



A MESSAGE FROM ATTORNEY GENERAL PATRICIA A. MADRID

Dear Fellow New Mexicans:

It is a privilege to serve as your Attorney General. During my sixth year in office, I continued to protect the interests of all New Mexicans and take tremendous pride in the accomplishments of my office.

As I look back at the close of the 2004 presidential election, I am proud my office safeguarded the right of qualified voters to cast their ballots for the candidate of their choice.

Expansion of voter registration and implementation of the Help America Vote Act did reveal, however, that more work remains to be done. I will continue to work with other elected officials to ensure that every New Mexican entitled to vote is afforded that opportunity and is confident their vote will be counted.

In 2004, my Consumer Protection Division protected the citizens of this state by handling almost 4,900 complaints from consumers. I took on pharmaceutical companies Perrigo and Alpharma for antitrust violations that maintained the high cost of a generic children's medicine. Prosecuting one of the first cases of its kind in the nation, my office is criminally pursuing a nursing home for its abject neglect and abuse resulting in the death of some of its elderly residents. We have also taken the lead in class actions to redress substantial financial losses suffered by the state due to misrepresentation made by companies in the selling of securities.

After first filing suit in 2000, a \$25 million settlement was negotiated with the Mescalero Apache Tribe this past April. Of the twelve tribes sued, only one gaming tribe still refuses to pay its past obligations as part of the Indian Gaming Compact. My office remains open to settling this dispute.

Additionally, a settlement was reached with the Burlington, Northern and Santa Fe Railroad to clean up contaminated groundwater sites in Albuquerque's South Valley. As part of this settlement, my office was also able to negotiate a monetary compensation for the State for damages to groundwater and wildlife habitat without having to resort to litigation.

Finally, as I prepare for next year, I will continue, along with my other duties, to support programs that were initiated by my office that address social problems affecting our most precious resource, our children. From underage drinking to cyber stalking, our children face greater dangers than we could ever have imagined in our youth. As your Attorney General, I remain vigilant and will take the measures necessary to prevent harm from coming to our young.

I look forward to the many challenges our state faces in the coming year and I remain committed to advancing the prosperity of our great state and protecting all its citizens.

Sincerely,

A handwritten signature in black ink that reads "Patricia A. Madrid". The signature is written in a cursive, flowing style.

Patricia A. Madrid
Attorney General of New Mexico

ANNUAL REPORT 2004

A STRONGER NEW MEXICO



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EXECUTIVE DIVISION

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O V E R V I E W

The executive office of the Attorney General's Office sets overall priorities and initiatives for the AGO. The executive office consists of the Attorney General, her Chief Deputy Attorney General, Stuart Bluestone, Deputy Attorney General Glenn Smith, Special Counsel Chris Coppin, Special Projects Director Caroline Buerkle and Director of Communications Sam Thompson.



Stuart Bluestone, Chief Deputy Attorney General



FROM CHIEF DEPUTY STUART BLUESTONE

Every day brings a variety of issues intersecting law and public policy that makes the job of Chief Deputy one of the most interesting, challenging, and exciting jobs imaginable.



Glenn Smith, Deputy Attorney General



This year the Chief Deputy stepped out of his management role and argued a case in the New Mexico Supreme Court, *State v. Smith*. The case involved a challenge to the DWI Laws that the Legislature enacted in 2003. With the help from Assistant Attorney General Margaret McLean, our Criminal Appeals Division and others, Chief Deputy Bluestone helped craft the State's position on the reasons to uphold the validity of increased DWI penalties. The New Mexico Supreme Court agreed with the State's position, reversed the Court of Appeals, and held that the higher DWI Penalty Laws should be honored and given effect, despite other and different changes to DWI Laws that were also enacted in the 2003 session of the Legislature. This was an important case not only for strengthening and improving New Mexico's DWI Laws, which remains an extremely important priority for Attorney General Madrid, but also because it confirms the principle of honoring legislative intent and not applying statutory construction rules in an overly technical and restrictive manner.



Chris Coppin, Special Counsel



Sam Thompson, Director of Communications



From left to right: Administrative Assistant Richard Russell, Attorney General Patricia Madrid, Chief Deputy Stuart Bluestone and Administrative Assistant Edie Nuñez



Caroline Buerkle, Special Projects Director



EXECUTIVE DIVISION

FROM DEPUTY GLENN SMITH



Key Note Speaker Attorney General Madrid at the Latino Council on Alcohol and Tobacco Prevention



Each year, the landmark tobacco settlement, which has brought hundreds of millions of dollars to New Mexico, presents new challenges to ensure the continued receipt of full settlement payments. In 2004, the Deputy Attorney General spearheaded Attorney General Madrid's successful effort to have legislation passed that closed a loophole that was effectively costing the state millions of dollars in reduced payments.



The Deputy Attorney General also coordinated Attorney General Madrid's intervention on the Nuclear Regulatory Commission's licensing proceeding on the proposed uranium enrichment facility to be located in southeast New Mexico. As a party-intervenor, Attorney General Madrid will ensure that before the project moves forward sufficient funds will be readily available to address contingencies that could jeopardize the health and safety of our citizens and the environment.



In 2004, the Deputy Attorney General spearheaded Attorney General Madrid's successful effort to have legislation passed that closed a loophole in the landmark tobacco settlement that was effectively costing the state millions of dollars in reduced payments.



FROM SPECIAL COUNSEL CHRIS COPPIN

INDIAN GAMING



In 2004, the Attorney General entered into a \$25 million settlement with the Mescalero Apache Tribe, resolving the long-standing dispute over the Tribe's failure to make payments to the State under the 1997 gaming compact. The settlement allowed the Tribe to enter into a new gaming compact with the State, lowering the revenue sharing payments from the Tribe to the State to 8% of the Tribe's gaming revenue. This settlement brings the total cash settlement in the case, originally filed against all of the gaming tribes, to \$116 million received by the State for back-payments. The State now receives \$35 million each year from the settling tribes. In addition, the tribes agreed not to pursue multi-million dollar claims against the State. To date, the total value of the settlement is approximately \$250 million. The only remaining Tribe still in the lawsuit as a defendant that has not settled is the Pueblo of Pojoaque. The claim against the Pueblo will continue in federal court.



SAME-SEX MARRIAGE



In March of 2004, Attorney General Patricia Madrid filed suit against Sandoval County Clerk Victoria Dunlap to stop the clerk from issuing same-sex marriage licenses after the Attorney General issued a letter opinion finding such marriages are not allowed under New Mexico law. The Attorney General successfully obtained a restraining order against the clerk from issuing such licenses until the clerk left office on January 1, 2005. The



Attorney General, in agreement with the new county clerk, dismissed the lawsuit recently because the new clerk said she would not issue same-sex marriage licenses.



FROM DIRECTOR OF COMMUNICATIONS SAM THOMPSON

The primary goal of the Public Information Office is to provide useful information to the public. This goal is accomplished by responding to the press in a timely manner. In addition, various educational initiatives in the public interest are undertaken at the direction of the Attorney General.



In March, the Public Information Office unveiled a newly designed web site. The site was redesigned to increase the ease of use of the web site, allowing users to reach desired information with a minimum of clicks. The Attorney General Office web site contains numerous features intended to educate the public. The web site provides New Mexicans with useful information to protect them against scams, important tips on Internet safety and ways to avoid identity theft.



The Public Information Office has expanded its capabilities to inform the public via electronic media outlets across the state. Using technology that allows audio to be recorded directly onto a computer hard drive, recorded messages can be converted into a small electronic file, called



Attorney General Patricia Madrid with Mescalero Apache Tribe President Mark Chino at the signing of the Mescalero Tribe Gaming Compact



Attorney General Madrid's website was awarded the "WAGGIE Award" from the Conference of Western Attorneys General for Best Website.



Deputy Communications Director Paul Nixon, PIO Assistant Jennifer Webb, Communications Director Sam Thompson and PIO Assistant Dustin Sparks



Home Page for the Attorney General's Office

EXECUTIVE DIVISION

an MP3, that can be e-mailed to radio and TV stations. The stations can convert those files back to audio, which can be aired and heard by listeners and viewers. Audio files are posted on the web site where visitors can download and listen to statements from the Attorney General.



Enhancements to the web site include the addition of a “Fugitive Alert” section to provide the public with information about New Mexico fugitives who have escaped from justice.



FROM SPECIAL PROJECTS DIRECTOR CAROLINE BUERKLE

Attorney General Madrid’s Special Projects Division highlighted two significant issues in our state: Domestic Violence and Underage Drinking. Since taking office in 1999, Attorney General Madrid has been an outspoken advocate for victims of domestic violence. This year, she sponsored the “Quilt of Hope,” a quilt created by domestic violence victims statewide in an effort to educate the public about the impact of this silent epidemic.



Attorney General Madrid has also established the Underage Drinking initiative in an effort to target teens and their families throughout the state and educate them on the dangers of underage drinking. She will continue her commitment to address both issues throughout the coming year.



Diana Jackson, Front Office Staff



The “CD's for Learning” statewide Distribution Tour



Attorney General Madrid’s Initiative on Under Age Drinking Press Conference



“Quilt of Hope”

ADMINISTRATIVE SERVICES DIVISION

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O V E R V I E W

Elizabeth Kupfer
Director of Administrative Services

Under the capable leadership of its director Elizabeth Kupfer, the Administrative Services Division (ASD) of the Attorney General's Office does a variety of work to keep all of the divisions running smoothly. The consistently excellent work done by this division is critical to the efficient operation of every other division in the agency.



The director manages the budget and directs 16 employees whose expertise is in financial services, computer services, record keeping, human resources and payroll. Elizabeth is the contact person for all public record documents requested from the agency and advocates at the legislature on money issues and for needed support for bills that the agency co-sponsors to improve New Mexico law.



ASD not only keeps the agency's \$12 million dollar budget under control, but also provides staff with the tools they need to do their jobs.



The ASD team handles all professional service contracts with law firms, pays vendors, witness fees and prepares in-state and out of state travel for employees. The Division also manages Medicaid Fraud financial issues, special victims grants, Texas water litigation, consumer restitutions and consumer settlements. These efforts by the ASD and Attorney General Madrid puts money back in the pockets of New Mexico consumers through multi-state lawsuits against national and international companies, and adds millions of dollars to the State General Fund each year.



Elizabeth Kupfer

The consistently excellent work done by this division is critical to the efficient operation of every other division in the agency.

F O C U S

The primary goal of the ASD is to provide quality service to the Office of the Attorney General. The Administrative Services Division is charged with keeping the Attorney General's Office in compliance with Department of Finance (DFA) rules and regulations, budget requirements, auditing records, clean audits and procurement.



Y E A R I N R E V I E W

As a result of the exceptional work by the Administrative Services Division and Director Elizabeth Kupfer, the division was awarded an Excellence in Accounting Award by the Department of Finance and Administration and the State's Comptroller's Office. The honor is awarded to state agencies that have a proven track record in responsibility for accounting functions.



ADMINISTRATIVE SERVICES DIVISION

The criteria for the DFA award is based on clean audits of the agency's finances, a record of processing invoices within a 45 day period, strict adherence to procurement guidelines and accurate, responsible accounting practices. In the last five years, the Attorney General Office's Finance division has not incurred any major findings on annual audited financial statements.



Administrative Services Department Staff with the Excellency in Accounting Award Plaque

“My office is truly honored to receive the Excellency in Accounting Award. It shows the integrity and the dedication of my finance staff in making sure all state guidelines are followed, that taxpayer’s money is not wasted or misused and every cent is accounted for.”
--Attorney General Patricia Madrid

The agency also successfully and accurately met every function of payroll, Human Relations and financial bookkeeping. Out of 114 state agencies, the Attorney General's Office was one of six agencies that received the award. The Administrative Services Division was the only major state agency managing a budget of more than \$10 million a year to receive this award.

“My office is truly honored to receive this award. It shows the integrity and the dedication of my finance staff in making sure all state guidelines are followed, that taxpayer’s money is not wasted or misused and every cent is accounted for,” said Attorney General Patricia Madrid.

This division has been given clean audits for the past 4 years, meaning there have been no audit exceptions with regard to the financial performance of the agency.

CIVIL DIVISION

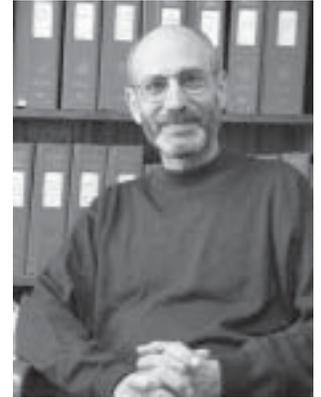
A STRONGER NEW MEXICO



O V E R V I E W

The attorneys of the Civil Division provide legal advice and counsel to administrative boards, commissions, and agencies throughout State Government. In addition, they are primarily responsible for preparing the formal opinions of Attorney General Madrid and advisory letters to members of the Legislature and other State Officials, reviewing proposed legislation, and providing oversight and enforcement of the New Mexico Open Meetings Act and Inspection of Public Records Act.

Don Trigg
Director of Civil Division



Don Trigg



Y E A R I N R E V I E W

SPECIAL COUNSEL FOR INDIAN AFFAIRS

The Special Counsel for Indian Affairs, Steffani A. Cochran, serves as a direct liaison between Attorney General Madrid and New Mexico's 22 sovereign Indian Nations, Tribes and Pueblos on a wide range of legal issues that mutually affect them. In 2004, at the direction of Attorney General Madrid, Ms. Cochran directed her efforts to the continued development of more effective tribal-state partnerships; consultation and coordination with various tribal and state representatives on the development of state policies, positions, and programs; enhancing communication and coordination through the government-to-government consultation process and working in collaboration with the tribal communities to engender a better understanding of issues of mutual concern.

To accomplish these goals, Ms. Cochran responded to requests for assistance from tribal leaders and officials and communicated regularly with tribal leadership on litigation involving and/or affecting tribal-state interests, such as criminal jurisdiction disputes. She routinely offered her expertise to state agencies and entities, such as the Indian Affairs Department, The Interim Indian Affairs Committee, and the Tribal-State Judicial Consortium in such areas as repatriation, sacred places protection, and children's law. Ms. Cochran served on the New Mexico Children's Code Revision Task Force this year, chairing the Native American Interface Subcommittee. She continually sought new opportunities to affirm Attorney General Madrid's willingness to partner on mutual tribal-state legal interests and innovative approaches to resolving conflicts with the Tribes for the benefit of New Mexico's Native American citizens and all New Mexicans.

On behalf of Attorney General Madrid, Special Counsel for Indian Affairs directed her efforts in 2004 at the continued development of more effective tribal-state partnership.

CIVIL DIVISION

HEALTH CARE

During 2004, the Attorney General's Health Care Practice was administratively transferred to the Civil Division in order to better integrate the specific responsibilities of the Attorney General in the areas of transactions involving health care institutions and advice and counsel with regard to health care programs and industries.

ECONOMIC DEVELOPMENT

As counsel to the State Investment Council, Economic Development Department, and the State Board of Finance and acting as Attorney General Madrid's designee to the Mortgage Finance Authority, the attorneys for the Civil Division are involved in the ongoing efforts of the State Government to ensure a better economic future for the citizens of New Mexico.

INSPECTION OF PUBLIC RECORDS ACT AND OPEN MEETINGS ACT

During 2004, attorneys of the Civil Division provided free educational seminars throughout New Mexico in order to teach the requirements of these important laws and to facilitate compliance. During 2004, presentations were made in Albuquerque, Clovis, Las Cruces, Pojoaque, Roswell, Ruidoso, Santa Ana Pueblo, Santa Fe, Silver City, Socorro and Taos. In addition, numerous inquiries from citizens regarding their efforts to participate pursuant to these Acts were received and responded to.

ELECTION 2004

During the 2004 election year, at the instruction of Attorney General Madrid, the attorneys of the Civil Division were instrumental in providing advice, counsel and legal representation with regard to the many challenges presented by the election year. On election day, attorneys of the Civil Division were deployed as observers at election polling places throughout New Mexico in order to help ensure a safe and lawful election. Assistant Attorney General Zachary Shandler was given the Attorney of the Year Award by Attorney General Madrid for his work on election issues.

ATTORNEY GENERAL OPINIONS AND ADVISORY LETTERS OPINIONS

The Office of the Attorney General issued five formal Opinions and 15 Advisory Letters in 2004. The opinions covered a wide range of complex legal issues of statewide concern. A synopsis of each is provided on the following pages.



*Special Counsel for Indian Affairs
Stephanie Cochran*

During the 2004 election year, at the instruction of Attorney General Madrid, the attorneys of the Civil Division were instrumental in providing advice, counsel and legal representation with regard to the many challenges presented by the election year.

ATTORNEY GENERAL OPINION 04-01 (FEBRUARY 3, 2004)

Senator Carraro asked what grounds exist in New Mexico to undertake a recount in a constitutional amendment election. The request stemmed from the September 23, 2003 election regarding two proposed amendments to the Constitution of New Mexico. One proposal created a Department of Education, and it passed. The second proposal, Amendment 2, increased the yearly allotment from the Permanent School Fund to provide for additional services related to education. However, the Amendment 2 election was very close, and its fate was mired in uncertainty for a number of days after the election. During this time, provisional and absentee ballots were counted. The counting of these ballots and the checking of results, prior to final certification, caused the total number of votes in favor of and against Amendment 2 to change over time. The Attorney General's Office



Attorneys from Civil Division, Santa Fe office

The Office of the Attorney General issued five formal Opinions and 15 Advisory Letters in 2004.

concluded there can be no recount under existing law in this constitutional amendment special election because there was not a candidate and because there was no evidence or even an allegation implicating the Free and Open Clause. While a lawsuit could always be brought, it is clear that it would have to overcome significant hurdles – including the implication of the Free and Open Clause, the lack of a candidate, the fact that it is well established in New Mexico that recount provisions for regular elections do not apply to special elections, and the lack of any other provision in the election Code creating a basis for a recount here. Pursuant to Senator Carraro's letter dated October 3, 2003, no voters were alleged to have been deprived of their right to vote. Rather, the letter indicates an interest in bolstering the credibility of the election results by recounting the votes or contesting the election. The Legislature may provide for a fully automatic recount if it chooses. Until then, however, no statutory or constitutional authority provides for a recount or contest under these circumstances.

ATTORNEY GENERAL OPINION 04-02 (MAY 12, 2004)



*Attorney General Madrid and
Assistant Attorney General
Alvin Garcia*

Senator Adair asked Attorney General Madrid if Governor Richardson's policy requiring potential appointees to the boards of regents of New Mexico state educational institutions to sign undated letters of resignation prior to their appointment and confirmation by the State Senate violate Article XII, Section 13 of the New Mexico Constitution. Attorney General Madrid concluded that an undated letter of resignation, secured by the Governor from a prospective regent as a condition of appointment to the board of regents of a New Mexico state educational institution, is not enforceable as matter of law. The conclusion reached in these cases is based on the principle that a person cannot resign an office to which he or she has not been appointed. In addition, the pertinent case law provides that an appointing authority may not use a pre-appointment letter of resignation to evade restrictions on the appointing authority's power to remove an officer. Based on this settled and well-reasoned precedent, Governor Richardson's policy of requiring prospective regents to sign undated letters of resignation, as a condition to their appointment, is improper. Under the applicable case law, the letters are invalid not only because they are obtained before the regents take office, but also because they effectively give the Governor the power to summarily remove regents. This is contrary to article XII, Section 13's provisions governing the removal, the independence and the integrity of the boards of regents those provisions are intended to protect.

ATTORNEY GENERAL OPINION 04-03 (MAY 14, 2004)

Representative Beam asked Attorney General Madrid if a 2003 amendment to the Human Rights Act, making it unlawful to discriminate, based on sexual orientation or gender identity, is subject to referendum under Article IV, Section 1 of the New Mexico Constitution. The question stemmed from an amendment that was passed by the New Mexico legislature in 2003 prohibiting discrimination based on sexual orientation or gender identity in certain areas, including employment and housing. Shortly after it was enacted, opponents of the amendment began organizing a petition drive for disapproval of the amendment under the referendum process governed by Article IV, Section 1 of the New Mexico Constitution. Proponents of the amendment then questioned whether the amendment was properly subject to a referendum vote, or what is termed "referable," in light of Article IV, Section 1's exception for "laws providing for the preservation of the public peace, health or safety." Under the weight of judicial authority addressing this issue, Chapter 383, prohibiting discrimination against minority groups,

**The Civil Division
reviewed and
analyzed more
than 219 pieces of
legislation for the
46th Legislature
and 59 pieces of
legislation for the
48th Legislature,
second session
2004.**

it is properly characterized as a law “providing for the preservation of the public peace, health or safety.” Accordingly, the Attorney General Madrid concluded that Chapter 383 is not subject to referendum under Article IV, Section 1 of the New Mexico Constitution.



ATTORNEY GENERAL OPINION 04-04 (AUGUST 13, 2004)

After the State Transportation Commission authorized a budget adjustment request to the State Budget Division of the Department of Finance and Administration proposing the transfer of \$4 million dollars from the State Road Fund to the Department’s Aviation Division, Representative Ogle asked if the New Mexico Department of Transportation (NMDOT) was entitled to use money from the State Road Fund to purchase a passenger plane for general use by the State. Attorney General Madrid’s office could not find any case or other legal authority supporting the use of State funds, dedicated by law for the maintenance, construction and improvement of public highway projects, for purposes unrelated to those projects, such as the purchase of a passenger plane. If permitted, the purchase of the passenger airplane as proposed by NMDOT could open the door to future misuse of funds for unauthorized purposes by NMDOT and other agencies and commissions. Attorney General Madrid’s office concluded that the purchase of the plane would be illegal, and any contract for such a purchase would be void.



ATTORNEY GENERAL OPINION 04-05 (NOVEMBER 9, 2004)

Governor Richardson requested Attorney General Madrid’s opinion as it relates to election-day or early provisional ballots. Specifically, he asked whether or not an absentee provisional ballot should be disqualified if the voter placed appropriate identification inside the inner envelope instead of the outer envelope. In other words, when the outer envelope lacks sufficient identification, should the inner envelope be checked for sufficient identification prior to a determination of disqualification? With regard to absentee provision ballots, may the ballot be qualified in accordance with NMSA 1978, Section 1-12-25.3(B), if the voter provides a valid signature and provides sufficient information to determine voter eligibility? When casting an election-day or early provisional ballot, should a voter be disqualified if a poll worker failed to obtain the voter’s signature on both the voter roll and the provisional ballot or can the ballot be qualified by a signature on either, pursuant to NMSA 1978, Section 1-12-25.4(B)? Attorney General Madrid concluded that a first time voter, who registered by mail and provided identification with an absentee ballot, would be deemed a



Advisory Letters were issued at the request of elected officials covering subjects as diverse as same-sex marriage, the authority of the New Mexico State Land Office, and charter school conflicts.

CIVIL DIVISION



qualified ballot only if the voter's proper identification was contained in the outer envelope. Otherwise, a voter who cast a provisional ballot shall have that ballot qualified if the voter provided a valid signature and sufficient information on the ballot to determine eligibility pursuant to NMSA 1978, Section 1-12-25.3(B). Finally, a provisional ballot shall be subject to qualification if the voter casting the ballot validly signed either the voter roll or the provisional ballot.



ADVISORY LETTERS



Advisory letters were issued during the year 2004 to Legislators and other elected officials covering subjects as diverse as same sex marriage in New Mexico, the authority of the New Mexico State Land Office, and charter school conflicts.

**The Civil Division,
in 2004, conducted
18 statewide
seminars on the
Open Meetings Act
and the Inspection
of Public Records
Act.**



CIVIL DIVISION HIGHLIGHTS 2004



- *Reviewed and analyzed more than 223 pieces of legislation for the 46th Legislature, second session 2004.*
- *Issued five formal Opinions of the Attorney General.*
- *Issued 15 advisory letters at the request of elected officials.*
- *Conducted 18 statewide seminars on the Open Meetings Act and Inspection of Public Records Act.*



CONSUMER PROTECTION DIVISION

A STRONGER NEW MEXICO



O V E R V I E W

Joel Cruz-Esparza
Director of Consumer Protection



Joel Cruz-Esparza

Protecting the interests and well-being of New Mexico's consumers has always been a priority of Attorney General Madrid's. Of all the Attorney General's divisions, Consumer Protection has the greatest opportunity to work directly with, and to promote the interests of, the people of New Mexico. The division is open to the public and in an effort to improve public access to the many services provided by the Attorney General's Office, 50% of the Consumer Protection staff is bilingual.

This Division receives approximately 75,000 inquiries each year regarding New Mexico's Consumer Protection Laws. Thousands of written complaints are filed annually against businesses by consumers. The complaints filed are the "pulse" of the public trade and commercial activities in the state. While all complaints filed cannot be handled by the Division, a referral system has been developed to direct consumers, whenever possible, to other appropriate government agencies. The Division works closely with many Municipal, County, State and Federal agencies in making sure the public is directed to the appropriate agency to address whatever concern they may have.

The Consumer Protection Division is authorized by the New Mexico Legislature to enforce the Unfair Trade Practices Act. In this capacity, this division provides the public with a variety of services: legal education, mediation, legislation and litigation. This year hundreds of recently published "Young Consumer Survival Guide" booklets were distributed to high schools, colleges and to citizens at the New Mexico Expo.



This Division receives approximately 75,000 inquiries annually.

Y E A R I N R E V I E W

LEGAL EDUCATION:

Educating consumers is the Attorney General's first line of defense in consumer protection. The Consumer Protection Division makes available an extensive and updated leaflet library on various consumer subjects and participates in several radio and television segments throughout the year discussing subjects relevant to consumers and businesses. Distribution of information is also done by way of presentations and seminars given throughout the year on various subjects. The Attorney General's newly remodeled web site provides the public with user-friendly and important consumer information with links to other sources.



The complaints filed are the "pulse" of the public trade and commercial activities in the state.

CONSUMER PROTECTION DIVISION

MEDIATION:



When parties in a dispute have been unsuccessful in resolving their issues, the consumer may file a written complaint (forms are available in both English and Spanish) with the Attorney General's Office and avail themselves of the mediation services of the Consumer Protection Division. All records filed with the office are public records.



In 2004, the Consumer Protection Division experienced a high degree of success (approximately 80%) in resolving disputes. This process saves consumers and businesses hundreds of thousands of dollars in litigation costs yearly.



Attorney General Patricia Madrid speaking about Identity Theft at the Conference of Western Attorneys General.



Attorney General Patricia Madrid, Assistant Attorney General Randilynn Lord and Consumer Protection Division Director Joel Cruz-Esparza at a Predatory Lending press conference.



When existing laws do not address the concerns of the consumers adequately, Attorney General Madrid proposes more effective legislation and lobbies the Legislature for changes needed to improve the trade and commercial relationships in our state.



LEGISLATION-SUPPORTING THE PASSING OF BETTER AND EQUITABLE LAWS:

The Office of the Attorney General is authorized to promulgate rules and regulations to mirror the provisions of the State Statutes related to consumer protection. When existing laws do not address the concerns of the consumers adequately, the Attorney General proposes more effective legislation and lobbies the Legislature for changes needed to improve the trade and commercial relationships in our state. Each year during the Legislative session, advocates from the Attorney General's Office fully participate in the process to create better and fairer laws.



LITIGATION- TO CURB UNFAIR BUSINESS PRACTICES:

When a pattern and practice of unfairness affecting the public interest is identified, tools, available through our statutes such as Cease and Desist Letters, Civil Investigative Demands, Written Assurances and law suits seeking redress, are used by Consumer Protection's legal staff on behalf of consumers affected by any unfair or unconscionable trade practice.



PUTTING THEORY INTO PRACTICE:

UNM LAW SCHOOL INITIATIVE:

Division Director Joel Cruz-Esparza taught the consumer law class at the University of New Mexico School of Law during the 2004 Spring semester. In line with the Attorney General's commitment to the continuing education of her staff, members of the Consumer Protection Division attended this extensive course to further their knowledge of consumer law.



Administrative Assistant Theresa Martinez and Attorney General Patricia Madrid

LEGISLATIVE ACTIVITY: THE "USED CAR LEMON LAW" OF NEW MEXICO:

Effective January 2004, a new law requires all auto dealers to give a warranty of merchantability and operability of 15 days or 500 miles, whichever comes first, for each and every used auto sold. An auto dealer can no longer sell an auto "as is." To clarify this new law, the Consumer Protection Division issued an Auto Dealer's Advisory explaining at length how the law works. The office has been very active in analyzing complaints related to this new law and reports that overall, the law is working well.



Consumer Protection Division Staff, Albuquerque office



When a pattern and practice of unfairness affecting the public interest is identified, tools, available through our statutes such as Cease and Desist Letters, Civil Investigative Demands, Written Assurances and law suits seeking redress, are used by Consumer Protection's legal staff on behalf of consumers affected by any unfair or unconscionable trade practice.

THE HOME LOAN PROTECTION ACT OF NEW MEXICO:

Abusive mortgage lending practices by sub-prime lenders triggered the passage of the Home Loan Protection Act. Effective July 1, 2003, for loans made or entered into after January 1, 2004, lenders are prohibited from "flipping" any loan and are prohibited from many other abusive lending practices. The Consumer Protection Division was involved, in an advisory capacity, in the promulgation of the rules under this act. To insure understanding of this important legislation the Division, in cooperation with several other consumer advocate organizations, participated in a public education campaign.



CONSUMER PROTECTION DIVISION

CEASE AND DESIST AGAINST ZANGARA DODGE:

Attorney General Madrid, through the Consumer Protection Division, issued a “cease and desist” directive to this major auto dealership, located in Albuquerque, advising that certain business practices were in violation of the Unfair Practices Act. The practices were: allowing a vehicle to be purchased and delivered on the spot before securing financing, selling the trade-in or informing the buyer that his or her trade-in had been sold when in fact it had not, and threatening to keep the buyer’s down payment when financing would fail. This was done by the auto dealership with the purpose of selling the consumer another vehicle or keeping the consumer’s money without any fault on the part of the consumer. The auto dealership responded through its attorney arguing that no violation had occurred. This matter may have to be tested in court.



Deputy Director Diana Marquez

S I G N I F I C A N T C A S E S



State of New Mexico v. Paul Graffis, owner and principal of Mega Auto Superstore: Consumer Protection filed a Complaint for Non-Dischargeability in the U.S. Bankruptcy Court for any debt incurred by Paul Graffis, a bankruptcy debtor, when he sold used vehicles to consumers and he failed to pay off the loan balances of the trade-ins he accepted, failed to pay for the extended warranty policies purchased by the consumer, and failed to pay the sales tax, titling and registration to the Department of Motor Vehicles. The office is alleging that Paul Graffis acquired these debts under false pretense, misrepresentation and fraud. The Bankruptcy Court has not yet set a trial date. Having received forty-four consumer complaints, the Consumer Protection Division embarked on the task of resolving the consumer’s problems with the lenders, the auto dealer’s floor planner, the bonding company and the New Mexico MVD.



In 2004, the Consumer Protection Division experienced a high degree of success (approximately 80%) in resolving disputes.



Consumer Protection Division staff meeting with Investigators

Intervention in the Consignment Auto v. Flora Sanchez case: The Consumer Protection Division moved to intervene in a lawsuit where the auto dealer attempted to collect the balance on a vehicle sale contract discovered by Consumer Protection to be a “salvaged” vehicle. As a result of this intervention, the auto dealership settled the matter by accepting the return of the salvaged vehicle, returning all of the money the buyer had paid him and financially compensating the consumer for some of the damages suffered as a result of the sale.



In 2004, 4,900 written complaints were received from consumers.



Consumer Protection Division Staff, Santa Fe office



2004 DIRECT RESTITUTION TO CONSUMERS: Approximately \$1.25 Million



NUMBER OF WRITTEN COMPLAINTS RECEIVED IN 2004: 4,900



THE TOP TEN CONSUMER COMPLAINTS FILED WITH OUR DIVISION IN 2004:

- (1) Auto Sales
- (2) Auto Repairs
- (3) Credit Reporting
- (4) Collection Agencies
- (5) Home Repair/Construction
- (6) Retail Sales
- (7) Internet Goods/Services
- (8) Telemarketing
- (9) Lending/Mortgages
- (10) Mobile Home Sales



RATE OF SUCCESSFUL RESOLUTION THROUGH MEDIATION: 80%



NUMBER OF LEGAL EDUCATION PRESENTATIONS: 85



CRIMINAL APPEALS DIVISION

A STRONGER NEW MEXICO

Artie Pepin
Director of Criminal Appeals



Artie Pepin

O V E R V I E W

On Attorney General Madrid's behalf, the 15 attorneys within the Appeals Division represent the State in all criminal appeals filed in the State. The Division represents wardens in state and federal habeas corpus cases, represents the State's interest in extraordinary writ cases, and also reviews every extradition and rendition arising from a governor's warrant for a fugitive. The Appeals Division does not enter into settlements or generate any funding for the Office. Most of the work of the Appellate Division is required by statute and is not discretionary.



F O C U S

The nature of the work of the Criminal Appeals Division precludes focus in a single area. The Division handles every criminal appeal that is filed by every person convicted by the District Attorney in any of the 13 districts.



In 2004, the Appeals Division opened 425 new appeals files in criminal cases.



Y E A R I N R E V I E W

As has been the case in recent years, statistics reveal an increase in the work accomplished by the Criminal Appeals Division in the past year. The appellate process includes the New Mexico Court of Appeals, the New Mexico Supreme Court and can include the United States Supreme Court. Work by the Criminal Appeals Division in these courts includes Memoranda In Opposition, Briefs-In-Chief, Answer Briefs, Reply Briefs, Certiorari Petitions and their Responses, and motions relating to the appeal. Any appellate case may also be scheduled for oral argument by the courts. Many appeals last beyond a single fiscal year. In 2004, the Criminal Appeals Division opened 425 new appeals files in criminal cases. During the past year, the Division filed a combined total of 323 briefs in state and federal court, an increase of 80 briefs over the previous year. In addition, the Division filed 185 memoranda and petition responses in state courts, an increase of 33 over the previous year. The Division attorneys also participated in oral argument in 47 cases in state and federal courts, an increase of 20 arguments over the prior year. Attorneys participated in 39 trial-type evidentiary hearings.



The work of the Division resulted in more than 53 state cases published in the last year, with many more unpublished cases in both state and federal courts.



The Criminal Appeals Division litigates federal and state habeas corpus petitions in state courts as well as the federal District Court, the Tenth Circuit Court of Appeals, and the United States Supreme Court. These cases usually last beyond one fiscal year. In 2004, the Division opened 64

new federal habeas cases and 87 new state habeas cases. The Criminal Appeals Division filed a total of 144 responses and motions on state and federal habeas corpus writs. This was about the same as the previous years, although these two years represent an exceptional increase over historic levels of activity in the area of habeas corpus writs. The present, sustained level of habeas corpus writ activity is more than double that of just five years ago.



Other tasks for the Criminal Appeals Division include the review of every governor's warrant, whether seeking extradition of a prisoner to another state or New Mexico seeking to have a prisoner held elsewhere returned to New Mexico. In 2004, the Criminal Appeals Division reviewed 229 extradition requests. The Division also analyzes bills proposed in the Legislature, provides regular training to police and prosecutors in various areas of criminal law and legal developments, and responds to frequent telephone inquiries from prosecutors throughout New Mexico regarding issues in pending cases.



*Attorney General Madrid and
Assistant Attorney General
Joel Jacobson*

S I G N I F I C A N T C A S E S

In addition to the general statistical accomplishments of the Appeals Division, a summary of a few of the specific, significant issues addressed this past year follows. The work of the Division resulted in more than 53 state cases being published last year, with many more unpublished cases in both state and federal courts. This is a small summary of a few of the significant published cases. The cases are listed in the chronological order by the date the Opinion was issued.



State v. Druktenis, 135 N.M. 223, 2004-NMCA-032 (1/30/04), Assistant Attorney General Margaret McLean - Defendant pled guilty in 1998 to sex offenses at a time when he did not have to register, but was later told that 1999 amendments required him to register as a sex offender. The appellate court held that the Sex Offender Registration and Notification Act (SORNA) is not ex post facto, is non-punitive, appropriately serves a legitimate public safety purpose, is not excessive, does not violate procedural due process, does not violate equal protection, and does not improperly infringe a protected liberty interest. The outcome of this case is that New Mexico's SORNA will continue to require registration of sex offenders and to permit prosecution for failing to register.



The outcome of the case, *State v. Druktenis*, is that New Mexico's SORNA will continue to require registration of sex offenders and to permit prosecution for failing to register.

State v. Young, 135 N.M. 458, 2004-NMSC-015 (4/21/04), Assistant Attorney General Ralph Trujillo - Contract prison guards are 'peace officers' and may be "jailers" and "corrections officers" for purposes of death penalty aggravators. The prosecutions for killings occurring during the Santa Rosa prison riot may go forward as death penalty cases.



CRIMINAL APPEALS DIVISION

In 2004, the Criminal Appeals Division filed a total of 323 briefs in State and Federal court, an increase of 80 briefs over the previous year.

The case of State v. K. Smith resolved dozens of pending cases that were unclear on whether or not the 2003 felony DWI measure (House Bill 117) was effective; it is now clear that increased DWI penalties are in effect and have been since March 28, 2003.



State v. Alvarez-Lopez, 136 N.M. 309, 2004-NMSC-030 (8/20/04), Assistant Attorney General Patricia Gandert - Where the defendant absconded for 7 years and was brought to trial after his co-defendant had been deported, it was error under the new United States Supreme Court case, *Cranford v. Washington*, to use the co-defendant's statements to the police against the defendant. The error was not harmless and the exception for forfeiture by wrongdoing does not apply because the State did not prove the defendant caused the deportation of the missing witness. The Attorney General filed a certiorari petition in the United States Supreme Court on December 20, 2004, asking the Court to review this case.



State v. K. Smith, 136 N.M. 335, 98 P.3d 1022, 2004-NMSC-032 (9/16/04), Assistant Attorney General Margaret McLean - Bill adopted as emergency measure effective 3/28/03, creating third-degree felony DWI (House Bill 117) was effective despite the Governor signing a later bill that "re-enacted" the fourth degree felony only. This case resolves dozens of pending cases that were unclear on whether or not the 2003 felony DWI measure was effective; it is now clear that increased DWI penalties are in effect and have been in effect since March 28, 2003.



Criminal Appeals Division Staff, Albuquerque office

LITIGATION DIVISION

A STRONGER NEW MEXICO



O V E R V I E W

The Litigation Division provides litigation services in three areas: general litigation, administrative prosecutions and representation of judges on civil writs. The Division also provides co-counsel and litigation support to other divisions or state agencies as requested. The division consists of ten attorneys and three legal assistants.

David Thomson
Director of Litigation



David Thomson

This division is the designated point of receipt for all service of process. Every action taken against any state agency must first be served upon the Office of the Attorney General.

Y E A R I N R E V I E W

Litigation Cases Opened in 2004: 63
Administrative Prosecution Cases Opened in 2004: 272
Litigation Cases Closed in 2004: 96
Administrative Prosecution Cases Closed in 2004: 317

S I G N I F I C A N T C A S E S

PUBLISHED CASES:

The Coulston Foundation v. Patricia A. Madrid
(cite as 135 N.M. 667, 92 P.3d 679, 2004-NMCA-060)

Attorney General Madrid's office issued an investigative subpoena under the Charitable Solicitations Act to this Foundation. The subpoena sought information concerning whether the Foundation had properly transferred certain trust funds associated with research chimpanzees. The Foundation sought to quash the subpoena on various legal theories, all of which were not accepted by the trial court which ordered the Foundation to comply with the subpoena. The Foundation appealed and oral argument was held October 23, 2003. The New Mexico Court of Appeals entered an order on March 16, 2004 affirming the district court's decision, resulting in a victory for the State.

State ex rel New Mexico Voices for Children, Inc. v. John Denko (Concealed Carry Gun Control Case)

(cite as 135 N.M. 439, 90 P.3d 458, 2004-NMSC-011)
Several persons and organizations brought an action in the New Mexico Supreme Court against the Secretary of the New Mexico Department of Public Safety seeking a writ of mandamus to direct the Secretary to cease enforcing the Concealed Handgun Carry Act, NMSA 1978 §§ 29-19-1 to

CASES OPENED IN 2004

Litigation: 63

**Administrative
Prosecution: 272**

CASES CLOSED IN 2004

Litigation: 96

**Administrative
Prosecution: 317**

LITIGATION DIVISION

Attorney General Madrid supported the public education system against a challenge in the realm of operational funding. As a result, the State Department of Education's position was upheld.

013 (2003) which was passed by the Legislature in 2003. Oral argument on the Petition was held on January 5, 2004. The Supreme Court, in a unanimous opinion, denied the Petition and found that the Act does not violate Article II, Section 6 of the New Mexico Constitution as alleged by the petitioners.

Taos Charter School v. State of New Mexico, Dept of Education (cite as 102 P.3d 102, 2004-NMCA-129)

Attorney General Madrid supported the public education system against a challenge in the realm of operational funding. The school advanced an interpretation of the operational "funding formula" which the State Department of Education believed was contrary to the legislative intent and injurious to districts statewide. Attorney General Madrid represented the State Department of Education in an appeal of the lower court ruling. This matter was briefed in the Court of Appeals and the Court reversed the district court's order which granted declaratory and injunctive relief to Taos Charter School. As a result, the State Department of Education's position was upheld. The opinion is published as 2004 WL 2900778 (N.M. App.).



Santa Fe Office Litigation staff

Board of Pharmacy v. Joel Butler

Joel Butler is the owner and pharmacist in charge of a pharmacy in Clovis, NM. The Board of Pharmacy uncovered discrepancies in Mr. Butler's records, including his use of a coding system affixed to a label on each prescription to identify a quantity of drug he dispensed which, in most cases, differed from the amount billed to patients or their insurance companies. A two day hearing was held. The hearing officer examined 830 prescriptions that were found to contain irregularities and, in most cases, each of the 830 prescriptions contained two or more irregularities. The Hearing Officer found in excess of 2,509 violations of the New Mexico Controlled Substances Act; the New Mexico Pharmacy Act; the New Mexico Drug, Device and Cosmetics Act; and regulations adopted by the Board pursuant



Albuquerque Office Litigation staff

to the Pharmacy Act. These included but are not limited to: Unprofessional Conduct – 830 counts; Obtaining Remuneration by Fraud – 830 acts; Drug or service Misbranding; Dispensing Drugs in Quantities greater than Prescribed; Unauthorized Altering of Prescriptions; Accepting Drug Samples from an Unidentified Doctor; Falsifying Records on Drugs Prescribed and Dispensed; Failing to keep and maintain proper records. The Pharmacy Board permanently revoked Mr. Butler’s license and imposed a fine of \$10 per violation or \$25,090 for 2,509 violations plus assessed costs of investigation and hearing of \$6,638.00.



*David Thomson and Zach Shandler,
Assistant Attorney General with the
Civil Division*

Board of Thanatopractice v. Gladys Crouch and Sunset Gardens Direct Disposal.

This office prosecuted a number of complaints made to the Board of Thanatopractice relating to the operation of Sunset Gardens Memorial Park and actions of Gladys Crouch and other employees. A hearing was held in Carlsbad in June, 2004 after which a decision was entered revoking Gladys Crouch’s license and that of the direct disposal. Further, a fine was levied in the amount of \$50,000.00. Mrs. Crouch and her husband, a former licensee who had lost his license several years ago, filed for Chapter 13 protection under the Bankruptcy Code. Attorney General Madrid’s office filed a lengthy objection on behalf of the Board and the matter is pending. Because of the high consumer interest in this matter and the fact that a cemetery is involved in these matters, the Litigation Division has consulted with city and county officials and is working diligently to preserve the dignity and integrity of the cemetery for the citizens in Eddy County.



In the bankruptcy arena, Attorney General Madrid’s office represented the Taxation and Revenue Department in bankruptcy cases in New Mexico, and throughout the country.

BANKRUPTCY

In the bankruptcy arena, Attorney General Madrid’s Office represented the Taxation and Revenue Department in bankruptcy cases in New Mexico, and throughout the country. In 2004, these efforts resulted in the recovery of more than \$1.2 million, from debtors in numerous cases under Chapters 7, 11 and 13 of the Bankruptcy Code. The Litigation Division also defends the Department against the claims of debtors. In the spring, it obtained dismissal of a law suit against the Department seeking to recover alleged preferential transfers in the Transit Group bankruptcy in the Middle District of Florida. Attorney General Madrid’s Office represented and advised other state agencies on bankruptcy issues, including the Energy, Minerals and Natural Resources Department on the Oglebay-Norton reorganization and on the possible effects of a bankruptcy filing on the remediation of Chino Mines, and the State Fair in the Furr’s Supermarkets case.



In 2004, these efforts resulted in the recovery of more than \$1.2 million, from debtors in numerous cases under Chapters 7, 11 and 13 of the Bankruptcy Code.

LITIGATION DIVISION

ANTI-TRUST

BuSpar – This case has received final approval and is now in the final stages. Checks totaling \$136,031.49 have been sent to 304 New Mexico consumer addresses. New Mexico will receive \$177,571.07 for its state purchases, 84% of which are Medicaid purchases and approximately \$50,000 for other costs incurred.

Cardizem – This case has been slowed by the appeal of a Tennessee attorney and his one client. The Sixth Circuit ruled against her and, barring its appeal to the US Supreme Court, New Mexico should receive \$75,500 for agency purchases and \$30,000 for costs and attorney fees. There is, after costs of notice, \$21,000,000 available for consumers. A straight estimate of the distribution would bring \$136,500 into New Mexico.

Children's Generic Motrin – Defendants Perrigo and Alpharma have settled this matter, in which the two defendants allocated the market and artificially increased prices. The court has approved the settlement. New Mexico will receive \$10,000 for its efforts in shutting down this monopoly.

Compact Discs – After four years of investigation and litigation, this price-fixing case is all but done. The settlement was in two parts, cash and product. In all, nearly 12,000 New Mexicans received checks for a total benefit more than \$161,000. The Defendants also provided to the states \$80,000,000 in kind, of which New Mexico received about \$465,000 in the form of 37,642 musical CD's. Each school district and each charter school received identical packages containing 32 CD's. Seventy-five public libraries in New Mexico, received packages ranging in size from 28 to over 10,000 CD's. The numbers were proportionate to the population each participating library served. This enabled many smaller libraries to begin their initial collections of music in the compact disc format

Taxol – Taxol is a powerful cancer-fighting drug developed by Bristol Myers-Squibb. When its patents expired, it sought new patents to protect its monopoly. New Mexico and its sister states alleged that the new patents were based on fraud on the U.S. Patent & Trade Office. The parties reached a settlement more than three years after beginning the investigation. Attorney General Madrid's office received payment in the amount of \$8,555.14 for costs and attorney fees in late June; 52 patients in New Mexico received a total of \$27,300 with no check issued for less than \$525; finally, checks totaling \$151,000 are being issued to the Medicaid Fraud Control Unit, the University of New Mexico Health Sciences Center and the State Risk Management Division for overcharges which those agencies paid.



Attorney General Madrid and
Assistant Attorney General
David Tourek

**In 2004, the
Litigation Division
focused on bringing
revenue back to the
State through
protection of debts
owed to the State
through bankruptcy
proceedings and by
generating revenue
through the
Antitrust Division of
Attorney General
Madrid's office.**

MEDICAID FRAUD CONTROL UNIT

A STRONGER NEW MEXICO



O V E R V I E W

Bob Baca
Director of Medicaid Fraud Control

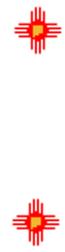
The New Mexico Medicaid Fraud Control Unit, directed by Assistant Attorney General Robert J. Baca, is administratively housed in the Office of the Attorney General. All states that receive Medicaid funds from the Federal Government must, by federal regulation have a Medicaid Fraud Control Unit. The Unit operates within federal regulations and is responsible for investigation and prosecution of Medicaid fraud perpetrated by providers, and the investigation of abuse and exploitation of Medicaid recipients with developmental disabilities or persons in long-term care facilities that receive Medicaid funding. The Federal Government has expanded the Unit's jurisdiction to investigate fraud and abuse in board and care facilities, as well as to investigate Medicare fraud when it is committed in conjunction with Medicaid fraud. The primary emphasis of the Unit is to investigate criminal allegations. Additionally, the Medicaid Fraud Unit examines cases of civil fraud allegations.



Bob Baca

F O C U S

When a recent congressional report alleged that there existed in nursing homes throughout the United States, evidence of deplorable conditions and inadequate medical care being provided to its residents, Attorney General Madrid directed the Medicaid Fraud Unit to give top priority to ensuring that residents in New Mexico nursing homes were receiving adequate care and that conditions at these homes were up to accepted standards.



The Medicaid Fraud Unit committed a large percentage of its resources to complying with Attorney General Madrid's directive. The efforts of the Unit have resulted in criminal proceeding being brought against one Albuquerque nursing home (See "Significant Cases" on page 31) and several other nursing homes being investigated for possible criminal prosecution.



Attorney General Madrid is hopeful that bringing such prosecutions will serve as a deterrent to the nursing home industry and send a message to the industry that anything less than adequate medical care will not be tolerated. Further, nursing homes that seek to cut corners to increase profits when such actions affect the treatment and care of nursing home residents will be investigated.



This nursing home initiative will continue in 2005 for as long as necessary to ensure the existence of proper care and acceptable living conditions for New Mexico's nursing home residents.



Attorney General Madrid directed the Medicaid Fraud Unit to give top priority to ensuring that residents in New Mexico nursing homes were receiving adequate care and that conditions at these homes were up to accepted standards.

MEDICAID FRAUD CONTROL UNIT

Y E A R I N R E V I E W

The efforts of Attorney General Madrid and the Medicaid Fraud Unit have resulted in criminal proceedings being brought against an Albuquerque nursing home and several others being investigated for possible criminal prosecution.



- Director Bob Baca was appointed in June 2004.



- Statewide outreach activities by Glory Cochrane, Medical Care Investigator.



- Law Enforcement Training Program
- Dispatcher Training
- Alzheimers conference
- New Mexicans Against Abuse conference
- Adult Protective Services (APS) Board annual conference
- Briefing of the Albuquerque Police Department on identifying developmentally disabled individuals.
- Directive to local police stations to inform patrolmen of the Medicaid Fraud Unit's abilities to provide assistance in Medicaid related matters.
- Department of Health training session



- Outreach initiative to nursing homes.

- To get the message to nursing homes of the active involvement of the Medicaid Fraud Unit of the AGO.



- Recommendations to Human Services Department/Medical Assistance Department and the Legislative Finance Committee for prevention of fraud and improvement to the system.

- During 2004 the Unit has made nineteen recommendations to HSD/MAD.



- In 2004, eight new positions were authorized by the Legislature for the Medicaid Fraud Control Unit..

- All employees have been hired and are in the process of being trained with an emphasis on investigation and prevention of future fraudulent payment.



In another major settlement Attorney General Madrid's Medicaid Fraud Control Unit recovered approximately \$677,000 from a provider improperly billing for case management services.



Medicaid Fraud Department Investigators and Staff

SIGNIFICANT CASES

NURSING HOME PROSECUTION: In late summer, the Division began the prosecution of a management company operating a nursing home on the West Side of Albuquerque. Earlier this year, criminal charges were filed against Home Quality Management, LLC and four individuals alleging various counts of resident abuse and neglect. In late August, a district court judge granted a defense motion to suppress statements. After full considerations of all options, Attorney General Madrid decided to pursue an appeal of the ruling citing the importance of the case and legal issues involved in the appeal. The appeal is expected to take at least six to nine months to complete.

MEDICAID FRAUD SETTLEMENT: In September, the Medicaid Fraud Division completed a major recovery against a Medicaid provider of dental and dental hygienist services to residents in nursing homes. This provider charged the Medicaid Program for services not rendered, double charged the program for the same services and charged more than permitted for other services. In the agreement, the division recovered \$250,000 in repayment to the State General Fund and the provider voluntarily withdrew from the Medicaid program.

CASE MANAGEMENT SETTLEMENT: In another major settlement agreement, the Division recovered approximately \$677,000 from a provider improperly billing for case management services. The settlement requires that the provider correct all improprieties and bill correctly for all services provided. This provision alone is expected to save the State several hundred thousand dollars over the next couple of years.

TRANSPORTATION: The Medicaid Fraud Unit has successfully investigated and enacted settlements with twelve transportation companies who were over-billing and billing without adequately documenting trips made to medical providers with Medicaid recipients.

PERSONAL CARE OPTIONS: During the year, the Unit noticed that many Personal Care Option companies had dramatically increased their billings to New Mexico Medicaid. The Unit began a review of these companies and found that numerous companies were not documenting their visits to the recipient's home in keeping with guidelines published by the Human Services Department. Additionally, through investigation, the Unit learned that limited oversight resources were being utilized to monitor and supervise this new service.



*Attorney General Madrid and
IS Specialist/Investigator
Ray Cybulski*

MEDICAID FRAUD RECOUPMENT AMOUNTS, 2004

**Total number of
recovery actions: 21**

**Number of
on-going recoveries: 5**

**Total actually
collected:
\$1,663,020.08**

SPECIAL PROSECUTION / INVESTIGATIONS

A STRONGER NEW MEXICO

Michael Cox
Director of Special
Prosecution / Investigations



Michael Cox

O V E R V I E W

The Special Prosecutions/Investigations Division is the criminal law enforcement arm of Attorney General Madrid's Office. The Division investigates and prosecutes selected crimes statewide. Attorney General Madrid has directed the Division to target certain areas of crime, which include child abuse, Internet exploitation of children, sexual assault, capital crimes and pyramid schemes. The majority of the cases are handled by the Division, in cooperation with local district attorneys, or in conjunction with outside law enforcement agencies that require the expertise of the Division.

F O C U S

The primary focus of the Division is to address the statewide need to improve the investigation and prosecution of child abuse, including sexual and physical abuse, as well as the exploitation of children by means of the Internet. As the host and lead agency in the New Mexico Child Abuse Task Force, Attorney General Madrid's Office has taken a leadership role in the effort to achieve consistent, successful prosecution of child abusers through the establishment of multi-disciplinary task forces, standard protocols and information sharing. In addition, the Division's own internal Child Abuse Task Force has obtained funding to facilitate training in the prosecution and investigation of child abuse for prosecutors, law enforcement officers, and social service providers across the state. In August of 2004, the Office of Justice Programs awarded Attorney General Madrid a grant of \$281,000 establishing and funding an Internet Crimes Against Children Task Force (ICAC). ICAC locates, identifies and prosecutes sexual predators who use the Internet to find potential victims.

Y E A R I N R E V I E W

During 2004, the Division continued its three-part strategy for criminal investigation and prosecution through active investigation and prosecution of individual criminal cases, providing training and resources to outside law enforcement agencies and participation in organizations that seek progressive change in the criminal justice system.

The Division has been involved in a variety of criminal cases throughout the state during the 2004, including:

Attorney General Madrid has directed the Special Prosecution/Investigations Division to target certain areas of crime, which include child abuse, Internet exploitation of children, sexual assault, capital crimes and pyramid schemes.

- Tax protestors from Carlsbad
- The murder of a policeman in Gallup by a citizen
- Environmental crimes in Deming
- A pyramid scheme in Tucumcari

Attorney General Madrid's Special Prosecution/Investigations Division has provided resource assistance to local law enforcement agencies in diverse areas including computer forensics, shaken baby syndrome evidence, capital litigation and cold case review. The Division has made presentations at seminars and conferences statewide on a wealth of topics including sexual assault, forensic evidence, ethics, child abuse, and identity theft.



Attorney General Madrid and Director Michael Cox

S I G N I F I C A N T I S S U E S

In recognition of the danger posed by online sexual predators, Attorney General Madrid sought and received a federal grant to fund a new Internet Crimes Against Children Unit. This Unit was created to identify and prosecute criminals who use the Internet to target victims. The grant provides some \$281,000 over an 18-month period, allowing the Unit to employ two specially trained investigators to work full time in locating, identifying and arresting online sexual predators. In addition, this grant provides training and resources for prosecutors and investigators in this highly specialized area. The ICAC Unit will be the central collection agency for referrals and reports relating to online exploitation in New Mexico. Representing the State in the national effort to protect children, Attorney General Madrid's Unit works in conjunction with and reports to the National Center for Missing and Exploited Children, a national resource center for such information.

Attorney General Madrid's Internet Crimes Against Children Unit aided law enforcement in making a criminal arrest of an alleged Internet predator from Socorro.

During 2004, Attorney General Madrid continued her aggressive prosecution of criminals who commit crimes in New Mexico then flee out of state, primarily to Mexico, to avoid prosecution. In a groundbreaking development, the Foreign Prosecution Unit successfully extradited two wanted criminals from Mexico to the state of New Mexico. Such extraditions, exceedingly rare in the past, begins a new era in the pursuit of those who flee from the state.

Pyramid scheme prosecution entered a new phase with the trial conviction of a Santa Fe woman involved in the "Woman Helping Woman" pyramid scheme. Donna Medina was convicted of three counts of violation of the New Mexico Pyramid Scheme Law, and was ordered to pay restitution in the amount of \$40,000. An additional three individuals



Michael Cox, Special Agent John Sides and Attorney General Madrid at the ICAC Press Conference.

SPECIAL PROSECUTION / INVESTIGATIONS

During 2004, in a groundbreaking development, the Foreign Prosecution Unit successfully extradited two wanted criminals from Mexico to the state of New Mexico.



Attorney General Madrid and Assistant Attorney General Jody Curran

Aggressive prosecution, combined with the pre-prosecution program and the training given in pyramid scheme litigation, helped New Mexico victims obtain restitution of more than \$411,000.

have been indicted this year. The Pre-prosecution Diversion program, established in partnership with the First, Second, and Thirteenth, Judicial District Attorneys, was expanded to include the Tenth District Attorney's Office in Tucumcari, New Mexico. Aggressive prosecution combined with the pre-prosecution programs and the training given in pyramid scheme litigation to local magistrates, helped victims obtain restitution for their losses. Using these approaches, more than \$411,000 in restitution has been ordered paid in 2004, since the inception of the programs.



Victim Advocate Marty Gonzales, Special Agent Jolene Altwies and Michael Cox

Also in 2004, the Division entered into partnerships with the Inspector General's Office of Taxation and Revenue and the Securities Division of the New Mexico Regulation and Licensing Department. Both partnerships are designed to maximize the investigations and prosecutions of tax and securities crime. An early success of this collaboration was the conviction of Debra and Jacob Kupcak for tax evasion in Santa Fe in August, 2004. The new partnership with the Securities Division proved instrumental in the ongoing prosecution of Henry Rivera for multi-million dollar securities fraud.



Special Agent Harry Betz, Special Agent in Charge John Sides and Assistant Attorney General Jody Curran

VIOLENCE AGAINST WOMEN A STRONGER NEW MEXICO



O V E R V I E W

The Violence Against Women Division is designed to provide training, mentorship and to set standards for the professional response to sexual assault, stalking, and domestic violence. Attorney General Madrid's staff provides training to law enforcement and prosecution personnel statewide in order to ensure that every victim is treated with sensitivity and competence.



Legal Assistant Annie Henz, Ann Badway, Attorney General Madrid and Administrative Assistant Aliessa Ruiz at the "Quilt Of Hope" workshop

Ann Badway
Director of Violence Against Women



Ann Badway

F O C U S

In 2003, Attorney General Madrid's office was awarded a grant from the United States Department of Justice, entitled, DOJ Rural Domestic Violence and Child Victimization Enforcement (# 2003-X0783-NM-WR). The funds from this grant are helping to provide multi-disciplinary training throughout the state. This effort aids in addressing the problem of domestic violence by working with communities to develop a collaborative community response. The training curriculum is tailored to law enforcement personnel, victim advocates, medical personnel, and prosecutors who deal with incidents of domestic violence, dating violence and child victimization.

Training sessions were held at Kirtland Air Force Base, Las Cruces and Gallup. The Trainer curriculum is presently being adapted by Attorney General Madrid's Division for use in the Native American communities of New Mexico.

Y E A R I N R E V I E W

2005 LEGISLATION

Attorney General Madrid is working closely with the State and other leaders in the domestic violence community to support and pass legislation amending New Mexico law with regards to domestic violence.

Attorney General Madrid's VAW Division was awarded funds from a U.S. Department of Justice grant to provide multi-disciplinary training throughout New Mexico to address the problem of domestic violence by working with communities to develop a coordinated community response.

VIOLENCE AGAINST WOMEN

Attorney General Madrid is working closely with the State and other leaders in the domestic violence community to support and pass legislation amending New Mexico law with regard to domestic violence.



· CRIMINAL DAMAGE TO PROPERTY

The proposed amendment would add the language “Property of another,” meaning property in which any person other than the defendant has interest, including community property and other property in which the defendant also has an interest.



· POLICE AUTHORITY TO ARREST WITHOUT A WARRANT

To amend the current statute, Arrest Without Warrant Act, would allow an officer to arrest an offender who has left the scene after committing assault or battery upon a household member when exigent circumstances support making an immediate arrest.



· DISCRETIONARY LIMITS ON EARNED MERITORIOUS TIME

Amending the Good Time Law would include appropriate household member crimes to the list of serious/optional serious violent offenses. Defendants convicted of a serious violent offense under the statute would be required to serve 85% of their sentence instead of the current 50% based on good behavior.



S I G N I F I C A N T I S S U E S

QUILT OF HOPE

The “Quilt of Hope” is a statewide project developed by Attorney General Madrid to bring community awareness, healing and hope to the victims of domestic violence.



The “Quilt of Hope” is a statewide project developed by Attorney General Madrid to bring community awareness, healing and hope to the victims of domestic violence. The project is broken down into four major events:



Attorney General Madrid at the “Quilt of Hope” press conference

A STRONGER NEW MEXICO

PROJECT LAUNCH:

On October 7, 2004, during Domestic Violence Awareness Month, Attorney General Madrid publicly launched the project during her speech at the Coalition Against Domestic Violence Awards Banquet.

“QUILT OF HOPE” WORKSHOP:

Members of the community joined with victims of domestic violence to collaborate on the project. Participants painted their messages on individual quilt squares. Patches for the quilt were created by women and children residing at the Women’s Community Association shelter, Morning Star House, provider of support services for Native American women, Enlace Comunitario a provider of bi-cultural support for Spanish-speaking battered immigrant women and children and Resources, Inc., a provider of services to anyone victimized by domestic violence. After several of these events, the completed squares, were sewn into a quilt by volunteer quilters.



“Quilt of Hope” Participants and VAW Staff

PUBLIC DISPLAY DAY:

The “Quilt of Hope” was displayed at Attorney General Madrid’s January 26, 2005 press conference to announce her support of legislation concerning domestic violence. Over the next year, the Attorney General will travel to towns in New Mexico to discuss domestic violence and encourage communities to come together and make a quilt of their own.

DOMESTIC VIOLENCE AWARENESS MONTH, OCTOBER 2005:

During the month of October, the Attorney General will host a “Quilt of Hope” showcase. The participating communities will come together to display their work and show state support for domestic violence advocacy.



“Quilt of Hope” squares

VIOLENCE AGAINST WOMEN

PROSECUTION



State of New Mexico v. Abra Martinez

Abra Martinez was bound over in December on a charge of Second Degree Murder in the death of her husband. Conflict case out of Las Vegas. Division Director Ann Badway serves as co-counsel with Julie Meade of Special Prosecutions.



State of New Mexico v. William Langley

Conflict case from Carlsbad. Husband charged with First Degree Murder in death of his wife. Set for trial February 28, 2005. Division Director Ann Badway serves as co-counsel with Julie Meade of Special Prosecutions



Since most domestic violence occurs as a result of learned behavior, providing curricula that focus on this aspect of the problem is critical in preventing the next generation of abusers.



Director Ann Badway and Aliasha Ruiz, Special Projects Division, with the "Quilt of Hope"

WATER, ENVIRONMENT & UTILITIES

A STRONGER NEW MEXICO



O V E R V I E W

WORKING TOGETHER TO PROTECT OUR ENVIRONMENT

Attorney General Madrid has been actively involved in the Middle Rio Grande Endangered Species Act Collaborative Program since its inception in 1999. The program has generated \$25 million in federal funding for the State, and another \$6 million in federal funding is expected for 2005. The Program ensures Endangered Species Act compliance for all authorized New Mexico water users along the Middle Rio Grande. Over its lifetime, this program is expected to bring in excess of \$150 million dollars in federal funding to New Mexico.

Stephen Farris
Director of Water, Environment & Utilities



Stephen Farris

Y E A R I N R E V I E W

ATTORNEY GENERAL MADRID APPLAUDS MINNOW RECOVERY SUCCESS

Attorney General Patricia Madrid applauded the success of the Middle Rio Grande Endangered Species Act Collaborative Program in recovering the endangered Rio Grande silvery minnow. The October 2004 Population Monitoring shows a dramatic increase in the numbers of silvery minnows in the Rio Grande as compared to October 2003.

“I understand that these numbers are statistically sound and show a significant upward trend in the numbers of silvery minnows in the Rio Grande. This is the best news we’ve had and it is especially remarkable that we have achieved this success in the middle of a terrible drought. It shows that the Biological Opinion is working and that the ESA Collaborative Program is working,” Attorney General Madrid stated.

The Middle Rio Grande ESA Collaborative Program was founded in 1999 with the goals of recovering endangered species, protecting individual’s water rights and ensuring New Mexico’s ability to meet its interstate compact obligations. Members of the collaborative program include farmers, municipalities, environmental groups, business groups and state and federal agencies.

“I suspect many people have doubted that this type of collaboration was possible given the hard fought litigation, but I have always believed in and supported collaborative solutions among opposing parties. I want to commend the many talented scientists who have joined together to make this success possible and I especially want to commend the members of the Collaborative Program for sticking together through



Attorney General Madrid has been actively involved in the Middle Rio Grande Endangered Species Act Collaborative Program since its inception in 1999. The program has generated \$25 million in federal funding for the State, and another \$6 million in federal funding is expected for 2005.

WATER, ENVIRONMENT & UTILITIES

some very tough times. We have much more work to do but this upswing in the numbers of silvery minnows dramatically shows that all our hard work is worthwhile,” said Attorney General Madrid.



WORKING TO RESTORE POLLUTED GROUNDWATER AND RECOVER DAMAGES

Attorney General Madrid represents the New Mexico Natural Resources Trustee in connection with litigation involving damage to New Mexico’s trust natural resources. A significant case currently being handled by the Attorney General’s Office is against Phelps Dodge Corporation with respect to its New Mexico mining operations. Recently, New Mexico successfully negotiated an agreement with Phelps Dodge to toll the statute of limitations through January 16, 2006. Phelps Dodge also agreed to reimburse the State for its expenses incurred in connection with the negotiations. In addition, the State finalized a settlement with Atchison, Topeka and Santa Fe Railway Company and is close to finalizing a settlement with SOHIO Western Mining Company, with respect to natural resource damages caused by these companies.



Currently efforts are underway to negotiate an amicable agreement with the State of Texas but should those efforts fail, New Mexico is well prepared to defend itself in any litigation brought by the State of Texas.

WORKING TO PROTECT NEW MEXICO’S WATER

Attorney General Madrid has lead New Mexico’s efforts to protect New Mexico’s share of the waters of the Rio Grande from threatened litigation by the State of Texas. In response to the Texas Legislature appropriating \$10 million dollars to the Texas Attorney General to sue New Mexico over disputes in the lower Rio Grande, Attorney General Madrid received nearly \$8 million dollars to prepare a defense for the threatened litigation. This money has been used to obtain expert legal assistance, as well as for funding research and fact gathering through the New Mexico Interstate Stream Commission, State Engineer Office and Environment Department. Currently efforts are underway to negotiate an amicable agreement with the State of Texas but should those efforts fail, New Mexico is well prepared to defend itself in any litigation brought by the State of Texas.



WORKING TO ENSURE A SAFE NUCLEAR FUTURE FOR NEW MEXICANS

Attorney General Madrid has successfully petitioned for intervention on behalf of the citizens of New Mexico in the Louisiana Energy Services, L.P., licensing proceeding before the United States Nuclear Regulatory Commission. In this licensing proceeding, the Nuclear Regulatory Commission must determine whether to license a limited partnership that seeks to construct and operate a facility in New Mexico that would enrich uranium for use in nuclear power plants. The Attorney General seeks to ensure that the licensing of this facility proceeds in a manner that is both open and thorough, and that the construction, operation, and decommissioning of the facility are accomplished in a





manner that provides for the greatest possible security and protection for the citizens of New Mexico.

WORKING TO PROTECT NEW MEXICO'S CONSUMERS

The Water, Environment and Utilities Division participated in a large number of cases in the past year, representing the interests of residential and small business utility consumers. Most recently, in the Public Service Company of New Mexico (PNM) -Texas New Mexico Power Company (TNMP) merger case, the Attorney General was instrumental in negotiating a significant electric rate decrease for customers served by TNMP. TNMP serves Silver City, Alamogordo, Ruidoso and other communities in southern New Mexico. If the rate decrease is approved by the Public Regulation Commission, it will take effect in January, 2006. There will also be credits for PNM electric and gas customers as a result of the settlement.

During 2004, the Division was active in negotiations on renewable energy legislation and also participated in several cases relating to renewable energy, arguing that renewable resources should not increase customer rates in New Mexico. Toward the end of the year, the Division represented small consumers in meetings of several energy task forces appointed by the governor.

In telecommunications regulation, Attorney General Madrid participated in a settlement that resulted in a \$1.5 million dollar payment to consumers and a \$2 million dollar payment to competitive telecommunications companies after Qwest was found to have improperly reported certain interconnection agreements. Attorney General Madrid is also advocating on behalf of small businesses and consumers concerning Qwest's promised investments in New Mexico. Finally, Attorney General Madrid is working with the state's rural telephone companies on legislation that will make in-state long distance calls less expensive.



Water, Environment and Utility Division Staff

Attorney General Madrid seeks to ensure that the licensing of the Louisiana Energy Services, L.P. facility proceeds in a manner that is both open and thorough, and that the construction, operation, and decommissioning of the facility are accomplished in a manner that provides for the greatest possible security and protection for the citizens of New Mexico.

S I G N I F I C A N T C A S E S

ENDANGERED SPECIES LITIGATION

Rio Grande Silvery Minnow v. Keys - On January 5, 2004, the Tenth Circuit vacated its prior opinion holding that the U.S. Bureau of Reclamation could seize both native Rio Grande and imported San Juan-Chama Project water for Endangered Species Act purposes. The Tenth Circuit then remanded the case to the District Court. Attorney General Madrid, along with other intervener-defendants, has filed a motion to dismiss the case as moot. The parties are currently awaiting the Court's decision on these motions.

AWARDS GIVEN TO THE ATTORNEY GENERAL IN 2004

AWARDED TO THE
ATTORNEY GENERAL IN
2004:

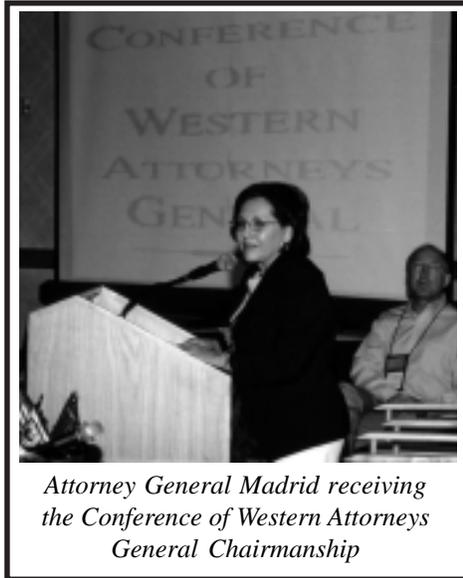
At the Conference of Western
Attorneys General annual
convention, Attorney General
Madrid was elected the CHAIR
OF THE CONFERENCE OF
WESTERN ATTORNEYS
GENERAL

LAS PRIMERAS AWARD
from the National Latina
Organization MANA in
recognition of her
accomplishments as New
Mexico's first female attorney
general and the nation's first
Hispanic female attorney general.

LÍDERAS-LAC POLICY
AND LAW AWARD
Attorney General Madrid received
the maiden award, which will be
given annually to an elected or
appointed official who has made
a significant contribution to the
improvement of the Hispanic
community in the United States.

MILAGRO EXECUTIVE
DIRECTOR'S AWARD
for her outstanding
humanitarian acts on behalf
of animals.

THE WOMAN OF THE
YEAR IN GOVERNMENT
AWARD
From The Capital Business and
Professional Women of Santa Fe



*Attorney General Madrid receiving
the Conference of Western Attorneys
General Chairmanship*



*Attorney General Madrid
receiving the Gavel for the
Conference of Western Attorneys
General Chairmanship*



*Attorney General Madrid and other award recipients at the
Las Primeras Award Ceremony*



*Las Primeras Award from
the National Latina
Organization on Mana*

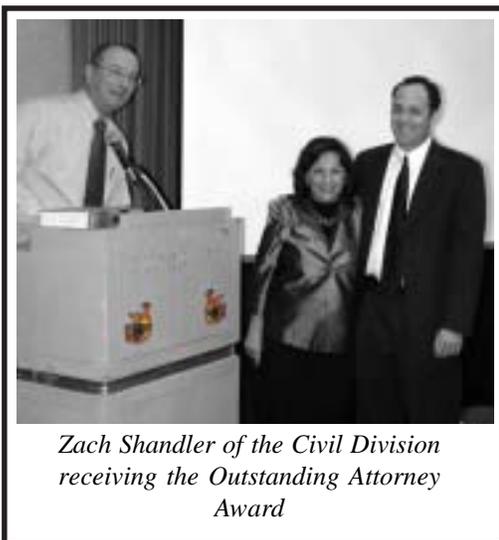
AWARDS GIVEN TO ATTORNEY GENERAL STAFF



Stuart Bluestone receiving the Nelson Kempsey Award from the Conference of Western Attorneys General



ASD Director Elizabeth Kupfer receiving the Excellence in Accounting Award



Zach Shandler of the Civil Division receiving the Outstanding Attorney Award



Jolene Altwies of the Special Prosecutions/Investigations Division receiving the Outstanding Investigator Award



Margaret McLean of the Criminal Appeals Division receiving the Outstanding Attorney Award



Richard Russel of the Executive Division receiving the Support Staff of the Year Award



NELSON KEMPSKY
AWARD FOR
MANAGEMENT AND
LEADERSHIP



Awarded to
Stuart M. Bluestone, Chief
Deputy Attorney General of New
Mexico



EXCELLENCE IN
ACCOUNTING AWARD

Awarded to

Elizabeth Kupfer

Director of the Administrative
Services Department from New
Mexico's Department of Finance
and Administration (DFA) and
the State's Comptroller's Office.
The honor is awarded to state
agencies that have a proven track
record in responsibility for
accounting functions.



OUTSTANDING
INVESTIGATOR AWARD



Awarded to
Jolene Altwies

OUTSTANDING
ATTORNEY AWARD



Awarded to
Zach Shandler and
Margaret McLean



OUTSTANDING LEGAL
ASSISTANT OF 2004

Awarded to
Claudia Ravanelli



OUTSTANDING SUPPORT
STAFF OF 2004

Awarded to
Richard Russell



Susan Armstrong, EDITOR



Lauren Houston Armstrong, PRODUCTION EDITOR



Elisa Wood, PHOTOGRAPHER: STAFF PORTRAITS AND SOME CANDID PHOTOGRAPHS

Credits

Cover photograph provided by www.fotosearch.com

Formal portrait of Attorney General Madrid by Frank Frost

Frank Frost Photography, 12514 Menaul Blvd, NE, Albuquerque, NM 87112

Staff portraits and some candid photographs by Lisa Wood and Attorney General staff members.

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