vintaging of interstate gas prices because of the inappropriateness of the vintaging method and the severe impact on New Mexico consumers as a result of the price escalation clauses. The FPC ruled unfavorably to New Mexico but recommended to New Mexico that the state solve its own problem locally.

(b) Regulation of intrastate gas producer prices: We have monitored and attempted to enhance the progress of the proposals for regulation of intrastate gas prices. Such legislation appears to be necessary as the only means to avoid grossly unfair and excessive wellhead natural gas prices to New Mexico consumers in relation to wellhead prices paid by out of state consumers for New Mexico produced gas. The Office will be proposing such legislation during the 1977 Legislature.

(c) Several further proceedings are already underway for 1977 and beyond. Most important are the pending proceedings before the New Mexico Public Service Commission involving the cost-of-service index. Public Service Company of New Mexico already has this plan, by which quarterly reports are used to establish adjustments on consumers' bills to bring the Company's return on common stock within an acceptable range. This plan is scheduled for a review in April, 1977. Gas Company of New Mexico has applied for a similar treatment, in a case in which the office has intervened. The impact of the Gas Company case would be equivalent to an annual \$10 million rate increase for the first quarter alone.

Moreover, a proceeding to restructure utility rates is long overdue. An evaluation of whether rate structures which promote the increased use of energy is also essential, as all consumer bills might be reduced if conservation were instead the goal.

Additional areas requiring attention include the maximization of royalties and taxes on New Mexico's mineral and petroleum wealth; the service rules and regulations of utility companies concerning terminations and billing procedures; and continued monitoring of gas rate applications. Several other areas are also of concern, but public exposure might interfere with any investigations that would be conducted.

## E. Indian Arts and Crafts

The goal of this unit is to secure compliance with the state's Indian Arts and Crafts Sales Act and the Unfair Practices Act, as it relates to the sale and advertising of authentic and non-authentic Indian arts and crafts. To achieve this goal, efforts have been made to educate concerned persons and businesses about the requirements of these statutes.

Within the past year, this Unit has issued a written statement of its enforcement policy with respect to pertinent statutes, and unit members have presented a two day consumer education seminar, have given interviews on radio, television and for newspaper publication, and have met repeatedly with groups of business and crafts persons. These efforts have been taken to prevent prospective violations of law.

Where, through its regular monitoring of advertising, this unit has found examples of false advertising or other illegal business practices, action has been taken to require that the business enter into an agreement to discontinue the illegal practice. In appropriate cases, businesses have also agreed to make consumer restitution with respect to sales which have been made in violation of law. Where such voluntary settlement has not proved possible, litigation has been commenced to secure appropriate relief.

Within the past year, the Indian Arts and Crafts Unit has brought several lawsuits alleging statutory violations. In State ex rel. Anaya v. Shell Oil Co., et al., the Attorney General seeks injunctive relief, civil penalties and consumer restitution for alleged violations of law arising from misrepresentation of merchandise in advertising. In State ex rel. Anaya v. First New Mexico Holding Corp., et al., the Attorney General seeks similar relief for violations of the Unfair Practices Act resulting from deceptive advertising, failures to deliver merchandise and from failure to make proper customer refunds. Both of the foregoing cases are currently pending in District Court in Santa Fe County. In Southwest Jewelry Arts and Crafts Association v. Toney Anaya, brought in federal District Court, this Unit obtained a voluntary dismissal of the lawsuit by the plaintiff association which, in bringing the action, had sought to enjoin enforcement of the Indian Arts and Crafts Sales Act and to have the Act declared unconstitutional.

Anticipated activity for the next year includes a continuation of the educational and enforcement efforts described above. Further, efforts will be made to prevent foreign-produced merchandise from being offered as authentic Indian arts and crafts. This situation poses a serious problem for consumers, Indian

craftspersons and domestic businesses involved in the sale of Indian arts and crafts. Action is also anticipated with respect to deceptive price advertising, a common practice within the industry. Attempts will be made to insure that advertised sales, discounts and other types of price reductions are, in fact, accurate and truthful.

F. Proposed Activities

The Division plans to expand its activities during the year 1977, and is submitting to the 1977 legislature seven pieces of legislation which would affect the scope of its activities, and allow for more effective enforcement of consumer rights. The major areas in which this expansion would take place are economic crime, land fraud, anti-trust, and utility regulation. Such an expansion would complete the transition from individual consumer complaint handling to the effective enforcement of consumer rights on a state-wide basis.

VII. CORRUPT GOVERNMENT PRACTICES AND WHITE COLLAR CRIME DIVISION  
(Harvey B. Fruman, Director)

(a) Introduction

Economic or "white-collar" crime has existed in our society for many decades. Corruption in government and the influence of organized crime in government, though dramatized only during the past several years, has likewise existed for decades. It has been very difficult to determine the extent of the existence of such crimes as they have not often come to the attention of law enforcement for a variety of reasons. In addition, most criminal activity of this nature is conducted in a very sophisticated manner without leaving a bloodstained trail, making its detection difficult and sometimes a matter of happenstance.

During the past year the Office of the Attorney General has increasingly focused on these areas, primarily through its Corrupt Government Practices and White Collar Crime Division. Its main functions are, as its name indicates, to gather intelligence, to investigate and to prosecute cases involving economic crime and corrupt practices in government. Its long range goals are to reduce the incidence of economic crimes and thus minimize the losses which accrue to citizens and businesses from such crimes, and to reduce the incidence of improper conduct in the performance of duties by all public officials and employees of the State and its political subdivisions.

Furthermore, the development of expertise in these areas will enable the Attorney General to provide assistance to other law enforcement agencies in the State so as to increase the

prosecutorial capabilities in combating these crimes. The corollary effect of such assistance is an enhancement of the necessary intelligence network which focuses on the incidence, growth, sources, and patterns of these crimes within the State.

During January 1977, the Corrupt Government Practices Unit of the Division will be consolidated with the Criminal Division to form the Criminal and Special Prosecutions Division and the White Collar Crime Unit with the Consumer Protection Division to form the Consumer and Economic Crimes Division. This is expected to strengthen the overall efforts of the Office.

(b) Background Information

Funding to support this project was approved by the Law Enforcement Assistance Administration in November, 1975. The project director began staffing at that time, and by the end of January, 1976 the small nucleus of the staff was formed. Throughout the following spring and continuing until mid-June, recruitment continued until the Division became fully staffed. There was some difficulty with recruitment due to "term" employment, because we were only certain of funding for one year, and because of our desire to hire the most qualified people available. During that period we were also able to open various lines of communication with federal, state and local agencies. These lines of communication exist on two levels: first the exchange of general information and intelligence, and secondly the exchange of specific information pertaining to individual cases.

(c) Major Activities

The Office of the Attorney General has been involved deeply during the past year in an investigation into the murder of Rio Arriba County Deputy Sheriff Eulogio Salazar. This case was reopened and assigned to the Attorney General by Governor Apodaca. Deputy Salazar was the jailer at the County Courthouse in Tierra Amarilla when, on the evening of January 2, 1968, he was abducted from in front of his home and brutally beaten to death. Deputy Salazar had been present at the Tierra Amarilla Courthouse raid on June 5, 1967, and was reported by various sources to have been under pressure from both sides with regard to his testimony in the trial of Reyes Lopez Tijerina later in the month of January, 1968.

The Office of the Attorney General initially committed one attorney and two investigators full time to a full scale effort in the case. Additionally, one other attorney and another investigator have been called in to assist on the case from time to time as matters have progressed. The inquiry involves the development and exploitation of inconsistencies in the information provided by various sources in an effort to develop new information.

The extensive use of polygraph examinations is also part of the investigation and is providing an effective means of filtering through the volumes of information and rumor which have sprung up over the years since the crime was committed.

The investigation has isolated five separate theories based on motive and is systematically approaching each of them. This effort should culminate in a presentation to a grand jury for consideration and may result in either a report or indictment or both. The ultimate deadline for the latter is January 3, 1978, the date upon which the ten year statute of limitations for first degree murder expires.

Although progress is slow in view of the multitude of contacts to be made, the time that has expired since the death of Salazar, and the desire for a definitive result, it is hoped that the investigation will wind up early this spring.

On March 1, 1976, a grand jury in Valencia County was convened at the request of the Attorney General. The grand jury occupied one attorney and one investigator almost full time for six months, along with additional assistance from other staff attorneys, secretaries, investigators and auditors throughout the term of the grand jury. During those proceedings the grand jury heard the testimony of approximately eighty witnesses and returned six indictments and one no-bill. It also requested its aides to file a complaint for five counts of misdemeanor embezzlement and to file a civil suit against the New Mexico accountant who was employed to audit the finances of the county for the fiscal year 1974-1975.

The criminal cases arising from that grand jury work have reached their final disposition. An embezzlement trial involving the County Sheriff resulted in a verdict of acquittal. Charges of receiving public money for services not rendered and for making false public vouchers against two County Commissioners were not pursued in exchange for both Commissioners resigning from their office (one had only recently been reelected, and his resignation also applied to the forthcoming term), paying twice the amount of public money involved, and paying certain penalties. Charges of receiving public money for services not rendered, for making false public vouchers, and for embezzlement against the County Manager were also not pursued in exchange for his return of the amount of money involved in the allegations.

The recommendations suggested in the Valencia County Grand Jury Report have resulted in a request for the County Commission to its District Attorney to draft both legislation and an administrative and fiscal procedures ordinance. The recommendations made in the report concerning information gathering under the

food stamp program have been taken under advisement, and the administrator of the New Mexico social welfare program has requested of his general counsel that the procedures suggested in the report be reviewed and adopted to the extent possible.

During the month of May, 1976, an attorney from this Division, assisted by an investigator and an auditor, successfully prosecuted a New Mexico attorney on eighteen counts of felonious tax evasion and eight counts of felonious false tax statements. These charges were made in an indictment by a grand jury assisted by this Division. An appeal from the Judgment and Sentence imposed in that case is presently pending. This was the first tax fraud prosecution in the State's history. The New Mexico Bureau of Revenue is in the process of developing additional criminal tax fraud cases, and we will be reviewing each of those cases either for prosecution by this Division or by a local District Attorney in cooperation with this Division.

In September, 1976 this Division represented the State in a criminal misdemeanor trial, initiated upon our filing of a criminal complaint, involving an alleged violation of the New Mexico Open Meetings Act by a local school board. That trial resulted in the conviction of all board members and the assessment against them of a minimal fine which was suspended on the condition that further violations do not occur. An appeal from these convictions was not taken.

This Division has represented the State on an appeal to the New Mexico Supreme Court of a lower court finding that another local school board also violated the Open Meetings Act. The Supreme Court has issued its decision and, in overruling the District Court, placed a very broad interpretation on the "personnel" exemption to the Open Meetings Act. This Office intends to bring this issue before the 1977 Legislature to amend and strengthen the Open Meetings Act.

At the end of November 1976 we had a trial scheduled for our first securities fraud case which was filed during the early part of our program. Rather than proceeding with the trial, the Defendants consented to judgment on behalf of the State. Pursuant to the judgment the Defendant corporation will be placed in receivership and its assets liquidated for the benefit of the many people who purchased "participation agreements" from that company. The amount of such agreements purchased is approximately \$700,000.

In December of 1976 we concluded our assistance to the Grant County Grand Jury. That jury heard approximately forty witnesses and returned one indictment charging two County Commissioners with neglect of their managerial duties with respect to the

public purchasing and the county road and bridge fund laws. Also, the Grant County Manager was indicted for failure to comply with the public purchasing laws and with neglect of his duties under that law. The County Road Superintendent was indicted for failure to comply with the county road and bridge fund laws and with neglect of his duties under that law.

The Grant County Grand Jury Report was quite critical of the Fifth Judicial District Attorney's assistance to it and of his representation of the County. The Report requested that the District Attorney address several areas of inquiry in a response to the Attorney General by March, 1977. The Report asks the Attorney General to review that response and, if necessary, to initiate removal proceedings against the District Attorney.

In the fall of 1976, a Special Grand Jury was convened in Otero County upon the filing of a citizens petition. The petition asked that the grand jury investigate several public officers and agencies in that county. This office was designated by the presiding judge to assist the grand jury.

The City of Alamogordo petitioned the New Mexico Supreme Court to prohibit the proceedings of that Special Grand Jury. The basis of the petition was that a grand jury had previously been convened in that county and was still in existence, and that the New Mexico Constitution did not permit two county grand juries to exist contemporaneously. The petition was successful and the Special Grand Jury was dissolved. This office will continue to investigate the matters raised in the petition, and, if merited, will present our findings to the next regularly impaneled Otero County Grand Jury within the next several months.

We have received requests to assist with six additional county grand juries and we are currently aiding three of them. We will attend the remaining grand juries when and as time permits. Each of these grand juries requires a minimum of six months time for at least one attorney, several investigators and one auditor.

We have concentrated on several legislative areas, evaluating statutory provisions existing under present state law. Our White Collar Unit has drafted a complete revision of the current antitrust law for presentation at the 1977 Legislative session. This Division has also been active in developing either new laws, or amendments to current laws concerning the establishment of a statewide grand jury system, various public purchasing practices, the conduct of open meetings, and the enforcement procedures under the State's Unfair Practices Act.

As of December 31, 1976, the Corrupt Government Practices and White Collar Crime Division had received and responded to

163 inquiries, 119 complaints and 39 special investigations during the relative short period of its existence. Of that number, approximately five percent of the inquiries were pending, as were 32 complaints and 29 special investigations. The reasons for the high percentage of "pending" special investigations are several - - we do not "close" a file until the appellate process is completed; grand jury investigations have resulted in indictments from which trials will arise; these investigations are often complex and can not be developed in a short time; several are sitting in limbo while we await the "big break"; and, a shortage of manpower.

We have defined "inquiries", "complaints" and "special investigations" as follows:

1. An "inquiry" represents a contact by telephone, mail or in person by a citizen with a request for information or with a complaint about potential or alleged economic crimes or corrupt government practices. These inquiries were either referred to other law enforcement or non-law enforcement agencies, or they were answered with the advice that private counsel be sought, or in the main, were directly responded to by this section. Our direct response was in the nature of an answer to the inquiry or was an advice to the correspondent that further action would be taken and which was taken, but which did not involve much expenditure of time by either a staff attorney, an investigator or an auditor.

2. A "complaint" is a specific allegation or report that an economic crime or a corrupt government practice has occurred or is suspected. A complaint will usually require investigation and legal research. Complaints may include referrals from or to other governmental agencies on the federal, state or local level.

3. A "special investigation" is characterized as the gathering of facts and the conduct of research with the intent to prosecute. This category also includes investigations designed to uncover violations or patterns of violations.

We have every reason to believe that further inquiries, complaints and special investigations will continue to be received and that our attention to them will be particularly necessary. Otherwise, we believe that the matters addressed in those inquiries, etc., will either not be tended to by other enforcement agencies or that they will be superficially treated.

Because of the volume of requests and demands that we have received and because of the vast amount of research, review and general education necessary in the antitrust field, our White Collar Unit is exploring the possibility of requesting an additional discretionary grant in order to create a new section

devoted entirely to antitrust. If we are unsuccessful in our attempt to receive funding, we will, of course, continue to include antitrust within this project on a limited basis and we will continue our research and legislative endeavors and will shortly begin investigations into possible areas of antitrust violations. This field, being one of the most complex forms of economic crime, does require extensive education, research and evaluation. In New Mexico, this area of the law also requires major legislative reform and this reform will be a primary goal for this program.

With the exception of our intentions to establish a separate antitrust entity within the Attorney General's office, our objectives for this project are the same. They are now more clearly defined, however, because of our experiences during the past year. We have found a definite need for our program, as displayed through the large number of requests from the public and from other law enforcement agencies and governmental agencies, political subdivisions and the like, ranging from our assistance with grand juries to simple inquiries, and including the more complex complaints and special investigations.

(d) Proposed Activities

Our anticipated schedule of activities during the forthcoming year is as follows:

1. Staff training will continue throughout 1977.
2. A procedural and investigative manual will be prepared in January, 1977.
3. Intelligence gathering, organization and dissemination will continue throughout 1977.
4. Public education programs will be further developed and presented during 1977.
5. Incoming District Attorneys will be assisted in the development of their own economic and corrupt government crime programs as requested.
6. Assistance to at least six grand juries will be provided during the first four months of 1977 and the subsequent, necessary trial preparation will follow the conclusion of those grand juries and will consume most of the rest of the year.
7. We will request that at least two additional county-wide grand juries be convened in the first quarter of 1977 because such a forum is necessary to further develop several major cases presently being investigated. Trial work following

these grand juries will consume most of the rest of the year.

8. In the corrupt practices area, a number of pending cases, involving primarily allegations of misuse of public funds, public property and bribes, will be developed and prosecuted if found to be warranted. This will take at least all of 1977. In addition to these pending cases, as noted elsewhere in this narrative, many more cases of this nature are expected to be received.

9. In the economic crime area, a number of pending cases, involving primarily allegations of land and securities frauds and antitrust violations will be developed and prosecuted if found to be warranted. This will take at least all of 1977. In addition to these pending cases, many more cases of this nature are expected to be received.

#### VIII. OPINIONS ISSUED

A total of forty (40) official Opinions of the Attorney General were issued in 1976. The Opinions are attached to this report.

The following is the policy of the Attorney General enforced in 1976 relating to furnishing written opinions in compliance with Section 4-3-2 (D), NMSA:

1. The Attorney General is authorized to furnish written opinions on any question of law submitted to him by the Legislature or any branch thereof, any state official, or any district attorney. Such officials may request an opinion only on a subject pending before them or under their control, and it must be a subject with which the official has to deal officially or with reference to their duty in office. An official should not request an opinion unless he truly needs it in order to perform his official duties. An official should not request an opinion merely to determine the position of the Attorney General with respect to any matter or as a personal favor for a constituent, a friend, or a client.

2. The Attorney General is not authorized to furnish written opinions to municipalities, municipal officers, local school boards, counties, magistrates or other county officials, or other political subdivisions. He is authorized to furnish opinions to the several district attorneys in matters relating to the duties of the office. He is not authorized, however, to furnish written opinions to district attorneys on matters which do not relate to the duties of their office but rather to the duties of a county or other official represented by them. In an effort to be helpful to political subdivisions, unofficial interpretations of law may occasionally be issued as published opinions. These unofficial

interpretations of law will be published by the Attorney General only when more than one political subdivision may be interested in the opinion and only when the work load imposed by his official duties permits.

3. Requests for opinions made by the executive officers and by all boards, commissions, departments and agencies of the state government must be in writing and must be signed or endorsed by such executive officer, or by the director of the department or by the head or executive secretary of the board, commission, department or agency.

4. All requests must contain a complete statement of the facts creating the problem and a clear, concise question of law. The Attorney General will not seek out the facts or infer the question submitted from the correspondence. He will only answer questions of law.

5. The Attorney General will not furnish opinions with respect to the exercise of executive judgment or discretion.

6. The Attorney General will not issue an opinion on a question pending before the Courts. He will furnish opinions or constitutional questions only to the Governor and other state officers, in a proper case, or to either branch of the Legislature, or any committee thereof, on pending legislation. With respect to statutes already enacted into law, the Attorney General will not intrude upon the judicial function of determining their constitutionality. It is the function of the Attorney General to seek to uphold the constitutionality of all state laws.

7. All of the foregoing statements are subject to exception where special circumstances can be shown to warrant such exception.

8. For a particularly difficult and important problem of law, officials should resort to a declaratory judgment action wherever possible.

**END**