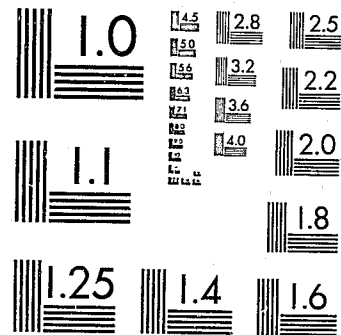


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8/11/83

NEW YORK STATE DEPARTMENT OF LAW
ATTORNEY GENERAL ROBERT ABRAMS



87260

THE ANNUAL REPORT OF
THE ATTORNEY GENERAL
OF NEW YORK STATE 1979

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**THE ANNUAL REPORT OF
THE ATTORNEY GENERAL
OF NEW YORK STATE 1979**



ROBERT ABRAMS
Attorney General

Robert Abrams is New York State's 60th Attorney General. Born on July 4, 1938, Mr. Abrams attended New York City public schools, Columbia College and New York University School of Law.

Mr. Abrams served in the New York State Assembly from 1965-1969 and as Bronx Borough President from 1970-1978. He was elected Attorney General in November 1978 and was inaugurated on January 1, 1979. Prior to entering public service, Mr. Abrams was engaged in the private practice of law.

Mr. Abrams lives in New York City with his wife Diane and their daughter Rachel.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

TO THE GOVERNOR AND THE LEGISLATURE:

Pursuant to Section 68 of the Executive Law, I hereby submit the Annual Report of the Department of Law for the year 1979.

Respectfully,

ROBERT ABRAMS
Attorney General

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INTRODUCTION

My first year as Attorney General has been a challenging and rewarding experience. The Department of Law is a large and complex agency, with nearly 500 lawyers, a total of over 1,000 employees and a budget of \$24 million.

In becoming familiar with the many broad and diverse responsibilities of this agency at the beginning of my term, I have learned to respect and appreciate the many achievements of previous Attorneys General, particularly my immediate predecessor Louis J. Lefkowitz, who brought many innovations to the office in his 22 years as Attorney General.

It was clear to me that, as the first new Attorney General in some time, I would benefit from having an independent, outside analysis of the office to help me understand its structure and the interrelationships of its many functional units and to assist in planning change. For that purpose, we contracted with the Institute of Judicial Administration, a not-for-profit management consultant which specializes in analyzing legal offices and judicial systems. The I.J.A., which is affiliated with the New York University School of Law, began their work early in 1979 and completed the first phase of their management and organizational study in December. Throughout the year, however, we worked very closely with I.J.A., and many changes were made with their advice, while their study was ongoing. Most significantly, we implemented a complete restructuring of the Law Department, with the creation of three new legal divisions, the Division of Public Advocacy, the Division of Appeals and Opinions and the Division of State Counsel. This restructuring is discussed fully in the Reorganization section of this Annual Report.

I.J.A. also stressed the urgency of modernizing the Attorney General's office in a variety of ways, and in consultation with them, we have begun the lengthy process of computerizing our recordkeeping and filing functions. This process, which will take several years, will ultimately involve computerizing our 66,000 annual broker-deal statements, our 18,000 charitable filings, and the docketing of our more than 30,000 annual pieces of litigation, assuming that budgetary support is coming from the Legislature.

I.J.A. also supported my belief that among the most serious problems facing this Department are the grave deficiencies in support services. We have insufficient clerical and administrative personnel and serious turnover problems among these groups resulting from low salaries. As a result, our Department's attorneys are forced to spend significant amounts of time doing non-legal work, which could more efficiently be performed by paralegal or clerical personnel.

Improved support services, including added personnel as well as advanced word processing technology, was the major focus of my appeal to the Legislature regarding the 1980-81 budget.

While these management and organizational issues have been of great importance during this year, my highest personal priority has been to assure that every effort is devoted to recruiting and hiring the most talented attorneys for our legal staff. For the first time in the Department's history, we have launched an aggressive on-campus recruitment program at law schools throughout the State and nation. We have also created an honors program to attract the highest quality law school graduates, and we have placed new emphasis on a summer internship program to give law students a first-hand sense of the excitement and challenge of working in our Department.

We have also taken steps designed to constantly improve the quality of work performed by our existing legal staff. An aggressive legal training program has been designed for implementation in 1980, and I have insisted on a complete commitment to public service by our lawyers by issuing an Executive Order banning any outside professional practice.

We have also seen in the past year a number of programmatic initiatives, emphasizing areas where the office can provide better protection to our State's consumers during a time of serious economic difficulties. I formed an Energy and Utilities Section, described more fully in the body of this Report, to advocate the consumers' interest in proceedings involving the cost of energy and electric, gas and telephone services. We launched a statewide anti-price gouging program in an attempt to prevent steep, unjustified in-

creases in the cost of gasoline during the summer of 1979 and in the prices of home heating oil during the winter of 1979-80.

Another new initiative to protect consumers was taken in the New York City metropolitan area, where evidence of repeated and flagrant violations of local rent control laws came to our attention. A number of investigations were launched resulting in significant refunds for tenants, and the issue is expected to continue to command a great deal of our attention in 1980.

The growing national concern over the problem of improperly buried toxic wastes was reflected in our office as an investigation of the catastrophic occurrences at Love Canal in Niagara Falls became the single largest investigation in the Department. Litigation in that case is expected in 1980.

Finally we embarked on a major effort to revitalize the Department's network of regional offices and to make them

more accessible to local consumers and more responsive to local needs. An Outreach program was implemented, under which attorneys from our regional offices visit every county in the State on a regular basis in order to take consumer complaints. Through this program, residents of our State's more rural areas have the assistance of the Attorney General's many powers to protect consumers for the first time.

While some of the actions undertaken in 1979 had immediate and tangible results, many will only bear fruit in the months and years to come as we continue to upgrade and improve the Department so as to provide the best possible legal representation to our State and its people.

Sincerely,



ROBERT ABRAMS

REORGANIZATION

The reorganization of the Law Department began this year, with many of the changes based on recommendations made in the study by the Institute of Judicial Administration.

Under this restructuring, the entire Department is now divided into three legal Divisions — Appeals and Opinions, State Counsel, and Public Advocacy. These new state-wide Divisions provide a framework for more effective management, better coordination and uniformity on legal policy matters, and improved relationships with state agencies and the public.

The new Public Advocacy Division provides the necessary focus and direction for such diverse responsibilities as enforcement of the state's anti-trust laws; protection of the civil rights of all New York residents; abatement of environmental problems, including action to deal with the peril of toxic wastes; guaranteeing full disclosure to prospective buyers of cooperative and condominium apartments; overseeing the activities of the charitable sector; and the formidable task of protecting the interests of consumers and investors through education, mediation and litigation in a variety of critical areas, including utility rate making.

Within this newly formed Division, a single Environmental Protection Bureau, with statewide jurisdiction, has been created through the consolidation of two existing units in Albany and New York City. The Civil Rights Bureau has been revitalized and restored to its status as a full Bureau. A Charities, Trusts and Estates Bureau unifies three formerly separate Bureaus into one more efficient entity. The Consumer Frauds and Protection Bureau has incorporated the former Building, Home Improvement and Miscellaneous Frauds Bureau and added a new Energy and Utilities Section. The Special Prosecutions Bureau has been recast and revitalized to carry out most of the Department's criminal justice responsibilities and to monitor the Department's entire criminal case load.

The Division of Appeals and Opinions centralizes responsibility for all appeals all over the state, a function formerly divided along geographic lines between upstate and downstate New York. It also is responsible for the issuance of all formal and informal opinions on matters of law and opinions on the ethical conduct of public officials. This revision gives a statewide perspective to this critical activity and a uniformity in developing and articulating legal positions.

The Division of State Counsel coordinates management of the many legal matters handled by the Attorney General's office which involve representing the interests of the State and its agencies. Until now this responsibility has been divided among eleven regional offices and twenty-seven functional units. This Division supervises the network of regional offices.

Bringing together previously fragmented, disparate bureaus and sections has improved operations in countless ways. Regular meetings of both bureau chiefs and regional office heads provide opportunities for sharing trends in the law, coordinating legal policy and exchanging views on personnel and management issues. We have made strides in eliminating the artificial and counter-productive upstate-downstate separation, upgraded the regional office network, improved administrative controls and created a framework for reforms to complete the modernization of the office.

Other organizational changes in the Division of State Counsel include the creation of a new Prisoner Litigation Unit to centralize control over the defense of the many thousands of cases brought by inmates in our penal institutions, significant realignment of the State Counsel bureaus in Albany, and initial steps to subdivide the very large New York City Litigation Bureau into discrete sections with significant responsibility for middle managers.

DIVISION OF PUBLIC ADVOCACY

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ANTI-MONOPOLIES BUREAU

The Anti-monopolies Bureau is the antitrust enforcement arm of the Department of Law, which takes action against restraints of trade. The Bureau is responsible for the civil and criminal enforcement of the New York antitrust law, the Donnelly Act (General Business Law, §§ 340 *et seq.*). It handles all civil treble damage and/or equity actions that the State may bring in the federal courts under the Clayton Act (15 U.S.C. §§ 15, 26).

In 1979, the Bureau maintained its traditionally active antitrust enforcement program. Its work was supported by a special grant from the federal government in the amount of \$383,625.

Several new enforcement actions were brought by the Bureau this year. One of particular importance is a civil action filed in State Supreme Court against the Carvel Corporation of Yonkers, New York and nineteen individuals and corporations, including several of its officers, directors, employees and suppliers. The defendants are charged with entering into an unlawful combination to maintain a restrictive, repressive and anticompetitive system of doing business through Carvel's soft ice cream franchise. They are charged with combining and conspiring to maintain a network of illegal exclusive dealing arrangements; to monopolize the selling of supplies and equipment to Carvel franchisees; to fix the price of items sold to Carvel franchisees; and to completely control the leasing of equipment and store premises, Carvel advertising, and the selling of Carvel franchised stores. Pricefixing of Carvel products sold to the public is also part of the charge, along with the violation of the civil and constitutional rights of Carvel franchisees. The complaint also charges that illegal methods were used to induce dealers to participate in Carvel's advertising and promotion programs and that fraud and abuse of the judicial process were also employed. Action on the case was pending at the end of the year.

The Bureau also filed suit in Federal Court against the American Medical Association, the American Hospital Association and 12 other defendants charging them with conspiring to boycott and eliminate the chiropractic profession. The alleged conspiracy, the suit says, has limited and impaired competition in the health care system, thus driving up the cost of health care to consumers and to the State of New York. The lawsuit charges that a conspiracy has been in existence for 15 years or more to discredit chiropractors and prevent them from competing effectively with medical doctors and doctors of osteopathy. Specifically, the defendants are accused of refusing to allow medical doctors and osteopaths to refer patients to chiropractors or

even to accept referrals from chiropractors. Other anti-competitive acts are also alleged. The lawsuit notes that the State Legislature has expressly authorized chiropractors to practice in New York, if they complete an appropriate program of training and are licensed by the State Education Department.

The Bureau obtained a number of consent judgments in 1979 including:

(1) *State of New York v. Lawn-A-Mat Chemical & Equipment Corp.* This franchisor was charged with having imposed anticompetitive restrictions on its franchisee dealers who provide lawn care services to homeowners. Without admitting a violation, Lawn-A-Mat entered into a consent judgment which permanently enjoins it from directly, or indirectly, fixing the prices its dealers may charge; from unreasonably limiting geographical areas of operation; and from preventing dealers from purchasing their supplies on the open market. Lawn-A-Mat also paid \$5,000 in penalties to the Law Department.

(2) *State of New York v. New York State Society of Ophthalmic Dispensers, Inc., et al.* The statewide trade association of opticians, a local chapter of the association, and two members of the local chapter were charged with organizing a boycott of certain manufacturers of eyeglass lenses and frames who participate in corporate employer sponsored vision care benefit plans. Without admitting a violation, the defendants agreed to a consent judgment which permanently enjoins them from any future activity designed to coerce, direct, persuade, influence or otherwise cause any eye care provider to refuse to deal with eyeglass lens and frame manufacturers who participate in vision benefit plans. The defendants paid \$2,500 in costs to the Law Department.

The Bureau continued its participation in multiparty antitrust lawsuits pending in various federal district courts around the nation, including the *Ampicillin* litigation in Washington, D.C.; the *Anthracite Coal* litigation in Philadelphia, Pa.; the *Chickens* litigation in Atlanta, Georgia; the *Eastern Sugar* litigation also in Philadelphia, Pa.; and the *Master Key* litigation in Hartford, Connecticut.

In *Master Key*, the Court approved the Attorney General's plan of allocation and distribution of New York State's share of a nationwide settlement fund. More than \$1.7 million was distributed to New York State governmental entities out of a total \$21 million national settlement. Distribution of the funds was made in May to 247 governmental entities represented by the Attorney General (\$1,227,602) and to the City of New York (\$469,565). The

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State of New York itself recovered \$217,574 as its *pro rata* share of the settlement.

In the *Anthracite Coal* litigation defendants agreed to pay \$275,000 to the State of New York in full settlement of the action.

In the *Ampicillin* litigation, the Court approved a nationwide settlement offer of \$2.07 million made by defendant Beecham to settle the claims of all city, county and state governmental entities. The litigation continues against defendant Bristol-Myers. Trial preparation was underway at the end of the year.

The Bureau is conducting several major investigations covering a broad range of industries and practices. The inquiries focus on various franchising practices, public contracts, real estate sales, the furnishing of services and the distribution of perishables, dairy products and other commodities.

In addition to these affirmative State and federal enforcement litigation activities, the Bureau was actively involved in several other legal proceedings.

The antitrust investigatory powers of the Attorney General, as exercised by the Bureau under G.B.L. § 343, continued to be challenged in the courts by potential witnesses and parties under investigation. Despite the increasing number of such challenges, the Attorney General's broad investigative authority was consistently and substantially reaffirmed by the courts.

In *Matter of Amos Post, Inc.*, 70 A D 2d 750 (3d Dept.), the Appellate Division affirmed a lower court's denial of a motion to quash a *subpoena duces tecum* issued by the Attorney General to a gasoline distributor. The distributor had claimed that the Attorney General had failed to establish a factual basis to support enforcement of the subpoena. The Court held that the Attorney General had "demonstrated a sufficient factual basis to support the issuance of the subpoena in the present case", and that the Attorney General is empowered to demand the production of documents for copying and inspection under both G.B.L. § 343 and CPLR 2304(c).

In *Matter of Gasoline Retailers Association of Northeastern New York, Inc.*, 1979-1 Trade Cases, ¶ 62, 892 (Sup. Ct., Albany Co.), the Court held that investigative subpoenas issued by the Attorney General in an investigation of a possible boycott of the public by gasoline retailers were proper, since the suspected activity would violate the Donnelly Act.

In connection with the Attorney General's continuing investigation into the practices of Carvel Corporation and its suppliers, three separate courts upheld the Attorney General's extensive investigative subpoenas either in whole or in part. In *Matter of Crowley Foods*, 1979-1 Trade Cases, ¶ 62,506 (Sup. Ct., Broome Co.), the Court upheld the subpoena and ordered Crowley, a supplier of ice cream

mix to Carvel, to disclose to the Attorney General the franchisor's secret formulas, processes and trade secrets. In *Matter of Grandview Dairy, Inc.*, 1979-1 Trade Cases ¶ 62,615 (Sup. Ct., N.Y. Co.), the Court upheld a subpoena issued to another Carvel supplier holding that a sufficient basis had been shown to justify the investigation.

In the main subpoena litigation against Carvel, *Matter of Carvel*, 1979-1 Trade Cases, ¶ 62,490 (Sup. Ct., Westchester Co.), the Court upheld the subpoena, but imposed severe limitations on the scope of the subpoena. While permitting the Attorney General to obtain "trade secrets" from Carvel, the Court denied the Attorney General access to a so-called "secret formula". The Court also limited the time period and the geographical area covered by the subpoena. The Attorney General has appealed from this decision. Carvel cross-appealed. The appeal was pending at the end of the year.

Ritter Wines and Liquors v. State Liquor Authority was a challenge to the Alcoholic Beverage Control Law's minimum resale pricing system. The suit alleged that this feature of the ABC Law operates as a pricefixing mechanism in violation of the Sherman Act, contending that state law is preempted in this area because the Commerce Clause supercedes the Twenty-First Amendment in matters of intrastate liquor control. The Appellate Division, Second Department, dismissed the action holding that the ABC Law is constitutional and not in violation of the antitrust laws.

The State has intervened in *Interco, Inc. v. Federal Trade Commission*, pending in the U.S. District Court for the District of Columbia. Interco, which manufactures Florsheim Shoes and other products, had provided information for an FTC investigation. Interco now seeks to block access to this data sought by various States, including New York, on the ground that the data includes trade secrets. Papers have been submitted to the Court on the availability of information under the federal Freedom of Information Act and the trade secrets issue.

The Bureau also filed an *amicus* brief in the Fourth Circuit in *United States of America and Commonwealth of Virginia v. Colonial Chevrolet Corp.* This is an appeal from a federal district court ruling denying the joint motion by the United States and Virginia for disclosure to the Virginia Attorney General of grand jury materials in a federal antitrust investigation which resulted in an indictment. The New York *amicus* brief contends that Section 4F(b) of the Clayton Act, which was added to the statute by the Antitrust Improvements Act of 1976, mandates close cooperation between federal and state antitrust enforcers. In particular, Section 4F(b) requires the disclosure of grand jury materials to a state attorney general, upon his request, when the request is made in furtherance of a lawful investigation and when the materials may contain the basis for an actual or potential cause of action by the State under the antitrust laws.

In a non-antitrust related administrative proceeding, the Bureau successfully sought leave, from the U.S. Department of Energy Office of Hearings and Appeals, for the State of New York through its Attorney General, to participate in a DOE enforcement proceeding against Ashland Oil, Inc. which had been charged with a violation of DOE price control regulations. New York had sought to participate on its own behalf and as *parens patriae* on behalf of its citizens. DOE agreed with the Attorney General that "the State's request to act as *parens patriae* for its consumers is an appropriate role in the context of the present proceedings." In addition DOE stated, "we see no reason why standing to

participate in agency proceedings should be limited to privately controlled interest." (Decision and Order of the Department of Energy, dated August 8, 1979, Case No. DRZ-0084.)

The Bureau was actively involved in the efforts of the National Association of Attorneys General to obtain action by Congress on the *Illinois Brick* matter. In that 1977 case, the U.S. Supreme Court ruled that only direct purchases of pricefixed products could sue for restitution and damages. This decision created a new and substantial obstacle to State antitrust enforcement, and Congress is considering legislation to broaden the right to bring pricefixing suits.

CHARITIES, TRUSTS & ESTATES BUREAU

During 1979, three separate Bureaus — Trusts & Estates, Charitable Foundations and Charity Frauds were consolidated into a single Charities, Trusts & Estates Bureau. That action unified the Attorney General's jurisdiction over charitable interests. Although the process of fully integrating the work of the Bureau was not completed in 1979, substantial changes occurred with important consequences for the Department's effectiveness. This reorganization will eliminate duplicative and overlapping functions, permit a more efficient allocation of staff, help develop a rational priority system and increase the ability to address significant issues.

The new Bureau's responsibility ranges from the enforcement of testamentary and *inter vivos* dispositions of property to charitable institutions to broad oversight responsibility for the institutional conduct of charitable organizations. These duties are carried out through the exercise of the Attorney General's powers under common law and under such statutes as Article 8 of the Estates, Powers and Trusts Law; the Not-For-Profit Corporation Law; and Article 7-A of the Executive Law.

The Bureau's organization reflects the division of its functions. The Trusts & Estates Division is responsible for all trusts and estates matters, probate proceedings and contests, and matters involving representation of the State Comptroller as custodian of the Abandoned Property Fund.

The Division of Investigations and Enforcement is charged with the duty of overseeing the conduct of all organizations in the voluntary sector as well as specific duties created by statutes, such as Article 7-A of the Executive Law dealing with public solicitation of funds for charitable purposes.

The third major Division in the reorganized Bureau, Accounting Services, works on such matters as fiduciary

accountings and investigative auditing and the review of registrations of, and annual reports by, some eighteen thousand charitable organizations.

Management and administrative systems have been put in place for uniform Bureau wide case reporting, case closing and assignment procedures in order to facilitate more effective case review. The bureau is developing its own bank of briefs and pleadings, conducting regular staff meetings and creating a specialized library for purposes of reference and continuing legal education.

One of the most promising developments for the future is a project involving the computerization of many of the time consuming clerical aspects of the registration and reporting process. Although the project initially will be limited in scope and will not be completed before late 1980, it represents a major step in facilitating the entire financial auditing function of the Bureau and may provide, in the future, for a computerized auditing capability. With approximately eighteen thousand reports to audit each year, the lack of electronic data processing techniques makes timely performance difficult. This project represents a long needed move to improve productivity.

The Bureau has assigned certain time consuming tasks involving the Attorney General's obligation to review Certificates of Incorporation, amendments, mergers and dissolutions of non-profit organization, to paralegals and legal aides, under the supervision of staff lawyers.

The Bureau has initiated, in conjunction with the Department of Law's regional offices, a comprehensive review of the ways in which charities matters are to be handled on a statewide uniform basis.

The Bureau has developed uniform auditing guidelines applicable to organizations required by the Estates, Powers

and Trusts Law to register with, and report annually to, the Attorney General. Audits will be concentrated on larger organizations, with spot auditing of smaller groups until such time as computerization expedites the review process.

The Bureau has developed a legislative proposal which would substantially change the nature of regulation of public soliciting charities. This bill, which was the subject of three days of joint hearings conducted by the Attorney General, the Secretary of State and members of the State Senate and Assembly, would provide substantially stronger enforcement tools for the Bureau in preventing charitable frauds, increase the Secretary's administrative powers, broaden the law's coverage and provide greater disclosure to the public.

In the trusts and estates area, a package of bills has been introduced to provide for notice to the Attorney General in a variety of Surrogate's Court proceedings. Participation in such matters will provide greater assurance that charitable interests will be adequately protected.

A major legislative proposal would restore the Attorney General's role in proceedings involving sales of assets and dissolutions by religious organizations, an increasing problem in many older urban communities where congregations have diminished and costs increased.

Another bill would require reporting by hospitals and educational institutions, otherwise exempt from registration and reporting under the Estates, Powers and Trusts Law, to file such reports with respect to their charitable endowments. That would provide protection for such funds from potential creditors at a time when many such institutions have had serious financial reversal and to protect the public's interest in maintaining the integrity of these endowments. Another measure introduced would create guidelines for deaccessioning by museums and other institutions possessing substantial collections.

Another major legislative effort, building upon the office's experience with art law (arising originally from its supervision of cultural institutions and other charitable matters involving art works) is a proposed series of bills attempting to correct abuses in the booming art market in New York State, a vital cultural and economic resource in need of protection.

A review of a series of cases will show the variety of ways the Attorney General uses his authority to protect charitable institutions in light of changed social and economic conditions. When Bennett College, a two-year women's college located in Millbrook, New York, became insolvent, this office filed a claim in Bankruptcy Court, on behalf of the ultimate charitable beneficiaries, for the school's endowment funds to protect them from the claims of creditors. A favorable settlement was negotiated whereby a substantial part of the fund was obtained for charity. At a time when many private institutions face mounting financial pressures, protection of charitable funds from

creditors in such situations has become increasingly important.

St. Barnabas Hospital had been caught in the financial squeeze of inflation and the needs of a changing community in The Bronx. Due to the closing of a general hospital in the area, St. Barnabas was forced to change from a nursing and convalescent facility to a general health care institution. A large wing was being constructed for this purpose. Until expected federal funds could be obtained, a prospect which would take several years to materialize, the hospital was faced with an enormous operating deficit. This Bureau, in cooperation with hospital counsel, devised a plan in which several large trusts, previously restricted for maintaining hospital beds, were freed for general use until the hospital could restore the funds for the endowment of beds. A petition with detailed supporting affidavits was submitted to Surrogate's Court and an order was submitted without the necessity of a formal hearing, saving the hospital additional expense for legal fees.

St. George's Episcopal Church, a long established institution in lower Manhattan, faced with declining membership and sharply rising operating costs, sought court approval for the sale of two of its buildings, to generate much needed revenues and remove a heavy financial obligation. The deed to one of the buildings was restricted by the donor, J.P. Morgan. The deed of gift provided that the property and building be used for church related activities and might be sold only in the event of the removal of the parish from its present location. In recent times only a small portion of the building was used by the church and the balance was rented to other charitable organizations. Rents received from both buildings were inadequate to meet the expenses of operation. Two parishioners objected vehemently to the sale contending that it was dismantling the parish and that the costs of operation were improperly calculated and not deficit producing. After extensive review of the circumstances the Bureau satisfied itself that the single parish activity conducted in the building could easily be relocated to another facility; that the church was operating at a deficit; and, that the price offered for the building was fair. Accordingly, the office supported the church's application and, ultimately, the court approved the sale of the property although the matter is now on appeal.

Following a court order permitting the sale of the Pike Street Synagogue in New York City's lower East Side, several individuals claiming to be members of the congregation brought an action to annul the order. They wished to have the corporate action authorizing the sale voided on the grounds that the sale had not been authorized by the members as required by the Religious Corporations Law. Upon invitation of the court, the Bureau intervened in the proceedings on behalf of the ultimate charitable beneficiaries pursuant to Article 8 of the EPTL. The Bureau has participated fully in pre-trial examinations and had conducted its own independent investigation as a basis for recommending

action to the court. Several alternative settlements may be considered. If none of these is acceptable, the matter will proceed to trial.

As a result of the Bureau's continuing efforts to correct serious deficiencies in the management of the Museum of the American Indian, we received a physical inventory of the Museum's entire collection of some four million objects, one of the first such computerized inventories ever prepared. The Museum expects the inventory to be of inestimable value in research on Indian culture. The Attorney General is analyzing the results to determine the liability, if any, of former trustees for objects missing from the collection.

An undercurrent in many of these matters is the adequacy of performance by trustees of their responsibilities for the management of non-profit institutions. Many of these issues have surfaced in litigation involving the Adams School. The School was a non-profit corporation formed for the education of emotionally disturbed and neurologically impaired children. State audits revealed excessive, improper and unreasonable use of State funds by the school's Board of Directors. As a result of the audits, the Attorney General commenced an action against thirteen former Board members for restitution of misappropriated funds. Certain of the directors are charged with improperly appropriating funds of the Adams School for their own benefit. The majority, however, is accused of acquiescing in the acts which form the basis of the complaint. The action seeks a precise judicial enunciation of the degree of care the public can expect to receive from those who are entrusted with public funds, particularly those who are "passive" directors, a widespread problem for those concerned with the effective management of such institutions.

Another class of cases involve unlawful conduct in the solicitation of charitable funds or in their expenditure for non-charitable purposes. The Institute of International Medical Education and the Italo-American Medical Foundation, Ltd. have been conducting companion programs since 1974 to qualify American college graduates for admission into foreign medical schools. They also conduct programs to prepare foreign-trained students for state licensing examinations for fees of \$4,600 each. The Bureau received complaints from students that fees paid to the Institute and the Foundation to cover tuition for a Spanish medical school had not been remitted. The Bureau subpoenaed the financial records of both institutions which revealed that the principals of these institutions wrongfully retained \$250,000 in tuition received from students for courses attended at the University of Navarra Medical School in Spain and Wagner College in New York City. Forty students were compelled to make duplicate payments in order to maintain standing in the Spanish medical school. An examination of the financial records also revealed that the principals had siphoned off more than \$900,000 from these corporations to private business interests of their

own, causing both institutions to become insolvent. An action was recently filed seeking restitution of these funds by the principals and the dissolution of the two corporations.

After receiving numerous complaints from New York City residents, the Bureau conducted an investigation of Police Review, Inc., Police Digest, Inc., and New York Fire-Fighters Tribune, Inc. The investigation revealed that fraudulent solicitation practices were used by these organizations to collect contributions. Consumers were told their contributions would be used for bullet proof vests or for a fund for widows of slain police officers when, in fact, the money was used exclusively for the personal benefit of the principals. The solicitors would deceive the public by implying the organizations were associated with the police or fire departments. The Bureau succeeded in obtaining a temporary restraining order enjoining the organizations and their principals from any solicitation and froze their assets. A motion for a preliminary injunction is pending.

Based on extensive investigation which revealed fraudulent solicitation of funds and misappropriation of charitable funds, the Bureau, in April 1979, obtained an Order from the New York Supreme Court prohibiting the Congress of Racial Equality (CORE) and its principal officers, including Roy Innis, the National Chairman, from "...soliciting, receiving or collecting contributions from the public by any means whatsoever, directly or indirectly within and from the State of New York." Subsequently, the office received complaints indicating that solicitation was continuing, notwithstanding the Court Order. As a result of its subpoena and review of the defendants' telephone records, the Bureau has instituted a motion to punish the defendants for criminal and civil contempt of court. This motion is now pending. A trail on the underlying claims is expected during 1980.

After a protracted investigation, the Bureau obtained a restraining order *pendente lite* against the International Conference of Police Associations, its officers and fund raising agents, upon proof that they misrepresented the terms of their fund raising contract in documents filed with the Secretary of State. The Bureau will litigate a claim for \$900,000 in punitive damages against each defendant for willful violation of the law.

The office is also involved in litigation concerning numerous substantial estates in which there are dispositions to charitable institutions and in which the Bureau represents the public, the ultimate charitable beneficiaries. Typical of these is the estate of the late Charles H. Revson, the founder of Revlon. Among the issues involved are whether the bequest of his yacht includes its valuable contents and a determination of the fair market value of Revlon shares for purposes of distribution to the residuary legatee, the Revson Foundation, now established as a major philanthropic organization.

In the estate of Charles R. Lachman, another of Revlon's founders, a probate contest and a proceeding to determine whether certain conditions set forth in the will were met by the decedent's widow was presented to the Court. The importance of this case lies in the size of the estate, which is approximately 30 million dollars. The Bureau's involvement is on behalf of the charitable interests. In the event that the widow does not meet the stated conditions of the will, the charities will benefit by additional millions of dollars. The position of the widow has been upheld in the trial court and the matter is now on appeal to the Appellate Division, First Department.

In the Estate of Chester Kallman, a week long trial was held in New York County Surrogate's Court. The purpose of the trial was to determine the legal right to possession of original extensive manuscripts and papers of the renowned

poet, W. H. Auden. Mr. Auden's lifelong friend and companion, the late Chester Kallman, had donated the papers to the Berg Collection of the New York Public Library. Subsequently Mr. Kallman's father, as administrator of his son's estate, challenged the validity of the gift. These works and papers of Auden's are irreplaceable and constitute a priceless resource to scholars of English literature. A decision is pending.

The Bureau commenced a proceeding in the Supreme Court, New York County, to declare as escheated unclaimed federal tax refunds belonging to New York State residents which are held in a custodial capacity by the Secretary of the Treasury. If successful, this could result in the return to the State of millions of dollars, benefiting all New Yorkers. This is the first such action brought by any state in the union.

CIVIL RIGHTS BUREAU

The Civil Rights Bureau utilizes the statutory powers granted in the Executive Law (§§ 63, [9 & 10]; Article 15, § 297), to institute or defend civil actions or proceedings, and to file complaints before the State Division of Human Rights, for the enforcement of the laws of this State against discrimination by reason of race, creed, color, national origin, age, sex, marital status or disability. In 1979 the Bureau participated in a number of major cases.

Fullilove v. Kreps

The Bureau represented New York State before the U.S. Supreme Court in a challenge to the constitutionality of § 103 (f) (2) of the federal Public Works Employment Act of 1977, 42 U.S.C. § 6705 (f) (2), which requires state and local grantees to set aside 10% of the federal public works funds for minority business enterprises. The suit was brought by several associations of construction contractors and sub-contractors to restrain the U.S. Secretary of Commerce as program administrator under the statute, and the State and City of New York, as grantees, from enforcing and implementing the Minority Business Enterprises requirement. Both the U.S. District Court, S.D.N.Y., and the Second Circuit Court of Appeals had previously upheld the constitutionality of the statute, holding that it served the

compelling state interest of overcoming the effects of prior discrimination.

The case was argued before the U.S. Supreme Court on November 27, 1979.

Fullilove v. Carey

The Bureau represented the Governor before the New York Court of Appeals in a case challenging State Executive Order No. 45, as an unwarranted exercise of legislative power. The order required that affirmative action provisions be included in public contracts. The Executive Order had previously been declared to be beyond the Governor's authority by the State Supreme Court, Albany County, and the Appellate Division, Third Department. The Bureau argued that Executive Order No. 45 is within the Governor's power to specify the terms and conditions of public contracts and that it is consistent with the policy of the State Human Rights Law.

Argued before the Court of Appeals, and affirmed, November 19, 1979.

Board of Education v. Califano, SDHR & NYS Dept. of Education

The Bureau was granted summary judgment in this action commenced in the Southern District by the Board of Education to determine the legality of the State defen-

dant's policy that health and physical education teachers (HPET) be hired and seniority determined on the basis of one list of males and females. This is consistent with the rationale that sex is not a bona fide occupational qualification for the position of HPET and that females may teach males and vice versa.

Hawley v. Cuomo (App. Div. 2nd Dept.)

The Bureau continues to provide legal representation to the Secretary of State in defending orders designed to prohibit blockbusting or panic selling. In *Hawley v. Cuomo*, an order issued on July 21, 1976 by the Secretary of State which prohibited licensed real estate brokers and sales people from soliciting listings from homeowners in the boroughs of Queens and Kings, was challenged by real estate brokers. They contended that the order was invalid due to lack of a public hearing. The order had been promulgated at the request of over 15,000 homeowners in those two boroughs.

After a full trial, the authority of the Secretary of State to issue the type of order in question was sustained as well as the authority to promulgate the order holding a public hearing. However, the Court held that the evidence presented did not warrant an order of borough wide scope and thus enjoined its enforcement. The Appellate Division, Second Department, affirmed and both parties appealed to the Court of Appeals, which affirmed.

Delta v. Kramarsky, SDHR & WCB

The Bureau has been handling the defense of the new amendments to the Disability Benefits Law which provides that a woman is entitled to receive eight weeks of disability benefits following a normal pregnancy, if she is unable to return to work due to her pregnancy. This legislation, enacted in August, 1977, is being challenged by fourteen major airlines that claim that the law is unconstitutional and illegal. They claim it is preempted by ERISA, and in violation of Title VII and the Railway Labor Act.

Majka v. N.J. College of Medicine & Dentistry; Vigliano v. NYC

In *Majka*, the Bureau represented the Downstate Medical Center in the U.S.D.C., District of New Jersey, and in *Vigliano*, the Bureau was intervenor-respondent defending the constitutionality of Education Law § 2590-g (12) (d) before the Appellate Division, First Department, in cases raising issues similar to those considered by the U.S. Supreme Court in *Regents of the University of Calif. v. Bakke*, 438 U.S. 265 (1978). In *Majka*, plaintiff, a white male who applied unsuccessfully eight times for admission to Downstate and two New Jersey state medical schools, alleged that Downstate's admission policies with regard to minority applicants constituted reverse discrimination and deprived him of equal protection. The Bureau moved for summary

judgment, arguing that Downstate's practices were within the guidelines mentioned in *Bakke* and did not include quotas.

In *Vigliano*, the Supreme Court, New York County, upheld the constitutionality of the discovery admissions program for disadvantaged students in New York City's "special" high schools in the face of attack by a white student denied admission. Plaintiff alleged that the discovery program constituted a racial admissions quota forbidden by *Bakke*. The Appellate Division, First Department, affirmed the Supreme Court's decision unanimously, on December 13, 1979.

Matter of Edwin I. Johnson's Estate

The Bureau brought an action in Westchester Surrogate Court in regard to a charitable bequest which established a scholarship fund solely for male graduates of the local high school. The fund was to be administered by the Board of Education of the local school district. This precedent setting case seeks to change the bequest's sex restriction so that the scholarship can be administered without unlawful discrimination of the basis of sex.

Police Conference of N.Y. v. Municipal Police Training Council

The Bureau represented respondent Municipal Police Training Council in a case which seeks to require the MPTC to promulgate a height requirement for eligibility of persons for appointment as police officers. Because of the discriminatory impact of a previous height requirement on women and certain minorities, in violation of Title VII or of the 1964 Civil Rights Act, the MPTC had rescinded the requirement. It is currently conducting a validation study to determine if, in fact, any height requirement is job related and thus would comply with Title VII. The petitioner, Police Conference of New York, is seeking to have the height requirement reinstituted before this study is completed.

Matter of General Hospital v. SDHR

The Bureau moved to intervene in the *Matter of General Hospital v. SDHR on the complaint of Sally Rappaport*. On October 23, 1979, the Court of Appeals granted this motion. The Bureau will be defending the constitutionality of § 296 of the Executive Law, which makes it unlawful for an employer to discriminate against an employee as a result of the employee's observance of the Sabbath. The law further mandates that the employer must accommodate the employee's Sabbath observance.

Credit Investigations

The Bureau has continued to satisfactorily resolve numerous complaints received from women who charge

they have been refused credit on account of their sex or marital status.

The Bureau has begun a broad inquiry directed at the major oil companies requesting detailed information regarding the credit scoring systems. Many of them, it has been charged, utilize a geographic factor which may have illegal discriminatory effects upon applicants.

CONSUMER FRAUDS AND PROTECTION BUREAU

In 1979, after a careful study and evaluation of the Bureau, several organizational changes were implemented to strengthen and consolidate the role of the Department of Law in the area of consumer protection.

A number of functions, formerly performed by sister bureaus (such as home improvements, rent securities and miscellaneous frauds) were merged into Consumer Frauds and Protection to achieve greater efficiency. A new Energy and Utilities unit was added to the Bureau as well.

The Bureau adopted a new administrative structure to establish a litigation approach to consumer protection. Three distinct divisions were established — Consumer Assistance, Litigation and Special Projects — each with its own supervisor, responsibilities and functions and coordinated into one cooperative group. An Executive Secretariat was formed to serve the entire Bureau.

The Consumer Assistance function is to promptly, courteously and effectively respond to the many complaints and inquiries that do not evidence a pattern of consumer frauds which would properly be the subject of the Bureau's investigation and enforcement powers. In addition to the role of mediator, the primarily non-legal staff plays the part of consumer counselor. Advice is given as to what action is best in each circumstance. Referrals are made to other agencies for further assistance when appropriate.

Most of the Bureau's legal staff has been assigned to the Litigation division for the purpose of pursuing and enjoining violators of specific consumer statutes. They seek to find patterns of fraudulent business conduct and deceptive advertising. This unit investigates the complaints, gathers the facts, issues subpoenas, negotiates assurances of discontinuance, prepares pleadings and litigates.

The Special Projects division is unique in its function and widespread in its effect. It has the broad mandate of developing and creating novel issues requiring, at times, extensive research and innovative approaches that will result in fundamental changes benefiting the consumer. This year

Legislation

The Bureau drafted a bill which was included in the Attorney General's legislative program and was passed and signed by the Governor. This bill amended the section of the Insurance Law pertaining to mandatory maternity care coverage by extending such coverage to state and other local government employees.

such areas as generic drugs, automobile repairs, bank practices, funeral practices and energy saving have been subject of action.

The Executive Secretariat has the responsibility of reviewing, directing, assigning and maintaining control over all incoming mail and complaints. This unit makes the initial determination of where a particular matter should be specifically directed or referred. It is also responsible for the Bureau's massive indexing and filing systems.

The Bureau acted on a variety of important matters during the past year.

Rent Overcharging

Two landlords, each managing approximately a dozen buildings subject to the New York City Rent Stabilization laws, had been ignoring the rent guidelines. Tenants were being overcharged up to \$200 per month.

The landlords agreed, through assurances of discontinuance, to thoroughly review each lease signed since July 1, 1977 and, where appropriate, issue refunds for illegal overcharges. All future leases are to comply with the rent laws and guidelines. Regular compliance reports are to be filed with the Attorney General. As a direct result of our action, over half a million dollars were refunded by one of the landlords.

Banks Advanced Interest Merchandise Programs

A number of New York Banks had adopted different types of programs offering to pay depositors interest in advance on certain time accounts in the form of merchandise. However, some of the banks did not inform consumers of the nature and details of their particular program.

At the request of our office, the New York State Banking Department issued a supervisory letter to require the banks that have adopted such programs to provide the fol-

lowing information to consumers: the merchandise offered is the interest or part of it; the annual interest rate and yield; the "cash interest equivalent"; the fair market value of the merchandise, to be provided on request; the penalty for premature withdrawal and the difference, if any, in penalties if interest were paid entirely in cash; the value of merchandise subject to income taxes; the entire fair market value of the merchandise to be declared as income in year received for tax purposes; the bank's responsibility regarding defective merchandise; comparison of the interest paid at the time the account is opened and at the time of maturity.

Generic Drugs

The Generic Drug laws, to a significant extent, are ignored, violated and unenforced. Pharmacies do not always dispense generic drugs when they should, and when they do, they often do not pass along the savings to the consumer. The State Pharmacy Board has given enforcement a low priority, imposed minimal penalties and has never referred a case of violation to a District Attorney. Doctors more and more are not permitting generic substitution. Drug price information is not always readily given or available to consumers.

In conjunction with the New York City and various County Departments of Consumer Affairs and the State Board of Pharmacy, the Bureau undertook a statewide survey to determine compliance with the generic drug laws. As a result of this survey, a report was issued recommending the law be amended: to allow criminal prosecution by the Attorney General; to authorize the Attorney General to seek restitution and civil penalties; to require pharmacists to pass along full savings to consumers; to eliminate pre-printed signature line on prescription forms and require the doctor to handwrite "medically necessary" if he does not want substitution; to require the doctor to inform the patient why substitution is not permissible; to give consumers the right to override the doctor so that brand names can be dispensed instead of generics in emergencies; to show both brand and generic prices on each drug listed on the required price poster; to provide that 51% of the Board of Pharmacy be composed of consumer representatives; to replace New York's green book with the federal drug formulary; to allow drug information to be obtained over the telephone. The study also proposed a law to provide for publication by the State of a generic drug guide.

Pharmacies and pharmacists who were found to be violating the law were disciplined by the Board of Pharmacy. Over \$20,000 in fines were assessed and other disciplinary action taken in what amounted to the strongest penalties ever assessed by the Board for Generic Drug Law violations. This action should lead to better compliance with this important pro-consumer law.

Cruise Ship's Sanitary Conditions

A luxury foreign cruise vessel that sailed out of New York repeatedly failed United States Public Health inspections and did not disclose this fact to prospective passengers. A number of cases of intestinal illness aboard ship were reported.

The Bureau obtained a temporary restraining order enjoining the cruise line from selling tickets to consumers unless they were told, in advance of sale, the latest score achieved on Public Health inspections. Simultaneously, a lawsuit was instituted in the state court for permanent injunctive relief. The case was ultimately settled in federal court through the entry of a consent order directing the cruise line to take the necessary steps to achieve a passing score on future inspections and, pending such time, to disclose the latest scores to those consumers who request it.

Gasoline Price Gouging

With the gas shortage of the summer, hundreds of complaints of price gouging and discriminatory practices on the part of gasoline retailers were received by our Bureau.

The office established specific procedures and created a special task force to receive and review complaints. It also monitored compliance with both the Federal Department of Energy price guidelines and regulations and the State Energy office's orders. Lawsuits were initiated and quickly concluded with judgments entered against two gasoline retailers for the most flagrant price gouging and discriminatory practices. Three different retailers executed assurances of discontinuance relating to excessive pricing and failing to comply with the state energy office's orders. In one instance, we were able to obtain a court order directing a retailer to roll back prices for a specified period to below what was permitted under the guidelines so as to return illegal profits to the public.

Storage of Household Goods

The Bureau received a number of complaints against a storage warehouse whose practices included giving of misleading "lowball" estimates, concealing of storage and connected fees, unconscionable charges and misleading advertising.

Upon the company's failure to respond to a subpoena, the Bureau sued for compliance. The order directing them to comply was affirmed by the Appellate Division and the company ultimately produced its records. Meanwhile, the Bureau pressed for and was successful in getting the legislature to enact a new "truth-in-storage" statute. (General Business Law, Article 29-1). This new law requires written estimates and prohibits the final bill from exceeding the estimate by more than 10%. In addition, all charges must be clearly disclosed.

Men's Wear Advertising

A well known men's clothing manufacturer and retailer, following a bankruptcy filing, retained another company to operate and advertise its retail business. In a mass advertising campaign, they led the public to believe that prices were drastically reduced on existing stock, while in fact lower quality merchandise was imported for these sales. They also had price tags affixed to merchandise where one price was crossed out and a much lower price inserted. Actually that merchandise was never sold at any price other than the current sale price.

The Attorney General obtained a court order enjoining these deceptive practices. It restrained the company from offering name brand garments unless sufficient stock was available or adequate disclosure was made specifying any restrictions or limitations. Restitution was also provided.

Synthetic Hair Implantation

Two hair implantation clinics, one run by an osteopath the other by a non-medically trained person, engaged in the business of treating baldness. They advertised a procedure of hair implantation as being safe, painless and effective. Numerous complaints were received from people who paid thousands of dollars and whose scalps became infected as a result of these procedures, conducted under somewhat less than sterile and sanitary conditions. No authorized personnel actually performed the medical procedure and the patients were misled, deprived of their money and in some cases, suffered severe pain and injury.

Two separate lawsuits for injunctive relief and restitution were instituted against the offending clinics and the individuals responsible for their operation. As a result of the Attorney General's involvement and even prior to the lawsuit, both clinics ceased operations in this state. In one case just decided, the court granted the basic relief sought. In the other matter, a default was entered and the court is working with our office to enter an appropriate judgment.

Savings Accounts Interest Rates

A survey was conducted by our office of sixty-three New York City bank branches to determine whether depositors were being offered the highest interest rate available for time deposit accounts of four or more years. There

are two different types of such accounts generally available paying different interest rates — the fixed ceiling rate and the treasury related variable ceiling rate. Nearly half of the banks surveyed did not offer the depositor the highest available interest rate accounts.

A detailed report describing the survey was issued by the Bureau. It recommended that the various Federal and State banking regulatory agencies require the banks to automatically give depositors the benefit of the highest interest rates available for a particular account. They should disclose, at the time of the initial deposit or first inquiry, the interest rates paid on all available accounts for which the contemplated deposit qualifies. It was urged that banks be required to disclose the interest rates and yields in all advertising. It was also requested that the banks identified in the survey as not having offered the highest available rates, substitute the higher interest accounts for those depositors effected. A subsequent survey by the Banking Department found significantly improved performance on the part of the banks surveyed.

Casket Pricing

A New York casket manufacturer provided showrooms where funeral directors can bring their customers to choose a casket. The casket prices were in code and only intelligible to the funeral directors. Customers were not told what the wholesale price was or the extent of the retail markup which varied between 200 and 300 percent depending on the customer or the director's particular preference.

The company agreed, in an assurance of discontinuance, to prominently display all suggested prices in a plainly legible, uncoded statement which everyone can read. The Bureau also requested the New York State Health Department to issue a directive requiring funeral directors to make proper price disclosure to consumers.

Commuter Airlines Intervention

In September 1979 the office intervened in an enforcement action brought by the Civil Aeronautics Board against Commuter Airlines Inc., to enjoin Commuter from engaging in unfair and deceptive practices. It was the first time a state was permitted to intervene in a C.A.B. enforcement proceeding.

CONSUMER EDUCATION

Consumer Education has the responsibility of planning, producing and disseminating a wide variety of materials and initiating a broad range of activities, to help the citizens of New York State know and use the laws protecting them as consumers.

During this first year, Consumer Education developed and issued the brochure "A Guide to New York Consumers," which provides a brief summary of some significant statutes affecting consumers. It has a list of suggested buying hints and the addresses and phone numbers of all the Attorney General's regional offices. The aim is to introduce New York State residents to consumer law and encourage them to use the Attorney General's office when they require assistance.

A second brochure, "Do You Want to Be an Actor, Announcer or a Model?" is being printed as a public service by AFTRA, the American Federation of Television and Radio Artists, New York local and will be available soon after the first of the year. This brochure provides information about laws governing show business, training schools and advice on how to deal with agents and managers as well as hints about fraudulent sales techniques. It is one of the most often requested subjects in consumer education. Teenagers and young adults from all over the state write to the Attorney General asking for such information.

The first issue of the Attorney General's "Consumer Education Newsletter" was sent to organizations and individuals throughout the State. The "Newsletter" carries articles about recent consumer fraud cases, items of special interest to senior citizens and reports of Law Department plans and actions.

"Consumer Alert", the Attorney General's weekly newspaper column informs the public of their rights and protections under current statutes and regulations regarding consumer matters. This year over sixty newspapers around the State have published columns on generic drugs, auto repair, debt collection, tire grading, health spas, inflation, art fraud and workers compensation.

Radio station WNYC has continued the Attorney General's Consumer Education program, with a new format. It is now a live show, with attorneys from various bureaus of the Law Department responding to the public's call in questions. Broadcasts this year have featured issues of Charity Fraud, Anti-Monopoly, Environmental Protection, Trusts and Estates, as well as Consumer Frauds and Protection.

The Speakers Bureau has been a very active part of Consumer Education this year. The Director of the Consumer Education and a number of attorneys, most of them from the Consumer Frauds and Protection Bureau, have responded to invitations from groups around the State. Each regional office of the Law Department has participated.

A consumer outreach and participation program is an essential part of Consumer Education activity. During 1979, Consumer Education re-established Consumer Education Centers at Brooklyn College and LaGuardia Community College in Queens. Cooperative efforts include involvement in the colleges' Consumer Education curriculum and complaint centers for students and community.

At the elementary school level, Consumer Education is working with School District 10 in the Bronx. Pupils, parents, teachers, administrators and community representatives are involved in a combined endeavor of education, identification of fraud, mediation and resolution of local marketplace disputes.

Individual schools have asked for special projects and in response seminars have been conducted for parents, and students have visited the office at the World Trade Center for Consumer Education sessions.

Consumer Education also takes place within the Attorney General's office. Two graduate students from the Fordham University School of Social Service and the CUNY Hunter College School of Social Work are in their field placement with Consumer Education. A high school student is also placed with Consumer Education through the New York City Board of Education Executive Training Program. Fifteen CETA funded workers have been placed in various bureaus of the Law Department by Consumer Education, through a referral arrangement with United Neighborhood Houses. As the CETA tenure is completed, jobs in the Department are sought.

An essential tool in the attempt to reach and relate to organized consumers is a directory of consumer organizations in New York State being developed by Consumer Education. It will be used by the Law Department and consumer groups, as well as the general public, to help maintain a communication network and create opportunities for cooperative ventures.

ENERGY AND UTILITIES SECTION

A new Energy and Utilities Section has been created in the Consumer Frauds and Protection Bureau. The Section is engaged in projects and cases aimed at avoiding and opposing increased energy and utility costs. It has prepared materials for the participation of the Attorney General in appropriate Public Service Commission cases and has devised special energy projects of particular importance for New York consumers.

One significant activity of the Energy and Utilities Section has been to develop extensive economic testimony for New York utility regulatory cases. Such testimony contributed to the \$93,000,000 reduction in the rate increase approved by the Public Service Commission to the New York Telephone Company. The Section has been involved in a variety of proceedings before the Public Service Commission. The Section has supported use of small power sources located in New York City, because they can reduce the need for expensive electric plant facilities.

The National Fuel Gas Distribution Company asked for a \$26.6 million increase in gas rates for its 640,000 customers. The Energy and Utilities Section filed briefs opposing the rate design proposed by the Company and the Public Service Commission staff as being inconsistent with State and Federal law and the public interest. The briefs included the point that the allocation of rates should be different for different types and sizes of customers. The briefs also noted that the National Energy Act and previous Public Service Commission decisions show that rates should be set on marginal and incremental cost principles in order to reduce the price of energy for the smallest users.

A similar case involves Orange & Rockland Utilities, Inc. The Section has participated in the hearing on this case. The decision by the Public Service Commission is pending.

Brooklyn Union Gas refused to provide electric and gas service to a divorced or abandoned woman unless she paid the bills left unpaid by her husband. The Public Service Commission had previously ordered that a woman should receive services in her own name. In a Public Service Commission rule making proceeding, the Section's brief in support of that initial order was upheld.

In another action, the Section submitted comments to the Public Service Commission arguing that it would be unconstitutional for the Commission to approve a rule proposed by Brooklyn Union Gas which would allow it to discontinue service when it suspects a customer of tampering with the gas meter. The Commission has deferred action on this matter, and has so far refused to allow the Brooklyn Union tariffs to go into effect.

For the State Energy Master Plan, the Section offered technical testimony and briefs, providing legal, economic and engineering advice to the State Energy Board. The materials emphasized promotion of conservation and use of alternative energy services.

The Section filed comments with the Federal Energy Regulatory Commission favoring quick implementation of incremental pricing of natural gas as required by federal law. Incremental pricing makes it possible for large industrial users to bear the brunt of the higher costs of new supplies of gas, thus holding down residential and small commercial consumer gas rates. This rule making proceeding will help decide the pending National Fuel Gas Distribution Company and Orange and Rockland Utilities rate cases.

The Attorney General's office has been participating in the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) study which is examining the most appropriate method to price natural gas for the different classes of consumers.

The Section submitted comments to the Economic Regulatory Administration regarding the current system of allocating gasoline. In cooperation with the State Energy Office, the Attorney General has opposed the present system which takes gasoline away from New York and gives it to the more recent growth states, especially the "Sunbelt" states.

Together with other northeastern states, the Attorney General has petitioned the ERA to reinstitute price controls on home heating oil. The petition also urges the ERA to take steps to insure that low and moderate income households, who usually find it difficult to get credit, will be able to obtain sufficient supplies of oil to heat their homes. ERA has not yet responded to the petition.

The Section intervened in a case against Ashland Oil brought by the Department of Energy. The suit seeks to return to New Yorkers over \$50 million that DOE claims Ashland overcharged its gasoline customers. DOE has granted standing to the Attorney General to represent the proprietary interests of the State and its citizens. In addition, a brief has been filed arguing that refunds should go to the State and its citizens and not to the Federal Treasury.

Eight states, including New York, brought suit against Louisiana for taxing off-shore natural gas which flows to these states. The states allege that Louisiana has unconstitutionally taxed federal off-shore natural gas. The Attorney General joined the Maryland Attorney General in his leadership to have the tax eliminated.

The Section participated with the Litigation Bureau of the Department of Law in defense of the State Energy Office's oil service regulations, designed to protect the poor, elderly and handicapped from abrupt termination of heating fuel deliveries. The Long Island Oil Heat Institute claimed that the regulations were in excess of the SEO's legal authority and are unconstitutional. The Attorney General's office has been successful in preventing an injunction against the SEO.

The Energy and Utilities Section has worked with other units in the Attorney General's office to prevent price gouging and discrimination through the enforcement of new heating fuel legislation passed in extraordinary session by the New York Legislature. The Section provided legal research and technical data in the creation of an enforcement mechanism for the new heating fuel statutes. It also drafted legislation and supporting memoranda during the special session.

EDUCATION BUREAU

The Education Bureau handles the enforcement of the laws regulating those professions which are licensed by the New York State Department of Education and which come under the jurisdiction of the Board of Regents. These professions include physicians, nurses, dentists, engineers, accountants, architects, chiropractors, pharmacists, psychologists, social workers and others.

Criminal prosecutions are conducted throughout the State of New York against persons practicing or attempting to practice any of the professions without being licensed. In some instances indictments are obtained after a presentation of the facts to a grand jury.

During 1979, there were many attempts by unlicensed persons to practice various professions including medicine. The Bureau successfully prosecuted 34 such criminal cases. Currently the Bureau is preparing to present a case against an unlicensed person who purports to treat cancer patients with "vitamin therapy".

This year, the Bureau disposed of 274 administrative disciplinary proceedings for misconduct against the licenses of professionals.

Actions against license holders are initiated for a variety of reasons, chiefly because they have been convicted of a crime, because they are alleged to be narcotics addicts, or because they are accused of unprofessional conduct, fraud, deceit, or the illegal prescribing and dispensing of narcotic drugs. Increasingly, there are allegations of malpractice, especially in the health professions. The Bureau sustained the revocation in the courts of the license of an orthopedic

surgeon who had caused the death of one patient and left another a quadriplegic. In the field of pharmacy, disciplinary proceedings were conducted against pharmacists who sold narcotic drugs, barbiturates and amphetamines to persons without medical prescriptions. There were several proceedings against physicians who prescribed narcotic and hypnotic drugs to addicts and other persons illegally and without proper medical examinations.

Another prosecution conducted by the Bureau was against a person who had obtained a license to practice medicine by fraud. The person involved, a non-physician, impersonated an out of state physician who had died, and used the credentials of that physician as a basis for licensure in New York State. We obtained the cancellation of the fraudulently issued license.

The recent enactment of legislation allowing the disciplining of professionals for repeated ordinary negligence has caused a vast increase in the workload of the Bureau. Also contributing to the increased workload is the greater awareness of the public that there is an agency which will act upon their complaints in an effective manner. Our clients, the Board of Regents, the Education Department and the Health Department have been engaged in an advertising campaign for several years and this campaign has begun to increase the number of cases referred to our office.

The Bureau also acts as counsel to the New York State Education Department and frequently confers with and assists officials of the Department in matters pertaining to professional conduct and law enforcement.

ENVIRONMENTAL PROTECTION BUREAU

In 1979, the Environmental Protection Bureau in New York City and the Water and Air Resources Bureau in Albany were consolidated into a single Environmental Protection Bureau.

The Bureau is responsible for all environmental matters which come before the Attorney General. It handles litigation pursuant to the Environmental Conservation Law on behalf of the Department of Environmental Conservation (DEC), initiates affirmative actions, answers and investigates numerous citizens' complaints, and drafts and comments upon legislation concerning environmental issues. The Bureau also manages environmental public health matters for the State Health Department and all litigation on behalf of the Adirondack Park Agency. It is engaged in a broad spectrum of activities to obtain judicial enforcement of the State's environmental laws, restrain air, water and noise pollution, protect freshwater and tidal wetlands, endangered animal species and other natural resources.

In response to the growing problems related to toxic wastes, particularly the situation arising out of the Hooker Chemical Company's disposal waste site at Love Canal in Buffalo, a special unit was created in the Bureau to deal solely with these issues.

The Bureau asserts the Attorney General's common law power as well as statutory authority, to seek the abatement of public nuisances in an effort to terminate serious incidents of air, water and noise pollution. The Bureau acts to protect the environment both on its own initiative and at the request of various state agencies. The Bureau has been able to contribute to that protection in a number of cases throughout the State.

In *New York v. Jancyn Manufacturing Corp.*, the Bureau obtained the consent of a major manufacturer of a toxic cesspool cleaner to a preliminary injunction. This required reformulation of its product for sale in Nassau and Suffolk Counties to protect the fragile quality of the groundwater resources there.

In *Long Island Oil Terminals Association, Inc. v. Commissioner of the New York Department of Transportation, et al.*, the Third Department rendered a favorable decision upholding the constitutionality of the new oil spill law.

Amendment of a consent judgment requiring deadlines and the appointment of a special master, was obtained in the ongoing action by the State and Federal Government against the City of New York which seeks to speed up the

City's construction of a sewage treatment plant (*USA, N.Y. v. City of N.Y.*).

The Bureau defended the constitutionality of the State law requiring approval by DEC of liquefied natural gas facilities. The statute was challenged by an LNG operator on Staten Island as being pre-empted by Federal law. The case is pending in the E.D.N.Y. (*Energy Terminal Services Corp. v. NYDEC*).

In *N.J., et al. v. EPA*, the Bureau, together with a coalition of northeastern States, sought review of EPA's designation of the status of various areas throughout the nation with respect to attainment or non-attainment of National Ambient Air Quality Standards. The action was taken on the grounds that EPA had not properly considered the negative impacts on the northeastern region of the interstate transport of ozone pollution.

Many citizens' complaints concerning pollution were received during the year, most of which were resolved without litigation. Many of these complaints were of conditions allegedly causing a public nuisance, such as from excessive noise emissions.

One problem which necessitated litigation because of the numerous complaints received and the lack of action to deal with them occurred in Irondequoit in Monroe County. A sewage treatment plant there, owned by the City of Rochester, was emitting foul odors. The Bureau sued to abate the nuisance.

The Bureau has taken a strong stand in support of the State Environmental Quality Review Act's (SEQRA) procedural and substantive requirements as a positive tool for insuring adequate protection of the State's environment. Successful decisions were obtained in cases of first impression under the new Environmental Quality Review Act.

In *Tuxedo Conservation and Taxpayers Association v. The Town Board of the Town of Tuxedo, New York, et al.*, the Bureau was an amicus in an action to insure compliance with SEQRA. In *People v. Skylift, Inc. and Suffolk County*, the Bureau obtained a preliminary injunction requiring the preparation of an environmental impact statement prior to the consummation of a leasing arrangement between the County and a commercial airline which would lead to a substantial increase in air traffic at Suffolk County Airport.

Two key cases established that alleged economic injury alone, without any allegation of potential environmental harm, does not afford standing for challenges to agency decisions based upon SEQRA. The Bureau repelled a challenge to the implementation of the State Energy Conserva-

tion Construction Code in *New York State Builder's Association v. State*, and won dismissal of an attempt to block relocation of a State Police outpost from Malone to Ray Brook, New York, in *County of Franklin v. Connelie*, since no potential adverse environmental effects were even alleged.

The Bureau handled a substantial number of cases under both the Freshwater and Tidal Wetlands laws. In *Spears v. Berle*, the Court of Appeals unanimously reversed an unfavorable Appellate Division decision which had declared the Freshwater Wetlands Act unconstitutional, as applied to the petitioner's property and remanded the Article 78 proceeding for a factual hearing.

A precedent setting decision was rendered in *Flacke v. Freshwater Wetlands Appeals Board, et al.* In that proceeding, the Department of Environmental Conservation challenged a decision of the Freshwater Wetlands Appeals Board, which reversed a decision by DEC Commissioner Flacke that a certain wetland was interconnected with a larger wetland and thus subject to his regulatory jurisdiction. The court rejected the FWAB's contention that the Commissioner lacked standing to contest the Board's decision, but, nevertheless, dismissed the petition on the merits. Both sides have appealed.

In *Rappl and Hoenig v. DEC*, the Court of Appeals accepted the argument that artificially created wetlands, as well as natural ones, may be subjected to the protection of the Wetlands Act and remanded for further proceedings.

Responding to the Love Canal Health Emergency, and at Governor Carey's request, this office has undertaken an investigation of past hazardous waste disposal practices, so as to protect the health and welfare of New York State's citizens and the pecuniary interest of the State.

Investigatory subpoenas were served upon Hooker Chemical & Plastics Corp. to secure documents pertaining to Hooker's past landburial of hazardous wastes in a number of Niagara County sites, including Love Canal. A special toxics unit within the Bureau is presently sifting the extensive material produced by Hooker in response to the subpoenas. The Unit is working with experts from the State Departments of Health and Environmental Conservation and the Federal Government.

The Attorney General actively opposed the practice of burying hazardous wastes. Instead, the Law Department favors safe storage pending their ultimate destruction through proven incineration technology. The Bureau participated in two crucial administrative hearings conducted by the Department of Environmental Conservation to consider permit applications by the operators of the only two landfills in New York State still actively receiving hazardous wastes. In the *Matter of Newco*, the Bureau developed a full factual record for consideration by DEC and a comprehensive legal briefing of relevant issues. This served as the base

for DEC's decision to require the strongest, most environmentally protective permit conditions ever imposed on a hazardous waste burial operation.

Although the results of the Phase I hearing in *Matter of SCA* was disappointing it will proceed to a Phase II hearing in 1980. The Bureau intends to participate and assist in development of a full record to insure that adequate consideration is given to the potential adverse environmental impacts of SCA's proposed landfilling and discharges of waste to the Niagara River. In both proceedings, the Attorney General strongly urged that the letter of the State Environmental Quality Review Act be closely followed and its spirit implemented as a means of adequately protecting the public and the environment.

This year the Bureau was involved in efforts to enforce the endangered species law and to obtain humane treatment of animals. As a result of an investigation at the first annual New York Fur Fair, the Bureau prevented the sale of a rare and valuable Indian Leopard Cat skin. The Bureau is presently seeking a change in the U.S. Fish and Wildlife Regulations to make them more effective. The Bureau was successful in obtaining the correction of gross violations in a number of animal shelters.

In May of 1979, the Bureau arranged an important and well-attended hearing by the Attorney General on nuclear waste management. It participated in the New York State Draft Energy Master Plan proceedings which resulted in a moratorium on the building of new nuclear reactors. It appeared before the State Board on Electric Generation Siting and the Environment and was successful in its opposition to the proposal by Long Island Lighting Company and New York State Electric and Gas Corporation to build two nuclear plants in Oswego County.

The Bureau appeared in the NRC hearing on the Proposed Rulemaking on Storage and Disposal of Nuclear Waste, arguing that since present technology does not exist for the safe disposal of nuclear waste, there should be a moratorium on the licensing of new nuclear facilities, until the waste question has been resolved. The Bureau submitted an *amicus* brief to the United States Court of Appeals for the 9th Circuit in *Pacific Legal Foundation v. State Energy Commission* in support of the State of California's right to impose a moratorium on nuclear plant construction pending a solution of the waste problem.

The Albany Office handled all litigation on behalf of the Adirondack Park Agency. In one action to enforce the provisions of the Act, the United States Court of Appeals, 2d Circuit, affirmed a lower court decision which held that our action for enforcement of the Act would not deprive the defendant of federal civil rights which would justify removal of the action to Federal Court and remanded the case. A preliminary injunction was later obtained in State Court to restrain defendant's violations of the APA Act and an appeal is pending.

The Bureau joined with New York City in successfully defending a city ordinance requiring the fluoridation of drinking water. A dismissal of the challenge was obtained in Supreme Court and a notice of appeal has been filed (*Ford v. City of New York, et al.*).

The Albany Office recovered judgments for penalties,

finances and costs totalling \$116,654 including conditions penalties against industries and individuals who were found to have violated the State's environmental protection laws. Actual monies received during 1979 totalled \$37,322.

In 1979, the New York Office recovered a total of \$6,064 in costs and penalties.

INVESTIGATION SECTION

The Investigation Section is a newly created unit of the Department of Law. Previously the investigators were assigned throughout the Attorney General's office. The formation of this new section now centralizes a group of investigators, at the disposal of any bureau within the Department.

Investigations are initiated, by this section and by the various bureaus, involving the commission of crimes and internal security, as well as civil matters. Other state agencies may request action by the section.

This reorganization and centralization of manpower was instrumental in the effort to enforce the Executive Orders issued by the Governor during the energy crisis created by the oil shortage this past summer.

The section has established a working rapport with the F.B.I., the State Police, the New York City Police Department, the Motor Vehicle Bureau and many other State and Federal agencies.

A case record keeping system was initiated, requiring reports from each investigator on every assignment. One hundred and twelve cases were recorded since June of 1979. Most were successfully completed, others are ongoing or have been referred back to the originating bureau.

A variety of cases has been investigated by this section.

An investigation enabled the Consumer Frauds And Protection Bureau to bring the officials of the steamship Marconi into court because the ship had repeatedly failed to pass health inspections.

A large scale Pyramid scheme, bilking millions of dollars from the public, generated a far reaching investigation. With the assistance of various law enforcement agencies throughout the country the scheme's promoter was arrested and pleaded guilty.

An investigation disclosed that an employee had been stealing a state agency's expense checks. Laboratory evidence was collected and an arrest was made. The employee pleaded guilty in court and restitution was obtained.

A number of other investigations have involved unlicensed veterinarians, tax fraud, illegal aliens, discrimination by a finance company, art fraud, dishonest and deceptive moving and warehouse company operations, insurance red-lining, contested wills, environmental protection complaints and bogus attorneys.

INVESTOR PROTECTION AND SECURITIES BUREAU

The year 1979 was one of significant activity for the Investor Protection and Securities Bureau. Enforcement action against fraudulent practices proceeded at an accelerated pace, and regulatory activities in the corporate takeover and pension abuse areas led to public hearings of national notice. A variety of legislative proposals were generated by the Bureau's actions. The following are a few representative examples of the Bureau's active enforcement program.

In the first major prosecution under the new administration, the Bureau instituted a civil proceeding against Futuristic Foods, Inc., a metropolitan area franchise operation that bilked its victims of over \$12,500,000, through gross and persistent fraud. Futuristic Foods, Inc. was founded in 1973 purportedly to provide a shop-at-home supermarket service which would allow customers to place food orders over the telephone and have the food delivered to their homes within 24 hours. The service was to be sold

to the public by the company's franchisees, who paid between \$1,000 and \$15,000 for the privilege. Franchises worth over \$12,500,000 were sold to 4,000 investors, but franchisees received only \$135,000 in commissions.

Alleging fraud, deception, concealment, suppression and misrepresentation, this office sought and obtained the dissolution of Futuristic Foods, Inc. and obtained permanent injunctive relief against eighteen of its principal participants. The court appointed a receiver to take over the company's assets and ordered a restitution program consisting of cash and promissory notes totalling three million dollars. This was one of the largest restitution programs ever obtained by the Bureau.

The Bureau has drafted and submitted to the Legislature a bill designed to eliminate similar franchise abuses. The new law would require filing the offering literature with the Attorney General's office, providing full and fair disclosure.

In February, the indictment of Adela Holzer, former Broadway producer, was moved to trial in New York County Supreme Court. This matter was one of the largest fraud cases ever prosecuted by the Attorney General's office. The defendant was accused in a 248 count indictment of grand larceny and violations of the Martin Act. She was charged with deceiving investors in non-existent overseas ventures, including an alleged sole distributorship of Toyota products in Indonesia, alleged real estate deals in Spain and fictitious international commodity trading. Evidence and witnesses were obtained from Indonesia, Japan, Sweden, Spain, Switzerland and Panama. After a three week trial, the judge submitted seven counts of grand larceny to the jury as representative of the counts charged in the indictment. Defendant was found guilty on all seven and was sentenced to a minimum of two years and a maximum sentence of six years incarceration.

In mid-August, the Bureau initiated an investigation which involved the most intensive manhunt in its history. Larry Hecker, promoter and representative for an international drug manufacturer, devised and operated a "Ponzi" scheme to steal millions of dollars from his victims. Hecker told prospective investors that he was investing their money in the purchase and sale of generic drugs. To deceive them and to create investor confidence, he took money from new investors to pay prior investors. These deceptive payments led investors to tell others of lucrative potential profits, and many others fell victim to the scheme.

When Hecker disappeared, a nationwide manhunt began. The search was conducted with the assistance of State Police in New York, Georgia, Tennessee and other southern states. Persistence was rewarded with Hecker's surrender at our office and his plea of guilty to charges of a scheme to defraud in the first degree and grand larceny in the third degree. The court sentenced the defendant to 7½ years in prison with a mandatory minimum of two years. The in-

vestigation and prosecution of Hecker was conducted with the full cooperation of the United States Attorney's office for the Eastern District of New York. Hecker also pleaded to federal charges and is presently incarcerated in federal prison.

In December, action was taken by the Bureau to halt the activities of several firms and individuals engaged in the fraudulent sale of futures contracts for crude oil. An order was obtained in State court in the *Matter of American Petroleum Exchange, et al.* to bar nine corporations and seventeen individuals from the fraudulent sale of such contracts. Action was brought on the basis that the futures contracts, which were alleged to be securities under state law, were being sold nationwide through high pressure tactics and fraudulent misrepresentations. The Bureau has been working in close cooperation with the Commodity Futures Trading Commission, and has been coordinating the enforcement efforts of twenty-eight states. An action will be started in early 1980 in the federal courts against the nationwide operations of these fraudulent operators.

During 1979, investigations continued into the activities of fraudulent sellers of commodity options in precious metals, including gold and silver bullion. Gary Fredericks, one of the leading salesman in the field, was found to have an extensive criminal record, including several felony convictions for violating the securities law. The Bureau instituted civil proceedings to bar him from the securities and commodities business in New York State. In August of 1979, a preliminary injunction was obtained against Fredericks, who was later incarcerated by federal authorities for violation of parole on the basis of evidence we submitted.

Two important court decisions stemming from our investigations into gold and silver bullion sales came in response to motions to quash subpoenas *duces tecum* on the grounds of federal preemption and that the Attorney General lacked authority to investigate petitioners' business. In both cases, the Supreme Court upheld the Attorney General's authority to act pursuant to the Martin Act. *Salitra v. Lefkowitz*, 413 N.Y.S. 2d 857 (Sup. Ct., N.Y. Co., 1979) and *Metals Depository Corp. v. Robert Abrams, et al.*, Index No. 879/79 (Sup. Ct., N.Y. Co., 1979).

The energy crisis has prompted many individuals to invest in coal tax shelters. In *State of New York v. Swanton Corporation*, the Bureau obtained a permanent injunction barring the defendant from future violations of the Martin Act, as a result of its failure to have six coal tax shelter programs registered with the Department of Law. Through its subsidiaries, Swanton Corp. had raised \$2,326,000 from the sale of interests in subleases to coal mining properties to 153 members of the public. In preparing the case, a representative of the Bureau was dispatched to Kentucky to make an on-site inspection of the Southeastern Kentucky

coal fields and obtain evidence that the coal mining properties were non-producing and unmineable. Investors' interests have been transferred to a mineable property that has begun to yield a return on their investments. The six coal programs also involved consented to Assurances of Discontinuance. The Bureau obtained a total of \$12,000 in costs from the defendants.

Working with the Securities and Exchange Commission, this Bureau obtained a permanent injunction barring Petro Natural Resource Corporation and its president, Eugene Leonard Colman, from dealing with the public in securities and commodities transactions. Petro had been engaged in the brokerage of a limited partnership in a gas program which had attempted to comply with the provisions of S.E.C. Rule 146 involving private offerings of securities. Colman and Petro were charged with violation of the anti-fraud and registration provisions of the Martin Act.

There has also been much activity in the tender offer area, over which the Bureau has jurisdiction pursuant to Business Corporation Law, Article 16.

On April 9, 1979, Brascan, U.S.A. Inc., a Canadian operation, filed a registration statement concerning its proposed takeover of F.W. Woolworth Co. at an approximate cost of \$1,125,000,000. The Attorney General considered the registration statement to be deficient and held a public hearing concerning the takeover on May 11. Prior to deter-

mining the merits of the disclosures made by Brascan, that company withdrew its registration statement and abandoned the proposed tender offer.

In another tender offer situation, the Attorney General invoked his "Stop Order" authority in connection with Gelco Corporation's takeover bid for Interway Corporation on May 11. After Gelco filed three amendments to its registration statement, the "Stop Order" was vacated on May 21.

In February, the Attorney General was required to rule on the applicability of the registration provisions in the Security Takeover Disclosure Act to a tender offer for a business trust. The tender offer in question involved an offer by Johncamp Realty, Inc. to acquire certificates of interest of Prudent Real Estate Trust. The Bureau ruled that under existing law, this office was of the opinion that, in such circumstances, the registration provisions did not apply. Prudent then filed suit in Supreme Court, New York County, charging that the tender offer was subject to the Act and that the Attorney General acted improperly in holding otherwise. The Supreme Court upheld the Attorney General's position and the Appellate Division, First Department, unanimously affirmed. Thereafter, the Attorney General submitted this matter to the Legislature, which enacted legislation providing that the registration provisions of the Act would apply to tender offers for business trusts.

REAL ESTATE FINANCING BUREAU

A record number of registrations of real estate syndications and cooperative and condominium offerings was filed with the Real Estate Financing Bureau in 1979.

Cooperative offerings increased most dramatically reflecting a nationwide trend in conversions. The large number of conversion plans submitted and accepted for filing in 1979 is particularly significant. Almost twice as many units were converted from rental status to cooperative and condominium ownership than in the past two years combined.

This withdrawal of rental units from the marketplace, together with higher prices for cooperative apartments, the lack of newly constructed rental housing and the unavailability of mortgage loans, intensified public concern over conversions. As a result, there were more inquiries, com-

plaints, investigations and litigation in the process of regulating the sale of cooperative apartments.

A major project during the year was the development of a special program at the request of the City of New York to accommodate the unique circumstances of converting low cost housing acquired by the City through tax foreclosure. A prototype pilot project for converting *in rem* properties is being devised.

During 1979, the Bureau initiated a variety of programs designed to increase service to the community. For example, a handbook for tenants explaining the complex laws pertaining to conversion was drafted. In addition, staff attorneys regularly addressed meetings, conferences and seminars sponsored by tenant groups and the legal profes-

sion explaining the conversion laws and defining the role of the Attorney General.

The Syndication Division has jurisdiction over all real estate securities which are offered and sold primarily as investments. Registration under the syndication statute is accomplished either by the issuance of a letter stating that a prospectus has been filed or by obtaining an exemption from filing requirements upon written application. During the first ten months of 1979, the number of real estate security offerings registered by the Division increased by 35% and the number submitted increased by 32%. The total dollar amount of real estate securities registered exceeded twelve billion, a 27% increase for the ten month period.

The number of syndications handled by the Division has more than doubled since 1976. There are a number of factors responsible for the increase. The period has been characterized by steadily improving market conditions for almost all types of real estate investment. The 1976 and 1978 changes in federal tax laws have enhanced the relative importance of real estate as a tax shelter investment vehicle. Large institutional and foreign investors have become more active purchasers of real estate, increasing competition for viable real estate investments.

The complexity of real estate investments has increased. The large sums that must be invested, with financing vehicles, tax law intricacies and environmental restrictions combine to reshape traditional real estate investments. Due to these factors, individual investors are less likely to invest directly in real estate which they control. They are more apt to invest as a passive security holder in a real estate syndication controlled by industry professionals. These individual investors require the protection of New York's Syndication Laws.

Many limited partnership syndications are sold as "private offerings" within the § 4(2) exemption of the 1933 Securities Act and are not registered with the Securities and Exchange Commission. These offerings generally must obtain an exemption upon written application in New York. During the ten month period, over six hundred of these "private" limited partnership offerings were reviewed by the Division. In the absence of any requirement for federal registration of these offerings, the Division's review is especially important for the protection of New York investors. During 1979, standards of review for these offerings have been elevated and exemption applications were more closely scrutinized.

Since 1976, the number of proposed offering plans in cooperatives, condominiums and homeowners associations submitted to the Attorney General's office has increased by 299%. The number of such offering plans accepted for filing increased by 219%. The following table shows the number of plans submitted to and accepted for filing by the Attorney General for the past four calendar years:

Total Of All Plans	1976	1977	1978	1979
Submitted for Filing	167	300	397	667
Accepted for Filing	121	249	295	386
Cooperative				
Conversion Plans	1976	1977	1978	1979
Submitted for Filing	67	143	270	501
Accepted for Filing	44	126	180	261

The growing number of offering plans submitted to this Bureau corresponded with an increase in the complexity and sophistication of individual offering plans. New and novel plans have been developed to facilitate the needs of sponsors, the cooperators and financing requirements.

The Bureau's staff of engineers and architects spent 125 man days in the field in 1979. They inspected the condition of properties being offered for sale, both new construction and conversions of existing rental properties. This was in addition to examining a burgeoning number of general descriptions contained in offering plans submitted for filing.

The Bureau has also increased its efforts to monitor the background and sales practice of persons engaged in advertising and offering for sale cooperative interests in realty. In 1979, the Real Estate Financing Bureau's staff of investigators, which is shared with the Securities Bureau, conducted 1,763 background investigations of sponsors, principals of sponsors and salesmen (444 firms and 1,321 individual background checks). There were only 675 such investigations conducted in 1978. The investigators also visited various developments and properties being offered for sale to monitor the sales practices of sponsors and their agents.

If the current acceleration of cooperative conversions continues, the number of plans to be submitted, both in 1980 and 1981, are estimated at nearly 1,000 each year. If most of these plans are ultimately accepted for filing, the number of units offered for sale and removed from the rental market in two years combined is projected at 85,000 units with a total dollar value of 56 billion.

During 1979, the Enforcement and Litigation Section of the Real Estate Financing Bureau was able to handle an increased number of investigations. As landlords escalated the conversion of their apartment houses to cooperative or condominium ownership, larger numbers of tenants complained to the Attorney General about many of the procedures used in the sale or offer for sale of these securities. As a result, more than 410 investigations were begun in 1979 into alleged violations of Article 23-A of the General Business Law.

A substantial number of these investigations resulted in an end to the alleged abuse and an extension to the complainants of full benefits of the applicable statutes and regulations. However, in other instances, corrective action was

obtained only by resort to administrative and judicial remedies. Thus, investigations which produced sufficient proof of violations resulted in 114 promoters, developers and issuers being the subject of 47 Assurances of Discontinuance, Cease and Desist Orders and Permanent Injunctions. These enforcement proceedings yielded \$96,350 in costs paid to the State in 1979.

The various enforcement and litigation proceedings of the Real Estate Financing Bureau produced indictments and offers of restitution by various promoters, developers and issuers in an amount in excess of \$5,991,000, of which more than \$2,799,000 has been returned to investors.

A noteworthy action during the year involved Adams Hotel Owners, Inc. In that case, a cooperative offered to the public in 1965 was the subject of an action by the Attorney General for the appointment of a receiver and ultimately the cooperative was dissolved. The premises were sold; the proceeds of the sale were distributed to shareholders and former shareholders in an amount greater than their original purchase price. The Adams Hotel became the first cooperative in New York State to be dissolved upon the initiative of the Attorney General.

The total dollar value of all offerings which were accepted for filing are as follows:

	1976	1977	1978	1979
Condominium	242,599,400.48	607,565,640.00	500,943,936.00	642,300,000.00
Cooperative	73,198,585.22	103,909,868.00	408,712,832.00	850,000,000.00
Home Owners Association	10,759,142.00	18,919,408.97	18,726,747.00	35,031,000.00
TOTAL	326,557,127.70	730,395,007.81	928,383,515.00	1,527,531,000.00

The total Fees collected were:

	113,950.00	216,350.00	363,400.00	500,000.00
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Sponsor developers are required to amend their offering plans in order to assure full disclosure to the public. This resulted in the following submission to and acceptance of amendments by the Attorney General.

	1976	1977	1978	1979
Amendments Submitted	695	815	916	1220
Amendments Accepted	685	675	866	1100
Fees Collected	36,400.00	33,800.00	43,300.00	55,500.00

The total amount of fees collected for these years for all initial filings and amendments are as follows:

	1976	1977	1978	1979
	146,700.00	250,150.00	406,700.00	555,500.00

A statistical summary of the Division's activities during the ten-month period, in comparison with the similar period of the preceding year, follows:

Real Estate Syndications

	Jan. 1, to Oct. 31, 1978	Jan. 1, to Oct. 31, 1979 (ESJ)
Number Submitted	765	1008
Number Registered	710	955
Withdrawn or Denied	46	22
Under Review at Period End	62	74
Total \$ Amount Registered	\$9,885,693,541.05	\$12,590,000,000.00
Fees Collected	\$435,950.00	\$550,000.00

The division also handles non-real estate public offerings of securities limited to residents of New York State. The statistical summary of those intrastate security registration is the following:

	Jan. 1, to Oct. 31, 1978	Jan. 1, to Oct. 31, 1979 (ESJ)
Number Submitted	6	13
Number Registered	3	10
Withdrawn or Denied	2	1
Under Review at Year End	11	7
Total \$ Amount Registered	\$965,500.00	\$2,720,000.00
Fees Collected	\$2,327.50	\$10,700.00

DIVISION OF APPEALS AND OPINIONS

APPEALS AND OPINIONS

The year 1979 was a time of dramatic and significant change in the functions of the Appeals and Opinions Bureau, the flagship of the Solicitor General's Division.

In the past, responsibility for supervising the appellate work of the Department of Law was split along geographic lines, with Albany taking responsibility for cases in the Third and Fourth Departments and most cases in the Court of Appeals, while New York City handled First and Second Department matters.

As part of the restructuring of the Department early in the year, the appeals function was centralized, and the Solicitor General was given the responsibility, somewhat analogous to that of the United States Solicitor General, for all appellate work of the Department throughout the State and in particular, representing the State's interests in the Court of Appeals and the United States Supreme Court.

The Appeals and Opinions Bureau in Albany is now managing the statewide appellate case load. It has developed an information system on all pending appeals. Offices of the Attorney General all over the State now receive reports on pending appeals identifying issues involved, organized into approximately ten subject areas. Each subject area is monitored by a different attorney in the Appeals and Opinions Bureau, who is available to render assistance to attorneys assigned similar cases, by providing briefs and other guidance. Review of the reports and briefs is designed to help insure not only consistency in approach, but the maintenance of quality standards.

All appellate briefs written in the Department are reviewed before service and filing, either in the Appeals and Opinions Bureau or, if written by the New York City Litigation Bureau, by certain members of the Bureau who are designated to assist in this function. All papers for the Court of Appeals in Albany and the United States Supreme Court are reviewed by the Solicitor General personally.

Special activities have included managing the extensive deployment of Albany attorneys of the Department in connection with the strike by the correction guards.

The Appeals and Opinions Bureau has an opinions section which renders formal opinions to State officials and agencies, which are personally reviewed and signed by the Attorney General, and informal opinions rendered as a courtesy to attorneys for local governmental units.

The Solicitor General also manages the Attorney General's responsibility as bond counsel for the State, rendering validity and tax opinions on bond and note issues of the State, as well as certifying various matters in connection with the sale of State-related obligations.

Typical appeals decided in 1979 in cases originating in the Court of Claims were as follows:

Fehlhaber Corporation and Horn Construction Co., Inc. v. State, (60 A D 2d 362 [3d Dept.]), one of a series of construction claims growing out of the Albany Mall, involved a contract for construction of foundations to the Cultural Center; the Court reduced an award of \$2,746,747 by \$537,000 and ordered another \$713,777 withheld pending final determination of the State's counterclaim, which it recognized.

Becker v. State, (N Y 2d) involved a claim for the value of radiological physicians' services to patients of the Downstate Medical Center. An award of \$256,550 by the Court of Claims was reversed on the ground that there was no agreement between the parties approved by the Comptroller (65 A D 2d 65 [3rd Dept.]), and the Court of Appeals affirmed.

Southworth v. State, (47 N Y 874), held that the State was not liable for a death and injuries in an accident caused by a drunken driver who had been issued a motor vehicle operator's license despite a prior record of driving while intoxicated. The Court held that in exercising the police power, the State owed no special duty to any particular member of the public.

Brooks v. Thruway Authority, (A D 2d [3d Dept.]). The Appellate Division reversed a Court of Claims award of \$417,068 with interest for wrongful death on the Thruway, holding that the claimant had failed to prove the existence of an unsafe condition.

The Appeals and Opinions Bureau handled significant constitutional litigation. These included:

Cook v. City of Binghamton, (N Y 2d), held that the constitutional protection of pension rights was not violated by a 1977 law diminishing disability benefits for regularly employed firemen.

People v. Hector Cruz, (N Y 2d), upheld the validity of provisions of the Vehicle and Traffic Law on driving while impaired and driving while intoxicated, which were challenged on the ground that their standards were unconstitutionally vague.

United States v. State Police, was a Title VII action wherein after a long trial, the Federal District Court for the Northern District of New York rendered a judgment that the tests previously given by the State Police violated constitutional standards and were discriminatory against minorities and women. The case was satisfactorily resolved by an

agreement governing hiring within certain goals, and no appeal was taken.

Considerable attention was given to litigation by Indian tribes, with substantial progress made towards settlement of land claims of the Cayuga Indians and of the St. Regis. Towards the year end, two new actions were started by different factions of the Oneida Indians.

Other constitutional litigation included *Pearl v. Regan* (F. Supp. [SDNY]), argued in the United States Supreme Court at year end, involving the validity of an act whereby the State reimbursed nonpublic schools for the cost of attendance-taking and State-mandated examinations; and *Fullilove v. Carey*, (N Y 2d) where the Court of Appeals struck down as a violation of separation of powers the Governor's Executive Order 45 requiring "goals and time-tables" for the hiring of minorities and women by public contractors.

Due partly to CPLR venue requirements, the preponderance of litigation involving determinations of the State Tax Commission, the State Comptroller and certain other State officials is handled by the Albany office. Among the appeals in this area which were resolved in 1979 were the following:

Matter of BES Corporation v. Tully, (46 N Y 2d 1030), upholding a determination that sales of school uniforms billed and shipped to the parents were taxed to the parents and not to the schools, which would be exempt.

Arthur Treachers Fish & Chips, Inc. v. State Tax Commission, (69 A D 2d 550 [3d Dept.]), holding a bulk purchaser of a restaurant liable for sales taxes owed by the seller, where the purchaser had not given the State the required notice; however, the Court upheld the purchaser's objection that the provision of the Tax Law which authorizes the issuance of a warrant against a person liable for tax was unconstitutional insofar as it failed to provide an opportunity for a *prompt* post-levy hearing.

In *Matter of Rednow Realty Corp. v. Tully, et al.*, (A D [3d Dept.]), (lv to app den N Y 2d) the Court sustained the Tax Commission's determination that additional money advanced pursuant to a remodified mortgage was taxable although the principal amount of the mortgage was identical with the amount of the mortgage before modification.

In *Merrick v. Tully, et al.*, (68 A D 2d 289 [3d Dept.]) the Court upheld the determination of the Commission insofar as it found the taxpayer's income as sole general partner of a limited partnership subject to the unincorporated business income tax, where the income resulted from taxpayer's pursuit of his individual interest in a profit from his overall business rather than as a distributive share.

Among the cases handled for the Comptroller was *Matter of Konski v. Levitt*, (69 A D 2d 940 [3d Dept.]), upholding the Comptroller's refusal to approve a contract

negotiated by the Department of Environmental Conservation with an engineering firm because the firm's principal was involved in a Grand Jury investigation; the Court found that the Comptroller's action has a rational basis and his approval was a condition precedent to State liability.

In addition, the Appeals and Opinions Bureau had its share of appeals from voluminous litigation under the Social Security Act, "Article 78" proceedings for review of administrative determinations which are defended by the Attorney General, and prisoners' appeals. A few salient cases in these categories were as follows:

In *Saratoga Vichy Spring Co., Inc. v. Orin Lehman, Commissioner of Parks and Recreation*, (F. Supp. [NDNY]) on appeal to the Circuit Court, the owner of the trademark "Saratoga Vichy" could not establish trademark infringement and unfair competition by the State in licensing a group to bottle and distribute the State's mineral water under the trademark "Saratoga Geyser". The evidence established that plaintiff had abandoned its prior trademarks; that the State had not abandoned its trademark; and that the plaintiff was guilty of laches.

In *Plummer v. Klepak*, (N Y 2d) the Court distinguished its prior decision invalidating the Civil Service regulation that unauthorized leave in excess of 10 days is deemed resignation, since petitioner's rights were governed by the provisions of a collective bargaining agreement providing a grievance procedure which was not timely pursued.

In *Long Island Home, Limited v. Whalen*, (47 N Y 2d 767), the Court applied the statute requiring Public Health Council approval of certain hospital stock transactions, to the transfer of the stock of a nursing home incorporated prior to enactment of the statute.

Kupferman v. State Board of Social Welfare, (66 A D 2d 540 [3d Dept.]), appeal pending. The Court upheld the constitutionality of a section of the Social Services Law excluding certain monies received by residents of private proprietary homes for adults from payment to the operators of such homes. No Federal law was violated nor was there any impairment of contract obligation notwithstanding inconsistency with the terms of a prior rental agreement.

In *Matter of Harold Rubin v. LaVerne Campbell and Department of Health*, (N Y 2d), the Court upheld suspension of a podiatrist as a Medicaid provider pursuant to a regulation of the State Health Department, notwithstanding that it had not been filed with the Secretary of State as required by law. The Court held that the failure to file did not divest the Health Department of inherent power to police the quality of medical service.

Other Federal litigation was *Holley v. Lavine*, (605 F. 2d 638 [2d Cir.]), where the Court held that the Eleventh Amendment barred a judgment for retroactive welfare benefits against the State Commissioner of Social Services.

DIVISION OF STATE COUNSEL

CLAIMS AND LITIGATION

The Claims and Litigation Bureau was reorganized during the latter part of 1979. This report is based upon the organizational structure in existence throughout most of 1979, when the Bureau was headquartered in Albany. It maintained the central docket and Law Department files for Statewide Court of Claims matters.

The primary function of the Bureau is to prepare for and litigate the defense of all claims against the State filed in the Court of Claims. Regional offices of the Department in Binghamton, Buffalo, New York, Poughkeepsie, and Syracuse provided support staff for representation in Court of Claims Districts adjacent to those sites.

Other major functions include cases involving affirmative actions for the recovery of damages sustained by reason of damage to or destruction of State-owned property; Article 78 proceedings in State Supreme Court in the Albany area; Federal Court actions designated for trial principally in Albany; affirmative actions brought for the recovery of monies due and owing to various State agencies; review and approval of all Small Claims submitted under the provisions of Section 8 of the State Finance Law; representation of State employees under the provisions of Section 17 of the Public Officers Law in the Albany area.

The Bureau manages contract and lien matters consisting of: (1) the examination and approval of insurance charters, contracts, bonds, undertakings, leases and miscellaneous documents submitted by the various State agencies; (2) the examination of validity and legality of securities purchased for the investment of State funds, as well as the legality of the issuance of all State bonds and notes under the supervision of the Solicitor General. Attorneys in this section also appear in actions involving liens upon public improvements. The approval of State contracts involved the review of over 30,000 agreements.

Notices of Intention filed in the Court of Claims were approximately 40% higher than in 1978. A total of 1,810 new notices were filed during 1979.

Collections on behalf of the State for the calendar year totaled \$4,241,373.37, a substantial increase over last year.

Continued reorganization will result in the separation of the collection responsibilities; non-Court of Claims litigation; and Court of Claims litigation.

Cases handled by the Bureau during 1979 include the following:

IN THE MATTER OF THE APPLICATION OF THE ASSEMBLY OF THE STATE OF NEW YORK FOR AN ORDER RESTRAINING ARBITRATION ATTEMPTED TO BE HAD BY COMPUTER SYSTEMS ENGINEERING, INC., RESPONDENT

Supreme Court, Albany County

This case concerned a contract under which the respondent was to install an electronic attendance system in the Chambers of the New York State Assembly. The contract contained an arbitration clause under which the parties agreed to arbitrate the value of requested changes to the contract if they were unable to reach an equitable settlement among themselves. After the contract work was completed the respondent served on the Assembly a Demand for Arbitration alleging that it was entitled to additional compensation for extra work. The State of New York moved in Supreme Court for an order restraining the attempted arbitration on, among other grounds, the principle that the State has only waived its sovereign immunity in the Court of Claims and cannot be compelled to arbitrate. The Supreme Court, Albany County, agreed and held that the doctrine of sovereign immunity precluded the submission of the dispute to arbitration. On October 30, 1979, a notice of appeal was filed in the Albany County Clerk's Office by the respondent.

STEIGERWALD V. CONNELIE

Supreme Court, Albany County

Petitioner, an applicant for the position of State Trooper, had scored well on entrance exams, but was found to be 10 months beyond the age limit of 29 for appointment, even after credit was given for military service. Statute provides that the Superintendent of State Police may, in his discretion, extend the age limit for appointment to 35 (Executive Law § 216[3]). A Division regulation also provides for such waiver (9 NYCRR 475.1).

The petitioner challenged the Superintendent's refusal to appoint him claiming it was arbitrary and capricious. The statute and regulation were challenged as unconstitutional, because they based employment solely upon the question of age.

The Court found that the Superintendent's refusal to exercise permissive discretion could not be challenged or compelled. The statute and regulation were upheld as constitutional citing *Matter of Figueroa v. Bronstein*, (38 N Y 2d 533).

TOWN OF ARIETTA V. STATE BOARD OF
EQUALIZATION AND ASSESSMENT
Supreme Court, Albany County

The petitioning towns and supervisors commenced eleven Article 78 proceedings seeking to obtain judgment directing the State Board of Equalization and Assessment to establish transition assessments for the towns with respect to the assessment rolls completed in the years 1968-1978, inclusive, in accordance with the procedure set forth in Section 545 of the Real Property Tax Law. The respondents have moved for a dismissal of the above entitled actions based upon the authority of *City of Mount Vernon v. State Board of Equalization and Assessment*, 44 N Y 2d 960. The Supreme Court in the County of Albany granted the respondents' motion to dismiss based upon the Mount Vernon decision that a municipality could not review a real property assessment made pursuant to a statute by the State Board of Equalization and Assessment by way of an Article 78 proceeding, but that the relief that the petitioners seek lies only with the legislature.

UNITED STATES OF AMERICA V. 285 ACRES
OF LAND, MORE OR LESS, SITUATED IN THE
COUNTY OF QUEENS, STATE OF NEW YORK;
BREEZY POINT COOPERATIVE; STATE OF NEW
YORK; CITY OF NEW YORK AND CERTAIN
UNKNOWN OTHERS

United States District Court
Eastern District of New York

This is a Condemnation Action by the United States of America seeking to condemn 285± acres of beach front property situated at Breezy Point on the westerly tip of Rockaway Peninsula, County of Queens, New York. The property is being acquired for park purposes in conjunction with the Gateway National Recreation Area. Title to the subject property is disputed between the State of New York and the Breezy Point Cooperative Inc., the owner of adjacent uplands. The land in question was created through the process of accretion which resulted from the construction of a large stone jetty by the Federal Government in the 1930's. The New York State Legislature has authorized the conveyance of the subject lands to the United States of America for the establishment of the Gateway National Recreation Area (L. 73 C.759, amended L. 78 C.110). The Court has directed a bifurcated trial be held on the issue of title. The matter is pending.

CONSOLIDATED EDISON V. STATE BOARD
OF EQUALIZATION AND ASSESSMENT, et al.
(INCLUDING ALL RELATED CON ED MATTERS)
Supreme Court, Albany County

This case involves approximately 160 cases requesting the review of special franchise assessments and of real and

personal property owned by Consolidated Edison in New York City and several surrounding Westchester communities. The basic issue in all of these lawsuits is inequality and valuation. These cases are currently in various stages of litigation and a motion for partial summary judgment on the issue of inequality has been granted to the State of New York and is currently on appeal by the petitioners. If the petitioners are successful in these numerous lawsuits, the reduction in assessment and tax revenue to localities, especially New York City, will be in the hundreds of millions of dollars.

LA ROSE V. STATE

This claim for \$2,000,000 involved a two car accident. The male claimant, a severely brain damaged college junior, pleaded that he was a passenger in a car being operated by a female claimant who had pleaded that the male was the operator of the car, she being a passenger. Both claims alleged negligence in the construction and maintenance of the shoulder of a two lane rural highway. Both claimed to have retrograde amnesia as to all events, for at least one hour before the happening of the accident. At the beginning of the trial, over objection, the female claimant was permitted to discontinue with prejudice. There was a sharp issue of fact as to who was driving. The State contended that the male claimant was driving, so as to avail itself of the defense of contributory negligence in the event the Court were to hold the State to have been legally liable for the accident. The Court found the female to have been the driver, but that the shoulder in question was not defective. It also found that even assuming that it was defective, the negligence of the female driver was the sole proximate cause of the accident and dismissed the claim of the severely handicapped claimant.

PATTERSON V. STATE
Court of Claims, Claim No. 62774

Claimants were the owners of a dairy farm and dairy products retail store whose cattle were found to be infected with bovine brucellosis. The discovery of brucellosis in the herd necessitated the destruction of the infected cattle and claimants were prohibited from selling or marketing their cattle for dairy purposes. Damages were sought against the Department of Agriculture and Markets based on allegations that the State was negligent in failing to properly control brucellosis and in failing to prevent it from spreading to and infecting claimants' cattle.

Claimants argued that the obligations imposed by Section 72 of the Agriculture and Markets Law created a special duty whose breach made the State liable for damages. In addressing this question, the Court held that

Section 72 was within the province of the police power of the State and that even if sovereign immunity had been waived

"...the State's duty to prevent and control infectious and communicable disease among domestic animals would run to the public generally and not to individuals."

In granting the State's motion to dismiss on the grounds of sovereign immunity, the Court stated that:

"...in the absence of any special duty owing to the claimants there is no right of recovery against the State for the discretionary actions of its officials performed for the benefit of the public in general."

APPENDIX A

COMBINED STATISTICAL REPORT
BUREAU OF CLAIMS (UPSTATE AND NEW YORK) AND
LITIGATION (ALBANY) - CALENDAR YEAR
1/1/79 - 12/31/79

Claims Matters	On Hand 1/1/79	Received	Closed	On Hand 12/31/79
Notices of Intention	6,503	1,810	445	7,868
Motions to File Claims	66	99	59	106
Special Assignments	286	118	40	364
Small Claims	71	889	942	18
Claims (Filed Court of Claims)	4,150	1,091	2,402	2,897
Severed		6		
Restored		53		
TOTAL CLAIMS MATTERS	11,076	4,066	3,888	11,253
TOTAL LITIGATION MATTERS	25,495	13,256	14,169	24,582*

CONTRACT APPROVAL SECTION

TOTAL MATTERS (Contract)	582	30,583	30,557	608
TOTAL COMBINED MATTERS [NET INCREASE IN MATTERS]	37,153	47,905	48,614	36,443

COLLECTIONS

Litigation (Albany)	
Collections for 1979	
1/1/79 - 12/31/79	\$4,241,373.37

*See Appendix C

APPENDIX B

STATE OF NEW YORK
COURT OF CLAIMS
1/1/79 – 12/31/79

SUMMARY – 1979 REPORT

Number of claims in which awards were made by the Court	Number of claims dismissed by the Court	Total number of claims disposed of during the year
271	2,185	2,402
Amount claimed in claims in which awards were made by the Court	Amount claimed in claims dismissed by the Court	Amount awarded in claims disposed of by the Court
\$89,955,081.32	\$686,518,818.50	\$17,178,417.65
Amount claimed in claims disposed of by the Court	Number of claims pending	Amount claimed in claims pending
\$776,473,899.82	2,897	\$8,155,836,263.95

CLAIMS

	Number	Amount Claimed	Amount Awarded
Awards made by the Court	217	\$ 89,955,081.32	\$17,178,417.65
Dismissed by the Court	2,185	686,518,818.50	
Pending	2,897	8,155,836,263.95	
Disposed of by the Court	2,402	776,473,899.82	

MOTIONS

	Number
Disposed of by the Court of Claims	1,420

APPENDIX C

REPORT FOR YEAR ENDING DECEMBER 31, 1979
BUREAU – LITIGATION – (ALBANY)

	Jan. 1, 1979 ON HAND	RECEIVED	CLOSED	Dec. 31, 1979 ON HAND
18. AFFIRMATIVE ACTIONS AND PROCEEDINGS				
(A) Contracts	23,195	11,803	13,025	*21,973
(B) Torts	1,106	902	724	1,284
(C) Special Proceedings	13	1	3	11
(D) Injunctions (Conservation Law)	5	2	3	4
(E) Injunctions (Health Law)	5	1	3	3
(F) Injunctions (Education Law)	1	1	0	2
(G) Injunctions (Labor Department)	0	0	0	0
(H) Injunctions (Transportation)	5	0	0	5
(I) Injunctions (Social Welfare)	3	1	3	1
(J) Injunctions (State)	1	2	1	2
(K) Injunctions (Thruway)	2	0	0	2
(L) Injunctions (Troopers)	0	0	0	0
(M) Civil Penalty (Conservation Law)	2	3	2	3
(N) Civil Penalty (Insurance Law)	1	0	0	1
(O) Deposit State Funds	1	0	0	1
(P) Veteran Relief Funds	0	0	0	0
(Q) Grade Crossing Elimination	0	0	0	0
(R) Canal Law	3	0	0	3
(S) Collected Fines	3	1	0	4
(T) Miscellaneous	403	185	169	419
(U) Declaratory Judgments	43	31	15	59
(V) Opinions	5	3	0	8
(W) Worker's Compensation Law	0	0	0	0
(X) Civil Actions	49	29	20	58
(Y) Tax Law	4	0	0	4
(Z) Encroachments	1	1	1	1
(Aa) Violation of Highway Law	1	0	0	1
(Ab) (Transportation) Rental	274	65	34	305

	Jan 1, 1979 ON HAND	RECEIVED	CLOSED	Dec. 31, 1979 ON HAND
19. DEFENSE OF PROC. UNDER ARTICLE 78 CPLR	329	102	99	332
19A. INJUNCTION CIVIL SERVICE	1	0	0	1
19B. HEALTH DEPARTMENT PENALTY	4	10	3	11
20. RAILROAD BANKRUPTCIES	0	6	1	5
21. REAL PROPERTY	0	73	2	71
22. LOBBYING PENALTY	0	1	0	1
23. SALARY OVERPAYMENT	0	3	0	3
DEFENSE OF STATE EMPLOYEES	35	26	61	0
OIL SPILLS	0	4	0	4
TOTAL MATTERS	25,495	13,256	14,169	*24,582
*§17 Supreme Court	70	2	1	71
§17 Federal Court	11	2	0	13
Other Matters (§63)	0	0	0	0
TOTAL §17	81	4	1	84

*Represents a further breakdown of matters counted above.

*Over the three years that the computer has been operational, the openings and closings made during the last few days of each month were not included in the statistical portion of the computer report of the following month. This makes a difference of 1,512 contracts, which we are now adding onto the on hand count.

In addition, 164 contracts from the Contract Unit are excluded from the report.

COLLECTIONS

Amount Received by Bureau	3,263,607.55
Amount Received by Departments After Action by Bureau	977,765.82
Total Collections	4,241,373.37

FINANCIAL SUMMARY

RECEIPTS

Collections Made Directly by Litigation Bureau

Mental Hygiene/Hospital Contracts	102,381.76
Employees Retirement System	1,591.10
Damages to State Property	896,912.00
Excessive Costs & Contracts	1,297,104.34
Miscellaneous	28,573.94
Rental Arrears	18,683.77
NDSL & HE Loans /SUNY Tuition	918,360.64

Total Received 3,263,607.55

Collections Effected For Other Departments

Mental Hygiene/Hospital Contracts	62,140.90
Employees Retirement System	359,882.93
Damages to State Property	132,190.81
Excessive Costs & Contracts	40,311.90
Miscellaneous	31,241.13
Rental Arrears	43,221.20
NDSL & HE Loans/SUNY Tuition	308,776.95

Total Advised 977,765.82

Total Collections Since the Beginning of the Year 4,241,373.37

APPENDIX D

CONTRACT APPROVAL SECTION – CLAIMS & LITIGATION BUREAU

ALBANY

	On Hand 1/1/80	Received	Disposed of	On Hand 12/31/79
Liens	582	44	18	608
Special Proceedings	0	22	22	0
APPROVAL OF:				
Bonds	0	7,334	7,334	0
Contracts	0	23,183	23,183	0
	582	30,583	30,557	608

EMPLOYMENT SECURITY BUREAU

The Bureau represents the Industrial Commissioner in litigation arising from the Unemployment Insurance Law (Labor Law, Art. 18) and related Federal and State statutes. To improve the efficiency of the Bureau's operations three new Sections were established in 1979. The Appeals Section represents the Industrial Commissioner on appeals to the Appellate Division, Third Department, and the Court of Appeals from decisions of the Unemployment Insurance Appeal Board. The Prosecutions Section conducts criminal prosecutions based on violations of the Unemployment Insurance Law and related statutes. The Civil Litigation Section represents the Commissioner in litigation involving monies owed to the Unemployment Insurance Fund by claimants and employers, and appears on his behalf in bankruptcy arrangement, reorganization, general assignment, foreclosure and decedent estate proceedings. It also handles miscellaneous Federal and State unemployment insurance litigation.

On January 1, 1979, 2,444 appeals were pending, both in the Appellate Division, Third Department, and the Court of Appeals. During the year 2,649 additional appeals were received, for a total of 5,093. Of these, 1,996 were disposed of, leaving 3,097 pending as of December 31, 1979, including 6 cases in the Court of Appeals.

During the year, 379 appellate briefs were written. Of 443 decisions on the merits, 427 were rendered in favor of the Industrial Commissioner. In addition, 92 appeals opposed by this Bureau were dismissed as untimely, 12 were withdrawn by stipulation and 1,439 were deemed abandoned pursuant to Rule 800.12 of the Appellate Division, Third Department.

In addition to handling appeals, the Bureau obtains custody of the appellate records after appeals have been noticed and makes them available to the parties. *Pro se* appellants are advised by the Bureau as to the procedures for perfecting their appeals, and are assisted by the Bureau with their review of the records. During 1979, approximately 1,768 parties or their representatives received assistance in pursuing their appeals.

The Bureau has revised its procedures for the assignment and review of Appeal Board decisions which are appealed to the Appellate Division, giving greater priority to determin-

ing whether legal or factual errors merit reconsideration by the Board or the Industrial Commissioner.

As a result of the enactment of the Federal Unemployment Compensation Amendments of 1979, which mandated coverage of employees not previously protected under State law, the Bureau experienced increased litigation involving newly covered claimants. Of particular importance were several cases concerning subdivisions 10 and 11 of Labor Law § 590, which limits the extent to which employees of public educational institutions can collect unemployment insurance benefits during school vacations. In *Matter of Hess v. Ross*, the Bureau obtained a favorable ruling from the Appellate Division, Third Department, upholding the Industrial Commissioner's interpretation of these subdivisions. An appeal to the Court of Appeals is expected.

On January 1, 1979, the Bureau had 121 criminal prosecutions pending. During the year 467 additional cases were received. Of these 588 cases, 295 were disposed of during 1979, leaving 293 prosecutions on hand as of the end of the year. As a result of the Bureau's criminal enforcement activities, involving 796 court appearances, \$274,036 was recovered from defendants. The Bureau obtained 173 convictions of unemployment insurance fraud in violation of Labor Law § 632. The New York State system of cross-checking social security contributions and unemployment insurance payments has facilitated fraud detection and resulted in a significant increase in the Bureau's criminal prosecution referrals.

A major purpose of the Bureau's reorganization was to facilitate the management of the large volume of civil litigation involving monies owed to the Unemployment Insurance Fund by claimants and employers. This section now is responsible for representing the Commissioner in benefit overpayment cases and various employer insolvency proceedings. It coordinates the miscellaneous litigation engaged in by the Bureau on behalf of the Labor Department in connection with its administration of the Unemployment Insurance Law.

During 1979, judgments totalling \$1,211,658 were obtained for monies owed to the Unemployment Insurance Fund.

LABOR BUREAU

The Labor Bureau protects the rights of wage earners and injured employees by enforcing provisions of the Workers' Compensation Law, Labor Law, State Industrial Code, Disability Benefits Law, Volunteer Firemen's Law and the General Business Law, Article 11 and 25a, both in the Civil and Criminal Courts. Criminal proceedings are initiated and processed principally against employers for failure to pay wages as required by law or to pay the minimum wage or supplementary fringe benefits; for the illegal employment of minors in industry; and for the failure to carry Workers' Compensation and/or disability benefits insurance for injuries or occupational diseases and illnesses sustained by employees. The Bureau represents the Workers' Compensation Board of Appeals in the appellate courts in cases related to provisions of the Workers' Compensation Law, Disability Benefits Law and Volunteer Firemen's Law. The Bureau also represents the Labor Department and the Workers' Compensation Board in special proceedings brought against these agencies in the State and Federal Courts. The Bureau enters judgments and institutes legal proceedings to collect awards of compensation made against uninsured employers who fail to pay such awards voluntarily.

An important aspect of the Bureau's work is to argue in support of the awards and decisions of the Workers' Compensation Board when court appeals are taken from such awards or decisions. In 1979, the Bureau handled 305 new appeals in addition to the 265 pending appeals on January 1, 1979, and it closed 302 successfully defended appeals involving awards totalling \$1,072,072.59.

The Labor Bureau had 386 pending criminal prosecutions on January 1, 1979, opened 295 additional prosecutions during 1979 and disposed of 263 Labor Law and Workers' Compensation Law violations. This resulted in restitution to employees under both laws in the sum of

\$321,742.48. Fines imposed against convicted employers totaled \$161,900.

The Bureau entered 73 judgments in the amount of \$1,849,123, based on awards of Workers' Compensation Benefits against uninsured employers and against employers who had illegally employed minors injured on the job.

Among the appeals and special proceedings handled by the Labor Bureau on behalf of the Workers' Compensation Board and the Labor Department were a number which resulted in significant decisions. In *Axel v. Duffy-Mott, Co., Inc.*, (48 N Y 2d 1), the Court of Appeals upheld the Authority of the Workers' Compensation Board to determine whether an employer had discriminated against an employee for filing a claim for Workers' Compensation benefits or for testifying on another person's behalf at a compensation hearing. This case will significantly affect the actions of employers who attempt to discourage employees from instituting Workers' Compensation claims.

An important principle of law advancing the protection of workers was established by the Court of Appeals in *Holcomb v. Daily News*, (45 N Y 2d 602). In that case, the claimant was injured while riding to work in a delivery truck owned by a newspaper after he had been picked up by a co-worker. The Court of Appeals recognized the rule that transportation provided by an employer solely as a gratuitous accommodation for the convenience of its employees is not an incident of employment. However, in this case the Court took a more liberal approach and held that compensability must be based on whether such transportation had been a sufficiently established custom recognized by an employer. The Court of Appeals reaffirmed the basic tenet that the Workers' Compensation Law is to be construed liberally "to accomplish the economic and humanitarian objectives of the act."

LEGISLATIVE BUREAU

The Legislative Bureau develops and advocates a wide range of legislative proposals on behalf of the Attorney General, relating primarily to the responsibilities of the Department of Law. While the Department's main function is to enforce existing law, the Legislative Bureau serves the special role of suggesting solutions to problems through new or revised laws. Some of the bills submitted, as part of the Attorney General's program, are technical in nature, clarifying the Attorney General's procedural and substantive jurisdiction, both in defending State agencies and in seeking to protect the interests of all New Yorkers in a variety of areas. Other bills relate to the legal rights and obligations of the entities of state government.

Another responsibility of the Legislative Bureau is the coordination of the Department of Law's responses to requests by the Governor for the Attorney General's recommendations of approval or disapproval for all bills passed during the Legislative Session.

The Bureau also maintains an ongoing liaison with members of the Legislature, especially when they request information or assistance from the Department. For our own Department's lawyers, the Bureau provides materials on legislative history.

The Attorney General's legislative program for 1979 included seventy bills. Many of these bills addressed important consumer, civil rights and environmental issues. Other proposals sought to modify New York law as it regulates securities transactions, conversions of real property to cooperative ownership, the management and operation of charitable organizations and the jurisdictional constraints placed upon the State's Organized Crime Task Force.

During the 1979 regular session of the Legislature, twenty of the Attorney General's program bills passed the Assembly. Six of these bills were passed by both houses and signed into law by the Governor. A seventh, which created a new State Historic Preservation Act, was vetoed. An important bill originally proposed by the Attorney General to curb unlawful price gouging was enacted during an extraordinary session as part of an emergency energy package.

The following is a summary of some of the program bills which were enacted into law:

(1) An amendment to the Insurance Law to extend maternity care coverage under group or blanket accident and health insurance policies to "government" or "public employees" who were previously exempted from such coverage by the Insurance Law. This bill brings New York State into compliance with recent amendments to Title VII

of the Federal Civil Rights Act, which prohibits discrimination in the terms and conditions of employment on the basis of pregnancy, childbirth or related medical conditions. Under the provisions of this legislation, all pregnant workers, whether they work in the public or private sector, are now entitled to equal benefits under employment health care plans.

(2) An amendment to the Environmental Conservation Law to correct an inequity pertaining to criminal fines imposed on corporations. The Penal Law allows as an option the imposition of a fine based upon the pecuniary gains of a corporate violator. Previously, however, the Environmental Conservation Law did not authorize such fines. The result was that in some cases a corporation was actually able to pay a lower fine than an individual convicted of the same offense under the Environmental Conservation Law. This statute corrects that anomaly.

(3) An amendment to the New York City Civil Court Act, the Uniform City Court, the Uniform District Court Act and the Uniform Justice Court Act to require businesses that operate under assumed names to pay small claims judgments rendered against them in such names. Studies have shown that 40% of Small Claims Court claimants who win their cases have been unable to collect their judgments, frequently because businesses took advantage of a loophole which allowed them to utilize technicalities to evade payment of valid awards. This legislation will enable a consumer to sue a business under its trade name as well as its real name, if known.

(4) An amendment to the General Business Law to regulate the storage of household goods. The statute requires full disclosure to the consumer of the terms and conditions of storage. The sum of all charges must be included in the estimate and the actual charge may not exceed the estimate by over 10%. Storage contracts are now required to give notice to the consumer of the rights afforded by this legislation. Violations of the Act are punishable either by private action in which treble damages may be recovered or by investigation and prosecution by the Attorney General. Civil penalties of not more than \$1,000 are provided for each violation.

(5) An amendment to the General Business Law to: (a) establish by legislative findings that some merchants have taken unfair advantage of consumers during abnormal disruptions of the market by charging excessive prices for essential consumer goods and services, and that such an abnormal disruption now exists with respect to home heating oil; (b) make unlawful, during an abnormal disruption of the market the sale, or offer for sale, of any essential con-

sumer goods or services for an unconscionably excessive price; (c) provide the court with standards for use in making its determination, as a matter of law, whether a price is unconscionable; and (d) authorize the Attorney General to bring an action for an injunction against alleged violations of the section and authorize the court to impose civil

damages up to \$5,000 and restitution to the consumer. With the sharp jump in heating oil prices now being experienced and the possibility of gasoline shortages next spring, enactment of this legislation was essential to prevent price gouging on commodities which are critical to the health and safety of New York residents.

LITIGATION BUREAU

The Litigation Bureau is responsible for representing the State and its officers and agencies in civil actions in all State and Federal Courts in the New York City metropolitan area, as well as in the New York Court of Appeals and the United States Supreme Court.

To more effectively deal with the increasing number of actions brought against state agencies and employees, two new units were established in the Litigation Bureau in 1979.

A Prisoner Litigation unit, with a staff of seventeen attorneys was created to manage the volume of between 3000 and 4000 cases per year instituted by inmates of the State's correctional facilities. Most cases involve Federal Court petitions for writ of habeas corpus based upon the inmate's state court convictions and alleged violations of civil rights. The unit also handles writs of habeas corpus and Article 78 proceedings brought by inmates in State Courts.

The population of correctional facilities reached an all time high this year and is expected to increase. Creation of this new unit is a first step in obtaining the manpower and talent to deal with this mounting case load.

A new Social Services section was established to assure that the funds allocated for welfare by the Legislature go to those who are legally entitled to them. In 1979, the seven Assistant Attorneys General in the new section have represented State interests in over 475 cases involving the administration of law and regulations dealing with public assistance and Medicaid.

Among the more than 4000 cases handled by the Litigation Bureau in 1979, the following are of special significance:

CASES IN THE UNITED STATES SUPREME COURT

N.Y. Telephone Company v. N.Y.S. Department of Labor, 47 USLW 4303.

In a 6-3 opinion, the United States Supreme Court held that the National Labor Relations Act did not prohibit the

State of New York from paying unemployment compensation to strikers.

This case arose after settlement of a seven month strike between the Communication Workers of America and the N.Y. Telephone Co. (Telco), during which the strikers were paid unemployment compensation after an eight week waiting period. Telco brought suit claiming that the payment of unemployment benefits to strikers, pursuant to New York Labor Law § 592.1, hindered collective bargaining and was therefore in conflict with the NLRA and invalid under the Supremacy Clause. The Supreme Court said that New York had not attempted to regulate or prohibit private conduct in the labor management field, but rather had provided for the distribution of benefits for certain members of the public. The Court found that the legislative history showed that the intent of Congress expressed in the Social Security Act, as well as the NLRA, was to permit the states a wide latitude in their establishment of unemployment compensation programs. The Court also observed that Congress had frequently discussed the issue of unemployment compensation for strikers both before the passage of the Social Security Act and the LRA and in debate relevant to amending these statutes, but had consistently declined to legislate on the question of strike benefits. The Court held that the challenged N.Y. law was not in conflict with national labor policy.

Ambach v. Norwick, 47 USLW 4387.

New York Education Law § 3001(3), forbidding certification as a public school teacher of any person who is not a citizen of the United States unless that person has manifested an intention to apply for citizenship, was held not to violate the equal protection clause of the Fourteenth Amendment.

In a 5-4 decision, the Supreme Court found that taking into consideration the role of public education (especially with respect to promoting civic virtue), and the degree of responsibility and discretion teachers possess in fulfilling the role, it is clear that public school teachers come well

within the "governmental function" principle recognized in *Sugarman v. Dougall*, 413 U.S. 634. Since the statute was found to bear a rational relationship to the state's interest in furthering its educational goals, it was held not to violate equal protection.

In *Barry v. Barchi*, 61 L.ed 2d 365, (1979), the Supreme Court, reversing an adverse ruling by a three-judge district court, sustained, for the most part, the constitutionality of Unconsolidated Laws § 8022. Under that statute, a harness horse trainer was summarily suspended pending an administrative hearing after a urine sample from one of his horses had been found to contain an illegal drug. In reviewing the suspension, the Court recognized the important state interest in "assuring the integrity of racing carried on under its auspices" and held that such a suspension comported with due process law. However, the Court found that the statute was unconstitutional insofar as it permitted a suspension to continue without the explicit provision for a prompt hearing, thus balancing the State's interest with the licensee's property right in the continued pursuit of his profession. The Court also upheld, against a claim of denial of equal protection, the provisions of § 8802 which precluded administrative stays pending the hearing, although such stays were permitted under the statute pertaining to the discipline of thoroughbred racing licenses. The Court cited the history of § 8802, which included specific legislative findings of the need to treat harness racing more stringently.

This decision constitutes an important aid to the governmental regulation of gambling and other industries which may require strict public control.

County Court of Ulster Co. N.Y. v. Allen, 47 USLW 4618.

In a 5-4 decision, the Supreme Court upheld New York's statutory presumption (Penal Law § 265.14[3]) that provides that the presence of a firearm in an automobile is presumptive evidence of its illegal possession by all persons then occupying the vehicle, except when it is found upon the person of one of the occupants. The four occupants in this case were jointly tried on possession of firearms after State Police, after stopping the car for speeding, observed through the window, two large caliber handguns and ammunition in an open handbag on the front floor of the car. As applied to the facts of this case, the New York statutory presumption was found constitutional as there was a rational connection between the basic facts that the prosecution proved and the ultimate fact presumed.

DEFENSE OF NEW YORK'S DOMESTIC RELATIONS LAWS

During its Spring session in 1979, the United States Supreme Court handed down two decisions affecting thou-

sands of New York families. In the first case, *Caban v. Mohammed*, it found unconstitutional New York's adoption statutes which allowed the mother of a child born out of wedlock to consent, or refuse to consent, to the child's adoption without giving a corresponding right to the alleged father of the child, at least where the father had established a parent-child relationship with the child. This decision opened to question the validity of prior adoptions where only the mother had consented to adoption and posed a substantial procedural obstacle to new adoptions. The Litigation Bureau went to Court in several cases across the State to sustain the validity of adoptions affected by *Caban* and cooperated with the Legislature in the enactment of new laws answering some of the procedural problems that decision created. More remains to be done and the Attorney General will work with the Legislature in seeking workable solutions.

The second Supreme Court decision was *Orr v. Orr*, holding unconstitutional matrimonial laws which allow only wives to obtain alimony or other financial relief despite a financial fact-finding addressed also to the husband's needs and financial circumstances. This decision, although dealing with an Alabama statute, opened to question the validity of all prior alimony and support awards based on similar statutes and left in doubt the Courts' authority to award alimony without a new statute. The Attorney General again cooperated with the Legislature in drafting bills which would respond to these problems, but none passed before the Legislature went into recess. In the meantime, the Attorney General's staff went to Court in nearly fifty cases across the State to suggest ways for the State's matrimonial laws to be read in a gender-neutral fashion. Thus far, the lower courts have accepted the Attorney General's arguments and are awarding support and alimony to both wives and husbands, depending on need.

Legislative action is still urgently needed to address the problem of matrimonial support in a comprehensive, equitable fashion, rather than forcing the Courts to construct new remedies for each of the dozens of laws involved.

APPOINTMENT OF RECEIVERS FOR ADULT HOME RESIDENTS

The problem of sub-standard care for adults who need assistance due to age or a physical or mental handicap attracted widespread attention during 1979. The Litigation Bureau cooperated with the State Department of Social Services, as the office has in past years, in seeking to close down adult homes whose operating certificates had been suspended or revoked for health and safety violations. In a new departure, the Attorney General went to Court in the name of the People of the State of New York to seek emergency relief for the residents of two particularly unsafe and unhealthy adult homes.

In *Blum v. Waldman* (Supreme Court, Nassau County) and in *Abrams v. Freeman* (Supreme Court, Suffolk County), the Attorney General succeeded in obtaining the appointment of a temporary receiver to operate two adult homes, which had health and safety violations. The receiver was to take steps to remove the violations if possible, or to transfer the patients to safer and more appropriate adult homes.

DEFENSE OF NEW YORK'S SCHOOL FINANCE SYSTEM

Board of Education, Levittown Union Free School District, et al. v. Nyquist, et al., 2d Dept.

The Litigation Bureau submitted an 187 page brief, plus three supplementary briefs, in support of its appeal from the decision and order of the Supreme Court, Nassau County (94 Misc. 2d 466) that had declared the State's educational finance system to be unconstitutional, on the grounds that educational expenditures were largely a function of disparate real property wealth and that the aid formula fails to take account of four of the big five cities' "municipal overburden" (i.e. their need to provide other services). The State's brief argued that the lower court erred in attempting to resolve social, political and educational controversies which are within the exclusive province of the Legislature, and in incorrectly interpreting the state constitution to mandate public expenditures for education beyond insuring a basic minimum standard for all children which has been met under the state system. The State's brief also demonstrated that the Legislature has provided significant amounts of local assistance for educational purposes distributed on a rational basis.

TAXATION

Stouffer v. Tully, (Appellate Division, First Department).

The Appellate Division upheld a ruling of the Supreme Court, New York County affirming the Tax Commission's application of the sales tax law to in-house food service establishments located in corporations and other business establishments. The application of the sales tax to food service establishments could produce additional revenues in the millions of dollars. Leave to appeal to the Court of Appeals denied by the Court of Appeals.

American Stock Exchange v. Tully, et al. (Supreme Court, New York County).

This is an action for declaratory judgment brought by the American Stock Exchange challenging the constitutionality of the application of the New York State and New York City sales taxes and utility taxes (imposed by State

Tax Law § 186[a] and Title QQ of the New York City Admin. Code) on plaintiff's market data receipts and toll calls. Plaintiffs claim that the application of the State tax statutes to its operations in providing information to vendors of their services is beyond the scope of the statutes, or if covered by the statutes is violative of the Federal Commerce clause.

SOCIAL SERVICES CASES

RAM v. Blum, (Supreme Court, New York County).

A class action for a judgment declaring that § 131-a of the Social Services Law violates § 1 of Article 17 of the New York State Constitution and the due process clauses of the State and Federal Constitutions. Plaintiffs allege that § 131-a is unconstitutional because it lacks a methodology to adjust the "standard of need" and benefit levels to account for inflation. They also allege that § 131-a is unconstitutional because the public assistance benefit levels it contains are inadequate to meet basic subsistence needs.

This case could have a major impact on the state budget should plaintiffs prevail. A motion to dismiss for failure to state a cause of action is pending in Supreme Court, New York County. The basis of the motion is that any change in benefit levels must come from the Legislature.

Giordiano v. Blum.

An Article 78 proceeding before the Appellate Division, in which petitioner seeks benefits for her unborn child prior to the date she furnished medical verification of her pregnancy as required by the regulations. The case's interest lies in the argument made advancing the rights of the unborn child separate from that of the mother. If that issue is specifically addressed by a high New York State Court in its decision, it may carry persuasive weight in later cases in other jurisdictions concerning abortion rights.

Matter of Poulos v. D'Elia. Pending in Court of Appeals.

The Appellate Division, Second Department upheld our argument that a Medicaid regulation which provides for the consideration of six months' excess income as available to the patient to pay for inpatient care, but requires only one month's excess income to be applied to outpatient care was not unconstitutional.

Callahan v. Carey, et al. (Supreme Court, New York County).

This is a class action that has been brought by the volunteer Division of the Legal Aid Society on behalf of all homeless men without income who live in New York City and are unable to provide for themselves. The action is brought against the Governor, Commissioners Prevost,

Mental Health; DeLuca, Alcoholism & Substance Abuse; Blum, Social Services and against the Mayor and other city offices and the Director of the Men's Shelter. The complaint alleges that the men's shelter is the only social service facility for homeless men in New York City, that it is understaffed and does not contain enough beds or space to accommodate the 1200 to 2000 homeless men who seek shelter there on a daily basis. It is alleged that persons unable to obtain shelter there are provided with lodging vouchers for other Bowery hotels that are dirty and dangerous. The complaint claims that plaintiffs are denied equal protection of law when compared to home relief recipients who receive cash grants for food, clothing and shelter.

The complaint seeks an order requiring defendants to provide an adequate supply of lodging quarters to meet plaintiffs' need, to provide plaintiffs with safe and decent lodging and basic hygienic services, medical and psychiatric treatment and security, and to inform plaintiffs of any public assistance benefits to which they might be entitled. Plaintiffs have obtained a preliminary injunction enjoining the closing of the Men's Shelter. The case has been ordered to trial.

PRISONER CASES

People v. New York State Board of Parole, (Appellate Division, First Department, 421 N.Y.S. 2d 365).

The Appellate Division unanimously reversed an order of the Supreme Court, Bronx County that had sustained a writ of habeas corpus. The Appellate Division held that neither statute nor case law required the Board to reveal to a parolee the name of the Board member who had reviewed the findings of the parole hearing officer in connection with the parole revocation hearing.

People ex rel. Flores v. Dalsheim, (Appellate Division 2d Department) 66 A.D. 2d 381.

A parolee argued that he should be relieved from the impositions of sanctions prescribed by the Board of Parole by reason of the failure of the State to execute a parole violation warrant until 2 1/2 years after he failed to report for an appointment with a parole officer. The Appellate Division held that a parolee who fails to report and absconds from supervision cannot assert immunity from apprehension due to delay only by the State in finding him.

Vito Finetti v. David Harris, Supt. of Green Haven Correctional Facility

Petitioner was convicted after a jury trial in the County Court, Orange County, New York of the crimes of robbery in the first degree and grand larceny in the second degree. Finetti filed a motion for a stay and for bail pending appeal. It was denied by the Appellate Division, 2nd, without a statement of reasons. He filed a habeas corpus petition in

the district court, alleging a denial of bail pending appeal without a statement of reasons was unconstitutional.

The Second Circuit resolved the conflict within this circuit. Some district courts have held that denial of bail pending appeal without a statement of reasons is arbitrary per se, others have held that a presumption of regularity attaches to a state court's denial of bail and that the defendant bears the burden of showing that there is no rational basis in the record to support such denial.

The Circuit Court held that the district court erred in holding that a state court's denial of bail pending appeal without a statement of reasons in the record to support the denial of bail was a violation of a state prisoner's constitutional rights. The Court found that there was adequate support in the record in the instant case to justify the denial of bail.

Booth v. Hammock, _____ F. 2d _____ slip op. 78-4753 (2d Cir. Sept. 14, 1979).

Plaintiff a state prisoner, claimed that the Parole Board's determination of his minimum period of imprisonment was rendered in violation of the due process clause, because no reasons were given for fixing a four year term. The Second Circuit, overruling two of its previous decisions [*Coralluzo v. NYS Parole Board*, 566 F. 2d 375 (2d Cir. 1977), *cert. dismissed as improvidently granted*, 435 U.S. 912 (1978); *Johnson v. Chairman of NYS Parole Board*, 500 F. 2d 925 (2d Cir.) *vacated as moot sub nom. Regan v. Johnson*, 419 U.S. 1015 (1974)] held that in New York the possibility of release prior to the expiration of the maximum term of imprisonment is not an interest entitled to due process protection.

Johnson v. Metz (2d Cir. Dec. 4, 1979).

In reviewing the District's granting of habeas corpus relief to petitioners, both of whom were convicted of selling almost two pounds of heroin, the Second Circuit held that petitioners' failure to properly present their claim of judicial misconduct to the state courts precluded federal habeas corpus review of their claims. The Court further noted that the question of whether a post-conviction remedy is available in the state courts, must be determined by the state courts before the federal courts will hold that no state post-conviction remedy exists.

In *Alexander v. Harris*, 595 F. 2d 87 (2d Cir. 1979), a federal habeas corpus proceeding, the Court of Appeals for the Second Circuit held that a county prosecutor's delegation of authority to a police detective to apply for an extension of a wire-tap order did not violate the Omnibus Act of 1968.

In a ruling of first impression the Court of Appeals established a standard for determining when a district judge should grant a certificate for probable cause to appeal, by

requiring the district court to find that the petition is not frivolous and that it presents some question deserving appellate review. The Court of Appeals stated:

"In the future, we would not expect a district judge to issue a certificate of probable cause to appeal after a summary dismissal."

In *Paquette v. Henderson*, 78-2138, _____ F. 2d _____ (2d Cir. Oct. 16, 1979), petitioner claimed that his retrial for first degree murder after a declaration of mistrial of his first trial was barred by the double jeopardy clause of the Fifth Amendment.

In affirming the district court's dismissal of petitioner's application for a writ of habeas corpus, the Court of Appeals for the Second Circuit held that the intimidation of prosecution witnesses by a relative of the defendant, in conjunction with the disappearance of one of the threatened witnesses during trial, created a manifest necessity to discharge the jury. The Court of Appeals observed that while the circumstances surrounding the threats were not fully explored by the trial judge prior to discharge of the first tribunal, a sufficient basis existed in the record for the court to conclude that the prosecution had not been negli-

gent in connection with, nor responsible for, the witnesses' disappearance.

In *Quinones v. LeFevre*, 79-2101, _____ F. 2d _____ (2d Cir. Nov. 14, 1979), petitioner attacked the constitutionality of the mandatory minimum sentencing provisions of the New York Penal Law governing convictions for the criminal sale of controlled substances. The U.S. Court of Appeals for the Second Circuit held that New York's interest in deterring drug offenses justifies the mandatory minimum sentence of 6 to 8 1/3 years imposed upon petitioner.

Root v. Kapelman, 67 A D 2d 131 (1st Dept. 1979), *lv. to appeal den.*, _____ N.Y. 2d _____.

Appellate Division granted defendant's cross-motion to dismiss the Article 78 petition for a writ of prohibition against Judge Kapelman as Assistant Administrative Judge, Bronx County. The petition was brought to prevent his placing 170 pending cases on the criminal calendar for sentencing. The Court rejected Legal Aid's claim that notwithstanding the fact that many of the cases involved defendants who had absconded before sentencing, such sentencing *in absentia* violated their constitutional rights and was beyond the authority and jurisdiction of the Court.

MENTAL HYGIENE BUREAU

The Mental Hygiene Bureau is responsible for providing legal representation for the New York State Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities, as well as for their constituent psychiatric centers, developmental centers, and aftercare clinics within the geographic area of the Bureau's operations. Other state agencies and institutions represented by the Bureau in various matters include the Office of Alcohol and Substance Abuse, the Department of Correctional Services, the Department of Health and Downstate Medical Center. The scope of the Bureau's activities encompasses a wide variety of legal services. In 1979, court attendance in all matters exceeded 1,200 days.

The Bureau handles suits against state employees entitled to indemnification and representation pursuant to Public Officers Law, § 17; surrogate proceedings involving patients' estates or estates in which patients have an interest; Family Court matters involving patients or their children, as well as Article 78 proceedings and Article 75 proceedings when presented in Supreme Court or local or Federal District Courts. In 1979 more than 2,600 of such matters were received and closed out.

As a result of the enactment of a new section 41.34 of the *Mental Hygiene Law* and the increased activity by the state in providing community residences for mentally retarded persons, the Bureau has been called upon to represent the Office of Mental Retardation and Developmental Disabilities in an increasing number of actions. The Bureau has been successful in defeating legal challenges to the opening of such residences.

Although Article 78 proceedings objecting to the establishment of community residences have been instituted in almost every county within the Bureau's area, only one has been finally determined after referral to the Appellate Division pursuant to *Civil Practice Law and Rules*, section 7804(g). In that case the State prevailed and the Court, in rejecting the petitioner's claims, stated that the "...sole issue to be resolved... is whether 'the nature and character of the area in which the facility is to be based would be substantially altered as a result of the establishment of the facility'". *Matter of Town of Greenburgh v. Coughlin, et al.* — App. Div. 2nd —, (Second Dept., 1979).

The first attack upon the constitutionality of Sec. 41.34 came in an action to restrain the operation of a community residence. The Court rejected an equal protection challenge while describing the statute as an exercise of the state's power "...that sweeps from border to border, affecting all property owners and all municipalities." (*Zubil v. Com-*

munity Mainstreaming, et al., Supreme Court, Nassau County). Plaintiffs have appealed to the Appellate Division, Second Department.

Another case in which summary judgment was granted to the defendants and an appeal has been taken by the plaintiffs is *Burns, et al. v. Coughlin, et al.*, Supreme Court, Richmond County. There the Court held that the operation of a respite home for groups of retarded persons is governmental in nature and exempt from local zoning and the acquisition of the premises involved by appropriation extinguished a restrictive covenant.

In another important case, the Mental Health Information Service sought to compel the Commissioner of the Office of Mental Retardation and Developmental Disabilities to accept custody of two allegedly retarded individuals theretofore admitted on an emergency basis as mentally ill to Nassau County Medical Center. The Supreme Court ordered the two individuals involuntarily committed to Suffolk Developmental Center. (*Besunder v. Coughlin, et al.*, Supreme Court, Nassau County). This case was appealed and has been argued before the Appellate Division, Second Department.

A plenary action was brought by the Board of Visitors of the Manhattan Psychiatric Center against the Governor and the Office of Mental Health to enjoin them from housing homeless men in a vacant building on the grounds of the center. The state's motion to dismiss the complaint was granted, (*Hartman, et al v. Carey, et al.*, Supreme Court, New York County).

During 1979, the Bureau handled 20 appeals for the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities.

In *Wade v. New York State Department of Mental Hygiene* — App. Div. 2d — 418 NY Supp 2nd 154, (2nd Dept., 1979) the Court held that it could not order the expungement of the petitioner's hospital record even if not his commitment was the result of an illegally issued health officer's certificate in the absence of legislative authority therefor. This case has been appealed by the petitioner and will be argued in the Court of Appeals in early 1980.

Argued in November, 1979, and now pending before the Appellate Term, Second and Eleventh Districts, is an attack upon the constitutionality of *Criminal Procedure Law*, Section 330.20, as it applies to an insanity acquittee hospitalized for a period of time greater than the maximum to which he could have been sentenced if convicted. The lower court in *People v. Barouty*, Criminal Court, Queens County

held that there is no relationship between the term of a prison sentence and the length of the period of hospitalization that an acquittee might require.

The Bureau is responsible for prosecuting claims for reimbursement for maintenance of patients in psychiatric and developmental centers as well as hospital charges of the Downstate Medical Center. During 1979, more than 400 maintenance cases were received from the Department of Mental Hygiene while a similar number were closed. Downstate Medical Center referred 22 cases for collection and 23 cases were closed.

As a consequence of the maintenance cases and other actions and proceedings in which the Bureau participates, it also collects funds for the benefit of patients in Department facilities. These include sums for luxury funds, burial funds, annulment security pursuant to *Domestic Relations Law*, section 141, and patients accounts pursuant to *Mental Hygiene Law*, section 29.23. The total amounts collected during 1979 were approximately \$2,000,000.

The Bureau represents the Office of Mental Health and the Department of Correctional Services in various proceedings involving involuntary hospitalization. These include retention proceedings pursuant to *Criminal Procedure Law*, Article 730 and hearings pursuant to *Jackson v. Indiana*, 406 U.S. 715, which involve defendants deemed to be unfit to proceed to trial; non-jury and jury hearings pursuant to *Criminal Procedure Law*, Section 330.20, involving persons acquitted of crimes by reason of mental disease or defect; commitments and retentions of mentally ill prisoners pursuant to *Correction Law*, Section 402; *Mental Hygiene Law* retentions and jury reviews involving the mentally ill and the mentally retarded; and writs of habeas corpus obtained

by patients committed for any reason. During 1979, members of the Bureau spent over 400 days in court in connection with more than 7,000 such cases.

In 1979, the Bureau represented the Office of Alcoholism and Substance Abuse in proceedings for the involuntary civil certification of drug dependent persons pursuant to *Mental Hygiene Law*, Article 23. These included non-jury and jury certification hearings; hearings prior to medical examinations; and writs of habeas corpus. Court attendance amounted to 110 days in connection with 339 such matters. However, during the year, the Office of Alcoholism and Substance Abuse discontinued the practice of accepting civil commitments for involuntary detention and treatment.

Although the Bureau no longer is required to prosecute involuntary certifications, it continues to represent the Office of Alcohol and Substance Abuse in other types of litigated matters. The Bureau successfully defended the Director of the agency's Division of Substance Abuse Services against an order to show cause seeking to find him in contempt for the alleged violation of a Family Court order. (*Matter of H*, Family Court, Queens Co.)

In two related cases, a block association and two neighbors were unsuccessful in attempts to prevent the Division and the Department of Health from approving the relocation of Greenwich House's methadone treatment center from West 24th Street to West 20th Street in Manhattan, (*Nippes, et al. v. Kolb, et al.*, Supreme Court, New York County, *West Side Rifle and Gun Club, et al v. Greenwich House Community Center, et al.*, Supreme Court, New York County).

MENTAL HYGIENE BUREAU, NEW YORK CITY OFFICE
STATISTICS — JANUARY 1, 1979 to DECEMBER 31, 1979

COLLECTIONS		
Mental Hygiene Maintenance	\$1,772,429.86	
Downstate Medical Center Maintenance	2,429.07	
*For patients' Accounts	164,645.90	
Costs	1,100.00	
TOTAL		\$1,940,604.83
MATTERS		
	Received	Closed
Mental Hygiene Maintenance	403	383
Downstate Medical Center Maintenance	22	23
**Other Actions and Proceedings	2,622	2,579
Annulments	22	21
Committee and Conservator Appointments	124	99
Court Authorizations for Surgery	887	879
Appeal	20	10
Court days for above matters		710

*Includes amounts for luxury funds, burial funds, annulment security and M.H.L. § 29.23.
**Includes Surrogate's proceedings, Family Court proceedings, Article 78 proceedings and various other actions and proceedings in State, Federal and Local Courts.

SANITY HEARINGS AND JURY TRIALS

Cases	Days in Court
7,294	428

NARCOTIC MATTERS

Cases	Days in Court
339	110

REAL PROPERTY BUREAU

The New York City Real Property Bureau writes deeds for the transfer of state lands and engages in court proceedings in relation to obtaining possession of State lands in the New York City and Long Island region. During 1979, the Bureau also certified the names of over 100 owners of titles in eminent domain claims in the region, including the current road widenings of Jericho Turnpike at Huntington, Sunrise Highway Extension at Islip and Route 107.

The Bureau participated in Supreme Court proceedings under Article 12 of the Real Property Law, generally known as the Torrens Title Registration Act. It handled about 300 such title transfers in 1979.

The Bureau appeared on behalf of the New York State Tax Commission when it was named in mortgage foreclosure cases brought in the metropolitan area by private individuals. It submitted about 65 claims in surplus money proceedings on behalf of the Tax Commission.

The rent security section administered the complaints of tenants who failed to receive reimbursements of their rent security deposits together with interest after termination of their tenancies. Tenants received restitution from their landlords of about \$110,000. During 1979, this function was transferred to the Consumer Frauds and Protection Bureau.

SPECIAL PROSECUTIONS BUREAU

The Special Prosecutions Bureau has a unique function within the Department of Law — enforcement of criminal statutes on a state-wide basis. The bureau is currently undergoing an extensive reorganization of both its personnel and caseload, disposing within the next year of all pending civil matters. In the future, the Bureau will handle criminal matters exclusively. The Bureau also assists the Attorney General in a wide range of criminal justice issues related to his authority. It has the new responsibility of screening all criminal cases in the Department of Law to insure more effective prosecutions.

The centerpiece of the Bureau's criminal jurisdiction is Section 63(3) of the Executive Law. It allows a state

agency head to request the Attorney General to investigate and prosecute the commission of any indictable offense connected with or related to the jurisdiction of that agency. These requests empower the Attorney General and his staff to proceed as a District Attorney would, cloaked with the inherent powers and duties of that officer. The Bureau thus has criminal jurisdiction, when properly invoked, which extends to a vast range of white collar and related crimes.

In order to properly investigate the increasing number of 63(3) requests, the Bureau has impanelled a Grand Jury in New York County which is currently hearing evidence concerning alleged criminal conduct. This significant development should enable the Bureau to improve both the

quantity and quality of criminal prosecutions conducted by the Attorney General.

A substantial part of the Bureau's criminal caseload results from referrals by the New York State Department of Taxation and Finance. These criminal cases generally involve individuals or corporations who fail to comply with the State tax statutes. The bureau is working with the Tax Department to seek out those corporations and businesses which fail to pay to New York State the sales taxes collected from the purchaser. Numerous corporations and businesses, as well as their principals, have been indicted for withholding sales tax monies from the State. It is our belief that through the creative use of the Penal Law to charge felonies in this situation, a long range deterrent effect will be accomplished.

On behalf of the Department of State, the Bureau is investigating alleged fraudulent activities of licensed apartment referral services and illegal operations of unlicensed services. The agencies being investigated are those which advertise non-existent apartments in newspapers to attract customers who are then advised that although the advertised apartment is no longer available, similar apartments in the neighborhood may be seen if the customer pays a standard fee, usually \$40 to \$50. The customer, often in need of an apartment within a relatively short period of time, pays the fee and is given a list of apartments that frequently either fail to meet his specifications or simply do not exist.

Referrals from approximately ten other agencies are currently being investigated by Bureau personnel.

The Bureau Head acts as the Attorney General's adviser and coordinator on the many criminal justice matters within his jurisdiction. He is responsible for monitoring the activities of the three Special Prosecutors, created by Executive Order of the Governor, which are placed within the Attorney General's office. These Special Prosecutors are investigating corruption in the New York City Criminal Justice System, the New York State Health Care system and in Onondaga County.

The Attorney General also exercises joint responsibility with the Governor for the Organized Crime Task Force, located, by statute, within the Department of Law. As a result, the Bureau Head has been assigned responsibility for monitoring and evaluating the Organized Crime Task Force on an ongoing basis.

The Attorney General is a member of the New York State Crime Control Planning Board which dispenses Federal anti-crime monies. The Bureau Head attends every meeting on behalf of the Attorney General, making recommendations concerning the allocation of federal funds for State and local law enforcement projects.

The Bureau Head advises the Attorney General on substantive criminal law legislation and is the liaison with the New York State District Attorneys Association.

Some of the current major civil cases handled by the Special Prosecutions Bureau include the following:

In *State v. Blue Crest Plans, Inc.* the State sought to enjoin a pre-paid legal services plan from operating on the ground that it was doing an insurance business without a license from the State Insurance Department. The complaint was dismissed after trial on the authority of *Matter of Feinstein*, 36 N Y 2d 199, holding that the Insurance Law was not applicable to plans of this type. The judgment was reversed on appeal and the injunction granted. The court held that Blue Crest's contract contained the elements of an insurance contract including, assumption of risk, pooling of risk and fortuity.

In *Goodman (County Clerk) v. Liebovitz*, a potential grand juror refused to be fingerprinted at her initial qualification interview with the County Clerk, claiming that fingerprinting invaded her privacy in violation of the 4th and 14th Amendments. The County Clerk instituted contempt proceedings, which were dismissed without prejudice to his re-summoning Liebovitz for service on proviso that she could have her prints returned on demand and that the prints would not be kept by the verifying agency. Liebovitz appealed. Argument was had and decision is pending, 1st Department.

In *Abrams v. Esposito* an appeal has been perfected from the dismissal of an amended complaint in an action to remove Meade Esposito from his political party post in Kings County. The action was instituted pursuant to § 63 of the pari-mutuel revenue law prohibiting party leaders and public officials from owning or transacting business with trades licensed by the State Racing and Wagering Board. The Attorney General alleged that Esposito was "County Leader". The complaint was dismissed on the ground that defendant had produced documentary evidence disclosing that there was no issue requiring a plenary trial (CPLR 3211[a] [1]). The court ruled that since the Kings County Democratic Rules (the evidence) didn't provide for a "County Leader", Esposito, who was the Chairman of the Executive Committee of this County Committee, was not one of the class of persons included in the statute's prohibitions.

In 1979, the Special Prosecutions Bureau recovered approximately \$411,555 as a result of its civil and criminal cases. The breakdown is as follows:

Taxes, penalties and interest	\$406,619.00
Fines, following convictions	4,750.00
Restitution	186.00
TOTAL	\$411,555.00

The following is the statistical report of the Bureau's referrals in 1979:

	On Hand 1/1/79	Opened	Closed	On Hand 12/31/79
Dept. of Taxation & Finance	38	70	63	45
Dept. of State	11	7	11	7
Dept. of Labor	1	2	2	1
Dept. of Motor Vehicles	2	1	3	0
Banking Department	3	3	5	1
Insurance Department	4	0	4	0
Dept. of Social Services	1	1	1	1
Dept. of Health	12	8	16	4
Dept. of Mental Hygiene	0	4	1	3
Dept. of Correction	0	1	1	0
Div. of Criminal Justice Services	1	0	1	0
State Athletic Commission	4	0	4	0
Education Department	5	2	7	0
Dept. of Agriculture & Markets	1	0	1	0
Office of Court Administration	0	1	0	1
Wagering and Racing Board	0	2	0	2
Judiciary Law	1	12	5	8
Welfare Inspector General	1	0	1	0
Division of Housing	1	5	2	4
New York County Clerk	1	1	2	0
Nassau County Police Department	1	0	1	0
Martin Act Violation	1	0	1	0
Appeals	4	2	1	5
Miscellaneous Investigations	5	23	22	6
Inquiries	0	113	108	5
Prisoner Related Proceedings	744	1031	1775*	0
TOTALS	842	1289	2038	93

*484 open cases transferred to Prisoner Litigation Unit.

REGIONAL OFFICES

AUBURN

The Auburn district office has the responsibility for the Department of Law's services in seven central New York counties: Cayuga, Chemung, Schuyler, Seneca, Tioga, Tompkins and Yates. The office handles cases on behalf of the Department of Correctional Services, the Auburn and Elmira Correctional Facilities, the Department of Mental Hygiene's Willard Psychiatric Center and the Elmira Psychiatric Center, the Department of Labor and the Agriculture and Markets Department. Appeals are processed to the Fourth Judicial Department of the Supreme Court, Appellate Division. Consumer complaints are also serviced by the office.

There was a significant increase in case load over the preceding year. The office opened a total of 776 cases and closed a total of 795. This is in comparison to 1978, when the office opened 710 cases and closed 674.

Collections, restitutions and fines, both direct and indirect, as a result of the office's work amounted to a total of \$541,182.49. That is a substantial increase over 1978 when the office collected \$287,576.69. The 1979 total included \$70,364.86 for the Department of Mental Hygiene and their patients.

The office collected \$410,717.42 on behalf of Charitable Trusts; in the field of Unknown Heirs, the amount of \$12,500.20 was collected; \$100. was also collected on fees for setting up conservatorships; and the office collected a total of \$74. in fines.

In Consumer Frauds and Protection matters, the office has had collections and restitutions totalling \$48,685.24. The office processed 271 new consumer cases and closed 277 as against 237 opened and 225 closed in 1978.

The most significant innovation was the outreach program, which the office began on a regular basis in September, covering a four county area in central New York. That activity in Cayuga, Seneca, Yates and Schuyler Counties immediately generated an increased case load throughout the territory.

Convenient locations were chosen within each service area and are visited on a regular basis each month, with press and radio publicity in order to receive and discuss problems that consumers are experiencing.

During the year, the office successfully handled a number of noteworthy cases and several assurances. It also cooperated with a District Attorney's office in the criminal prosecution of a contractor who was found to be using deceptive practices in the field of home repairs.

An important case was successfully concluded involving a large paving company which had contracted with a local

chapter of an international service club to build several tennis courts. The club had raised the necessary funds through contributions and special projects. When completed, the courts were found to be totally unsatisfactory. This was due to poor workmanship as well as the substitution of inferior materials. Negotiations with attorneys for the contractor were successful, following issuance of investigative subpoenas. As a result, there was nearly a complete re-doing of the work, pursuant to the contract requirements and with ultimate acceptance of the job by the club.

Another contractor case involved the purchase by an individual of a new style log-type home. This house was placed on the market by a manufacturer, who franchised the house and its construction to various contractors, who in turn contracted with purchasers. Problems developed due to the novelty of such construction. Both manufacturer and contractor refused to accept responsibilities under the warranty provisions. After lengthy negotiations the office was successful in having the problems resolved without further costs to the consumer.

The "Barn Owl" case was one of the most interesting and far-reaching matters handled by the office. Numerous complaints were received from all over the nation regarding an antique dealer who was a New York State resident. The complaints concerned questionable business practices committed at numerous antique shows throughout the United States and Canada. After investigation and the issuance of a subpoena, negotiations were undertaken with his attorney. The result was repayment in full to consumers and the return of antiques which had been sold. A sum of money was placed in escrow with his attorney to guarantee payment of any further claims and there was an assurance to stop the questionable business practices.

In another case, a consumer complaint was filed with this office involving a nationwide flim-flam business scheme to grow earthworms as a food product and which operated out of Washington, D.C. and Orlando, Florida. This office cooperated with the United States Postal authorities in their investigation and subsequent indictment of an operation that had swindled thousands of dollars from consumers all over the country.

In a case involving a false and misleading advertisement by a furnace retail and repair concern, the office was successful in requiring that the warranty be honored. There was also an assurance agreement that the firm would revise its advertising to properly reflect the length of time it had been in business under various names that it had used over a number of years. The company had changed names well within warranty periods in order to defeat such warranties.

Recently passed consumer legislation has not only increased such matters handled in the office, but has greatly increased the number of personal and telephone inquiries by the public for advice, suggestions and interpretations.

The office was involved in a case, brought under § 2222 of the Surrogate's Court Procedure Act, in which the assets of an estate were paid into the State Comptroller's office to hold for claims of possible heirs. Based upon the accounting of the public administrator, there appeared to be an indication of malfeasance and misfeasance on his part. Subsequent investigation by the office verified that assumption.

BINGHAMTON

During the past year the Binghamton office was engaged in a variety of cases involving consumer fraud, claims, general litigation and Department of Labor criminal prosecutions. Mental Hygiene Department retention hearings and medical treatment orders for Binghamton Psychiatric Center and Broome Developmental Center were also important 1979 activities.

At the end of 1978, 722 cases were pending. Cases received and opened in 1979 totaled 638. In 1979, 770 cases were closed. There were 590 cases pending on December 1, 1979, 132 less than the end of 1978. The New York State Department of Transportation accounted for most claims and litigation cases. The New York State Department of Social Services represented the most Article 78 proceedings. Collection of fines and penalties cases were limited to the Department of Agriculture and Markets.

BUFFALO

The Buffalo office consists of two Bureaus: General Laws and Claims & Litigation.

General Laws includes a Consumer Frauds Section which handles over one thousand cases a year. In 1979, a consumer outreach program was initiated through which attorneys traveled to each of the counties covered by the office to serve the residents. Other activities cover social service cases; prisoner litigation in the state courts; federal prisoner litigation; Surrogate's Court practice; mental hygiene actions; labor law violations; Agriculture and Market matters; tax matters and medical disciplinary proceedings.

The Claims & Litigation Bureau is engaged in cases involving negligence-wrongful death, medical malpractice, appropriations, Love Canal and Bloody Run Canal, Attica and other areas of tort litigation. These cases are litigated in Court of Claims located in Buffalo and Rochester.

The number of cases in the office far exceeds 600; the number of cases on trial calendar exceeds 400.

The matter of a surcharge is still pending, as the public administrator rejected the initial compromise offered him.

The office also handled a matter on behalf of the Division of Parole in which a prisoner challenged the authority of the Board of Parole to rescind a firm parole release date without a "Morrissey" type hearing. He claimed violation of his due process rights, as well as the lack of statutory authority under Article 12-B of the Executive Law. The Supreme Court for the Third Judicial Department rejected such contentions and dismissed the case.

The consumer fraud work of the office increased slightly more than 100% this year. It is apparent that our new consumer outreach program was partly the cause. Action increased in the fall as more people were made aware of our services.

Sixty-four complaints were received in August and September, compared to 34 for the same two months of 1978. One hundred and forty-nine cases were opened in October and November, compared to 38 cases for the same two months in 1978. The outreach program is available twice each month in the counties of Chenango, Broome, Delaware, Chemung, Tioga and Tompkins. For the first eleven months of 1979, \$41,468.71 was recovered in monies or the value of goods and services compared to \$18,212.04 in 1978.

The majority of cases in the General Laws Bureau involve Article 78 proceedings and federal court actions. In the Court of original jurisdiction and on appeal, the cases involve injunctions, constitutional issues, and class actions directed against Social Service statutes and regulations.

The volume of prisoner litigation is exceptionally high. Virtually every case lost by a prisoner is appealed.

Despite the number of years since the Attica insurrection, this office remains actively involved in the litigation that it engendered. In April, 1979, the Appellate Division, Fourth Department decided the case of *People v. Hill* (415 NYS 2d 541), affirming a conviction for the murder of an unarmed correction officer during the uprising. Among the highly significant issues in the case were the discriminatory practice of prosecuting inmates and not prison guards, the fair cross-section (jury) requirement of the Sixth Amendment and women's exemption from jury service. The Court addressed, for the first time, the issue of dismissal of a murder indictment in the interests of justice.

There are Surrogate's Courts in all eight of the counties represented by this office, the busiest of which is in Erie County. The office represents all charities and unknown heirs. It also assists the Department of Social Services in obtaining money for estates on behalf of persons receiving public assistance.

In federal litigation, the primary area in which jurisdiction is exercised by the United States District Court involves the civil rights of the plaintiffs. The actions are commenced under the reconstruction civil rights acts of the 1800's (42 U.S.C. Sections 1981, 1983 and 1985) as well as under the modern civil rights acts. (42 U.S.C. Section 2000-e *et. seq.*, Title VII of the Civil Rights Act of 1964). The relief commonly demanded by the plaintiffs involves compensatory as well as punitive damages.

The majority of the lawsuits begun under 42 U.S.C. Section 1983 are brought by inmates in the custody of the state's Department of Correctional Services. The causes of action deal with every conceivable aspect of prison life, including conditions of confinement, due process at disciplinary hearings, censorship of incoming literature, adequacy of medical care, charges of individual acts of brutality by the guards, deprivation of property, visiting rights, First Amendment rights and denial of parole or conditional release.

There are a number of ongoing significant cases.

A student at the State University Law School is suing the school for concessions pertaining to examination time, atmosphere, etc. because of an alleged learning disability which hinders her ability to perform educational tasks in the time normally allotted to students. This case has been pending for months, with many motions, voluminous pre-trial discovery and much more to come before trial. National attention has been attracted.

The President of the State University at Buffalo is being sued by the Student Association for prohibiting the use of mandatory student fees for individual student legal representation. The case has statewide and national significance, as the policy decisions in this area differ from campus to campus.

Niagara County has sued the Niagara Frontier Transportation Authority (NFTA) to protest mandated payments to NFTA's operating deficit. The case involves the constitutionality of a provision of the New York State Constitution. Niagara County has also sued the federal government and NFTA to challenge, on technical grounds, the funding of the Buffalo Light Rail Rapid Transit Project. In both Niagara County cases public interest is high.

This office has initiated a suit against the Department of Health, Education and Welfare challenging the constitutionality of statutes permitting social security benefits to divorced widows while prohibiting payment to divorced widowers. It is a case of first impression in the country.

This office is still peripherally involved in the Buffalo school system desegregation case. While the State has been dropped as a defendant, close monitoring is necessary because of the potential for renewed State involvement.

A recent prison case involved four inmates complaining of infringement of their First, Eighth and Fourteenth Amendment rights by officials at the Clinton and Attica Correctional Facilities and the Commissioner of Corrections. This was a two week non-jury trial involving testimony from more than a dozen witnesses.

A variety of consumer fraud actions have been taken this year.

This office infiltrated a promotional meeting of the Circle of Gold, and subpoenaed three of the apparent principals. Other subpoenas have been issued as the result of information from the public. Examinations of the subpoenaed persons resulted in the acquisition of records which, in turn, has led to the issuance of more than a hundred additional subpoenas. Those persons already questioned have agreed to injunctions and restitution.

In an automobile case, a consumer contracted to purchase a car for \$5,673.00. When the car arrived, the consumer was informed that the price had gone up by \$350.00. Unless this manufacturer's increase was paid, the car would be sold to someone else. When the dealer was informed that this kind of increase was prohibited by law, he tried to re-appraise the value of the trade-in. Through our efforts, the consumer received the car at the contract price. This office has notified all manufacturers and 150 auto dealers that this practice will not be tolerated.

The office has reviewed thousands of accounts of National Fuel Gas to determine if there are an appreciable number of cases where money has been erroneously held by the utility. As a result of this investigation, it will be possible to have interest paid on these moneys.

Up until very recently, the Claims and Litigation calendar consisted of, approximately, 85% appropriations cases, the remainder being tort and negligence actions. Now, the converse is true, with tort and negligence cases being predominant. This is significant because of the greater need for court appearances, pre-trial discovery, motion practice, investigation, witness preparation and the higher and less predictable exposure to monetary damages.

The agency primarily served in this area is the Department of Transportation, as the failure of maintenance of roads and defects in design are often alleged by claimants. The *ad damnum* clauses in this category alone total in excess of one hundred and seventy-two million dollars.

Medical malpractice cases involve the failure to diagnose and treat inmates in correctional facilities, Roswell Park Memorial Institute and other similar State institutions. This category accounts for a large part of the increase in number of substantial cases on the claims calendar.

HAUPPAUGE

During the year, the Hauppauge office managed a variety of consumer cases. Numerous complaints were received concerning landlords' failure to pay interest on rent security and to return security deposits. One exceptional case involved a landlord whose lease contained a cash penalty for a so-called "unwarranted service call". If a tenant called complaining about a lack of heat and the landlord's service representative responded to the call, and if in his opinion the service call was unwarranted, the tenant was charged a fee. This landlord, who maintains over 900 units in Suffolk County, attempted to obtain an increase in rent, citing an increase in fuel costs, without the right to do so. The landlord's lease also contained a 4% late charge with a minimum amount of \$350 for attorneys' fees. The lease even provided that if there was a judicial determination against the landlord, a \$100 fee would be due from the tenant. There were many other objectionable clauses, such as a release that the tenant was required to sign, excusing the landlord from all liabilities in connection with the use of the recreational facilities located in the apartment complex and an extra payment per month for pets. This office conducted an extensive survey of every tenant. Actions are now pending in the Supreme Court of Suffolk County.

Many mail order firms are within the jurisdiction of the Hauppauge office. A large number of complaints were received from consumers in various states involving these firms. This office established lines of communication with several of these mail order organizations in order to convey complaints and obtain compliance. Consumers' complaints have been resolved more speedily as a result.

Since the State Legislature enacted the refund law, this office has received complaints concerning the improper posting or non-posting of a store's refund policy. Some of the stores involved were of the opinion that if they printed their refund policy on their sales slips, which were given to the customer after the sales were consummated, it was sufficient. In each instance, after a conference with the store involved, it was agreed to prominently display their refund policies so that the customer could determine what it was prior to the sale.

Since the passage of the plain language law, our office has conducted an inquiry into its effects. We discovered that the average mortgage used by the lending institutions and utilizing the plain language law was as much as thirteen pages. This compared with four or five pages prior to the enactment of the law. This resulted in the mortgagors paying as much as three times the former amount in filing fees recording mortgages, since the fees are based upon a set amount per page. We are also working with the business community of our area to help them use this important

piece of legislation. Numerous conferences are being held with the members of the business community to inform them of the significance and impact of this law.

In 1979, there was also a marked increase in the handling of Article 78 proceedings and other suits against State agencies. In one instance, students of a local university were suing to remain in the same room as they had occupied the previous year, since the university reassigned some 49 students to other rooms. After a hearing in Supreme Court, Suffolk County, it was decided that the university was within its rights in reassigning these students to other rooms and dormitories.

The last quarter of the year saw a significant change of direction for the Hauppauge office. Court of Claims litigation was handled by this office beginning October 1, 1979. With a Court of Claims Courtroom established in the State Office Building at Hauppauge, litigation could be more efficiently processed here. In the past, the Claims Bureau in New York City had sent attorneys and investigators to Long Island with considerable travelling time and expense. This change in operations benefits claimants, witnesses and the local bar and is more efficient in terms of trial preparation. The great majority of cases involve the Department of Transportation, whose local field office (Area 10) is also located in the State Office Building at Hauppauge. Department of Transportation investigators and claims agents now work more closely with the attorney in charge of the case.

Approximately sixty files were assigned to Hauppauge from the New York City Claims Bureau.

The reduction of travel time and expense and the added convenience to the Long Island public and to the legal community will be realized through a plan to expand and extend services. Processing of consumer complaints and litigation involving Article 78 proceedings, affirmative cases and specialized suits in Labor, Workers' Compensation and Motor Vehicles will be extended. These additional activities warrant the opening of a satellite office in Nassau County. Thus, a Long Island Bureau will be created to serve the needs of the residents of Nassau and Suffolk Counties, almost one-fifth of the State's population.

The following figures cover the activity of the Hauppauge office for the year, 1979:

Cases Opened	—	2,295
Cases Closed	—	3,311
Services of Process on The Attorney General	—	381
MEDIATED CASES:		
Restitution of Cash	—	\$ 84,645.93
Restitution of Property, Merchandise, or other	—	\$157,383.07

MONTICELLO

The Monticello office of the Law Department is operated as a satellite of the Poughkeepsie office. It handles all Sullivan County matters and some matters in Ulster and Orange Counties. These three counties have a large number of summer resort hotels, camps and two large correctional facilities: Woodbourne Correctional Facility and Eastern New York Correctional Facility.

Prior to October, 1979, the office was not staffed by an attorney, and cases were handled by attorneys from other offices. As a result, there was no central record of office cases. Consequently, the figures contained in this report represent only a portion of those cases assigned to the Monticello office prior to October, 1979. In October, an Assistant Attorney General in Charge was appointed, and since that time all cases have been handled by her.

Currently, the office consists of the Assistant Attorney General in Charge and a secretary. For one or two days each week, the office has a paralegal from the Sullivan County Community College.

In 1979, the office handled litigation involving varied areas of law, including Consumer Frauds and Protection, Social Services, Motor Vehicles, Workers' Compensation, Labor, Agriculture and Markets, Health, Environmental Conservation, Prison and Parole Matters and the Employees' Retirement System.

Consumer frauds work included the investigation of complaints from consumers, as well as litigation, affirmative actions and assistance to consumers by aiding in the return to them of money from merchants. Prison cases included Article 78 petitions, habeas corpus, name changes, parole and MPI cases. Other work included Article 78 proceedings in defense of actions of the Departments of Social Services and Motor Vehicles and the New York State Racing and Wagering Board; labor and Workers' Compensation cases,

which proliferated in the late summer and early autumn due to the great numbers of summer employees at the various resorts, and which generally involve criminal prosecution for failure to have insurance or judgment enforcement; civil actions to enforce penalties imposed for violation of the Agriculture and Markets Law; and miscellaneous cases, including prosecutions for violation of the Education Law, actions to collect penalties and affirmative actions under the Public Health Law, which increase in summer due to the large number of resorts and camps.

In 1979, an Outreach Program was instituted. Meetings were held with the Jefferson Gardens Tenants Association and the N.A.A.C.P.

The case load for 1979 was as follows:

Prisoner cases (Article 78 petitions, habeas corpus, name changes, parole and MPI cases):

Opened	86
Closed	67
Pending	19

Consumer fraud cases (investigation of complaints from consumers, litigation, affirmative actions, assistance to consumers by aiding in the return to them of money from merchants):

Opened	118
Closed	38
Pending	70

All other cases (Article 78 proceedings, Labor and Workers' Compensation cases, Collections for the Department of Agriculture and Markets and Miscellaneous):

Opened	31
Closed	10
Pending	21

PLATTSBURGH

The Plattsburgh Regional office of the Department of Law changed greatly during 1979.

Since October 1, 1979, a full-time Assistant Attorney General has been in charge, with a full-time secretary, and a part-time student assistant who works on a volunteer basis.

A major consumer outreach program was initiated during the year to serve the residents of the Northeastern portion of the State. With this higher profile, there has been a deluge of consumer complaints. Almost everyone in the North Country has become aware of the Attorney General's "Consumer Outreach" program, and many of the complaints which were received in the first weeks of full-time

operations were months old. The publicity attendant to the starting of the "Consumer Outreach" program was positive and productive. It was apparent that there has long been a need for such services. In addition, the office's continued consumer complaint workload remained large.

An important area of work is prisoner litigation. The Clinton Correctional Facility in Dannemora is one of the largest facilities in the state, and there is a great deal of inmate instituted litigation. In four Supreme Court Special Terms since October 1, 1979, this office has argued a total of 20 prisoner cases. Many of these have been challenges to prison disciplinary proceedings. Quite recently, there have been a number of claims regarding the setting of allegedly

excessive minimum periods of imprisonment by the Board of Parole. The litigation in this area arises primarily as a result of the unsettled state of the law regarding minimum periods of imprisonment. The Court of Appeals may clarify the issue in 1980.

A fairly substantial number of commitment hearings, pursuant to Correction Law, §402, came from the Clinton Correctional Facility. These tended to average one or two per week.

The amount of litigation generated by client agencies other than the Department of Correctional Services can vary greatly based solely on one major event or tragedy. For instance, a recent road washout in Elizabethtown, in Essex County, resulted in a number of deaths and injuries. A significant number of lawsuits is to be expected.

At present, this office has two cases pending where it represents the Department of Social Services; one case where it represents the State Police; and one criminal prose-

cution under the professional licensing requirements of the Education Law. This prosecution was instituted at the request of the Education Department, and involves a defendant with a history of acting as a priest, a laser beam technologist, a psychology professor and a medical doctor.

1979 STATISTICAL REPORT

Consumer complaints	305*
Writs of Habeas Corpus	25
Petitions for Writs of Habeas Corpus	22
Trials of Article 78 Proceedings	77
Petitions for Article 78 Proceedings	21
Section 402 (commitment) hearings	72 (approx.)
Miscellaneous court matters	18

* 146 of the 305 consumer complaints which came into this office in 1979 were lodged on or after October 1, 1979, when this office began full-time operations.

POUGHKEEPSIE

The Poughkeepsie office of the Department of Law handles litigation and consumer frauds matters in six counties in the Hudson Valley including Westchester and Rockland. The office's Court of Claims calendar has remained active with terms being held throughout the year at Poughkeepsie and Mount Vernon. The Prisoners Litigation Unit represents the Department of Correctional Services in matters arising in the various facilities in our geographic area. Within the past year, the new Downstate Correctional Facility at Fishkill has become fully operational, resulting in increased litigation and court appearances. The Consumer Frauds Unit has instituted an Outreach Program for our service area. An Assistant Attorney General visits each county on a regular schedule to meet with consumers to discuss complaints and problems.

In the Court of Claims, Poughkeepsie District, 128 new negligence claims were filed alleging \$173,852,100 in damages; and 29 new appropriation claims were filed alleging damages of \$8,979,000. During the year, 101 cases were closed alleging damages in the amount of \$64,501,900. Of the cases closed, 46 were tried, 23 were settled, 18 were dismissed and 14 discontinued.

A case of particular interest involved a patient at a Children's Psychiatric Center who was injured while operating a lawnmower. He had been working with the grounds staff as part of his vocational training. The Court of Claims dismissed a claim he filed, finding that the determination to permit the claimant to operate the mower was a proper

exercise of medical judgment, and that the training and supervision was appropriate. The Court also held that the claimant was contributorily negligent. *Castro v. State*, Claim No. 60426.

Another important case involved an accident which occurred on the New York State Thruway. The claimant contended that he drove at a slow speed onto the shoulder to check a malfunction, and the defective condition of the shoulder caused him to strike an adjacent rock wall. In dismissing the claim, the Court of Claims held that the angle of impact and nature of damage to the vehicle were consistent with the Defendant's position that the claimant was traveling at a high rate of speed and lost control of his vehicle. The Court found no negligence on the part of the Thruway Authority. *Reale v. New York State Thruway Authority*, Claim No. 61079.

During the year, 460 Article 78 proceedings, *habeas corpus* applications and related matters in the Supreme Court were opened and assigned to the Prisoner's Litigation Unit. 530 cases handled by this Unit were closed. Thirty-six non-prisoner Article 78 proceedings and other general litigation in the Supreme Court were opened and 17 closed.

The Consumer Fraud Unit opened 2,275 new complaints and closed 2,226 complaints through November 30, 1979. A total of \$771,723 was recovered in either goods, money or services by this office. Of this amount, \$169,550 represented actual monies recovered, and \$602,173 represented the value of goods and services recovered for consumers.

Twelve Assurances of Discontinuance agreements were obtained as a result of the investigative efforts of the Poughkeepsie Consumer Unit, in which \$3,300 in costs, payable to the State of New York, were paid by merchants who agreed to cease and desist from engaging in alleged deceptive and misleading practices.

An important consent judgment was entered into by a Dutchess County collection agency. An investigation was made as a result of numerous complaints from consumers, primarily from the Dutchess County area, who reported that they had been subjected to unreasonable abuse and harassment by the practices of the collection agency. The investigation led to legal action by our office. The consent judgment requires the collection agency to cease and desist from engaging in abusive conduct or harassment of alleged debtors in performance of its debt-collection business. The judgment established a model collection presentation to be followed by the collection agency in its activities. It also provides that if there is a breach of the judgment, the Attorney General may seek to enjoin the collection agency operating a debt-collection business from and within the State of New York.

The Poughkeepsie Consumer Frauds Unit obtained a jury verdict against a retail camera store which was found to have engaged in false advertising.

Another false advertising case arose out of a consumer complaint alleging that a Dutchess County retailer's adver-

tising concerning the sale of bedding was highly confusing and misleading. An Assurance agreement provided that the retailer cease and desist from advertising merchandise to the public at "sale" prices or other types of discount, unless such discounts were true and accurate.

The Poughkeepsie office investigated several complaints concerning the practices of a corporation which has 45 retail outlets within the States of New York and Pennsylvania. The complaints alleged that the corporation, which specializes in the retail sale of mufflers and brakes, had engaged in false advertising. Investigation revealed that this was so and we entered into an Assurance of Discontinuance agreement with the corporation.

Another false and misleading advertising matter involved a small retail chain having two locations in Orange County, one in Putnam County and one in Dutchess County. Investigation disclosed that the chainstore, specializing in the retail sale of stereo equipment, published misleading advertising. An Assurance of Discontinuance agreement was entered into which resulted in the resolving of all the issues.

The Poughkeepsie office has experienced increased volume in all areas. The Court of Claims litigation has demonstrated an increase in tort claims with a reduction in appropriation filings. We have virtually completed the litigation developed by the Stewart Airport Expansion Project, which involved 120 appropriation claims.

ROCHESTER

In 1979, the Rochester Regional Office conducted a number of significant consumer cases. In one, restitution in the amount of \$14,615. was recovered by the Office on behalf of 37 mobile home park tenants. The recovery was based upon a creative application of the "mobile home tenants' bill of rights" (Real Property Law, Section 233) in conjunction with Section 63(12) of the Executive Law.

In another matter, an extensive and lengthy investigation into the bait and switch tactics of two Rochester area retail bulk meat operators resulted in both criminal and civil actions against them. Both businesses were forced to close prior to final determinations in either the civil or criminal proceedings. A consent judgment was entered with one of the operators resulting in restitution to the victims. The final data is not yet in because the consent judgment gives all complainants until February 15, 1980 to file their claims for restitution. An especially noteworthy aspect of the investigation was the complete cooperation and assistance provided to the Bureau of Criminal Investigation of the

New York State Police as well as the Monroe County District Attorney's Office.

Two other important cases should be mentioned. The first, *Doherty v. Cuomo*, ___ Misc 2d ___, 415 N.Y.S. 2d 760, Supreme Court, County of Monroe, stood for the proposition that an ENTIRE matter must be transferred to the Appellate Division, Fourth Department, whenever the substantial evidence question is before the Court, even if other questions are posed as well. In the second case, *In the Matter of the Application of the State of New York, Division of State Police, et al. v. Hon. David O. Boehmn*, an Article 78 proceeding was brought against Supreme Court Justice Boehm. The Appellate Division, Fourth Department, upheld the confidentiality of the identity of those who provide information which assists the State Police in their investigations.

During 1979, the office disposed of 1,458 matters, and recovered, in collections and restitutions, direct and indirect, \$208,613.87.

SYRACUSE

The Syracuse office of the Department handles Court of Claims matters in eight upstate counties and litigation and consumer frauds matters in four upstate counties. The staff of eight attorneys has been given vital assistance during the past year by seven law students from Syracuse University. The students worked 10-20 hours per week on either a four credit or a workstudy basis under a newly instituted program designed to provide second and third year law students with clinical experience in the Department of Law.

The Consumer Fraud Unit opened 1,471 new complaints, closed 1,272 complaints, and had 957 open complaints on hand on December 31, 1979. More than \$138,000 in restitution was returned to consumers. Major litigation efforts included injunctions against fraudulent business practices, motions for contempt for failure to obey Department of Law subpoenas and contempt proceedings for failure to obey court orders directing restitution. In addition, an important negotiated settlement was reached concerning nearly 300 complaints involving non-delivery of photographs. Another significant action resulted in more than \$4,000 in restitution for airline reservations cancelled by a travel agency.

Three important consent judgments were entered into by individuals involved in a pyramid scheme called the Circle of Gold. An investigation revealed an intricate pyramid organization operating in and around Syracuse that violated both securities and pyramid laws. The consent

judgments required the individuals involved to cease all further pyramid activities.

In addition, the Consumer Fraud Unit established its outreach program in the counties of Madison, Cortland and Oswego. A member of the unit visits each county for an afternoon each month to counsel consumers and receive complaints.

In the Court of Claims, 140 motions were handled, 65 matters were tried, 12 were settled and 16 were discontinued or dismissed. A significant claim tried successfully during 1979 involved a 52 vehicle chain-reaction accident on Route 81 where the court found no liability on the part of the State for the accident. The court held that the Department of Transportation was not required to fully man its residences 24 hours per day, but could have certain staff on call from 9:00 p.m. to 5:00 a.m. *Holden v. State*, claim No. 60062-A.

During the year nearly one hundred Article 78 proceedings and other actions involving the defense of state agencies were handled by the Litigation Unit. One important federal court action involved a challenge to the transfer of property provision concerning medical assistance eligibility. Numerous similar cases were consolidated with the action pending in the Northern District. The preliminary injunction granted plaintiffs was appealed to the Second Circuit Court of Appeals in December. *Caldwell et. al. v. Blum*, N.D.N.Y. 78-CV-569.

UTICA

The staff of the Utica Regional Office presently consists of one attorney, one investigator and one stenographer-receptionist. A substantial portion of the work of this office revolves around the three major psychiatric institutions located in Oneida County — the Utica/Marcy Psychiatric Center, the Central New York Psychiatric Center and the Rome Developmental Center. They constitute a constant and growing source of litigation. Consumer matters are also a constantly growing area demanding more time and attention from staff.

Formerly, a great deal of the regular case work of the Utica office was referred to the Albany office. Despite limitations of time and staff, the Utica office is now attempting to retain as many of these local matters as is possible. This office handles general litigation and consumer fraud matters in the counties of Oneida and Herkimer and has established a consumer outreach program in Herkimer. The Assistant Attorney General visits Herkimer on a regular schedule to handle any consumer complaints and problems.

In 1979, there were several cases involving consumer problems which are of particular interest.

Matter of Pachman Auto Parts, Inc. Early in the year, a matter arose out of a local consumer complaint which resulted in a resolution of a state wide problem by this office and the New York State Automotive Wholesalers Association, Inc.

A complaint was filed against Pachman Auto Parts, Inc., a local parts dealer, with regard to the posting of the refund and services charge policy. The problem was that the parts dealer was not posting all essential information as to his refund and credit policies. In not posting this information, the local dealer was following the recommendations of the Automotive Wholesalers Association.

A conference was convened by this office with the local dealer and a representative of the association. The conference resulted in a verbal agreement by the association to recommend that its dealer members throughout the State post complete information as to refund and credit practices. This was accomplished through the publication of a special bulletin by the association and sent to its members.

Meadowbrook Garden Apartments. This office was successful in obtaining an agreement from the management of

the apartments to refund to tenants interest on security deposits.

Prior to this agreement, the management had neglected to place security deposits in a special account. Interest money in the amount of \$2,032.72 was returned and all security deposits were placed in a special account as required by the General Business Law and the account number was provided to tenants.

Sanbor. This case involved the illegal practice of odometer tampering by a person engaged in the selling of used cars.

An assurance of discontinuance was signed and \$1,000 in costs collected and \$1,500 in restitution returned to aggrieved parties.

William C. Gobel d/b/a General Agents Associates. This was an extensive investigation by this office in cooperation with the Securities Bureau in New York City.

The complaint involved the sale of interest bearing, short term notes for which no monies were returned or interest paid upon maturity. The matter was scheduled for Grand Jury action in March of 1979, and was discontinued because of the death of Mr. Gobel.

The statistical summary for the matters handled by the Utica office for the year 1979 is as follows:

Consumer Fraud Complaints Responded to	794
Investigations Conducted	31
Agriculture and Markets	13
Labor	1
Health	1
Total Collection and Restitution	\$26,519.87

Work Done in Relation to New York State Psychiatric Institutions:

Utica/Marcy Psychiatric Center
Central New York Psychiatric Center
Rome Developmental Center

Retention Hearings — Approx. 2,111 cases on calendar
Approx. 83 hearings
Approx. 19 jury trials

Applications for Surgical Orders — 64

Requests or Subpoenas for Patient Files — 7

Conservator Accountings, Citations, Subpoenas, and Divorce Concerning Patients — Approximately 32
(These matters generally referred to Albany)

Article 78 Petitions:

January	— August	— approximately	20
August	— December	— approximately	18
Total:			38

Habeas Corpus Petitions:

January	— September	—	3
September	— December	—	4
Total:			7

Notice of Family Court Petitions for Special Education for the Handicapped

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WATERTOWN

In September, the Consumer Outreach Program began with satellite offices in three separate villages within the office's jurisdiction. Office hours were held in the evenings to more effectively utilize the Assistant Attorney General's work day, allow for the extended travel between the offices and accommodate a greater number of consumers. During the few months of the 1979 Outreach, between thirty and forty persons met monthly with the Assistant Attorney General conducting the program, indicating a need which had gone unanswered for far too long.

An integrated series of television, newspaper and radio interviews paved the program's path. For the first time, the Department of Law opened and staffed a booth at the Jefferson County Fair. Restitution to consumers during 1979 of over \$80,000.00 almost doubled the amount for 1978. A major feature of the office's work continued to be

the highly successful Automotive Consumer Action Panel (Autocap). Borrowing from a similar panel in the Niagara Frontier, Jefferson County automobile dealers, working with this office, formed the local panel in 1978. Statistics and observation alone indicate that this is a consistently positive influence on the consumers' behalf.

One new automobile dealer in Jefferson County, who is not a member of Autocap, refused to honor a written contract with a consumer for the purchase of two 1980 automobiles. The contract was clearly within the recently enacted Section 396-p of the General Business Law, and this office finally effected consummation of the contract as executed.

The Assistant Attorney General practices in all courts except the Court of Claims. Typical proceedings involve the Department of Mental Health, the Department of Motor

Vehicles and the Department of Social Services. The Watertown Office regularly represents the Office of Mental Hygiene in hearings, appeals and trials brought by patients of St. Lawrence Psychiatric Center in Ogdensburg.

A decision was made early in 1979 to pay particular attention to Surrogate Court matters, especially where there was a chance of recovering monies due New York State. Collections on behalf of State agencies through November, 1979 in Surrogate proceedings doubled the 1978 collection figure.

A law guardian petitioned the St. Lawrence County Family Court to proceed, by a class action suit, for an order creating an entirely new statewide network of institutions for those individuals judged as suffering from neither primary psychiatric problems nor primary mental retardation, yet indicative of both. The guardian alleged existence of a non-man's land where many persons languish and neither the Office of Mental Health nor the Office of Mental Retardation and Developmental Disabilities had responsibility by statute or regulation for their care. After seven months of negotiations, working with counsel for both offices, and with the diligence of the professional staff of the St. Lawrence Psychiatric Center, the Court accepted a plan

embracing the six northern counties of Northern New York, for a "multiply handicapped" Adolescent Group Home Program. Accepting this proposal as a sign of good faith, the court dismissed the petition in its entirety. Negotiation and interagency cooperation, in this instance proved as effective as the litigation.

In another matter, a Consent Decree ended the operation of a diploma mill operating in New York State as a Canadian University. The Watertown Law Investigator had discovered that because of a Canadian postal strike the principal of the "university" had established a mail drop in a small, remote hamlet of St. Lawrence County. The Decree followed service of process on this individual.

In another case, a young mother neglected to place her stopped vehicle in the parking gear. The car rolled down an incline lodging between a wall and a telephone pole. The woman unable to pay the \$10.00 charge to the tow operator called the police and was instructed to sign her car's registration over to the tow operator. She asked this office for assistance eleven days after the incident, and it was successful in aiding the complainant in obtaining the return of her registration.

ADMINISTRATION

ADMINISTRATION

The Administration Bureau continued its high level support activity despite staff and fiscal reductions. A significant portion of our work this year involved the smooth and effective transition and orientation of new members of the Department, particularly the Executive staff of the new administration. Informational and liaison activities with the Institute of Judicial Administration in their study of the operations of the Department was a major part of our effort. The reorganization of the New York City Administration Office, major disciplinary and grievance activities, implementation of employee organization contracts, employee benefit programs and evaluation activities, development of new exempt salary plans, development of clerical advancement programs, study of word processing were critical actions. Reordering of office space in New York City, Albany and district offices in four cities were part of our responsibility. Installation of Lexis on a test basis, preparation of IPA grant requests, administration of three Federal grant projects, Freedom of Information activities, and recruitment testing and personnel activities were special assignments of particular importance.

FINANCE OFFICE

During 1979, the Administrative Finance Office continued to coordinate budget requests for the Department, recommend fiscal policies, and exercise budgetary control of Departmental funds.

The lack of adequate funds and the budget imposed personnel targets have made the initial phases of the Department's planned reorganization particularly difficult this past year. The Department is faced with severe inflation in purchasing office equipment. These and other problems continue to challenge the staff to keep the Department adequately stocked and operational.

The office maintains all interest bearing escrow accounts and prepares restitution payments to the public. This year we took another step toward modernization with the computerization of the Department's restitution account. The volume of checks and restitution matters has become so great in recent years that the old manual system had to be changed. The new system, designed in cooperation with the Planning Office, became operational in December.

The office is currently monitoring three separate Federal grants, two through the Division of Criminal Justice Services and one directly from the United States Department of Justice. Although the administration and reporting requirements have put additional burdens on the administration staff, the grants have greatly assisted the Department during a period of fiscal restraint.

PERSONNEL OFFICE

The Personnel Office handles a high volume of personnel activities including recruitment, fringe benefits administration, employee services, training, staffing studies, classification, personnel transactions, payroll preparation and special studies. Early in the year, considerable staff time was spent in assisting the Administrative Director and Executive staff in transitions and orientation activities.

Responsibility for the administration of the Employee Performance Appraisal and Evaluation Program for staff in the CSEA units as well as Managerial/Confidential employees and exempt attorney staff heavily impacted on available staff time. During the year activities included:

1. New advancement and training programs were developed, including a clerical advancement program which should enable clerical staff to advance to professional administrative positions and a unique transition program that can lead to a paralegal career for employees presently in clerical positions.

2. Tests for entrance-level stenographers and typists have been conducted on a decentralized basis in New York City. This program of self-help has proven useful in the stenographic recruiting process. In addition, oral tests were administered to candidates for various Consumer Frauds Representatives positions.

3. New contracts for the CSEA and PS&T units and other Managerial/Confidential programs have brought many changes in the administration of health insurance and other employee programs and have required a considerable increase in staff time. Among the many new programs that have been developed, is an Employee Assistance Program, in cooperation with the Union, that offers confidential counseling to troubled departmental employees.

4. We have arranged for participation in CETA and Special Employment Programs which encourage the employment of the handicapped, unemployed, under-employed and the aging. Clerical stenographic training programs developed in New York City draw candidates from the unemployed and after 14 weeks of training, candidates are capable of taking an examination and receiving permanent employment with the Law Department. Initial steps have been taken with the Career Opportunity Division to institute a traineeship program in the selected professional and clerical positions for individuals who are sight and hearing impaired.

5. The Personnel Office has tried with considerable success to prevent time consuming formal grievance procedures, by providing a variety of counseling and other techniques to achieve a resolution to employee problems as they arise.

PLANNING OFFICE

In 1979, the Planning Office conducted comprehensive space analyses for two major projects in Albany and New York City. The Law Department is participating in a larger project involving the Office of General Services and the Division of the Budget to build mezzanines in portions of the first and second floors of the Capitol Building to increase the capacity of this building to provide useful office space. Other space projects include relocation of offices in Rochester, Plattsburg and Monticello.

A word processing study was conducted involving nearly all the stenographers and typists in Albany and New York City and the support staff of one representative field office. As a result of the findings, the Department replaced eleven of its oldest most outdated magnetic tape typewriters (some of which had served the Department for nearly ten years) which reduced the overall efficiency of our word processing efforts because of excess downtime for repairs. The largest concentration of automated equipment is located in the New York City Steno Pool which is now evaluating several types of new word processors, including high speed printers to supplement our current mix of equipment.

The planning staff participated in the analysis of numerous requests for new positions and equipment in connection with the preparation of the 1979-80 Supplemental Budget and the 1980-81 Main Budget.

Computer applications in stages of development, implementation and continuing review include:

1. *Litigated Case Management System* — The major emphasis of this project was the detail design and system specifications. After reviewing the docketing practices of the Department's bureaus, three were selected as possible sites to serve as pilot bureaus in which to test the system. The Appeals and Opinions Bureau, the Claims and Litigation Bureau and the Litigation Bureau were chosen because their cases represented the broadest range of the Department's work load. Without compromising the centralized approach of this system, a number of changes were suggested and incorporated into the system design.

Since the Planning Office lacks a sufficient number of technical staff to undertake any major computer program-

ming, we chose the Prosecutors Management Information System developed by the Institute for Law and Social Research to serve as the framework for our own Litigated Case Management System. This software will be modified to provide computerized case tracking, docketing and statistical reports.

The Claims and Litigation Bureau will serve as the test site for the implementation of the system during 1980.

2. *Charitable Foundations* — Programming of this application to monitor registrations and related correspondence was started in November, 1979, and equipment was ordered to be installed in 1980.

3. *Restitution Checking Account* — An application was designed to issue refund checks to consumers for whom the Consumer Frauds Bureau had recovered funds. The largest case is the Cashtime case, in which some 6,000 consumers will receive \$10 each, but there are usually about 30 refund accounts open simultaneously. The system will also keep track of outstanding checks and maintain running balances for each of the accounts. Programming has been completed and the first checks will be issued in January 1980.

4. *Collection Unit* — The judgment sequence of the Collection Unit was modified to calculate interest on the declining balance rather than the original default amount.

An analysis of printing needs led to the recommendation to install a high speed printer terminal that will reduce printing time by 30 hours per month.

Special programming was needed in conjunction with the transfer of about 6,000 National Defense Student Loans to the Department of Health, Education and Welfare in Washington.

5. *Time Distribution* — A new module was designed and programmed to prepare semi-annual billings for legal work done for the Thruway Authority, Power Authority, Metropolitan Transportation Authority and East Hudson Parkway Authority.

6. *Equipment Inventory System* — A new system will provide information that will allow analysis of existing equipment in comparison to the latest technology available on the market as well as the cost effectiveness of various rental plans and options. It will also facilitate the renewal of rental agreements in a timely fashion.

1979 STATISTICAL REPORT

FINANCIAL REPORT*

CATEGORY	Direct		Indirect	
	1978	1979	1978	1979
I. Collections and Restitutions Effected for the State				
A. Collections:				
1. Abandoned Property	\$ 5,728.11	\$ 4,713.62	\$ 4,879,615.89	\$5,551,571.52
2. Costs in Actions and Proceedings	217,678.71	139,789.95	489,450.39	4,334,994.22
3. Damage to State Property			2,098,703.76	1,030,352.81
4. Excessive Costs on Contract			382,656.55	1,337,416.24
5. Fines and Penalties:				
a. Agriculture & Markets	80,888.03	78,723.55	5,437.15	45,901.36
b. Anti-Trust		217,574.34	66,500.00	179,674.34
c. Environmental Quality			16,245.88	1,414.20
d. Labor Law Violations			4,763.57	169,432.63
e. Licensed Practice			28,950.00	31,510.00
f. Special Investigations				
g. Unlicensed Practice			8,100.00	5,200.00
h. Workmen's Comp. Law Violations			99,301.56	9,390.00
i. Miscellaneous	33,010.00	19,800.00	66,278.60	7,616.60
j. Other State Agencies			1,094,576.88	
6. Industrial Commissioner			122,674.13	
7. Institutions & Hospitals			194,590.38	441,224.10
8. Patient Maintenance			3,259,967.74	2,492,828.51
9. Refund of Expenses	4,036.92	7,388.42		
10. Rental Arrears				61,904.97
11. Special Investigations			8,655.00	
12. Taxes:				
a. Bankruptcies			29,815.10	392,194.44
b. Corporation			6,642.67	21,159.91
c. Decedents Estates			200,669.24	273,723.52
d. Mortgage Foreclosure			7,493.90	59,261.65
e. Income			2,239.75	150,098.50
f. Unemployment Insurance			960,953.75	785,125.00
g. Sales			141,772.30	425,725.84
h. Miscellaneous			2,730.92	9,385.30
13. Student Loans and Tuitions		15,931.26	885,842.63	1,211,942.08
14. Miscellaneous				59,835.07
15. Interest on Rent Security Deposits			222,271.16	
B. Restitutions:				
1. Anti-Trust Litigation			3,339.10	1,227,602.00
2. Employees Retirement System				361,474.03
3. Unemployment Insurance			598,828.00	700,698.73
Total Collections and Restitutions Effected for the State	\$ 341,341.77	\$ 483,921.14	\$15,889,065.90	\$21,378,657.57

*This report represents monies received by the State or the public as a result of efforts by the Department of Law. The distinction between direct and indirect collections is that of payments made directly to the Department of Law (direct collections) and payments made to other State departments and agencies or to the public.

FINANCIAL REPORT (cont'd)

CATEGORY	Direct		Indirect	
	1978	1979	1978	1979
II. Collections and Restitutions Effected for the Public				
A. Collections:				
1. Injured Workmen	\$	\$	\$ 499,728.00	\$ 523,518.57
2. Wage Claimants			532,874.80	271,742.48
3. Workmen's Compensation Appeal			1,348,054.90	1,072,472.59
B. Restitutions:				
1. Charity Frauds & Recoveries for Charitable Institutions*			3,200,834.00	24,434,543.62
2. Consumer Frauds	738,854.62	255,681.18	1,384,845.02	2,374,236.94
3. Stock Frauds			702,423.68	1,120,866.22
4. Coop. Cont. E. Synd.			1,715,706.12	2,799,000.00
Total Collections and Restitutions Effected for the Public	\$ 738,854.62	\$ 255,681.18	\$ 9,384,466.73	\$32,596,380.42
III. Reimbursement for Services Rendered by the Law Department				
A. East Hudson Parkway Authority	\$ 3,084.81	\$ 5,748.99	\$	\$
B. Federal Government Capitol Construction Projects			627,122.78	1,092,876.00
C. Insurance Law Section 32A			10,832.00	6,177.31
D. Power Authority	429,375.62	64,182.73		
E. Metropolitan Transportation Authority	8,468.33	30,417.70		
F. Thruway Authority	9,872.66			
G. Volunteer Firemen's Benefit Law			509.00	702.14
H. Workmen's Comp. Law Section 151			451,535.00	434,592.82
I. Workmen's Comp. Law Article 9			18,445.00	11,880.16
Total Reimbursements:	\$ 450,801.42	\$ 100,349.42	\$ 1,108,443.78	\$ 1,546,228.43
IV. Filing Fees:				
A. Broker-Dealer Exemptions	\$ 60,160.00	\$ 77,720.00	\$	\$
B. Broker-Dealer Statements	77,840.00	97,800.00		
C. Charitable Foundations	466,933.39	436,093.69		
D. Fingerprint Processing	113,530.00	15,180.00		
E. Investment Advisory Amendment	3,275.00	3,525.00		
F. Investment Advisory Registration	26,700.00	26,300.00		
G. Principal Statements	19,758.00	23,190.00		
H. Real Estate Syndications	1,172,377.09	1,245,540.40		
I. Salesmen Statements	103,160.00	101,370.00		
J. Supplemental Statements	125,850.00	109,515.00		
K. Security Takeover Disclosure	13,500.00	15,000.00		
L. Miscellaneous		700,686.90		

Total Filing Fees	\$ 2,183,083.48	\$ 2,851,920.99		
V. Miscellaneous Receipts				
A. Sale of Publications	\$ 350.00	\$ 1,720.00	\$	\$
B. Subpoena Fees	232.26	159.70		
Total Miscellaneous Receipts	\$ 582.26	\$ 1,879.70	\$	\$
Grand Total of Receipts	\$ 3,714,663.55	\$ 3,693,752.43	\$26,381,976.47	\$55,521,266.42

*Includes funds contested in legal proceedings which were protected for charitable entities.

EXECUTIVE

Robert Abrams Attorney General
 *Jorge L. Batista First Assistant Attorney General;
 Chief, Division of Public Advocacy

Shirley Adelson Siegel Solicitor General; Chief,
 Division of Appeals and Opinions
 Dennis H. Allee Counsel to the Attorney General;
 Chief, Division of State Counsel
 Ethan M. Geto Executive Assistant
 Edward Perlmutter Executive Assistant
 Timothy Gilles Press Secretary
 James T. Conroy Special Assistant

*Resigned 1/30 - Dennis H. Allee appointed First Assistant;
 Robert Hermann appointed Chief of
 Division of Public Advocacy

DIVISION MANAGEMENT

Richard Rifkin Deputy/State Counsel Division
 Peter L. Yellin Deputy/State Counsel Division
 Robert Hermann Deputy/Public Advocacy Division

Donald P. Hirshorn . . Ass't. Deputy/State Counsel Division
 John E. Burke Administrative Assistant
 Albert R. Singer Director of Administration

BUREAU HEADS

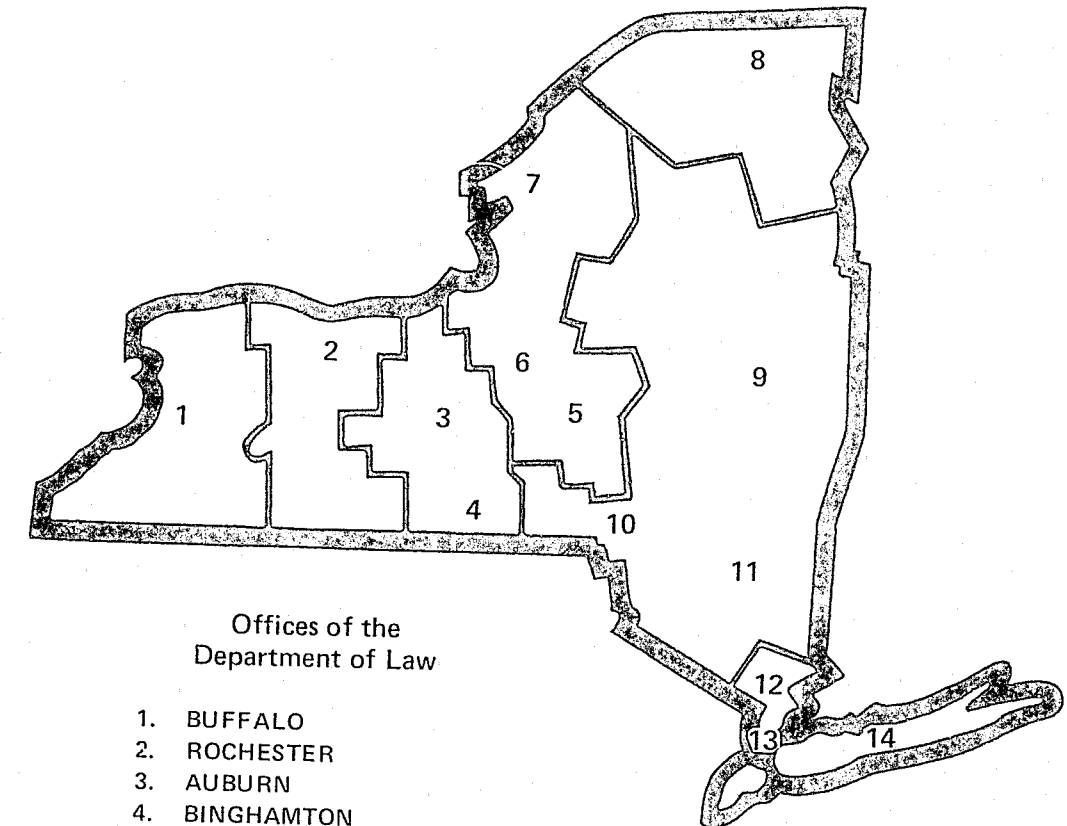
John M. Desiderio Anti-Monopolies
 Daniel L. Kurtz Charities, Trusts and Estates
 Peter Bienstock Civil Rights
 Carl Rosenbloom Claims (Albany)
 Franklin Miller Claims (NYC)
 Kenneth Page Collections
 Bertram A. Weinert Consumer Education Section
 Melvyn R. Leventhal Consumer Frauds and Protection
 William Wood Education
 Paul S. Shemin Employment Security

Marcia Cleveland Environmental Protection
 Orestes J. Mihaly Investor Protection and Securities
 Henriette Frieder Labor
 Frank R. Fioramonti Legislative
 James McSparron Litigation (Albany)
 George D. Zuckerman Litigation (NYC)
 Thomas P. Dorsey Mental Hygiene
 Harold Lubell Real Estate Financing
 Horace M. Flowers Real Property
 William F. Dowling Special Prosecutions

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 John R. Marshall, Jr. Binghamton
 Judith Blake Manzella Buffalo
 Jacqueline Bullock Harlem
 Ronald Glickman Long Island
 Anna T. Withey Monticello

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 Thomas J. Maroney Syracuse
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 Terence J. Germain Watertown



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