

ANNUAL REPORT 2008

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MESSAGE FROM ATTORNEY GENERAL GARY K. KING



This report to the Legislature is dedicated to my mother, former New Mexico First Lady Alice King, who passed away unexpectedly December 7, 2008. Her contributions to the state and its children are well known and it seems appropriate that she be acknowledged in this report. Many Legislators worked with her during and after her years in the Capitol and came to know her passion for New Mexico's most vulnerable citizens. Her work for children will be carried on by others and the protection of children and their families will always be central to my administration as Attorney General.

Once again, the professionals in the Attorney General's Office have put in another year of hard work to produce good things for the state of New Mexico while protecting the interests, health and safety of its residents. The following points are a representative accounting of some of the AGO's accomplishments in 2008.

- In the Albuquerque Metro Courthouse fraud case, all eight Defendants, including three who were cooperating witnesses, have now pled guilty. This case was conducted jointly with NMAGO's Government Accountability Division and the New Mexico US Attorney's Office.
- The Medicaid Fraud and Elder Abuse Division received more than 330 complaints of fraud, abuse or exploitation in 2008 by care or service providers, family members or people who prey on the elderly, ill or disabled.
- The Special Prosecutions Division is successfully completing the prosecutions of the Santa Rosa prison riot cases. On December 5th, an Albuquerque jury convicted Robert Young, a leader in a Santa Rosa prison gang, for the killing of prison guard Ralph Garcia in 1999.
- All four of the co-defendants in the federal New Mexico State Treasurer trial were prosecuted by the Special Prosecutions Division of the Attorney General's Office. Each co-defendant was convicted of a second degree felony in state district court.
- The Special Prosecutions Division, working collaboratively with the Internet Crimes Against Children (ICAC) unit of the Attorney General's Investigations Division, indicted and convicted several Internet child predators. In one unusual case, our office arrested and indicted a father and son Internet predator team. Both will serve prison terms pursuant to guilty pleas obtained by the Special Prosecutions Division.
- The Attorney General's Office Civil Division issued seven formal opinions and 32 advisory letters in 2008. Topics addressed include campaign expenditures, application of the Procurement Code and political committees.
- The Civil Division investigated complaints and issued determinations regarding 68 Open

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Meetings Act (OMA) and Inspection of Public Records Act (IPRA) violations in 2008. The division also conducted at least a dozen OMA/IPRA training sessions for local government officials across the state.

- The Water, Environment & Utilities Division (WEUD) appealed the federal Environmental Protection Agency's issuance of a permit for the proposed Desert Rock power plant. New Mexico considers EPA's permitting process for Desert Rock to have been legally deficient in several ways. Desert Rock presents issues of great consequence for New Mexicans' public health and the environment.
- The WEUD intervened to represent residential and small business consumers in several major cases before the Public Regulation Commission (PRC). The AGO successfully helped the PRC reach a balanced approach to protect reliability of service by the state's largest electricity provider. WEUD also was instrumental in securing a three year rate freeze and financial guarantees from the companies acquiring their natural gas utility.
- The Criminal Appeals Division attorneys have appeared in more than 40 oral arguments throughout New Mexico. More than 400 briefs were filed; 175 memoranda and responses prepared; 200-plus petitions for certiorari and responses in the New Mexico Supreme Court filed; appearances at 91 state habeas corpus evidentiary hearings; 59 answers were filed in federal district court; 19 filings were made in the Tenth Circuit Court of Appeals; and 160 extraditions and renditions were reviewed.
- The New Mexico Legislature passed a bill criminalizing human trafficking last Session. This was my top legislative priority and the crime of human trafficking was enacted into law in July 2008. The Border Violence Division was instrumental in crafting language for the new law and a new bi-national human trafficking agreement with Chihuahua, Mexico. The division also conducts public outreach and law enforcement training about the new law.
- The Consumer Protection Division, through its dispute resolution efforts, provided restitution to consumers in the amount of \$1,835,757. The division addressed 3,582 consumer complaints and presented 42 community education and outreach events in FY 2008.
- With guidance by the Violence Against Women Division, a partnership was developed between the New Mexico Attorney General's Office and the New Mexico Sentencing Commission/ Justice Information Sharing Council to enhance their existing Consolidated Offender Query. This partnership will allow the JISC to develop a Web-based Emergency Order of Protection System for statewide use by NM law enforcement officers, including Tribal Police.
- Our Litigation Division's work has resulted in back taxes revenue recovery for the Taxation & Revenue Department of \$1,378,932.11 to date in FY 2009, and \$964,613.23 in FY 2008. Combined with other AGO division recoveries and settlements, millions of dollars are brought in annually for the State by this office.
- AGO Information & Technology Division staff completed a series of projects that produced

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a fully operational and tested Disaster Recovery Solution and also developed a Charities Online Registration System. This new application is state of the art and has a built-in intelligence that speeds charities to a successful registration.

I am very pleased that this office has accomplished so much in 2008. The coming year promises more such achievement along with further advancements in criminal and civil prosecutions, consumer and family protection and a full slate of legislative proposals.

Sincerely,



New Mexico Attorney General

Gary K. King



REPORT FROM THE EXECUTIVE OFFICE

CHIEF DEPUTY ATTORNEY GENERAL
ALBERT LAMA

As a career government lawyer, I am humbled by the trust that Attorney General King continues to place in me as his Chief Deputy and I am confident that, under his leadership, our opportunity for future success will have no limits. This annual report documents some examples of how the Attorney General and his staff of professionals accomplished the duties of the office in 2008. I wish to congratulate all of my colleagues for a very productive and successful year and thank them for their efforts on behalf of the citizens of the State of New Mexico. Additionally, we appreciate the support Legislators have provided the last two years and we ask for your continued support in 2009.



In looking ahead to 2009, our plate is full of challenges and opportunities to advance the best interests of our clients and the public. In the coming year, Attorney General King and staff will continue their efforts to ensure that our elected and appointed officials receive the best legal advice available to assist them in making wise and effective decisions. As before, the Attorney General will aggressively use the resources of the office to hold individuals accountable when they act illegally or otherwise violate the public trust. The Attorney General will continue to pursue efforts to enact and enforce laws that protect the interests of New Mexico, its people and its resources.

It is important to remember that in pursuing these efforts, every step in the process must be completed in a thorough and timely manner. Expediency, however, is not the sole measure of success. Rather, every day, we must exhibit deliberate and conscientious attention to the principals of the law and to its fair application. It is this philosophy that Attorney General King has set for our office and it is the protocol under which we operate on a daily basis. I believe that it is the only way to ensure that we meet our responsibilities to our clients, the state and the citizens of New Mexico in an ethical and responsible manner.

As we embark on the third year of Attorney General King's term of office, I am very optimistic about the role we will play in producing good outcomes for our clients, the state and the citizens of New Mexico.

Sincerely,

Chief Deputy Attorney General

Albert Lama



DEPUTY ATTORNEY GENERAL
DAVID THOMSON

As Deputy Attorney General, David Thomson serves as one of Attorney General King's advisors concerning Civil Litigation. His duties include counsel for and supervision over the general operation and management of the civil legal service divisions in the agency. Deputy Thomson provides legal advice to the Attorney General on legislative efforts and at the Attorney General's direction, assists in the execution of multi-state litigation.

In 2008, the tobacco team continued to enforce New Mexico laws regulating tobacco sales and distribution. Mr. Thomson continued to monitor numerous state Qui Tam cases, reviewing and writing consumer amicus briefs, and maintained a civil caseload including serving as co-counsel in *U.S. Airways v. New Mexico Regulation and Licensing Department*.

Another success for the office was the release of the "Report to the New Mexico Attorney General – A Response to the GAO's 2004 Report Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico." Mr. Thomson presented this report to the entire legislative committee and will monitor the federal response.

CHIEF OF STAFF
MICHELLE GARCIA

The Chief of Staff, Michelle Garcia, oversees a variety of issues including helping the Attorney General set and achieve overall priorities and initiatives for the office. The work of the Office of the Attorney General is a continual balancing act. Because there are limited resources available, including hours in the day, decisions must be made as to where to place those precious resources.



One of Attorney General King's priorities for 2008 was to formulate a comprehensive plan to address New Mexico's burgeoning methamphetamine abuse problem. Ms. Garcia oversaw the Attorney General's Statewide Methamphetamine Alert Program. The Methamphetamine Alert Program includes an education and awareness campaign designed to not only deter the use of the drug but to encourage parents to educate themselves and their children on the dangers of methamphetamine.

Chief of Staff Garcia also serves as the law enforcement liaison for the Attorney General's Office and represents the Attorney General on several boards, including the Anti-Terrorism Advisory Council (ATAC).

Ms. Garcia is also working on other AG priorities such as border issues, including the crime of auto theft. She will be working hard during the 2009 Legislature to ensure Attorney General King's initiatives continue to succeed.



SPECIAL COUNSEL STEVE SUTTLE

Special Counsel Steven Suttle serves as AG King's liaison to the Attorney General's Animal Cruelty Task Force (ACT). During the past year, the task force hot-line has received an average of 26 complaints per month. Each complaint has been referred to local law enforcement agencies for possible investigation. Members of the task force participated in

five raids of suspected animal-fighting venues. The task force has also been active in proposing new legislation concerning animal fighting and abuse.

Additionally, Mr. Suttle and Assistant Attorney General James Grayson have been working on an important Miranda case in the United States Supreme Court that, if ultimately accepted, will have nationwide impact on how traffic officers conduct routine accident investigations.

As a former district attorney with thirty-four years of experience as a trial and appellate prosecutor, Steven Suttle has been a valued asset at the Attorney General's Office since 1996.

LEGISLATIVE TEAM

PHILLIP BACA, STUART BLUESTONE, VICTORIA BRANSFORD

Attorney General Gary King's Legislative Team is overseeing an ambitious agenda for the 2009 Legislative Session. The Attorney General has asked experts throughout his office to take responsibility for the substantive issues they know best. For general legislative issues management, the AG's Legislative Team leaders are Stuart Bluestone and Phil Baca for civil issues and Steve Suttle for criminal issues. Victoria Bransford oversees administrative management of legislative matters for the AGO.



The Attorney General has set six general priority areas for legislation:

- Ethics and Campaign Finance Reform
- Underage Drinking and DWI Enforcement
- Inspection of Public Records Act Improvements
- Consumer Lending Protections
- Criminal Law Equity in Statutes, including Sentencing Guidelines, Animal Cruelty and Protection of Judges from Intimidation
- Domestic Violence Law Amendments

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Some of the key Ethics bills include seeking to enact limits on political campaign contributions, expansion of the Governmental Conduct Act to local governments, establishment of an Ethics Commission and adoption of a strong Whistleblower Protection Act.

AG King also wants to expand the Local Liquor Excise Tax Act to give all counties the option to increase taxes on alcohol in order to fund preventive measures for alcohol and substance abuse related problems.

Consumer lending protections will take center stage with bills seeking to reform the mortgage lending industry as well as the small loan industry in general.

Legislative Team members Bluestone and Baca conducted a number of trainings in 2008 for state agency personnel on ethics laws and issues.

CONSTITUENT SERVICES CORDY MEDINA

Officially, the position of Constituent Services Coordinator involves resolving issues and problems reported to the Attorney General's Office by the general public. In reality, Cordy Medina provides personal attention to hundreds of people who have found no other source of help for their particular type of problem or issue.

Sometimes the reported problems are of a legal nature and Ms. Medina quickly routs them to the appropriate staff within the Attorney General's Office. Other constituent complaints are often handled by collaborating with other state agencies to find solutions. Many times this past year, Cordy personally traveled to various towns and villages around New Mexico to meet with groups of local residents about their problems.

Attorney General King established this position in the office in order to bring services and help to people in New Mexico who might have difficulty navigating the sometimes intimidating bureaucracy of government. Judging by the hundreds of letters, phone calls, and emails received by her office; the word is out that Cordy Medina at the Attorney General's Office is here to help.



COMMUNICATIONS DIVISION

DIRECTOR
PHILLIP SISNEROS

VISION

The Communications Division serves as the conduit to the public for information about or from the Attorney General's Office (AGO). Transparency is the guiding concept for the division, while preserving the efficient and responsible representation of the state's legal interests.

Communications staff are also tasked with conceptualizing, developing and maintaining various education and outreach efforts directed by Attorney General King. This includes agency publications, content for the AG's Web site and live presentations on public safety and consumer issues for the public.



THE YEAR IN REVIEW

A large focus for Communications staff in 2008 was the development of a major goal of Attorney General King, a statewide methamphetamine awareness and abuse prevention campaign. The campaign includes publications, a Power Point presentation and accompanying education and outreach efforts across New Mexico.

Another highlight of the past year was the production of the first ever bilingual "fotonovela" style publication dealing with door-to-door sales in New Mexico. Working with the AG's Consumer Protection Division's Immigrant Consumer Services unit, the pilot project will be unveiled in early 2009. The project is directed at reducing product sales fraud, primarily perpetrated against the Spanish speaking immigrant community. Since the booklet is in English and Spanish however, it is expected that non-Spanish readers will also benefit from the information and warnings portrayed.

The Communications Division partnered with the FBI, U.S. Attorney's Office and U.S. Department of Homeland Security to develop an Internet Safety presentation that is targeted for mid-school students. This unprecedented collaboration served to pool resources and information while producing an instructional safety presentation that can be used by all agencies. The presentation will be in use early in the coming year.

In addition to daily news media contacts, division staff have conducted education and outreach presentations statewide involving Identity Theft, Scams and other subjects.

LOOKING AHEAD

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Plans for 2009 include statewide marketing/education and outreach for the anti-meth and 'fotonovela' projects as well as updating current AGO outreach presentations.

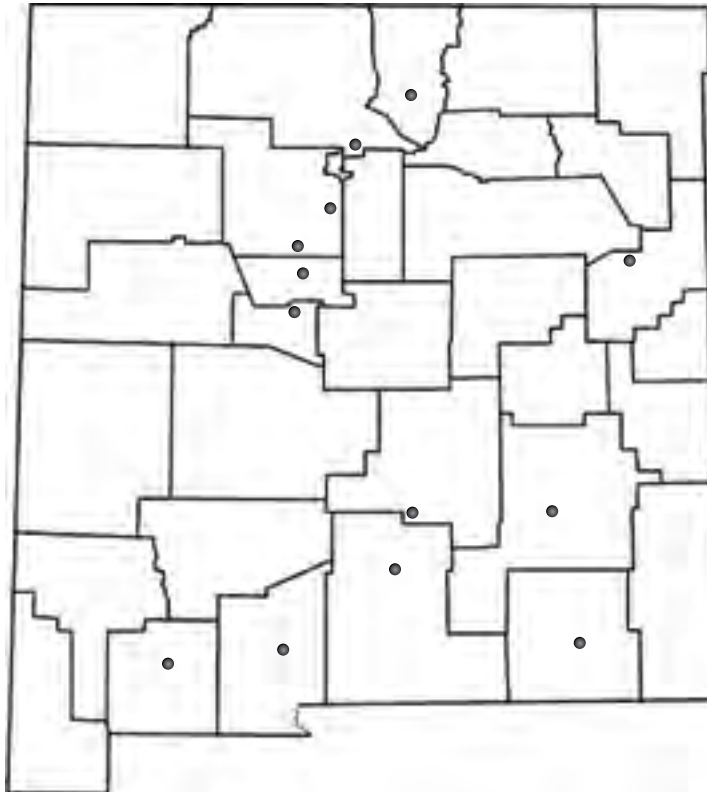
Continued collaboration with the Information/Technology Division to improve internal and external communications, especially the agency Web site, nmag.gov.

The Communications Division expects to increase the number of various education and outreach efforts in the coming year, particularly in the addition of more public presentations during the statewide Attorney General's Office Roadshow for 2009.

AGO EDUCATION AND OUTREACH ROADSHOW

Attorney General Gary King and his staff have been travelling all around the state to educate the public on topics such as Open Government Laws, Internet Safety, Non-Profits, Identity Theft, and Scams. The Roadshow has also included Border Violence and Financial Crimes trainings for organizations, prosecutors, and law enforcement.

These dots show everywhere the Roadshow reached in 2008:



Number of Attendees

Public Education and Outreach			107
Internet Safety	6,882	Grant to Encourage Arrest and	
Scams/Identity Theft Prevention	513	Enforcement of Protection Orders Task	
		Force Meeting/Training	

INFORMATION & TECHNOLOGY DIVISION

DIRECTOR
JAMES FERREIRA

VISION

Computers and communication devices play a significant roll in daily operations of the Attorney General's Office. The goal of the Information and Technology Division is to facilitate information sharing between staff and communication with the general public.



THE YEAR IN REVIEW

Electronic data at the AGO represents a tremendous number of staff hours and effort, plus millions of dollars in equipment and infrastructure. Losing access to this data, according to an internal system audit, would result in a monetary loss of more than \$76,000 per day and have an incalculable devastating effect on Office functions. To ensure that this data is safe and available, this year AGO IT staff completed a series of projects that lead to a fully operational and tested Disaster Recovery Solution.

Another top IT accomplishment is the Charities Online Registration System. Unlike simple Web-based forms, this new application is state of the art and has a built-in intelligence that speeds charities to a successful registration, which is an important responsibility of the Attorney General's Office.

State agencies should pool their resources when it leads to saving the taxpayers' money. In 2008 the AGO partnered with the State Treasures Office by providing a location in the Albuquerque AGO as a disaster data recovery point should something happen to STO data systems in Santa Fe.

Hacking crimes are on the rise and to guard against intruders with malicious intent, IT staff has installed new network perimeter defenses that include intrusion detection and prevention.

LOOKING AHEAD

In the coming year the IT division will continue to employ innovative methods to further support the ability of AGO staff to meet the goals of Attorney General King while reducing the overall cost of doing business.

One project receiving considerable effort looks at the semantic relationships between AGO data and how that data is accessed by staff. By creating relevance embedded in the data, staff will be better able to leverage the use of that data and thus save valuable time and tax payer money.

IT will focus on creating a system of collaboration between staff with the goal of reducing the number of document copies. This will be accomplished through training, hardware and software.

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The system should eliminate confusion over what work has been completed and reduce IT resources necessary to store data in the years to come.

Another area of focus involves creating redundant network systems as back-up for mission-critical information. This will allow staff to continue operations without interruption.

In one of our most important 09 initiatives, IT will be asking the Legislature to fund a new Voice-over-IP phone system that will return the installation cost in less than a year and save the state \$1 million over the next six years.



ADMINISTRATIVE SERVICES DIVISION

DIRECTOR
EVANGELINE TINAJERO

VISION

The Administrative Services Division serves the entire Attorney General's Office and facilitates its fiscal operation within the parameters of the budget established by the Legislature. The Division also provides Human Resources Management and services for the AGO. The Administrative Services Division is responsible for managing the finances of the Attorney General's Office in order for it to function properly and provide the public and state government with its statutorily directed duties and responsibilities.



YEAR IN REVIEW

Assuring adequate budgetary funding was once again the main goal for the Administrative Services Division in 2008. Every effort was made by staff to assist each of the fifteen divisions of the Office to reach their individual internal goals. Each division's staffing requirements; operating costs; recurring expenses and day-to-day needs are facilitated by Administrative Services as it continues to provide solid customer service to our internal and external customers.

A project begun last year continued this year as ASD provided funding and acquisition expertise to the Information Technology Division's ongoing work to upgrade electronic communications and information accessibility throughout the entire agency.

The Administrative Services Division was actively involved this year in the planning and functionality of office accommodations for new and existing personnel in the Attorney General's offices in Albuquerque, Santa Fe and Las Cruces.

LOOKING AHEAD

For 2009, the Administrative Services Division has already begun mapping ways to deal with the budgetary effects of recently weakened national and state economies. Fiscal creativity and planning will be even further refined as ASD strives to excel as a customer service organization while providing the necessary financial guidance for the Attorney General to accomplish the many aspects of his responsibilities to the people and government of New Mexico.

BORDER VIOLENCE DIVISION

DIRECTOR
MARIA SANCHEZ-GAGNE

VISION

In October 2005, the Border Violence Division was formed to develop and maintain liaison on mutual law enforcement matters between Mexico and New Mexico and to coordinate between prosecutors and law enforcement agencies in New Mexico with similar entities in the Republic of Mexico.

The Border Violence Division provides specialized legal and technical assistance to law enforcement and district attorneys in New Mexico in matters of foreign prosecutions with Mexico and international criminal extraditions. District attorneys and law enforcement refer these cases to the Border Violence Division for the expertise needed in these complex and specialized cases to ensure that criminals do not evade justice by fleeing across the border into Mexico or any other country.

The Border Violence Division also addresses border-related policy issues such as human trafficking and criminal justice reform with Mexican states.



THE YEAR IN REVIEW



Human Trafficking Legislation

Attorney General King's top legislative priority for 2008 passed the NM Legislature and the crime of human trafficking was enacted into law in July 2008. The bill was sponsored by Senator Mary Jane Garcia and criminalizes the commercial sexual exploitation and labor exploitation of individuals with increased penalties for the exploitation of minors.

Bi-national human trafficking agreement with Chihuahua, Mexico

In January 2008, Attorney General King and Chihuahua Attorney General Patricia Gonzalez Rodriguez of Chihuahua, Mexico signed a collaborative agreement to combat human trafficking, recognizing that human trafficking exists on both sides of the border. The agreement calls for development of compatible strategies in prevention, information, education and awareness, intelligence and anti-trafficking law enforcement efforts.

As a result of this innovative effort to combat human trafficking, Attorney General Gary King was recognized by the U.S. Department of State and was invited to serve as a member of the United States delegation to present a report to a United Nations



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Committee on the Rights of the Child, in Geneva, Switzerland. The UN committee hailed the collaborative relationship between New Mexico and Chihuahua as an international model for human trafficking efforts.

The Conference of Western Attorneys General has also recognized and promoted the Chihuahua-New Mexico model of collaboration as an effective tool to combat human trafficking.

Human Trafficking Conference

On July 11, 2008, Attorney General King and the Border Violence Division hosted a conference on human trafficking. Attendees included state, federal and local law enforcement from New Mexico, victim service providers, federal and state prosecutors and representatives from the Children, Youth and Families and the Labor Department. Fifteen Mexican state and federal investigators from Chihuahua also attended the conference.



Training and Public Outreach

The Border Violence Division is conducting regional human trafficking trainings throughout the thirteen judicial districts of New Mexico. In 2008, The Border Violence Division has trained approximately 700 state, local and federal law enforcement personnel, prosecutors and non-governmental organizations (NGOs) in New Mexico on human trafficking.

Attorney General King continues to serve as chair of the New Mexico Human Trafficking Task Force.

Extradition News:

Manuel Noriega:

Manuel De Jesus Noriega Ruvalcaba, aka: Manuel Noriega, was extradited to New Mexico on Wednesday May 7, 2008 after all appeals were exhausted in Mexico based on the extradition request from the Border Violence Division. Agents with the U.S. Marshal's Service transported Ruvalcaba from Mexico City to Santa Fe, where he is being held without bond at the Santa Fe County Detention Center. Ruvalcaba was indicted September 7, 2006, on five counts of criminal sexual penetration, kidnapping, aggravated battery with a deadly weapon and aggravated battery. Ruvalcaba fled to Mexico before Santa Fe police could arrest him. The first judicial district attorney's office requested assistance from the Border Violence Division to seek the extradition of Ruvalcaba from Mexico.

Ernesto Gutierrez:

One of the Attorney General's Office "Most Wanted" fugitives was extradited to New Mexico on October 30, 2008; Ernesto Gutierrez was arrested January 7, 2008 in Hanos, Chihuahua, Mexico based on an arrest warrant requested from the Border Violence Division. The warrant was signed and authorized by a Mexican court. Mexican law enforcement officers took Ernesto Gutierrez into

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custody based on the warrant for the stabbing death of a man in Deming in 1983. Gutierrez escaped custody from a New Mexico correctional facility in 1984. The Border Violence Division requested Mexico to extradite Gutierrez to serve at least the remainder of his twelve year sentence in New Mexico for the murder of Francisco Rodriguez.

The Border Violence Division is currently assisting district attorneys with several other extradition requests from Mexico for fugitives charged with murders in New Mexico.

Article 4 news:

In March 2008, the Mexico court of appeals affirmed Carlos Luis Valerio's 30 year conviction for murder. He is currently serving 30 years in a Mexican prison. Valerio was charged in September of 1996 with the murder of Selina Marie Sedillo in Bernalillo County. Sedillo was an ex-girlfriend of Valerio and was killed on August 14, 1995 during a domestic violence incident. Valerio fled to Mexico and in 1996 the Office of New Mexico Attorney General filed the case in Mexico City for a prosecution in Mexico according to Article Four of the Federal Mexican Penal Code. Valerio remained a fugitive for ten years traveling throughout Mexico using several aliases. He was finally arrested in September 2005 and tried in Mexico for the crime of murder. In February 2007, a Mexican court found Valerio guilty of murder and sentenced him to 30 years incarceration. Valerio appealed this conviction.

LOOKING AHEAD

The Border Violence Division will continue to provide human trafficking training for law enforcement and victim service providers throughout the thirteen judicial districts of New Mexico. The Border Violence Division will develop regional working task forces and coalitions throughout the different regions in New Mexico. The task forces will consist of federal, state and local law enforcement and victim service providers. Regional task forces will provide effective victim assistance and collaboration in the investigation and prosecution of human trafficking cases. Additionally, the Division will continue to seek federal funding to combat human trafficking.

The Border Violence Division will assist in developing a human trafficking curriculum at the New Mexico Law Enforcement Academy.

Lastly, the Border Violence Division will continue to support district attorneys with international extradition requests and Article 4 cases submitted to the Division and will continue training in this specialized area of fugitive apprehension and prosecution for prosecutors and state and local law enforcement.

CIVIL DIVISION

DIRECTOR
ELIZABETH GLENN

VISION

The Civil Division strives to provide quality legal services to the Attorney General's Office and its state agency clients. The Division's three primary areas of responsibility are: (1) the provision of legal advice and representation to over 100 state agencies, boards and commissions; (2) researching and drafting Attorney General opinions and advisory letters in response to requests by state legislators, state officers and district attorneys; and (3) enforcing the Open Meetings Act and Inspection of Public Records Act by handling complaints alleging violations of the Acts and providing training to state and local government bodies and members of the public regarding their rights and responsibilities under the Acts. The Division's Charities Unit is responsible for registering nonprofit organizations and investigating claims under the Charitable Solicitations Act.



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- In 2008, the Civil Division hired four attorneys and one legal assistant, as well as an attorney and an investigator for the Division's Charities Unit. With these additions, the Civil Division is now fully staffed.
- During the 2008 Legislative Session, the Attorney General's Office provided 134 bill analyses, most of which were prepared by the Civil Division.
- The Attorney General's Office issued seven formal opinions and 32 advisory letters in 2008. Topics addressed include campaign expenditures, application of the Procurement Code and political committees.
- Civil Division provided legal services to state agency clients, including providing legal advice at board meetings and disciplinary hearings; defending agency decisions in judicial appeals; and reviewing contracts and other legal documents. The Division defended agency actions in 20 judicial appeals and similar court proceedings filed in 2008.
- The Civil Division investigated and issued determinations regarding 68 Open Meetings Act and Inspection of Public Records Act complaints in 2008. Members of the Division held 12 training sessions on both Acts throughout New Mexico as part of the AGO's outreach program and made additional presentations at trainings and conferences conducted by the Rural Communities Assistance Corporation, Municipal League, Association of Counties, DFA's Local Government Division and others.

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- By statute, the Attorney General is required to review transcripts and issue approving opinions for school district general obligation bond issues. In FY 2008, Civil Division issued 44 approving opinions and is on track to issue 51 in FY 2009.
- The Charities Unit had 594 new registrations in 2008, bringing the total number of registered charitable organizations to 6442. The additional personnel recently hired for the Unit will enable it to more efficiently conduct financial reviews of nonprofit organizations, bolster its training efforts, and take appropriate legal action against charitable organizations that violate the Charitable Solicitations Act or their charitable purposes. Special recognition goes to Leah Quesada for her stellar work in handling the registration and other business of the Charities Unit. She was able to accomplish this virtually working alone since early spring of 2008.

LOOKING AHEAD

The Civil Division looks forward to another year of providing legal services to its state agency clients and will renew its efforts to enhance communication and cooperation with those clients to ensure that they are able to perform their public functions creatively and effectively within the confines of their statutory authority. Regarding the Open Meetings and Inspection of Public Records Acts, the Division will continue to implement the Attorney General's policies for facilitating the handling and resolution of complaints, provide training statewide and will soon publish revised Compliance Guides for both Acts. The Charities Unit's online registration and reporting capabilities, which should substantially facilitate the Unit's ability to register charitable organizations and review their filings, should be up and running in the near future.



CONSUMER PROTECTION DIVISION

DIRECTOR
KAREN MEYERS

VISION

The Consumer Protection Division (CPD) is charged with enforcement of consumer protection laws to prevent and deter unfair, deceptive, and unlawful practices that injure consumers and harm businesses that operate lawfully in the competitive market place. Division staff promote consumer protection through **community education and outreach** throughout New Mexico. Staff members assist consumers and businesses through CPD's voluntary **dispute resolution** services to resolve consumer complaints without the need for litigation. The division staff **monitors and investigates suspicious business practices** when business activities or practices may violate consumer protection laws. The Attorney General **enacts regulations, proposes legislation and initiates legal actions on behalf of the public interest** to improve consumer protection, enforce the law and respond to evolving issues in the consumer marketplace. The division also works in cooperation with other public agencies and private entities to improve consumer protection throughout the state.



NEW MEXICO'S COMMONLY REPORTED CONSUMER PROBLEMS

Contests/Sweepstakes
Auto Sales/Auto Repair
Predatory Lending
Debt Collection/Credit
Retail Sales
Construction/Home Improvement
Travel Clubs/Weight Loss Plans
Telecommunications

YEAR IN REVIEW

Dispute resolution - Restitution to consumers: \$1,835,757
Number of written complaints filed: 3,582
Number of community/outreach events FY 2008: 42

The Division's Assistant Attorneys General have pursued enforcement actions to assure that companies doing business in New Mexico comply with the Unfair Practices Act. Legal action was filed against a national debt collection firm for its failure to disclose the fact that debt it was attempting to collect was time-barred and unenforceable; this lawsuit was settled and the company has ceased its collection efforts in New Mexico and agreed that it will disclose when a debt is time-barred and unenforceable should it commence collection efforts in the future.

Legal action is pending against two (2) Santa Fe jewelry stores alleging the sale of items fraudulently identified as made by a prominent Navajo artist; a stipulated preliminary injunction has been entered pending discovery in this matter.

A voluntary assurance of discontinuance was negotiated with a used car dealer who continued to sell cars “as is”, although New Mexico law prohibits such practices.

Legal action is pending against a travel discount company for failing to provide the travel services paid for and failing to accurately represent the discounts available with the membership. A second travel discount company that engaged in similar practices has ceased doing business in New Mexico as a result of the intervention of the Attorney General’s office.

Litigation is also pending against a payday lender based on allegations of threats to arrest the borrower if he did not make his payments.

A settlement was reached in litigation against a New Mexico furniture retailer resolving claims that the retailer delivered damaged furniture, failed to deliver purchases in a timely manner and failed to provide appropriate refunds.



The New Mexico Supreme Court entered a unanimous decision finding that an arbitration provision in a sales contract between Dell Computers and a New Mexico consumer was invalid; stating that “in the context of smaller consumer claims that would be prohibitively costly to bring on an individual basis, contractual prohibitions on class relief are contrary to New Mexico’s fundamental public policy of encouraging the resolution of small consumer claims”; the Attorney General filed an amicus brief

(friend of the court) on behalf of the consumer in this matter.

The Consumer Division staff has been actively working with regulatory agencies, industry representatives and consumer advocates to develop legislative initiatives to respond to many of the economic issues facing New Mexico, including mortgage foreclosure procedures, predatory lending, mortgage loan originator licensing, and consumer protection in financial matters.

CPD continues to monitor the endless number of scams that are increasingly being reported to the office. Through community education and outreach; scam alerts to consumers and media; and a

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counterfeit check database; the Attorney General and his staff provide consumers the information they need to help avoid becoming victims of a scam or identity theft.

LOOKING AHEAD

The staff of the Consumer Protection Division will continue its successful dispute resolution efforts to assure that consumers and business can resolve disputes efficiently and economically. The division is committed to working with other state agencies and interested parties to respond to problems of predatory lending, the impact of mortgage foreclosures and ongoing sharp dealings by some businesses that use deceptive practices to gain unfair and illegal advantages over consumers. The staff will strengthen its outreach and education focus because knowledgeable consumers help level the marketplace-playing-field. But, when violations of the law are identified, the Office of the Attorney General will pursue all available legal remedies to ensure the rights of consumers and advance marketplace fairness throughout the state.



CRIMINAL APPEALS DIVISION

DIRECTOR
MARGARET MCLEAN

VISION

The Criminal Appeals Division is comprised of fifteen attorneys and two paralegals. The division is responsible for all direct appeals from a criminal conviction in the New Mexico Court of Appeals and New Mexico Supreme Court.

Other duties include state habeas corpus proceedings in both the state district courts and New Mexico Supreme Court. Federal habeas corpus cases are another mandatory responsibility and include appearances in the federal district court and the Tenth Circuit Court of Appeals. Last, the division handles the majority of extraordinary writ proceedings before the New Mexico Supreme Court. This practice includes responses and arguments.



In addition to the statutory duties, the division participates in many activities relating to the criminal justice system. Attorneys have presented seminars for prosecutors, victim advocates, and provided support for those individual committed to stopping domestic violence.

The division reviews and lobbies for changes to New Mexico criminal and related statutes during each legislative session. Attorneys serve on the Rules of Appellate Procedure Committee, the DNA Oversight Committee, the Board of Bar Examiners, the Governor's DWI Task Force, and the Access to Justice Commission. Joel Jacobsen has continued his invaluable service to all prosecutors nationwide with his treatise and survey regarding Crawford v. Washington.

Another important function of the division is acting as a liaison for all district attorneys offices throughout the State as well as an in-house liaison for all divisions of the Attorney General's Office. Acting as an "on-call" appellate specialist for other divisions has resolved pending issues during an investigation, pretrial motions, trial, and sentencing.

YEAR IN REVIEW

The caseload is impressive and extraordinary. During the past fiscal year, attorneys have appeared in more than 40 oral arguments throughout New Mexico. More than 400 briefs were filed; 175 memoranda and responses prepared; 200-plus petitions for certiorari and responses in the New Mexico Supreme Court filed; appearances at 91 state habeas corpus evidentiary hearings; 59 answers were filed in federal district court; 19 filings were made in the Tenth Circuit Court of Appeals; and 160 extraditions and renditions were reviewed.

During the past year, attorneys have filed petitions, responses, and amicus briefs in the United States Supreme Court.

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Victoria Wilson was honored to serve a three-month internship at the National Association of Attorneys General in Washington, D.C. Victoria wrote an amicus brief and participated in activities related to practice before the United States Supreme Court.

James Grayson was successful in *State v. Sena*, New Mexico Supreme Court, regarding the type of evidence admissible in a child sexual assault case.

The first-degree murder conviction of Martin Saiz was affirmed after briefing and oral argument in the New Mexico Supreme Court. *Andrew Montgomery* represented the State.

The important issue of final orders and appellate review was resolved in *State v. Lohberger* and *State v. Montoya*, cases decided by the New Mexico Supreme Court. *Ralph Trujillo* prevailed in *State v. Lohberger* and *Ann Harvey* was successful in *State v. Montoya*.

Police officers are often subjected to multiple assaults during the course of their duties. *Anne Kelly* advocated for two separate convictions involving battery of an officer and resisting an officer in *State v. Lopez*. The New Mexico Court of Appeals agreed with the State's position and affirmed the two separate convictions and sentences. The New Mexico Supreme Court addressed an issue of self-defense for aggravated assault against a peace officer in *State v. Ellis*. The Court agreed with *Anita Carlson's* argument that the amount of force used by the officer was reasonable and a self-defense instruction was inappropriate.

Another critical decision impacting law enforcement was *State v. Ochoa*. The New Mexico Supreme Court adopted *Victoria Wilson's* arguments that the misdemeanor/arrest rule did not apply to a traffic stop or investigatory stop.

The broad scope of criminal appeals is demonstrated in *State v. Nguyen*. The New Mexico Court of Appeals decided that the use of single Vietnamese interpreter for the defendant and a juror was not prejudicial. *Max Shepherd* handled this unusual appeal.

Joel Jacobsen argued the conviction for sexual assault by a massage therapist was lawful in *State v. Haskins* in the New Mexico Court of Appeals. Joel has also continued his invaluable service to all prosecutors nationwide with his treatise and survey regarding *Crawford v. Washington*.

In *State v. Burke*, the New Mexico Supreme Court affirmed a conviction for failure to register as a sex offender and clarified the scope of appellate review. *Margaret McLean* handled this appeal.

Of special note is the expertise and diligence of *Mark Lovato*. Mark is the sole attorney who manages and tracks all state habeas corpus petitions, responses and hearings. Special appreciation is extended to *Ann Harvey* and *Max Shepherd* for the review of all extradition and rendition requests. This specialized practice requires cooperation with other states and the Governor's office.

During 2008, the division wished *Katherine Zinn* adieu as she began her retirement. New attorneys have been warmly welcomed: *Francine Baca-Chavez*, *Andrea Sassa*, *Nicole Beder*, and *Farhan Khan*.

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LOOKING AHEAD

The division will be working on bill analyses for the 2009 Legislative Session, continuing to participate in United States Supreme Court cases with the National Association of Attorneys General, and meeting each and every deadline in state and federal courts with the legal expertise and dedication exhibited by each member of the division.



GOVERNMENT ACCOUNTABILITY DIVISION

DIRECTOR
ANN BADWAY

VISION

Good government: to fight public corruption and ensure that state government benefits all New Mexicans. Attorney General King is committed to protecting the citizens of New Mexico from abuses in government. Public corruption poses the greatest single threat to the credibility of government institutions at all levels. As part of his dedication to good government, Attorney General King formed the Governmental Accountability Division (GAD).



The division's mission is to investigate, evaluate and prosecute complaints of public corruption and to provide oversight for the conduct of the people's business. The vigorous enforcement of laws intended to ensure open and clean government benefits all New Mexicans.

THE YEAR IN REVIEW

In the Blackrobe Metro Courthouse fraud case, all eight Defendants, including three who were cooperating witnesses, have now pled guilty. This case was conducted jointly with NMAGO's Government Accountability Division and the New Mexico US Attorney's Office. GAD is pleased to have been able to work cooperatively with our federal counterparts on this important public corruption prosecution effort. All eight Defendants will be sentenced in early 2009, and significant prison sentences are expected.

Although a part of the West Las Vegas School Board case was tried earlier this year, the remaining fraud and conspiracy charges against three co-defendants is set for two weeks of trial in May, 2009.

GAD has other criminal matters in various stages of preparation.

LOOKING AHEAD

The GAD is now fully operational with the addition of a paralegal in March of 2008. Staff now includes 3 lawyers, a paralegal, a computer forensic analyst and a forensic auditor.

The division has established a working group composed of GAD staff, the Department of Finance and Administration and the State Auditor's Office to discuss common concerns impacting our respective abilities to address and respond to complaints regarding possible abuse of authority by public bodies. The vision, on a case by case basis, is to develop a collaborative response to such complaints. The Government Accountability Division is pleased that these agencies have agreed to commit the time and resources necessary to the working group's efforts. This working group will help leverage scarce resources to more effectively resolve troublesome and recurring problems.

INVESTIGATIONS DIVISION

DIRECTOR
EARL HOLMES

VISION

The Investigations Division is the law enforcement element of the Attorney General's Office. The division consists of three individual units of highly experienced investigators with diverse professional investigative backgrounds. The agents have many years of previous experience from federal, state, and local assignments within and outside of New Mexico. This accumulation of talent allows the Office of the New Mexico Attorney General to investigate extremely complex cases with a high degree of precision and accuracy. These experienced special agents consistently present investigated cases to prosecutors that result in indictments and convictions.



The Government Accountability Unit was specifically developed by Attorney General Gary King and launched on July 1, 2007 to address alleged abuses within the state government of New Mexico. The primary mission of this unit is to identify, investigate and provide quality criminal cases to the Government Accountability Division prosecutors that involve state corruption and fraud. The unit is comprised of highly trained senior law enforcement officers, specifically selected for this important mission. Currently, several government corruption cases are open and active at various levels of completion. The unit is now fully staffed with the addition of dedicated professional audit and forensic computer specialists.



The Special Investigations Unit is the general investigation arm of the Attorney General's Office. Special agents assigned to this unit focus on economic related crimes such as forgery, fraud and embezzlement. Agents also have the knowledge and experience in violent crimes, several of which are currently being investigated. Since the unit accepts all categories of crimes to investigate, agents have a broad range of investigative experience. Case assignments can vary from election/voter law-related complaints to sex crimes. Agents are frequently called upon to assist other law enforcement agencies, district attorneys and any state or local government department that may request help. The special investigations unit supports the Attorney General's Animal Cruelty Task Force and has its own internal forensic and computer auditors that support financial investigations.

The Internet Crimes Against Children (ICAC) Unit was started in 2004 with funding from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The Attorney General's Office received a second supplemental grant in September of 2008 that will enable the unit to provide specific training and mentoring of law enforcement agencies and district attorneys

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statewide. This unit is part of a larger ICAC Task Force consisting of a multi-agency network of law enforcement personnel whose mission it is to locate, track and arrest Internet child sexual predators and child pornographers.

YEAR IN REVIEW

Starting in 2008, the newly formed Governmental Accountability Unit became fully staffed and functional. Several substantial cases were immediately assigned by the Attorney General. The team of agents worked through a number of logistical problems to complete several major in-depth criminal cases that have been referred to Government Accountability Division prosecutors for review and indictments.

The Special Investigations Unit continued to work jointly with state agencies, such as the Tax and Revenue Department and Secretary of State's Office, to successfully investigate citizen complaints and criminal cases. Agents were instrumental in identifying a specific target for the Illinois and Oregon state attorneys general offices in a multi-million dollar civil filing resulting in a personal subpoena service to the target, who had been avoiding all proceedings.



Since this unit provides general investigative needs, the agents have investigated complaints of music and video pirating, state welfare fraud, internal corporate embezzlement, voter fraud, animal abuse, tax related fraud, aggravated assault, consumer fraud and an array of other criminal violations during the past year. Special Investigations agents have supported all the divisions within the Attorney General's Office with supplemental criminal, civil and internal investigations.

The Internet Crimes Against Children unit received a federal supplemental grant of \$430,000 starting in September, 2008. The Attorney General requested and received from the 2008 State Legislature two permanent ICAC special agent positions, which were previously funded by the grant. This allows the ICAC unit to be a permanent resource for increasing investigative and prosecution capabilities to local and state law enforcement agencies and the state's district attorneys. Starting with this new supplemental grant, the unit will employ a special agent to be fully dedicated to statewide ICAC Task Force coordination duties. This new coordinator will identify specific training and equipment needs for participating affiliate law enforcement agencies and district attorney offices. The goal is to increase the statewide efficiency and effectiveness of ICAC investigators to produce high quality criminal cases to their respective district attorney. ICAC will work along side the New Mexico's district attorneys and assist them with legal requirements and tools to obtain successful convictions. The ICAC unit also conducts continuing statewide public Internet Safety presentations for teens and pre-teens to help them avoid Internet predators. Numerous publications about reporting child cyber-predators are now available through the Attorney General's Web site.

LOOKING AHEAD

The New Mexico Attorney General's Investigations Division will continue to upgrade and modernize its equipment and investigative methods. Agents will be given additional training that will keep them current with the ever changing computer and legal environments. The division has taken assertive steps to communicate and cooperate with other federal, state and local investigative agencies. Agents now participate in the New Mexico Gang Task Force, International Association of Financial Criminal Investigators, Anti-terrorism Advisory Council, New Mexico Police and Sheriff Association, and the Attorney General's Animal Cruelty Task Force. The division believes in the importance of law enforcement working together across jurisdictions and governmental levels to better serve the citizens of New Mexico with the highest quality civil and criminal investigations.

New Mexico 

*** Members**

ICAC
INTERNET CRIMES AGAINST CHILDREN
TASK FORCE

Report cyber crimes to 1-800-843-5678
www.CyberTipline.com
Supported by the Office of New Mexico
Attorney General Gary K. King

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Members:
1st Judicial District Attorney's Office
2nd Judicial District Attorney's Office
3rd Judicial District Attorney's Office
4th Judicial District Attorney's Office
5th Judicial District Attorney's Office
6th Judicial District Attorney's Office
7th Judicial District Attorney's Office
8th Judicial District Attorney's Office
9th Judicial District Attorney's Office
10th Judicial District Attorney's Office
11th Judicial District Attorney's Office
12th Judicial District Attorney's Office
Alamogordo Police Department
Albuquerque County Sheriff's Department
Albuquerque Police Department
Carrizozo Police Department
Crown Point Police Department
Department of Corrections, Probation and Parole
Department of Defense, Office of the Inspector General
Federal Bureau of Investigation
Farmington Police Department
Hobbs Police Department
Immigration and Customs Enforcement
Las Cruces Police Department
Mojave Police Department
New Mexico State University Police Department
Rio Rancho Department of Public Safety
Roswell County Sheriff's Department
Roswell Police Department
Silver City Police Department
Socorro County Sheriff's Department
Socorro Police Department
Tularosa County Sheriff's Department
United States Attorney's Office
University of New Mexico Police Department
Valencia County Sheriff's Department

LITIGATION DIVISION

DIRECTOR
JOCELYN TORRES

VISION

The vision of the Litigation Division of the Attorney General's Office is to provide professional legal representation for State Officials and State Agencies. The division seeks to protect New Mexico citizens, when necessary, by initiating lawsuits on behalf of the State. Finally, the division seeks to conduct administrative prosecutions in an effective and ethical manner that furthers the policy goals of the various Boards and Commissions and also protects the due process rights of licensees.



YEAR IN REVIEW

This division represents the citizens of the State of New Mexico in general litigation, administrative prosecutions and representation of judges and state officials on civil writs. The division's success ratio remains consistently positive. At the conclusion of 2008 the division consisted of 11 attorneys and three paralegals.

In 2008, the division represented state officials, judges, agencies, boards and commissions when those entities were sued in their official capacities in non-tort claims. The division also served as administrative prosecutor to 32 boards and commissions primarily for violations of the Uniform Licensing Act. Sanctions imposed ranged from fines to revocation of state-issued licenses. The division represented many judges and state officials whose decisions were challenged by writs of superintending control or by mandamus in the New Mexico Supreme Court and various district courts.

This division enforces the Tobacco Industry's Master Settlement Agreement, which includes filing actions against manufacturers who fail to comply with enforcement statutes and litigation against those who participate but fail to pay the statutory amounts due. The division also accepts service of process for the state and serves as a resource for all state departments. It monitors special commission attorney assignments and defends appeals in division cases.

During 2008, at least 20 litigation and 233 board and commission prosecutions were concluded. This division monitored 87 writ filings in the Supreme Court and actively represented state officials and judges in 42 writ proceedings.

Division Highlights:

The Division Director Jocelyn M. Torres has handled litigation and office related matters and has assisted in developing the agency's e-discovery policy and revising the Attorney General's Guide to Administrative Discipline. Litigation attorneys also include David J. Tourek, Eric R. Miller, Scott

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Fuqua, Nan Erdman, Anderson E. Clipper, Matthew Jackson and contract attorney Jerome Marshak. Paralegals include Claudia J. Ravanelli, Rose Butler and Lynne Laier.

Case Highlights:

Elane Photography v. Francie Cordova, challenged the Human Rights Division's investigation of alleged sexual orientation discrimination. The successful efforts of David J. Tourek resulted in the lawsuit's dismissal on federal abstention grounds.

Cuba Soil and Water v. State Treasurer contested the state legislature's method for distributing the federal government's payments for mineral development. Eric R. Miller prevailed in having the action dismissed by the U.S. District Court and affirmed by the Tenth Circuit Court of Appeals.

National Association of People with Disabilities v. Mary Herrera challenged a state law regulating the manner in which non-governmental groups register voters. Scott Fuqua's successful defense resulted in the U.S. District Judge James Browning's denial of plaintiffs' claims.



Nan Erdman is handling two large lawsuits against Otho-McNeil (Risperdal) and Eli Lilly (Zyprexa) for alleged fraudulent marketing of newer anti-psychotic drugs that sometimes caused diabetes. Ms. Erdman is also handling several *qui tam* cases involving the 2007 Fraud Against Taxpayers Act.

Jerome Marshak and Eric R. Miller defended the ten year old *Starke v. Human Services Department* case which was recently dismissed by District Judge Linda Vanzi.

Anderson E. Clipper has obtained a \$10,000.00 settlement in a Thanatopractice Board case and has settled seven Financial Institutions Division cases involving broker misconduct.

Matthew Jackson has assisted with the e-discovery policy and various litigation cases. Mr. Jackson has also handled licensing prosecutions for various boards and commissions, including the Chiropractic and Law Enforcement Academy Boards.

Paralegals Claudia J. Ravanelli, Rose Butler and Lynne Laier assist the director and other attorneys in handling all matters pertaining to the work of this division.

Bankruptcy:

James C. Jacobsen represents the bankruptcy section, which handled 103 new bankruptcy cases and proceedings, in addition to pending cases. His work has resulted in the Taxation & Revenue Department's recovery to date of \$1,378,932.11 in FY 2009, and \$964,613.23 in FY 2008. This section assists other divisions and state agencies in pursuing debtor claims and recently obtained a denial of the bankruptcy discharge against a debtor pursued by the Consumer Division for

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defrauding homeowners.

Antitrust:

Deyonna Young handled the 2005 multi-state Dynamic Random Access Memory (DRAM) litigation involving corporate memory chip price-fixing. Discovery activities significantly increased and involved several depositions and interrogatories. Due to interlocutory appeals in closely related cases, the trial will likely occur in 2009. She prepared an extensive report examining unusual developments in gasoline and diesel markets for the State House of Representatives. New Mexico consumers benefited from this section's joinder in a successful multi-state objection to a proposed cosmetics industry settlement, which yielded a portion of the \$124,000 attorney fee award.

LOOKING AHEAD

The Litigation Division will pursue its mission of providing excellent legal representation for New Mexico agencies and officials. This Division also seeks to expand its role in initiating lawsuits generated by other Divisions of the Attorney General's Office. The furtherance of the State's legal interests in a professional and ethical manner remains its primary goal.



MEDICAID FRAUD & ELDER ABUSE DIVISION

DIRECTOR
ELIZABETH STALEY

VISION

The Medicaid Fraud and Elder Abuse Division (MFEAD) of the Attorney General's Office investigates and prosecutes the abuse, neglect and exploitation of Medicaid recipients as mandated by federal and state law. Division prosecutions protect residents in care facilities that receive Medicaid funding as well as the elderly, developmentally disabled and others who receive Medicaid services. Medicaid payments that are made improperly to providers are recovered by MFEAD and returned to the New Mexico Human Services Department to be used to provide more Medicaid services. Federal law requires each state that receives Medicaid funds to have a federally certified Medicaid Fraud unit that is completely independent of the state agency that receives and disburses Medicaid funds to providers.

This division is comprised of 21 positions, including attorneys, nurses, auditors, investigators and legal support staff. The following are MFEAD's main goals:

- To ensure the integrity of the Medicaid program and the well-being of Medicaid recipients by investigating and prosecuting those who attempt to abuse, neglect or exploit its recipients or defraud the program.
- To assure the integrity of the Medicaid Program through civil and criminal prosecutions as it changes its method of service delivery to a managed-care model.
- To protect of residents in facilities or those receiving Medicaid-funded in-home services in the community.
- To establish collaborative relationships in these areas with state and federal agencies through presentations, task forces and meetings.
- To continue to seek recoupment from pharmaceutical companies that violate Medicaid regulations and to participate in multistate and qui tam litigation to recover funds owed the New Mexico Medicaid Program.



YEAR IN REVIEW

The Medicaid Fraud and Elder Abuse Division received more than 330 complaints of fraud, abuse or exploitation in 2008 by care or service providers, family members or people who prey on the elderly, ill or disabled. Those complaints came from a variety sources, including state agencies, Medicaid recipients and their family members and law enforcement agencies. All complaints are reviewed by an attorney and an investigator. The Division makes referrals to appropriate agencies of complaints that are outside its jurisdiction and informs the complainants of the actions that Division staff is taking.

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2008 Medicaid Fraud Unit Highlights:

- 32 new investigations of fraud, abuse or exploitation opened
- Completed 31 ongoing investigations
- 2 convictions (one for the financial exploitation of developmentally disabled client and one for the abuse and neglect of a developmentally disabled resident by her caregiver).
- 4 indictments
- Collections of more than \$1.43 million in Medicaid overpayment
- Identification of more than \$11.3 million in Medicaid program savings

MFEAD also increased emphasis on appropriate criminal prosecution of providers who commit monetary Medicaid Fraud and abuse and neglect of Medicaid recipients. Maltreatment of developmentally disabled New Mexicans was a special focus, resulting in convictions of care providers for financial exploitation and abuse and neglect of developmentally disabled clients. Criminal charges were brought in December against a care giver in a DD community program. Additionally, the division increased prosecution of abuse and neglect in nursing homes with heightened concern for unnecessary deaths.

2008 saw active outreach to and collaboration with other agencies that deal with Medicaid fraud, abuse or neglect to address common issues and facilitate joint prosecutions. This outreach resulted in the significant increase in the number of complaints received and investigated by the division in 2008. MFEAD and the US Attorney's Office reactivated the joint Health Care Fraud Task Force and the division actively participates in the state multi-agency health fraud task force.

Accomplishments included the development and distribution of four new brochures that provide substantive information regarding the prevention of elder abuse; choosing a nursing home; Medicaid options and how to determine the levels of care available to aging New Mexicans.

The Division Director was appointed to the Elder Abuse and Neglect Committee of the National Association of Medicaid Fraud Control Units and is participating in the preparation of a training manual to improve the quality of elder abuse and neglect prosecutions in Medicaid Fraud programs nationwide.

In 2008, a certified public accountant and two Registered Nurse Medical Care Investigators were hired to fill vacant positions. These staff have made a demonstrable improvement in the division's investigations.

LOOKING AHEAD

The completion of the specialized multidisciplinary team that works closely to investigate and prosecute Medicaid Fraud.

Active participation in the newly formed Multistate Qui Tam Working Group to maximize monetary recovery for the Medicaid Single State Agency utilizing Medicaid laws and regulations and the Fraud Against Taxpayers Act.

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Continued efforts to cement the relationships between agencies that deal with Medicaid matters through direct contact, meetings and investigation assistance with the goal of a continued increase the number of investigation referrals received.

The Medicaid Fraud & Elder Abuse Division will continue to provide updated MFEAD presentations and handouts to providers and clients to increase awareness of MFEAD functions and capabilities among Medicaid recipients, family members and providers. Also planned; proactive facility visits to ascertain regulation compliance and recipient safety.



SPECIAL PROSECUTIONS DIVISION

DIRECTOR
MARY HELEN BABER

VISION

The Special Prosecutions Division, headed by Mary Helen Baber, prosecutes priority cases designated by Attorney General King, and serious felony offenses such as homicides, sex crimes and crimes against children. This Division has placed a particular emphasis on Internet Crimes Against Children.



THE YEAR IN REVIEW

DEATH PENALTY CASES

The Special Prosecution Division is successfully completing the prosecutions of the Santa Rosa death penalty cases. Following a Supreme Court ruling, and the lack of funding from the state for defense counsel pursuant to that ruling, two of the Santa Rosa cases had the death penalty portion of their case dismissed. Of these two cases, one was resolved by plea agreement in May 2008. The other case went to trial in November, 2008 and on December 5th, an Albuquerque jury convicted Robert Young, a leader in a Santa Rosa prison gang, for the killing of prison guard Ralph Garcia in 1999. Due to threats to witnesses and to the prosecutors, several law enforcement agencies including AG Investigations secured the safety of the prosecutor Francisco Prieto during the three-week trial. An AG legal assistant, who asked not to be identified, provided outstanding support by tracking down and producing hostile witnesses for testimony at trial. The jury returned guilty verdicts on felony first-degree murder and seven additional felonies. Young is facing more than 30 years in prison plus habitual offender charges.

STATE TREASURER (FED IV) CO-DEFENDANTS

All four of the co-defendants in the federal State treasurer trial were prosecuted by the Special Prosecutions Division of the Attorney General's Office. Each co-defendant was convicted of a second degree felony in state district court. The sentences ranged from probation for the co-defendant who cooperated with the government and nine years in prison.

INTERNET CRIMES AGAINST CHILDREN (ICAC)

The Special Prosecutions Division, working collaboratively with the ICAC unit of the Attorney General's Investigations Division, indicted and convicted several Internet child predators. In one unusual case, our office arrested and indicted a father and son Internet predator team. Both will serve prison terms pursuant to guilty pleas obtained by prosecutor Raul Torrez. Theresa Martinez, legal assistant, helped coordinate ICAC cases and other significant cases in the special prosecution division while providing services to several other AG divisions

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LOOKING AHEAD

* RATON CITY POLICE TASER CASE

The high-profile and controversial Raton City Police taser case was transferred to the Attorney General's office from the Taos DA's office a few months after the November 2007 incident in which 23-year-old Jesse Saenz died. In December 2008, Carlos Gutierrez, supervising prosecutor and Raul Torrez presented this challenging case to a special grand jury in Raton. Grand jurors heard 3 ½ days of testimony to consider whether three city officers used excess force when they used tasers on Saenz while he was handcuffed and restrained in the back of a police unit. Saenz died while in police custody. Raton grand jurors returned indictments of involuntary manslaughter against all three city officers.

* VICTIM ADVOCACY

Elora Martinez, 2007 Legal Assistant of the Year, has taken on leadership in the division for victim advocacy. She initiated and presented a training program for victim advocates for the Association of District Attorneys. This popular training will be extended statewide in the up-coming year.

* GURULE and DAVIS CASES

Division prosecutors Shannon Murdock and Mary Helen Baber, are co-counsel with the Second District Attorney's Office in a child sexual abuse case that was discovered and indicted as a result of the extraordinary investigative skills of AG Special Agent Lois Kinch. While investigating an Internet child pornography case, Agent Kinch used her skills to retrieve "permanently deleted" photos from a camera which was seized along with the computer. The photos Agent Kinch retrieved are the heart of the prosecution case. The matter is expected to go to trial sometime in 2009.

* SOUTAR CASES

Michael Soutar, the "Casanova Conman", is awaiting jury trials on his escape charge in Albuquerque and tax fraud in Santa Fe. Soutar was convicted at jury trial in 2007 by prosecutors Jody Curran and Patrick McNertney, and sentenced to more than 30 years in prison. Paralegal Loretta Archuleta provided legal assistance that contributed to the successful prosecutions. Soutar's 2007 convictions are on appeal.

* SANTA ROSA PRISON RIOT

David Sanchez, the defendant in the final Santa Rosa prison riot case, is pending trial in 2009.

The Special Prosecutions Division will continue to review, investigate and prosecute challenging and high impact cases specifically targeted by Attorney General King.

VIOLENCE AGAINST WOMEN DIVISION

DIRECTOR
ANN BADWAY

VISION

A top priority of Attorney General Gary King is the protection of our citizens who are most vulnerable. The Violence Against Women (VAW) Division prosecutes specific crimes including domestic violence and sexual assault against women and children. The division also helps facilitate statewide training for law enforcement officials and other professionals. Incidents in New Mexico of domestic violence, intimate partner violence and stalking are alarmingly high. Nationally, New Mexico consistently ranks near the top for incidents of domestic violence, including women murdered by men and sexual assaults. In New Mexico, one in four adult females has been the victim of stalking. The job ahead is clear.



THE YEAR IN REVIEW

Department of Justice Grant to Encourage Arrest Policies and Enforcement of Protection Orders

This 1.4 million dollar grant project involves an intensive study of enforcement of orders of protection in both state and tribal jurisdictions in our state. A task force, comprised of representatives of law enforcement, prosecution and defense, judiciary, civil legal advocates,



emergency dispatch, therapists, victim advocates and other stakeholders has worked to identify and adapt replicable best practice models for enforcement and develop implementation strategies. In the past year, the research team conducted approximately 90 key informant surveys in the four areas selected for intensive study. Surveys were conducted with members of the judiciary, prosecution, law enforcement, civil legal aid and victims' advocacy organizations. More than 500 surveys were collected in

this process. Analysis of this data has begun and from this analysis, the Best Practice model will be developed.

A partnership was developed between the New Mexico Attorney General's Office and the New Mexico Sentencing Commission/Justice Information Sharing Council to enhance their existing Consolidated Offender Query. This partnership will allow the JISC to develop a Web-based Emergency Order of Protection System for statewide use by NM law enforcement officers, including Tribal Police. The online application will also officers to enter information into the system with

approval from the judge on duty. Emergency orders of protection information will be available in real time. This level of technology will be a valuable asset in the statewide enforcement of emergency orders of protection and victim/petitioner safety.

Training on best practice model will be conducted in 2009.

Attorney General's Family Violence Protection Act Task Force

Attorney General King created the task force in 2007. The VAW Division has been heavily involved in the task force review of the Family Violence Protection Act and making legislative recommendations to ensure that the Act continues to be in compliance with federal funding mandates. Sponsored by Attorney General King during his time as a member of the New Mexico State Legislature, this Act has been the primary tool for fighting domestic violence in our state since 1987. As a result of the intensive work and collaboration by the task force, legislation was proposed in the 2008 legislative Session. The funding at stake supports sexual assault programs, domestic violence shelters and programs and other services statewide. Ultimately, two bills presented to the Legislature and recommended by the task force were passed, thus ensuring that the State of New Mexico remains in compliance with Federal guidelines and laws.

LOOKING AHEAD

Legislative Initiatives: Three bills will be presented in the 2009 Session. The first bill will amend the state statute relating to HIV testing. The others will help solidify New Mexico's compliance with Federal guidelines. The Family Violence Task Force continues to meet and will present updates to the Family Violence Protection Act in the 2009 Session.



WATER, ENVIRONMENT & UTILITIES DIVISION

DIRECTOR
STEPHEN FARRIS

VISION

The Water, Environment & Utilities Division (WEUD) works to protect, preserve and recover New Mexico's beautiful but fragile environment as well as our precious water and other natural resources. Division staff accomplish this task through litigation when necessary and through unique cooperative efforts with stakeholders such as farmers environmentalists, municipalities, industry and state and federal government agencies. In addition, WEUD will continue to represent the interests of New Mexico's residential and small business consumers in matters of natural gas, electricity and telecommunications regulation.



THE YEAR IN REVIEW

WATER AND ENVIRONMENT

Interstate Compacts

The State of New Mexico intervened in the Grand Canyon Trust case in federal district court in Arizona along with the other six states who are parties to the Colorado River Compact – Arizona, California, Nevada, Utah, Colorado and Wyoming. The case is a challenge by environmental groups to the operation of federal facilities on the Colorado River. The state intervened to defend existing environmental protections and to ensure that the compact was not violated. In addition, the Attorney General's Office continues to coordinate the multi-year legal and technical work necessary to defend against threatened interstate litigation on the Lower Rio Grande.

Desert Rock

On July 31, 2008, the Environmental Protection Agency (EPA) issued a permit under the Clean Air Act for the construction of the Desert Rock Energy Facility, a 1500 MW coal-fired power plant proposed to be built on the Navajo Reservation approximately 25 miles southwest of Farmington, New Mexico. New Mexico considers EPA's permitting process for Desert Rock to have been legally deficient in several ways. For example, EPA issued the final permit without the consultation with the U.S. Fish & Wildlife Service that is required under the Endangered Species Act. Also, EPA based its decision to issue the final permit on a defective analysis of Desert Rock's impacts on ozone levels in the Four Corners. Further, EPA issued the permit without giving any consideration to Desert Rock's emissions of carbon dioxide.

WEUD is lead counsel for the State in an appeal of EPA's permitting decision to the Environmental

Appeals Board (EAB), the administrative law body that has primary jurisdiction over such appeals. WEUD has undertaken this appeal with assistance from attorneys and staff at the New Mexico Environment Department. New Mexico filed its initial petition for appeal on August 15, 2008, and filed its brief in support of its appeal on October 2, 2008. New Mexico has asked that the EAB remand the permit with an order compelling EPA to perform the proper analyses and incorporate the findings of those analyses into the terms of the permit.

Desert Rock presents issues of great consequence for New Mexicans' public health and the environment. Even without Desert Rock's significant emissions of ozone precursors, recent evidence shows San Juan County has exceeded ozone levels permitted under EPA's national standards. Desert Rock's emissions would increase ozone levels in San Juan County, further exacerbating the region's violation of the national standard. Desert Rock's carbon dioxide emissions would essentially undo the State's concerted efforts to reduce its emissions of greenhouse gases. Desert Rock would also emit significant amounts of mercury when mercury levels in most major water bodies in the area already have levels of mercury high enough to trigger a fish consumption advisory from the New Mexico Environment Department. Desert Rock's emissions will also worsen air quality at some of New Mexico's most significant natural and cultural sites, including Bandelier National Monument and the San Pedro Parks Wilderness. Finally, Desert Rock's emissions will pose a threat to several endangered species that live in New Mexico.

Office of the Natural Resources Trustee (ONRT)

WEUD continues to provide legal counsel for the ONRT in support of its efforts to recover Natural Resource Damages (NRD) at hazardous waste sites throughout the State. These efforts include ongoing negotiations to settle NRD claims for substantial groundwater injury at a complex of Phelps-Dodge mines near Silver City, working through the final stages of an NRD settlement at the Molycorp mine site near Red River, New Mexico, and the beginning of an NRD assessment at the Los Alamos National Laboratory.

State v. Menefee Mining Corporation

WEUD serves as co-counsel with the New Mexico Environment Department in a suit filed on September 11, 2008 to enjoin operation of and collect penalties for an illegal humate processing facility near Cuba, New Mexico.

ASARCO Bankruptcy

The State of New Mexico reached settlement with ASARCO for claims for response costs to clean up polluted sites and for natural resource damages. The federal bankruptcy judge in the case has approved that settlement.

State of New Mexico v. Amerada Hess et al., (MTBE Case)

The Attorney General's Office reached a settlement with approximately half of the numerous defendants in State of New Mexico v. Amerada Hess et al. The Attorney General brought suit against these companies for damages to soil and groundwater caused by the release of MTBE into the environment in New Mexico. The litigation continues against the non-settling defendants.

ENSURING INTEGRITY AND SERVICE FOR NEW MEXICO

UTILITIES

PNM Cases

There have been several major cases handled by the utility section of WEUD during the year. Probably the largest case was Public Service Company of New Mexico's (PNM) electricity rate case, wherein PNM requested a rate increase of approximately \$80 million. The Attorney General intervened to represent residential and small business consumers. Expert witnesses for the Attorney General filed testimony and opposed any rate increase, and further testified that any increase should not affect the cost of the first two hundred kilowatt hours of use for each residential customer, which is priced at 6.7 cents per kWh. After hearings, the Public Regulation Commission (PRC) granted a rate increase of about \$30 million. The commission agreed with the Attorney General that the price of the first block of power should not increase. The case took almost a year to litigate. PNM, on September 22, 2008, filed another electricity rate case, this time seeking an increase of \$123 million. It is expected that the case will require 9-12 months to complete.

In the first of these rate cases, PNM also sought authority to re-implement a fuel and purchased power cost adjustment clause, whereby costs of fuel for electricity generating plants is recovered in a monthly fuel clause, rather than base rates. Although the PRC rejected PNM's application in its order on the rate case, the company refiled for a fuel clause a few months later when its bond rating was downgraded to one level above junk status. PNM asserted that without a fuel clause its cost of borrowing would increase, leading to higher rates. The Attorney General's office negotiated with PNM for limits on the fuel clause to protect consumers, including a price cap of one cent per kilowatt hour, one hundred percent credit to consumers for off-system sales, no capacity costs for purchased power could be included without commission approval, and the clause could last for no more than two years. When the PRC granted PNM's application, it included the conditions negotiated by the Attorney General.

Early in 2008, PNM applied to the PRC to sell its natural gas utility that serves more than one hundred communities in the state, including Albuquerque and Santa Fe. The Attorney General, PRC utility staff and other parties entered into negotiations with PNM and the proposed new owners of the utility, New Mexico Gas Company (NMGC), to establish conditions for the sale. In August a settlement was reached whereby PNM and NMGC agreed that, as a condition of the sale there would be no gas rate increase for three years, the utility would remain headquartered in Albuquerque under the new ownership, there would be no layoffs or closing of field offices for three years, electricity customers would not be harmed by the sale due to increased cost allocations, and employee retirement and pension programs would be protected, among other things. A hearing on the settlement was held in September.

In 2007, the Attorney General and the PRC utility division staff filed a petition with the commission to investigate the circumstances and cost of PNM's purchased power agreement for the Valencia Black Hills gas-fired power plant. After conducting discovery and otherwise investigating the costs of the plant, the Attorney General proposed to settle the controversy about the plant by bringing the Valencia plant, as well as two other gas plants, Luna and Lordsburg, into rates as a single settlement. The settlement will provide PNM with sufficient generation through at least 2013 at a cost to consumers significantly below the national average cost for new generation

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TELECOMMUNICATIONS

08-00189-UT -- The AFOR Enforcement case: Qwest has omitted reports and appears to have purposely obfuscated its Quality of Service reporting. This data gives the Public Regulation Commission (PRC) and advocates a picture of the health of Qwest's network. Also at stake may be significant administrative fines.

08-00197-UT -- The Promotions case: Qwest's alternative form of regulation (AFOR) allows it to announce promotions that almost instantly take effect. However, they may be suspended if a competitive local exchange carrier objects. A legitimate basis for objecting is that prices offered do not cover the cost of the service that is the subject of the promotion. The AG's Office intervened to determine if anti-competitive predatory pricing on the part of Qwest Corp is occurring.

08-00206-UT – The Impairment case: The Federal Communications Commission allows an Incumbent Local Exchange Carrier (ILEC) such as Qwest, to obtain regulatory forbearance in certain wire centers if certain conditions are met. These conditions concern the number of particular types of circuits that are sold to business customers. The AG intervened in this case to protect New Mexico's fledgling market in telecommunications service.

TITLE INSURANCE

07-00095-UT – Title Insurance Data Gathering: The AG proposed a new rule that would tighten data gathering requirements for title insurance agents. This rule would have addressed the issue of “reverse competition and potential over-counting of expenses, thereby resulting in lower rates to the consumer. However the Superintendent of Insurance has placed the proposal in abeyance.

07-00247-IN and 08-00243-IN – Title Insurance Rate Cases: The AG intervened to advocate for lower title insurance rates.

LOOKING AHEAD

Most work of the Water, Environment and Utilities Division is ongoing and long term. Some litigation can take many years. Additionally, WEUD's collaborative efforts to protect New Mexico's interests involve projects that require long-term planning and implementation. These efforts are continuing and, as new issues arise, they will be handled in ways that protect and preserve New Mexico's environment, natural resources, utility consumer interests and the health and welfare of the state's residents.

PROTECTING THE YOUTH OF NEW MEXICO

In 2008, the New Mexico Attorney General's Office created and participated in several initiatives targeting the youth of the state.

Internet Safety

Last year, the New Mexico Attorney General's Office continued its Internet Safety outreach and education. The Communications Division partnered with the FBI, U.S. Attorney's Office and U.S. Department of Homeland Security to develop an Internet Safety presentation that will be used by all partnering organizations. The presentation, accompanied by the Internet Safety guide for teens and parents, targets middle school students and covers topics such as cyber predators, cyber bullying, and protecting personal information online. In 2008, the Office reached 6,882 students and parents with Internet Safety education.



Underage Drinking

New Mexico Attorney General Gary King took important steps in 2008 to address the problem of underage drinking. Attorney General King and 13 other attorneys general reached an agreement with MillerCoors to discontinue producing the pre-mixed alcoholic energy drink, Sparks. The mistaken belief that caffeine will counteract the intoxicating effects of alcohol has made it popular among young people. Attorney General King has also developed legislative proposals to combat underage drinking such as prohibiting underage intoxication, regulating alcohol advertising to minors, and banning caffeinated alcohol energy drinks. These proposals are being presented to the 2009 Legislature.



Methamphetamine

The problem of Methamphetamine abuse continues to negatively affect New Mexico families. In response, the Attorney General's Office began a Meth prevention and education initiative. In September, 2008, Attorney General King joined the Boys and Girls Clubs in unveiling the MethSMART© methamphetamine abuse prevention program that is being initiated in several locations across the state. The Office has also created its own

Methamphetamine education and outreach program. The program utilizes an educational guide and a visual/audio presentation which focuses on educating teens and parents on the effects of Meth. Parents are urged to use the guide and information from the presentation to talk to their teens about Meth.



2008 IN PICTURES



Attorney General Gary King and Attorney General of Chihuahua Patricia Gonzales Rodriguez signing an International agreement to address human trafficking

Statewide Animal Cruelty Taskforce training



2008 Special Olympics Torch Run

ENSURING INTEGRITY AND SERVICE FOR NEW MEXICO

MethSMART©
methamphetamine abuse
prevention program with Boys
and Girls Clubs of New Mexico



New Mexico Municipal League
Annual Conference

NetSmartz Conference



