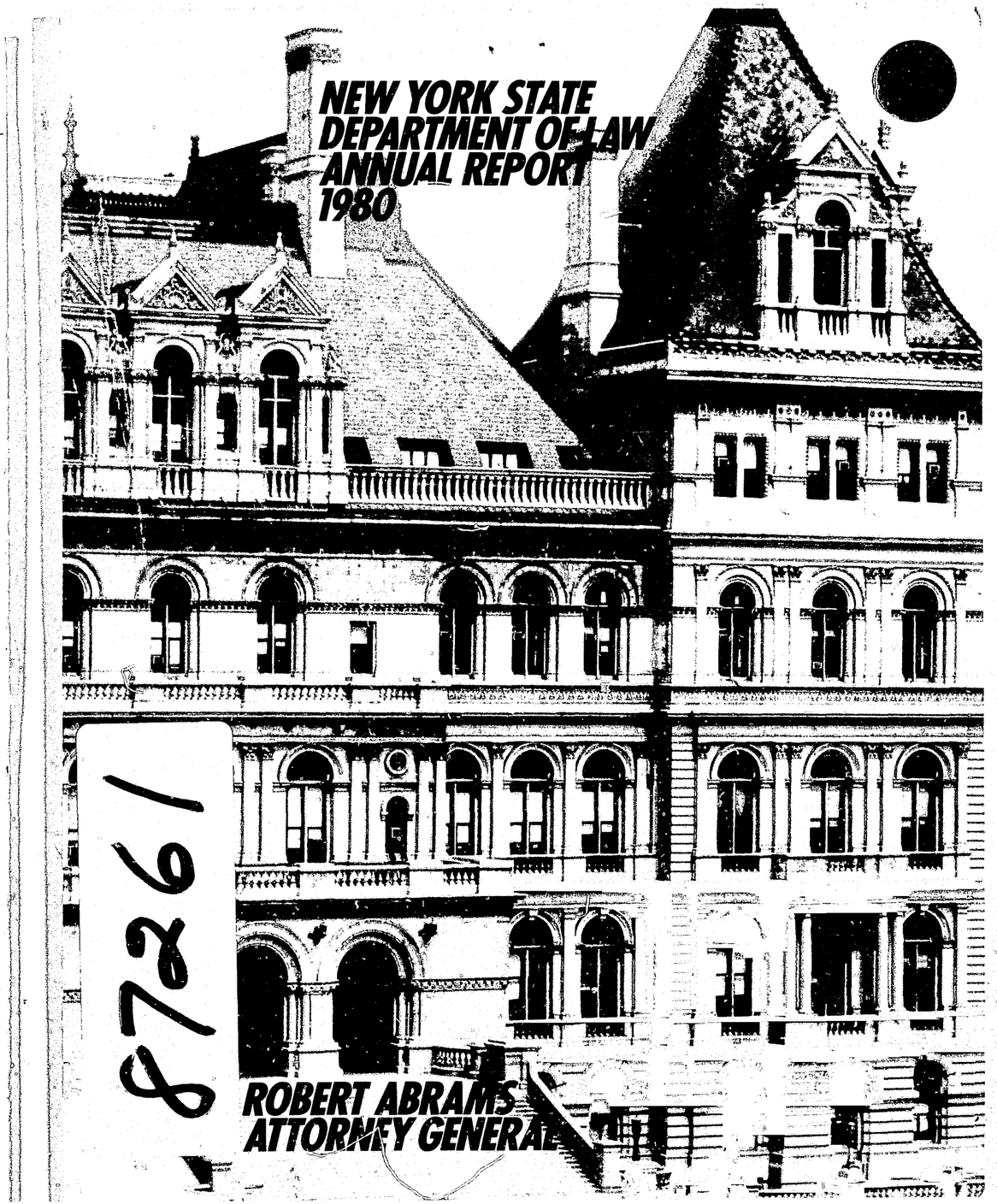

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Contents

From the Attorney General

The signal accomplishments during 1980 in the Office of the Attorney General were five-fold:

First and foremost, we continued to build a team of outstanding lawyers drawn not only from veterans of the office, but also from elsewhere in government, from legal services programs, and from the private bar, with recruits from the latter often coming at great personal economic sacrifices.

Second, we charted an ongoing course of improvements in management by consolidating a statewide reorganization of the office along functional lines; rationalizing bureau and regional office jurisdictions; starting a statewide training program and upgrading attorney salaries; introducing new management techniques to improve resource allocation and performance accountability; and implementing computerized systems and other support service improvements in the office for the first time.

Third, we gave priority to those initiatives on behalf of the state and the public which raise major legal questions or affect large numbers of people, especially on issues of environmental protection, consumer protection, civil rights, and securities, antitrust and charities regulation.

Fourth, we moved vigorously to deal with the problems posed both by the burgeoning growth in the numbers of lawsuits against state agencies and officials, and by the increasing complexity of many cases involving fundamental issues of state law and public policy. We face a major challenge in the fact that attorneys must struggle with overwhelming caseloads, and, at the same time, meet high standards of thoroughness and quality in complex cases.

Finally, we gave new emphasis to improving the criminal enforcement capability of the office, in particular, by expanding investigations and prosecutions of white collar crimes like tax fraud, securities and commodities fraud, and criminal violations of the State's Labor and Workers' Compensation Laws. Cooperation with other agencies was strengthened through such efforts as an extensive investigation undertaken in 1980 of illegal sweatshop conditions with the aid of the State Department of Labor and the Workers' Compensation Board. Of special note, the office received judicial approval for the first time to empanel two grand juries. In addition, we continued to move forward to reorganize the statewide Organized Crime Task Force and to bolster its effectiveness.

These and other accomplishments as detailed in this report are a tribute to the hundreds of devoted public servants who make up the Department of Law. Their commitment, and mine, continues to be to make this agency the best public law office in the nation.

Robert Abrams

ROBERT ABRAMS
Attorney General

Highlights of 1980

- The nation's largest environmental lawsuit was brought against Hooker Chemical & Plastics Corp. and Occidental Petroleum Corporation in connection with dumping toxic wastes at Love Canal and other Niagara County sites.
- The Attorney General took action to compel federal enforcement of pollution standards in midwestern states whose coal-burning emissions endanger the health of New Yorkers and cause acid rain which is devastating to life in New York's lakes, as well as harmful to other wildlife and to crops.
- The first suit by a state attorney general against the U.S. Census Bureau was brought challenging the 1980 census undercount of the state's population.
- The Attorney General opposed exorbitant rate increase requests by telephone, electric and gas utilities, helping to persuade the Public Service Commission to reduce a New York Telephone request by $80 million.
- A suit was filed charging the U.S. Department of Labor with failure to enforce Presidential orders on hiring minority and women workers by federal contractors.
- Resources were focused on actions important to large numbers of consumers, such as a suit against Citibank, the second largest commercial bank in the country, for credit violations that affected tens of thousands of its customers, and a suit for abusive and improper debt-collection practices against AVCO Financial Services of New York, the state's third largest consumer loan company.
- Unprecedented actions against landlords for illegal overcharges in rent-stabilized New York City apartments resulted in refunds to tenants of some $3 million.
- Refunds and restitutions to consumers statewide reached $7.2 million in 1980, up 174 percent over 1979, and total revenue obtained for the state treasury was more than $22 million.
- Criminal enforcement capacity was upgraded to handle a sharp increase in matters referred by other state agencies, to conduct an extensive probe of illegal sweatshops, and to increase action to protect investors against fraud.
- Under new procedures for coordination of all appellate matters by the Solicitor General, the Court of Appeals held for the state as respondent in 86 percent of all cases and reversed decisions appealed by the state in 44 percent of the cases.
- The defense of $6.4 billion in claims against the state resulted in awards through settlements of $15 million, or one-fifth of one percent of the total.
- Despite rising prisoner-litigation caseloads, management improvements resulted in a steady increase in the number of matters handled in this largest category of litigation.
- A new outreach program gave victimized consumers in nearly every county of the state greater access to make complaints.
- A reorganized regional office network expanded capacity to conduct statewide investigations like a probe of milk price-fixing and a survey of overcharges in auto repair.
- New programs provided skills training to newer attorneys and continuing education to experienced staff.
- Computer systems were implemented to centralize information on appeals, speed auditing of charitable organizations, track real estate offering plans, and correlate data on securities broker-dealer registrations; and an agency-wide case management information system moved to final development.

Management has been streamlined by creating three statewide divisions. Shown with the Attorney General are (left to right) Robert Hermann, Public Advocacy; Shirley Adelson Siegel, Appeals and Opinions; and Dennis Allee, State Counsel.

To cope effectively with both growing legal responsibilities and burgeoning numbers of cases, the Attorney General initiated a major reorganization of the Department of Law in 1979 which continued through 1980. This restructuring resulted in a significant increase in the agency's productivity, even though staffing levels and other resources remained substantially unchanged through the end of 1980.

Responsibility for the Department's legal work is now divided among three statewide divisions to define clear areas of responsibility, to improve management and performance accountability, and to assure greater quality control.

The Division of State Counsel is responsible for providing representation to defend suits against the state and its agencies, the governor and other state officials, the judiciary, and the Legislature. The division is headed by the First Assistant Attorney General, and includes nearly two-thirds of the Department's attorneys in Albany, New York City, and the Department's 12 regional offices. The regional offices have been for the first time integrated into a single network whose work is closely coordinated with that of the central bureaus. The division also has responsibility for many criminal investigations and prosecutions on behalf of state agencies.

The Division of Appeals and Opinions centralizes responsibility for coordinating all appellate litigation statewide to facilitate consistency and uniformity in the state's position on legal and policy issues and to monitor quality. Headed by the Solicitor General and staffed by 28 Albany-based attorneys, the division handles directly a large appellate caseload and works closely with other attorneys assigned to appeals. The division is also responsible for the preparation of all formal and informal opinions of the Attorney General and for the Attorney General's statements on state bonds and notes acting in his capacity as the state's bond counsel.

The Division of Public Advocacy brings together under the unified management of the Attorney-in-Chief the many functions in which the Attorney General exercises his obligations to protect the interests of the public as a whole. The division's attorneys enforce statutes which protect consumers against fraud and deception; represent the interests of residential and commercial consumers in utility rate cases; review cooperative and condominium offering plans to insure full and fair disclosure; enforce the securities law barring fraudulent investment schemes and the antitrust statute prohibiting monopolistic and anti-competitive business practices; protect the public

interest against abuses involving charitable entities; take legal action to prevent or clean up environmental and health hazards; and protect against violations of federal or state civil rights laws.

The statewide reorganization was accompanied by major management improvements for the Department as a whole and for its bureaus and offices, the inauguration of new programs of attorney recruitment and training, and significant efforts to upgrade support systems. These changes were based on the findings and recommendations of the Institute of Judicial Administration, a nationally renowned, independent center for the study of legal administration, which conducted a comprehensive survey of the management and operations of the Department during 1979 and 1980.

Initiatives in the Public Interest

As the chief legal officer of the state under the state's constitution, the Attorney General has historically been empowered and required to act to protect the public interest and enforce the law, as well as to defend the state. These basic powers and duties have been exercised over many decades and sustained in major court decisions. In addition, scores of specific legislative acts on a variety of issues have dramatically expanded the role of the Attorney General to protect the public.

This body of public protection legislation has grown rapidly in the last ten years, particularly in the areas of environmental and consumer protection. By 1980, in addition to the basic powers and duties of the Attorney General set forth in the Executive Law, some 700 additional statutes specifically allowed or required the Attorney General to take action in more than sixty major areas.

To improve the Department's ability to fulfill its myriad obligations through significant action on the public's behalf, the Attorney General undertook a number of major initiatives during 1980.

Most significantly, the Attorney General adopted a policy of developing those cases with the greatest impact on the public or the state as a whole. For example, the action brought against the U.S. Bureau of the Census alleging a sizable undercount of the state's population could mean hundreds of millions of additional federal dollars for the State of New York and, possibly, preserve a larger state Congressional delegation.

The Attorney General also directed special attention to those activities which may break new legal ground in establishing or broadening the rights and protections available to large segments of the public. The Department has, for example, expanded its activities extensively in civil rights, bringing four separate anti-discrimination actions in federal court, each of which involves important issues raised for the first time by a state attorney general in a federal forum. And in arguments before the Public Service Commission against rate increases requested by the New York Telephone Company, the Attorney General successfully raised antitrust issues for the first time, which established a major precedent, and which contributed to the commission's reduction of the proposed rate increase.

Left: The Department concentrates its resources on actions with the greatest impact, like the challenge to the 1980 census undercount of the state's population, particularly of inner-city residents. Right: Cooperation with other agencies is essential to such major initiatives as efforts to curb "midnight dumping" of toxic wastes.

In the face of rapidly rising gasoline and home heating oil prices, the Attorney General took major actions to protect consumers, including a suit against the federal energy agency seeking restitution of gas overcharges to New York State residents.

Major lawsuits were brought against Hooker Chemicals & Plastics Corp. and its corporate parents for hazardous dumping of toxic wastes at Love Canal and other sites in Niagara County. These are the largest environmental legal proceedings undertaken anywhere in the nation. Their outcome not only will affect the health and safety of residents of the area, but may establish national precedents concerning toxic waste disposal and corporate liability for the hazards created.

The Department also has responded to emerging legal needs and public priorities by deploying its resources in areas of the law not previously covered adequately. All New York State residents and businesses, for example, are hard-pressed in a period of high inflation by large-scale and frequently unjustified utility rate increases. To assist in carrying out his legal responsibility to represent the public interest in utility rate and energy cost matters, the Attorney General established an Energy and Utility Unit within the Consumer Frauds and Protection Bureau. The unit provides the specialized legal expertise needed to prepare cases in this highly complex area.

In another area, the Attorney General was the first public official to sue New York City landlords for rent gouging. As a result, by the end of 1980, the Department was successful in obtaining more than $3 million in rent overcharge refunds to tenants.

In every area of the state, through a strengthened network of regional offices, the Attorney General stepped up efforts to bring relief to those victimized by fraud and illegality. As part of a new consumer outreach program, Department attorneys visited virtually every county in the state to make the services of the Attorney General available to those with legitimate complaints. The regional offices handled more complaints from the public than ever before, and aided in several statewide investigations. Reports of pervasive milk price-fixing throughout the state, for example, led the Attorney General to undertake a major antitrust investigation into the milk industry with the help of the regional offices.

The Attorney General also sought during 1980 to expand the ability of individuals to take legal action on their own behalf. He supported a bill, passed by the Legislature, which gave consumers the right to bring private actions when they have been victimized by deceptive trade practices. He sought and gained passage of a bill which increased the jurisdiction of small claims courts from $1,000 to $1,500. And to ensure that the judgments of these courts are honored, Department attorneys took legal action against a New York City scofflaw in the auto repair business who had failed to pay several small claims judgments. Further action against similar offenders was anticipated.

New emphasis was given in 1980 to upgrading the Department's criminal enforcement capabilities. The Attorney General appointed an experienced former prosecutor from the Manhattan District Attorney's office to head a reorganized and revitalized Special Prosecutions Bureau. The bureau worked to expand the Department's criminal investigations and prosecutions of white collar crime and to increase the

deterrent effect of its actions. Successful prosecutions of tax fraud and other matters also resulted in the collection of approximately one-half million dollars.

Criminal enforcement activities received increased emphasis in other bureaus as well. The Investor Protection and Securities Bureau successfully prosecuted a number of cases of commodities and securities fraud; the Real Estate Financing Bureau obtained the conviction of major developers for fraud in connection with various offerings of real estate securities; and the Labor Bureau recovered hundreds of thousands of dollars from employers guilty of criminal violations of the state's Labor and Workers' Compensation Laws.

Continuing efforts were made during the year to make further organizational and systems improvements to help Department attorneys deal more efficiently and effectively with growing litigation and complaint caseloads on the public's behalf. The Consumer Frauds and Protection Bureau, for example, was extensively reorganized to improve its ability to manage the different kinds of matters handled by the bureau. Alongside the creation of an Energy and Utilities Unit, the bureau now has three other sections, each with a specialized task: One section mediates more routine complaints, screening them in the process, to spot those cases where litigation might be called for; a second plans and implements major litigation affecting large numbers of consumers; and a third undertakes special projects, such as the investigation and legal actions related to rent gouging.

A major reorganization was begun in 1980 in the Real Estate Financing Bureau, which included the development of a computerized system to track information on the approximately 600 pending cooperative and condominium offering plans, the establishment of specialized sections to deal with registration, enforcement and litigation, and the preparation for promulgation in 1981 of comprehensive filing regulations.

To keep pace with the work generated by the Department's expanding regulatory responsibilities, other new automated systems were introduced. In the Charities, Trusts and Estates Bureau, a computerized recordkeeping system was developed to replace an antiquated manual system for filing the registrations and reports received each year from as many as 25,000 charitable organizations. The system expedites review and audit of these statements to insure that charitable purposes are carried out.

In an important national development in the securities area, the National Association of Securities Dealers established a central computer file of records on securities industry firms and employees accessible by state regulators. The Attorney General persuaded the Legislature to allow use of this system, making possible the use of this computerized file at substantial savings to the state for more than 50,000 documents filed annually with the Department's Investor Protection and Securities Bureau. Computerization will open up possibilities of investigations and enforcement actions previously foreclosed by the inaccessibility of the relevant information.

Finally, the Attorney General sought to minimize unnecessary regulatory burdens on the state's business community. For example, the above-mentioned national computer system for the securities industry, which New York State joined at the Attorney General's urging, permits the filing of one standard form in Washington that can be used simultaneously by New York and any other state which wishes to use the system. Also, a bill proposed by the Attorney General to bring the state's Securities Takeover Disclosure Act into conformity with recent Securities and Exchange Commission regulations was passed, eliminating conflicting requirements between state and federal regulations. And the new Franchise Disclosure Law, which was proposed by the Attorney General and passed in 1980 to protect prospective franchise buyers, provided at the Attorney General's recommendation that statements required by New York be the same as those filed with the Federal Trade Commission to avoid unnecessary duplication.

Effective Counsel for the State

Disputes evolving over public policy and governmental actions are increasingly coming into the courts for resolution. A nationwide trend, this kind of litigation has resulted in a mushrooming of caseloads for the Attorney General's office. In representing state agencies and officials, the Law Department has had to contend not only with larger numbers of cases but, increasingly, with issues of great complexity having major ramifications for state programs and fiscal policy and the operations of state agencies. Claims litigation also continues as an important Department responsibility involving defense of the state against claims amounting to billions of dollars each year.

A few recent cases illustrate the scope and importance of matters handled by the Attorney General. In a challenge to the constitutionality of the present system for funding public education, for example, an

Most Department lawyers work on the huge caseloads involving representation of state agencies and officials. Richard Rifkin oversees the Division of State Counsel's New York City bureaus.

adverse ruling could fundamentally alter future school-aid funding formulas and increase payments from the state treasury by $3 billion or more.

In 1980 the Attorney General's office also defended against challenges to statutes designed to alleviate confusion over the setting of municipal property tax assessments. Millions of dollars in potential refunds from municipalities are at stake in the outcome of these cases.

In the period following the 1975 consent decree affecting the care of patients in the state institution for the mentally retarded on Staten Island formerly known as Willowbrook, numerous lawsuits were commenced involving issues of the care and treatment provided at other state-run facilities. These issues potentially involve hundreds of millions of dollars in state expenditures.

And, in another series of 1980 cases, the office defended against an attack by major oil companies on the constitutionality of a state tax on oil company gross receipts, the revenues of which are earmarked to help fund mass transit.

Major issues such as these, which affect the constitutionality of statutes, the budget process and revenue sources, the conduct of state and municipal business and the regulation of the public health and welfare, placed tremendous burdens on the Department's limited resources in 1980. The Department responded to the challenge through continued implementation of management changes and improvements designed to insure effective representation of the state.

Developments in the past few years which account for much of the increase in the numbers of cases include the following:

■ Representation of additional agencies. In 1979, the City University of New York became part of the state university system, and the responsibility for all damage claims and other litigation involving CUNY passed from the New York City Corporation Counsel to the Attorney General. Also, as a result of the state takeover of the administration of the courts, the Department now represents judges and court officials in town, city and county courts across the state, in addition to the judges in the Supreme Court and other New York State courts.

■ Growth of regulatory activity. Legislative action establishing or expanding regulatory authority by state agencies has resulted in significant increases in cases for the Department. For example, during 1980, two new measures were enacted providing protections for workers. One establishes occupational health and safety standards for government employees not covered by the federal Occupational Health and Safety Act and the other requires employers to notify employees of the presence of hazardous substances in the workplace. The State Departments of Labor and Health will administer the laws and refer matters for litigation to the Attorney General, creating a substantial new caseload for Department attorneys.

■ Expanded representation of public employees. Section 17 of the Public Officers Law provides for the indemnification and defense of all state officers and employees who are sued individually for actions taken

in the normal performance of their official duties. A 1978 revision of section 17 expanded state responsibility to defend such cases. And in 1980, as a result of court decisions broadening the grounds for legal action against state employees, various public benefit corporations and independent agencies sought legislative approval to have state indemnification and legal representation extended to their employees under section 17. The Legislature approved this extension to the State Housing Finance Agency and the Energy and Research Development Authority, and other agencies indicated they would seek such extensions next year.

■ Rapid growth of federal suits against state employees. Following the Civil War, Congress enacted section 1983 of Title 42 of the United States Code to allow individuals to sue state and local government employees for violations of their civil rights. Over the years, the courts have interpreted this provision to apply to a broad variety of alleged deprivations of constitutional rights. Then, in 1980, in *Maine* v. *Thiboutot*, the United States Supreme Court held in a landmark decision that section 1983 provided a remedy for alleged denial of rights under any federal laws resulting from the actions of a state or local official.

This decision will substantially increase the volume of federal actions because it allows state employees to be sued for actions taken in the performance of their duties, if the state activity involved is affected by a federal law or funded pursuant to a federal statute. Beneficiaries of state social welfare programs, for example, will be able to seek a remedy in federal court for some grievances related to programs linked by mandate or funding to federal laws. A significant increase in federal litigation is also expected in the areas of environmental protection, education, labor, mental health and housing, as a result of the Court's decision.

■ Extension of grounds for awarding attorneys' fees. Closely linked to the expanding use of section 1983 is the growth of awards of attorneys fees. The Civil Rights Act of 1964 authorized the recovery of attorneys' fees for the prevailing party in certain actions. In 1976, Congress extended the award of reasonable attorneys' fees to the successful parties in all actions against state and local governmental agencies brought under section 1983, as well as other provisions of law. With the extension of the applicability of section 1983 actions by the Supreme Court in *Thiboutot*, the opportunity for the collection of attorneys' fees was greatly enlarged. Federal suits for fees can lead to a doubling of caseloads. After disposition of an action on the substantive matter at issue, a second, separate proceeding is often necessary to determine fair awards of attorneys fees.

By the end of 1980 there were more than 400 pending cases which could involve the payment of fees by the state. Future payments could cost the state millions of dollars annually. The magnitude of the problem is illustrated by the litigation over payment of attorneys' fees resulting from the Willowbrook consent decree in which the prevailing parties are seeking more than $2 million in fees.

Peter Yellin (right), who supervises the Albany bureaus and regional offices of the Division of State Counsel, confers with Real Property Chief Horace Flowers.

■ The greater availability of legal services. The growth of legal services funded both by the state and federal governments and by a variety of private organizations has made free counsel widely available. Lower-income people who apply for public benefit programs can get professional help from community-based legal services organizations. Prisoners in correctional institutions now have the assistance of publicly funded legal services groups to bring actions ranging from claims of denial of prison amenities to petitions for release. The increased facility in bringing suits has contributed to the increase of more than 500 percent in prisoner-related actions between 1975 and 1980.

But the increase in the volume of litigation is only one cause of an increasing burden on the Department's staff and resources in defending state agencies and officials. Growing complexity of the caseload brought about by the evolution of the law and the changing litigation environment is also a major factor. Class actions and section 1983 suits, for example, often require extensive research and discovery time.

In one case involving the quality of care in certain state mental hygiene institutions, Department attorneys have had to familiarize themselves with the detailed operations of more than 20 institutions. In several cases challenging state reimbursement rates for Medicaid, Department attorneys have had to master a complicated reimbursement formula and evaluate its application to the circumstances of each institution involved. And in prisoner-related litigation, with fewer actions brought by individuals without counsel and more plaintiffs represented by legal services lawyers, judicial attention has heightened. Department attorneys must prepare more complicated briefs and spend more time to prepare successfully for motions and trials.

Moreover, as litigation caseloads have mounted, judicial pressure has increased to reduce the amount of time allowable for bringing appeals and in limiting stays of actions in the case of adverse rulings to the state. Both of these developments have added to the Department's burden. Attorneys with caseloads far in excess of those handled by private-sector lawyers (New York City Litigation Bureau attorneys, for example, carried an average of approximately 100 cases in 1980, and attorneys in Buffalo were carrying from 250 to 300 prisoner cases) have come under pressure to increase the quality of their work at the same time as they have been coping with an unprecedented increase in its quantity.

Beginning in 1979 and continuing through 1980, the Attorney General implemented major management changes and improvements designed to maximize use of the Department's limited resources in meeting the dual challenge of quality and quantity in litigation for the state.

By centralizing responsibility for representation of state agencies and officials in the new statewide Division of State Counsel, relations with client state agencies are now closely coordinated, staff resources are more efficiently allocated to the areas of greatest need, and uniform standards of performance have been established to improve accountability.

Similarly, by centralizing responsibility for monitoring and coordinating appellate litigation in the new statewide Division of Appeals and Opinions, procedures have been established to insure uniformity and consistency of the state's legal positions, approaches have been set up to provide trial-level attorneys with assistance and advice on complex issues, and standards have been set to require performance accountability on appellate matters.

By truly integrating the operations of the Department's 12 regional offices into those of the Albany and New York City-based central bureaus, the exchange of information, experience and expertise has increased dramatically and the Department's capabilities to take statewide actions have been significantly enhanced.

Other steps taken to improve management of the Department's caseload on behalf of the state include establishment of specialized claims bureaus in New York City and Albany; consolidation of various collections matters in a specialized Civil Prosecutions Bureau in Albany; creation with the assistance of federal funds of a Prisoner Litigation Unit to handle prisoner-related matters in a 10-county downstate area and to coordinate similar activities elsewhere; and establishment of a new Social Services Unit in the New York City Litigation Bureau to represent the state in hundreds of cases each year involving the administration of laws and regulations governing public assistance and Medicaid.

Also, a team approach to litigation was introduced in the 65-attorney New York City Litigation Bureau, which handles many of the state's major cases. Each team is headed by a section chief with extensive experience and includes some seasoned attorneys who help train the newer staff. This approach has provided closer supervision of cases and better allocation of

work, as well as regular consultation among attorneys on complex cases.

Along with these organizational moves, the Attorney General set up for the first time a Department-wide legal training and development program.

Finally, improvements in support systems — described in detail below — which were implemented or in the planning stage during 1980 are especially important to deal with the huge caseload problems related to representation of state agencies and officials.

The Attorney General has also sought to provide more effective representation to state agencies by developing closer working relationships with them. Improved cooperation has produced important results in many areas such as the following:

■ A reduction in the use by state agencies of expensive outside counsel instead of Department attorneys. Agency proposals for retaining outside counsel are now closely monitored and detailed consultations are held to determine if and when the use of outside counsel is appropriate.

■ Better working relationships on matters involving agencies' administrative responsibilities and Law Department litigation and enforcement responsibilities. For example, the Special Prosecutions Bureau has improved referrals of criminal matters from the State Tax Commission and other agencies, resulting in a significant increase in investigations and prosecutions in 1980.

■ Closer ties in developing major cases. The several suits against the Hooker Chemicals & Plastics Corp. and its parent corporations involving alleged toxic waste dumping, for example, were made possible by the integrated effort of staff from the Departments of Law, Environmental Conservation and Health.

■ The development of structured inter-agency groups to tackle major problems. A new task force to investigate the problem of sweatshops and take appropriate action was set up which includes the Law Department's Labor and Special Prosecutions Bureaus, the Department of Labor and the Workers' Compensation Board. And to maximize effectiveness in detecting and imposing sanctions on "midnight dumpers" who surreptitiously dispose of toxic chemicals and other hazardous wastes, a task force was formed which includes the Law Department's Environmental Protection and Special Prosecutions Bureaus and the Department of Environmental Conservation.

These and other management and operational changes made possible a high degree of success during the year in providing quality legal representation to the state in the face of the burgeoning workloads. At year's end, however, serious challenges remained to be met. A major problem to be addressed in 1981 is the long-standing serious inadequacies in the Department's support staffing and systems. These shortcomings have imposed a major constraint on the Department's capacity to handle the heavy caseloads involved in representing state agencies and officials.

Statewide Coordination of Appeals

As the amount of litigation involving significant policy issues has grown, the Department's appellate litigation has increased commensurately and become more complex and demanding. To improve the Department's handling of matters before the state and federal appellate courts, the Attorney General created a statewide Appeals and Opinions Division headed by the Solicitor General.

Control over appellate litigation, formerly scattered among various bureaus and offices of the Department, is now centered in the Solicitor General and the new division. Procedures have been put into effect to monitor all matters on appeal and closely coordinate positions taken. These procedures ensure both quality control and uniformity on legal and public policy issues.

Briefs are now reviewed by division attorneys with extensive appellate experience; those prepared for the State Court of Appeals and the United States Supreme Court are reviewed by the Solicitor General. Centralized review is designed to encourage uniformity in style, compliance with court rules, consistency in approach on similar issues, and to improve substantive content and quality. In addition to review of briefs, the development of arguments at each step in a case is discussed and analyzed, and many oral arguments are audited. There is now also greater scrutiny of litigation at the trial level and of lower court decisions to identify significant issues and determine which cases merit further appellate action.

To facilitate coordination, the Department has developed a computerized information system covering the approximately 1,000 cases pending at any one time in the appellate courts. The system, which became fully operational in 1980, is a valuable research

Solicitor General Shirley Adelson Siegel, who coordinates all appellate litigation, personally appears before the Court of Appeals and other appellate courts to argue cases of unusual importance.

tool and an aide to management of the appellate caseload.

One indicator of the effectiveness of these procedures is that in 1980 the Court of Appeals held in support of the Department's position in more than 86 percent of those cases in which the Department defended lower-court decisions as respondent, compared to a 75 percent average for all respondents. The Department also won reversal in 44 percent of those cases decided adverse to the state's position in the lower courts, compared to 25 percent for all appellants.

The Solicitor General acts as a liaison on behalf of the Attorney General to the Court of Appeals. When, for example, the court published a proposed revision of its Rules of Practice in 1980, considerable attention was given to it by attorneys engaged in appellate practice under the supervision of the Solicitor General, and their comments were consolidated and transmitted to the court.

The Solicitor General also plays a special role with respect to the United States Supreme Court. The Attorney General may submit a brief to the Court in any case which may involve a state interest and in which the state should make its views known. The Solicitor General monitors the Supreme Court docket to identify such cases. In 1980, the Department submitted *amicus* briefs in support of the eligibility of inmates of publicly administered mental health institutions to receive monthly stipends under the federal Supplemental Support Income Program; in suppport of the affirmative action plan adopted by the California Department of Corrections for the hiring of guards; in support of the First Amendment right to diversity in radio programming argued by listeners of radio station WNCN; and against a retaliatory tax on out-of-state insurance companies.

In addition, the Attorney General joined in *amicus* briefs prepared by Attorneys General of other states in support of televised trials; in support of open-space zoning; against the waiver of immunity by contract with providers of health care services; and against simple negligence as a basis for a section 1983 judgment against state officials.

The Attorney General also acts as intervenor or *amicus* in support of the constitutionality of state statutes challenged by a party in private litigation. State law and federal court rules require that notice be given

to the Attorney General whenever such a constitutional challenge is made. The Solicitor General is responsible for the dozens of such interventions that take place each year. In 1980, the Attorney General intervened in a number of important cases of this kind.

In 1979, the United States Supreme Court decided several significant cases involving marriage and family law. The decisions in two cases altered traditional notions about legislative power to treat parental or spousal rights and duties differently on the basis of sex. In *Caban* v. *Mohammed*, the Court invalidated a New York statute that permitted unwed mothers, but not unwed fathers, to block adoption of a child by withholding consent. Another case, *Orr* v. *Orr*, nullified an Alabama statute that required husbands, but not wives, to pay alimony upon divorce.

In response to these decisions, numerous constitutional challenges were brought to attack other statutes where the Legislature made any sex-based distinction as to the rights or duties of parents or spouses. The Attorney General intervened in some of these cases to defend the Legislature's power to enact family laws and domestic relations statutes. One such case, *Hickland* v. *Hickland*, was successfully defended on the basis that, rather than eradicating the provision for alimony, the law should be read in a gender-neutral manner.

In another area, one major case involved potential municipal liability for tax refunds based on methods of assessment previously declared illegal. New state statutes had been passed to alleviate additional burdens on the municipalities, and the Attorney General intervened to have the laws declared constitutional when they were challenged by taxpayers seeking refunds.

As legal advisor to state agencies on questions of law, the Attorney General issues formal opinions relating to proposed agency actions, determining whether they are constitutional and delineating the extent of agency powers under state law. It is also the practice of the Attorney General's office to issue informal opinions to local officials on questions concerning the extent of local authority under existing state and federal statutes. Over the past two years, the Attorney General consolidated the work of preparing all formal and informal opinions in the Division of Appeals and Opinions. This has enabled the Department to develop growing expertise in pertinent areas of law.

In 1980, the Attorney General issued 40 formal opinions. Among the more important holdings in these opinions were: that the state, as an employer, is subject to the Human Rights Law; that libraries and museums chartered by the Board of Regents are subject to the reporting requirements of the Charitable Solicitations Act; that state agencies may not enter into formal contracts with each other; that the provision of the Disability Benefits Law limiting pregnancy benefits is superseded by other state and federal civil rights laws; that a former state employee appointed to a position previously held is entitled to the salary rate reflecting length of service in the former position; and that police organizations raising funds from the public by use of professional fund raisers must register under the Charitable Solicitations Act.

The Attorney General also issued 121 informal opinions to towns and municipalities on such matters as whether a locality may require or permit a referendum on issues other than those authorized by state statutes; whether a county may prohibit the sale of beer and soft drinks in non-returnable containers; and whether towns may impose a curfew on juveniles.

The Attorney General also serves as the state's bond counsel in connection with public financing. Under the Solicitor General's supervision, the office renders opinions as to the validity and tax exempt status of all state bonds and notes. The Department is responsible for disclosure to purchasers of these obligations of all pending litigation which, if adversely decided to the state, could have a significant fiscal impact or which could affect the state's ability to finance its operations.

Another responsibility of the Solicitor General's staff is the preparation of opinions of the Attorney General advising the Legislature on the effect of any proposed amendment to the state's constitution upon other provisions of the constitution. In 1980, the Attorney General issued 128 opinions of this kind.

As part of the opinion function, the Solicitor General is also liaison with the Advisory Committee on Ethical Standards. Appointed by the Attorney General and chaired by former N.Y.U. School of Law Dean Robert McKay, the committee assists the Attorney General in making determinations about the conduct of public officials under the State Code of Ethics.

Twelve regional offices constitute a unified network, participating fully in statewide actions. Regional chiefs meet monthly to share information and expertise.

Reorganization of Regional Offices

During 1980, the Attorney General continued efforts to make the Department's 12 regional offices more accessible to citizens and to enable these offices to handle their rapidly growing caseloads more effectively. (See map, inside back cover, for office locations.)

The Institute of Judicial Administration found that over many years the Department's regional offices had developed overlapping jurisdictions that fostered inefficient use of resources; that little monitoring or coordinating had been done of the work of the offices; that staffing in many cases had not kept pace with expanding caseloads; that plant and equipment was often inadequate; and that communications among the offices and between the offices and the central bureaus had been infrequent.

Relying on the Institute's findings and the results of a comprehensive internal analysis of each office, the Attorney General initiated a series of reorganization steps designed to strengthen and improve the regional offices' structure, management, performance and relations to other Department offices.

Office jurisdictions were clarified by eliminating the previous distinctions among types of local offices and carefully delineating the geographic jurisdiction of each office. The appointment of a Deputy First Assistant Attorney General responsible for the regional offices as well as five Albany-based bureaus, created a closer working relationship between the regional offices and the central bureaus. Regional office attorneys for the first time were given access to specialized internal training programs which serve both to improve skills and substantive knowledge and to strengthen working relationships among Department attorneys. Regular meetings of regional office chiefs were inaugurated. These sessions keep regional attorneys abreast of current legal developments throughout the state, enable them to share expertise and information, and allow for closer central management review of their activities.

Through these and other efforts, the regional offices have rapidly become integrated into the operations of the Department.

The reorganization established a working partnership among offices and bureaus on significant statewide cases. In many major actions, improved Departmental effectiveness resulted from the pooling of statewide resources. Examples of such actions include the antitrust investigation into allegations of price-fixing in the milk industry, the investigation of transmission switches in several models of General Motors cars, and the successful effort to stop a Long Island mortgage firm from selling mortgages at inflated interest rates around the state.

Staffing of the regional offices was given greater emphasis, and a major recruitment drive was undertaken to bring in the best possible legal talent. Local

judges, bar association leaders, and members of the legal community were contacted to recruit many outstanding lawyers.

The inadequate physical plants of many of the regional offices also were upgraded. In Rochester, Auburn and Monticello new, improved facilities were opened at more convenient locations. In Monticello, for example, where the office had been located at the rear of a walk-up building, the new office in the heart of the city's business district has made the Department's services far more accessible to the public, as is shown by the 600 percent increase in consumer complaints from 1979 to 1980.

Also, the Plattsburgh office became a full-time facility. This office, which is responsible for cases in a huge three-county area in the northernmost part of the state, had been for many years a part-time operation.

The Consumer Outreach Program, inaugurated in 1979 to bring attorneys from the Department's regional offices to outlying smaller communities, continued in 1980 to make the Department's assistance more widely accessible. Through the cooperation of municipal authorities, who made public space available, Department attorneys were able to assist hundreds of consumers in less-populated areas of the state. By the end of 1980, regular, monthly outreach visits were being made into almost every county of the state.

With the growing success of the Harlem office where the caseload nearly doubled from 489 complaints in 1979 to 950 in 1980, the Attorney General also sought to expand the availability of similar services to other areas within New York City where individuals might have difficulty communicating their complaints to the World Trade Center office. Contact was made with legal services groups located in other boroughs, with a resulting increase in referrals from these offices.

The volume of consumer complaints grew steadily in 1980 throughout the state. At the same time, the organizational, management and training improvements in the regional office network resulted in a widespread increase in effectiveness in dealing with consumer cases, despite the rising caseload. Some offices showed dramatic increases in restitutions obtained for consumers.

In Plattsburgh, where the consumer caseload doubled from 305 in 1979 to 622 in 1980, Department attorneys were able to increase restitutions to consumers tenfold. And in Binghamton, which also experienced a doubling of consumer cases from 1979 to 1980, restitutions also doubled.

The regional offices also developed increasingly effective mediation techniques in dealing with consumer cases. Mediation is often an efficient means of assisting on consumer problems because the Attorney General's office may be able to get results without legal action. In the Albany, Buffalo and Auburn offices, for example, the high volume of complaints relating to auto services were expedited through the creation of working arrangements with automobile dealers in each area who responded to consumer complaints in a more satisfactory manner.

The regional offices also experienced in 1980 substantial growth in caseloads relating to representation of the state.

In particular, the offices with jurisdictions encompassing large state correctional facilities continued to be burdened by a growing volume of prisoner-related litigation. In the Buffalo office, which is responsible for cases at the Attica Correctional Facility, prisoner-related litigation increased by 58 percent over 1979. And the Poughkeepsie office, which is responsible for cases at the new Downstate Correctional Facility at Fishkill and the Green Haven Correctional Facility, one of the largest maximum security prisons in the state, had an increase of 40 percent over the year before.

At other offices, increases in matters relating to the Department of Mental Hygiene were significant. The Auburn office, for example, continued to experience a steady increase in retention hearings and trials. And cases coming to the Watertown office from the St. Lawrence Psychiatric Center located in Ogdensburg continued to mount.

In Buffalo, Poughkeepsie and the other offices which handle claims litigation for the state, the numbers of such cases and the amounts of money being sought have been escalating for some time. Damage claims, in particular, have been growing steadily over the last few years.

To manage these growing caseloads better, the Department took specific steps to improve efficiency, in addition to the overall measures discussed above. For example, where warranted by the caseload, regional office attorneys were assigned to specialized areas of responsibility such as prisoner-related litigation or claims. A federal grant made possible the addition of an attorney to work full-time on prisoner matters in the Buffalo office. And attorneys were

added in Hauppauge and Rochester to enable those offices to take on Court of Claims cases for the first time.

The regional offices also began to take on expanded responsibilities for activities formerly handled by the central Albany or New York City bureaus. They took over criminal prosecutions in their areas of violations of the Labor Law and Workers' Compensation Law. Also, by the end of 1980, regional office attorneys were responsible for prosecuting criminal cases referred by the State Tax Commission, the Department of Agriculture and Markets and other agencies. The Hauppauge office, which previously handled only consumer matters and assisted in cases managed by the New York City bureaus, had by the end of the year also assumed responsibility for defending many of the suits brought against state departments and agencies in Nassau and Suffolk courts, including Court of Claims actions.

The Department inaugurated a comprehensive recruitment and training program. Legal Training and Development Chief Holly Hartstone, shown here interviewing an applicant, directs the new effort.

As a result of the major changes begun in 1979 and brought to fruition in 1980, the Department's regional offices were by year's end a fully integrated network whose work was closely coordinated with that of the central bureaus. Despite ongoing problems in coping with growing caseloads without fully adequate resources, the offices had demonstrated improved effectiveness and greater responsiveness to the needs of state agency clients and the public, alike.

Improvements in Management and Operations

The study by the Institute of Judicial Administration of the management and operations of the Department of Law found that the dramatic growth in caseloads during recent years had not been accompanied by the necessary planning and management controls. With the growth of public protection legislation, the expansion of litigation involving state agencies, and increased regulatory responsibilities, new management initiatives were needed to handle burgeoning caseloads.

In its reports, the I.J.A. recommended the following:

■ Upgrading of planning and resource allocation capabilities. The Department's capacity to provide efficient, quality legal services depends on the ability of top management to develop and implement uniform policies and procedures for establishing long-range goals.

■ Statewide integration of the Department's offices and bureaus. The Department had been managed along geographic lines with separate Albany and New York City operations and more or less autonomous regional offices.

■ Upgrading of the regional office network. These offices differed considerably in the kinds of services they offered, had overlapping or unclear jurisdictions, and only nominally reported to various supervisors.

■ Reorganization of the Department's internal structure. Twenty-three bureaus and 12 regional offices often had similar or overlapping jurisdictions, while those in different geographic areas performing similar kinds of work, such as consumer frauds, trusts and estates, or prisoner-related litigation, had little communication and consultation.

The PROMIS case management information system will track litigation in the first use of this advanced computer system by a state attorney general. Project head Brian Maybee (left), and Administrative Director Albert Singer recently briefed managers on PROMIS implementation.

■ Improved recruitment and training. The Department needed formal recruitment programs to attract highly qualified attorneys, and formal training programs for new attorneys, as well as continuing education opportunities for more experienced lawyers.

■ Creation of section chiefs to provide a closer level of supervision, appropriate compensation for supervisors, and a team approach to litigation.

■ Upgrading of the Department's library and research services. This essential support service needed adequate staff, space and equipment, a substantial infusion of resources for necessary acquisitions and extensive reorganization.

■ The introduction of a computerized case management information system and other systems modernization. Reliance on antiquated manual systems severely taxed the Department's ability to function in a fully efficient manner.

■ A major expansion of support staff including the addition of badly needed typists and other clericals and the introduction of paralegals. Burgeoning workloads had far outstripped the agency's support capabilities, forcing attorneys to devote inordinate amounts of time to routine tasks.

With the aid of the I.J.A.'s findings and recommendations, the Attorney General undertook a series of major Departmental initiatives beginning in 1979 and continuing through 1980 to improve management, increase productivity and upgrade the quality of the agency's work including the following:

■ The reorganization of the Department into three divisions which made possible more comprehensive planning and resource allocation, and improved performance accountability and quality control on a statewide basis.

■ The establishment of an integrated regional office network within the Division of State Counsel, rationalizing jurisdictions, improving communications, and drawing regional attorneys increasingly into work on coordinated statewide projects.

■ Reorganization of bureau responsibilities. Where responsibilities overlapped, bureaus were merged or eliminated. The former Building, Home Improvements and Miscellaneous Frauds Bureau was merged into the Consumer Frauds and Protection Bureau; three bureaus with related responsibilities were merged into the Charities, Trusts and Estates Bureau; and two separate Environmental bureaus in Albany and New York City were consolidated into one bureau with statewide responsibilities.

In some areas, the nature and extent of the Department's responsibilities warranted establishment of new organizational units. Thus, a full-fledged Civil Rights Bureau was set up, a specialized Energy and Utilities Unit was created, and the Albany office was extensively reorganized to define clear areas of responsibility.

■ Implementation of formal recruitment and training programs. A Bureau of Legal Training and Development was established in 1980 and a significant training effort begun. Aided by federal funds obtained

through a program administered by the New York Secretary of State, newer attorneys attended an intensive trials skills training course offered by the National Institute of Trial Advocacy, and work was started to develop the Department's own pre-trial litigation skills program. The Department also conducted its first statewide training conference for nearly 200 Department attorneys from throughout the state, at which experts from within and outside the Department made presentations on recent legal developments and litigation skills, including appellate practice. Also, for the first time, a training conference for some 26 Department personnel involved in consumer protection work was held at Cornell University, focusing on the multiple legal approaches to handling consumer problems. Individual bureaus also implemented training projects tailored to their needs.

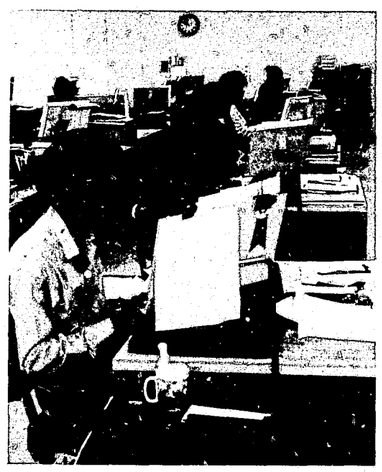
The bureau also was responsible for an aggressive and highly successful recruitment effort in which Department representatives went to 15 northeastern law schools in 1980 to seek the most qualified graduates. By the end of 1980, the Department's ability to recruit experienced attorneys at every level from the private bar and from the public sector resulted in the determination to require a minimum of bar admission and some experience for appointment.

Major emphasis was given in recruiting to affirmative action. The Department sought the assistance of law schools and of minority, women's and other specialized bar groups to reach as many qualified candidates as possible. As a result, of the 201 persons appointed as assistant attorneys general during 1979 and 1980, 12 percent were minority-group members and 46 percent were women.

The Attorney General also issued a number of executive orders within the Department to counter discrimination and upgrade the Department's professional capabilities. These included orders which prohibit discrimination in all aspects of employment; set up a unique internal complaint review process; prohibit the conduct of official Department business in private establishments that discriminate; prohibit sexual harassment on the job; and bar outside professional practice.

Of great significance to recruitment, the Attorney General obtained a major revision of attorney salaries. While the Department could offer new attorneys just admitted to the bar $16,800 in early 1979, the salary was $21,037 as of January 1, 1981. Salary levels for attorneys with more experience rose commensurately, making the Department significantly more competitive with other public and non-profit employers.

In addition, a system of formal performance evaluation of attorneys was introduced. Semi-annual performance ratings form the basis for salary increases and other career development opportunities. The plan makes possible the rapid advancement of outstanding attorneys.



Inadequate and antiquated support systems are giving way to major improvements such as these state-of-the-art word processors introduced in 1980.

Shortcomings in research capabilities are being met by lawyer-librarian Thomas Heitz (left), the new Chief of Library Services, who has moved to upgrade collections and introduce computerized legal research.

■ Closer supervision through the establishment of sections and appropriately compensated section chief positions within bureaus and inauguration of the team approach to complex litigation. Better supervision means greater performance accountability, increased productivity and improved quality. In addition, the creation of supervisory positions at the section level offers a career development opportunity for more experienced attorneys.

■ Revamping and upgrading of the Department's library and legal research system. As a first step, the library was placed under the Solicitor General to provide management by a top agency official with statewide responsibilities and extensive knowledge of the working needs of the lawyers engaged in the Department's unusually varied practice. Second, a new, dynamic and able chief of library services was appointed, a lawyer-librarian with responsibility for direct supervision of all library and research services. Third, a modest, initial infusion of resources for badly needed acquisitions was made, with emphasis on upgrading the regional office libraries. And, for the first time in the Department's history, an automated legal research system was installed in Albany and New York City.

■ The development of a computerized case management system and other systems improvements. With the award in 1980 of a $233,000 federal grant from the Law Enforcement Assistance Administration to supplement a state appropriation, the Department moved forward on the development of a system that will track the approximately 35,000 litigated cases handled by the Department, as well as non-litigation matters, and provide a wide-range of information critical to management decision making. The system, which uses a modified version of the Prosecutors Management Information System (PROMIS) developed by the Institute for Law and Social Research, will be operational in the first pilot bureau in 1981. After this it can be implemented agency-wide, if the necessary resources are available. The operation of PROMIS in the office will serve as a model that can be replicated by other state attorneys general.

Other computer systems — described above — were implemented to aid specific operations in Appeals and Opinions, Charities, Trusts and Estates, Real Estate Financing, and Investor Protection and Securities.

■ Introduction of the first "state-of-the-art" word processors in critical typing support locations. Video display typing systems were installed on a trial basis with results indicating substantial improvement in productivity and flexibility. A major program for replacement of obsolete equipment by new high-technology word-processing units is planned for 1981. This will have an enormous positive effect on the efficiency and productivity of this most basic support service for Department attorneys.

■ Establishment of new paralegal positions. Although no significant change in support staff levels was achieved during 1980 due to inadequate budget resources, a small number of paralegal positions was authorized. These paralegals are beginning to handle some of the many more routine tasks previously performed by attorneys, allowing the attorneys more time to devote to the work which demands their specialized training and skills.

At the close of the year, levels of support staffing remained seriously inadequate, but plans for substantial enlargement of support capabilities during 1981 were being made.

Management of the Attorney General's responsibilities to protect the public is centralized under Public Advocacy Division Chief Robert Hermann (right) and Deputy Chief Scott Greathead.

Consumer Protection

Since the 1960s, the Attorney General's responsibilities to protect the public in the retail marketplace have expanded enormously. The consumer protection section of the Executive Law has been repeatedly amended to give the Attorney General broader authority to uproot patterns of fraud and illegality, to redress actions which are not only illegal but unconscionable, and to seek restitution and damages.

The office's mandate was also significantly broadened during the 1970s through passage of numerous statutes to redress abuses within specific industries. The Debt Collection Procedures Act (1971), the Fair Credit Billing Act (1973), the Mail Order Merchandise Statute (1974), the Mobile Home Warranties Bill (1975), the Performing Artists Law (1977), and the Price Gouging and Truth-in-Storage Laws of 1979 are typical examples.

As a result of these increased responsibilities, the Attorney General has taken action both to streamline the processing of consumer cases and — through increased litigation — to improve the Department's ability to deter unlawful conduct.

As a result, in 1980, the office was able to obtain $7,192,727 statewide in restitution of both goods and services for consumers, and to bring a series of significant legal actions against major violators of the consumer protection laws.

Credit and Lending Services

With the growth of the credit card industry and the extension of consumer credit generally, the abuses have grown. As consumer complaints related to credit mounted, attorneys in the Consumer Frauds and Protection Bureau focused on demonstrating patterns of abuse by major lending institutions, and several precedent-setting actions were commenced.

The Attorney General brought suit against Citibank, the nation's second largest commercial bank, charging that the bank had illegally changed

the terms of two of its credit programs. After interest rates were raised in March, the bank imposed the higher rate on prior balances, as well as on new loans made when consumers used their credit line, which was in violation of the state's usury, banking and fraud laws.

Patterns of abuse were also uncovered among a number of debt collection firms. While deceptive collection practices have come under greater control due to new federal and state laws, individual companies continue to engage in crude and unlawful harassment of consumers.

Having received complaints from throughout the state concerning AVCO Financial Services of New York, the third largest consumer loan company in the state, the Attorney General launched a major investigation into AVCO's debt collection practices. Court action was instituted against AVCO under the New York Debt Collection Procedures Law — only the second such litigation under this statute — charging that AVCO employees threatened debtors with death, physical injury or loss of reputation, and made abusive and obscene phone calls to debtors and their families, friends and employers.

During 1980, the Department also brought the first court case under the state's Plain Language Law. The action challenged the readability of the Lincoln Savings Bank's safe deposit rules. After a robbery at a Lincoln branch in which 287 safety deposit boxes were broken into and looted, the Attorney General charged that, as a result of the unreadable sections, key provisions were concealed and consumers left unprotected. The case was settled when the bank agreed to revise its agreement form and to provide additional disclosures.

Auto Sales and Repair

Auto sales and repair problems are a major source of complaints received by the Department, particularly in the regional offices. In response to these complaints, the Attorney General placed increasing emphasis on investigative efforts and legal actions on behalf of large numbers of consumers.

In 1980, the Attorney General launched a statewide investigation into allegations that General Motors had installed an undersized and inadequate transmission in full-sized cars built during the last four model years. The Department had received more than 2,500 complaints from New York car owners that these faulty transmissions required premature repair, typically costing about $450. The Attorney General is asking restitution for these customers, who have lost more than $700,000 dollars to date.

In another case, General Motors agreed this past year to settle an action on behalf of 9,500 New Yorkers who purchased 1977 Oldsmobile, Pontiac and Buick cars equipped with non-matching engines. The company agreed to make approximately $200,000 in restitution to customers for engine repairs already

Effective consumer protection requires coordinated statewide efforts, like the probe which revealed a pattern of excessive billing in auto repair shops.

made, to repair those malfunctions which still exist, and to pay $40,000 in costs to the state.

Department attorneys also cracked down on the practice by some auto dealers of "bumping up," or raising the agreed-upon sales price of a vehicle between purchase and delivery. Attorneys in the Albany office moved against a Delmar Honda dealer for charging customers for artificially inflated transportation fees and unwanted rustproofing and polyglycoating. A court order was obtained permanently barring the dealer from charging for these excess or unwanted services and ordering restitution to all defrauded customers. And in Buffalo, action against a Buick dealer for illegally raising prices on delivery was successfully concluded with an order for restitution and a penalty.

In New York City, the Consumer Frauds and Protection Bureau reached an agreement with the American distributor of Toyota cars under which the company will correct misleading advertising about the cars which are actually available to consumers. Because of the company's distribution and allocation system to dealers, car buyers had found themselves charged more on delivery than they had agreed to when they signed purchase agreements. Under the agreement, victimized customers also received $15,000 in refunds.

Faced with an alarming increase in complaints about overpricing in auto repair, the Attorney General initiated a statewide probe into repair shop practices with the cooperation of the Department of Motor Vehicles. Investigators examined 408 invoices in 21 repair shops where charges were derived from flat-rate manuals. The investigation revealed that 56 percent of all customers were overcharged under this system, because the actual time for the work required was less than that stated in the industry manuals. Statewide, it is estimated that New Yorkers are being overcharged $73 million annually.

To combat this practice, the Attorney General proposed legislation requiring disclosure of the methods used in calculating labor costs and limiting the customer's charge to the rate for the actual time involved or the rate computed by the flat-rate manual, whichever is less.

Consumer Protection Bureau Chief Melvyn Leventhal (left) heads a unit which takes major actions to help large numbers of consumers. $7.2 million in refunds and restitutions was obtained for consumers in 1980.

Some moving and storage firms failed to comply with the new Truth-In-Storage Law, enacted at the Attorney General's request, and enforcement action began in 1980.

The public as a whole benefits from the Attorney General's antitrust actions such as the statewide probe of milk price-fixing. Here, Antitrust Bureau Chief Lloyd Constantine (left) and bureau attorney Alice McInerney discuss the milk case.

Milk Price Fixing

As a result of complaints from milk retailers and media reports concerning possible anti-competitive practices in the milk industry, the Attorney General commenced a statewide antitrust investigation into alleged price fixing and other illegal practices in the milk industry. Among other things, the investigation sought to uncover whether there were illegal agreements among milk wholesalers to maintain milk prices at above market levels, and whether retailers were being forced to accept this practice. The Department's regional offices cooperated, gathering information and evidence from industry sources, retailers and the public.

The Attorney General also launched a related investigation into possible antitrust violations or other irregularities in public bidding for school milk contracts.

Olympic Game Refunds

A major case arose out of the 1980 Lake Placid Winter Olympics. A number of customers paid for tickets in advance but could not obtain the tickets in time to attend the events. Others sent in payments for tickets for events that were already sold out. Due to transportation tieups at Lake Placid, many ticket holders could not attend the events they had paid to see. The Attorney General's Plattsburgh and Albany offices were able to help many ticket holders prior to and during the events, but a substantial number of cases remained unresolved after the events were over.

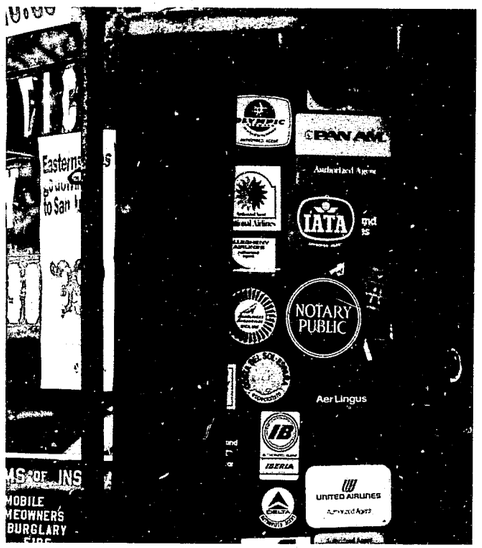
Through the efforts of the Department's attorneys in both Albany and Plattsburgh, a settlement was reached in which the Lake Placid Olympic Organizing Committee agreed to pay $1.5 million in both refunds and interest on the delayed refunds.

After the President urged a boycott of the 1980 Summer Olympics in Moscow, many New Yorkers who had pre-paid their travel costs but chose not to go were unable to get refunds. The Attorney General's office intervened and recovered more than $120,000 in refunds from the insurance company which had provided the trip cancellation insurance. The Department also sought assistance from the White House in recovering the cost of tickets for those who chose not to attend and participated in a class action suit to obtain refunds.

Travel and Recreation

Failure to provide promised services led to a number of important cases in the travel and recreation industry. A joint investigation by the Attorney General and the New York City Department of Consumer Affairs uncovered massive fraud in the operation of New Horizons Unlimited, a travel agency which had declared bankruptcy. Because the company owed approximately $658,000 to more than 1,300 persons throughout the nation, the Attorney General persuaded the U.S. Bankruptcy Court to authorize suit against the company. Subsequently, the Attorney General's action led to a court order granting restitution and permanently barring the company's principals from doing business in New York State.

In Albany, refunds totalling $5,000 were obtained for customers of a travel agency which had failed to deliver promised tours or refunds. The com-



Travel and leisure activities give rise to many complaints. Most travel and leisure industry firms operate properly, but some fail to deliver services or make refunds.

pany was required to post a $50,000 performance bond before doing any further business in New York State. In New York City, when the promoter of a health club failed to open the club as promised or to return deposits, the Department commenced court action seeking to apply certain assets of the firm to refunds. The matter was pending at year's end. And in Binghamton, after a pilot training school went out of business, Department attorneys obtained $10,000 to reimburse students who had paid for but not received lessons.

Because the level of complaints concerning the travel industry remains consistently high, the Attorney General proposed legislation which would require the registration of travel agents and the creation of an industry fund to reimburse consumers who fail to get services which they have paid for. Another bill proposed by the Attorney General, to prohibit travel services from placing a "credit hold" on a consumer credit card account without obtaining the consumer's consent, was passed by the Legislature in 1980.

Moving and Storage

In response to persistent and widespread complaints about overcharges in the moving and storage industry, in 1979 the Attorney General drafted and the Legislature passed a Truth-In-Storage Law. For many years, warehouse operators had a system of "lowballing" estimates, quoting charges that were often much lower than what customers had to pay once the goods or furniture had been removed to a warehouse. Under the new law, a written contract estimating costs must be presented before any goods can be received for storage, and the final price charged must be within 10 percent of that estimate.

In 1980, the Attorney General began an industry-wide probe of moving and storage owners and operators to insure industry compliance and found widespread non-compliance with the new law. Where firms failed voluntarily to change illegal practices, attorneys of the Consumer Frauds and Protection Bureau began preparation for court action.

Consumer Frauds Bureau attorneys also won a court judgment against a moving company which had promised to deliver the possessions of 70 families from New York to Puerto Rico but, instead, abandoned them in Florida. Under the court order, the Attorney General arranged free shipment and delivery to the rightful owners, and the company was barred from doing business in New York unless it got all the requisite federal, New York and Puerto Rico permits.

Other Major Actions

Complaints about mail order firms which fail to provide refunds for unshipped merchandise make up one of the largest categories of complaints to the Department of Law in every area of the state. In 1980, the Attorney General for the first time invoked the state's Mail Order Merchandise Law against an out-of-state company. On behalf of 4,000 victimized customers, court action was taken against Camalier & Buckley, Inc., a well-known Washington, D.C. retail chain, which had licensed its name to a New York mail order company that failed.

In another typical action, a court order was obtained by attorneys in the Department's Albany office requiring an Oneonta manufacturing firm to pay $25,000 in restitution for undelivered goods. And in

Long Island, an Oceanside firm which failed to make delivery of expensive electronic equipment was ordered to pay a civil penalty and to provide restitution to its customers.

Responding to health warnings by the U.S. Food and Drug Administration concerning the dangers of sun-tanning salons, the Department undertook a field survey of the industry to determine compliance and, where appropriate, took legal action. As a result, agreement was reached with several salons to display the appropriate warnings, to post instructions for the proper use of tanning equipment, to provide goggles, and to screen out individuals most susceptible to harm.

In another case involving health hazards, the Department closed down the Long Island firm, Hair Discovery Center, also known as Hair Labs, Inc., for providing synthetic hair implantations as a supposed cure for baldness. Department attorneys charged that the firm's claims were fraudulent and its services dangerous to health and illegally performed by non-physicians.

In Rochester, Department attorneys shut down two high-pressure bulk meat sale operations which used "bait and switch" tactics. The two firms advertised sides of beef at low prices, but the advertised beef was of exceedingly poor quality, and consumers were pressured into buying much more expensive meat. The firms also failed to disclose the actual per-pound cost of the meat. An investigation begun in 1979 with the cooperation of the Monroe County District Attorney's Office resulted in 1980 in a conviction for fraud against Block and Kleaver Inc. and a guilty plea of false advertising by Meat City, a Rochester subsidiary of the Reiffton Beef Company. Close to $15,000 in restitution was obtained for nearly 300 customers who had been victimized, and Reiffton Beef was barred by court order from such practices in their other outlets.

In a case involving misrepresentation in door-to-door sales, Consumer Frauds Bureau attorneys obtained $34,000 in refunds and credits for more than 200 New York veterans. The veterans had been misled into believing that they could obtain "free" graves from the Forest Green Park Cemetary Association in New Jersey, which falsely held itself out as endorsed by the Veterans Administration.

The Department also cracked down on door-to-door sales merchants and others around the state who provide services requiring contracts but who fail to alert customers to their right to cancel the contracts within three days. In the Albany and Binghamton areas, for example, 2,000 members of two health spas were informed of their right to cancel their contract under the newly passed Health Club Services Act.

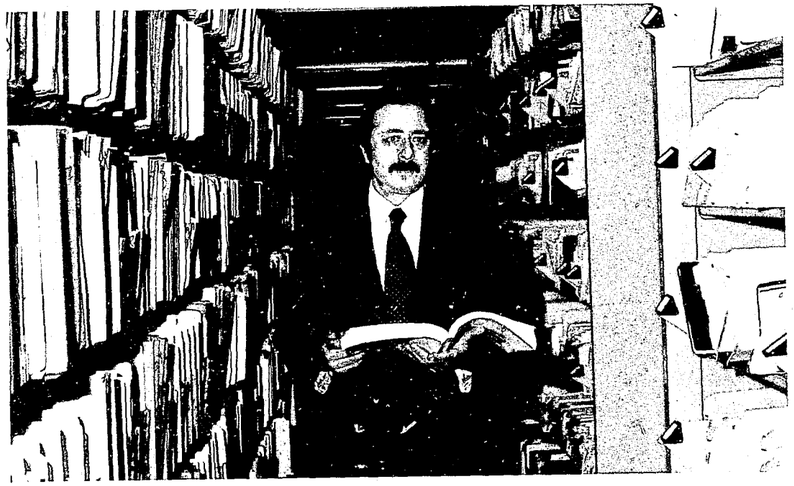
The Department also received numerous complaints about paid-in-advance services which the potential suppliers fail to deliver. In one case, the Department recovered approximately $24,000 in restitution for nearly 1,500 consumers who had subscribed to *At Home* magazine, which then failed to publish on a regular basis as promised.

Mediation

The Department of Law receives thousands of consumer complaints each year which it resolves satisfactorily through the mediation process. The Consumer Assistance Unit of the New York City Consumer Frauds and Protection Bureau obtained, for example, an estimated $800,000 in refunds, replacement merchandise or services for close to 5,000 consumers. A typical case involved a consumer who bought a refrigerator from a retail outlet in Brooklyn, only to discover cracks in the freezer. After months passed and the store failed to make the proper repairs, the Attorney General's office intervened, and was able to get a new refrigerator for the consumer.

Most of the complaints received by the Department concern faulty or undelivered merchandise or services. In the Harlem office, dozens of complaints about the delivery of damaged furniture were resolved through negotiations with furniture dealers who agreed to procedures for quick replacement or repair. And in the regional offices throughout the state, hundreds of complaints about automobile dealers or repair services were resolved through the Department's efforts to obtain refunds, replacement vehicles, or the necessary adjustments or repairs.

In the area of travel and recreation, many complaints also were disposed of satisfactorily through mediation. The Monticello office obtained refunds from several local hotels for travelers who had cancelled their reservations within the required time limit but had been unable to get their money back. In Utica, when an out-of-state health club closed without warning, the Department arranged for a local hotel to continue the services contracted for by the club members. And when a theater in the Buffalo area closed in mid-season, the Buffalo office arranged to have tickets honored by the new owners in an up-coming season.



With co-op and condo conversions up a staggering 800 percent since 1976, Real Estate Financing Bureau Chief Robert Robbin began to implement major management improvements to deal with the heavy and rising workload.

Tenant, Homeowner and Homebuyer Protection

In this period of high inflation, tight money and apartment shortages, the Attorney General put increased emphasis on the Department's role in enforcement of both the State Emergency Tenant Protection Act and the New York City rent stabilization laws.

Apartment Rental

For the first time in the history of the Department of Law, the Attorney General ordered a large-scale investigation of rent overcharges and became the first elected public official to sue New York City landlords for rent gouging.

As a result, by the end of 1980 the Attorney General's Consumer Frauds and Protection Bureau was successful in obtaining more than $3 million in rent overcharge refunds for more than 20,000 tenants in Manhattan, the Bronx, Queens and Brooklyn. In one case involving Carol Management Company, 8,000 apartments in 50 buildings were affected, resulting in refunds in excess of $1.2 million.

Because of the persistent pattern of abuse uncovered within New York City, the Attorney General ordered the probe extended to Westchester and Nassau Counties with the cooperation of the State Division of Housing and Community Renewal. In Westchester, bureau attorneys are investigating landlords who failed to comply with a county rent guidelines resolution, which requires submission of detailed information before raising rents in stabilized apartments.

The Consumer Frauds and Protection Bureau also handled more than 2,000 cases of mishandled apartment rent security deposits. Department attorneys tracked down missing deposits, sought former landlords who had failed to turn over deposits to new landlords, and required landlords to open escrow bank accounts for rent deposits as required by law and to pay past-due interest to tenants where they had failed to do so. In 1980, the Department refunded or escrowed more than $100,000 in tenants' rent security deposits.

Department attorneys were also engaged during the year in negotiations with major real estate industry representatives to revise the standard lease form used by most landlords in New York. The aim was to bring leases into compliance with the plain language law by making their provisions easily understandable, clearly spelling out tenants rights and options.

Homeowner Protection

In order to provide badly needed relief to homeowners victimized by some contractors who fail either to make the agreed upon repairs after accepting payment or to perform proper work, the Attorney General moved to strengthen the Department's ability to handle such complaints. Where contractors ignored Department attorneys' requests for information, a record number of subpoenas was issued in 1980, and, where necessary, further legal action was pursued.

Lawyers in the Albany office, for example, took action against a contractor who had provided faulty driveway repairs, resulting in six separate complaints. The case was settled when the contractor agreed to make refunds to two customers and do over the work for four others. Many other cases resulted in similar restitution or in violators being barred from doing further business in the state.

In two-thirds of the cases of home improvement complaints, Department attorneys were able to achieve satisfactory resolution through mediation. The Poughkeepsie office, for example, negotiated an agreement with a home building contractor and two roofing supply manufacturers to share the cost of redoing faulty shingling jobs.

Under the Mobile Home Tenants Bill of Rights, the Department moved against a mobile home park in Dutchess County to obtain restitution for tenants who were charged illegal rent increases. In other areas of the state, the agency took action against the manufacturers and distributors of mobile homes for defective construction and related problems. The Monticello office, for instance, was able to obtain refunds or repair work for more than a dozen mobile home residents.

In a case involving statewide coordination among the Department's regional offices, attorneys in the Buffalo office, acting on complaints received in many areas of the state, took action against a Long Island firm offering home mortgages at inflated interest rates. The Vanguard Holding Corporation, a mortgage wholesale company which charged interest rates prevailing at the time of closing, was alleged to be deliberately delaying closings so as to profit from escalating rates. A settlement was reached in which the company agreed to make refunds to mortgagees who had already suffered by such delays and to submit future cases of delay in closing to binding arbitration by court-approved arbitration associations.

Attorneys of the Consumer Frauds and Protection Bureau also moved against three Long Island FHA mortgage lenders for charging real estate brokers and homeowners the mortgage recording tax which the lenders were required by law to pay themselves. The court ordered one company to make restitution estimated to exceed $30,000 and is withholding decision against the other two pending the outcome of private suits against them.

Cooperatives and Condominiums

In the last five years, the number of offering plans for cooperative and condominium conversion submitted for filing with the Attorney General's office rose by 800 percent — jumping dramatically from 67 offerings in 1976 to 596 in 1980. This explosion in the marketplace was not accompanied by a commensurate increase in personnel needed to review plans. The severe burden placed on the Department's limited staff resulted in a significant backlog of plans awaiting review. To assist the Department in clearing up the growing caseloads, the Legislature provided for a substantial increase in the Real Estate Financing Bureau's resources beginning in January, 1981.

Despite the serious problems, attorneys for the Real Estate Financing Bureau were able to nearly double the number of conversion plans accepted for filing from 180 in 1978 to 347 in 1980. One indicator of the increasingly effective activity is that, in addition to ongoing review and spot field checks, Department investigators conducted 1,853 background investigations of sponsors, principals of sponsors and salesmen in 1980, compared to 675 such investigations in 1978.

As conversions of apartment buildings to cooperative or condominium ownership increased sharply, harassment and other illegal activities rose as well. In response, the Real Estate Financing Bureau stepped up its enforcement activities. In one case, the firm of Village Mall Townhouses, Inc. and its three principals, took deposits for a new condominium they were supposedly constructing in Queens. The building was never constructed and the developers attempted to divert $636,000 in deposits. A lower court judge found the developers guilty of 15 counts of grand larceny. In 1980 the Court of Appeals unanimously supported the Attorney General's position by upholding the convictions with limited modifications. The remainder of restitution payment was completed, and two of the three principals began serving their prison sentence in December. As a result of this and other actions, more than $3 million in restitution was obtained in 1980.

The Attorney General also secured court-ordered injunctive relief where harassment of tenants was found.

In other actions protecting the legal rights of tenants, Real Estate Financing Bureau attorneys went to court on complaints that some landlords had attempted to raise apartment purchase prices during the initial 90-day period prescribed by law for sales exclusively to existing tenants. The action resulted in judicial confirmation of the Attorney General's position that such increases are not legal.

Because the unusual explosion in conversions of rental buildings to cooperative and condominium ownership is taking place in one of the tightest rental markets in New York history, the Attorney General proposed to the Legislature a series of reforms to provide a more consistent framework for the enforcement of existing laws and to provide fairness and security for tenants. Current laws set markedly different requirements for offerings in various parts of the state. The Attorney General's program calls for extension of the protections now provided to New York City residents to the rest of the state. The program also proposes an increase from 35 to 51 percent in the proportion of tenants who must approve conversion of a building where tenants could be evicted; stricter definitions of the tenants eligible to be counted as approving conversion to prevent brokers and sponsor nominees from unfairly influencing the outcome; a longer period for tenants to decide whether to buy their apartments; more time for tenants choosing not to buy to relocate; and broader protections for senior citizens and the handicapped to exempt them totally from possible eviction.

Low-income Cooperatives

A major project during the year was the development of a special program in conjunction with the City of New York to facilitate conversion of low-cost housing acquired by the city through *in rem* tax foreclosure to cooperative ownership. A prototype pilot project used standard form documents and enabled buildings to be sold to the tenants who lived in them. The city's policy is to sell all buildings on the same terms and at the same price of $250 per dwelling unit. The chief concern of the bureau in implementing the standard plan approach was to develop a model form of co-op offering written in plain English that would be easily understood by lawyers and tenants, minimizing the high legal fees normally generated by a "one-of-a-kind" offering plan, while making cooperative living a reality for lower-income city residents.

Real Estate Syndications

The number of real estate syndication offerings filed with the Attorney General also have experienced a rapid expansion, almost tripling from 530 in 1976 to 1,515 in 1980. Because of the large sums often involved in real estate investments, the growing complexities of financing vehicles, tax laws and environmental restrictions, investors are increasingly turning to syndication or homeowner association offerings.

During 1980, Real Estate Financing Bureau attorneys reviewed filings or exemptions for offerings with a total market value of $26.8 billion.

Energy and Utility Services

As part of his responsibilities as the state's chief legal officer to protect the public interest, the Attorney General has moved vigorously to give the public a voice in the complex legal process of utility rate regulation and in other important energy matters.

With inflation sapping real incomes, the succession of unprecedented increases in utility rates are causing real hardships for families and businesses, alike. To oppose more effectively unjustified rate requests or portions of requests, the Attorney General created a special Energy and Utilities Unit within the Department's Bureau of Consumer Frauds and Protection. In 1980, this highly specialized legal staff intervened in major rate cases before the Public Service Commission and went to court to argue the case for business and residential consumers.

Utility Rate Cases

When the New York Telephone Company asked for a massive $381 million rate increase, the Attorney General intervened in opposition, and, in part due to the

arguments raised by the Attorney General, nearly $80 million of the company's request was denied. Department attorneys charged that the increase was not intended to provide phone service but to subsidize the company's plans to improve its competitive abilities in the face of the Federal Communications Commission's historic order deregulating many aspects of the telephone industry. The P.S.C. acknowledged the validity of this concern and shaped the final award to the New York Telephone Company accordingly. The price of public pay phone calls was kept at 10 cents, and the basic service charge for home phones was also held down.

The Attorney General was also successful in winning release to the public of certain documents which New York Telephone had submitted to the P.S.C. to demonstrate the need for a rate increase but wished to keep confidential. The commission agreed with the Attorney General that documents submitted to support a rate increase should be public, setting an important precedent for future rate cases.

The Attorney General opposed the 15 percent rate hike requested by Con Edison and the 16 percent increase sought by Central Hudson Gas and Electric, raising the issue of economic impact in rate setting. Attorneys from the Department's Energy and Utility Unit presented evidence to demonstrate that the sound financial condition of the two utility companies did not warrant increases which would have adverse economic and social effects on the region. The P.S.C. reserved decision in both cases.

In another action, Department attorneys were successful in arguing against the immediate adoption by the P.S.C. of revised deposit requirements for telephone customers. The proposed requirements would have obligated new customers without bank references or credit cards to post deposits.

Because of the thousands of consumer complaints received by the Department, the Attorney General also pressed for passage of a Residential Consumers Utility Law and Procedures Act. The law would protect ratepayers against unfair requirements for security deposits, arbitrary refusals of service because a prior tenant had not paid, termination of service without fair notice, and denial of the opportunity to pay overdue bills on installments.

Fuel Adjustment Increases

First adopted in 1917, the fuel adjustment clause allows regulated power companies to pass along increases in fuel costs to customers when fuel costs to the utility rise, without having to make a case through the usual P.S.C. procedures. Cheaper fuel costs are supposed to result in savings to consumers.

Consolidated Edison tried to use this automatic rate hike when one of its newest plants was knocked out of service. It increased its rates to all 2.9 million of its electric customers following the flooding of its Indian Point II nuclear generator at Buchanan in Westchester County. The Attorney General asked the P.S.C. to disallow the estimated $850,000-per-day increase and order a refund to rate-payers. The utility claimed that it needed to recover the higher fuel costs involved in alternative generation while the nuclear plant was shut. Department attorneys charged that the shutdown resulted from company negligence and mismanagement and that the resulting costs should be borne by the company. They presented evidence to show that Con Edison was not only negligent in the few weeks prior to the flooding but also had failed for at least five years to maintain or replace equipment properly.

In another case, the Attorney General challenged the Long Island Lighting Company's imposition of a 15 percent rate increase on its 900,000 residential and business customers through the fuel adjustment clause. The P.S.C. did not rule on the question in 1980. The Attorney General asked the P.S.C. to investigate LILCO's failure to reduce its costly dependence on foreign oil and to allow customers to spread out their payment of sudden increases over a six-month period.

The Attorney General's Energy and Utilities Unit, headed by Paulann Caplovitz, contributed significantly to reducing a telephone rate increase request by $80 million.

To prevent cases like these from arising in the future, the Attorney General also commenced a broad legal challenge against the Public Service Commission for allowing such increases, arguing that the Public Service Law prohibits rate changes of significant size without 30 days notice and a public hearing. Current P.S.C. rules permit such increases on only three days notice and without any hearing. The Attorney General has also proposed legislation to eliminate the fuel adjustment clause entirely, asserting that the original intent to give both the benefits and burdens of fluctuations in fuel costs to consumers had long given way to a practice of using the clause as a device to effect large rate increases without proper scrutiny.

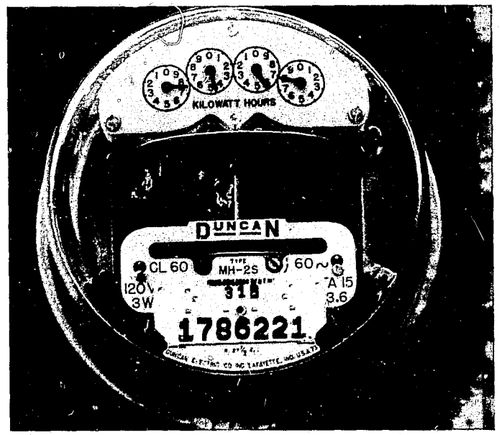
Fuel Oil and Gas Overcharges

New Yorkers are bearing the brunt of the disastrous changes and disruptions in the world's oil markets since 1973. Because of the billions of dollars of overcharges by national oil companies which sell to New York customers, the Attorney General and the New York State Energy Commissioner, in an unprecedented action, took the U.S. Department of Energy to court, challenging its policy of settling huge overcharge cases. The legal action, brought jointly with the State of Minnesota, challenges the federal energy agency's failure to provide refunds to victimized consumers in its settlement of its overcharge case against the Amoco Oil Company. The suit also seeks to require the Department of Energy to continue to prosecute for past violations of the oil price and allocation rules mandated by the Emergency Petroleum Allocation Act and to help consumers who have been overcharged to bring private suits against oil companies.

In a related action, the Attorney General obtained a U.S. Magistrate's order in Minnesota preventing Amoco from destroying the records which would document the amount the company overcharged consumers from 1973 through 1979.

The Attorney General also joined with the attorneys general of seven other states in bringing an action in the United States Supreme Court against the State of Louisiana challenging the constitutionality of its "first use" tax imposed in 1979 on natural gas obtained from the outer continental shelf. The action seeks recovery of up to $60 million on behalf of New York consumers who paid the tax while it was in effect. In 1980, the Court appointed a special master to determine the facts of the case, and his reports and recommendations were submitted to the Court for oral argument in 1981.

Because intermittent shortages of oil supplies have been coupled in New York with unprecedented price rises, the Attorney General fought for and achieved passage of a state law in 1979 which prohibits price gouging on vital necessities, including home heating oil. Under the powers granted to the Attorney General by the new law, Department attorneys in 1980 conducted a statewide survey of the prices charged for home heating oil. One result of the findings was a charge filed by the Attorney General against the Strong Oil Company of Southampton, Long Island, for price gouging its home heating oil customers. The Department is seeking a price rollback, restitution of all overcharges to consumers and a fine. The trial court upheld the state's claim that it has a duty to protect the public from price gouging when a critical commodity is at stake, but found that federal law decontrolling the price of oil pre-empted New York law in this case. The state has filed an appeal.



The Attorney General challenged utilities' use of the "fuel adjustment clause" to raise rates sharply without hearings, as when LILCO hiked its rates 15 percent for its 900,000 customers.

Because of a large number of complaints received against companies supplying bottled propane gas for residential use, the Department undertook an investigation and is preparing litigation designed to stop abusive billing practices, deposit requirements and minimum purchase rules by the companies on whom many rural, low-income and fixed-income families depend.

Because of complaints and inquiries received from residents in the Capitol District area, the Attorney General published a *Landowner's Guide To Oil and Gas Leases*, listing the pitfalls a potential lease-signer is likely to encounter and offering suggestions on avoiding them. This was done after oil and natural gas drilling companies had become active in Rensselaer and Washington counties. While supporting the need for oil and gas explorations in New York State and elsewhere in the country to offset dependence on foreign oil, the Attorney General has a duty to provide protection to those in the marketplace — such as long-time landowners faced with complex lease arrangements — who may fall victim to unscrupulous practices.

Heating Equipment

With rising homeowner concern about fuel conservation to keep costs down, the Attorney General initiated an investigation into the claims of companies advertising fuel savings devices. When laboratory tests did not validate the fuel savings advertised for "Fuel Boss," an automatic vent damper sold by the National Energy Reduction Corporation, the Attorney General was successful in obtaining refunds of close to $50,000 for some 100 customers who had purchased the device. The firm also agreed to alter their future advertising.

The Department's regional offices were especially active in resolving numerous complaints from homeowners about the installation or maintenance of home heating equipment. The Poughkeepsie Office, for example, assisted in the recovery of $4,000 for an Ulster County homeowner who had been unable to get satisfactory service from the installer of an oil burner. The Albany office got a heating systems manufacturer to provide an independent inspection and follow-up repairs for one of its units belonging to an elderly Saratoga woman who claimed her heating bills were running consistently higher than they should have. And attorneys from the Binghamton office were successful in getting the Columbia Gas Company to replace a faulty residential gas meter and to credit the customer with $200 that she had been overcharged prior to its replacement.

Environmental Protection

In the face of increasingly serious instances of threats to the public's health and safety, the Attorney General's enforcement obligations in environmental protection have been expanded greatly during the last decade. Since 1970, when the State Department of Environmental Conservation was created, several major pieces of state and federal legislation have set enforcement standards concerning air pollution, water pollution, disposal of solid and hazardous wastes, land use and the protection of natural areas such as tidal and freshwater wetlands, and the Adirondack Park.

Toxic Wastes

The elimination of dangers from toxic waste disposal has the highest priority in the area of environmental safety. In response to the serious threats arising from the contamination of Love Canal and the other dump sites in Niagara County, the Attorney General initiated major action against the Hooker Chemicals & Plastics Corp. and its two parent companies, the Hooker Chemical Corporation and Occidental Petroleum Corporation.

A lawsuit was filed in State Supreme Court in April, charging that these companies are legally liable for the harm to the public health and the environment caused by the hazardous chemicals dumped at Love Canal. This action, taken with the cooperation of the State Departments of Environmental Conservation and Health, seeks "complete and permanent" remedial action; $250 million in compensation for injury to the air, land and water resources of the state; $250 million in punitive damages; additional damages on behalf of UDC-Love Canal, Inc., the corporation created by the state to buy houses near Love Canal; and recovery of all expenses incurred by the state in taking emergency action at the site, including the cost of relocating residents.

Environmental Protection Bureau Chief Marcia Cleveland oversees many important cases, including the nation's largest environmental law suit over toxic waste dumping at Love Canal.

In August, the Attorney General became co-plaintiff with the U.S. Justice Department in a similar suit filed in federal court in Buffalo. This suit concerns Love Canal and three other landfill sites maintained by Hooker in Niagara County: Hyde Park, "S" Area, and 102nd Street.

In another toxic waste disposal case, the Attorney General intervened in an administrative hearing of the Department of Environmental Conservation, urging the refusal of permits to the SCA Corporation of Niagara County for expansion of its facility for land burial of toxic wastes in Porter. He presented evidence that there was danger of toxic chemicals leaking out of the landfill due to a buildup of volatile chemicals within the site area. Sampling done by the Department's technical staff on five older SCA landfill sites found heavily contaminated water, or leachate, surrounding the drums of waste, which could easily leak into the soil and the surrounding groundwater. The Attorney General charged the company with poor management of its previous sites and argued that safer methodologies existed for the disposal of toxic wastes, such as incineration used successfully elsewhere in the country. In December, the Department of Environmental Conservation suspended all permits for the site.

Another dangerous and growing environmental problem is the illegal hauling and dumping of toxic wastes. Typical violators are carters who secretly carry such wastes to less-populated areas of the state, usually under cover of darkness, and bury or dump them in local landfills with no regard to the serious health hazards involved.

To combat these "midnight dumpers" and other illegal disposers of toxic wastes, the Attorney General created a special Task Force on Toxic Waste, combining the expertise of the lawyers and scientists of the Department's Environmental Protection Bureau with the criminal enforcement expertise of the Department's Special Prosecutions Bureau. Investigations began late in 1980, in anticipation of lawsuits to be filed. To aid these efforts, the Attorney General proposed stiffer penalties against dumpers, urging the Legislature to make illegal disposal of toxic wastes a felony offense.

Also, as a result of the Attorney General's efforts, the Legislature in 1980 enacted a prohibition against the sale of toxic sewage system cleaners in Nassau and Suffolk Counties because of the danger of contamination to Long Island's groundwater.

Acid Rain

Acting on numerous studies on the disastrous effects of acid rain on the people and resources of New York State, including several performed by the Department of Environmental Conservation, the Attorney General took action to force the federal Environmental Protection Agency to enforce certain provisions of the Clear Air Act. In the Adirondacks, for instance, as a result of acid rainfall, the fish in hundreds of lakes are either extinct or only just marginally surviving.

The principal pollutant in this acid rainfall is sulfate particles derived from sulfur dioxide emissions, primarily from large coal-fired power plants in the Midwest. These particles are hazardous to human health when inhaled, in addition to their role in causing acid rain. The Clean Air Act requires strict standards for such emissions, but the federal agency had permitted an easing of the restrictions on seven such plants in the past two years and has been considering easing restrictions on 19 others. Because of the threat to New York's environment, the Attorney General in 1980 informed the federal agency of his intention to sue, if necessary, to prevent the relaxation of these vital restrictions.

Other Pollution Hazards

After state and local health officials found unacceptably high levels of radioactivity in soil samples in Albany County, the Attorney General, joined by the Commissioner of Environmental Conservation, brought action against NL Industries, which manufactures aircraft and missile parts using depleted uranium 238, to make the firm reduce discharges of radioactive material into the air. A temporary restraining order was obtained under which the company has limited its operations to keep within legal air emission standards. Also as a result of the Department's action, the company is in the process of preparing a clean-up plan to lower radioactivity in the area.

The Attorney General also participated in a Nuclear Regulatory Commission Waste Confidence Rulemaking Proceeding, in which he urged that no new approvals on licensing of new nuclear plants be granted until a safe disposal method for nuclear waste can be found. In another proceeding before the U.S. Department of Transportation, the Attorney General opposed the issuance of regulations which would bar state and local regulations governing highway transportation of radioactive materials even where the federal standards were not as strict as those of the state. The regulations have been delayed for a year.

Defense of State Law and Policy

Environmental Protection Bureau attorneys achieved a number of significant gains in defense of environmentally protective state statutes and state agency policies.

In the case of *Cohn and Northeast Fruit Council* v. *Robert Flacke*, Department attorneys argued successfully in Albany Supreme Court that the state's prohibition on the use of the hazardous pesticide Endrin should be upheld. Based on the results of a special two-year study which monitored the environmental impact of the use of Endrin in the Hudson Valley, the state imposed the outright ban, thus going beyond federal government standards. The Department argued that federal law expressly reserved to the states the right to impose controls of pesticide usage, provided these controls are at least as strict as those required by the federal government, and the court agreed. The case was appealed to the Appellate Division.

Action was taken to prevent relaxation of federal pollution standards at midwestern plants. Sulfur dioxide emissions cause "acid rain" which is poisoning New York's lakes.

Attorneys in the bureau's Albany office were successful in defeating a constitutional challenge to the Wild, Scenic and Recreational Rivers System Act in *Grinspan* v. *Adirondack Park Agency* (APA). The petitioner wanted to build a number of homes close to a river's edge, disrupting its wild character, in violation of APA regulations and state law. The court upheld APA's power to set rules protecting the area in dispute.

Another significant case was *Long Island Oil Terminals Association, Inc.* v. *Commissioner of the New York Department of Transportation.* In this case, a trade association challenged the constitutionality of the Spill Prevention Control and Corporation Act, which requires operators of oil terminals to be licensed and to contribute to an oil spill cleanup fund. The Attorney General's office successfully defended the act. The Supreme Court, Albany County, ruled that the law was constitutional and industry members were required to contribute to the fund.

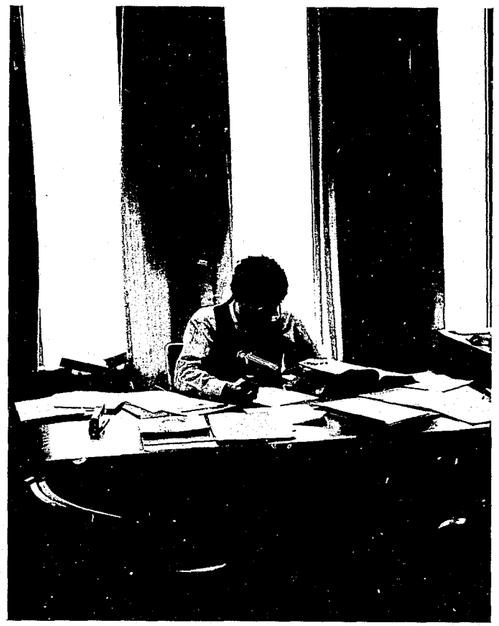
In *Dowling College* v. *Flacke,* the Attorney General obtained a favorable decision in an action challenging the Department of Environmental Conservation's acquisition of a wetland by eminent domain. The agency wanted the land to preserve one of the few remaining marshes on Long Island, as required by the Tidal Wetlands Act.

The Attorney General continued to take a strong stand in support of the procedural and substantive requirements of the State Environmental Quality Review Act (SEQRA), the state's most formidable legal tool for insuring adequate protection of its environment. The most important action brought under SEQRA during 1980 was *Town of Henrietta and Miracle Mile Assoc.* v. *N.Y.S. Department of Environmental Conservation.* When the Department of Environmental Conservation issued air and water permits for the Miracle Mile shopping center project, it imposed additional conditions to minimize any adverse environmental impact. The Appellate Division upheld the state agency's right under SEQRA to go beyond previous permit requirements.

The Department also participated in negotiations which achieved settlement in the various cases pending against Con Edison relating to its power plants along the Hudson. Con Edison agreed to abandon its controversial proposal to build a pump storage plant at Storm King mountain on the Hudson River in Rockland County. The utility also agreed to a ten-year moratorium on the construction of other new plants along the Hudson and to modification of the cooling systems in five existing plants in exchange for not having to build new cooling towers instead. This important settlement concluded litigation that dated back to the mid-1960s.

Civil Rights

Having re-established in 1979 a full-fledged Civil Rights Bureau responsible for affirmative legal action to protect the civil rights of New Yorkers, the Attorney General initiated cases of major legal significance on a broad range of civil rights issues in 1980.



The newly constituted Civil Rights Bureau under its chief, Peter Bienstock, sued the U.S. Labor Department for failure to enforce Presidential orders on employment of minority and women workers by federal contractors.

The Attorney General broke new ground in federal litigation, commencing a series of cases in which for the first time a state attorney general used the federal forum and laws to raise fundamental civil rights issues.

The most far-reaching was the suit against the federal Bureau of the Census, charging an undercount in the 1980 census of as many as a million New York State residents, due in part to gross mismanagement. The suit, filed jointly with the City of New York, was based on an extensive investigation which produced evidence to demonstrate serious potential undercounts in many areas of the state, including New York City, Nassau and Westchester Counties, and Rochester. The undercount would have had a serious effect both on the congressional representation of New York citizens and on federal funds New York receives under programs based on population.

After an eight-day trial, the federal District Court ruled in favor of the state and city in all respects. It found that the New York undercount ranged from 772,000 to 905,000, which was disproportionately large compared to the rest of the country. The Census Bureau, which was ordered to make an appropriate adjustment, indicated it would appeal the decision.

In another innovative application of federal civil rights laws, the Attorney General sued in federal court on behalf of the State Office of Mental Retardation and Developmental Disabilities to remedy housing discrimination against the mentally retarded in a Long Island community. An attempt had been made to block the state's plan to locate a residence for mentally retarded persons by purchasing the building involved before the plan could be implemented. The court held that the Attorney General had statutory authority to bring such an action, and Civil Rights Bureau attorneys were preparing for trial at the close of 1980.

Civil Rights Bureau attorneys also successfully established the Attorney General's right to sue as representative of the interests of all New York State residents to vindicate civil rights under federal statutes forbidding racial steering in housing. Following a six-week investigation, a Nassau County real estate firm was charged with violation of the federal Fair Housing Act of 1968 by a discriminatory pattern and practice of steering whites and blacks to different areas. The federal court ruled that the Attorney General is empowered to bring such a suit and preparations for trial were started.

In an unprecedented action involving employment practices, the Attorney General brought suit against the federal Department of Labor for failing to enforce the federal government's regulations requiring affirmative action in the hiring of minority groups and women in the construction industry. The suit charged that Presidential executive orders had been undermined by a pattern of neglect. It asserted that the Office of Federal Contract Compliance in the Department of Labor had failed to require affirmative action or to impose sanctions for violations of these orders and had ignored clear evidence of violations.

Civil Rights Bureau attorneys, including Sheila Abdus-Salaam, established in a series of actions the right of a state attorney general to seek federal remedies for civil rights violations.

In a case involving worker benefits, the Attorney General successfully argued in federal district court on behalf of the state Workers' Compensation Board that pregnancy claims should be treated equally with claims of benefits for other disabilities.

The Attorney General also filed briefs in the United States Supreme Court as *amicus curiae,* seeking to affirm two important decisions by lower courts. In one case, the lower courts had held that the ban on Medicaid funding for abortions was unconstitutional; this ruling was reversed by the Supreme Court in 1980.

In the second case, the Attorney General argued in support of the affirmative action program for the hiring of personnel by the California State Department of Corrections. The plan is similar to a program currently being prepared by the New York State Department of Corrections. A Supreme Court ruling is expected in 1981.

In a federal lawsuit related to the census case, Civil Rights Bureau attorneys also participated in successfully defending against an attempt to exclude so-called illegal aliens from the census count. After hearing arguments from the Census Bureau and the State and City of New York, a three-judge federal district court in Washington, D.C. dismissed the complaint. This action was upheld by the District of Columbia Court of Appeals.

At the state level, the Attorney General also moved to expand the scope of the Department's civil rights actions.

A nationwide restaurant chain with 35 outlets in New York State, Sambo's, was charged with engaging in a pattern and practice of employment discrimination against Blacks and Hispanics in proceedings initiated before both the State Division of Human Rights and the federal Equal Employment Opportunity Commission.

Concerned about a growing number of anti-Semitic incidents in the New York City metropolitan area, the Attorney General convened a meeting in November of top law enforcement officials from New York City, Westchester, Rockland, Nassau and Suffolk Counties to discuss joint efforts to counter anti-Semitism. This group mapped out an improved effort to share information and respond more effectively to vandalism and desecration of houses of worship and community institutions. To aid in more vigorous prosecution, the officials proposed legislation to define such offenses as serious crimes with more appropriate, tougher penalties.

In the first case involving the interpretation of the prohibition in the state Human Rights Law against discrimination in housing based on marital status, Civil Rights Bureau attorneys intervened successfully in a landlord-tenant civil court proceeding to prevent a landlord from evicting a couple solely because they were not married. At the close of 1980, the case was on appeal in the Appellate Term.

The Attorney General also moved to expand the activities of the Harlem office in civil rights. This office had previously focused primarily on consumer issues. The scope of its responsibility now includes the handling of civil rights complaints in housing, education and employment.

Protection of Workers

Under the provisions of the New York State Labor Law, the State Industrial Code, the Workers' Compensation Law, the Disability Benefits Law, the Volunteer Firemen's Law and the General Business Law, the Attorney General has the responsibility to protect the rights of wage earners, injured employees and dependents of deceased employees. To enforce these laws in 1980, the Attorney General's Labor Bureau initiated 247 criminal proceedings and obtained restitution of more than $700,000 from employers in cases involving unpaid wages, minimum wages, fringe benefits and workers' compensation awards. In addition, about $1 million in restitution was obtained as a result of civil judgments, including over $100,000 collected in fines and penalties.

Criminal Proceedings

The Labor Bureau prosecutes as misdemeanors the failure by employers to provide workers' compensation coverage and death benefits for employees; and employers' failure to pay wages and fringe benefits of all kinds. Significantly, the Attorney General can criminally prosecute individual officers of corporate employers for violations of the Labor Law, preventing corporate officers from being shielded by a corporate entity.

In one typical case, a telephone equipment sales and installation company in Long Island City, was charged with failing to pay wages and commissions to its employees before going into bankruptcy. Despite the corporation's petition in bankruptcy, Labor Bureau attorneys were successful in obtaining restitution of $12,500 from the president.

In another case involving a corporate officer, a criminal prosecution was instituted against a Queens plastics manufacturing firm and the firm's vice president. The corporation's bank account had been

The Labor Bureau, initiated 247 criminal proceedings and obtained restitution of more than $700,000 from employers for violations of the state's Labor and Workers' Compensation Laws. Here, Bureau Chief Henriette Frieder (left) consults with attorney Theresa Wolinsky.

previously confiscated to satisfy a bank loan to the corporation, and the firm had gone out of business owing wages to its employees. The company's president, who had signed dishonored payroll checks to employees, had absconded, but bureau attorneys were able to collect approximately $11,000 from the vice president.

In cases involving claims of non-payment of fringe benefits agreed to by employers, the Department collected $125,000 in 1980. In one important case, the Attorney General established in New York City Criminal Court that a general contractor is liable for payment of these benefits despite efforts to escape this responsibility by setting up subcontracting work in another state. In this case, involving a Pennsylvania general contracting firm which had failed to pay agreed-upon contributions to health and welfare funds, retirement funds, supplementary benefits funds and a health services plan, the firm's president was convicted and restitution of some $16,000 was obtained.

The Department was also effective in collecting workers' compensation awards from non-insured employers. Under law, all employees must be protected by their employers by providing insurance coverage against disability or death. Failure to provide such workers' compensation coverage is a misdemeanor. In a typical case of this kind, Labor Bureau attorneys obtained a conviction against a non-insured gas station owner in Nassau County, one of whose employees had lost a hand as a result of being hit by a moving car.

Civil Proceedings

Under the Workers' Compensation Law, the Attorney General is empowered to enter civil judgments against non-insured defaulting employers for failure to pay awards to disabled employees and dependents of deceased employees and double compensation awards to injured minors employed in violation of the State Education Law. In 1980, the Department entered more than $800,000 in judgments.

As of August, 1980, the Attorney General was given the power by the Legislature to streamline the process of collecting unpaid wages, benefits or pensions from delinquent employers. After a determination by the Industrial Commissioner, the Department need only give notice to an employer to be able to enter civil judgments and to collect payments. For the first time, the Department will also be able to collect interest and penalties. Since the number of requests from the Industrial Commissioner for the entry of these judgments is expected to equal requests for criminal prosecutions, work was under way during 1980 to set up new procedures involving the Labor Department and the Law Department to deal with the anticipated heavy caseload.

To protect workers against exploitation in "sweatshops", where the decent standards adhered to by the honest employer in the shop shown at left are not observed, the Attorney General launched a comprehensive investigation in concert with other agencies.

The Attorney General's Labor Bureau also defends in the appellate courts awards by the Workers' Compensation Board of disability benefits to injured employees and death benefits to dependents of deceased employees when these awards are challenged by insurance companies or employers. In 1980, the bureau successfully defended appeals involving awards totalling some $700,000. In addition, nearly $6,000 in statutory costs and disbursements was recovered.

Major Cases

In 1980, the Attorney General's office successfully defended the decisions of the State Industrial Commissioner and the Workers' Compensation Board in a number of significant cases affirming the state's policies on worker protection.

The authority of the Industrial Commissioner to control the activities of employment agencies and to suspend licenses to conduct such businesses where appropriate was argued successfully in the Appellare Division, Third Department, in the case of a Monticello employment agency fined by the Industrial Commissioner for repeatedly coming into New York City to solicit derelicts for Catskills hotel jobs.

A decision was won in the Court of Appeals expanding the meaning of the section of the Workers' Compensation Law which prohibits discrimination by an employer against an employee who files a claim for workers' compensation benefits. Labor Bureau attorneys argued that it is unlawful discrimination for an employer to dismiss an employee for absenteeism under the guise of an underlying policy of discharge for absenteeism when the absenteeism was caused by the work-related disability.

In another case before the Court of Appeals, bureau attorneys successfully defended the right of the chairman of the Workers' Compensation Board to regulate the activities of doctors licensed by him to practice industrial medicine and to remove such licenses where appropriate.

The Attorney General also opposed attempts by non-union construction contractors to challenge the administration and enforcement of prevailing-rate-of-wage statutes and the manner in which the Industrial Commissioner establishes the prevailing rate. State law requires all contractors on public works projects to adhere to these standards. In two cases before the Appellate Division, Third Department, the Attorney General won decisions sustaining the right of the Industrial Commissioner to require the withholding of sums due a contractor while a complaint of violation of prevailing-wage-rate standards was unresolved.

Expanded Responsibilities

The Attorney General's responsibilities in the area of worker protection were expanded significantly in 1980 by two major legislative actions. One establishes occupational health and safety standards for government employees at all levels who are not covered by the federal Occupational Health and Safety Act. The State Department of Labor has the responsibility to administer the law, referring matters for litigation to the Attorney General. This will generate a significant number of additional cases for the Department of Law.

The second requires employers to notify employees of the presence in the workplace of toxic substances and the known hazards of the toxins. The Departments of Labor and Health have responsibility for administration of the law, referring matters for litigation to the Attorney General. It is expected that this also will create a substantial new caseload.

Investor Protection

The Attorney General shares with federal agencies important responsibilities in regulating securities transactions in New York. He is directed by the state's Martin Act to protect the public from fraud by brokers, dealers, salesmen, investment advisors and principals of their firms. The federal Commodity Futures Trading Commission Act also gives state attorneys general power to bring actions in federal court to prevent fraudulent commodities practices.

Because of the volatility of the nation's economy in 1980, greater numbers of investors sought new ways to protect and increase their incomes, and illegal schemes aimed at taking advantage of this heightened investor activity proliferated. The Attorney General moved quickly and forcefully against these schemes, using criminal actions to a greater extent than ever before.

Commodity Misrepresentation

As investors turned to the commodities markets as a hedge against inflation, illegal "boiler room" operations increased in number. Typically, these are high-pressure telephone operations, offering investors seemingly attractive opportunities to buy options or contracts for future delivery of precious metals, oil and other valuable commodities. Typically, the risks are not disclosed or the underlying commodity is nonexistant. After the payment is made and delivery comes due, the investor discovers that the investment is worthless and the seller has disappeared. Attorneys of the Investor Protection and Securities Bureau cracked down on these activities in 1980, closing several major operations.

In one major case, Department attorneys brought criminal action against the principals of Morgan, Harris & Scott, Inc., a firm which had engaged in the fraudulent sale of gold and silver options nationwide to some 300 customers, grossing in excess of $2 million. The principal in the firm pleaded guilty. The action was brought as a result of an ongoing joint investigation conducted by the Attorney General in cooperation with the U.S. Attorney for the Southern District of New York, the U.S. Postal Service and the federal Commodity Futures Trading Commission.

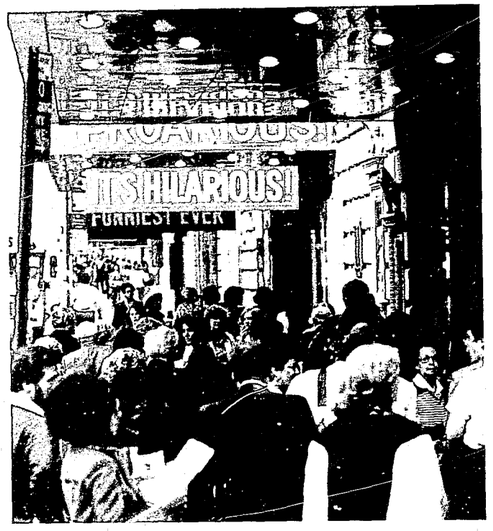
In another criminal action, Department attorneys obtained a multi-count indictment for grand larceny and fraud against the principals of T.S.F. Trading Company for running a phone operation selling fraudulent contracts to deliver precious metals. One principal pleaded guilty, and the second was awaiting trial at the end of 1980.

The Department also set up a rapid action information network on illegal sales of commodity futures. Working with 32 other states and various federal agencies, Department attorneys succeeded in closing down more than thirty-five such boiler room operations through civil and administrative proceedings within weeks after they started.

In one major action, Department attorneys went to court against Commercial Petrolera International S.A., alleging the illegal sale of crude oil futures contracts and fraud by 37 persons and 30 firms. This joint action by the Attorney General and the Commodity Futures Trading Commission was the first of its kind in federal court. By the end of the year, permanent injunctions had been obtained against most of the named defendants, putting them out of business.

The Attorney General also went to federal court for the first time to seek relief from commodity fraud under the federal statutes. In an action brought against Haydon Allen Associates and its principal,

Above: To ensure the integrity of the legitimate marketplace for investors, symbolized by the N.Y. Stock Exchange shown here, criminal enforcement was stepped up against con artists who bilk investors through fraud and misrepresentation. Below: A major theatrical producer was jailed as one result of criminal action by the Department against perpetrators of theatrical investment frauds.



Stanley Haydon Allen, for fraud in the sale of precious metals, the court ordered the firm to submit a plan for the restitution of some $570,000 obtained illegally from customers.

As a result of the Investor Protection and Securities Bureau's enforcement activities against illegal commodity boiler rooms, some turned to mail drops and telephone answering services, operating clandestinely for short periods of time before disappearing. The bureau was able to apprehend the principal of one such operation after receiving the cooperation of a victim from Michigan who flew to New York City to meet him. The boiler room operator was arrested and jailed awaiting trial for grand larceny and fraud.

The Attorney General gained passage of legislation in 1980 to prohibit the use of the word "exchange" by any firm which is not registered as such with the Securities and Exchange Commission or the Commodity Futures Trading Commission. Acting under the new law, Department attorneys obtained a court injunction barring the so-called New York Gold and Silver Exchange from doing any further business under that name. The threat of legal action also resulted in agreements with the so-called New York Diamond Exchange, International Gold and Silver Bullion Exchange and other similar entities to stop further business under such names.

In another commodity matter, attorneys from the Poughkeepsie office were able to obtain a $2,900 refund for a local resident who had purchased a supposed "investment grade" diamond from a California firm. Upon discovering that the diamond did not measure up to its certification, the customer returned it but was unable to gain the refund until Department attorneys intervened.

Credit Fraud

With interest rates skyrocketing and consumer, mortgage and commercial loans more difficult to obtain, credit seekers have been forced to look for funds from sources other than banks and other reputable financial institutions. This has given rise to a proliferation of fraudulent and illegal financing schemes around the state.

Attorneys from the Utica office, working with the Department's Investor Protection and Securities Bureau, moved against two firms and five individuals who defrauded legitimate business people throughout the United States by posing as agents for Arab financiers eager to invest money in the United States. Advertisements were placed promising various kinds of business loans and mortgages. When would-be borrowers responded, they were asked to put up a commitment fee of several thousand dollars but afterwards never received the promised loans. After the Attorney General's office commenced criminal enforcement action, the major organizer of the fraud disappeared. A warrant was issued for his arrest.

Attorneys from the Syracuse office were successful in stopping the operations of a loan broker in Onondaga and Cortlandt counties who charged $100 application fees for loans that were never made. The office is now monitoring the restitution of an estimated $2,000 to victimized clients.

And in New York City, Department attorneys took action against an operator called "The Bishop" who preyed upon enterprising minority individuals seeking financing to start small businesses. In this case also, advance fees were paid for loans that were never made. The operator was sent to jail.

Securities Fraud

In one of the largest securities fraud cases in upstate New York in many years, the Attorney General obtained indictments against four Albany residents, charging them with 57 counts of grand larceny, conspiracy to defraud and issuing false financial statements involving more than $2.4 million. The defendants were charged with promising protected security investment plans to some 250 small investors — most of them elderly and unsophisticated about financial matters — and then misleading them with false financial statements when, in fact, their money had been lost in risky stock option speculations. The case will go to trial in 1981.

After a major securities fraud investigation by a team of Department attorneys and investigators, the Attorney General's office successfully located and arrested Eduardo Rabi, an international confidence man and fugitive wanted in California and several foreign countries for crimes committed over a thirty-year period. Rabi, a very successful white-collar criminal and high on Interpol's list of the most wanted international criminals, had been convicted in absentia in Europe but had never before been convicted and sentenced while in custody. Attorneys from the Department's Investor Protection and Securities Bureau charged Rabi with selling a visiting Mexican professor stock that Rabi did not have in a meat company and in a food franchise that did not exist, fleecing her of $141,500. Bureau attorneys were preparing for trial at year's end.

Another major case involved Adela Holzer, the former theatrical producer who was convicted after trial in 1979 for grand larceny. Her conviction was unanimously affirmed by the Appellate Division, First Department, and upheld by the Court of Appeals. Adela Holzer is now in prison.

In another matter, an Albany tipster who solicited funds for investment advice based on a nonexistent computer system was put out of business by Department attorneys and forced to return the money collected from unsuspecting clients.

Pyramid Schemes

As various "clubs" swept New York in 1980 bringing an upsurge of cases of this type of organized fraud, the Attorney General took strong action to punish violators, put pyramid operations out of business, and warn an unsuspecting public of the fraudulent nature of this illegal activity. Pyramid schemes dupe individuals into joining a chain of subscribers with the promise of a guaranteed return which is mathematically impossible.

Acting under the Martin Act, which specifically outlaws such schemes, Department attorneys arrested three California promotors at a mid-town Manhattan hotel in May who subsequently pleaded guilty and made restitution of $4,000. Nine other arrests were made in July in two other cases of promoting pyramid schemes. These defendants cooperated in further investigation of related illegal activities. In Rochester, the Department's regional office stopped an illegal chain-distributor scheme involving hundreds of victims who were each investing $1,000. The resulting attention helped end the pyramid craze after only a few months.

Art Sales

As the market for art as an investment continued to grow, the Attorney General's office received increasing numbers of complaints involving the sale of art multiples, primarily prints and reproductions of works by major artists. Although the legitimate art market offers lithographs and other works which are produced in limited quantities and which may be worthwhile investments, many abuses were discovered involving customers who had been misled about the unique qualities or investment potential of the works being offered.

In response to these abuses, the Attorney General held hearings in New York City and Rochester to determine whether current laws are adequate to protect the public, and how best to improve the agency's enforcement abilities in this area. Based on these hearings and investigations by attorneys from the Department's Charities, Trusts and Estates Bureau, the Attorney General proposed legislation requiring written disclosure of information pertinent to determining the value of a multiple. Such disclosure would then bring the customer under the protection of the General Business Law if disputes arose as to the genuineness of a purchased work.

Takeover Bids

In the field of tender offers, the Attorney General conducted a number of important enforcement investigations under the state's Securities Takeover Disclosure Act.

A total of nine filings were made during 1980. One important case involved the takeover bid by Internorth Inc. of Oklahoma for equity shares of Crouse-Hinds Company, a large New York manufacturer based in Syracuse. As a result of a Department hearing and investigation, an order was issued barring the purchase of tendered shares until additional disclosures of material facts were made. Internorth filed the appropriate amendments, and the tender offer was allowed to proceed. In late December, a second filing was made involving an exchange offer for all of the equity securities of Crouse-Hinds by Cooper Industries of Texas. This filing was being reviewed by Department attorneys at year's end.

Attorneys from the Investor Protection and Securities Bureau also successfully defended the New York Securities Takeover Disclosure Act in two actions challenging its constitutionality. The cases arose because of rules newly promulgated by the Securities and Exchange Commission which virtually eliminated any post-filing time period before a takeover bid could commence. This presented a potential conflict with many state takeover laws, including New York's, which required a 20-day post-filing waiting period before an offer could commence. To obviate any possible conflict between state and federal laws, the Attorney General proposed and the Legislature passed amendments to eliminate the waiting period. Under the amended law, which is unique among state takeover statutes, the Attorney General has the power to prohibit the actual purchase or taking up of any tendered shares in the target company until full disclosure of all material facts has been provided in the offering documents and registration statement.

Franchise Protection

After successfully dissolving a fraudulent franchise operation in 1979 which had bilked 3000 investors of more than $10 million, and upon receipt of 200 further complaints about franchise purchases, the Attorney General ordered a study of the franchise industry to determine whether existing laws were adequate to protect the public. Franchising has experienced a period of explosive growth with nearly one-third of all retail sales now taking place in franchise outlets. Most franchise operations are legitimate businesses, but fraud and other abuses in selling franchises have increased markedly.

To strengthen the Department's powers to combat fraud in this area, the Attorney General proposed legislation which was enacted, to take effect in January, 1981. The new franchise law mandates full and truthful pre-sale disclosure in any franchise transaction, requires filing of offering and sales materials

with the Department, and gives the Attorney General expanded civil and criminal jurisdiction. To avoid any undue regulatory burden on legitimate franchisors, the law permits applicants to file the identical prospectus form used by the Federal Trade Commission or the uniform franchise offering circular used by several other states with a supplement containing any added information required by New York law.

Regulation of Charities and Trusts

The voluntary sector of the New York economy is one of the largest industries in the State. New Yorkers donate each year more than $4 billion to charitable organizations which have total revenues of more than $11 billion. The Attorney General's office has been responsible historically for regulating the conduct of these organizations and for protecting both potential donors and prospective beneficiaries from unscrupulous practices. The state's Not-For-Profit-Corporation Law and the Estates, Powers & Trusts Law give the Department specific regulatory and enforcement duties.

Because the number of organizations required to file information with the Department continues to grow each year, from more than 15,000 in 1975 to more than 20,000 in 1980, the Department undertook in 1980 computerization of records to improve its auditing capabilities. As a result of this better record keeping and more active monitoring, attorneys from the Department's Charities, Trusts and Estates Bureau instituted a record number of investigations into the conduct of fund directors and managers to ensure that the solicitation, collection and distribution of funds met state standards.

Enforcement Activities

In a major enforcement action, Department attorneys moved against the Life Science Church and 10 of its principals for selling credentials as ministers to members of the public with fraudulent representations that this status would exempt them from federal, state and local taxes. The group is also charged with inducing people to participate in these activities through the promised benefits of an illegal pyramid scheme. The action grew out of an investigation undertaken in cooperation with the Nassau County District Attorney. In 1980, the court granted the Attorney General's request to halt these activities until trial.

The Attorney General seeks to put the promoters of this scheme out of business permanently and to obtain restitution for the 5,000 New Yorkers who paid $3,500 or more each for the credentials. The Internal Revenue Service has ruled that such groups, which operate for personal financial benefit and do not serve an exclusively charitable purpose, do not qualify for tax exemption. The action does not dispute the right of any group to profess any belief but is based on legal prohibitions against fraudulent misrepresentation and pyramid schemes.

After receiving numerous complaints, the Attorney General moved against abuses in collecting money for ostensibly law enforcement-related purposes. In one case, Department attorneys put the so-called *Police Digest* out of business. Promoters of the magazine had solicited Queens merchants to purchase advertisements supposedly to help buy bullet-proof vests and help the families of slain police officers when, in fact, the *Police Digest* had no connection with any law enforcement-related group. The Department also obtained partial restitution for those victimized from funds recouped after the magazine was closed down.

In a typical case of charity fraud, Buffalo office attorneys, in cooperation with the Cheektowaga Police Department, moved against J.A.R. Productions, a professional fundraising organization, for collecting $3,900 for a veteran-run children's camp but not giving it to the camp. An agent affiliated with both the fundraisers and the veterans' group was arrested, and Department attorneys are monitoring restitution of the money.

The Attorney General also obtained a court order shutting down the Institute of International Medical Education and the related Italo-American Medical Foundation, Ltd. for misleading American students into believing admission could be obtained for them in medical schools abroad. Despite growing restrictions on admissions of Americans to foreign universities, these institutions continued to encourage the expectations of students interested in pursuing a medical education abroad and to collect high fees from them without, in fact, placing them. Efforts are underway to locate and recover assets from these now-closed institutions for purposes of restitution.

Because present laws governing charitable activi-

A new computer system that facilitates audit of filings by charitable organizations will increase enforcement capability. The Department protects the public from such abuses as soliciting funds for non-existent charities.

ties are often unnecessarily burdensome to many legitimate institutions and, at the same time, leave many potential beneficiaries unprotected, the Attorney General worked to develop legislative changes. After hearings conducted by the Attorney General with members of the Legislature and the Secretary of State's office, the Department submitted the first comprehensive revision in 25 years of the laws governing charitable solicitation. The proposals would minimize the regulatory burden on thousands of smaller charitable organizations; eliminate loopholes that allow arbitrary exceptions to existing laws; provide a broader range of administrative sanctions to take effective enforcement action appropriate to the seriousness of the offense; require full disclosure of an organization's programs and operating costs to potential donors; and curb the charges allowed professional fundraisers and the fundraising expenses of charities themselves.

Trust and Estate Proceedings

Under the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act, the Attorney General represents the public in matters in which questions arise about will and trust provisions affecting an interest of charitable organizations. The Department also represents the State Comptroller in all matters where abandoned property is involved.

A major action taken by the Department under these powers in 1980 was the proceeding against the federal government — the first of its kind in the country — for recovery from the U.S. Treasury of all tax refunds due New York State residents which have remained uncollected for more than seven years. The amount involved is expected to total tens of millions of dollars.

The Department recently has placed increased emphasis on the impact of estate decisions upon the broader public interest at stake, as well as on the specific legal questions involved. When, for example, the Osteopathic Hospital and Clinic of New York was faced with closing because it failed to meet certain health and safety codes, the hospital trustees sought to acquire another hospital in the city to take its place. To do this, the trustees would have had to pledge the endowment funds, which are used to cover operating

costs, as collateral to a bank loan. In the past the Attorney General's office had opposed the use of endowment funds as collateral. But in this case Department attorneys went to court in favor of the action and argued that the larger purpose of continuing the city's only osteopathic teaching hospital was what the endowment's donor intended. The Manhattan Surrogate's Court agreed, and the trustees were able to go ahead with the purchase.

In a case involving the proposed sale of a landmark building, the Poppenhusen Institute sought judicial approval to sell its building on the grounds that it could no longer finance the institute's work in Queens adult education programs. The Attorney General's office opposed the sale, arguing in State Supreme Court that the public interest would be adversely affected by the closing of this cherished local institution and that the board of the institute had failed to take the necessary action to obtain the additional funds required. The court agreed, denying the petition to sell and urging the institute to broaden its base of financial support by working more closely with the community.

In a proceeding involving the original manuscripts of the celebrated English author, W.H. Auden, which had been donated to the New York Public Library, the executors of the donor's estate sought return of the papers on the grounds that the gift had been only conditional. They argued that all the relevant tax and other arrangements relating to the gift had not been completed before the donor died. After a lengthy trial in New York County Surrogate's Court, Department attorneys obtained a decision that the collection was indeed the rightful property of the New York Public Library and that this had been the donor's intention.

In another case involving the issue of a donor's intention to leave his estate for public benefit, Department attorneys opposed the sale of a Nassau residential care facility maintained for the poor and the indigent for more than 100 years by the Samuel Jones Trust. The Department argued that the sale did not include a plan for the creation of a new facility at a time when cutbacks in public social service programs made its continuance more important than ever. The Queens County Surrogate's Court approved the sale but also ordered submission of a plan to the Attorney General for a new facility.

Criminal Investigations and Prosecutions

The Department of Law has an important criminal enforcement role, even though its responsibilities are mainly civil. Within the Department is the Organized Crime Task Force, a statewide office which can, with the cooperation of local district attorneys, investigate and take action against organized criminal activities that cross county lines. Established in 1970, the O.C.T.F. is headed by a Deputy Attorney General jointly appointed by the Governor and the Attorney General.

The Department also has important criminal enforcement powers in connection with a wide range of white collar crimes such as tax fraud and is assigned statutory enforcement responsibility in a number of special areas.

Organized Crime Task Force

During 1980, the Organized Crime Task Force processed 108 indictments involving 52 defendants and eight counties. There were 88 indictments pending at the beginning of 1980. Grand juries in six counties voted an additional 20 indictments during the year.

Of the 38 cases reaching disposition, guilty pleas were entered by 28 defendants, and three were convicted after trial. The task force's conviction rate was 81 percent.

The results of some O.C.T.F. major operations included the following:

- Felony convictions were obtained against 13 members of a Brooklyn-based organized crime network dealing in counterfeiting, loan sharking, extortion, stolen securities and grand larceny.

- Two associates of a major organized crime leader were indicted in Brooklyn following a broad investigation of organized crime's penetration of segments of the cheese industry nationwide. The State

Department of Agriculture & Markets worked closely with the task force on this matter.

■ Five individuals, including a New England organized crime figure, were prosecuted on charges related to their participation in a nationwide conspiracy to fix thoroughbred horse races.

■ Prosecutions were conducted against 12 past and present town highway superintendents in eight western New York counties who were accused of receiving bribes from equipment suppliers. One defendant was convicted and the others are awaiting trial.

Investigations were also ongoing into the attempted takeover of organized crime in central New York by a group of career felons; the distribution of narcotics in the mid-Hudson valley; arson for hire; the infiltration of legitimate business; and the systematic multi-state trafficking in more than $150,000 worth of stolen electric typewriters.

Special Prosecutions Bureau

The Attorney General is empowered to investigate and prosecute criminal violations at the request of other state officials. In 1980, the Attorney General extensively reorganized and upgraded the Department's Special Prosecutions Bureau to increase its enforcement capabilities. At the same time, other state agencies were encouraged to refer possible violations to the bureau. As a result, the number of criminal matters handled in 1980 by the bureau was 339 — a huge increase over the 186 matters handled in 1979.

To strengthen further the Department's capacity to undertake these expanded criminal enforcement activities, the Attorney General for the first time received judicial approval to empanel two grand juries. The two New York County grand juries returned 21 indictments and issued one grand jury report. In addition, bureau attorneys presented evidence to grand juries in 11 other counties which resulted in 36 indictments. Finally, in addition to the 57 indictments returned by grand juries in 1980, the bureau filed 45 criminal informations charging individuals and corporations with various misdemeanors.

A substantial portion of the bureau's 1980 caseload resulted from referrals by the State Department of Taxation and Finance. Working closely with the Tax Department, the Special Prosecutions Bureau attempted to identify those individuals and corporations intentionally failing to comply with the Tax Law. Particular emphasis was given to cases of failure to pay to the state sales taxes collected from customers. In 1980, bureau actions resulted in the indictments of more than 40 individuals and corporations who withheld sales tax monies from the state.

Department attorneys sought to obtain stricter penalties in these situations by charging grand larceny under the theory that collected sales tax monies are held by the collector "in trust" for the state. Grand larceny is a felony, while tax law violations are only misdemeanors. A central aim of the prosecutions was to establish a long-range deterrent effect by making the crime more serious.

Also, a policy on plea bargaining was adopted which requires an individual defendant to plead guilty to a felony in the absence of exceptional mitigating circumstances. To date, this mandatory felony plea policy has had great success and should contribute to the anticipated deterrent effect.

The Tax Department also referred a significant number of cases involving failure to file income tax returns, filing of false income tax returns and violations of the franchise tax laws.

Some of the significant tax matters handled by the bureau in 1980 were:

■ The owner of the Palace and the Proof-of-the-Pudding restaurants in Manhattan was indicted on 12 felony counts of grand larceny in the second degree arising out of his failure to pay nearly $250,000 in state sales taxes based on total gross sales of more than $3 million. It is anticipated that the case will go to trial in New York County Supreme Court in early 1981.

■ The owner of a major tobacco store in Manhattan had unreported sales of approximately $1.5 million during 1977 and 1978 and evaded in excess of $100,000 in sales taxes. The owner pleaded guilty to grand larceny in the third degree and was awaiting sentence at year's end.

■ The owner of a restaurant in New Hyde Park, Long Island was indicted for evading more than $60,000 in sales taxes. The restaurant had gross sales of nearly $600,000 in the period involved, but the defendant filed sales tax returns for less than half of the sales figure. The indictment is pending in Nassau County Court.

■ In *People* v. *Charles Barnett,* the defendant was convicted after trial in Bronx County Supreme Court of grand larceny in the third degree for receiving a refund obtained as a result of his filing a false income tax return. The defendant was sentenced to serve a prison term of one and one-half to three years.

Hundreds of thousands of dollars in unpaid sales taxes were recovered through expanded tax law enforcement implemented by Special Prosecutions Bureau Chief William Dowling (right), shown here with attorneys Julie Mereson and John Ryan.

Criminal indictments obtained by the Special Prosecutions Bureau nearly doubled in 1980 as a result of upgrading the bureau's resources and improving working relationships with state agencies that refer criminal matters. Here, Department Investigator James Hairston takes fingerprints.

■ An auditor in the New York State Department of Taxation and Finance was indicted for taking a bribe in exchange for giving a taxpayer a more favorable audit. The indictment is pending in Queens Supreme Court.

■ The owner of a clothing store in Poughkeepsie pleaded guilty to a felony charge arising from his willful failure to pay the state $25,000 in sales tax monies collected from customers. The defendant made complete restitution and was sentenced to probation with the stipulation that he perform 500 hours of community service in the Poughkeepsie area.

In 1980, the State Department of Labor referred 10 matters to the Special Prosecutions Bureau relating to substantial unemployment insurance frauds. Most of these cases were still under investigation at the close of the year, but two resulted in guilty pleas.

In one case, the defendant had filed 45 fictitious unemployment claims, collecting $86,000 in benefits. Following indictment, the defendant pleaded guilty in Queens County Supreme Court to grand larceny in the second degree.

In a second case, the defendant was convicted after trial in Brooklyn Supreme Court of grand larceny in the second degree. The defendant had filed numerous false unemployment insurance claims over a two-year period and had received in excess of $20,000 through this fraudulent scheme.

In *People* v. *Nicholas Delgado*, a case referred to the Attorney General by the State Department of Agriculture and Markets, the Special Prosecutions Bureau conducted a successful joint investigation with the New York City Department of Investigation and other city and state agencies. The defendant in the case had posed as a government inspector and conducted "inspections" of small grocery stores in the Bronx, Brooklyn and Manhattan. Finding a supposed violation, he would offer to provide the store with a phony license in return for money, bilking hundreds of small grocery store owners out of thousands of dollars. The defendant pleaded guilty to scheme to defraud in the first degree and was sentenced to one and one half to three years in prison.

Matters referred by the Education Department, the Insurance Department, the Racing and Wagering Board, the Department of State and the Lottery Commission also were the subjects of ongoing investigations.

Other Criminal Enforcement Activities

In 1980, a newly formed task force consisting of the Attorney General's Labor Bureau and Special Prosecutions Bureau, in cooperation with the Workers' Compensation Board and the New York State Labor Department, began a grand jury investigation into the working conditions in factories which operate as contractors for manufacturers in the garment industry and are commonly known as "sweatshops." The probe focused on possible violations by owners of such factories of various sections of the Labor and Worker's Compensation Laws as well as violations of the Penal Law.

The Attorney General's Professional Responsibility and Enforcement Bureau (formerly the Education Bureau) undertakes investigations and prosecutions of criminal violations of the state's professional licensing laws. In 1980, the bureau prosecuted 42 individuals for practicing various professions without a license and put them out of business. These individuals claimed to be doctors, nurses, dentists, optometrists, certified public accountants and other professionals. In one case, an individual was convicted of practicing medicine illegally for surgically implanting synthetic wig fibers into human scalps. In another case, a person licensed to practice as a registered nurse posed instead as a physician and was employed by two hospitals and a nursing home. And bureau attorneys obtained the conviction of an individual who pretended to be a podiatrist and a masseur simply by hanging certificates on his wall.

Beginning in January, 1981, the Professional Responsibility and Enforcement Bureau will handle only prosecutions for violations of this kind and certain civil litigation for the State Department of Education. During 1980, however, it also was responsible for 347 administrative proceedings involving revocation of licenses and other discipline of licensed professionals by the Education Department. Responsibility for these administrative actions was transferred to the Education Department by legislation taking effect at the beginning of 1981.

The Attorney General's Employment Security Bureau represents the Industrial Commissioner in criminal matters involving the Unemployment Insurance Law. Computer cross-checking of employers' quarterly wage reports and unemployment insurance payment records has improved fraud detection and resulted in a significant increase in criminal prosecution referrals from the New York State Labor Department. Most of these involve claimants who illegally obtained unemployment insurance benefits while they were working. During 1980, attorneys of the Employment Security Bureau obtained 244 convictions in these cases and recovered nearly $500,000.

As detailed elsewhere in this report, the Environmental Protection Bureau increased criminal enforcement activity in cases involving toxic waste dumping; the Investor Protection and Securities Bureau successfully prosecuted numerous major fraud cases; and the Real Estate Financing, Antitrust and Labor Bureaus, as well as several regional offices, were engaged in significant criminal investigations and prosecutions.

Cooperation with District Attorneys

The Attorney General sought during 1980 to improve further the ongoing cooperation between the Department of Law and the state's 62 county district attorneys. One important step was the use of cross-deputization in some recent cases handled by the Department. By deputizing Law Department attorneys as assistant district attorneys and prosecutors from the district attorneys' staffs as assistant attorneys general, the traditional criminal enforcement powers of the district attorneys were combined with the diverse criminal and civil powers and statewide jurisdiction of the Attorney General. This procedure strengthened the civil and criminal remedies available to both offices in particular investigations.

In the Rochester area, for example, cross-deputization was employed successfully with the Monroe County District Attorney's office in the prosecution of a consumer fraud in large meat sales. In Nassau County, the prosecution of the principals of the Life Science Church for charity fraud was aided by the procedure. And in several counties around the state, investigations of toxic waste dumping were begun in 1980 with the cooperation of local prosecutors utilizing cross-deputization. These investigations were continuing at year's end, and prosecutions are expected in 1981.

Defense of State Law and Public Policy

As the chief legal officer of the state, the Attorney General is called upon to defend the constitutionality of acts of the Legislature. Challenges to legislative actions raise fundamental issues of law and public policy and impact in important ways on the ability of the state and its agencies to act in such vital areas as education, health care and municipal and social services. The fiscal ramifications for the state of such disputes often amount to hundreds of millions of dollars. Representation of the state's position in such matters is fundamental to the Attorney General's responsibility. Such representation includes not only advocacy of the state's legal position, but also close consultation with the office's agency clients to assure that the legal positions taken in defending cases are sound, effective and responsible. This consultation is an important part of a lawyer's responsibility to represent his client effectively and completely.

One of the most significant cases currently being handled by the Department is *Levittown Union Free School District* v. *Nyquist*. In this case, 30 school districts in the state have challenged the constitutionality of the formula adopted by the Legislature to distribute state aid for primary and secondary education to school districts. They argued that the aid did not overcome the differences among districts in the monies available for educational purposes, differences which depended in part on the property wealth available within each district for taxing purposes.

In 1978, a trial court held the aid formula unconstitutional, and gave the Legislature time to develop a revised plan. If sustained by the Appellate Division, this ruling could require a major restructuring of the financing of the state's school systems, and the State Division of the Budget has estimated the additional cost could be more than $3 billion.

Above: First Assistant Attorney General Dennis Allee deals with complex policy and fiscal issues as well as constantly growing caseloads. Below: George Zuckerman, New York City Litigation Bureau Chief, supervises attorneys who handle an average 100 cases.

Appeals attorneys have a record of prevailing before the State Court of Appeals significantly more often then the average respondent or appellant. Here, attorney William Kogan researches a case.

In an appeal before the Appellate Division, Second Department, attorneys from the Department's New York City Litigation Bureau argued that the people through their democratically elected representatives must have the right to choose the system for financing public schools and the amount to be allocated, and that such an important decision on public policy should not be usurped by the courts. A decision by the appellate court was pending at year's end.

In 1980, the Legislature enacted a franchise tax equal to two percent of the gross receipts of oil companies allocable to New York State. The Legislature intended to allocate revenues from this tax — estimated to be $235 million in the first year — to help keep the New York City transit fare from rising and to aid public transportation systems throughout the state. The Legislature thus sought to direct a small portion of the rapidly increasing profits of oil companies to assist mass transportation as a matter of public policy by barring the companies from passing the effect of this tax through to their customers.

Ten major oil companies challenged the constitutionality of the no-pass-through provision in federal court. One of the companies' major arguments was that this provision violated the federal petroleum allocation statutes and regulations because the no-pass-through provision amounted to a form of price control by the state.

Following this federal court challenge, five oil companies brought five separate actions in state court, directly challenging the constitutionality of the tax itself. These actions were pending in Supreme Court in Albany County at year's end.

In *Benson* v. *Beame*, the Attorney General successfully defended the New York City rent control law in the New York State Court of Appeals against the objection of landlord representatives that a housing emergency no longer existed in the city. The court sustained the Attorney General's position that the need for rent control had been re-examined by legislative bodies every three years, most recently in a 1980 review by the New York State Temporary Commission on Rental Housing. The commission concluded in its report that there was "a need for continuing a form of rent regulation in those jurisdictions in which housing accommodations are presently subject to rent control or rent stabilization." An appeal to the United States

Supreme Court was pending at the end of 1980.

In an important action brought by pharmaceutical manufacturers to challenge the state's new generic drug substitution law, the Attorney General's arguments in favor of the law's constitutionality prevailed. As a result, consumers throughout the state can continue to fill necessary drug prescriptions at the lowest possible cost.

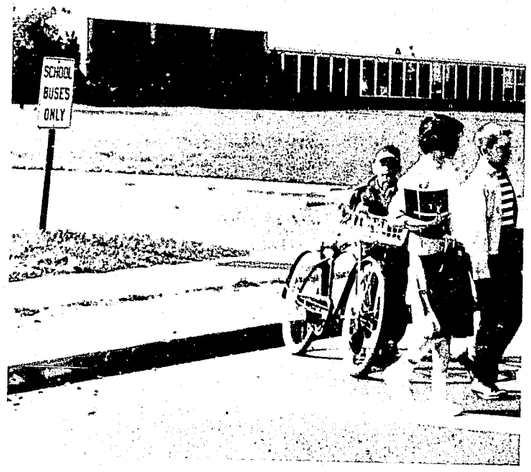
Under the substitution provision, when a physician indicates approval for use of a generic equivalent of a prescription, the pharmacist is required to provide the least expensive drug containing the same active ingredients, dosage, form and strength as the drug prescribed.

In upholding the constitutionality of the generic drug substitution law, the Appellate Division, First Department, rejected plaintiffs' claims that it deprived drug manufacturers of equal protection or due process of law and rejected their claims that they were deprived of rights under the federal Patent and Trademark Laws.

In 1976, in an effort to control soaring hospital costs, the Governor and the Legislature adopted stricter regulations for Medicaid reimbursement to health care providers. Following these restrictions, court actions were instituted by such Medicaid-supported providers as hospitals and nursing homes, seeking increases in the rates of reimbursement granted them. By 1979, the providers' claims amounted to hundreds of millions of dollars.

In 1980, a settlement of $20 million was reached on the hospital claims through 1979 of all but four of the voluntary and public hospitals in the state and of the New York City Health and Hospitals Corporation. Since that settlement, however, new legal actions were commenced by several hospitals challenging the method by which the settlement applies to them. New actions were also brought by the New York City Health and Hospitals Corporation, among others, in federal court challenging the reimbursement rates for 1980.

During the period of the state's fiscal crisis in 1977, the Legislature sought a means to reduce the budgetary burden of education aid to localities without causing additional difficulties for the localities, many of which faced their own fiscal hardships. Legislation was adopted offering localities the chance to borrow against accrued insurance reserves from the state health insurance plan in order to offset reductions in school aid. Later, when repayment of these cash advances was required because the school districts were withdrawing from the state health insurance plan, participating school districts challenged this legislation as unconstitutional. In one case, *Syracuse Board of*



Increasingly, cases of major social and fiscal significance are coming to the courts, like a challenge to the state school-aid funding formula which could have a $3 billion impact.

Education v. *Regan,* the plaintiff school district prevailed at the trial level, but the state appealed and the matter was pending in the Appellate Division, Fourth Department at year's end. A similar case, *Deer Park Union Free School District* v. *Carey,* was also pending in Suffolk County Supreme Court. The potential liability of the state in these cases is some $20 million.

In a case involving the economic development of the state, the Attorney General succeeded in sustaining the American Stock Exchange Facility Act, which created economic incentives to facilitate construction and lease of a new building for the American Stock Exchange. The purpose of the act was to help preserve New York City's position as the nation's major financial center and thus safeguard an important base of state revenues. The New York Public Interest Research Group challenged this legislation in Albany County Supreme Court as an unconstitutional gift or loan of state funds for a private purpose. The Attorney General argued that the effort to create innovative methods of financing for economic development purposes was constitutional, and the trial court agreed. Plaintiffs filed a notice of appeal, but the case appeared to be moot when the American Stock Exchange cancelled the construction project. The funding mechanism upheld in this case, however, is being used as a model for other economic development projects.

As a result of three major Court of Appeals decisions during the last 10 years affecting municipal real property tax assessment practices and the procedures for seeking refunds, non-residential taxpayers sought large tax refunds from municipalities across the state. This precipitated a fiscal crisis in many communities. In New York City alone, the refunds currently claimed are estimated at $2.7 billion. Throughout the rest of the state, municipalities may be liable for several hundred million dollars.

In its decisions, the court held that the state-determined ratio of assessed property values set by the State Board of Equalization and Assessment could be used as a basis for bringing tax challenges against municipal assessments and that properties, both residential and non-residential, had to be assessed either at full or equal value. This was contrary to the practice of many municipalities, which used fractional assessments and set higher assessments for industrial properties than for residential properties because of the availability to them of other tax offsets.

Subsequently the Legislature adopted two measures aimed at alleviating the dislocations that could come from the effects of the court's holdings. A 1978 law required taxpayers to plead and prove that their property was unequally assessed in comparison with other property of the same major type in the state, rather than in comparison to all property. And a 1979 law eliminated the state equalization rate as evidence in determining the basis of comparison within any particular community.

In 1980, municipalities, in defending themselves against refund challenges by taxpayers under the previous court rulings, introduced these new statutes as part of their defense. When some of the taxpayers argued that these laws were unconstitutional and therefore should not apply to their refunds, the Attorney General intervened to defend the constitutionality of the laws.

Challenges to the constitutionality of the "Padavan Law" continued to come from various sources during 1980. This statute establishes administrative procedures for considering issues and objections relating to the location of Department of Mental Hygiene facilities for mentally ill, retarded and developmentally handicapped persons. As a result of the state's policy of treating certain of these patients in the least restrictive setting in recent years, the Department of Mental Hygiene has opened many relatively small residential community facilities for them, giving rise to concern in the affected areas.

In one Nassau County case, *DiBiase* v. *Piscatelli,* the Supreme Court upheld the constitutionality of the law against challenges from a group of neighboring homeowners and an organization representing retarded persons. The court found that the homeowners did not have standing to challenge the statute and that, in any case, their challenge lacked merit since the statute was both a valid exercise of state power and reasonable. The court also found that the statute did not abridge any of the rights of the mentally retarded. At year's end, the case was on appeal to the Appellate Division, Second Department.

In another case, *Village of Old Field* v. *Introne,* the Supreme Court in Suffolk County also upheld the law's constitutionality. The court rejected the claim of a municipality, holding that the municipality lacked standing, that the statute had sufficient standards and criteria for its application, that it did not deny the municipality due process or equal protection, and that it properly voided a conflicting local ordinance. An appeal was pending in the Appellate Division, Second Department, at the close of 1980.

Above: In recent years, major suits have challenged the treatment afforded patients at state-run facilities for the mentally incapacitated. Below: Caren Brutten heads the Litigation Unit which handles many of these cases.

Defense of State Agencies and Officials

In the course of taking action to carry out their duties and responsibilities, the Governor, the Comptroller, and the commissioners and other officials and employees of state agencies acting in their official capacities, as well as judges, are sued by those seeking to challenge their actions or the laws and regulations on which the actions are based. The defense of thousands of such suits each year in every area of state government activity is a large and growing part of the workloads of the Department's Albany and New York City Litigation Bureaus, the regional offices and the Division of Appeals and Opinions.

Department attorneys worked effectively to handle this growing caseload with significant successes in many major cases. A significant part of the Department's efforts was its counseling of agencies and officials on the legal correctness of their positions, which the Attorney General considers an important aspect of his representation of state defendants.

Defense of State Agencies

Court decisions in the myriad legal challenges to state agencies and officials have had an enormous impact on the authority and operations of state government. The cases defended by the Department of Law involve issues of agency policy, regulations, and day-to-day operations in every major area where the state exercises regulatory jurisdiction or provides public services. Among the more important cases of this kind defended by the Department in 1980 were the following:

In *Feinstein* v. *Lewis,* New York City Litigation Bureau attorneys defended the jurisdiction of the Superintendent of Insurance to supervise public employee welfare funds which are jointly administered by labor and management. The United States Court of Appeals for the Second Circuit rejected a claim by the plaintiff that the federal government had exclusive jurisdiction over such welfare funds under the federal Employees' Retirement Income Security Act.

In *Lovisa Construction* v. *State Department of Transportation,* the Albany Division of Appeals and Opinions successfully asserted the right of a state agency to exercise discretionary power in waiving minor technical deficiencies in bids for public contracts. In its highway and building construction contracts, the state continually strives to obtain highest quality work done expeditiously for the lowest competitive bid. Of necessity, bid applications sometimes are exceedingly complex. Department attorneys argued that a rigid interpretation of relevant statutes that would require rejection of the lowest bid solely because of unimportant technical faults is not in the state's best interest. The Court of Appeals ruled in the state's favor.

In *Fay* v. *Bahou,* attorneys from the Albany Litigation Bureau prevented the dismantling of the new performance evaluation and rating system devised for state employees by the Office of Employee Relations, when an employee of the state's Civil Service Department challenged the procedures. The employee charged that the new system, which is designed to provide incentives for all management/confidential employees based upon an increase in the productivity and quality of employee work, denied him due process because he was not granted a formal hearing to contest his evaluation. The Supreme Court in Albany County ruled in favor of the state's position, holding that no formal hearing was required because the appeals procedures which were followed were adequate.

In *Coalition of Concerned Medical Professionals* v. *Axelrod,* Albany Litigation Bureau attorneys prevailed on the issue of the Commissioner of Health's authority to inspect the premises of health-related facilities for violations of the Public Health Law. The Commissioner of Health commenced administrative proceedings against an unlicensed diagnostic and treatment center on Long Island, and, as part of the Health Department's investigation, applied for an inspection warrant. The unlicensed facility brought action in Albany County Supreme Court seeking to suppress the warrant and prevent the state from using any evidence thus obtained either to close the facility or to compel it to get a license. The court ruled for the state, following which the plaintiffs brought a federal action seeking the same relief. The federal suit was pending at year's end.

In another area of law, attorneys of the Binghamton office defended the state in a libel action brought against the State University at Binghamton. The claimants alleged that the state was guilty of libel based upon the university newspaper's receiving and publishing a letter signed with the names of persons who were not the authors of the letter. The claim raised the question of the extent to which the university controlled the student newspaper. Department attorneys argued that the university did not exercise significant control over the student newspaper to cast the state in liability. The case was scheduled to go to trial in early 1981.

Social Services Cases

Social services-related cases make up a large part of the Department's litigation caseload. In *Schaubman* v. *Blum,* attorneys of the New York City Litigation Bureau established the authority of the New York State Department of Social Services to disqualify a Brooklyn drug store and pharmacist from the Medicaid program for fraud. The case involved submission of a false invoice requesting Medicaid to pay the full price of the brand name drug, when a lower-priced generic drug actually had been used. After Jarett Drug Corporation pleaded guilty to the charge in the New York City Criminal Court, the company was fined $2,000. In a subsequent administrative proceeding held by the Department of Social Services, both the drug corporation and the pharmacist were permanently disqualified from the Medicaid program.

In a proceeding against the Department of Social Services, the pharmacist contended that the penalty was excessive, and the Appellate Division modified it. In unanimously reversing the Appellate Division, the Court of Appeals ruled that a wrongdoer cannot be insulated from a severe sanction merely because small sums of money may be involved, and that this was an entirely proper administrative response to protect the integrity of the Medicaid system and to put other providers on notice.

The Department of Law is also responsible for defending the State Department of Social Services in all legal challenges relating to the granting of public assistance and other benefits. A number of important actions involving state-determined benefit levels were litigated during 1980.

In *R.A.M.* v. *Blum,* for example, a class action was brought on behalf of welfare recipients, arguing that public assistance payments should be adjusted annually to reflect cost-of-living increases. The Appellate Division, supporting the state's position, held that the issue was one of public policy to be left to the discretion of the Legislature. The case was appealed and was

pending before the Court of Appeals at the end of 1980.

The Attorney General also initiated a number of affirmative actions in 1980 on behalf of the Department of Social Services against group homes and other communal centers for failing to maintain safe and healthy conditions. As a result, some homes made the changes necessary to bring them into compliance with state health and safety regulations, and actions are still pending against others.

The Attorney General also closed certain homes. In *Blum* v. *Rosenbaum,* Department of Law attorneys commenced a proceeding in State Supreme Court which resulted in the appointment of a receiver to take possession of, manage and operate an adult home in Rockland County after the prior owner had left the facility unsupervised and in the hands of an unlicensed party.

In another case, *Abrams* v. *Freeman,* the Attorney General secured a court order which resulted in the closing down of an adult home in Nassau County which had been guilty of serious safety violations and inadequate supervision. Under the court's supervision, the patients were transferred to safe and appropriate facilities.

Major Institutional Care Issues

Cases related to institutional care for those in need of mental health or developmental disability services constitute another major category in the Department's litigation workload because of both the numbers of actions and the policy and fiscal implications for the state.

The State Department of Mental Hygiene maintains a statewide system of institutional care for the mentally ill and the mentally retarded encompassing 51 institutions and approximately 33,000 patients, in addition to over 160 smaller community-based facilities.

Since 1975, when the Willowbrook case resulted in a consent decree providing for a reduction in the number of residents at the Staten Island Developmental Center for the mentally retarded (formerly known as Willowbrook) and for reforms in the delivery of services to the mentally retarded at that institution, other lawsuits have been commenced involving the care and treatment provided to residents at various other state facilities. The cost to the state of the Willowbrook decree is approximately $100 million annually.

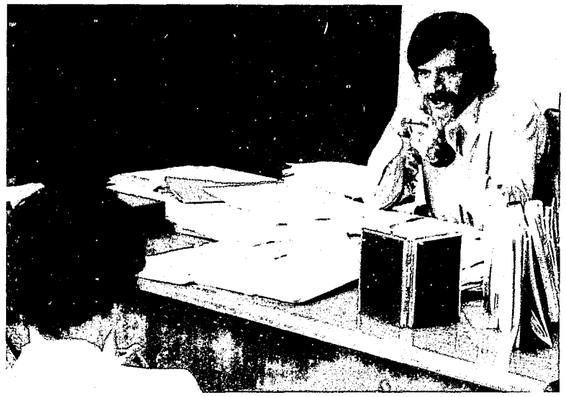
In all these cases the state is faced with the dilemma of trying to provide the best care and treatment possible within the limitations of budget, staff and physical facilities.

In one important case of this kind, a parents' organization brought a class action contending that the residents of the Suffolk Developmental Center receive inadequate treatment and are subject to overcrowded conditions. Plaintiffs in this action seek to transfer all of the institution's present residents to small-unit community residences, a change which would require additional expenditures equal to or greater than those experienced under the Willowbrook decree. The case was still pending at the close of 1980 in United States District Court, Eastern District.

In 1980, Department attorneys successfully defended the state's position in *Sundheimer* v. *Blum,* which raised the issue that mentally retarded children and adults who reside at home were not getting treatment equal to those currently affected by the Willowbrook consent decree. The Appellate Division, First Department, held that there was no denial of equal protection to these individuals. An appeal to the Court of Appeals is pending.

In *Woe* v. *Carey,* Department attorneys defended against a class action challenging the care and treatment of adult patients civilly committed on an involuntary basis to over 20 state mental facilities. Plaintiffs contended that the care and treatment provided by the state in its mental health facilities should be equal to that provided mental patients at private institutions. Department attorneys argued that the facilities had been properly accredited and that there was no constitutional requirement that conditions in state institutions match those in the most expensive private institutions. The potential financial liability of the state in this case is substantial. The case was pending at year's end in U.S. District Court for the Eastern District.

In *Oates* v. *Carey,* another case concerning care of the retarded, attorneys of the Buffalo office reached a settlement in a class action brought by parents of children who were patients of the West Seneca Developmental Center. The issues raised concerned staff inadequacies. Under the agreement, the Commissioner of the Office of Mental Retardation and Developmental Disabilities will add additional staff and will maintain a staff-patient ratio which will not fall below the state-wide ratio, excluding those facilities operating under the Willowbrook consent decree.



Heavy caseloads are a statewide problem. The Albany Litigation Bureau, headed by James McSparron (right) must cope with growing caseloads in corrections, mental hygiene and other areas.

Other Mental Hygiene Matters

Other litigated matters handled by the Department of Law for the State Department of Mental Hygiene include suits against state employees entitled to indemnification and representation under the Public Officers Law; surrogate proceedings involving patients' estates or estate interests; Family Court proceedings involving patients and their children; and various other actions and proceedings in Supreme Court and local and federal courts.

Mental hygiene matters are handled in a 12-county downstate region (which has the largest concentration of the mental hygiene agency's patients) by the New York City-based Mental Hygiene Bureau and, in other areas, by the Department's Albany and regional offices.

In 1980, the Mental Hygiene Bureau alone handled more than 2,200 general litigation matters. In addition, Department attorneys handled requests seeking court authorization of elective surgery for committed patients. The downstate bureau handled more than 500 such orders In 1980, most of which required evidentiary hearings.

The Department of Law is also responsible for representation of the Departments of Mental Hygiene and Correctional Services in a variety of proceedings involving involuntary hospitalization under the state's criminal procedure, corrections, and mental hygiene laws. These include applications to retain criminal defendants deemed unfit to stand trial in psychiatric facilities; applications by defendants committed as unfit to stand trial seeking to convert their commitment to civil status; applications by institutionalized persons acquitted of criminal charges by reason of mental illness seeking release; applications for commitment of persons in state correctional facilities to psychiatric facilities on the grounds that they need treatment; various state habeas corpus proceedings brought by committed patients; and applications for retention of civilly committed patients in state psychiatric facilities.

The Mental Hygiene Bureau handled more than 7500 of these retention matters and related jury trials in 1980, accounting for more than 400 full attorney days in court. In the regional offices, retention hearings and trials continued to consume more attorney time in 1980. In Utica, 147 hearings and 24 jury trials were held; and in Auburn, 97 such matters were handled, a 30 percent increase over 1979.

In 1980, there was an increase in the number of actions brought against the state objecting to the establishment of community residences for mentally ill, retarded and developmentally handicapped persons. As a result of the state's policy of care in the least restrictive setting of certain patients, the responsible state agencies have sought to establish a variety of relatively small residential facilities in communities throughout the state.

In two cases brought in 1980, Mental Hygiene Bureau attorneys defended the state's position and the objections of the petitioners were turned aside by the courts on the grounds that the only issue to be resolved in such a claim was whether the facility proposed would substantially alter the nature and character of the area.

State Employee Relations Issues

In 1980, the Department of Law defended hundreds of cases challenging specific rulings or policies of the Civil Service Commission. These decisions are critical to the day-to-day operations of the state and its personnel policies.

In another personnel area, the State Employees' Retirement System and the State Teachers' Retirement System collectively manage billions of dollars of assets that will fund retirees' pensions. State officials responsible for administering these systems are under a duty to preserve the fiscal integrity of the system by preventing spurious payouts and resisting claims by those who are ineligible. The Attorney General represents the state agencies or officials in these cases.

The Department is also called upon to bring actions to represent the state under the Taylor Law, which bars strikes by public employees. In the April, 1980 New York City transit strike, for example, the involved unions were enjoined from striking by Brooklyn Supreme Court, and, after a trial on contempt, ordered by the court to pay fines for violating the injunction. And in a case involving the refusal of unionized employees of the Metropolitan Suburban Bus Authority to operate certain buses in Nassau County, the employees were found, after a trial in Nassau County Supreme Court, to have violated the Taylor Law.

Real Property Matters

The Department's Real Property Bureau, headquartered in Albany, provides legal assistance to state agencies in connection with the acquisition and disposition of land. Under the Eminent Domain Procedure Law, bureau attorneys certify title and payment, review title documents, and prepare closing papers for the acquisitions. In 1980, 12,638 cases were processed, 3,497 certifications made, and 3,773 matters directed for payment. An indication of the extent of its operations is that the bureau processed 2,850 agreements and awards for direction of payment totalling $50 million on behalf of the State Departments of Transportation, Mental Hygiene and Environmental Conservation, the State University of New York, the State Power Authority and various other executive agencies.

In 1980, to protect the state against a possible loss of $500 million in federal highway funds as a result of its being unable to pay all acquisition claims before the letting of construction contracts, the Attorney General intervened. After a series of conferences initiated by the State Department of Transportation with federal officials, Real Property Bureau attorneys devised a plan to solve the problem by placing the estimated money in question on deposit in lieu of payment. An amendment to the Eminent Domain Procedure Law was also proposed, which the Legislature enacted, to make this accelerated system of payment possible. The bureau, at the request of the State Department of Transportation, developed a similar system of accelerating the acquisition process for other projects. This system is now being extended to acquisitions on behalf of other state agencies.

Defense of State Officials

In hundreds of cases, state officials and employees are sued as individuals for actions taken by them. Under section 17 of the state's Public Officers Law, these individuals are entitled to indemnification by the state for most actions which are taken in the performance of their duties. In these circumstances, the Department of Law is responsible for representing them.

In 1980, the recent trend continued toward an increase in the number of civil actions in which state employees were sued for damages and/or injunctive relief. These cases may be brought in state court where a claim under state law is asserted. For example, a campus security officer for the State University of New York was sued in State Supreme Court for over $750,000 in damages by a motorist who alleged serious personal injury as a result of a car accident. The accident took place off campus while the security officer was pursuing another driver guilty of traffic violations on campus. The case was still pending at the end of 1980.

Most of these actions were brought pursuant to federal law, however, under section 1983 of Title 42 of the U.S. Code, which permits suits against public officers who are alleged to have violated an individual's federal constitutional or statutory rights. These suits are often brought against the personnel of corrections or mental hygiene institutions and state police officers. Suits are also brought against judges by defendants in criminal cases. And individuals seeking benefits under public welfare programs which are federally funded are increasingly bringing such actions, asserting deprivation of their federal constitutional or statutory rights.

The grounds for bringing challenges against state employees based on federal rights have been considerably expanded by court decisions over the last several decades. In 1980 the United States Supreme Court held in *State of Maine* v. *Thiboutot*, that section 1983 actions could be extended to provide a remedy not only to individuals who are deprived of rights under the federal constitution or civil rights statutes, but also to those deprived of rights as a result of violations of any federal law. This important decision enables individuals aggrieved by state actions in connection with the many programs which are funded or mandated by federal statutes, such as social welfare or housing programs, to seek relief, as well as attorneys fees, in either federal or state court. This expansion of the grounds for federal suits has led some claimants seeking damages for state actions to bypass the State Court of Claims, which is the only state forum for damage claims against the state.

Section 1983 actions also allow for the collection of attorney fees by plaintiff if he or she is the prevailing party in whole or in part. As a result, many actions formerly brought under state law are now being brought as section 1983 actions, so that the plaintiffs, if successful, can obtain legal fees.

These suits have placed additional burdens on the Department's limited staff resources since, after the close of the court proceeding on the substantive matter at issue, if plaintiff is successful a second proceeding is instituted and a second round of discovery and submissions to the court are often necessary to determine what constitutes fair reimbursement in attorneys fees.

The growing numbers of these federal suits have dramatically increased the costs to the state in awards, attorneys fees and other related payments. In the 1978-79 fiscal year, state payments amounted to $150,000. In 1979-80, they had climbed to $260,000. And by 1980-81, payments exceeded $1 million. It is estimated that payments in 1981-82 will exceed $2 million.

Since successful plaintiffs can recover attorneys' fees with the amount determined, in large part, by the time the attorneys spend in order to achieve the result, there is a need for a vigilant policy on the part of the state to settle meritorious claims. The Department continues its effort to counsel the agencies to resolve and settle cases where appropriate in order to save court time, attorneys and agencies' time and to minimize the attorneys' fees to be paid.

Congress in 1980 also deleted the restricting clause which had limited injury claims brought in federal court to those which exceeded $10,000, further increasing the potential numbers of such cases.

An example of the shift from state to federal court action, with a commensurate increase in potential state liability, is the case of a woman employee at a state mental institution in New York City who was reassigned to work at an institution in Rockland County. The employee initially brought an Article 78 proceeding against the State Department of Mental Hygiene, charging that improper procedures had been involved in the transfer. When this was dismissed in state court, the employee brought a civil rights action in federal district court, seeking hundreds of thousands of dollars in damages for alleged violation of her constitutional rights. The federal court refused the state's motion to dismiss the case despite the earlier state court ruling and ordered the case tried. Thus, even though the case was previously completed in state court, the federal court imposed a significant additional burden on Department attorneys who had to undertake discovery and other preparations for the federal trial.

Another typical section 1983 action, handled by Albany litigation attorneys, involved an individual who had failed to file state income taxes. After not paying taxes in 1977, the State Tax Commission issued a warrant requiring him to pay a $950 penalty. The individual brought action in federal court against the Tax Commission agent and attorney involved with the case, charging them with violating his constitutional rights by issuing a warrant under a state tax law he claimed was unconstitutional. The U.S. District Court, Northern District, dismissed his claim, holding that he had adequate remedy under state law to challenge the warrants.

Suits against judges are another important and growing segment of the Department caseload in both state and federal court. In 1980, the Attorney General was called upon to defend judges in approximately 75 actions and proceedings. Such actions generally fall into two categories. First, it has become common for convicts or other disappointed litigants to bring a federal civil rights action contending that a state court judge violated their constitutional rights. Although judges have been held to be absolutely immune from claims for personal liability resulting from acts that they performed within the scope of their judicial authority, it is still necessary for Department attorneys to assert such defenses in moving to dismiss personal action suits against judges.

Second, state court judges are frequently sued by persons involved in a pending lawsuit who assert

that the judge in the litigation acted in excess of his authority. These include claims by criminal defendants that a judge has threatened to introduce improperly obtained evidence or has issued or is about to issue a ruling that would be contrary to the defendant's constitutional or statutory rights; suits by district attorneys in pending criminal cases challenging a judge's ruling; suits by newspapers challenging so-called "gag" orders of judges barring the public from attending criminal proceedings; and suits by litigants in divorce or child custody disputes challenging a judge's ruling.

In most instances, these proceedings against judges have been held to be improper.

Prisoner-Related Litigation

The rising crime rate of the last decade has produced a corresponding growth in the state's prison population. In the last five years alone, the number of inmates in custody increased by more than 33 percent, from 16,074 at the end of 1975 to 21,644 at the end of 1980. Expanding prison populations, combined with publicly funded legal services available to inmates, has resulted in a huge increase in prisoner-related litigation caseloads. These legal challenges, which are brought primarily against officials of the Department of Correctional Services and the Board of Parole, jumped from 1,070 in 1976 to 5,427 in 1980, an increase of more than 500 percent.

Prisoner cases range from the less serious, such as a suit brought by an inmate to compel staff and fellow inmates to call him by his right name, to fundamental challenges to major aspects of the state's correctional system.

State habeas corpus challenges, which usually involve parole-related issues, constituted the largest category of prisoner litigation during 1980. These are actions charging non-compliance with statutory procedural requirements. When a prisoner is charged with violation of parole, for example, an administrative hearing is held to determine whether the violation exists, and, if so, what course of action should be ordered. State habeas corpus actions are often brought to challenge the results of these hearings, typically charging failure to observe such procedural requisites as holding hearings within a certain number of days and allowing the prisoner to have an attorney present and to call witnesses.

Sometimes, these cases involve more fundamental issues. In *Green* v. *Dalsheim,* a prisoner in the Ossining Correctional Facility whose parole application was denied by the State Parole Board challenged his confinement on the grounds that the name of the board member who had reviewed the findings of his hearings officer had been withheld from him. Parole Board members have opposed signing their names to board decisions because of possible threat to their personal safety when they visit correctional institutions. The Appellate Division, Second Department, upheld the state in finding no merit to petitioner's claim that the board be required to reveal such information.

In another important case involving the decision-making power of the Parole Board, the board set a minimum period of imprisonment for a prisoner convicted of criminal solicitation of murder-for-hire that was the same as maximum sentence given him by the sentencing court. In *Russo* v. *New York State Board of Parole,* the prisoner argued that parole should be considered after one-third of the maximum sentence since the sentencing court had not set a required minimum period. The Court of Appeals upheld the argument by the Albany Division of Appeals and Opinions that the board was within its authority in setting a minimum period greater than one-third of the maximum sentence, even though the sentencing court could not have done so.

The next largest category of prisoner cases are those involving Article 78 proceedings under the state Civil Practice Laws and Rules. These are usually challenges against the superintendent of the prison where the individual is incarcerated on the grounds that either statutory requirements or prison regulations have not been met. They often involve charges of failure to provide jail time credit or good time credit for good behavior, or failure to provide the amenities of prison life required by regulations.

Challenges to disciplinary proceedings are the most frequent Article 78 proceedings handled by the Buffalo office, which is responsible for cases at the Attica Correctional Facility. A typical case during 1980 was that of a prisoner who had been convicted of second-degree murder and who had been put in an area of restricted confinement after assaulting a corrections officer. The prisoner brought an Article 78 proceeding and charged that the superintendent's hearing, which resulted in an order of restrictive confinement, had not been held under the proper time requirements; that

evidence relied upon in this hearing was not sufficient; and that six months restrictive confinement was too harsh a penalty. The court denied the prisoner's application.

Attica also houses the state's reclassification unit, to which prisoners around the state are sent if the superintendents of other facilities believe these prisoners' classifications should be reevaluated. (Each prisoner, upon commencing a prison sentence, is given a security and programmatic classification to determine the appropriate institution or program for that prisoner.) A class action Article 78 proceeding was instituted by inmates of the reclassification unit challenging the existence of this unit, their placement in it, and the procedures and conditions there. This case was heard in Supreme Court, Wyoming County, and a decision was pending in early 1981.

The large numbers of federal habeas corpus actions brought each year constitute another major category of cases. These are federal court actions brought after conviction in the state courts which charge violations of the prisoner's constitutional rights in the criminal trial proceeding and seek release from custody. Alleged violations include that proper identification procedures were not followed, that confessions were coerced, and that defense counsel was incompetent.

For example, a prisoner convicted of second-degree murder and serving a 25-year-to-life sentence in Attica, brought a federal habeas corpus action seeking to overturn his trial conviction on the grounds that his confession had been coerced in violation of the Sixth and Fourteenth Amendments. The U.S. District Court, Eastern District, held that the circumstances of the interrogation were not coercive and the writ was denied.

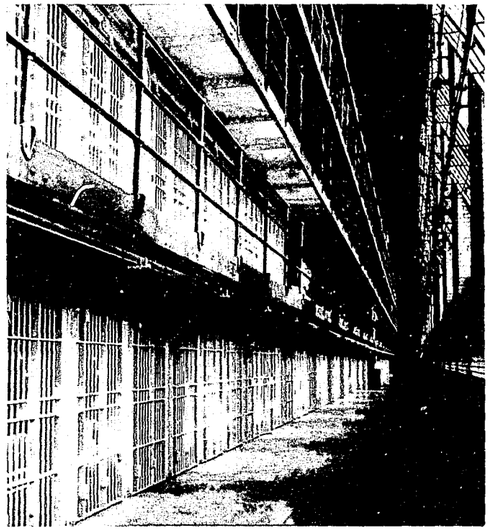
Finally, the most complex type of prisoner cases are those which involve federal constitutional challenges, particularly actions under section 1983 of Title 42 of the United States Code, challenging the conditions of confinement. These cases were formerly few in number, but they have been rapidly on the increase. From 256 in 1979, the number rose to 332 in 1980, a jump of nearly 30 percent in one year. While most prisoner legal challenges involve remedies which primarily affect only the individual bringing suit, many section 1983 actions, sometimes brought as class actions, have the potential for affecting, or even radically altering, the operations and the budget of the state's correctional system.

A major section 1983 action, brought in U.S. District Court, Southern District, for example, could dramatically affect the security precautions in all 33 of the state's correctional facilities. In *Hurley* v. *Ward,* a prisoner in the Ossining Correctional Facility convicted of murder charged that the strip search violates the Eighth Amendment, which prohibits cruel and unusual punishment. Attorneys of the New York City Prisoner Litigation Unit were preparing for trial in this case at the end of 1980.

In another major section 1983 action, which could affect the way in which disciplinary procedures are implemented throughout the state prison system, prisoners at the Bedford Hills Correctional Facility, located in Westchester County, charged in *Powell* v. *Ward* that their constitutional rights were violated by procedures followed in disciplinary hearings on charges of violations of prison rules. This class action was originally brought in 1975. In 1980 the U.S. District Court, Southern District, ruled that the prison must permanently abide by a code which had been preliminarily mandated by the court in 1975. The procedural requirements relate to notice of hearing, the right to call witnesses, the length of stay in disciplinary segregation pending disposition and other related matters. The state appealed the decision.

In *Anderson* v. *Coughlin,* a section 1983 action was brought in 1980 by a prisoner in the Bedford Hills Correctional Facility against the Commissioner of Correctional Services, challenging the manner in which prisoners are treated in the special housing units of eight downstate prisons. These are the units to which prisoners are sent after they have violated prison rules and where confinement conditions are more restrictive. The prisoner, convicted of manslaughter, charged a violation of her constitutional rights by virtue of the lack of proper ministerial attention, recreation and health services in these special units. An adverse decision in this case, which was pending at year's end in U.S. District Court, Southern District, could effect virtually all of the major downstate correctional institutions.

In *Chase* v. *Henderson,* another far-reaching case commenced in 1980 affecting special housing units, attorneys of the Auburn office defended against a challenge to the special housing facilities at the Auburn Correctional Facility in relation to the Department of Correctional Services' regulation on "outdoor exercise." The State Supreme Court held that the present



Above: Prisoner-related cases have increased by more than 500 percent in five years. Below: a new Prisoner Litigation Unit, headed by Gerald Ryan, has made substantial progress in improving management of this largest category of cases.

physical set up of this facility does not allow for the requisite outdoor exercise and gave the department time to submit an acceptable plan. The case is significant because of many other proceedings throughout the state which raise similar issue.

In addition to new cases challenging the conditions of confinement, a great deal of attorney time is also spent on applications by prisoners to secure compliance with judicial rulings in previous cases. In 1977, for example, in *Todaro* v. *Ward,* the U.S. District Court, Southern District, held that the Department of Correctional Services must provide specified medical services to the women inmates of the Bedford Hills Correctional Facility. From the entry of that judgment through 1980, applications have been made by many of the affected inmates seeking maintenance of the standards set forth in that judgment.

Legal action by prisoners has been facilitated by the creation of three prisoner legal services programs during the last decade. The largest of these, Prisoner Legal Services, was originally funded by Federal grants and is now funded by a state appropriation amounting to $1,361,800 for the 1981-82 fiscal year. In addition, the Legal Aid Society of New York and the American Civil Liberties Union make special prisoner legal services programs available throughout the state.

At the same time as prisoner-related caseloads have grown rapidly, cases have become more complex. Class actions are more common; counsel in legal services programs have grown more experienced and sophisticated since the inception of these groups; and judges have begun to demand more discovery about the facts of each case and more well-developed briefs. The result is that more attorney time is necessary for discovery and research on more cases, placing a severe strain on the Department's staff resources.

Section 1983 actions, in particular, are time-consuming because they frequently raise fundamental questions about the entire state prison system. The number of hours worked by attorneys handling typical habeas corpus cases ranges from 40 to 50 hours; but section 1983 cases require from 100 to 125 attorney hours.

Growing numbers and increased complexity of cases have combined to contribute to a growing backlog of prisoner-related cases throughout the state. The caseload experience during 1980 is shown in the following table:

Prisoner Litigation Cases During 1980

	On hand end-1979	*Received 1980*	*Disposed of 1980*	*On hand end-1980*
New York City Office	1620	2570	1762	2428
Buffalo Office	1192	1660	1434	1418
Albany Office	463	399	339	523
Poughkeepsie	322	392	310	404
Auburn Office	17	278	266	29
Plattsburgh*	58	128	156	30
Total	3672	5427	4267	4832

*estimated

To administer these cases better and to try to limit the growth of the case backlog, the Attorney General in 1979 created a special Prisoner Litigation Unit based in New York City. This unit is responsible for prisoner cases in a 10-county downstate area and for coordinating prisoner litigation activity with the Albany office and the regional offices which handle large numbers of such cases. In the Albany, Buffalo, and Poughkeepsie offices, specific attorneys were also assigned full-time responsibility for handling this type of litigation. The defense of cases was also strengthened by the exchange of expertise and knowledge.

To assist the Department in meeting its responsibilities in this area, a three-year grant of federal Law Enforcement Assistance Administration funds was obtained through the State Division of Criminal Justice Services. With the additional staff provided under the grant and the improved management introduced into the handling of prisoner-related litigation, the Department was able to increase the numbers of cases handled during 1979 and 1980, despite the greater volume and complexity of cases. But a substantial and growing backlog still exists. The federal funding will run out in mid-1981 and an increased state appropriation will be needed to continue to handle this enormous caseload in a fully effective and professional manner.

Claims and Collections

The Attorney General is responsible for defending the state in the Court of Claims against all claims for money damages arising out of alleged injury to person or property and from disputes in connection with state contracts or condemnation proceedings. The Department also defends state employees being sued individually in other state courts for personal or property damage charged against them while in the course of their employment.

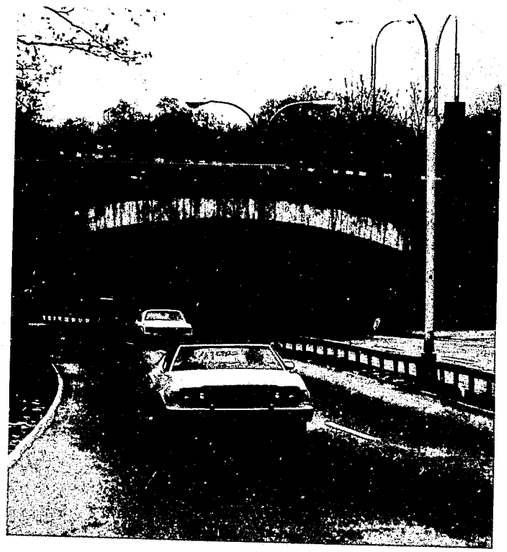
Claims against the state have been rising steadily during the last several years, both in numbers and in dollar amounts sought. In 1980, the Department disposed of 1,345 cases in the Court of Claims. While approximately $6.4 billion in claims were sought in these cases, Department claims attorneys were able to limit the actual awards to less than $15 million, or about one-fifth of one percent of the sums originally sought. By comparison, only three years earlier, in 1977, 815, or one-third fewer claims cases were disposed of, while the amount of awards was $26.3 million, or close to double the 1980 amount.

As a result of the Department's recent efforts, a several-year-long build-up of outstanding liability against the state was sharply reduced. The Department put a priority on clearing the calendar of all pre-1977 cases, and in 1980 claims attorneys throughout the state were able to clear away 145 such cases, which was more than half of the 234 cases outstanding.

Improved management effectiveness and greater efficiency in processing claims cases was achieved as a result of the Attorney General's creation in 1979 of separate, specialized claims bureaus in both New York City and Albany. The processing of Court of Claims cases by the regional offices was also reorganized to rationalize geographic coverage and to emphasize management of claims caseloads by the regional office chiefs.

Major Money Claims

The largest of the outstanding claims against the state involve Indian claims. In 1978, an action was commenced by the Oneida Indian Nation alleging that the agreements and treaties by which the Oneida Indians



Above: The number of personal and property damage claims filed against the state increase each year, particularly those involving state highways. Below: Under Bureau Chief Kenneth Page, the Civil Prosecutions Bureau has increased its collections on behalf of the state by more than 50 percent.

transferred title to the state of approximately six million acres of land in central New York violated federal law. The plaintiffs demanded a declaration of their ownership interest in certain of the contested lands, an accounting of rents and profits which they allege belongs to them, and compensatory and punitive damages, all of which amounts to millions of dollars. This case was heard in U.S. District Court for the Northern District. The court's decision was still pending at the close of 1980.

In 1980, the Cayuga Indian Nation, whose claims to lands in New York involve three million acres, commenced a class action seeking a declaration that it is the rightful owner of all this land by virtue of a treaty; immediate restoration of the land; ejection of all present occupiers; substantial damages as rental value for the alleged period of the Indians' ouster from the land; an accounting for all valuable resources extracted from the land in the past two centuries; and various other relief, including attorneys fees. The case is still pending in U.S. District Court for the Northern District.

Another large outstanding claims case is *Abrams v. Community Services, Inc.*, an action brought by the residents and former residents of Co-op City, a state-supported Mitchell-Lama housing complex in the Bronx, against the sponsor and general contractor of Co-op City, as well as the state and the state Housing Finance Agency. The claimants, who are seeking damages of more than $233 million, allege that the state and the Housing Finance Agency conspired to mislead purchasers who bought apartments in the housing complex by failing to disclose to purchasers that their rentals might go up substantially as a result of increased construction costs. After losing their case in the federal courts on jurisdictional grounds, an action was then brought in State Supreme Court. The latter action was pending at year's end.

A related suit was brought by a Co-op City construction contractor against the Riverbay Corporation (which is the title-holder organization for the tenants), the Housing Finance Agency, the State Division of Housing and Community Renewal and the general contractor of the complex. Riverbay cross-claimed against the state co-defendants in the case, alleging that the two housing agencies, both of which had consented to the contractual arrangements for construction of Co-op City, had failed adequately to supervise and control the method and materials used in construction, as a result of which Riverbay will expend large sums of money for remedial relief.

In Niagara County, 140 present and former residents of the area around the Hooker Chemicals Love Canal toxic waste disposal site have filed notices of intention to bring claims against the state for damages incurred because of alleged failure by the state to properly warn residents of the dangers involved. One suit has already been filed for $12 million, and the others, if filed, would have a potential liability of at least $232 million. (In unrelated actions, the Attorney General has brought suit in state and federal court against the Hooker Chemicals & Plastics Corp. and its corporate parents seeking damages on behalf of the state and the public and permanent remedial action by the companies to clean up the Love Canal and other Niagara toxic dump sites.)

There are also approximately $48 million worth of claims pending against the state involving the construction of the Empire State Plaza, the state building complex also known as the Albany mall. The largest of these is *South Mall Constructors* v. *State*, in which a contractor seeks payment for increased costs due to alleged delay and extra work in completion of the contract.

Personal and Property Damage Claims

Tort claims, which involve personal injury and property damages, constitute approximately two-thirds of the claims brought against the state. The number of such claims has been increasing each year.

One factor contributing to this rise was a 1975 change in the law affecting claims. Formerly, under a concept of contributory negligence, if the claimant had contributed in any way to the damage, the claim could be dismissed. Under the new concept of comparative negligence, the claimant can now deduct that portion of damages for which he is responsible and sue the state for the rest. The result of this law has been a rising number of negligence cases. In addition, in 1976 the Court of Claims Act was amended to make it simpler to file a late claim, increasing the number of such claims.

A particular area of increase has been in the number of claims involving accidents on state highways, where damages are sought as a result of alleged design failure or other failures such as in highway maintenance. These cases are more time-consuming and more expensive to defend than many others, because of the necessity of obtaining expert engineering testimony on the nature of road design and other relevant issues.

A typical case handled by the Poughkeepsie office involved an accident which occurred on a connecting ramp between two interstate highways. The claimant's truck, which was laden with unsecured freezers, failed to negotiate the ramp and overturned. In suing the state for $2 million, the claimant contended that the accident resulted because the ramp was improperly designed, constructed and maintained. In dismissing the claim, the Court of Claims found that the speed limitation involved on the ramp was proper and that adequate notification was provided; that the ramp was properly designed; and that the proximate cause of the accident was the negligence of the claimant.

The Attorney General's office in 1980 won two decisions in major claims cases which, if upheld, could have the effect of limiting state liability for damages in a large number of future cases.

A frequent issue of dispute is the question of whether the state or the municipality through which a state roadway runs, is responsible for maintenance of the sidewalks adjacent to the road. State law permits the state to build sidewalks adjacent to state highways but mandates that the municipality maintain them. Attorneys from the New York City Claims Bureau won an important decision on this issue in *Van Etten* v. *State*. A claimant fell on what she alleged was a cracked sidewalk adjacent to the Hempstead Turnpike, a state highway on Long Island. Although previous court decisions had ignored the language of the law and held that the state had a duty to maintain what it owned and/or built, the Court of Claims disagreed, holding that the statute must be taken on its face and that the municipality is liable for any claims arising out of negligent maintenance. An appeal from this decision was pending at year's end in the Appellate

Division, Second Department. The outcome will affect many similar cases handled by the Department.

The second case, *Weiner* v. *State,* involved the question of the state's liability for interest payments. The modern trend in trying negligence cases is to try liability first and, if such is found, to proceed to assess damages. In this case the state was found liable, but the damage aspect of the case was not decided until several months later. The issue became, from what date should interest run on the award. The Court of Claims held in the state's favor, and ruled that since the delay between the liability holding and the damage assessment was not the state's fault, interest should run from the latter date. Since half of all tort cases are decided in this two-step manner, this ruling could result in a substantial savings in future interest payments.

Contract Claims

The Albany Claims Bureau represents state agencies and various public authorities in litigation arising from the award and management of construction contracts.

Because construction contract cases involve voluminous and extensive damage claims, the Attorney General added an accountant to the staff of the Albany Claims Bureau in 1980 to perform audits of actual construction claims. This additional resource assists trial attorneys in the preparation and trial of contract suits and reduces the expense of retaining private accounting firms.

The largest volume of contract claims arises out of highway construction projects undertaken on behalf of the State Department of Transportation. The biggest claim in this area was brought by Slattery Associates, a highway construction company which is seeking more than $13 million plus interest. The damages are sought for the extra expenses incurred allegedly as a result of breaches of contract by the state.

In 1980, Department attorneys disposed of nine construction claims on behalf of the Department of Transportation in which $17.6 million had been claimed, but the awards were limited to $3 million after trial or court-approved settlement. At the end of 1980, 68 such claims against the transportation agency were outstanding with a potential liability to the state of $91 million.

Claims also arise from contracts for providing a variety of services to the state. A typical case handled by the New York City Claims Bureau, involved a contract between a doctor and the State University of New York to supply support and staffing services to the Downstate Medical Center. According to the state Finance Law, such contracts must be approved by the State Comptroller, who refused to do so in this case. Payment was denied on this basis, and the Court of Claims upheld the state's position.

To comply with the statutory responsibility of approving the legality of state contracts and certain bonds to be posted by prospective licensees, in 1980 · the Department's Contract Approval Unit in Albany also processed and approved 24,486 contracts and 7,544 bonds.

Affirmative Claims Actions

In addition to representing state agencies and public authorities in defense of claims, the Contract Unit of the Albany Claims Bureau also initiates legal action on behalf of state agencies or public authorities against contractors, architects or other design professionals to recover damages for defects in the design or the construction of public facilities. A major action of this kind is pending in Albany County Supreme Court against one of the contractors and an architect involved in the building of Empire State Plaza. The state is seeking $25 million in compensation for alleged errors in the design and construction of one major building, which resulted in loose marble on the building's face.

In the last few years, actions by the state have increased against architects in situations where the state seeks indemnification in legal challenges brought against public contracting agencies by contractors, and the state believes that the architect, rather than the state agency, is at fault for the alleged damages involved.

In 1980, Albany claims attorneys concluded a favorable settlement in an action against an architect who supervised the construction of a rehabilitation center at the Hudson River State Hospital in Poughkeepsie. The Department obtained $51,000 on behalf of the Facilities Development Corporation to compensate for repairs made necessary when certain alterations had to be made because of alleged design failure.

Collections

Through its specialized Civil Prosecutions Bureau in the Albany office, which centralizes collections functions that had been scattered, the Department has been able to increase substantially collections of monies owed the state from delinquent accounts, unpaid student loans, damages to state property and fines and other penalties.

In 1980, the Civil Prosecutions Bureau increased the number of staff collections specialists and improved the training they receive. The bureau has also undertaken the coordination of collections activities in the regional offices.

As a result of these and other steps, the Department's collection practices have become more effective. Bureau collections for 1980 were $6,671,973, up from $4,241,373 in 1979, a jump of more than 50 percent.

In a collections-related matter, attorneys from the Albany Litigation Bureau were successful in defending a regulation of the State University of New York requiring full payment of tuition and fees before any academic transcripts can be released to ensure payment of debts owed the state. In the first case of this kind, the State Supreme Court in Albany County held that the regulation was reasonable and in accord with the basic tenets of contract law.

Other Department bureaus and offices are responsible for various other kinds of collections. For example, the Department represents the State Department of Mental Hygiene and its facilities in matters relating to reimbursement of the state for the costs of services for civilly committed patients.

Acting for the Department of Mental Hygiene, Department of Law attorneys bring proceedings for court appointment of a conservator or committee to administer such a patient's assets on behalf of the patient. In prosecuting claims on behalf of the Department of Mental Hygiene for reimbursement for maintenance of patients, as well as collecting funds for the benefit of patients, Department attorneys collected a total of nearly $3.1 million in 1980.

In addition, the Employment Security Bureau collected $1.3 million in unemployment insurance taxes from employers on behalf of the State Industrial Commissioner; the Labor Bureau obtained more than $108,000 in fines and penalties for Labor Law and

Revenues obtained for the state totalled some $22 million in 1980, including fines and penalties collected for state agencies, like Agriculture and Markets, which inspects sanitary conditions, as in a Buffalo market here.

Worker's Compensation Law violations; the Special Prosecutions Bureau collected $296,000 in taxes owed the state, primarily in unpaid sales taxes, and obtained another $61,800 in fines and penalties; and the Charities, Trusts and Estates Bureau was responsible for the collection of almost $4 million worth of abandoned property.

Further, the regional offices also handled certain collections matters for the state. The Syracuse office, for example, collected $453,867 for the state in 1980 in fines, penalties and monies owed to state agencies.

Also, the Department generates substantial fee revenues for the state, all of which go to the general fund. In 1980, the Real Estate Financing Bureau received $1.7 million in filing fees for real estate

syndications, which include cooperative and condominium offerings; the Investor Protection and Securities Bureau obtained in excess of $575,000 in filing fees from broker dealers, investment advisors and securities salesmen; and the Charities, Trust and Estates Bureau collected $428,000 in fees paid by charitable organizations when filing required documents.

The total funds collected by the Attorney General's office for the state treasury in 1980 were more than $22 million. In addition, restitutions and collections effected for the public totalled more than $43 million. See appendix for the complete Financial Report detailing these results.

Taxation and Revenue Issues

At the request of the State Tax Commission, the body which directs the Department of Taxation and Finance, and other state agencies, the Department of Law defends challenges to specific tax or other revenue-related actions. These challenges frequently involve important constitutional and statutory issues. The number of tax related cases has been rising. In 1980 alone, 95 new appeals were received by the Appeals and Opinions Division involving issues relating to taxation.

To insure that the state collects income taxes due it, the State Tax Commission acts to tax persons whose residence and connections are in New York but who establish temporary or tenuous connections in other states or nations. The Attorney General represents the State Tax Commission in cases on this issue.

In one major case, *Shapiro* v. *State Tax Commission*, the commission was upheld by the Court of Appeals in its determination that an employee and substantial shareholder of a New York employer who worked in England but retained a residence in and substantial financial contacts with New York was "domiciled" in New York for purposes of income taxation.

In *Babbin* v. *State Tax Commission,* attorneys of the Appeals and Opinions Division prevailed when the Court of Appeals held that New York was the domicile of a business executive who lived here but temporarily resided in the Netherlands while managing European operations for his employer.

A challenge to the right of the state to collect its full share of taxes from the interstate commerce of vendors selling to New York customers came in *Aldens, Inc.* v. *Tully.* A mail-order corporation, which did business in New York through a wholly owned subsidiary operating offices in four different localities in the state, claimed that it did not have to collect local taxes outside the four areas where it maintained offices and that it was not required to pay them retroactively. The Solicitor General successfully argued the case before the Court of Appeals, which upheld a decision of the State Tax Commission and ruled that the corporation was liable for payment of the taxes.

In *Bankers Trust Company* v. *New York State Department of Taxation and Finance,* New York City Ligitation Bureau attorneys successfully defended the state against the claims of seven major banks for tax refunds of nearly $1 million. The banks had paid the taxes under the provisions of a 1973 state law, which had made the tax retroactive for the 1972 tax year. When the courts held in 1978 that the retroactive clause of the law was unconstitutional, the banks sought refunds. The State Supreme Court in New York County ruled, however, that the banks could not seek refunds on tax payments which they had made without protest seven years before and after the money had already been dispersed.

Recovery of Unclaimed Tax Refunds

In addition to defending the state's revenues policies, the Attorney General, in the first action of its kind in the nation, initiated legal proceedings in 1980 against the United States Treasury to recover for New York State millions of dollars of unclaimed federal tax refunds. The Attorney General sought the return of any monies owed New York citizens which remained unclaimed longer than seven years. Under New York's Abandoned Property Law, any assets or funds of New York residents which are abandoned may be claimed by the state after a specified period of time. For funds held by the federal government, the period is seven years.

Some indication of the magnitude of the state's claim can be gleaned from the fact that in 1978

unclaimed federal tax refunds for the New York City metropolitan area alone amounted to more than $1,500,000. Since the refunds in question date back to the beginning of the Federal income tax in 1916, the total amount involved may reach into tens of millions of dollars. If the proceedings are successful, the money now in the federal treasury would be restored to New York State to use for the state's activities on behalf of all state residents.

Other Tax and Revenue Matters

As required by state law governing the real property tax system, the State Board of Equalization and Assessment (SBEA) centrally assesses "special franchises," i.e., the rights-of-way and other use rights of utilities to run their power lines and facilities across public property. The SBEA computes equalization rates (which reflect the ratio of assessed value to full value) for many purposes, including allocation of state aid and computation of net assessed valuation of special franchises. In an action brought by Consolidated Edison against the SBEA, the Attorney General defended against the utility's claim that it had the right to force SBEA to recompute the equalization rates despite the absence of any showing that a newly-calculated equalization rate would be appreciably more accurate. After divided lower court rulings, the Court of Appeals, with three judges dissenting, decided the case in favor of the utility company.

The New York City Litigation Bureau handles most of the Department's cases involving the defense of and priority of state tax claims in bankruptcy and insolvency proceedings. A typical 1980 case involved a complaint filed on behalf of the State Tax Commission against the federal Internal Revenue Service to recover money owed the state by a Nassau County business man who had failed to pay both state and federal taxes. The federal government had seized and sold his property to secure recovery of its own lien amounts. After the Department brought legal action, the federal government recognized the state's rights, which had been filed in a prior claim, and paid the state $34,344.

The Attorney General also represents the Department of Taxation and Finance in franchise tax claims in judicial dissolution proceedings. Approximately 150 of these proceedings are concluded per year involving claims ranging from $250 to $10,000.

Financial Report*

Category	DIRECT 1979	DIRECT 1980	INDIRECT 1979	INDIRECT 1980
I. Collections and Restitutions Effected for the State				
A. Collections:				
1. Abandoned Property	$ 4,713.62	$116,721.29	$5,551,571.52	$3,889,042.71
2. Costs in Actions and Proceedings	139,789.95	428,969.24		
3. Damage to State Property			1,030,352.81	437,259.19
4. Excessive Costs on Contract			1,337,416.24	447,175.57
5. Fines and Penalties:				
a. Agriculture & Markets	78,723.55	125,680.49	45,901.36	16,826.49
b. Antitrust	217,574.34	23,100.00	179,674.34	
c. Environmental Quality			1,414.20	49,800.00
d. Labor Law Violations			169,432.63	160,405.00
e. Licensed Practice			31,510.00	
f. Special Investigations				500.00
g. Unlicensed Practice			5,200.00	2,000.00
h. Workers' Comp. Law Violations			9,390.00	66,375.61
i. Miscellaneous	19,800.00	2,119.20	7,616.60	113,336.02
j. Other State Agencies				101,492.73
6. Industrial Commissioner				1,728.36
7. Institutions and Hospitals			$ 441,224.10	$ 945,811.70
8. Patient Maintenance			2,492,828.51	3,140,904.09
9. Refund of Expenses	7,388.42	48,584.40		
10. Rental Arrears			61,904.97	66,489.77
11. Taxes				
a. Bankruptcies			392,194.44	90,290.98
b. Corporation			21,159.91	40,029.99
c. Decedents Estates			273,723.52	202,796.10
d. Mortgage Foreclosure			59,261.65	
e. Income			150,098.50	
f. Unemployment Insurance			785,125.00	1,316,746.93
g. Sales			425,725.84	326,581.32
h. Miscellaneous			9,385.30	149,187.24
12. Student Loans and Tuitions	15,931.26	35,236.26	1,211,942.08	1,282,684.85
13. Miscellaneous			59,835.07	327,322.25
B. Restitutions:				
1. Antitrust Litigation			1,227,602.00	16,318.00
2. Employees Retirement System			361,474.03	3,382,186.09
3. Unemployment Insurance			700,698.73	725,344.68
Total Collections and Restitutions Effected for the State	$483,921.14	$780,410.88	$17,044,663.35	$17,298,635.57

*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.

Category	DIRECT 1979	DIRECT 1980	INDIRECT 1979	INDIRECT 1980
II. Collections and Restitutions Effected for the Public				
A. Collections:				
1. Injured Workers	$	$	$ 523,518.57	$ 488,574.83
2. Wage Claimants			271,742.48	244,420.42
3. Workers' Comp. Appeal			1,072,472.59	836,223.14
B. Restitutions:				
1. Charity Frauds and Recoveries for Charitable Institutions*			24,434,543.62	31,542,300.00
2. Consumer Frauds	255,681.18	343,848.07	2,374,236.94	6,848,878.58
3. Coop. Cond. R.E. Synd.			2,799,000.00	2,951,375.00
4. Stock Frauds			1,120,866.22	301,058.00
Total Collections and Restitutions Effected for the Public	$255,681.18	$343,848.07	32,596,380.42	$43,192,829.97
III. Reimbursement for Services Rendered by the Law Department				
A. East Hudson Pkwy Auth.	$ 5,748.99	$ 19,413.46	$	$
B. Federal Government Capitol Construction Projects			1,092,876.00	509,065.92
C. Insurance Law section 32A			6,177.31	4,826.00
D. Power Authority	64,182.73	96,067.47		
E. Metropolitan Trans Auth.	30,417.70			
F. Thruway Authority		25,395.75		
G. Volunteer Firemen's Benefit Law			702.14	647.00
H. Workers' Comp. Law Section 151			434,592.82	343,050.00
I. Workers' Comp. Law Article 9			11,880.16	2,881.00
J. Higher Education Serv. Corp.				
K. Nat'l. Direct Student Loans		111,310.55		
Total Reimbursements	$100,349.42	169,336.80 $421,524.03	$1,546,228.43	$860,469.92
IV. Filing Fees:				
A. Broker Dealer Exemptions	$ 77,720.00	$ 90,200.00		
B. Broker Dealer Statements	97,800.00	143,830.00		
C. Charitable Foundations	436,093.69	428,661.88		
D. Fingerprint Processing	15,180.00	9,890.00		
E. Investment Advisory Amendment	3,525.00	3,350.00		
F. Investment Advisory Registration	26,300.00	30,550.00		
G. Principal Statements	23,190.00	39,412.00		
H. Real Estate Syndications	1,245,540.40	1,738,920.00		
I. Salesmen Statements	101,370.00	147,280.00		
J. Supplemental Statements	109,515.00	122,570.00		
K. Security Takeover Disclosure	15,000.00	17,500.00		
Total Filing Fees	$2,151,234.09	$2,772,163.88		
V. Miscellaneous Receipts:				
A. Sale of Publications	$ 1,720.00	$ 1,180.00		
B. Subpoena Fees	159.70	42.00		
Total Miscellaneous Receipts	$ 1,879.70	$ 1,222.00		
GRAND TOTAL OF RECEIPTS	$2,993,065.53	$4,319,168.86	$51,186,272.20	$61,351,935.46

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

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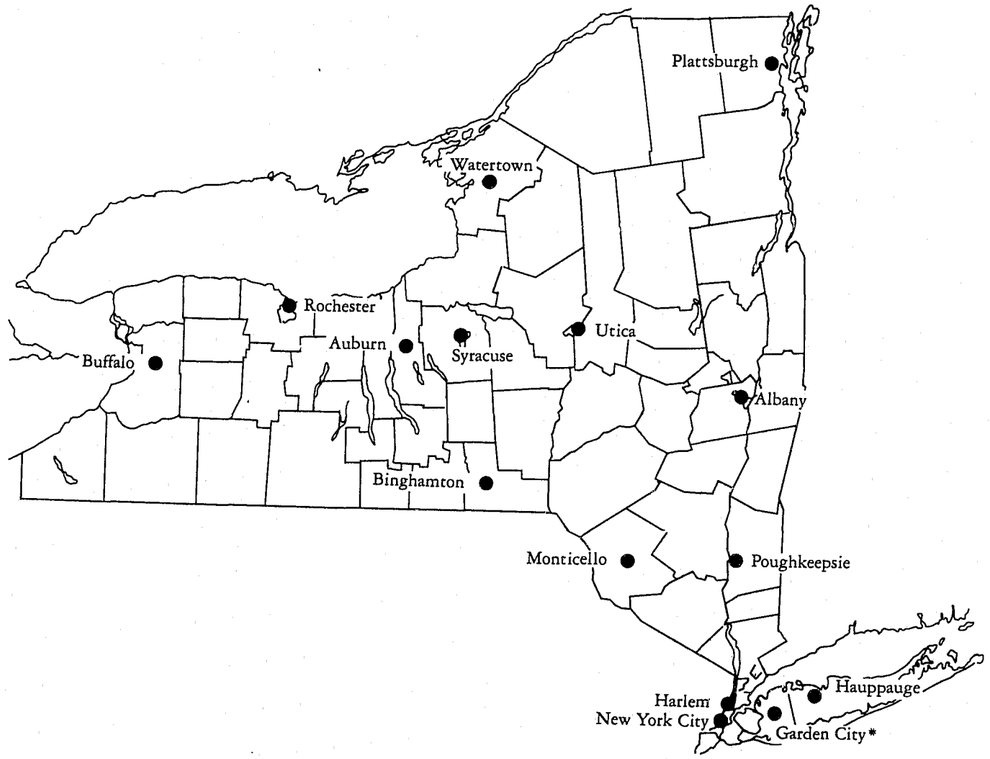
Locations of Department of Law Offices



*To be opened in 1981.

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