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**REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL**

2003 CITY ATTORNEY'S ANNUAL REPORT

Like no other time in the history of the San Diego City Attorney's Office, it is crucial for the public today to understand the role and work of the committed, dedicated public servants in the City Attorney's Office. This Annual Report catalogues the tremendous work of the Office over the last year. The City is facing major fiscal and policy issues, candidates for City Attorney are regularly making misleading and inaccurate statements about the Office, and the public discussion is focusing on a handful of matters instead of the diversity of the work of one of the largest law offices in San Diego County.

Recently, I mailed out an office-wide email to encourage our staff. The e-mail included these words:

"As you are all aware, these are challenging times for the City Attorney's Office. Budget issues, City financial issues, City Attorney's election politics, uncertainty about the future, and a host of other issues face us daily even as we try to stay focused on continuing to do our job with excellence and professionalism. Over my nineteen years in this Office, I have seen such incredible dedication to public service and I have witnessed so many giving all they have to advise the City, represent the taxpayers, enhance public safety, and make a difference in the lives of hurting people..."

The message to my staff continued:

"I have such great regard for the staff of this Office and the work you do day in and day out. This Office should never be defined by a handful of hot political issues or the current political winds. It will always be my hope that this Office will be defined by the work we do and the way we treat each other and those we deal with throughout the City and in the community. Do what is right, even when no one is looking. Do your best. Stay humble. Support each other. Be honest. And choose to act with integrity at every juncture in the road. I am honored and humbled to have served as your City Attorney over these past eight years and I will continue to do everything possible to advocate for all of you, to believe in you, and to respond to

misunderstandings and inaccurate statements about the Office. I have always trusted so many of you with such massive responsibilities and my trust in your work, dedication, and professionalism remains solid as a rock.”

In the last two years, the Office has faced major challenges with a reduction of \$2 million to its budget. Yet, the Office’s staff has continued to do excellent work day in and day out with little public notice. And the staff in the Office has supported each other. Last year, the deputy city attorneys, the Leadership Team, and I took 10% pay cuts in March, with little fanfare, in order to save the jobs of the support staff in the Office. This year, again, the deputy city attorneys, the Leadership Team, and I took work furlough (pay cuts) in order to protect the jobs of the classified staff – secretaries, investigators, legal assistants, and support staff. To the present time, we are the only City employees that have taken mandatory pay cuts and mandatory work furlough. In addition, I imposed a hiring freeze last year which continued until the Office staff was reduced to fifteen attorneys below our budgeted strength. While some service levels have been compromised, the staff has remained determined to provide the best possible legal services.

To be sure, in recent months, virtually every ill of the City has been blamed on the City Attorney’s Office by one critic or another. But the vast majority of the City’s problems are not legal issues. Most of the major problems are the result of policy decisions by the prior Mayor and prior City Council members. Even the current controversies such as the Chargers or the Boy Scouts are not the result of inadequate legal work by the City Attorney’s Office. The simple reality is that most issues with the City are policy issues and the City Attorney and his or her staff are not policy makers. We are lawyers committed to providing professional legal advocacy and advice. The vast majority of the attorneys in the Office have foregone lucrative careers in the private practice of law because they want to make a difference in the public sector. This Annual Report is dedicated to the hardworking men and women of the San Diego City Attorney’s Office. They don’t thump their chests and demand public recognition. They will not be heard clamoring for greater and greater benefits. When they do great work, they simply let the work speak for itself. When they face political criticism, they do not respond. It is these men and women that we all should salute and thank for their dedicated public service over the last year. With this tremendous staff at the forefront of my mind, I am pleased to share with you and the people of San Diego a brief review of our work over the last year.

The City Attorney's Office is made up of more than 350 full-time, part-time, and volunteer staff members committed to a proactive, early intervention, community outreach approach to providing legal services to, and criminal prosecution within, the City of San Diego. The City Attorney's Criminal Division represents the People of the State of California in prosecuting all misdemeanor criminal cases in the City of San Diego. Last year, the Criminal Division successfully prosecuted nearly 35,000 criminal cases in the City. The City Attorney's

Civil Division provides legal advocacy, advice, and support to every level of City government. Last year, the Civil Division successfully defended the taxpayers of San Diego in hundreds of lawsuits against the City and collected millions of dollars in legal actions on behalf of the City, and provided daily legal support on hundreds of contracts, development projects, legislative proposals, and issues at public meetings.

This report is intended to highlight the nationally recognized work of the City Attorney's Office in a host of legal arenas. Twice since 1998, the City Attorney's Office has been chosen as one of America's Best Places to Work with a Law Degree - highlighted as one of the best public law offices in America by author Kim Walton in her nationally distributed book published by Harcourt & Brace. Our reputation with law schools around the country has resulted in more than 1,000 job applicants each year for approximately 25 deputy city attorney positions. As the City Attorney, I and other members of the Office are honored, because of the reputation of our Office, to represent the City on the boards of local non-profits, statewide advocacy organizations, congressional task forces, and United States Department of Defense and Department of Justice advisory bodies.

The City Attorney's Office is led by a nine-member Leadership Team: City Attorney Casey Gwinn, Executive City Attorney Leslie Devaney (Leave of Absence), Acting Executive Assistant City Attorney Les Girard (2nd in command), Assistant City Attorney Gael Strack (Criminal - Special Projects and Family Justice Center), Assistant City Attorney Susan Heath (Criminal Division), Assistant City Attorney Anita Noone (Civil Division), Deputy City Attorney Rick Duvernay (Public Policy Group), and Richel Thaler (Administrative Services Director). The Leadership Team includes Maria Velasquez (Press Secretary, Community & Media Relations) and Jean Emmons (Executive Secretary to City Attorney Casey Gwinn).

Highlights of 2003

The City Attorney's accomplishments reflect the Office's ongoing dedication to proactive, early intervention lawyering and commitment to community outreach and the people of San Diego. The work of the Office is complex, varied, and diverse. The following are highlights of our work in 2003:

- The Criminal Division screened more than 41,000 criminal misdemeanor cases and filed 32,000 cases submitted by the San Diego Police Department, San Diego Harbor Police, California Highway Patrol, Poway Sheriff's Substation and other law enforcement agencies.

- The Criminal Division's Appellate Unit handled close to 700 pretrial motions, winning more than 90 percent of the motions argued in court.
- The death rate from illegal street racing on city streets dramatically decreased to four, compared to eight deaths in 2002. The decline can also be attributed to another new local law, Vehicle Forfeiture Ordinance, which was proposed and drafted by the City Attorney's Office and unanimously approved by the City Council in 2003.
- Habitual traffic offenders continued to be taken off City streets. Working in partnership with the San Diego Traffic Offender Program (STOP) the City Attorney's Office forfeited 115 vehicles through actions filed in the San Diego Superior Court.
- The Consumer and Environmental Protection Unit in the Criminal Division received nearly 500 consumer complaints, settling more than 120 cases and recovering \$200,000 in restitution for individual victims.
- The Consumer and Environmental Protection Unit successfully prosecuted the owner of BIG Screen TV of San Diego who scammed 119 local victims. The joint investigation was the largest case in the 40-year history of the California Bureau of Electronics and Appliance Repair (BEAR).
- The Consumer and Environmental Protection Unit participated in a multi-jurisdictional prosecution of a national gasoline and fuel company which resulted in \$4 million in penalties, costs, and restitution with \$300,450 paid to the City.
- The Consumer and Environmental Protection Unit prosecuted a local circuit board manufacturer for hazardous waste violations which resulted in \$278,000 in penalties, costs, and restitution to the City;
- The Consumer and Environmental Protection Unit prosecuted 38 water pollution cases in the City; the settlement of one major case from a large beverage distributor resulted in \$153,000 in penalties and costs.
- The Code Enforcement Unit in the Criminal Division prosecuted 20 illegal grading cases; including a nursery owner who was fined \$220,000 for destroying sensitive habitat and waterways.
- The Downtown and Mid-City Community Courts are now in session. These innovative courts are improving the quality of life in the neighborhoods of San Diego. The Neighborhood Prosecution Unit resolved 67 cases and the community courts ordered

defendants to perform 832 hours of community work service in the neighborhoods they harmed.

- The Mid-City Prostitution Impact Panel, created by the City Attorney's Office in 2002, continued its 100% success rate by having 189 "johns" complete the program with no repeat offenders.
- The San Diego Family Justice Center was nationally recognized by President Bush as a model for other cities through the Family Justice Center Initiative, and was featured on national television on the Oprah Winfrey Show.
- The nation's first freestanding Forensic Medical Unit for victims of domestic violence opened at the Family Justice Center. It is a joint partnership with Sharp Grossmont Hospital and the City Attorney's Office.
- Camp Hope, the nation's first camp for children of domestic violence homes, began operating last summer at Lake Sutherland which is located in the eastern San Diego County. The Camp is a joint partnership with the City and the San Diego Family Justice Center Foundation.
- In 2003, 250 major lawsuits were filed against the City. The majority of these cases were resolved through successful motions, voluntary dismissals without payments, and nominal settlements.
- The Civil Division's Trial Unit prevailed in all 13 civil jury trials conducted in 2003. Indeed, the Civil Division's Trial Unit has not lost a case in trial now in nearly two years.
- The Civil Enforcement Section in the Trial Unit obtained \$1,352,837 in judgments and recovered \$905,142 for the City.
- The Civil Division's Trial Unit assisted in concluding all litigation against the Ballpark Redevelopment Project and Petco Park is now scheduled to open in April 2004.

CRIMINAL DIVISION

The Criminal Division is Charter-mandated to prosecute all misdemeanors within the City of San Diego. Misdemeanors are crimes punishable by up to six months or one year in County jail. Misdemeanors include driving under the influence of alcohol or controlled substances, domestic violence, weapons offenses, drug offenses, theft offenses, vandalism, graffiti, prostitution, other alcohol offenses, environmental crimes such as illegal dumping,

consumer cases including unlawful business practices, and Municipal Code violations, including maintaining substandard housing and zoning and building violations. The Criminal Division attorneys and staff work in seven teams: the Screening and Arraignment Unit, the Trial Unit, the Appellate Unit, the Child Abuse and Domestic Violence Unit, the Consumer and Environmental Protection Unit, the Code Enforcement Unit, and the Neighborhood Prosecution Unit. The City Attorney's Office stands alone as one of the most innovative and aggressive misdemeanor prosecution operations in the state. Indeed, the Criminal Division continues to set the standard for early intervention efforts to stop criminal activity before it escalates to serious felony conduct.

Screening and Arraignment Unit

The Screening and Arraignment Unit, led by Head Deputy City Attorney Patty Herian, is responsible for the process of reviewing and filing criminal charges in the majority of criminal cases submitted to the Office by local law enforcement agencies. The criminal cases not being handled by specialized units start the prosecution process in the Screening and Arraignment Unit. In 2003, the Unit screened more than 41,000 cases submitted by the San Diego Police Department, San Diego Harbor Police, California Highway Patrol, Poway Sheriff's substation, and other law enforcement agencies. The Unit filed approximately 32,000 criminal cases. The Unit's attorneys and experienced, dedicated support staff process the largest volume of paperwork anywhere in the Office.

The criminal charges reviewed include driving under the influence of alcohol and drugs, other drug-related offenses, theft offenses, animal cruelty and neglect, sex crimes, and crimes of violence. Nearly 5,800 of the cases filed and prosecuted by the Office last year were for driving under the influence of drugs or alcohol. The Unit also issued criminal complaints for more than 2,500 felony wobbler offenses, which are crimes that the District Attorney's Office declined to file as felonies. These involved weapons, grand theft and commercial burglary, and crimes of violence.

Specialized committees of attorneys within the Screening and Arraignment Unit handle cases involving vehicular manslaughter, fraud and forgery, and gangs and graffiti. To ensure each case is handled swiftly, victims are kept informed, and repeat offenders are quickly recognized and held accountable. The Screening and Arraignment team works proactively with the San Diego Police Department on a variety of projects involving special events, sex crimes, prostitution, and vice operations.

Within the Screening and Arraignment Unit, the City Attorney operates a Dispute Resolution Office, a pre-filing diversion program that provides mediation services and alternative dispute resolution for victims involved in disputes with neighbors, coworkers, or other individuals with whom they have an ongoing personal relationship. The Dispute

Resolution team is composed of two dispute resolution officers and one staff member. Attorneys from the Screening and Arraignment Unit send certain cases to the Dispute Resolution Office for special handling. Often, these cases involve on-going disputes or issues that have escalated to a report of criminal conduct. The Dispute Resolution Office works to reconcile differences between the parties, or have the parties come to a mutual understanding. The resolution may include a rehabilitative component, such as an anger management class or a parenting class, and often will involve facilitating victim restitution. One of the main goals of this program is to stop future criminal conduct before it starts by acknowledging the underlying issues and working to resolve these issues. In 2003, the Dispute Resolution Office handled more than 500 cases. About 87 percent of those cases were successfully resolved as an alternative to filing formal criminal charges. Victims received more than \$5,100 in restitution payments.

Criminal Division Trial Unit

The Criminal Division Trial Unit, led by Head Deputy City Attorney Tracy Rogers, conducts the post-arraignment courtroom proceedings on the majority of cases handled by the Criminal Division. Once charges are filed and the defendant is arraigned, the Trial Unit takes over. Deputies in the Trial Unit review each case to determine its provability at trial and what sentencing guidelines are appropriate based on the defendant's conduct.

The cases prosecuted by the Trial Unit impact the people of San Diego in their daily lives, and effective prosecution of these cases is vital to the quality of life in the City. Most cases result in a criminal conviction based on a guilty plea before trial. The Trial Unit appears at the plea hearings to ensure the correct plea is entered and to argue for the appropriate sentence. Each month, approximately 150 to 175 cases are set for trial. Each of those cases must be reviewed and prepared for trial. The process of trial preparation includes interviewing and subpoenaing witnesses, preparing trial exhibits, and securing the presence of physical evidence, such as photographs, 911 tapes, weapons, blood vials, and other evidence. Once the trial preparation is complete, most -- but not all--cases result in a guilty plea on the eve or the day of trial. In 2003, nearly 200 cases went to jury trial. Some examples of the trial successes from 2003 include:

- *Guilty – Possession of a Loaded Firearm and Failure to Appear in Court [Council District 1]:* Deputy City Attorney Stephen Marquardt convicted a man who was sleeping in his van at Torrey Pines State Park of carrying a loaded gun in his vehicle. The officers saw two rifles in plain view and saw the defendant sleeping in a sleeping bag in the back of his van. When they woke the defendant, he pulled out a loaded pistol from his sleeping bag. The defendant claimed that since his van was his temporary home that he was entitled to keep his gun in it.

- *Guilty – Battery with Serious Injury [Council District 2]:* Deputy City Attorney Chip Flaherty convicted a bouncer at a Pacific Beach bar of battery. The victim was a bar patron who left the bar through one of two doors side by side, marked “Exit.” The bouncer wanted the victim to come back into the bar and leave through the “proper” door. Both doors exited to within one foot of the other outside the establishment. When the patron would not come back inside in order to leave again, the bouncer beat the victim. The victim suffered a neck injury. The jury found the bouncer guilty.
- *Guilty – Driving Under the Influence of Alcohol and with a Blood Alcohol Level of .08 or higher [Council District 2]:* Deputy City Attorney Keith Watanabe convicted a defendant with a .09 blood alcohol level, who was pulling away from the curb in the Gaslamp District and made an immediate illegal left turn. The defendant told the officer she had consumed two glasses of wine. The defendant’s husband testified at trial that he watched her pull away from the curb properly and that there was no reason for the officer to pull her over. The jury found the defendant guilty.
- *Guilty – Resisting Arrest [Council District 2]:* Deputy City Attorney Keith Watanabe also successfully prosecuted a resisting and obstructing a police officer case that resulted from a fight outside a nightclub in the Gaslamp District. The defendant and his buddies had been kicked out of the club for being involved in a fight. Some of the defendant’s friends were being detained by bouncers at the club. The bouncers pointed out the defendant to the Vice detectives who responded to the scene. When a detective told the defendant to stop because he needed to speak to him, the defendant glanced back briefly and continued walking. The detective grabbed his wrist, and the defendant pulled his arm away. The detective took him down to the ground. Despite the defense that the defendant did not know the detective was a police officer and the claim of excessive force, the jury found the defendant guilty.
- *Guilty – Resisting Arrest [Council District 3]:* Deputy City Attorney Lea Fields convicted a man who struggled with police when they responded to a 911 call of a possible domestic violence situation. The police separated the defendant from a woman. But the defendant would not cooperate. He kept grabbing at the officer’s neck, and the struggle moved from one bed in a bedroom to the next bed where the officer finally restrained the defendant. The defense was that the officer just started to hit the defendant and never gave him time to comply. The jury believed that the defendant did delay and resist the officer.
- *Guilty – Driving Under the Influence of Alcohol and with a Blood Alcohol Level of .08 or higher [Council District 6]:* Deputy City Attorney Lonnie Eldridge got guilty verdicts on a .08 breath test driving under the influence of alcohol case. The defendant was driving

south on Interstate 5 at Mission Bay. She was going 35 mph without her lights on. After the police stopped the defendant, her boyfriend, who was driving his own car, stopped to find out what was going on. He was also arrested for driving under the influence. He pleaded guilty. The female defendant took her case to trial.

- *Guilty – Possession of a Concealed Weapon [Council District 6]:* Deputy City Attorney Chip Flaherty convicted a defendant who was sleeping in his car in an industrial park in Kearny Mesa at 11 p.m. The police were responding to citizen complaints of burglary and other crimes in the area and contacted the defendant. The police approached and questioned the defendant. The defendant stated he had nothing illegal but he did have his flare gun. The flare gun turned out to be modified to a sawed off shotgun, and there were shotgun shells in the car as well. At trial, the defendant, who represented himself, claimed that his vehicle was not a car, but was a “house-car” and that he had the weapon to protect his “house-car.” The jury deliberated for nine minutes and returned the guilty verdict.

An important component of the work of the Trial Unit involves seeking restitution for people victimized by crime. Often a restitution hearing must be held even if the defendant pleaded guilty because the dollar amount of the harm to the victim may be a disputed issue. Trial Unit deputies appear regularly at restitution hearings to argue for orders that require convicted defendants to compensate those whom they have harmed.

STOP and Illegal Street Racing Enforcement

Suspended, revoked, and unlicensed drivers continue to be a public health and safety risk. Statistics show that a high percentage of fatal collisions involve unlicensed or suspended license drivers. During 2003, law enforcement agencies forwarded 8,356 misdemeanor driver’s license cases to the City Attorney’s Office for prosecution. The San Diego Police Department’s San Diego Traffic Offender Program [STOP] continued to focus on these problem drivers. Working in partnership with Deputy City Attorney Linda Peter, the STOP team forfeited 115 vehicles to the state when they were operated by habitual traffic offenders. Since these offenders are more likely to cause traffic collisions, this innovative work has unquestionably provided public safety to a host of would-be victims had these illegal drivers not been taken off the road.

Increased enforcement, aggressive prosecution, legal racing alternatives, and new local ordinances have made San Diego safer this past year from the dangers of illegal street races and exhibitions of speed. This year saw a dramatic decrease in the number of racing-related collisions. In 2003, there were four deaths and six injuries in racing-related collisions countywide. Of those figures, one death and two injuries occurred on San Diego city streets. The remaining three deaths and four injuries occurred on county streets and city and county highways. In contrast, in 2002, racing-related fatalities were termed epidemic when 14 deaths

and 31 injuries were reported countywide. That staggering figure included eight deaths and 16 injuries on city streets alone, with the county reporting an additional six deaths and 15 injuries on county streets and city and county highways.

Most of the cases now prosecuted by the City Attorney involve “impromptu” races on the freeway or on city streets while cars are traveling from traffic light to traffic light. In 2003, the City reaped the benefits of the spectator ordinance, which makes it a misdemeanor to be a spectator at an illegal racing site. The large numbers of racers and spectators gathering on city streets have practically disappeared. In March 2003, San Diego Police conducted an undercover operation to enforce the spectator ordinance. A group of motorcyclists converged on a city street to perform stunts and exhibitions of speed. The motorcyclists were accompanied by a large number of spectators. From that operation, the City Attorney’s Office filed eleven cases against individuals for violating the city’s spectator ordinance. Of the 11 defendants, eight pleaded guilty before trial. Two individuals took their cases to trial and were found guilty by a San Diego Superior Court judge. One case remains open.

The spectator ordinance was followed up in April 2003 with another nuisance abatement measure – an ordinance to forfeit the vehicles used in illegal speed contests and exhibitions of speed. The ordinance was drafted by Deputy City Attorney Linda Peter and enthusiastically supported by the City Council. Thus far, no forfeiture cases have had to be initiated.

Appellate Unit

The Criminal Division's Appellate Unit, led by Head Deputy City Attorney Steve Hansen, handles writs, motions, and appeals on the criminal cases prosecuted each year by the City Attorney's Office. In 2003, the Unit handled approximately 700 pretrial motions, winning more than 90 percent of the motions argued at hearing. Typical issues included suppression of evidence, speedy trial, plea withdrawal, invalidation of prior conviction, double jeopardy, and demurrers. The Unit also handles appeals and writs before both the Appellate Department of the San Diego Superior Court and the Fourth District Court of Appeal. The staff handled more than 145 writs and appeals with more than 95 percent decided in favor of the City Attorney and the People of the State of California.

In 2003, the Appellate Unit successfully defended constitutional challenges to the City’s handbill distribution ordinance and the Neighborhood Prosecution Unit’s Serial Inebriate Program, Prostitution Impact Panel, and Downtown Community Court. The Unit also successfully defended the Code Enforcement Unit’s prosecution of “brown bag” drug paraphernalia vendors, and prevented the dismissal of hundreds of driving under the influence cases in which blood samples were drawn by phlebotomists.

The Appellate Unit plays an important part in training in the Office. The deputy city attorneys assigned to the Unit train all new deputies on discovery, trial, and sentencing issues, and assist other prosecutors on an as-needed basis. Law students from local law schools gain extensive experience while working in the Appellate Unit. In 2003, the Unit was involved in training fourteen new deputy city attorneys and fifteen interns.

Child Abuse and Domestic Violence Unit

The Child Abuse and Domestic Violence Unit of the City Attorney's Office continued to set the standard for the nation as a primary on-site partner at the San Diego Family Justice Center (www.familyjusticecenter.org). Led by Assistant City Attorney Gael Strack, the San Diego Family Justice Center, opened in October 2002, continues to gain national and international recognition. Working in collaboration with the San Diego Police Department's Domestic Violence Unit and over 20 community-based social service agencies, the City Attorney's Office and the Family Justice Center are changing the entire approach to providing services to victims of family violence and their children.

The statistics from the Family Justice Center and the City Attorney's Child Abuse and Domestic Violence Unit for 2003 tell an incredible story:

Victims seeking services: 5,705 (including 750 children)
Professionals meeting professionals on site: 4,962
Phone calls to FJC: 31,578
SDPD Police Reports: 11,368
City Attorney Cases: 4,393
Trials set: 712
Trials conducted: 70
Cases Reviewed by Probation in DV Court: 3,942
CCS TROs Issued: 557
Forensic Medical Unit Clients: 131
Volunteer Hours: 5,204
Website Hits: 20,665

The San Diego Family Justice Center (FJC) is designed to stop family violence, make victims safer, hold batterers accountable, and provide long-term support to victims through collaboration and coordinated services.

The FJC consolidates city-wide efforts and expertise to increase services, successful prosecutions of offenders, and the safety of domestic violence victims. Nearly 120 domestic violence professionals come together every day at the Justice Center to meet the needs of hurting

families. The FJC has enabled intervention and prevention personnel to share information and resources and become more effective in the delivery of services. Key partners include law enforcement and prosecutorial personnel, corporate and community leaders, nonprofit agencies, state and federal governmental agencies, medical professionals, advocates, and volunteers.

In September, a partnership agreement with Adult Protective Services (APS) was signed and the agency joined the FJC community in October. Having an on-site APS representative is a tremendous asset towards prosecution of elder abuse and provides enhanced advocacy services to elderly victims.

The Forensic Medical Unit, a key component of the FJC, also provided greater prosecution potential—as victims are able to receive onsite assault and medical exams, photo documentation of injuries, and expert witness testimony when appropriate. Nearly 200 forensic medical examinations have now been provided to victims of domestic violence since the inception of the nationally recognized Forensic Medical Unit.

The Family Justice Center was pleased in 2003 to see the opening of Camp Hope, the first camping facility in America to focus its services exclusively on victims of child abuse and domestic violence. Camp Hope (www.sdcamphope.org) is a central component of the Family Justice Center. Located at Lake Sutherland, a City reservoir in Eastern San Diego County, Camp Hope hosted its first 75 children this past summer. The children came from shelters for battered women, transitional housing facilities, and social service agencies. Executive Director Tiffanie Mills is leading the public/private partnership that allows Camp Hope to operate at private expense on City-leased property.

While the vast majority of cases in the Unit involve violence between heterosexual adult partners, the City Attorney's Office continues to develop specialized services and protocols to same sex partners and to victims of elder abuse which fall under the definition of domestic violence situations under California law. These two areas deserve special highlighting in this year's report.

Same Sex Domestic Violence

Deputy City Attorney Danielle Hickman was responsible for Same Sex Domestic Violence vertical prosecution through December 12, 2003. Since December, Deputy City Attorney Chandra Reid was assigned to handle these difficult cases.

Our deputies continue to be active in presenting on the issue of domestic violence to organizations within the Lesbian, Gay, Bisexual, and Transgendered (LGBT) community.

In July, Ms. Hickman, and victim advocate Mr. Juan Gonzalez, participated in the San Diego Gay and Lesbian Pride Parade and Festival. Ms. Hickman and Mr. Gonzalez marched in the parade on behalf of the San Diego City Attorney's Office, Child Abuse and Domestic Violence Unit. They also attended the Gay and Lesbian Pride Festival, staffed a table for the three-day event, and provided resources and information on services available at the FJC and within the community for victims of domestic violence. While at the Festival, Ms. Hickman and Mr. Gonzalez were invited to present on same sex domestic violence at one of the forums at the festival.

Community outreach efforts have resulted in an increase in the number of walk-in victims at the FJC from within the LGBT community. It is believed that the increase in victim contact with the FJC is directly reflective of outreach efforts within the community. During this period, The Center, the predominant local gay and lesbian outreach and support center, agreed to be an offsite partner and negotiations are ongoing to facilitate their staff being present for office hours at the FJC. Currently, the FJC provides office space to The Center on an as needed basis. Since the opening of the FJC, same sex domestic violence victims have been able to receive more comprehensive victim services and there has been an increase in the number of walk-in victims within the LGBT community.

In October of 2003, Deputy City Attorney Danielle Hickman assisted in facilitating a "Community Conversation" focused on the inter-related issues of domestic violence and substance abuse within different parts of San Diego County. Representatives from Probation, the Courts, Rehabilitation Centers, Therapists, and Domestic Violence Counselors, just to name a few, attended the one-day conference. Representatives from various LGBT organizations were present to provide their insight and concerns. In one specific discussion, the issues of available resources to members of the LGBT community were discussed. Overall, the event was a success and provided a stepping-off point for further service development.

As part of Domestic Violence Awareness Month in October, Danielle Hickman presented on the issue of "Diversity" at a fundraiser for Bienestar, The Center, ProCabi, and other agencies that provide resources within the GBLT community. Danielle Hickman attended the 30th Anniversary celebration for the San Diego Gay and Lesbian Center, where she spoke to many local community members about the services the FJC provides to victims of domestic violence.

One case illustrates the tremendous work of the City Attorney's staff in dealing with same sex relationship violence. The defendant and victim, a lesbian couple, shared a child and the victim ran a daycare center in her home. On the date of the incident, the defendant went to victim's home in a rage, attacked the victim, vandalized property, and terrified the children present in the home. This case is noteworthy because on initial review, the detective decided not to submit the case for prosecution. However, after Deputy City Attorney Danielle Hickman

received a copy of the case, she spoke at length with the victim, and determined that the case should be prosecuted. Working with Juan Gonzalez, a specialized victim advocate, and the victim, Ms. Hickman was able to develop a stronger case, ultimately resulting in the defendant's conviction in which she pled guilty to a violation of Penal Code section 243(e)(1). This case reflects the positive results of continued community outreach and victim advocacy.

Deputies in the Unit and victim advocate Juan Gonzalez also worked with victims of same sex relationship violence to ensure follow-up and referrals for counseling and living assistance programs, as well as with defense counsel, to find programs which best address defendants issues, whether it include substance abuse, alcohol abuse, and/or psychological issues.

Additionally, the disbursement of the *Violence Does Not Belong in the Family* same sex domestic violence informational brochures continued. Distribution points included the FJC, the Gay and Lesbian Center, Metropolitan Community Church, the San Diego Police Department, San Diego County Sheriff's Department, and South Bay Community Services.

Victims of reported domestic violence continued to be contacted six months after the initial law enforcement contact. A victim advocate offers counseling, referrals and safety planning as well as sends a copy of the *Violence Does Not Belong in the Family* brochure to the victim. Ms. Hickman also continued to assist in the creation and distribution of informational brochures, posters and advertisements addressing Same Sex Domestic Violence.

City Attorney's Office staff met with San Diego Police Department Domestic Violence Unit Detectives on a regular basis this past year regarding same sex domestic violence cases in both the investigative and prosecution stages. The Office also worked closely with the San Diego Police Department Domestic Violence Unit in obtaining arrest warrants for defendants who have failed to appear for court dates.

The City Attorney's Office now maintains a Same Sex Domestic Violence Case Log. This computerized log contains the case name, case number, charges issued, brief factual summaries of the offense, date of the offense(s) and the disposition of the case. Additional information includes the date the case was received by the prosecutor, the number of days to complete disposition, and whether bail was increased. Specific query reports may be generated from this database as well, allowing quick access to key information. Further, appearances on the case are noted on the case file. Thus, documentation is kept on whether or not the case was prosecuted under a true vertical prosecution versus a major stages, or "horizontal," prosecution. During the period, true vertical prosecution was conducted on all cases. Ms. Reid has taken over the task of regularly updating the log.

Elder Abuse Domestic Violence

Deputy City Attorneys Christina Arrollado and Daniela Davidian have handled elder abuse prosecutions for the Office over the last year. The cases are handled “vertically” with the same deputy handling a case from filing to conviction.

The City Attorney’s Office continued to be an active participant in the Elder Abuse Council (EAC). EAC meetings are held quarterly at the Hall of Justice. During these meetings, police officers, prosecutors, and licensing agencies= representatives meet to discuss issues of elder abuse in the law enforcement community.

The San Diego City Attorney’s Office, in conjunction with the County of San Diego, continued to publish the Safe Seniors quarterly newsletter which is distributed to the City libraries, elder abuse and domestic violence partners, senior centers and organizations that provide services to the senior citizens. This collaborative effort continues to be funded jointly by the City and the County.

The San Diego Police Department’s specialized Elder Abuse Unit has designated an Elder Abuse Detective at each of the eight police divisions. The elder abuse detectives conducted monthly training sessions for domestic violence personnel. City Attorney’s staff met regularly to discuss elder abuse cases with Detectives Paul Homan, Leslie Albrecht, and Jenard Lazare. These detectives have been specially assigned to all elder abuse cases involving physical abuse.

The City Attorney regularly monitored the progress of elder abuse defendants while they were on probation this past year. The presence of a specialized prosecutor in court helped to ensure that these defendants complied with the conditions of probation imposed on them and helped to ensure that any violations of probation were properly addressed.

The City Attorney’s Office now consults regularly with the Adult Protection Services to gather more information on elder abuse cases being prosecuted by the Office. This allows our staff to learn more about what services are being provided to the victim, what services she needs to access, and what type of contact the victim has with the perpetrator.

As with same sex domestic violence cases, the Office is now maintaining an Elder Abuse Case Log. The information contained in the log includes the case name, charges issued, description of the offense, and the disposition of the case. Court appearances on the case are noted on the case file. This documentation reflects whether cases are prosecuted vertically versus a major stages prosecution scheme. During the period, true vertical prosecution was conducted on all cases.

President's Family Justice Center Initiative

It has been my honor over the last two years to facilitate the development of the San Diego Family Justice Center, in partnership with the Police Chief, the District Attorney, and a host of community organizations. The Center is the first of its kind in America and is setting the standard for the country. In October 2003, President George W. Bush announced the National Family Justice Center Initiative including \$20 million of funding from the Department of Justice. The Initiative seeks to initially develop 12 Family Justice Centers across America, modeled after the San Diego Family Justice Center.

Working in partnership with District Attorney Bonnie Dumanis, Supervisor Pam Slater, Sheriff Bill Kolender, and Police Chief Bill Lansdowne, we are also developing a strategic plan to facilitate creation of Family Justice Centers throughout the County. This exciting City/County partnership promises to set an example for the nation as we develop a Regional Family Justice System for San Diego County that coordinates services for victims of domestic violence, child abuse, elder abuse, and sexual assault.

Consumer and Environmental Protection Unit

The Consumer and Environmental Protection Unit [CEPU], led by Head Deputy City Attorney Cindy Davis, prosecutes a wide range of consumer protection, public health and safety, and environmental offenses. In 2003, the Unit received nearly 500 consumer complaints. The Unit filed and settled more than 120 cases and recovered more than \$200,000 in restitution for individual victims. Major settlements by the Unit produced more than \$500,000 for the City's General Fund and for victims of fraud.

Public Health and Safety

In 2003, CEPU worked to protect citizens from health dangers in the form of questionable ephedra-based diet supplements, bogus growth hormones, dangerous fitness equipment, and fireworks. Coming together with district attorneys in other regions of the state, CEPU joined in a civil complaint against Cytodyne Technologies for false advertising and failing to substantiate its claims regarding its ephedra-based dietary supplement Xenadrine RFA-1. The Unit also settled claims in another multi-jurisdictional prosecution involving Cambridge Laboratories, makers of HGH Gold, a purported reverse-aging spray, which stimulated human growth hormone. Cambridge Laboratories was forced to remove the product from the market and pay significant penalties and costs. CEPU continued in its prosecution of the manufacturers, distributors, and retailers of AbEnergizer for its ineffective and dangerous electric-stimulus stomach belt. The Unit also successfully prosecuted a distributor selling dangerous and illegal fireworks to minors from his ice cream truck.

Consumer, Vocational, and Internet Fraud

In 2003, CEPU worked to protect consumers. In partnership with the Bureau of Electronics and Appliance Repair [BEAR], CEPU successfully prosecuted the owner of Big Screen TV of San Diego on behalf of 119 local victims whose televisions and electronic devices were stolen by the business owner. After the execution of three search warrants and the seizure of nearly 200 television sets, Legal Secretary Marianne Troxell coordinated claims from more than 100 victims. The defendant pleaded guilty to ten counts of theft and fraud, and is currently serving a three-year jail sentence. The case was the largest case prosecuted in the 40-year history of BEAR.

An important goal of CEPU prosecutors and staff is to ensure that consumers can rely on advertising and labeling. Working with the County's Department of Weights and Measures, CEPU successfully prosecuted a manufacturer and supplier of home-use propane tanks for false advertising and mislabeling for under-filled tanks. CEPU was also successful in resolving a case against a Persian rug store for misleading "going out of business" sales. The rug store was forced to pay significant fines, restitution, and hold full-refund events for consumers. Also in 2003, Deputy City Attorney Joan McNamara partnered with the Department of Justice to successfully prosecute billiard and game retailers and several small businesses for selling or harboring illegal slot machines in the county. In some cases, business owners were splitting their significant "takes" with bag-men who would come to the businesses weekly to collect their ill-gotten gains.

In 2003, CEPU prosecuted a broad variety of business and license violations referred from numerous outside agencies, including the State Contractors Licensing Board, the Bureau of Automotive Repair, the Public Utilities Commission, and the Department of Consumer Affairs. No profession was above scrutiny. The cases included prosecution of unlicensed dental assistants, a doctor, an acupuncturist, auto repair workers, appliance repair persons, caregivers, and contractors. The Unit successfully prosecuted an unlicensed contractor who left an elderly victim in an unfinished home while trying to care for her adult disabled son. Ultimately, the elderly victim obtained over \$22,000 in restitution to complete the repair of her home. The Unit also shut down an auto repair facility that falsely represented it was replacing parts during transmission overhauls.

As a charter member of the Computer and Technology Crime High Tech Response Team [CATCH], the Unit prosecuted a wide array of Internet-based crime. The Unit has filed combination Internet fraud and identity theft claims. In one case, the defendant posed as a well-known editor of FHM Magazine and bilked consumers out of thousands of dollars for bogus trips and an auto purchase. Based on the work of CEPU Investigator Carmina Duran, CEPU was able to shut down a website that was selling illegal cable box decoders using false and misleading advertising.

Environmental Protection

The Environmental Protection Team of CEPU receives cases from many different city and county departments and state agencies for prosecution. In 2003, CEPU assisted the Metropolitan Waste Water Department's Food Establishment Waste Water Discharge program in its first prosecution of a restaurant owner who refused to comply with the City's grease trap rules. Grease accumulation is a serious problem and is the second most common cause of sewer blockage. The Unit also assisted the California Department of Fish and Game with enforcement issues surrounding the commercial fishing industry in San Diego. Deputy City Attorney Steven Gold concluded two major cases this year. In one case, a local circuit board manufacturer was prosecuted for hazardous waste violations resulting in clean-up orders and \$278,000 in penalties, costs, and restitution. In the second case, working with a number of other jurisdictions, a major oil corporation was prosecuted for underground storage tank violations at local gas stations. As a result of the prosecution, the corporation was ordered to pay \$4,000,000 in penalties, costs, and restitution.

The water pollution prosecution team of Deputy City Attorney Kathryn Lange and Senior Investigator William Bartleman convicted twenty defendants of polluting our waterways. In one case, a large hotel near Liberty Station had a sewage backup that overflowed to the storm water conveyance system and ultimately into San Diego Bay. The hotel owner declined to take action until ordered to by a Harbor Police officer. The corporation pleaded guilty in February 2003 to a violation of the storm water pollution ordinance and paid over \$8,000 in fines and costs. Urban streams were protected as well. One civil settlement netted \$153,000 in penalties and costs from a large beverage distributor whose poor housekeeping caused pollution to enter into Chollas Creek. As part of the settlement, the distributor paid \$90,000 to Project Swell, a new water pollution prevention and educational program in the City Schools. The team also partnered with the San Diego Natural History Museum to create an educational program specifically for environmental offenders.

In 2003, CEPU continued its crackdown on illegal dumping on San Diego's city parks and beaches. Partnering with the City's Park Rangers, Lifeguards, and Police, CEPU prosecutors obtained seventeen convictions for dumping trash on Fiesta Island. The Unit also partnered with Cal Trans to stop illegal dumping by commercial dirt hauling companies on property owned by Cal Trans along the San Diego River.

Law Enforcement Training and Consumer Education

In 2003, CEPU conducted several training sessions for law enforcement and environmental interest groups. The sessions for law enforcement included environmental crimes training for the San Diego Harbor Police and California Department of Fish and Game's Office of Spill Prevention and Response (OSPR), and investigation training for storm water code compliance officers throughout the County. Educational sessions were also held for members of environmental groups, such as Surfrider and BayKeeper, on how to refer a potential

environmental crime case to law enforcement for further investigation. Deputy City Attorney Steven Gold presented seminars regarding environmental prosecutions to the local environmental bar and law schools.

CEPU is also dedicated to educating consumers and businesses so they do not become victims or violators of consumer and environmental protection laws. In January 2003, CEPU introduced "Consumer Corner" as a part of the City Attorney's new website. At Consumer Corner, individuals can access consumer complaint forms in English and Spanish. They can also find articles providing consumer tips and CEPU's "Most Wanted" column where we seek input from citizens regarding the Unit's most notorious defendants at warrant. The Unit receives calls from across the state providing tips on its Most Wanted. In 2003, the Unit provided important information to victims of the San Diego wildfires on the web, including articles regarding hiring contractors for rebuilding after the fire and how to avoid charity scams. These articles were also featured on the San Diego County Bar Association web page to assist fire victims. Head Deputy City Attorney Cindy Davis was featured on five one-hour radio programs on KPRZ and KCBQ on topics ranging from identity theft, Internet fraud, and fire victim assistance. She also published two articles in *Décor* and *Style* magazines regarding identity theft and store return policies as well as an article regarding charity scams in *Lawyers Club News*. CEPU was well represented at "Scam Jam" a consumer education fair sponsored by the Better Business Bureau.

CEPU works with a broad base of enforcement agencies and community groups. Members of CEPU sit on several professional boards and advisory committees. As an example, Deputy City Attorney Joan McNamara serves on the Model Tobacco-Free Communities Ordinance Task Force and has been working with the American Lung Association, American Heart Association, and the County Tobacco Resource Program to develop a model tobacco ordinance for San Diego and Imperial Counties. Prosecution of smoking ordinances has paid off for the citizens of San Diego. San Diego was awarded the prestigious "Platinum Lung" award for achieving exemplary rates of smoke-free bars and work places in the city. Deputy City Attorney Joan McNamara was given special recognition by the American Lung Association for her dedicated work in leading the law enforcement effort.

Code Enforcement Unit

In 2003, the Code Enforcement Unit, led by Head Deputy City Attorney Diane Silva-Martinez, worked in close partnership with City Departments and community groups to aggressively enforce a wide range of state and local laws aimed at protecting and improving the quality of life in San Diego's neighborhoods. Attorneys, investigators, and staff members worked to proactively address substandard housing. The Code Enforcement Unit also successfully resolved a number of nuisance cases involving vacant properties where criminal activity, including drug offenses, prostitution, transient trespassers, and fires negatively impacted neighborhoods.

The Code Enforcement Unit will continue to receive state funding through 2004 under a

grant program called "Up to Code" to specifically address substandard housing in the communities of Sherman Heights, Grant Hill, and Memorial. A recent case handled by Deputy City Attorney Linh Nguyen resulted in the relocation of a single mother and children who were living in deplorable conditions with no functional plumbing, kitchen, or heat. The landlord, who was charging significant rent for these substandard conditions, was required to pay the relocation costs. In 2003, the Unit also criminally prosecuted a slumlord in the Mid-City area that was collecting rental income from 27 substandard houses. Significant fines were imposed on the landlord as well as probationary terms, which required the timely rehabilitation of the houses.

The Code Enforcement Unit serves as an important member of the Grading Violation Assessment Team with other City Departments. In 2003, the Unit prosecuted more than 20 illegal grading cases in which either developers or private property owners graded environmentally sensitive land. In one case, Deputy City Attorney Michael Neumeyer was successful in collecting more than \$220,000 in fines and costs against a nursery business owner who blatantly destroyed sensitive habitat and waterways.

The Code Enforcement Unit is also an important member of the City's "Lead Task Force" whose purpose is to develop ordinances and enforcement strategies to abate lead hazards in residential housing, which pose a significant risk to children under the age of seven.

In 2003, Deputy City Attorney Patricia Fusco assisted the Water Department in holding water thieves accountable. In one criminal case, a construction company paid \$6,000 in restitution, fines and investigative costs for maintaining illegal water connections to an apartment complex. A civil suit brought against a property owner and several subcontractors for maintaining illegal water connections at a construction site in Mission Valley resulted in a stipulation requiring the companies to pay almost \$20,000 in restitution, penalties and investigative costs.

The Code Enforcement Unit represents the City Attorney's Office on a national Advisory Committee to the "National Vacant Properties Campaign," which is funded by the Fannie Mae Foundation and the U.S. Environmental Protection Agency. The campaign is a project of Smart Growth America, the Local Initiatives Support Corporation, the International City/County Management Association, and the National Trust for Historic Preservation. CEU, in partnership with the Neighborhood Code Compliance Department, will continue to be recognized on a national level for our aggressive efforts in addressing vacant properties in San Diego and San Diego's Vacant Properties Program. In December 2003, Head Deputy Diane Silva-Martinez, at the invitation of the International City/County Management Association, served as a panelist for a conference on vacant properties in Las Vegas, Nevada. The purpose of the conference sponsored by the International City/County Management Association was to assist other cities, including Las Vegas, to address their vacant property stock and set up programs and strategies based on the City of San Diego's successful model.

In 2003, the Code Enforcement Unit prosecuted a number of illegal businesses operating

in violation of zoning laws. In one case, an ice company was illegally operating in a residential zone and the neighborhood could no longer tolerate the traffic problems and early morning noise caused by delivery trucks and the operation of the business. The case was criminally prosecuted by the Unit, and the owner was required to evict the business. Similarly, in the Ocean Beach area, a business owner was required to remove a number of inoperable buses from his lot, which posed considerable blight and had become a haven for transients and drug activity. As part of his sentence, the owner was required to pay \$6,000 to the Ocean Beach Community Group.

In 2003, the Code Enforcement Unit collected over \$37,000 in investigative costs in criminal and civil prosecutorial actions. These monies were paid by violators as part of court orders requiring reimbursement to City Departments for time spent on the cases.

The Code Enforcement Unit attorneys and investigators regularly provide training for City Departments on various aspects of code enforcement, including case preparation, report writing, search and seizure law, and courtroom testimony. These trainings assist in ensuring that code inspectors are properly enforcing the City's Municipal Codes and preparing strong cases for prosecution.

Drug Abatement Response Team

The Drug Abatement Response Team [DART] is composed of two San Diego Police detectives, a Neighborhood Code Compliance inspector, and two Deputy City Attorneys. They use civil abatement actions to rid San Diego's neighborhoods of nuisance properties. In 2003, DART targeted businesses and properties where drug, criminal, and nuisance activity was occurring:

- *City of San Diego v. Mullin's Liquor:* After a sixteen-month investigation by the San Diego Police Department into the business practices and illicit activity taking place at Mullin's Liquor in Barrio Logan, DART prosecutors Makini Hammond and Ken So obtained a preliminary injunction against the business owners of this problem liquor store. Mullin's Liquor had a long history and reputation as an open drug market and a Lincoln Park gang hangout. Among other things, the injunction requires the owners of Mullin's Liquor to retain reputable security on the property, prohibits the sale of malt liquors and fortified wines on the property, and requires Mullin's to pay a substantial fine.
- *200 S. Bancroft & Payne Project:* In District 8, DART worked a project area known as a "shooting gallery" because of its popularity with local drug users who used heroin in an "alleyway" between two rows of homes on Bancroft and Payne Streets. This "alleyway" was also frequented by gang members and sex offenders and used as a short cut by school children. DART members set up a community meeting and required approximately ten affected property owners to extend their fences to the edge of their property line. DART

also worked with the Neighborhood Code Compliance Department and Environmental Services to require that owners clean up the debris on their property. As a result, the drug activity has significantly decreased and the criminals who frequented that vicinity no longer hang around there.

- *Operation Bagpipe:* As part of an undercover operation involving DART and the California Department of Alcohol Beverage Control (ABC), eleven local merchants were documented selling illegal drug paraphernalia, narcotic smoking kits, or “brownbags.” The eleven merchants that sold illegal drug paraphernalia were in the Mid City, Southeastern, and Central areas of San Diego. DART prosecuted twenty-five store owners and clerks. Based on the convictions against the liquor stores, ABC is seeking thirty-five day suspensions of their alcohol licenses. The liquor stores’ conditional use permits are also in the process of being reviewed for a possible revocation by the City.
- *Bayview Motel:* In District 6, DART obtained a permanent injunction against the owner of this motel, which had been a problem location for many years. The criminal activity was so rampant that the community was initially calling for the City to acquire and redevelop the property. Instead of spending public funds to acquire and redevelop the property, DART required the owner to invest his money in his own property, saving the City millions of tax dollars. As part of the injunction, the owner was required to hire a professional property management company and has spent over a hundred thousand dollars so far in renovations. The remodeled and renamed Seaside Motel re-opened under new management in October 2003.

Neighborhood Prosecution Unit

The Neighborhood Prosecution Unit, led by Head Deputy City Attorney Joan Dawson, works in partnership with the San Diego Police Department, other agencies, and community organizations and leaders to aggressively and creatively combat crimes that impact quality of life. Four neighborhood prosecutors are assigned to work in more than 25 neighborhoods throughout San Diego, including Barrio Logan, Core-Columbia, Downtown, the East Village, Gaslamp District, Grant Hill, Hillcrest, Logan Heights, all of Mid-City including City Heights and College, Mission Bay, Mission Beach, North Park, Pacific Beach, Sherman Heights, and Stockton. The neighborhood prosecutors also work on problem-solving efforts in other communities in the City. The neighborhood prosecutors regularly attend community meetings and community events to bring information on quality-of-life crime problems back to the Criminal Division for attention and problem-solving. The Neighborhood Prosecution Unit is pointing the way to the future of criminal justice prosecutors in San Diego County and around the country. Prosecutors are getting out from behind their desks and are proactively going out into the community to work on solving community problems.

Chronic and Repeat Offenders

An important focus of the Neighborhood Prosecution Unit is working to resolve problems caused by repeat and chronic offenders. In 2003, the Neighborhood Prosecution Unit handled a caseload that included more than 150 repeat and chronic offenders. The Unit initiates an average of four to seven probation revocation proceedings a month involving offenders currently on probation and in violation of their probation. These offenders include prostitutes who are violating their street conditions (stay away orders) and transients in the Mission Valley Riverbed, Chicano Park, and Balboa Park who are in violation of their stay away orders and other conditions of probation.

The conduct of many of these chronic and repeat offenders results in multiple calls for police service and community concerns in several San Diego neighborhoods. In one case, a woman had been a problem in a Pacific Beach neighborhood for about two years. Her neighbors obtained a restraining order against her, and she continued to violate the order. She suffered from a psychological disorder and called the police daily, reporting that her neighbors were terrorizing her. The police responded to all of the unfounded calls for assistance. Northern Division Neighborhood Prosecutor Regan Savalla filed a four-count complaint against the defendant, alleging restraining order violations. In July 2003, the defendant pleaded guilty and was ordered into counseling. She also moved from the location of the incidents. The victims were pleased with the resolution as was the Police Department, which has received no new calls for service at her former or current residences since the Neighborhood Prosecution Unit took the case.

Since January 1, 2003, the San Diego Police Department received fifty 911 calls from a North Park woman. The majority of the calls were hang-up calls; some of the calls for assistance were cancelled after information was received from the resident stating there was no emergency. Of the fifty calls, officers responded to her home twenty-two times. The officers never found an emergency situation. Despite warnings, the resident continued to call 911 to report non-emergency situations. She was drunk on several occasions when police responded. Deputy City Attorney Regan Savalla worked with the officers to obtain information on the 911 calls and the police response to them. She filed a 21-count complaint alleging misdemeanor abuse of the 911 system. The woman pleaded guilty to making false 911 calls and being drunk in public. She had a psychological evaluation and was placed on probation for three years on the condition she abstain from alcohol, make no false calls to 911, complete a six-month residential rehabilitation program, and pay restitution.

In November 2003, Head Deputy City Attorney Joan Dawson, obtained convictions for two counts of battery on a police officer and one count of drunk in public against a defendant who is an alcoholic and terrorized a Mira Mesa neighborhood with violent outbursts. The defendant was ordered by the Court to serve 360 days in jail. Upon his release from custody, he will continue on probation for three years with orders to abstain from alcohol and other controlled substances, take prescribed medications, complete a one-year rehabilitation program, and stay away from a Mira Mesa convenience store that was the location of the incident.

Deputy City Attorney Gabriela Brannan successfully prosecuted several chronic alcoholics for being drunk in public as part of the City of San Diego's Serial Inebriate Program [SIP]. Brannan also conducted training for San Diego Police officers on SIP, a program that uses the power of the court to get alcohol offenders into rehabilitation. One offender successfully prosecuted by Brannan had been a chronic alcohol offender since 1996. He was ordered to serve time in custody and was then placed in an alcohol rehab program. Another offender, who also had been a problem for San Diego Police since 1996, was ordered to serve 150 days in custody and stay away from Balboa Park, the location of his arrests. The defendant has not been contacted again in Balboa Park.

Mid-City Neighborhood Prosecutor Chandani Flinn successfully prosecuted a female offender who had multiple prior convictions for prostitution. This woman had been a problem for Mid-City police officers for ten years. The woman, a substance abuser, is now in recovery, participating in a rehabilitation program, attending support meetings, and enrolled in community college classes. Flinn also prosecuted a transient alcoholic who had multiple prior convictions for drinking in public. After serving custody on probation violations, he agreed to enter a rehabilitation program through the Serial Inebriate Program and is doing well.

In December 2003, Head Deputy City Attorney Joan Dawson obtained a conviction for illegal lodging against a transient who had been living on the grounds of a La Jolla church for four years. The defendant had eighteen prior convictions for illegal lodging as well as convictions for drinking in public and other transient crimes. He had served significant time in jail for the prior convictions. He always refused assistance in the past. Following his jury trial, the defendant agreed to accept help from the San Diego Police Department's Homeless Outreach Team, which has found him placement in housing for homeless seniors. The defendant was also placed on probation for three years and was ordered to stay away from the church.

Problem-Solving Efforts

The Neighborhood Prosecution Unit supports the efforts of the San Diego Police Department in working problem-oriented policing projects. The Unit prosecutes offenders arrested in these enforcement efforts, which, in 2003, have included drinking and transient activity at Chicano Park, Maple Canyon, and the San Diego Riverbed, loud parties and underage drinking in the College and Beach areas, and chronic offender prosecution, including offenders who are drunk in public as part of the Serial Inebriate Program. The Unit is prosecuting the offenders and obtaining stay away orders to keep them out of the neighborhoods where they are committing the crimes.

In 2003, Deputy City Attorney Regan Savalla worked on the ongoing problem of transients living in the San Diego Riverbed in Mission Valley. Over the past year, there has been an increase in transient activity in the riverbed. There are several large transient camps. Many are elaborate; with tents, room dividers, solar panels and car batteries, televisions and other

electronic equipment, furniture, and makeshift restrooms, creating tent cities in the riverbed. These camps create waste and garbage that collects and runs down the San Diego River into the Bay and the Pacific Ocean. Officers are also finding heroin, methamphetamine, marijuana, and morphine, along with needles and scales. In 2003, Regan Savalla worked with San Diego Police officers to clean up the riverbed. She filed approximately 95 cases originating from the San Diego Riverbed. This number has more than doubled from the 45 active cases in December 2002. Most of the cases involve illegal lodging; however, some involve weapons and drug charges. In 2003, there were 67 convictions, with the remaining cases still open or at warrant. The defendants are being ordered to serve time in custody and to stay away from the riverbed on their release. Forty-five defendants are on active probation with stay away orders. Approximately four defendants were found in the riverbed after being ordered to stay away, and they all served at least 45 days in custody for their violations. A task force has now been formed to coordinate the enforcement and clean up effort.

The Neighborhood Prosecution Unit is prosecuting social host ordinance cases forwarded by the San Diego Police Department. In May 2003, the San Diego City Council enacted a new ordinance, making it a misdemeanor to host or allow a party where three or more minors are present and alcoholic beverages are being consumed by a minor. The new ordinance also makes it unlawful for minors to consume alcohol. State law makes it a misdemeanor for minors to possess alcohol. The new social host ordinance strengthens the ability of local law enforcement to solve the problem of underage drinking at parties. The Neighborhood Prosecution Unit has filed charges against more than 15 people for violating the social host ordinance. Three people have been convicted with the remaining cases pending. The Unit is also aggressively prosecuting disturbing the peace cases from loud parties in the College and Beach areas. The Unit has handled 43 loud party/disturbing the peace cases through the Mid-City Community Court.

The Neighborhood Prosecution Unit is prosecuting individuals who are off-roading at Black Mountain Park, destroying environmentally sensitive land and wildlife. The Unit has successfully prosecuted ten drivers of vehicles stopped by the City of San Diego's Park Rangers for violating the "no off-roading" signs at the park. These defendants have been placed on misdemeanor probation with stay away orders from Black Mountain Park.

In 2003, Downtown Neighborhood Prosecutor Marcella Ordorica worked on two significant problem-solving efforts with the Police Department to address narcotics activity in the 300 to 900 blocks of C Street and disturbing the peace complaints involving entertainment establishments and street entertainers in the Gaslamp District. Ordorica is also working with the Police Department on the issue of displacement of transient offenders from the Ballpark District.

The Neighborhood Prosecution Unit staffs three problem-solving courts in San Diego: the Homeless Court, the Downtown Community Court, and the Mid-City Community Court. The City Attorney's Office assisted in the creation of each of these innovative courts. In 2003, the Unit resolved 67 cases through the Downtown Community Court. Offenders who committed crimes downtown and agreed to participate in the Downtown Community Court were ordered to perform 832 hours of community work service, including cleaning sidewalks, painting out graffiti, and doing landscaping downtown. The Downtown Community Court was implemented in October 2002 and has received state and national attention. The Neighborhood Prosecution Unit resolved 94 cases through the Mid-City Community Court. In this pre-filing court, created by the City Attorney, offenders who commit quality-of-life crimes accept responsibility and are sanctioned by community members, who serve as the voice of the community. In 2003, offenders were ordered to perform 676 hours of community work service in Mid-City. In addition, there were 51 referrals to educational, preventative, and rehabilitative programs designed to curb future criminal conduct. The Mid-City Community Court was implemented in February 2003. The Neighborhood Prosecution Unit also staffs the monthly Homeless Court and the annual summer StandDown event. In 2003, approximately 1320 cases were heard in the Homeless Court. These cases were resolved with defendants participating in rehabilitative programs designed to get them off the streets. The Homeless Court assists misdemeanor defendants who are making positive, productive changes in their lives.

In 2003, the Prostitution Impact Panel [PIP] continued to play an integral role in curbing prostitution in San Diego. Created in January 2002, under the leadership of the City Attorney's Office, PIP is an educational program to inform john offenders – those who solicit or agree to engage in prostitution activity – about the far-reaching impact of prostitution on a community. Offenders hear from community members who are impacted by prostitution in their neighborhoods. The offenders also hear from former prostitutes who talk about life on the street, social service and health care workers who discuss sexually transmitted diseases and the dangers of engaging in prostitution activity, and police officers who discuss the legal consequences. The monthly PIP sessions are coordinated by Mid-City Neighborhood Prosecutor Chandani Flinn and Mid-City Neighborhood Prosecution Officer Steve Rosenbloom. Approximately 189 john offenders have attended PIP, with no repeat offenders to date!

Law Enforcement Training and Community Outreach

The work on the Stockton Pedestrian Tunnel is moving forward. This tunnel located at 33rd and K Streets has been the site of drug activity, graffiti, illegal dumping, and transient crimes. Children who attend a nearby elementary school must pass through this pedestrian tunnel on their way to and from school. Community members are afraid for their safety and the safety of their children when using the tunnel. Central Neighborhood Prosecutor Gabriela Brannan is working on this issue with community members. A "crime prevention through environmental design" analysis was done, and improvements to the lighting and landscaping were completed. In April 2003, a community clean-up funded by Volunteer San Diego was organized by Gabriela Brannan, and was a striking success. More than 65 residents attended the

clean up. Residents painted fences, picked up trash, and planted trees. The next step is to add a mural to the inside of the tunnel with the assistance of a grant of \$1,000 from County Supervisor Greg Cox to the Bronze Triangle Community Development Corporation. The long-term goal is to develop a park next to the tunnel.

In 2003, the Neighborhood Prosecutors conducted training for San Diego Police Officers at the Police Academy on “Surviving the Witness Stand” and “Neighborhood Nuisance Prosecutions.” The Unit also conducted line-up training at Northern, Western, Central, Mid-City, and Eastern Divisions of the San Diego Police Department. The purpose of the trainings was to provide information on misdemeanor prosecution issues and to ensure successful prosecution of misdemeanor crimes in the City of San Diego. The City Attorney’s Neighborhood Prosecutors also serve as a resource to community prosecutors from throughout California as trainers for the California District Attorney’s Association Community Prosecution Committee.

The Neighborhood Prosecutors regularly attend community meetings, including Town Council, Community Council, and Police Problem-Solving meetings in communities throughout San Diego. The Neighborhood Prosecutors listen to community concerns about quality-of-life crime issues and share information about the progress of community collaborative initiatives, such as the Community Courts.

CIVIL DIVISION

The attorneys and staff in the Civil Division work to provide quality legal advice to all City Departments and Boards and Commissions and represent the City in all Civil litigation involving the City of San Diego. In recent months, the City Attorney’s Civil Division has been the brunt of a variety of false and misleading statements about the effectiveness of the City’s civil attorneys. Contrary to the reckless and irresponsible hyperbole of the political season, the Office continues to enjoy tremendous success in state and federal courts and a reputation for excellence throughout the legal community in San Diego.

Civil Division Trial Unit

The Civil Division’s Trial Unit, led by Head Deputy City Attorney Frank Devaney, is responsible for defending all lawsuits filed against the City of San Diego. The Unit also proactively initiates litigation to benefit the City. In 2003, approximately 250 civil cases, excluding worker’s compensation cases, were filed against the City of San Diego. Attorneys resolved most of these cases through successful motions, voluntary dismissals without payments, and nominal settlements. In 2003, the Trial Unit tried twelve jury trials and obtained defense verdicts in each case. In addition, the Unit tried two bench trials and won both of them. The Unit’s 100% success rate at trial is second to none when compared to other public offices around the state in the last year. Indeed, the Trial Unit has not lost a jury trial or bench trial for nearly two years – an incredible accomplishment and a testimony to the hard work and tenacity of the

litigation team developed by the City Attorney over the last eight years.

In 2003, the Trial Unit proactively initiated numerous litigation matters, including eminent domain cases, collections cases, unlawful detainers, and other enforcement matters. The City Attorney's Civil Enforcement Unit, which is part of the Trial Unit, obtained \$1,352,837 in judgments and collected \$905,142 for the City.

Among the Trial Unit's successes in 2003 were the following cases:

- *Henderson v. Robinson, San Diego Superior Court:* Deputy City Attorney Ed Cahill obtained a defense verdict in favor of the City in a negligence case in which the plaintiff was injured when her car was hit by a police car responding to an emergency call on El Cajon Boulevard. [Case No. GIC 778924/Hon. William Pate, Trial Judge]
- *Thompson v. City of San Diego, San Diego Superior Court:* Deputy City Attorney Cara Lassman successfully defended a dangerous condition on public property case in which the plaintiff broke his ankle when he slipped on a muddy hillside in Balboa Park. The muddy condition was caused by an old, broken storm drain. [Case No. GIC 783473/Hon. Ronald Prager, Trial Judge]
- *DuBose v. City of San Diego, U.S. District Court:* Head Trial Deputy Frank Devaney prevailed in a wrongful death case in which a former Notre Dame All-American and NFL football player was shot and killed during a struggle with two police officers in Mission Beach. [Case No. 99cv2279L(NLS)/Hon. James Lorenz, Trial Judge]
- *Mitchell v. City of San Diego, U.S. District Court:* Deputy City Attorney Mia Severson successfully defended a false arrest/excessive force case in which the plaintiff alleged that he was injured and that his civil rights were violated when he was arrested for a violation of misdemeanor drunk in public charges. The plaintiff initiated the contact with the arresting officers when he approached their patrol car parked outside a Miramar Road night club and complained that their presence there was a waste of public resources. [Case No. 00cv0033/Hon. Napoleon Jones, Jr., Trial Judge]
- *Nguyen v. City of San Diego, U.S. District Court:* Deputy City Attorney Rick Ostrow obtained a defense verdict in a case involving a non-fatal bean bag shooting by San Diego Police officers. The plaintiff was a felony domestic violence suspect who refused to drop a knife when the police tried to arrest him. The plaintiff lost an eye and suffered moderate brain damage when a bean-bag round lodged in his left eye. [Case No. GIC788272/Hon. Ronald Prager, Trial Judge]
- *Poe v. City of San Diego, U.S. District Court:* Deputy City Attorney Penny Castleman successfully defended a wrongful death case in which the decedent died in the back of a police car while in custody. The decedent had fought with the arresting officers and had been forcibly restrained. The plaintiff contended that the restraining techniques and lack

of medical care provided to the decedent caused his death; the City contended that the decedent choked on the plastic baggie of drugs that he swallowed when he was contacted by the police. [Case No. 01cv0127/Hon. Jeffrey Miller, Trial Judge]

- *Langston v. City of San Diego, San Diego Superior Court:* Deputy City Attorney David Brodie obtained a defense verdict in favor of the City's taxpayers in an employment case in which plaintiff, an African-American Street Division Utility Worker, claimed that he was treated unfairly, not promoted, retaliated against because of past grievances, and discriminated against because of his race. [Case No. 780037/Hon. William R. Nevitt, Jr., Trial Judge]
- *Wallace v. City of San Diego, U.S. District Court:* Deputy City Attorney Mark Stiffler prevailed in an employment case, in which the plaintiff, a former San Diego Police Department sergeant, sued the City after he voluntarily left the department. He claimed that the City had constructively discharged him by retaliating against him in violation of the Uniform Services Employment and Re-Employment Rights Act [USERRA], which protects employees whose military service requirements impact their employment. The plaintiff alleged that he left the Police Department because of various adverse employment actions taken against him. He contended the alleged actions were in retaliation for his taking frequent, sometimes extended military leaves, and not for the other reasons cited by the Police Department. A federal jury returned a verdict in favor of plaintiff, but, following the City's post-trial Motion for Judgment, the trial judge reversed the jury verdict and entered judgment in favor of the City's taxpayers. [Case No. 01cv0703/Hon. Jeffrey Miller/Trial Judge]
- *Blanco v. City of San Diego, San Diego Superior Court:* Deputy City Attorney David Brodie prevailed in a dangerous condition case in which the plaintiff suffered broken ribs and a punctured lung when he hit a three-inch deep sunken valve cover while riding his bicycle on Torrey Pines Road near U.C.S.D. [Case No. GIC 791552/Hon. Richard Haden, Trial Judge]
- *Burnett v. City of San Diego, San Diego Superior Court:* Deputy City Attorney Mark Stiffler also prevailed in an excessive force against the San Diego Police Department. The plaintiff was a suspect wanted for passing forged checks. He was injured in a non-fatal police shooting after he tried to flee in his car when confronted with officers who had staked out the parking lot of a shopping center in which he was suspected of passing such checks. The plaintiff was shot in the arm by an officer who feared that he was going to be hit by the plaintiff's car. [Case No. GIC 795502/Hon. Wayne Peterson, Trial Judge]
- *Flores v. Bryan, U.S. District Court:* Deputy City Attorney Rick Ostrow successfully defended a wrongful death case in which the decedent was shot and killed when he stabbed with scissors a police officer who had entered the decedent's home to free a hostage decedent was holding. The officer was wearing a bulletproof vest and was not

injured. [Case No. 01cv1353/Hon. Irma Gonzalez, Trial Judge]

- *Imperiale v. City of San Diego, U.S. District Court:* Deputy City Attorney Ed Cahill obtained a defense verdict in a false arrest/excessive force case in which the plaintiff was stopped and searched by officers who had observed him engaging in an apparent drug transaction in the parking lot of a liquor store. The plaintiff allegedly suffered strains and sprains to his back and shoulders while scuffling with the officers. [Case No. 02-cv0969/Hon. Larry Burns, Trial Judge]
- *Bustamante v. City of San Diego, San Diego Superior Court:* Deputy City Attorney Andrew Jones prevailed in a dangerous condition case in which the blind plaintiff was injured when she walked into a traffic sign that had been partially knocked over and was hanging across the sidewalk upon which she was walking. [Case No. GIC 778384/Hon. Patricia Cowett, Trial Judge/Bench Trial]

Many high profile property cases were litigated this year, resulting in favorable outcomes to the City:

- January: United States District Court Magistrate Judge Leo Papas denied a request based on the Americans with Disabilities Act for a temporary restraining order against the Super Bowl, and allowed the game to proceed. Deputy City Attorney Gene Gordon successfully handled that case.
- July: Superior Court Judge Wayne Peterson denied a CEQA-based challenge to the expansion of the Francis Parker Middle School in Mission Hills, and allowed that project to proceed. Deputy City Attorney John Mullen handled that case.
- August: Judge Peterson denied a long standing CEQA-based challenge to the City Council's decision to close Sorrento Valley Road to vehicular traffic. Deputy City Attorney William S. Donnell was responsible for handling that litigation.

The Trial Unit was also successful in 2003 in the appellate arena:

- In November, the Ninth Circuit upheld the trial court's decision allowing the City to impose a \$250 limit on campaign contributions to a committee formed to support the recall of Councilmember Scott Peters. Deputy City Attorney John Mullen handled that case.
- John Mullen handled a case in which the Fourth District Court of Appeals affirmed the trial court's ruling that the thirty-foot height limit contained in Proposition D does not apply to the new development of the Naval Training Center.
- In March, the Fourth District affirmed the trial court's ruling allowing the widening of

the Mission Beach boardwalk. Deputy City Attorney Leslie Fitzgerald represented the City.

- In June, the Ninth Circuit affirmed the granting of summary judgment in the City's favor in a case in which plaintiffs contended that the City deprived them of equal protection by failing to diligently investigate the death of their infant son; the plaintiffs contended that the suspect babysitter in the death was the daughter of a San Diego Police officer and, because of that relationship, the death was not appropriately investigated by the department. Deputy City Attorney Gene Gordon handled this appeal for the City.

Civil Enforcement Unit

In 2003, the Civil Enforcement Unit [CEU] was successful in collecting \$905,142 for the City. The Unit collected money on behalf of the Collections Department as well as other City Departments including Real Estate Assets, Environmental Services, Library, Parking Management, Risk Management, Financial Management, Auditors, Police Department, Fire Department, Streets Division, and others. The following cases highlight the Unit's success in 2003:

- *Maryland Hotel*: Three hundred thousand dollars (\$300,000) was recovered in this case on behalf of the Housing Commission. The case involved a dispute between the City and the Maryland Hotel over whether or not the city can enforce the Single Room Occupancy [SRO] regulations in San Diego Municipal Code section 143.0510 *et seq.* The City argued that it has the authority to enforce these regulations by virtue of the provisions of Government Code Section 7060.1, subdivisions (b) and (c), Government Code section 7060.7 and the decision of the California Supreme Court in *San Remo Hotel v. City and County of San Francisco*, 27 Cal.4th 643 (2002), which regulate the conversion of existing housing to other non-residential uses and seek to mitigate any adverse impacts on persons displaced by reason of the withdrawal from rent or lease of any accommodations in any residential hotel. Ultimately, the Hotel agreed to settle the dispute by paying the City \$300,000.00.
- *Shea Homes*: One hundred thirty thousand (\$130,000) was recovered in this case by Deputy City Attorney Heidi Weirman. This was a pre-litigation matter pursued by the Collections Enforcement Unit at the request of the Park and Recreation Department. In 1991, pursuant to a Development Agreement with the City of San Diego, the Wuest Estate Company began building a mixed use development in Miramar Ranch North. Part of the Development Agreement required that, where Shea made required infrastructure improvements, which resulted in the elimination of various trees, shrubs, and other plant materials, that those materials would have to be replaced with similar items throughout the landscaping for the Project. The City contended that Shea was responsible for the replacement of 184 trees (based on a photographic inventory); whereas Shea claimed that the actual number for which it was responsible was, in fact, much lower. Pursuant to the

final agreement, Shea paid \$130,000 for settlement of its replacement costs, and to reduce the time it is required to pay for the landscaping maintenance from two years to one year. This represents full and complete settlement of all claims and disputes arising out of the landscaping within the public rights of way for the Project.

- Neighbors United: Another significant result for the 2003 year was a recovery of \$117,679 on a foreclosure sale of a building on Market Street that was purchased with Community Development Block Grant funds. This case was handled by Deputy City Attorney Yolanda Gammill. CDBG (Community Services) loaned the debtor \$250,000 in exchange for a lien on his building. Unfortunately, the lien was not properly recorded and Alliance Title in San Francisco refused to recognize the City's lien. After pointing out to the title company that the City can either take the money from the foreclosure sale or sue the title company, the title company relented and gave the City the balance of the foreclosure money. The recovery of the CDBG money was approved by the City Council and transferred to District 8.
- Thunderboats: This case involved an organization that promotes an annual thunder boat racing event on Mission Bay. Each year the event is held, the promoters agree to pay for police and fire services that are utilized during the three days of the event. However, for the past two years, the promoters have refused to pay for police and fire services. After being refused another permit to the promoter for the event until the past due police and fire bills were paid, the promoter paid \$48,225.85 in back bills.
- AHH Coin Laundry: This case involved an owner of two laundromats who refused to pay his sewer bills. In the area where the laundries are located, San Diego does not provide water service but does provide sewer lines. Normally, the City would shut off the water lines if a person refuses to pay his bill. However, there is no way for the City to shut off the sewer lines because of health and safety laws, so Deputy City Attorney Yolanda Gammill, section leader of the Civil Enforcement Unit, sued AHH Coin laundry twice in 2003, obtaining total judgments of \$28,782.66.
- Wagner: This case involved Neighborhood Code Compliance Department's attempt to enforce the City's building code by requiring the defendant to return his illegally converted room back into a garage. The defendant was ordered to pay civil penalties at an administrative hearing, but he refused to pay. The Civil Enforcement Unit sent a demand letter to the defendant for \$20,290.94. He paid the full amount the next day.
- Deng – Henry: This case involved a driver who lost control of her vehicle and crashed it into the Linda Vista library, causing approx \$22,000 in damage. Deputy City Attorney Kristi Pfister was able to recover \$20,000.00 in a settlement agreement.

In 2003, CEU handled eleven unlawful detainers. Judgment and lock-outs were obtained in three cases, and one was successfully tried. The handling of the unlawful detainers has meant

that the City can now enforce its lease agreements with full knowledge that there is a unit that will obtain a judgment and lock-out if the lessee fails to pay its rent. Among the successes, Deputy City Attorney Kristi Pfister successfully obtained a judgment of \$7,687.36 in an unlawful detainer case against a tenant of the City-owned World Trade Center at 1250 Sixth Avenue.

Another focus of the Civil Enforcement Unit in 2003 was the recovery of compensation for damage to or destruction of City trees, both in parkways and in park areas. Civil Code Section 3346 and Code of Civil Procedure Section 7333 provide for double or treble damages in the case of torts against trees. These have not been collected in the past, and the City has suffered from such non-collection in that damaged or removed trees are not adequately replaced. The Unit is participating in setting up a tree fund that will use the double and treble damages to plant and maintain trees throughout the City of San Diego.

The Unit is also working on standardizing the city's invoices and demand letters for loss of City trees. In addition to insuring that destroyed trees are appraised at their full value, the goal is to insure that full demand is made for double or treble damages, per Civil Code section 3346(a) and Code of Civil Procedure section 733. In one case of note, Deputy City Attorney Grant Telfer filed suit against the Watt Family Properties, Inc. alleging that Watt caused damage to City property by removing three mature Jacaranda trees from Ash Street while constructing an apartment building in the Little Italy area. On a negligence cause of action, the City sought recovery of \$54,000 in damages against Watt. Watt denied all allegations and raised affirmative defenses. After negotiations, the case was settled for \$39,000.00. In another case, Deputy City Attorney Yolanda Gammill was successful in recovering \$6,390 in double damages from an individual who cut down protected Torrey Pine trees on City property. He claimed that he cut the trees to avoid a fire hazard; however, the trees were located on wetland and were lush and green. In another case, Deputy City Attorney Kristi Pfister was able to recover \$25,855 in damages from a property owner who removed trees and a fence from the adjacent City property.

The Civil Enforcement Unit has taken a proactive approach in obtaining restitution for the City of San Diego by creating and instituting a restitution recovery procedure which allows the city to obtain civil judgments against criminal defendants in cases in which the city's property or employees have been damaged. Normally, a court will order the defendant to pay restitution to the city for damages, but the defendant is usually ordered to pay only \$25 a month through Revenue and Recovery, regardless of the income of the defendant. However, the Penal Code allows the City to obtain civil judgments and go after the defendant's assets. CEU has obtained a total number of 11 civil judgments against such defendants.

One such case is the case of Banyan Marques. Marques stole a car, and while trying to evade the police, crashed into a city vehicle occupied by a city employee. The City incurred \$40,711 in losses -- \$17,608 in medical bills for the injured employee, \$19,712 in lost wages paid to the employee and \$3,391 in damages to the city vehicle. Originally, the District Attorney's Office, which prosecuted Marques, did not seek restitution for the City because it did

not view the City as a victim. Deputy City Attorney Yolanda Gammill was able to convince the District Attorney that the City of San Diego was a victim and as a victim is entitled to restitution. The City was able to turn the restitution order into a civil judgment against the defendant, which is good for ten years.

The Civil Enforcement Unit also has been vigilant in recovering the costs of litigating a case when a trial attorney has won a trial or a summary judgment motion. The total cost judgments the Trial Unit has obtained this year and CEU has referred to Collections is \$83,681.56. This total includes a \$28,440.17 costs judgment that was obtained in the Dubose case by Head Deputy City Attorney Frank Devaney.

Employment Services and Safety Unit

The Employment Services and Safety Unit, led by Head Deputy City Attorney Chris Morris, provides legal services in a variety of areas, including employment, labor relations, and personnel; worker's compensation; information technology and communications; and fire and life safety services.

In 2003, the Unit's attorneys and professional support staff assisted in establishing and staffing the Pension Reform Committee. This committee was established by the Mayor to find solutions to the funding issues currently facing the City's pension system. The Unit also drafted and presented the Domestic Partners Ordinance. This ordinance will confer spousal retirement benefits to domestic partners. The Unit assisted both Police and Fire with various labor issues surrounding the Cedar Fire, including the processing of overtime and reviewing a number of media-related Public Records Act requests. The Unit also assisted in citywide training on family and medical leave issues. Lastly, the Unit successfully handled a challenge to the labor structure adopted for Petco Park.

In the workers compensation area, the Unit has four dedicated attorneys with special expertise in cancer, heart, back, and multiple body part cases. In 2003, the City prevailed in a worker's compensation case in which the injured worker claimed work-related injuries worth approximately \$70,000. He claimed that his two heart attacks were caused by work stress. The Unit collected \$471,133 in third party recoveries and \$171,739 in credits before the Workers' Compensation Appeals Board.

In 2003, the Unit also worked closely with the City Manager's staff in the information technology and communication area. The Unit negotiated an extension and increase of the franchise fee with Time Warner Cable. The new agreement increases the fee from three percent to five percent. This represents an increase of approximately two million dollars in annual franchise fee payments to the City. The Unit also obtained the City's first trademark for the ThinkBlue storm water program.

Public Works Unit

In 2003, the Public Works Unit, led by Head Deputy City Attorney Keri Katz, worked closely with the City Manager's Office on the successful completion of several major construction projects, including upgrades to several libraries and multiple water and sewer systems. Public Works attorneys have worked on these projects from inception to completion. The attorneys provide advice that includes contract review and analysis, and the application of various city, state, and federal laws. The Public Works Unit has also provided legal advice on several of the City's special projects, including the development of Petco Park, the application of prevailing wages to the City's municipal sewer and water fun projects over 10 million dollars, the new Main Library, and the Super Bowl.

Engineering and Capital Projects Department

In 2003, Public Works Unit attorneys advising Engineering and Capital project include Deputy City Attorneys' Susan Cola, Eric Swenson, Marie Wright Travis, and Cristy Lorente.

The Unit provided extensive legal advice regarding the City's Undergrounding Program. Deputies assisted in advising the City Council on its approval of the first Underground Utility Conversion Projects financed by the Surcharge Fund. The Surcharge Fund was created by the new Franchise Agreement with SDG&E and approved by the Public Utilities Commission. SDG&E pays about three-and-a-half percent of its gross electric receipts into the Surcharge Fund on a quarterly basis. The City Council approved over \$32 million in new Surcharge Funded projects, and converted another \$38 million in projects from Rule 20A funding to Surcharge Funding. The Surcharge Fund will allow the City to eliminate overhead utility lines at a faster rate, and to extend projects into previously ineligible residential areas.

The Unit wrote major revisions to the City's standardized forms, including construction, design build, and consultant contracts. Part of these revisions included the preparation of standardized insurance language to be used in all City construction projects. The use of standardized insurance requirements and endorsements will reduce the costs associated with the processing of public works contracts.

Finally, the Public Works Unit successfully assisted the City in advocating for the State Library Grant. The City has secured over \$20 million in State library grants to assist the City towards its ultimate goal of a complete and integrated library system.

Metropolitan Wastewater Department

The Metropolitan Wastewater Department is provided extensive legal advice from Deputy City Attorneys' Ted Bromfield, Thomas Zeleny and James Lancaster. On January 6, 2003, the Regional Water Quality Control Board issued a complaint against the City, alleging forty-six violations of exceeding limitations, stemming from the San Diego Convention Center and its discharge of groundwater to the San Diego Bay. The complaint sought prohibitions and a *minimum* penalty of \$129,000. On February 4, 2003,

the City Attorney filed points and authorities in opposition to the penalty that resulted in a February 20, 2003 *withdrawal* of all penalties. Subsequent negotiations with the City Attorney's Office led to a voluntary Cease and Desist Order with remedial studies, but no monetary penalties against the City.

Two petitions were filed with the U.S. Environmental Appeals Board. In separate petitions for review, the San Diego BayKeeper/Surfrider Foundation [BayKeeper/Surfrider] and the City Attorney's Office filed appeals contesting the total mass emission limits of total suspended solids discharged annually at the Point Loma Wastewater Treatment Plant. Any reduction of this limit could require the City to build an alternate treatment facility at an estimated cost of over \$2 billion. Seeking to find common ground rather than litigate the two appeals, the parties agreed to a joint stay of proceedings for one year, November 2002 – November 2003, which required quarterly reports throughout 2003 (February 28, June 2, September 3, and November 13, 2003) detailing the progress made. Utilizing a neutral facilitator, the City and BayKeeper/Surfrider met fifteen times during the year and produced an Interim Settlement Agreement. If approved by the City Council in January 2004, this Interim Agreement will resolve the pending appeals and permit the Point Loma Treatment Plant to operate at its current level. The City, in return, would agree to test biological aerated filtration, to improve ocean monitoring and to study increased methods of reuse of reclaimed water.

Additionally in *United States v. City of San Diego*, and *State of California v. City of San Diego*, two U.S. District Court cases, were filed July 3 and July 9, 2003, alleging violations of the Clean Water Act by reason of excessive sanitary sewer overflows. At the initiative of the City, working with the two plaintiffs, the two cases were consolidated with a similar pending case, *BayKeeper v. City*, and all response times were extended to January 12, 2004. Seeking a common solution to improve the performance of the City's sewer collection system, the City has met with all parties in three informal negotiating sessions and three court-supervised sessions, seeking a joint consent decree to memorialize the improvements approved by the City Council. To date, progress is being made and the next court-supervised session is on February 5, 2004.

Water Department

The Public Works Unit, through Deputy City Attorney Lori Girard and John Kirk, continues to support the Water Department's Capital Improvement Program. This program is estimated in Fiscal Years 2003-07 to cost \$508 million. Currently, the Office is providing extensive legal support for the \$81 million Miramar Water Treatment Plant upgrade, and the \$44 million upgrade to the Alvarado Water Treatment Plant.

The Public Works Unit also continues working with the Water Department on insuring a safe, future water supply for the citizens of San Diego including providing legal advice to all the Department programs such as ground water, reclaimed water, water recycling and other similar water conservation programs.

Energy and Public Utilities

In 2003, the Unit assisted the City Manager with the preparation and negotiation of amendments to the SDG&E Franchise and associated Memorandum of Understanding. Both of these documents are awaiting approval by the California Public Utilities Commission. The franchise fees will provide the City with approximately \$26 - \$30 million for undergrounding electrical facilities. In order to facilitate the undergrounding, Municipal Code amendments and a Council Policy for new undergrounding procedures were drafted by our office and approved by the City Council. These new procedures will ensure timely completion of City's undergrounding program.

The Unit's designated Energy Deputy Fritz Ortlieb is currently handling five separate Public Utilities Commission cases. These matters include AB 265 Balancing Account, State Rate Stabilization case, Procurement proceedings, Public Benefit Program proceedings, and investigations of Gas and Electric transmission constraints.

In an attempt to increase the City's energy efficiency, the City Attorney's Office has assisted the City Manager in writing and negotiating several agreements to upgrade City facilities, including the photovoltaic contracts and efficiency retrofits agreements. Both of which will provide the City with improved energy conservation.

Financing Services

In the financing arena, Deputy City Attorney Kelly Salt has provided legal advice to the City Manager in the issuance and preparation of related bond documents for \$15.25 million in refunding Lease Revenue Bonds for the Old Town Light Rail Trolley, and \$11.7 million in refunding Certificates of Participation for Balboa Park and Mission Bay Park. The Unit assisted in the formation of Community Facilities District No. 2 Improvement Area 4, and Assessment District 4096 (Piper Ranch). Significant savings were achieved from these revenue bonds.

Finally, legal advice was also provided the formation of San Diego Reassessment District No. 2003-1 and the issuance of \$8.86 million in bonds for the district. In conjunction with attorneys in the Real Property Unit, the Public Works Unit assisted in the issuance of \$18.85 million in Horton Plaza Redevelopment Project Tax Allocation Bonds, and \$31 million in Redevelopment Project Subordinate Tax Allocation Bonds Series 2003A.

Construction Litigation

The Construction Litigation Team deputies, Sim von Kalinowski, Armando Mendez and lead deputy Michael McGuinness had a very successful year. The City Attorney's Office prevailed on four major cases before the California Court of Appeal this year. The City Attorney's Office also successfully defended the City's debarment ordinance, reversed a \$1 million verdict against the City, affirmed a nonsuit granted to the City in a \$1.7 million lawsuit, and was successful in a writ action on another debarment action.

The Unit has had equal success with its trial and motion practice before the trial courts. The City successfully defended at trial a plaintiff's action seeking \$250,000. In another action, the City's motion for summary judgment was granted in a lawsuit seeking \$2 million alleging breach of a consultant contract. The court in that case also granted the City Attorney's fee motion in the amount of \$146,478.50. The City received summary judgment in another case effectively eliminating claims of over \$10 million.

The construction litigation deputies continue to prosecute actions against contractors and others for damages. The City is currently in litigation against PCL Civil Constructors, Inc. over latent defects in a five-mile pipeline system. The City is litigating a complex *qui tam* action in Los Angeles Superior Court arising out of misrepresented water works parts and another false claims case arising out of contractor fraud. The City is also prosecuting a case against a consultant for professional negligence and breach of contract.

Environmental Services

The Public Works Unit Deputy, Grace Lowenberg, is in the process of working with and advising the Lead Poison Prevention Citizen's Advisory Task Force, to draft a comprehensive Lead Hazard Prevention and Control Ordinance addressing lead safe work practices and lead-based paint hazards in residential and other buildings. A draft ordinance was sent to a task force for review on December 12, 2003.

This Unit continues to provide legal support to the City staff and Mission Bay Landfill Technical Advisory Committee for a comprehensive site assessment of the Mission Bay Landfill.

Finally, the Public Works Unit attorneys advising the Environmental Services Department are working with City staff to revise solid waste collection franchise system requirements and franchise hauler contracts to better address the City's needs.

Americans with Disability Act/Title 24 of the California Building Standards Code

The Public Works Unit continues to provide extensive legal advice on the implementation of the Americans with Disability Act and Title 24 of the California Building Standards Code [Access Laws]. The Unit prepared several legal memoranda advising the Manager on the proper design and construction of City facilities to ensure that the City meets all applicable standards. More notable projects have included Petco Park and several fire stations.

In addition, the designated Public Works Unit's ADA attorney, Claudia Silva, continues to assist the City in shepherding through the ongoing Transition Plan Update. This included delivering a five-part training session to all departments regarding program accessibility and facility accessibility, as required by Title II of the ADA and Title 24 of the California Building Code.

Equal Opportunity in Contracting

The Public Works Unit deputies continue to assist the City's Equal Opportunity Contracting [EOC] in its day to day operations, as well as in its recent application to the State for certification of its Labor Compliance Program. After this unit assistance EOC's proposed application was approved. This new labor compliance program is applicable to all public works projects requiring prevailing wage, and contains labor compliance standards required by state and federal laws, regulations and directives. EOC's application was certified and the City Attorney's Office is assisting in the process of implementing the procedures required for certification.

Real Property Unit

The Real Property Unit, led by Head Deputy City Attorney Prescilla Dugard, provides legal support to numerous departments and agencies with respect to use and development of real property within the City. Major departments and agencies include Real Estate Assets, Planning, Development Services, Park and Recreation, Redevelopment Agency, Housing Authority, Solid Waste Local Enforcement Agency.

In 2003, the Real Property Unit worked closely with the Housing Commission, Redevelopment Agency, and City staff to implement various components of the City's affordable housing strategy, including legal analysis and drafting of legislation for implementation of the recommendations of the City's Affordable Housing Task Force. Since the declaration of an affordable housing crisis in August 2002, the Unit has provided legal support on the drafting and implementation of the City's Inclusionary Housing Regulations, adopted by the City Council in May, and drafting of amendments to the following regulations, which will be before City Council in early 2004: Single Room Occupancy Hotel Regulations, Tenant's Right to Know Regulations (addressing just cause evictions), and condominium conversion regulations. These proposed amendments and new regulations are all products of the Affordable Housing Task Force established in response to the affordable housing crisis.

In 2003, the Real Property Unit also provided legal support to City and Agency staff on more than 600 items processed to review by the City Council, Redevelopment Agency, and Housing Authority. Significant among these were the establishment of the Crossroads Redevelopment Project Area; the issuance of more than \$40 million in Multi-Family Housing Revenue bonds, supporting the construction of more than 500 new affordable units in the City; and adoption of various regulations and programs to address the City's declared affordable housing crisis. The Unit provided legal support to the Redevelopment Agency staff on the implementation and review of projects responding to the Notice of Funding Availability issued by the City to respond to the affordable housing crisis. This funding is expected to provide funding for several thousand new affordable units in the City.

Public Policy Team

The Public Policy Team, led Deputy City Attorney Rick Duvernay, is made up of attorneys who work closely with the Council, the Mayor's Office, the Clerk's Office, the City Manager, the Ethics Commission, the Auditor, the Treasurer and the Library Department. The Police Legal Advisor Group provides daily legal support and training to the Police Department.

Highlights of this past year include the work of Public Policy Team with the City's Library Department and Library Commission to amend the City's Internet access policy to provide for pornography filters on City Library computers. This team also worked especially hard to support the Auditor and Director of Financial Management in responding to the many fiscal challenges facing the City.

Police Legal Advisors

The Office's Police Legal Advisors, led by Deputy City Attorney Paul Cooper, provide legal advice at every level of the San Diego Police Department. They handle all Civil Service appeals in front of the Civil Service Commission. They prepare ordinances and resolutions, review contracts, review subpoenas, respond to the public's requests for information, respond to Council inquiries, and appear at Council meetings with Police Department personnel. They review and advise on all employment matters for the Department, including Peace Officer Bill of Rights, EEO, ADA, FSLA, FMLA and MOU related grievances. The Police Legal Advisors also litigates all Pitchess motions on behalf of the department in the Superior Court. They litigate all Return of Firearm motions from criminal defendants and other members of the public and represent the department in a host of other legal proceedings.

In August, the City named William Lansdowne the new Chief of Police, replacing Acting Chief of Police John Welter. The Police Legal Advisors played a crucial role in this transition as Chief Lansdowne joined the San Diego Police Department, by providing advice and background on the current legal challenges facing the Department as well as the Department.

Deputy City Attorney Simon Silva worked closely with Councilmember Mainschein's Office in drafting and docketing the social host ordinance, making it illegal for adults to host parties involving underage drinking. He also drafted and docketed the ordinance banning possession of kegs on the Fourth of July, assisting Councilmember Zucchett in his effort to make San Diego beaches safer. Recently, the Criminal Division's Appellate Unit successfully defended the Social Host Ordinance against a demurrer.

The Police Legal Advisors were very involved this year in many other major initiatives of the City: Legal Street Racing with Racelegal.com; Regional Public Training Institute development; First Amendment issues; Red Light Photo Program; and the San Diego Family Justice Center. In 2003, the Police Legal Advisors, at the request of the City Attorney, developed a regulatory structure for "home health care providers." Criminals often target the elderly and gain their trust as home health care workers. Currently, there is no licensing scheme or regulation in place to ensure that criminals are prevented from easy access to vulnerable,

elderly community members. The proposal is scheduled to go before the Public Safety and Neighborhood Services committee for consideration in February 2004.

Special Projects

Assistant City Attorney Leslie Girard is responsible for Special Projects in the Civil Division. Without question, Les Girard continues to be one of the true heroes of the City Attorney's Office, providing incredible legal advocacy and counsel on a host of complex and difficult legal issues facing the City. In 2003, continued progress was made on the Ballpark Project, which will culminate in Opening Day for the San Diego Padres at Petco Park in April. Further work on the project in 2003 included the coordination of City oversight on the private development surrounding the new ballpark, which will bring millions of dollars of new revenue to the City and Redevelopment Agency and finalization of the design for the Park at the Park, completing the experience for Ballpark patrons. In addition, Special Projects has been involved in the negotiations with the San Diego Chargers, and a variety of other complex, high profile matters.

Community Outreach and Media

Community outreach continues to be a high priority of my Office. In her role as Press Secretary, overseeing media and community outreach, Emmy-award-winning journalist Maria Velasquez used a variety of tools to communicate with the public, including the media, public forums, and our website.

In 2003, we rang in the New Year, making national headlines on the Oprah Winfrey Show, educating 26 million Oprah viewers about our nationally recognized Family Justice Center, which serves families affected by domestic violence. In October, the Family Justice Center was in the spotlight again, this time at the White House. President George Bush announced that he was creating twelve family justice centers around the country, using San Diego as a model. While the President announced his initiative, the Mayor and Police Chief held a news conference at the Family Justice Center informing the media of the great news.

This year we updated our website. The new site provides us the opportunity to poll readers about significant issues, allows me to communicate directly with the public on timely matters, provides more information about our Civil and Criminal Divisions, and features a "news watch" section that alerts the public about newsworthy events.

This past year, we informed consumers about a variety of issues through news conferences and public presentations. For example, we informed consumers about a scam involving Big Screen TV, also known as San Diego Best TV. At another news conference, we warned illegal street racers that they stand to lose their cars with the City's passage of the Vehicle Forfeiture Ordinance. For a complete list of our joint news conferences, please visit our website: www.sandiegocityattorney.org.

Summary

I continue to be honored and humbled to serve with such tremendous public servants. The City Attorney's Office is made of hundreds of incredible people who have devoted much of their careers to public service. Attorneys turn down major money in private law firms in order to make a difference in the world through working in the San Diego City Attorney's Office. Both the Civil Division and the Criminal Division have developed strong track records of competence and excellence. I look forward in my remaining months in Office to working with my staff to support each and every level of City government as we move the City forward through many difficult challenges. Thank you for your continuing support and dedication in addressing the complex problems facing the City.

Respectfully submitted,

CASEY GWINN
City Attorney

CG:smf
RC-2004-6