

The Seattle Public Library Museum and Reading Room shall be open for use to the public under such regulations as the City Council shall by ordinance prescribe.

Article XV

Seattle City Attorney
Annual Report 2013

The Law Department.

Section 1. The Law Department of the City of Seattle shall consist of a Corporation Counsel and a City Attorney.

Section 2. The Corporation Counsel shall be elected by the Electors of the City at the General Municipal Election.

for in this Charter a ...



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STATEMENT FROM THE CITY ATTORNEY



The last year of my first term as Seattle's City Attorney demonstrates that lasting change requires focused, tenacious leadership. While 2012 brought Seattle a groundbreaking consent decree with the U.S. Department of Justice (DOJ) to begin reforms at the Seattle Police Department (SPD) and an historic vote on Initiative 502 to begin the end of the insane

War on Drugs, 2013 witnessed crucial struggles to preserve these progressive policy victories.

Police Reform and Culture and the DOJ/SPD Consent Decree

With many of the pieces of *police reform* seemingly in place, a cautionary (though by no means pessimistic) word about

SPD TIMELINE



STATEMENT FROM THE CITY ATTORNEY *continued*



Pete with City Councilmember Nick Licata in Licata's office

the *police culture* at SPD is appropriate as I close out not just another year in office, but fully one dozen years in civilian oversight of the police.

Resistance to change is a natural condition among human institutions. GE Chairman and CEO Jack Welch admonished organizations to “change before you have to.” Meaningful change in the policing culture at SPD has eluded Seattle for decades, even when championed by our finest reform-

minded professionals from within the department. We agreed on reform in 2012 only at the brink of all-out litigation with DOJ—only to battle almost immediately thereafter over the appointment of Merrick Bobb, a consummate professional with the expertise needed to ensure lasting reform, as federal monitor.

On March 12, 2013, the parties appeared before U.S. District Judge James Robart for a pivotal status conference. The Court stressed that the SPD must attain full and effective compliance with the Consent Decree and fully approved Bobb’s proposed monitoring plan. The Court took exception to a lawsuit filed against the City and the monitor by the police unions. My office had removed this state court complaint to federal court; the unions voluntarily dismissed it soon after. The former mayor turned his attention to reelection, and SPD would finally change *because it had to*.

Today, I am optimistic. In charge of the SPD is Chief O’Toole, a law enforcement professional with a long and successful career as a police change agent from New England to Ireland. She is aided by the active oversight of the federal court and its monitor and by the ongoing involvement of City Council, DOJ and the CPC. As Seattle’s lawyer, I pledge to provide Chief O’Toole and the SPD the best and most thoughtful and thorough legal advice and counsel my staff and I can muster.

SPD TIMELINE



STATEMENT FROM THE CITY ATTORNEY *continued*



Journalists from a French broadcast network interview Pete about I-502

As the City’s misdemeanor prosecutor, however, my first concern must be for public safety. Allegations of depolicing, insubordination and the apparent inability to control expenditures for overtime staffing must be taken seriously. On the other hand, Seattle’s police force is no different from other departments undergoing mandatory reform; confusion and frustration is a typical response among the rank and file. In the same way that Seattle must move beyond the false choice between public safety and police accountability—indeed, you cannot have one without the other—so must

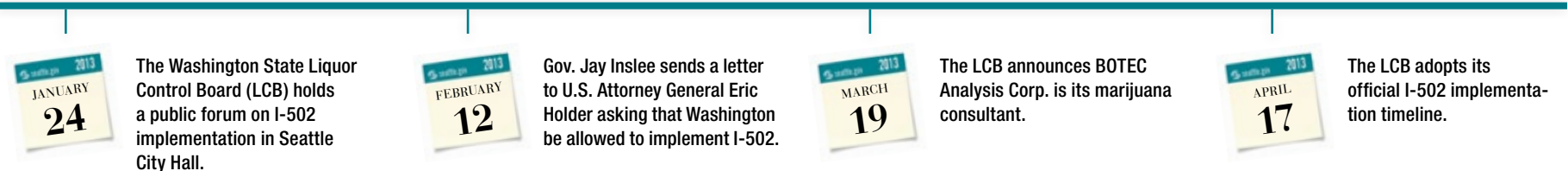
problem-solving proceed with a “we’re all in this together” spirit that never retreats from individual accountability.

And this is where Seattle as a whole is responsible for achieving the police department we want and deserve. First responders such as our police have challenging, often dangerous jobs, and it is natural to demonstrate gratitude for keeping us safe. We must guard against, however, unhelpful hero worship that places human beings on pedestals, making it difficult if not impossible to identify the human mistakes all officers make and take corrective action—for their safety and for ours. It happens everywhere, but Seattleites can be at the forefront of a new way of viewing our police as guardians, not warriors, and more simply, as fallible human beings. We support our police more fully when we accept them as people who can do better, not as superheroes (or villains) immune to constructive criticism. It takes a village, not just a new chief of police, to drive lasting cultural reform—within and outside SPD.

Drug Policy Reform

It’s one thing to discredit the failed policy of prohibition when it comes to the War on Drugs. It’s quite another to substitute, from the ground up, a completely new, state-licensed marijuana supply system that promises to more effectively regulate a potentially harmful drug where prohibition has failed. Our state Liquor Control Board deserves kudos for overseeing

MARIJUANA TIMELINE



STATEMENT FROM THE CITY ATTORNEY *continued*



A public hearing on I-502 drew an overflow crowd to City Hall

comprehensive, statewide rulemaking since the 2012 election, given the cautionary note struck by the Obama Administration in Assistant Attorney General James Cole’s guidance memorandum of Aug. 29, 2013. Seattle City Council has also asserted a strong leadership role and deserves praise for setting smart zoning standards before I-502 stores open in 2014. Among other things, our Council enacted legislation dictating that marijuana facilities must not locate in our residential neighborhoods, and requiring that any

producers exceeding 45 plants must have a state license—whether for purely recreational or medicinal pot.

Unfortunately, having failed at the 11th hour in its most recent session, the state Legislature must step up early in 2015 to reconcile I-502 with Washington’s largely unregulated medical marijuana industry. Our office is now working with state legislators to enact legislation to make sure that medical patients retain safe access while providing the strict regulatory controls voters (and the federal government) demand. I remain concerned that our fledgling state-licensed supply will be inadequate to wrest market share away from illegal sources. It is critical that law enforcement supplement market forces to ensure I-502’s success.

Well within the City’s purview is the alignment of bans on marijuana smoking and drinking in public. CAO prepared, and the Council approved, an ordinance to levy a \$27 ticket for marijuana smoking, in line with public drinking penalties. But for adults without a private residence where they can enjoy legal marijuana—including marijuana tourists—the CAO began work developing a regulatory framework for lounges or cafes that simultaneously comply with indoor smoking bans. And our precinct liaison attorneys spent hours helping to screen applications for the 21 retail marijuana stores allocated by the Liquor Control Board—although I continue to lobby the state for additional sites, because only an adequate legal supply will displace the illegal market.

MARIJUANA TIMELINE



STATEMENT FROM THE CITY ATTORNEY *continued*



Pete at Nordstrom's on 5th Avenue when SPD roused homeless campers at 8 a.m.

Life in a modern city doesn't pause amid reform efforts . . .

Seattle is a full service municipal corporation with a nearly \$4 billion annual operating budget. Every day, nearly 100 lawyers and 70 legal professionals in the CAO advise and defend city officials in all aspects of city functions. The remainder of this 2013 Annual Report showcases progress from CAO's four divisions—Civil, Criminal, Precinct Liaison and Administration—toward solving some of the thorniest problems presented us by the City Council, the Mayor's Office and all the City departments.

Civil Division issues ranged from helping the City navigate the complicated partnerships and risk of the waterfront-tunnel-seawall projects to recovering \$1.1 million embezzled by a former Seattle Public Utilities employee. The new mayoral administration was barely one month into its transition when the deep bore tunneling machine "Bertha" ceased forward progress below Seattle's waterfront, complicating plans to replace Seattle's crumbling seawall. Assistant City Attorneys were called upon to help protect City interests even as a new governor was simultaneously taking office in Olympia.

CAO lawyers prepared a Memorandum of Understanding that City Council and the mayor eventually agreed upon for a new arena for professional basketball and hockey teams. We successfully defended that MOU against two lawsuits. And while sports fans await the acquisition of NBA/NHL franchises, our lawyers are also helping to guide booming development in a rebounding economy. It is critical to assure that increasing prosperity is shared across Seattle's economic strata, attacking institutional racism and economic inequality in the face of vanishing workforce housing.

In the Criminal Division, which prosecutes misdemeanors committed within city limits, we reached agreement on our first ever prosecutor-union labor contract. Assistant City Prosecutors worked with the state legislative DUI task force and testified in Olympia to improve drunk-driving laws. We

MARIJUANA TIMELINE



STATEMENT FROM THE CITY ATTORNEY *continued*



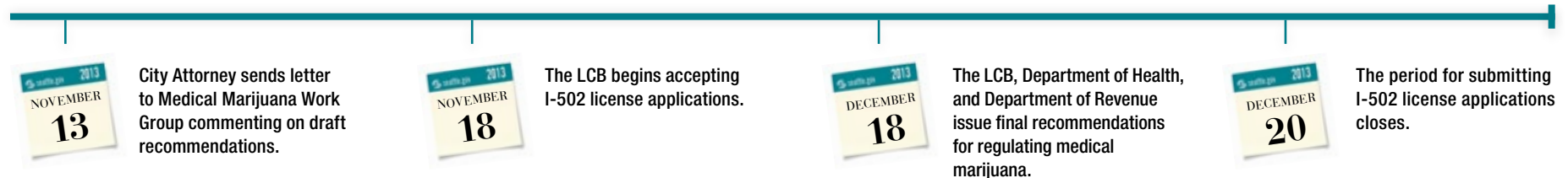
coordinated with SPD to attack the demand side of prostitution by shifting the focus from prostituted people to sex buyers, and succeeded in restoring SPD detective resources to investigate misdemeanor domestic violence cases. We joined a citywide multi-disciplinary team that addresses the root problems of poverty and homelessness, and continued as key partners in an innovative program called Law Enforcement Assisted Diversion (LEAD), providing police officers with more affective alternatives to incarceration for low level street disorder. Our prosecutors are now teaming up with the U.S. Labor Department to coordinate enforcement against employers who engage in wage theft, especially when preying upon immigrant workers.

Although 2013 witnessed the end of my first term as City Attorney, it marked a new beginning for the CAO. We are taking this office to the next level even as Seattle continues as a world leader in what The Brookings Institution has dubbed the “Metropolitan Revolution.” A world-class city requires a world-class municipal law department, and I’m proud report that we’re prepared to meet all new challenges in 2014 and beyond!

A handwritten signature in blue ink that reads "Peter S. Holman".

Seattle City Attorney

MARIJUANA TIMELINE



PRECINCT LIAISONS DIVISION

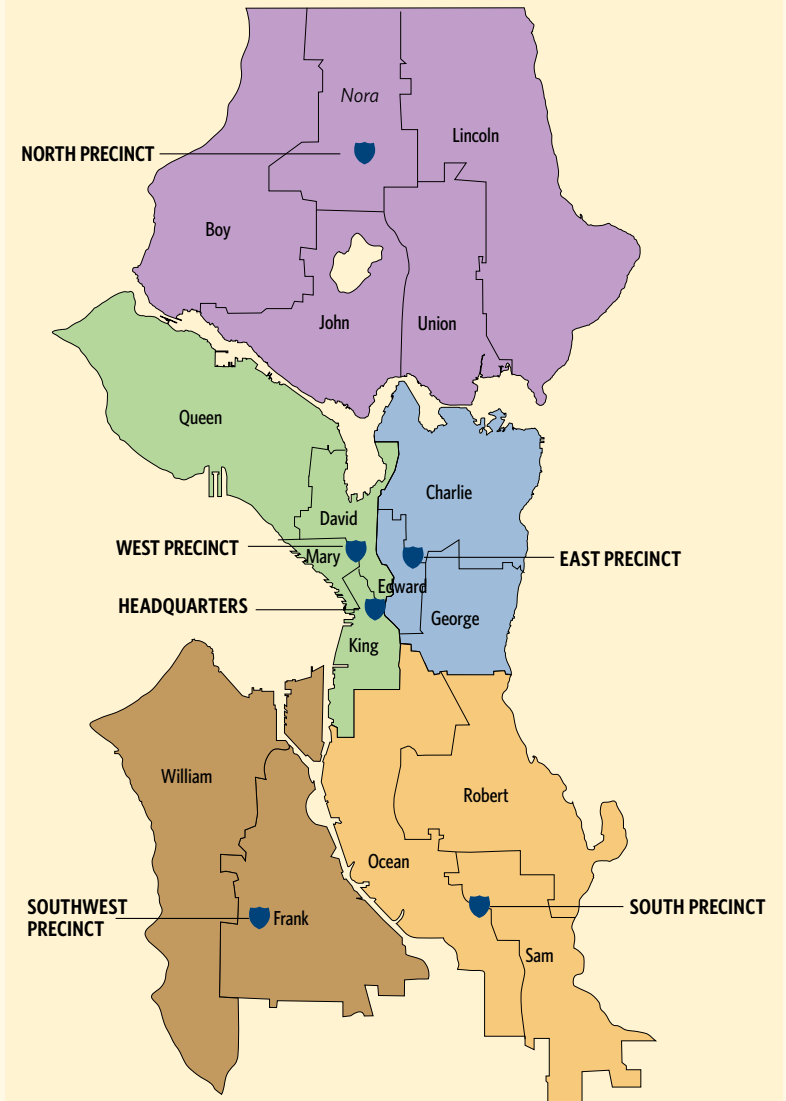
“ . . . repeated prosecution and incarceration of homeless or mentally ill individuals who commit low-level civility offenses is an ineffective option, and the most expensive one. Rather, a more deliberative approach to identify individuals, understand their needs and develop a plan to help them with services should be pursued.”

Pete Holmes

None of Seattle neighborhoods, where CAO’s precinct liaisons are stationed, was as scrutinized in 2013 as the downtown core.

Residents, business owners and tourists were acutely concerned with incivility in the downtown corridor, a huge part of SPD’s **West Precinct**. One news report focused on a hotel manager randomly assaulted by a homeless individual suffering from severe mental illness. Another report detailed an assault on a building doorman accosted by a group of youth when he came to aid another person. The Seattle Convention and Visitors Bureau launched a “See It, Send It” campaign to encourage tourists, residents, business owners and commuters to take pictures of uncivil activities and forward them to local elected officials.

In response, Mayor Mike McGinn’s administration placed more emphasis on the Center City Initiative (CCI), which is a conversation among interest groups with a stake in a vibrant and successful downtown. CCI is made up of elected officials, business owners, service providers, public defenders and resident groups, among others. Some of these groups historically had tense relationships and difficulty reaching common ground. The conversations, facilitated by faculty from the University of Washington Evans School of Public Affairs, worked toward a collective vision of a safe and vibrant downtown and a shared understanding of the root causes of problems and issues.



PRECINCT LIAISONS DIVISION *continued*



Homeless camping near the Alaskan Way steps to Pike Market



West Precinct Liaison Attorney **Sumeer Singla** participated in these conversations. Pete has consistently emphasized that repeated prosecution and incarceration of homeless or mentally ill individuals who commit low-level civility offenses is an ineffective option, and the most expensive one. Rather, a more deliberative approach to identify individuals, understand their needs and develop a plan to help them with services should be pursued. Then if the individual continues to engage in uncivil activities after such intervention, prosecution and subsequent incarceration may be appropriate. This approach allows for a long-term solution for individuals chronically engaged in uncivil activities by potentially addressing the source of their issues—but still allows for penalties if their bad behavior persists. This is now CCI policy.

The CCI workgroup created a Multi-Disciplinary Team (MDT) to address the individuals causing the greatest concern to businesses and residents. Led by the City's Human Services Department (HSD), the team consists of members

of the Police Department (SPD), Parks Department, City Attorney's Office, Metropolitan Improvement District (MID), Downtown Emergency Service Center (DESC) and Evergreen Treatment Services. Following Pete's principles, the MDT identifies and discusses individual histories and challenges, and tries to figure out the core reason for their objectionable behavior. The team develops a plan to engage the individual in services to prevent him or her from acting out. If these efforts fail, the individual may be prosecuted for their criminal behaviors. In the limited time the MDT functioned in 2013, it produced encouraging results:

- Proprietors of a retail store in Westlake Park felt they were consistently losing 20 to 30 percent of their business because homeless individuals were camping in front of the store all day and selling low amounts of narcotics. The same people were sleeping overnight under the canopy of Nordstrom's on Fifth Avenue, greatly frustrating neighboring businesses, residents and commuters. The MDT identified the leader of the group and actively engaged him in services. He was convinced to use the

PRECINCT LIAISONS DIVISION *continued*



Nickelsville

Crisis Solution Center for emergency services. The leader, however, still continued his uncivil behavior, including selling narcotics. King County Sheriff's Office and SPD ran a joint undercover operation and developed a felony case against the leader. He left town after a bench warrant was issued for him. The retail store saw an immediate jump in sales after the individuals dispersed from the area. Other business owners, residents and commuters also found relief from uncivil behavior on Fifth Avenue.

- A homeless elderly woman suffering from severe mental illness hoarded everything she saw, ignoring her own hygiene. Neighbors and businesses complained that she stayed in Occidental Park all day. At one point, her hoarding was so severe that she was almost picked up by a garbage truck because the operator could not distinguish her from the rest of the garbage piled around her. The MDT worked with her until she received intensive counseling for her mental illness—and a roof over her head.
- Many business owners, residents and commuters continually complained about a homeless encampment erected every night on Western Avenue on a sidewalk by a furniture store. The encampment left garbage and human waste every morning for commuters to walk through and local

businesses to clean up. The MDT worked very closely with outreach workers to identify leaders within the encampment. Through patience and perseverance, some of the leaders moved away from the encampment, and others moved away from the location. As a result, encampments occur infrequently in front of that store.



In the **Southwest Precinct** in 2013, **Melissa Chin** collaborated with police command staff, the mayor's office, City Council and CAO's Civil Division to brainstorm how to resolve an illegal encampment on City property at 7116 W. Marginal Way SW that campers called Nickelsville (after a previous mayor). Criminal activities by some campers were negatively impacting the neighborhood, and 911 calls were draining police resources. Chin worked with civil attorneys to analyze the trespass, land use, and landlord/tenant laws. The traditional methods of enforcing trespass laws proved to be problematic because of the sheer number of campers. She also worked with several council members on the intricate legal issues. Ultimately, the City Council allocated \$500,000 to relocate the campers, who dispersed into three different camps in the East Precinct. The encampment site was fenced and "no trespassing"

PRECINCT LIAISONS DIVISION *continued*



Airlane Motel

signs were posted. The Southwest Community Police Team continues to address unlawful encampments on City properties with Chin's help.

In the **South Precinct**, her other precinct assignment in 2013, Chin worked on various code compliance issues to address community concerns. She collaborated with several Seattle and King County agencies to remove an illegal street vendor whose actions in the Rainier Valley had generated voluminous complaints over several years. This unlawful vendor operated a food truck and car wash without the proper street-use permits, health permits and license inspections. Chin succeeded in removing him from city streets and private properties, and avoided costly litigation by mediating the City's concerns with him; he voluntarily moved his business from South Seattle.

Chin also assisted in declaring the Airlane Motel a chronic nuisance property under Seattle Municipal Code 10.09. The Airlane Motel had a significant number of public safety issues over the previous years that concerned neighbors, including prostitution, drug activity, assaults and domestic violence. After the property

was declared a nuisance, she convinced business owners and management to sign a "correction agreement" to abate the nuisance activity. The correction agreement includes private security guards, inspections, guest requirements, client code of conduct, participation in the city's Trespass Warning Program and other conditions to improve public safety in the Georgetown neighborhood.

As other precinct liaisons do, Chin reviewed all liquor applications received in South and Southwest precincts. She worked with the South Precinct on several liquor license objections in 2013: Aston Manor, Dahlak, and May Bon Phuong (aka Jumbo's). Aston Manor appealed its liquor license denial; Chin worked with the Washington State Liquor Control Board (WSLCB) on issuing public safety restriction requirements on the business and on a strict conditional liquor license. The nightclub now operates under strict agreements with the WSLCB and the City.

The majority of Seattle's marijuana applications stemming from Initiative 502 fall inside the South Precinct. Chin has worked with the precinct's Community Police Team to review the first round of applications received at the end of the year.

PRECINCT LIAISONS DIVISION *continued*



Boating noise at Shilshole



Transition was the order of business in the **North Precinct** in 2013 as liaison attorney **Jana Jorgensen** handed off the position to **Brendan Brophy** at midyear so she could return to the trial teams in the Criminal Division.

First, Jorgensen drafted a new noise ordinance to regulate excessive boater noise. Since SPD Harbor Patrol is housed in the North Precinct, Jorgensen was tasked with addressing community concerns with amplified noise coming from recreational boaters, primarily in the summer months. She worked with SPD, City Council, the Mayor's Office, tourism groups and the community to draft what eventually was adopted as SMC 25.08.485(A). It was one of the first reforms of the City's noise code in years.



In early May Jorgensen met with a family that SPD had visited many times after neighbors complained. She reviewed a dozen reports in which neighbors said the family had intimidated and harassed



SPD's picnic at the North Precinct

them as well as exhibited stalking behaviors. Some family members had extensive criminal histories, and another had diagnosed mental health issues but refused treatment.

Rather than holding a neighborhood meeting that could have led to another incident, Jorgensen approached the family herself. They discussed the police response, the chronic nuisance ordinance and potential consequences of continued complaints. It was agreed the family would be "on probation" for 60 days. If police were called during that time, the city would initiate nuisance abatement proceedings. During those 60 days not a single complaint was reported and calls about the family decreased dramatically.

Picking up where Jorgensen left off, **Brophy** worked with community members, police officers and a multitude of city agencies in addressing public safety issues with reliable communication and a clear message. As the new liaison, he attended SPD roll calls, community meetings, such as the North Precinct Advisory Council, and smaller meetings with neighborhoods and individuals.

PRECINCT LIAISONS DIVISION *continued*



The Social

Brophy initiated dialogue with different prostitution survivor groups in Seattle and the North Precinct in an effort to coordinate services with North Precinct operations and officers' enforcement of prostitution laws. With his leadership, the North Precinct is setting the City's standard for intervention with prostituted people and prosecuting sex buyers.



In **Matthew York's** second year in the **East Precinct**, he encountered many challenges involving business and community members, among them the continued growth of nightlife establishments. Several problem locations remained non-compliant with both city code and the WSLCB. In 2013, one location, The Social, shut down rather than come into compliance. The Social caused overcrowding, noise issues, traffic congestion, health code violations and liquor board violations. The residents of the adjacent apartments and condos regularly complained of loud music, crowd noise, sidewalks blocked



In a hookah bar

with garbage, and patrons vomiting after excessive drinking. Working with various city agencies, council members and the liquor board, York forced The Social to choose between complying with city code or closing. This group effort exemplified how different jurisdictions can team up to benefit residents' quality of life.

2013 also saw a rise in violence and nuisance crimes around select hookah bar establishments in the East Precinct. After six shootings in eight months, it became clear that York needed to look more closely at these businesses. In March, he participated in a citywide enforcement effort and recruited Seattle & King County - Public Health to assist, as these hookah bars allowed indoor smoking in violation of indoor clean air regulations. The Health Department began to investigate and cite the locations. Problem hookah bars in the East and West Precincts were contacted and instructed on the expectations they are held to under fire code, health code, and business license requirements.



Stone house



Unlike the other liaison attorneys, **Beth Gappert** isn't geographically restricted. That's because her title, Narcotics and High Risk Victims Liaison, takes her all over Seattle.

In 2013 Gappert succeeded in finishing a project that had plagued one neighborhood. For the previous three and a half years CAO and SPD had worked to close the Sharon Stone property, 8433 55th Ave. S., which had been a chronic drug nuisance for two decades. In 2012, the City reached a settlement agreement with Stone in a drug forfeiture case; she agreed to sell the property and split the proceeds of the sale with the police department.

The house sold on the day it went on the market in October 2012. Closing had been scheduled for two weeks later. Because the homeowner had numerous liens against the property and was under felon criminal prosecution, the sale took months to close. The sale finally closed in July 2013—nearly 10 months after the purchase and sale agreement had been signed. Gappert worked extensively with the escrow company, the lienholders, the real estate agents and the owner's family



Bus sign

to negotiate the lien releases and make sure the sale accomplished the goal of removing the family and drug activity from the neighborhood.

Gappert also represents SPD when officers seize and forfeit property from drug traffickers. She works closely with narcotics detectives to develop the cases that involve criminal and civil sanctions. While Gappert doesn't prosecute suspects for drug trafficking, she ensures that the illegally gained profits from drug trafficking are taken. In 2013, her representation resulted in the forfeiture of more than \$370,000 in assets. The proceeds do not fund the department's general budget. SPD is required, by statute, to use the money exclusively to improve and expand its drug-related enforcement activities.

Following through on Pete's decision to dramatically alter prostitution prosecution—treating prostituted people as victims instead of criminals—Gappert redoubled her efforts to ensure that all prosecutions be coupled with services and treatment. By ordinance, anyone convicted of or entering a diversion for a charge of prostitution must complete a counseling class that HSD runs. The class must, at a minimum, provide education about the risks from prostitution of sexually transmitted diseases, including HIV.

Through speaking with prostitution survivors and other experts, the city has learned that peer support is critical to helping prostituted persons exit the life. With that in mind, Gappert collaborated with HSD to change the format of the prostituted persons class from a one-day session to two hours a week for four weeks. The class still meets all of the statutory requirements but now also includes a peer support group.

CIVIL DIVISION



The Civil Division is the City's law firm. Every day, the 50-plus division lawyers provide legal advice and representation on everything from constitutional policing to seawall construction and financing to marijuana store regulation. The City's in-house law firm saves the City millions in legal fees each year by providing high-quality legal advice and litigation services that would otherwise come from higher priced private law firms.

Having in-house lawyers also better serves City management and overall risk supervision by providing a close and consistent relationship between City

managers and their lawyers. The following is a sampling of the varied projects handled by the division in 2013:

- **Duwamish Cleanup:** In the industrial heart of Seattle is a federal Superfund site consisting of the lower six miles of the Duwamish waterway. Attorneys in the Environmental Protection Section have been advising the City regarding this site for more than a dozen years and are now ready to help guide the allocation of costs for the cleanup, which the EPA

estimates to be more than \$300 million, among responsible parties.

- **Seattle Police Department (SPD)/ Department of Justice Consent Decree:** Changing the culture at SPD takes hours and hours of policy review, negotiation, training and advice. In 2013 the CAO helped SPD rework and negotiate the department's use of force, stops and detentions and bias policies.
- **Waterfront-Tunnel-Seawall:** Seattle is on course to remake its waterfront to ensure its residents are safe, its transportation needs are met, and its natural beauty is available to all. Lawyers across the entire division help the City navigate the complicated partnerships and risks that accompany such enduring change.
- **Prevailing in court:** A man with criminal warrants races through a city neighborhood at 85 miles per hour after seeing a patrol car in Seward Park. He smashes into a retaining wall, paralyzing the teenager who had the misfortune of getting in his car that night. The teenager sues the police, saying they never should have tried to stop them. The jury agrees with our lawyers that the person responsible for the terrible tragedy was the driver, not the officers doing their jobs.

As lawsuits are filed against the City, attorneys assess the City's exposure—what it might lose if the

matter were tried in court. The attorneys then work to dismiss, try and settle the cases with the ultimate aim of limiting the City's exposure.

Civil Division attorneys also recover money for the City in taxes, damages and enforcement penalties. In 2013 our collections and torts attorneys recovered \$993,634.41 in damages owed to the City. Division tax lawyers collected \$800,787.72 in disputed taxes. Our Land Use Section collected \$558,000 enforcement penalties for land use violations. In all the Civil Division recovered \$2,352,422.13

DIVISION PROJECTS

SPD's DOJ Consent Decree

The Civil Division Chief and lawyers from the Torts and the Utilities/Contracts Sections continue to work many hours on the Settlement Agreement between the City and the Department of Justice (DOJ), including drafting and reviewing policies, representing the City at meetings with the court-appointed monitor and his team and DOJ, advising and guiding SPD through internal challenges and changes, and acting as stewards for reform – all while making sure that the legitimate concerns of the department are raised and addressed in a diplomatic manner. Division lawyers attend the majority of meetings on DOJ-related issues and regularly attend the Use of Force Review Board sessions, Crisis Intervention Committee meetings, and Community Police Commission meetings. The Police Action team provides technical assistance for the development of training modules on issues such as search and seizure and use of force.



Notice of investigation of SPD



Proposed waterfront design

Waterfront-Tunnel-Seawall

The state's tunnel project, the City's rebuild of the seawall and the plans for far-reaching changes to the City's waterfront all raise legal questions. These questions range from which entities bear legal responsibility for delays—to how to make waterfront recreation enhancement compatible with environmental regulations—to what properties might be included in a Local Improvement District. The CAO has a team of lawyers from the Contracts and Utilities, Environmental, Government Affairs and Land Use Sections that work with the City's transportation, finance, and development departments, as well as the City Council and Mayor's Office, to answer these questions and keep these important projects moving.

EMPLOYMENT SECTION

In 2013, the City persuaded the state Department of Labor & Industries to issue a willful misrepresentation order against an injured worker. She filed an industrial insurance claim and alleged she was unable to work due to her injuries. An investigation revealed she was managing a local food bank and engaging in activities that far exceeded her reported restrictions. Extensive surveillance showed her moving furniture, operating and riding a truck lift-gate and driving a forklift. The worker has been ordered to repay \$25,984.00 in wage payments to the City and a 50% penalty of \$12,992 to the Department of Labor & Industries.

The nine Employment Section lawyers assist the City's managers and human resources professionals



Seawall construction

CIVIL DIVISION *continued*

as they navigate the complicated matrix of employment laws, collective bargaining agreements, civil service regulations, and City policies that apply to roughly 10,000 City employees. When disagreements arise, we defend the City's interests as disputes move to courts, administrative agencies, arbitration and mediation.

Advice

How does the City's new sick leave ordinance affect City employees? What's the best way to manage an employee whose leave balances have run out? Should a department conduct an investigation into a complaint, and if so, how? Will our efforts to accomplish Race and Social Justice Initiative goals conflict with our collective bargaining agreements? Is it legal? Is it wise? What are our options?

These questions typify those brought to Employment lawyers, day by day, throughout the year. The attorneys strive to provide solid legal, pragmatic advice that allows City operations to proceed efficiently and fairly. The attorneys monitor developments in diverse aspects of employment, labor and workers' compensation law. With a collaborative approach within the section, the attorneys take advantage of expertise on such topics as the ADA, the Washington Law Against Discrimination, wage and hour laws, personnel rules, workers' compensation statutes, and the Washington and U.S. constitutions.

City managers and employees typically are dedicated, conscientious public servants who face difficult, day-to-day challenges. Employment attorneys serve as trusted advisors as managers confront personnel

and other issues. Our advice included evaluating disciplinary options for employee misconduct, helping to identify reasonable options for accommodating disabilities, and enabling investigations into claims of harassment and discrimination. We give highly specialized and technical advice on management of workers' compensation cases. We help determine when managers can change policies that concern employees and when such changes must be bargained with unions. In 2013, the section continued to develop its expertise in the unique and growing field of local labor-standards regulation. The City has focused increasingly on establishing minimum standards for private employers, through such efforts as the breakthrough Sick and Safe Leave legislation and an ordinance regulating the use of criminal background checks. Section lawyers have played an integral role in developing and implementing such policy reforms.

Litigation

Employment disputes sometimes lead to litigation, and the Employment Section lawyers continue to represent the City in federal and state courts—from the initial response to lawsuits, through extensive discovery, in motion practice, through trial, and all appeals. The attorneys provide the same service in administrative forums, including the Public Employment Relations Commission, both of Seattle's Civil Service Commissions, in arbitration, and in any other arena that employees or unions might press their claims. A few examples:

Manager v. City

In this whistleblower-retaliation case, a high-level manager complained that his career was damaged



“Thank you and kudos for pursuing the “willful misrepresentation” case to a successful outcome. The \$26,000 workers compensation time loss repayment to the City plus the \$13,000 penalty the claimant must pay to L&I are important milestones for the City’s workers compensation program. Much appreciation for all you do!!!!”

From a satisfied City client

CIVIL DIVISION *continued*

following the well-publicized criminal case surrounding former SPU employee Joe Phan. The City had fired Phan in early 2011 for manipulating his own utility accounts. The City then discovered that Phan's \$1,000 theft was relatively superficial. Phan had actually stolen more than \$1 million from the City by diverting funds to his own bank account. Phan obtained a job with the City of Bothell, largely on the strength of a positive reference provided by his former City manager. The job reference was problematic for several reasons: The manager had been advised against giving a reference; City personnel rules prohibited it; and the manager knew the circumstances of Phan's termination. The City investigated, suspended the manager for five days, and documented its actions in the manager's official personnel file.

Six months later, the manager applied for a higher position with another City department. Although the manager was highly qualified, the new department decided not to hire him because of the five-day suspension. The manager filed a complaint under the City and state whistleblower-protection laws. According to the manager, the City sought to retaliate against him for participating in the Phan investigation.

The case illustrates the difficulties in determining the motivations of City managers when they make employment decisions. The City claimed that its decisions were related to the manager's own misconduct while the manager strongly questioned those motivations. What was the real motivation, previous discipline or retaliation? Two section lawyers vigorously litigated the case for more than a

year, culminating in a hearing before the state Office of Administrative Hearings. Because the lawyer was able to present the case in a clear and compelling manner, the hearing examiner ultimately ruled in favor of the City. This is not the end of the story, however, as more claims of retaliation are already under way.

Employees v. Seattle City Light

Some cases demonstrate the value of patience and tenacity on the part of the City's lawyers. The 2012 Annual Report included a description of the lengthy, vigorously litigated claims asserted by two City Light employees. A year later, the case continued and may someday rival Charles Dickens' *Jarndyce v. Jarndyce* for its slow and arcane journey through the legal system.

The employees in this case (neither named Jarndyce) alleged they were treated poorly through discipline and lost advancement opportunities—not because they engaged in misconduct but because of their sexual orientation, genders or disabilities. The City prevailed in virtually every case, in part because City Light's promotional decisions were reasonable and thoroughly documented.

In 2013, the Employment Section team obtained dismissal of most claims asserted in the latest, state-court lawsuit. Notably, the Superior Court judge affirmed the City's right to evaluate evidence of the plaintiffs' alleged mental distress when the plaintiffs seek compensation for such distress. In 2013, the plaintiffs filed an "interlocutory appeal" in the Court of Appeals. That is, they asked the Court to review the

trial judge's decisions, even though the case had not yet concluded at the lower level. The Court of Appeals denied the appeal. This led to a Supreme Court appeal, contending that the Court of Appeals and the trial court were *both* wrong. The Supreme Court, too, ruled in the City's favor. Not satisfied, the plaintiffs filed yet another Supreme Court brief, asking the Court to "modify" its earlier ruling. In December, the Supreme Court agreed with the City again, denied the plaintiff's motion, and effectively returned the case to Superior Court. Employment Section lawyers are well prepared to continue this marathon case.

Former Sergeant v. Seattle Police Department

Even when a plaintiff's claims against the City appear to lack foundation in fact and law, obtaining dismissal requires hard work and effective oral and written advocacy. In one such case, Employment Section lawyers obtained dismissal of a lawsuit brought by a former police sergeant for violation of his privacy rights. The sergeant was at the center of an incident that received extensive media coverage—he had allowed the rubber stamping of his signature on police reports in the DUI unit. After an internal investigation by SPD's Office of Professional Accountability, the sergeant resigned.

A short time later, in response to requests under the state Public Records Act, SPD provided copies of its investigation files to the media. Those files included information that the sergeant believed was private, including the name of a prescription narcotic that the sergeant used while on duty. The sergeant claimed that he had been damaged when the Seattle Times published an article that identified the narcotic.

CIVIL DIVISION *continued*

The City asked that the judge dismiss the case without a jury trial because (a) there was no evidence that SPD acted in bad faith when it failed to make redactions and (b) the name of the narcotic should not have been redacted at all because it was a matter of public concern. After an extensive oral argument, the judge ruled that the public has a right to know when public employees are using medications at work and granted summary judgment in favor of the City.

Workers Compensation

During 2013, the Workers' Compensation practice group continued to process a high volume of cases. The City prevailed in a medically complex case involving a firefighter who alleged his off-duty heart attack resulted from responding to a car fire three weeks prior to the cardiac event. The denial of his workers' compensation claim was upheld. In addition, the Workers' Compensation group obtained the City's first Willful Misrepresentation order. The employee alleged she was unable to work at any employment due to multiple injuries. The City obtained surveillance evidence showing the employee owned, managed and worked at a food bank during this same period. The employee has been ordered to repay the City \$38,976 in workers' compensation benefits.

Alternative Dispute Resolution

Employment lawyers fully recognize the significant value in "Alternative Dispute Resolution," which can lead to results that are acceptable to both the employees and management. They are thus frequently engaged in mediation efforts, both prior to and during litigation. In one case, a lawyer assisted a

department in a complicated negotiation among the employee, union and department as they tried to interpret personnel rules that apply to layoffs. The case was eventually resolved by agreement rather than through litigation. In another, a lawyer helped negotiate a settlement for a terminating employee that would provide a small financial cushion for the departing employee but would obtain the necessary finality and closure for the department. These cases typify those in which attorneys can help clients carefully balance the risks, rewards and interests of litigation as well as settlement.

Training

Employment lawyers continue to lead and assist with training for other City employees. These training sessions occur through the City's Personnel Department or directly through individual departments. Section lawyers take an active role in helping plan and develop training programs.

ENVIRONMENTAL PROTECTION

"See you in court!" isn't always music to a lawyer's ears. Sometimes it is better to resolve disputes using the Alternative Dispute Resolution process. When numerous parties face legal responsibility for an environmental cleanup, they often engage in this process. These processes have been extremely expensive, because the parties typically hire a team of technical experts to scour archives of records, crunch data, and compile information about each of the possible sources of pollution. After years of work, the experts produce a report with lengthy spread sheets to explain the share of liability assigned to each participating party.

"She's very professional, and she's also easy to talk to and is very friendly and approachable. I don't hesitate to pick up the phone or to send something to her knowing that she helps, not hinders."

A City client expresses thanks

CIVIL DIVISION *continued*

The Environmental Protection Section is leading development of a different approach that hopefully will cost much less, while still being fair. Instead of a team of experts, the parties will hire an attorney to be their “allocator,” who will function like a judge. Each of the parties in the allocation will provide information about its own operations, such as what chemicals were used, when and where there were spills, and so on. The parties may choose to hire their own experts to help explain technical information to the allocator.

After they exchange information, each party will write a position paper telling the allocator what percentage of the cleanup costs should be allocated to them and to others. The allocator will not do independent research. Instead, the allocator will issue a report based on the parties’ position papers. With this approach the parties can spend their money on cleanup, rather than fighting in court or paying a team of experts.

Stormwater

Every five years, the Washington Department of Ecology issues a new permit under the federal and state Clean Water laws to cities and counties that operate storm water drainage systems. These permits are usually appealed by some municipalities that object to various permit requirements and by environmental groups, which argue the permits do not require enough. A lawyer in the Environmental Protection Section, one of four, has become a recognized expert in these issues and represents the City in such appeals. This year the appeal involved 10 parties and the hearing lasted three weeks before

the state’s Pollution Control Hearings Board. The City did not appeal, but chose to intervene in order to be able to address issues that others raised.

When the state issues a new permit for the City’s storm water system, a great deal of legal and technical work is necessary to implement it. Permit requirements for “Green Stormwater Infrastructure,” or “GSI,” are the current focus of those efforts. GSI means that stormwater is put into the ground using “rain gardens,” or engineered swaths of soil that allow water to penetrate. The City has to require developers to use GSI, while keeping in mind what is feasible, given how little land in Seattle has not been paved over or built on. This area of the law is evolving, making it challenging for attorneys and their clients.

Contaminated land

The City’s Parks Department often acquires land that was contaminated by former operations, such as dry cleaners or gas stations. Environmental Protection lawyers help to negotiate and draft the agreements for these land deals. Sometimes they have to come up with new approaches. For example, the City might agree to purchase the property at a discount due to the contamination and to take responsibility for cleanup. But, if the cleanup costs more than an agreed upon amount, the City would be able to get additional funds from the seller.

The Duwamish cleanup

In the industrial heart of Seattle is a federal Superfund Site consisting of the lower six miles of the Duwamish waterway. Section lawyers have been advising the City regarding this site for more



Ballard rain garden



Duwamish Alive cleanup



Duwamish River at South Park

than a dozen years. In 2014 the Environmental Protection Agency will issue its Record of Decision, describing what strategies will be used to reduce contamination in the waterway. It is now time for the City and many other entities that owned property or operated industries along the waterway to determine which of them will implement the cleanup actions, which of them will pay into a fund for the cleanup, and what percentage of the costs each will incur. EPA estimates that the total cleanup cost will be \$305 million. Other parties believe the cost will be closer to \$400 million. The City's share will be paid by City residents and businesses as part of their bills for electricity, sewage and surface water. Lawyers will play a key role in the next few years as the process for allocating shares of costs runs its course.

GOVERNMENT AFFAIRS SECTION

Every day legal issues arise related to the powers and duties of government, including free speech, the release of public records, the power to tax and the ethical behavior of public officials. The 10-attorney Government Affairs Section advises on government power and litigates cases that challenge the City's ability to do such things as regulate marijuana and strip clubs, close public meetings, limit camping in public parks, withhold police records on open investigations, and collect business taxes. Here is a sampling of some of the section's work in 2013.

Marijuana Legalization

In 2012, Washington voters approved Initiative 502 (I-502), which legalized the recreational use of marijuana under state law. As the Washington

CIVIL DIVISION *continued*

State Liquor Control Board (WSLCB) drafted rules and procedures for implementing I-502, our lawyers worked as part of an interdepartment City team to provide input to the board on the rules, prepare and advise on legislation for zoning of marijuana-related businesses, and address issues related to consumption of marijuana in public.

Campaign Finance Ballot Measure

Our attorneys advised the City Council and helped draft City's Proposition 1, which concerned the creation of a system of publicly financed election campaigns, supported by an increase in the property tax. By a narrow margin, the voters defeated the proposition.

Whistleblower Code Overhaul

With our help, the City overhauled its Whistleblower Code, which now gives more protection to employees who report improper government activity by shifting investigations from the mayor and executive departments to the SEEC's executive director, expanding the individuals who can receive the reports, and protecting against any negative perception of the whistleblower. The new code also expands the range of remedies to include those that could be ordered by a Superior Court, including future pay and compensation for emotional distress.

SPD surveillance camera protocols

In March 2013, the Law Department assisted with drafting an ordinance that requires the adoption of operational protocols before the acquisition or use of certain surveillance equipment. Law also assisted SPD with drafting an ordinance adopting specific

protocols for security cameras that monitor Elliott Bay and the Port of Seattle.

Business Improvement Areas

The City supports eight Business Improvement Areas (BIAs) throughout Seattle. BIAs allow business districts to assess members in order to provide services that support growth and management in the area. In 2013, new BIAs were established in Pioneer Square and Sodo. The Downtown BIA (also known as Metropolitan Improvement District) was renewed, revised and the boundaries expanded. The Capitol Hill BIA and West Seattle BIA were amended to expand boundaries and adjust rates.

FIRST AMENDMENT LITIGATION

ATL v. City of Seattle

In 2012, our attorneys litigated a three-day trial in U.S. District Court on whether the City owed more than \$1.6 million in lost profits plus attorneys' fees to a prospective strip club operator who was denied a permit. The trial court upheld the City's strip club zoning ordinance and held the permit was properly denied because the proposed strip club would have been within buffer zones created by the ordinance where new strip clubs are prohibited (800 feet of property previously permitted for a day care, and within 600 feet of property previously permitted as a strip club). The court found that the City committed some technical violations and awarded the plaintiff \$1 in nominal damages for each of the two violations, and about \$40,000 in attorney's fees. The plaintiff appealed and the Court of Appeals affirmed all of the trial court's decisions except one but remanded



Surveillance cameras

CIVIL DIVISION *continued*

for a determination of whether the buffers provided enough space to meet the demand for new strip clubs. The City settled the case in 2014, preserving the buffer zone ordinance.

Real Change et al v. City of Seattle

The weekly homeless newspaper Real Change argued that the ability to erect tents and have an overnight presence in parks involved First Amendment expressive activity, and that the outright ban was unconstitutional. Our attorneys negotiated a settlement agreement that allowed the Parks Department to adopt rules providing a limited overnight presence in parks as a First Amendment expressive activity. The rule limits the overnight presence to five tents, no more than a 48-hour continuous presence, and no more than one such event in a particular park within a 30-day time period.

PUBLIC RECORDS

Washington State Sunshine Committee

The Sunshine Committee is comprised of gubernatorial appointees charged with reviewing exemptions to the Public Records Act, and recommending whether the exemptions should be retained, modified or eliminated. Pete has served on the committee since 2010, and our lawyers assist him and the committee at large in researching related exemptions, drafting suggested amendments to the PRA and in doing outreach to particular stakeholders.

In 2013, Pete proposed that the Sunshine Committee consider clarifying PRA exemptions that apply to crime victims and witnesses to ensure that local agencies properly apply the exemption. Pete

also proposed that the committee consider whether the PRA should completely exempt concealed pistol licenses, or whether there was a public interest in information contained in concealed pistol licenses that outweighs any interest in non-disclosure.

City v. Tarver

The City joined King County and the cities of Auburn, Federal Way, Kirkland and Bellevue in obtaining a public records injunction against inmate Julian Tarver. The injunction was granted under a provision in state law that was enacted to prevent persons serving criminal sentences from harassing, intimidating or threatening the security of agency staff, family members or any other person, or from assisting in criminal activity. Tarver, who is serving time for impersonating a police officer and raping women, had made almost 1,000 public records requests concerning his victims, his crimes, police operations, and information such as uniform and weapon descriptions that could aid in future criminal activity. This is only the second time that this injunction provision has been used since it was enacted in 2009.

West v. City

Arthur West sued the City regarding CAO's response to his public records request for records related to I-502. Our attorneys prevailed in Superior Court when the judge found the City had promptly provided all responsive records.

Fisher Broadcasting v. City of Seattle

SPD retains a large number of in-car videos for three years in accordance with the City's interpretation of state law retention requirements. A KOMOTV



Real Change

CIVIL DIVISION *continued*

reporter requested the database of all of the department's in-car video recordings that had been tagged for retention. The trial court ruled that the police department properly withheld the videos under a state law that requires that in-car videos not be released to the public until all litigation concerning them is concluded. The case also raises the issue of whether public agencies are required to reprogram and reconfigure databases in responding to public records requests. The Washington Supreme Court heard oral argument in May 2013. The Supreme Court issued a decision in 2014 holding the in-car videos should be released unless an actual criminal or civil case is pending.

City of Seattle v. James Egan

Private attorney James Egan requested in-car videos from SPD of incidents that did not involve his clients. After SPD withheld the videos, Egan threatened to sue. The City sought a declaratory judgment asking the court to determine whether SPD correctly interpreted a statute prohibiting disclosure of the videos. Although the Supreme Court has interpreted the Public Records Act as allowing an agency to seek declaratory judgment, the trial court ruled that the City should not have brought the action in this case. On appeal, the Court of Appeals overturned the trial court's ruling, holding that cities have a right to bring declaratory judgment actions in public records cases, and vacating sanctions issued against the City lawyers.

Howard Gale v. City of Seattle, Seattle Center

Gale made a public records request to the Seattle Center for information relating to electrical outlet

access at the Armory. Seattle Center provided Gale with responsive documents and he responded that he believed documents were missing. The Seattle Center conducted a second, expanded search and produced more documents to Gale. Gale filed suit before he received the second installment of documents. To address Gale's allegation that missing documents existed, our attorneys offered to and conducted a third search. The trial court found that the City's first search was inadequate but that the second search was adequate. However, the trial court imposed the maximum \$100 daily penalty against the City for the 22 days between the first and second installment of documents, as well as the 64 days between the second and third installments. Both sides moved for reconsideration. The trial court amended its order, reducing the daily penalty for the 22 days between the first and second installment of documents from \$100 to \$10 per day, and eliminating all other penalties. Gale appealed the order to the Court of Appeals, which affirmed the trial court.

Sargent v. SPD

After an altercation with an off-duty police officer, Evan Sargent was arrested and investigative records were sent to the prosecutor for a decision as to whether to file charges. The prosecutor sent the records back to SPD and requested further investigation. At that point, Sargent requested the investigative file. SPD denied the request, citing the PRA exemption that applies to open and active law enforcement investigations. Meanwhile, the SPD Office of Professional Accountability opened an investigation of the off-duty officer's conduct. While that investigation



In-car video

CIVIL DIVISION *continued*

was ongoing, Sargent also requested those records. SPD denied disclosure of that separate investigative file, again citing the PRA exemption that applies to open and active investigations. Sargent then filed suit, arguing that both investigative files should have been immediately disclosed. In 2011, Division I of the Court of Appeals agreed with SPD and held that the categorical exemption applied in both situations. In January 2013, the Law Department argued this case before the Washington Supreme Court. In December 2013, the Supreme Court issued a 5-4 decision narrowly overturning the Court of Appeals.

SETTLEMENTS

The Public Records Act imposes a heavy burden on government agencies. Governments must pay penalties of up to \$100 per day and attorneys' fees for failing to produce documents, even if the failures were inadvertent and unintentional. Our attorneys settled a number of such public records act cases in 2013.

PRA Training

Our attorneys have provided training on compliance with the Washington Public Records Act, Chapter 42.56 RCW, including in-house CLE sessions, and client-training classes.

In 2013, Government Affairs lawyers presented on the PRA at various forums, including the Washington State Association of Municipal Attorneys, Washington State Association of Public Records Officers and Law Seminars International Forum. Government Affairs attorneys also served as editors for various chapters of the forthcoming new edition of the Washington State Bar Association PRA deskbook.

TAXES

John and Jane Does v. City

In this case several marijuana distributors alleged that the City is preempted by state and federal law from enforcing business license and zoning codes against medical marijuana collective gardens. The court dismissed the case.

AOL, Inc. v. City of Seattle

AOL appealed a tax assessment in the amount of \$800,787.72. We obtained a favorable settlement under which AOL paid all of the taxes.

Wedbush Securities

Wedbush is a securities broker/dealer with offices nationwide. It has an office in downtown Seattle where 28 employees work. It sought to apportion its income differently from the manner required under the code, and the City denied its alternative apportionment scheme. Wedbush appealed. After the City won before the hearing examiner, Wedbush sought a writ and the case will be heard in King County Superior Court.

COLLECTIONS

CAO's Collections Unit collects debts owed to the City by taking the debtors to court. Last year it assisted in collecting \$993,634.41. Following is a sampling of cases and updates:

Metropolitan Improvement District BIA

At the request of Financial and Administrative Services, lawyers pursued past-due assessments from several business owners, including Aegis (\$11,337.05); Balfour Place Apartments

“The city and county remain free to change course. The [MOU] does not commit them to action. The trial court properly concluded that the [MOU] is not an ‘action’ within the meaning of SEPA and judicial review is not available.”

From a Washington Court of Appeals decision regarding the proposed arena



(\$8,442.27); Hotel Seattle (\$16,041.91) and Springhill Suites (\$24,693.04). A fourth debtor, Brooke Barnes, who owns the 1901 3rd Ave. building, is in arbitration with the City on his debt.

Clyde Yancey

Five cases with five judgments were previously referred to the unit from the Land Use Section for collections. The judgments were for building and land use code violations on several Yancey properties. The unit fully resolved one of the five cases by collecting \$14,502.75 from the court. The money was deposited by Yancey shortly before the scheduled execution sale of one of his properties. Action to collect the remaining four judgments is continuing.

MSRE Management, LLC dba Yesler Investment Company and MSRE Management, LLC dba Selig Holdings Company, LLC

These cases represent two among the several cases referred to the unit for collection of unpaid business improvement area assessments. The assessments were left owing at the conclusion of the 2004

Downtown Parking and Business Improvement Area. Settlements were reached in these two cases and \$176,125.67 was collected in 2013. Additional amounts are due under the settlements in 2014.

LAND USE SECTION

Sometimes a hole in the ground is a problem. Sometimes it's an opportunity.

When the hole was Sound Transit's Broadway Light Rail Station construction site in the heart of Capitol Hill, the Land Use Section helped ensure the community and Sound Transit realized the opportunity. Working in concert with the Department of Planning and Development (DPD), the Office of Housing, and Sound Transit, section attorneys invoked a rarely-used state law allowing development regulations to be tailored to a project in exchange for community benefits. The negotiations required the parties to strike a balance workable for both sides while respecting a host of complex federal, state and local laws.



Light rail tunnel hole, left. Preview of light rail tunnel, above.



Smith Cove

The result was an agreement giving Sound Transit and its future developer partners flexibility and certainty about the rules that will govern the land above the new station, and securing for the community such benefits as enhanced levels of affordable housing, plaza space for public use, and designs that respect neighborhood character.

The agreement was welcomed by community leaders and unanimously approved by the Sound Transit Board and City Council.

All in a day's work for the Land Use Section, one of the single largest, and most respected, land use law teams in Washington, public or private. The 10-lawyer section supports the City in all facets of shaping the landscapes we call home.

CITY PROJECTS

Smith Cove

A multi-year negotiation enabled the City to purchase more than five acres of land, including waterfront, at

Smith Cove in Magnolia for a future park. This complex, win-win-win deal involved the Port of Seattle, which owned the site, and King County, which will construct a vital drainage facility there.

Central Waterfront

As City departments work on an array of projects to repair and improve the downtown waterfront area, they need counsel on a host of land use issues, including environmental review, street use and shoreline regulation.

PARTNERING TO SHAPE OUR COMMUNITIES

Enhancing affordable housing

The City Offices of Housing and Economic Development provide tens of millions of dollars in loans annually, and tap additional federal funding and tax incentives, to support affordable housing projects throughout the city. These significant deals require advice and negotiation to ensure the public's money is invested consistent with complex laws and



Yesler Terrace

CIVIL DIVISION *continued*

regulations and is protected for the intended use, affordable housing.

Yesler Terrace

The Seattle Housing Authority (which is independent from the City) is redeveloping one of the largest public housing communities in the city: Yesler Terrace, which sits on approximately 30 acres on First Hill, just east of downtown. The City and its attorneys are advancing this project through loans, federal funding, bonds and tax credits. The City must also regulate the development, especially through an amendment to the City Code and a complex, one-of-a-kind subdivision process addressing such issues as streets and infrastructure to serve the project's more than 1,000 residents.

LAWSUITS

Potential Sodo Arena

After the City, King County and the Hansen group proposing to build a sports arena in Sodo inked a Memorandum of Understanding fleshing out a framework for the proposal, a lawsuit challenged the MOU because it preceded an environmental review. Both the Superior Court and the Court of Appeals dismissed the case.

Seawall litigation and settlement

Replacing the deteriorating seawall is a time-sensitive project that must be completed if other crucial work to reshape the downtown waterfront is to occur without compromising mobility through the area during years of construction. A SEPA lawsuit by owners of historic piers threatened to delay this important project. The City simultaneously mounted a vigorous defense of

the suit, negotiated a resolution of the dispute, and reshaped the project to implement that resolution while complying with many legal requirements.

State notice laws

State law allows cities to tailor the level of notice of proposed projects to their complexity and impact. Consistent with that law, the City does not require applicants for routine building permits to provide notice to others about their applications. A group of residents upset about a permit issued without notice sued the City for monetary damages in federal court for allegedly violating their constitutional rights. The court sided with the City.

SHAPING KEY CITY LEGISLATION

Shoreline Master Program update

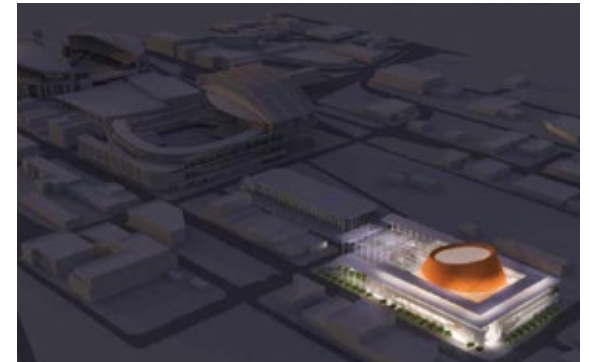
The state Legislature required cities to significantly update and revamp their shoreline regulations. Over a two-year period, Land Use attorneys worked with DPD, Council members, interest groups and the state Department of Ecology to craft provisions that meet state law, protect our valuable shoreline environments, and balance the interests of property owners and the public.

Zoning for marijuana activity

In the wake of state regulation of medical marijuana and the passage of I-502 setting up a system of licensed providers of recreational marijuana, City leaders wanted to ensure marijuana activity occurred in areas and at levels compatible with existing neighborhoods. The result is a comprehensive approach to the siting of larger-scale marijuana production, processing, and sales activity within the City.

“I can't say enough about her commitment to the Shoreline Master Program Update process. I'm sure you have heard that we couldn't have done it without her, and truer words were never spoken.”

A DPD client thanks a Land Use attorney



Proposed basketball-hockey arena

CIVIL DIVISION *continued*

Wall sign legislation

Attorneys worked with Council members and DPD to develop reasonable limits to the size and location of commercial wall signs, and to defend litigation brought by sign companies to thwart the law.

South Lake Union rezoning

Fulfilling the City's role as the region's most densely- developed hub, the Mayor and Council worked on sensible ways to expand downtown to the southern shores of Lake Union. Over five years, section attorneys worked with DPD, the executive and Council to navigate growth management and environmental review regulations, embrace an "incentive zoning" program, and defend a lawsuit from a property owner seeking even more development capacity.

Enforcing our rules

Section attorneys take on the tough job of pressing enforcement actions in court against those who refuse to play by rules or, worse, endanger their tenants, neighbors and the environment. In 2013, these cases included: bringing down an illegal sky bridge built by a UW fraternity over a City alley; obtaining an order of contempt against a recalcitrant property owner for refusing to remove illegal fill; making a sign company live within the limits of its permit; securing payment of tenant relocation funds owned by landlords, forcing the removal of junk cars from a neighborhood and securing almost \$1 million in fines against a notorious landlord. In all, the section filed more than 20 enforcement cases, closed 80 cases, and secured judgments for \$558,000 in penalties in 2013.

TORTS SECTION

The Torts Section defends the City against lawsuits for personal injury or property damage, arising out a wide variety of circumstances such as alleged negligent road design, auto accidents, flooding and landslides. The 12-lawyer section also pursues insurance companies when they fail to accept our tenders of defense. The section opened 70 cases and 26 project files in 2013.

Risk Management

The Torts Section works extensively with the City's risk manager and with operating departments to control the City's risk of lawsuits, concentrating on the departments that are most frequently involved in litigation due to the nature of their work: SPD, SDOT, SPU, Parks and City Light. The Law Department gives risk management work and training a priority because these efforts ultimately lead to reduced liability exposure and litigation costs.

Advice

In addition to the section's risk management work, the Torts Section routinely provides advice to other CAO sections and City departments on numerous issues, including Washington Industrial Safety and Health Act citations and other worker safety issues.

Personal Injury and Property Damage Litigation

In 2013, the cases ranged from relatively minor to allegations of wrongful death and catastrophic injury. Torts against the City run the gamut—negligent road design, sidewalk trip and falls, and automobile accidents. Property damage cases



South Lake Union

“Thank you to you and your entire office for taking action. . . . Your hard work is not going unnoticed. I see mention of it in the Seattle Times article of today's date as well as the great appreciation for your service noted in the comments section. The safety of our neighborhoods is paramount, and it is great to see that your office understands that.”

A neighbor of property subject to a Law Department enforcement action

CIVIL DIVISION *continued*

include allegations of surface water flooding, sewer backups, and landslides. Two torts cases (Hor and Turner) were tried to juries during 2013.

CASES OF PARTICULAR INTEREST

Hor v. City of Seattle

Shortly after midnight on May 18, 2006, Police Officer Adam Thorp observed a Cadillac parked illegally, after hours, in a dark secluded parking lot of Seward Park. He pulled in near the vehicle, walked over, and knocked on the driver's window. The driver, Omar Tammam, turned on the vehicle and backed up. When Thorp ordered Tammam to stop, Tammam instead drove towards Thorp, who had to jump out of the way, and then sped out of the park. Officer Arron Grant entered Seward Park as Thorp was attempting to contact Tammam. As Tammam sped by, Grant activated his emergency lights; when Tammam did not stop, Grant made a three-point turn, then proceeded out of the park in the same direction. By the time Grant exited the park, the Tammam vehicle was gone. When Grant reached the intersection of Seward Park Avenue and Juneau, he observed taillights disappearing around a bend in the roadway approximately 600 feet ahead. With Thorp behind him, he turned in the direction of those taillights; three blocks later, after cresting a hill, he came across the Cadillac, which had crashed into a rock wall. The Cadillac's event data recorder showed that the car had been traveling in excess of 85 mph six seconds prior to the crash and was still traveling in excess of 60 mph at the time it struck the wall. By the time the officers arrived, Tammam had extricated himself from the vehicle and was running away from the

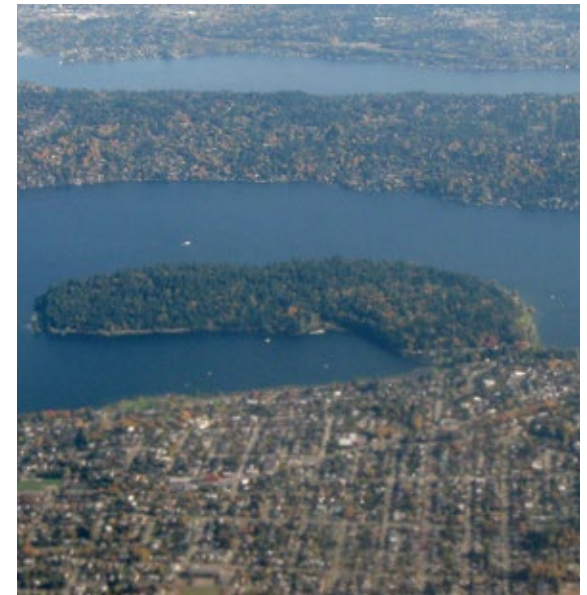
scene. The plaintiff, age 16 at the time and a passenger in the vehicle, was left quadriplegic. Tammam was later captured by a K9 unit; he reported (and blood tests confirmed) that he was on Ecstasy and had smoked marijuana earlier that day. He reported that he ran because he had warrants.

In June 2013, more than seven years after the crash, the case was finally tried to a jury.

After hearing four weeks of testimony and after deliberating for less than half a day, the jury returned a verdict finding that the officers were not negligent in any of their actions and that Tammam's criminal acts were the sole cause of plaintiff's injuries. The jury awarded plaintiff just over \$17 million in damages against Tammam. The case is on appeal.

Robb v. City of Seattle

This wrongful death case arose out of the murder of Michael Robb by Samson Berhe. Robb's estate sued Seattle police officers, claiming they were negligent because when they stopped Berhe and a companion in connection with a burglary investigation earlier that day, they did not pick up shotgun shells they observed on the ground during the stop. Berhe may have later retrieved and loaded those shells into a shotgun stashed elsewhere and used it to shoot Robb. A unanimous Supreme Court ruled that there was no duty to pick up shells from the street, and noted that a contrary ruling would mean that police officers could face unbounded liability for failure to take steps to protect against every potential harm they may have reason to foresee.



Seward Park

CIVIL DIVISION *continued*

Turner v. City

A car hit a defective steel plate that had been placed over an excavation by SPU and was forced into oncoming traffic. The City admitted liability but disputed the extent of plaintiff's damages. After a bench trial in which plaintiff sought \$3.4 million, the court awarded her \$187,000. During the case, the doctor altered medical records inappropriately.

DISMISSALS AND SETTLEMENTS

The section obtained dismissals and favorable settlements in numerous cases. Examples include:

- **Wicki** - The plaintiff, a disabled passenger on a Metro bus, was seriously injured when her bus was struck by a motorist fleeing an attempted police stop. Alleging that officers negligently pursued the suspect when he attempted to elude them, plaintiff sued the City for her injuries, claiming nearly \$1 million in damages. The City settled the case for \$365,000.
- **Remme** - Plaintiff, a bicyclist, was rendered quadriplegic when his bicycle struck an offset between two sidewalk panels on the sidewalk approaching the Montlake Bridge, allegedly causing him to rotate forward over his handlebars. The plaintiff sued both the City and the state. The state owns the bridge and had actual notice of the offset pursuant to an inspection a year earlier but did not inform the City. The City, by statute, is the road authority with respect to the sidewalk. In addition to plaintiff's claim for more than

\$20 million, his wife and six children each brought loss of consortium claims. All claims against the City were settled for \$2.5 million. The state settled separately.

- **Rowles** - Rowles and codefendant Fontaine were involved in a car accident where plaintiff was the driver with the right of way. Rowles sued Fontaine for damages. Fontaine claimed the accident was caused, in part, due to the City's failure to maintain the vegetation in the median at 14th Avenue NW and 57th Street NW in Ballard. The City noted a summary judgment motion arguing the failure to maintain vegetation alone could not be a basis for negligence and the City lacked any notice of the alleged overgrown condition. Plaintiff and Fontaine settled the case between them and dismissed the City.
- **Williams** - Plaintiff was lawfully arrested and placed in the back of a police van. He alleged he was injured when he fell off a seat in the back of the van while handcuffed and unrestrained by a seatbelt. The City moved for summary judgment of dismissal, arguing that the fact that he was unrestrained by a seatbelt could not be the basis for his negligence action. The judge agreed and granted the City's motion dismissing the case.
- **Wheaton** - Plaintiff had an accident on the disc golf course at Mineral Springs Park on Sept. 10, 2009. He claimed that when he went to throw the disc off the 4th concrete



Steel plates on Seattle streets



Montlake bridge, south tower

CIVIL DIVISION *continued*

tee pad, he stepped on the concrete corner, which broke, causing him to roll his ankle. The City argued the Recreational Land Use Statute (RCW 4.24.210) provided immunity to the City and that the plaintiff could not show the injury-causing condition was artificial, known, dangerous and latent. The King County Superior Court judge agreed and found that City did not know of the condition and dismissed the case.

- **Rusch-Guthrie** - This case arose from an auto-train collision on Martin Luther King Way. Plaintiff sued the railroad company and the City. The case was tried to an arbitrator. The arbitrator decided in favor of the City.
- **Gold** - Plaintiff was an innocent victim when a large and deep sinkhole suddenly appeared on the sidewalk adjacent to the City's pergola on the Seattle waterfront. Gold sued the Port of Seattle, the state and the City. He raised his demand to \$2.5 million a few weeks before trial. The case settled for a total of \$150,000, with \$50,000 coming from the City.
- **Oregon Mutual** - The City paid \$675,000 to resolve this case involving a high voltage power line falling and causing extensive damage to a townhome building.
- **Richmond** - The City paid \$1.55 million to settle this matter. Plaintiff was badly injured when the mast of a boat he was pushing came in contact with a high-voltage power line that was lower than the height allowed in an area servicing boats.

APPEALS

- **Jones** - A City firefighter fell down a pole hole and was seriously injured. After a seven-week trial in 2009, a jury found liability against the City and awarded \$12,752,094 in damages. The Supreme Court held that the trial court had erred in its analysis regarding admissibility of certain City evidence but held that the error was harmless. The ruling on Dec. 12, 2013 brought this case to an end. The total judgment, including post-judgment interest and costs on appeal, was \$13,924,845.22. In early 2014, the City paid \$2,713,829.18 of that amount, with the remainder paid by the City's insurers.
- The **Doss** case is a sidewalk trip and fall case that was dismissed on summary judgment for lack of notice and causation. During 2013 Division I affirmed the dismissal, finding that the planting strip where plaintiff fell was not unreasonably dangerous.
- The **Almo** case is a sidewalk trip and fall case that was dismissed on summary judgment. Division I reversed the dismissal during 2013, sending it back to the trial court.
- The **Torgerson (Gayle)** case involves a pedestrian who was struck by a motorist while crossing a City street in a marked crosswalk. The City was dismissed on summary judgment for lack of proximate cause. Plaintiff's appeal is pending before the Court of Appeals.



City pergola on Alaskan Way

CIVIL DIVISION *continued*

- The plaintiff in the **Cho** case is one of five pedestrians struck at First Avenue South and South Massachusetts Avenue by a pickup driven by an intoxicated driver in October 2011. Cho alleges City negligence based upon street design issues. The trial court granted the City's motion for summary judgment during 2013. The case is on appeal. The companion case of *Ha* is pending before the trial court.
- In **Elliott Bay Marina**, plaintiff alleges that the City is illegally taxing it by requiring the marina to pay the rate for City sewer services. The City prevailed on summary judgment and plaintiff appealed. The case is pending on appeal.

POLICE ACTION LITIGATION

To increase the Section's capacity to defend police action lawsuits in-house, an additional attorney was added during 2013 and the paralegal position became full time on police action litigation. During 2013, 18 police action cases and six projects were opened. Of the 18 cases, 14 are being handled completely inhouse, one is being handled partly in-house and partly by outside counsel for capacity reasons, and three are being handled by outside counsel for capacity or conflict reasons.

Pete's decision to bring police action work in-house continues to prove successful. In 2013, the section's police action team and/or outside counsel obtained numerous dismissals and advantageous settlements. Thirteen cases were closed without payment. and eight cases were settled or paid for

amounts ranging from \$15,000 to \$1,750,000, for a total of \$2,346,263.13. No cases went to trial.

Torgerson v. City

The \$1.75 million settlement in the Brian Torgerson case comprised the vast majority of the total paid in settlement. The night before his arrest, plaintiff assaulted his father outside the City. Seattle police officers, at the request of his parents, attempted to arrest Torgerson at his apartment building on an outstanding Municipal Court warrant for theft. Torgerson violently resisted the officers' attempts to take him into custody, which escalated into a "help the officer" call. Responding officers quickly handcuffed Torgerson, who continued to resist, buck and thrash against the restraints. Recognizing that Torgerson was probably in a state of "excited delirium," which constitutes a medical emergency, the officers restrained him and attempted to calm him so that he could be transported to the medical personnel staged in the lobby. Once in the lobby, Torgerson had a heart attack (which is consistent with excited delirium) and was resuscitated by police officers and medical personnel. Unfortunately, Torgerson sustained oxygen deprivation during the event, causing brain damage. Due to the serious nature of the injuries and the risk of liability, the parties settled shortly before trial.

To avoid potential conflicts, the office continues to retain outside counsel to handle inquests into officer-involved incidents. During 2013 outside counsel handled two inquests into shooting deaths. The decedent in the first inquest was James Anderson; the second was Jack Keewatinawin. The inquests cleared both officers.



Elliott Bay marina

INQUESTS

Appeals in Police Action Cases

- **Anderson** - Plaintiff claimed that he was wrongfully arrested and prosecuted for selling Mariners tickets. The case was tried to a jury, resulting in a defense verdict. During 2013 the plaintiff's appeal to the 9th Circuit resolved favorably for the City.
- **Bear** - Plaintiff claimed he was wrongfully arrested and that officers used excessive force in affecting his arrest. His claims were dismissed by the trial court. During 2013 the 9th Circuit affirmed the dismissal. Plaintiff seeks review to the U.S. Supreme Court.
- **Tolsma** - Plaintiff alleged that an arrest was made without probable cause. His case was dismissed on summary judgment. During 2013 the 9th Circuit affirmed the dismissal.
- **Rutherford** - Plaintiff alleged that he was wrongfully detained and subjected to excessive force. The case was tried to a jury. Plaintiff prevailed on one claim; the jury awarded \$0 in nominal damages which the federal judge increased to \$1. The judge later awarded plaintiff over \$90,042.12 in attorneys' fees and costs. An appeal on behalf of the officer was taken to the 9th Circuit. In early 2013, the 9th Circuit affirmed the judgment. A petition for certiorari was taken to the U.S. Supreme Court on behalf of the officer during 2013, which was denied. Attorney fees on appeal were added to the underlying judgment and final payment in the total amount of \$207,763.13 was made.

- **Brumfield** - Plaintiff alleged that he was wrongfully arrested after striking the mirror on a police car. The case resulted in a defense verdict during 2011. A settlement of \$30,000 was reached while the case was on appeal to the 9th Circuit.
- **Weed** - Plaintiffs alleged that they were wrongfully arrested and that excessive force was used against them. The case was tried to a jury and resulted in a defense verdict during 2011. During 2013 the 9th Circuit affirmed the judgment in favor of City defendants.
- **Sargent** - During 2013 this case was dismissed on summary judgment. Late in 2013, while plaintiff's appeal was pending before the 9th Circuit, the parties reached an agreement to settle this case along with the companion public disclosure case. The portion attributed internally to the police action matter was \$10,000. The total settlement was \$235,000, which was paid in early 2014.

Advice and Training

The Police Action Team also provides direct client advice to SPD training on: (1) detention and identification of individuals during civil infractions; (2) distinctions between social contacts, *Terry* stops, and arrest; (3) seizure of cell phones; (4) special commissions and secondary employment; and (5) other issues. Team members worked with the Mayor's Office, the City Council, and the Community Police Commission on a wide variety of topics including: drones, in-car videos, Homeland Security cameras, and the MESH wi-fi

systems. During 2013, Police Action Team members also trained DPD investigators on criminal seizures and provided advice to the Seattle Public Library concerning its policy prohibiting firearms. The Police Action Team is also involved in emergency operations and provided direct client advice on scene during May Day 2013.

Team members regularly attend the local police advisors' meetings that bring regional attorneys together to discuss relevant issues. The team works to stay current with developments in police action litigation and policy through regular review of the Law Enforcement Digest put out by the Attorney General's Office, and in 2013 also attended the National Association of Civilian Oversight of Law Enforcement (NACOLE) conference and the Use of Force Summit in Connecticut. Given the fast-paced development of the law in this area, regular professional development is critical to the functioning of the team.

Insurance Coverage Tenders

One of the City's primary risk management tools is its additional insured status under insurance policies issued to the City's contractors, concessionaires, vendors, permittees and those who hold events on City rights-of-way pursuant to street use permits. In 2013, the section's attorneys aggressively asserted the City's interests in insurance coverage often in the face of denial or delay, including the following examples:

- **City v. Phan/Le** - This lawsuit arose out of the theft of more than \$1.2 million by a SPU

CIVIL DIVISION *continued*

employee. The City recovered approximately \$600,000 in assets from Phan and his wife and successfully tendered its remaining loss and costs to the City's insurer and received from it the difference between the City's total loss and what it recovered from Phan and his wife. The City completely recovered its losses from this theft.

- ***Slee/McDaniel v. City, et al.*** - This lawsuit arose out of a death and serious injury resulting from the collapse of a utility vault under construction. The City tendered the case to Liberty Mutual, the insurer for the general contractor. The City was an additional insured under that policy. The tender was eventually accepted and the lawsuit was settled without payment by the City. During 2013 the City recovered \$146,451.39 from Liberty Mutual for its pre- and post-tender attorneys' fees and defense costs.

Tuliebitz v. City and Pike Place Market PDA -

This lawsuit arose out of a fall down an outside stairway behind the Pike Place Market. Our tender on the basis of the City's additional insured status on the Market's insurance policy was accepted and the case settled for \$80,000 with no payment by the City.

Disaster Planning and Emergency Operations Center Legal Support

Torts Section attorneys and others provide legal support to SPD's Emergency Management Section. Section attorneys also help to staff the City's

Emergency Operations Center, provide legal support during emergencies and participate in training activities throughout the year. On May Day 2013, the Police Action Team providing on-site staffing to provide real-time advice to the Mayor, the Police Chief and other members of Command Staff during civil unrest.

CONTRACTS AND UTILITIES

The 11-attorney section provides legal advice, handles litigation, drafts agreements and legislation for all City departments in support of capital projects, real property transactions, bonds, purchasing, and intellectual property matters, and provides advice to the City's own electric, water, drainage and solid waste utilities—Seattle City Light (City Light) and Seattle Public Utilities (SPU). Clients frequently draw upon the practical and business experience of section lawyers as well as the particularized knowledge of the utilities lawyers to support the complex operations of the City, its utilities and the resulting litigation that arises.

REPRESENTATIVE LITIGATION

2000-2001 West Coast Energy Crisis Refunds

The impacts of the ENRON energy manipulation continue decades later. In a proceeding before the Federal Energy Regulatory Commission (FERC), various buyers of energy, including City Light, sought refunds on inflated energy sales in the Pacific Northwest between December 1999 and June 2001. City Light presented claims before FERC against multiple entities between August and October 2013.



Preparation for May Day

Correcting an historical legal wrong: Removal of a racially restrictive covenant from a City property deed

On May 17, 2013, King County Superior Court Judge Pro Tem Henry Judson signed On May 17, 2013, King County Superior Court Judge Pro Tem Henry Judson signed an “Order Granting Petition for In Rem Declaratory Judgment Striking Discriminatory Provision from Title” for a City of Seattle property held by Seattle City Light since 1954. The property served as a substation for power distribution to City Light customers in parts of unincorporated King County and Burien. The property had stood vacant since it became surplus to City Light’s utility needs once the substation was decommissioned in the 1990s. When City Light decided to sell the property in 2012, a title report revealed the existence of a racially restrictive covenant on a 1929 Warranty Deed to the property from the “South Seattle Land Company” as Grantor to a “Mrs. G.C. Jacobsen” as Grantee. When City Light purchased the property in 1954 from King Runnels and Verna M. Runnels, the Statutory Warranty Deed for the property did not include the repugnant language of the 1929 deed, which in part read:

“No part of said property hereby conveyed shall ever be used or occupied by any person of Ethiopian, Malay or any Asiatic race, and the party of the second part, his heirs, personal representatives or assigns, shall never place any such person in the possession or occupancy of said property or any part thereof, nor permit the said property or any part thereof, nor permit the said property or any part thereof, ever to be used or occupied by any such person, excepting only employees in the domestic service on the premises of persons qualified hereunder as occupants and uses and residing on the premises.”

Under RCW 49.60.224(1), this deed provision was void and against public policy. RCW 49.60.227 provides that a land

owner may cause a provision that is void by reason of RCW 49.60.224 to be stricken from the public records:

RCW 49.60.224

Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void — Unfair practice.

- 1) *Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or with any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled, and every condition, restriction, or prohibition, including a right of entry or possibility of reverted, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled is void.*
- 2) *It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title.*

[2007 c 187 § 15; 2006 c 4 § 16; 1997 c 271 § 16; 1993 c 69 § 8; 1979 c 127 § 10; 1969 exist. c 167 § 6.]

Real Estate Services staff of City Light discovered the repugnant language and contacted the Law Department for guidance to see if could be removed from the public record, thus taking the language off title completely for future title reports. The Law Department recognized that under Washington law the repugnant language could be stricken from the 1929 Warranty Deed from the South Seattle Land Company to Mrs. G.C. Jacobsen, and then searched court records to see if a similar court order under RCW 49.60.227 had ever been issued before in King County. Being unable to find a previous similar order, the Law Department drafted a “Petition for In Rem Declaratory Judgment Striking Discriminatory Provision From Title for Lot Sixteen (16) of Block Eight (8) Division One (1) Beverly Park Addition,” and filed it with a Proposed Order granting the Petition in King County Superior Court on May 15, 2013.

Just two days later, on May 17, 2013, the order was granted by the court, striking the void deed provision from the public records forever, and eliminating said provision from title to property.

The documents drafted and filed by the City Attorney’s Office can now serve as an example for future similar petitions to strike such repugnant and discriminatory historical language from title to other properties both within King County and around our state.

CIVIL DIVISION *continued*

FERC has received the parties' closing briefs and the City awaits the preliminary ruling from the trial judge. Prior to the FERC trial, the City settled claims with 12 entities, with a combined total settlement amount of \$2,564,980. During the middle of the FERC trial, the City also reached a settlement with Powerex Corp for \$2,000,000. The Powerex settlement is waiting for FERC approval. Settling these cases will enable City Light to better fund the continuing litigation.

Johal v. City of Seattle v. WSDOT

Section lawyers continued their representation of the City's utility clients in an inverse condemnation/quiet title action for underground electrical and drainage lines. The plaintiffs appealed the November 2011 bench trial decision dismissing all of their claims and creating an easement for the City. In 2013, Division 1 Court of Appeals upheld the trial court decision.

Oregon Tax

Section lawyers filed a lawsuit on behalf of City Light challenging Oregon's imposition of property tax on City Light. The case is on appeal to the Oregon Supreme Court.

SPU Wastewater

Section lawyers, in partnership with the Torts Section, continue to represent SPU in litigation brought by a large commercial wastewater customer who asserts that because their side sewers connect directly to King County's trunk line, they should only have to pay the treatment component of the City's wastewater volume rate. The City won summary judgment in Superior Court on behalf of

the City. Briefing to the Court of Appeals was completed at the end of 2013.

REPRESENTATIVE PROJECTS AND CONTRACTS

Arena

After more than a year of negotiation, the City, King County and Chris Hansen (ArenaCo) agreed on a path forward to build a new, state-of-the-art multi-purpose sports and entertainment arena. This agreement was simultaneously approved by both the City and County Councils. Section lawyers, together with clients and outside arena counsel, continued to advise and prepare transactional documents to ensure that the City was in a position to facilitate the development of a new arena. Hansen did not secure an NBA franchise in 2013, rendering the agreement dormant.

Bonds

Section lawyers worked with the Department of Finance and outside bond counsel to issue approximately \$340 million worth of general obligation and revenue bonds for the City, including a significant effort to update and refine the City's form of authorizing documents.

Boundary Dam

Section lawyers furnished legal advice and contract drafting support to City Light in its project to rebuild generator units 53, 55 and 56. During the first quarter of 2013, the Boundary Dam Project received a new 42-year operating license from FERC that adopted the settlement agreement terms and conditions worked on by section attorneys and outside counsel. The new license formalizes existing



Proposed basketball-hockey arena



Boundary Dam

project operations and numerous protection, mitigation and enhancement measures. Section lawyers continued to work with the Boundary team on the license implementation phase, and one of the first big challenges was to develop a new approach to the planned removal of Mill Pond Dam.

Broadband

We worked with multiple departments to provide advice and support regarding the mayor’s goal to improve and expand high-speed internet services to Seattle businesses and residents. The work included providing legal advice and strategy to the Department of Information Technology (DoIT) on legislation that allows the City to lease excess fiber and infrastructure to third parties.

Bullitt Foundation

Section lawyers continued to work with City Light regarding its Memorandum of Understanding with

the Bullitt Foundation that presents an innovative way to pay for energy conservation in the form of a power purchase agreement. The plan is to use the trademarked Metered Energy Efficiency System, which provides a theoretical way to account for the electric energy that a baseline building of similar size would have normally used, subtracts the number of kilowatt hours actually used, and creates a number of kilowatt hours for which City Light will pay the customer. Section lawyers are pursuing a formal power purchase agreement for the Bullitt Building.

Cable Communications Code Revisions

Section lawyers reviewed Seattle Municipal Code Chapter 21.60, the City’s Cable Communications Ordinance, which hasn’t been revised in many years. The revised Code will be sent to the City Council for approval in 2014.



Bullitt Center

CIVIL DIVISION *continued*

Cascade Water Alliance

We assisted SPU in finalizing an amended long-term water supply contract with Cascade Water Alliance that will bring in approximately \$145 million in revenues for the water fund over the term of the contract through 2062 and allow Cascade Water Alliance to defer the costs of developing Lake Tapps as its independent water supply.

Racial and Social Justice Initiative

Section lawyers provided legal advice, analysis and drafting of the City's Community Workforce Agreement, which is designed to increase the employment of local workers in City public works projects. Lawyers in this section also provided such support for the development of new prompt pay contract requirements aimed at getting payment to small subcontractors, who are frequently women- and minority-owned firms at an expedited rate, and continued to furnish support to the expansion of the City's WMBE Inclusion Plan for public works projects.

Civic Center Development

After researching market conditions, advising Council in executive session and negotiating with Triad, section attorneys, together with City clients, negotiated a second amendment to the purchase and sale agreement for the "hole in the ground across the street from City Hall." The amendment ensures active marketing of the development and protects the City with a personal guarantee if the financing fails.

Construction Careers Resolution 31485

Section lawyers frequently provide advice to City Purchasing and Contracting Services (CPCS) as

that department develops contracting policies and guidelines to carry out social equity requirements under the Seattle Municipal Code. In 2013, attorneys worked with CPCS and City Council to examine contracting programs in other jurisdictions that are designed to ensure that a wide variety of individuals, including local and minority workers, have opportunities to work on public works projects. City Council passed Resolution 31485, which created a task force to make policy recommendations to Council, and section lawyers will continue to provide legal advice as more policies are considered and developed.

Contractual Indemnification of Third Parties

One recurrent issue in 2013 involved the indemnification of third parties, including the state. With respect to the state, section attorneys finalized global lease amendment language, and drafted and introduced legislation to Council to approve the language that resolves concerns about the City's ability to indemnify the state under certain lease agreements.

Customer Information Contract

Section lawyers have assisted City clients with the high-value procurement (\$32 million) of software that will manage customer information for City Light and SPU. This very complex contract was awarded to Price-Waterhouse-Coopers, and after months of negotiations, all legal and business issues were successfully resolved.

Emergency Management

We continued to improve the Law Department's emergency management response capabilities, including the development of the Department Continuity of



Civic Development Center—the reality



Civic Development Center—the dream

CIVIL DIVISION *continued*

Operations Plan and emergency response plan and expanded training of the 16-member team of lawyer responders. We continue to provide legal advice, analysis and drafting of legal documents for the Office of Emergency Management (OEM), and serve on the citywide Disaster Management Committee, the Emergency Executive Board, the Strategic Work Group of the OEM and the multi-agency work group among numerous state, federal and local governments. Our lawyers also play an essential role in preparing contingency plans for anticipated May Day civil unrest, including the preparation of defensible strategies for potential emergency orders, and staffed emergency response in the Emergency Operations Center during the event.

Energy Delivery

Section lawyers continue to advise City Light with respect to the utilities' compliance with the mandatory reliability standards implemented by the North American Electric Reliability Corp. and enforced by the Western Electricity Coordinating Council. They also negotiated settlements with the Western Electricity Coordinating Council for self-reported violations that resulted in notices of alleged violations.

First Hill Streetcar

We assisted in the negotiation and development of the operating agreement with King County of the First Hill Streetcar.

Franchise Issues/Agreements

Section lawyers provide ongoing advice and contract negotiations regarding various issues under SPU's

franchises, including utility tax issues and design and construction to relocate electric utility infrastructure required under City Light's franchise with Burien. We also assisted City Light in its ongoing negotiations with suburban franchise cities for franchise rights to continue to provide electric utility service.

Proposed transfer of municipal water distribution system assets and service area from SPU to City of Shoreline

In November 2012, the City of Shoreline (Shoreline) voters passed Proposition 1 ratifying Shoreline's plan to become its own municipal water utility by acquiring municipal water distribution system assets and service area from SPU in 2020 through a negotiated sale. Section lawyers have been assisting SPU in negotiating and drafting proposed transfer agreement terms that are still subject to a public hearing and final consideration and approval by ordinance of the Seattle City Council. The terms being negotiated include: the timing and purchase price for the facilities, real property, and service area/customer base that is proposed for transfer; reimbursement for costs SPU would incur to implement the transfer; plans (including complex sequential scheduling) that would be necessary to physically separate the distribution facilities into two independent systems; plans to transfer, test and validate customer service and billing records and systems; and plans for ongoing relationship issues including a franchise extension for regional transmission facilities in Shoreline that SPU will retain, negotiation of a wholesale water supply contract to Shoreline and assignment of wheeling contracts to Shoreline so SPU can continue serving



City of Shoreline

CIVIL DIVISION *continued*

wholesale water customers through certain facilities that would be transferred to Shoreline if the sale is approved. CAO will continue assisting SPU through the final negotiations and development of a legislation package for consideration by the City Council if the negotiations are successful.

Key Arena ADA

In 2013 lawyers furnished legal advice and analysis of ADA requirements to a citywide team charged with the planned remodeling of the City's arena at Seattle Center. This work included identifying and assembling a team of uniquely qualified experts with specialized knowledge of both the ADA and the requirements of NBA professional basketball operations. This work played a key role in developing plan modifications to the arena in a manner that to the greatest extent feasible is consistent with the 2010 Standards for Accessible Design.

Mercer Street Projects

Since the 1960s the City has struggled to improve the "Mercer Mess." Throughout the past 15 years, section lawyers have been extensively involved in helping plans evolve through contracting and property acquisition issues. During 2013, the construction of a new two-way Mercer Street East Project was completed. This nearly \$200 million project changed Mercer Street from one-way to two-way, helping to create a new multi-modal transportation environment in the South Lake Union neighborhood, with enhanced pedestrian connections, bike trail and a quiet street fronting South Lake Union Park.



Mercer Street Project

As the Mercer Street East Project wound to a close, the Mercer Street West Project got under way. Section lawyers have provided continuing legal support to this new project, which will continue Mercer Street as a two-way enhanced transportation corridor stretching from I-5 to Elliott Way. A portion of Mercer West passes through and over the state's Highway 99 north tunnel portal and section lawyers have assisted in the development and review of contract documents between the City and state necessary to accomplish this work.

Multi-City Business License and Tax Portal ("FileLocal")

This is a joint project among the cities of Seattle, Bellevue, Tacoma and Everett that is initially being led and funded by Seattle. A separate public entity is being created to manage the portal after it is



Key Arena

CIVIL DIVISION *continued*

developed, and it will be staffed by Seattle employees on loan to the portal entity. The FileLocal portal will allow one-stop tax payments to be made by participating taxpaying businesses. Section lawyers have assisted City clients with advice, negotiations, and document and contract drafting on all aspects of the project. The portal should be completed and available for use in 2014.

Power and Renewable Energy Credit Purchases

In 2013 section lawyers continued to advise City Light on the purchase and sale of energy, renewable energy credits and transmission.

Public works and alternative public works for large projects

Until recently under Washington law, public works construction projects were required to be designed by the public owner and awarded to the contractor who submitted the lowest qualified bid. That method, sometimes referred to as “design-bid-build,” was required for all public works construction regardless of size. In the past two decades, state law has changed to permit what are known as “alternative public works” for larger, more complex projects. In general, the projects must have an estimated cost of \$10 million or more. The two principal alternative methods are: a) General Contractor/Construction Manager (GC/CM), where the public owner selects the best qualified contractor and the owner and contractor collaborate in completion of design and then negotiate a construction price; and b) Design-Build (D-B), in which the owner selects the best design and construction team known as the design-builder, which completes the design and constructs the

project for a negotiated price. These methods require a more intensive selection process, the creation of complex contracting documents and sophisticated project management than traditional design-bid-build projects. A public owner wishing to use these methods must be certified by the state as qualified to do so. Smaller agencies are generally only authorized to do a limited number of these projects and must be approved on a case-by-case basis by the state oversight board. The City is certified to use alternative public works without case-by-case approval. Every three years, the City must re-new its certification. Lawyers in the section furnish legal advice, contract drafting and project management support to the three constructing departments (SPU, City Light and Department of Finance and Administration). During the year section lawyers assisted the City’s contracting department in obtaining that recertification by furnishing records and narrative summaries of the alternative public works performed by the City during the three-year term and by appearing before the state board during the recertification process. A section lawyer serves as a member of the state certification board.

During the year, section attorneys helped prepare a new form of GC/CM alternative public works contract. Alternative public works projects on which section attorneys worked include: SDOT’s Seawall Replacement Project; SPU’s Combined Sewer Overflow Projects (Windermere, Genesee and Henderson), its North Transfer Station, Landsburg Chlorination Facility and South Transfer Station; Finance and Administration’s fire station



South Transfer Station

replacement projects. These projects have cumulative project costs in excess of \$400,000,000.

Real Property

Section lawyers provided advice on purchases, dispositions and leases of real property related to utility operations and land management issues, including easements, encroachments, trespass and illegal dumping.

Seattle Indian Services Commission

The Seattle Indian Services Commission is a city-chartered public corporation with a mission of providing culturally appropriate services to American Indian and Alaska Native residents. The commission has had serious financial and administrative challenges, which include significant deferred maintenance and tenant

issues with the commission's two main assets—the Pearl Warren Building and the Leschi Center. In 2012 we successfully prosecuted an action by City Council and the mayor to intervene in the affairs of the commission; in 2013 section lawyers continued providing advice and assistance to City representatives working with the commission on its challenges. The collective efforts resulted in an agreement to relocate the Seattle Indian Center, one of the tenants at the Leschi Center, and to transfer the Leschi Center to the Seattle Indian Health Board, allowing the organization to relocate from the badly damaged Pearl Warren Building. Section lawyers will continue to assist as the City and the commission explore options for redevelopment of the Pearl Warren Building.



Pearl Warren Building

CIVIL DIVISION *continued*

South Recycling and Disposal Station

SPU's construction of this new transfer and recycling station, which began in November 2010, was completed during the first half of 2013. Section lawyers provided legal advice and contract drafting assistance to the client in helping to complete the \$74 million project.

Towing Contract

Throughout most of 2013, section lawyers advised the Department of Finance and Administrative Services as it worked through the procurement of a new towing contractor. This procurement went through two bidding processes, bid protests, several public disclosure requests, and threats of litigation over issues involving state licensing, bidding procedures, interstate commerce, and women and minority owned business enterprises (WMBE). At the end of this lengthy process, the City successfully awarded the contract to Lincoln Towing Enterprises, Inc.

Yellow Pages

In 2011 the City enforced an ordinance that (1) required Yellow Pages publishers to obtain permits and pay a fee for each directory distributed in the City, (2) established an opt-out registry for people who do not want Yellow Pages, and (3) required publishers to advertise the availability of the opt-out registry on the front cover of the Yellow Pages. The publishers challenged the ordinance primarily on First Amendment grounds. In 2011 the City won the first round when a federal judge in Seattle found the ordinance an appropriate regulation of commercial speech, which is entitled to less

constitutional protection. The publishers appealed and, in October 2012, the Ninth Circuit Court of Appeals agreed with them that Yellow Pages are not commercial speech, but rather fully protected speech like newspapers. The City settled with the publishers in early 2013, agreeing not to seek Supreme Court review and to pay \$517,500 in attorneys' fees.

Yellow Pages providers have changed their behavior, and more than 75,000 households have been able to stop phone book delivery since May 2011.

State Route 520

Section lawyers assisted the Parks Department regarding numerous agreements, including such things as Washington Park Arboretum mitigation projects and design services. The most consequential agreement was a three-party real estate transaction among the City, Washington State Department of Transportation (WSDOT) and the University of Washington by which the City and UW will shortly convey certain property in the vicinity of McCurdy and East Montlake parks to the state, and UW will convey other property adjacent to Sakuma Viewpoint Park to the City. The City will then develop a new park for passive recreational use. WSDOT is funding the entire development project.

Section lawyers also advised and assisted SPU and City Light in their negotiation and retention of easements regarding the protection and relocation of facilities in order to accommodate the state's transportation project.



Lincoln Towing



Unwanted Yellow Page Books



Design of post-tunnel waterfront

WATERFRONT

Alaskan Way Viaduct Bored Tunnel Project

Section lawyers continued to advise City Light and SPU on issues regarding the protection and relocation of their facilities, and other issues involved with implementing their contracts with WSDOT, for the Alaskan Way Viaduct Bored Tunnel Project. Section lawyers also advised the Seattle Department of Transportation (SDOT) in connection with well-publicized delays by the WSDOT's contractor, Seattle Tunnel Partners. At year's end, the tunnel boring machine became stuck, complicating seawall construction.

Elliott Bay Seawall Project

During 2013, the City moved into the construction phase of the \$300 million Seawall Replacement project, in which SDOT serves as lead department. Section lawyers assisted SDOT in the development of a multi-volume project contract for the replacement of the seawall as well as assisting SDOT in selection of the General Contractor/Construction Manager (GC/CM). Early phases of the work that began during the year included construction of a temporary roadway to replace portions of Alaskan Way, which were taken for project needs. Section lawyers also assisted SDOT in the negotiation of



Seawall



Waterfront

a complex agreement with private pier owners that will allow SDOT to close all access to the piers during portions of the seawall construction. Construction of the tunnel project also started, creating increasing need for legal advice, contract drafting and legal analysis of the responsibilities of the City and state in their adjacent and interdependent projects. We also drafted the interdepartmental agreements regarding cost allocation and other responsibilities for this city-led project, and mediated interdepartmental differences as they arose among City departments.

Local Improvement District (LID)

The City continues to consider a local improvement district to pay for certain waterfront improvements.

Section lawyers have worked closely with a variety of departments to explore all available options and legal risk. Once completed, the LID will fund a portion of the “Waterfront for All,” one of the most significant civic projects in the City’s history.

THE CITY INVESTIGATOR

The City Investigator investigates City employees’ complaints of discriminatory or retaliatory treatment and discipline matters. Through the City Investigator, the City’s use of contract investigators has declined significantly, saving thousands of dollars annually. Investigations focus on discrimination, retaliation, workplace safety and employee misconduct. The City Investigator also provides training to human resources professionals,

managers and employment lawyers on how to conduct investigations and best employment practices. In 2013, the City Investigator co-hosted, with King County, the “Accommodating Psychological and Psychiatric Disabilities” training, and hosted several other City-sponsored trainings on disability accommodation and workplace safety.

CRIMINAL DIVISION



Evolution was the theme in the Criminal Division in 2013 as well as Pete's first term in office. It was a year of technological evolution, as we sought to develop an electronic file infrastructure to compliment the Seattle Municipal Court's (SMC) advancement towards an electronic court filing system. The division also worked with SPD in creating technological solutions for the transfer of electronic discovery. In coordination with SPD's technology team, we developed methods in which 911 recordings and other electronic discovery will be delivered electronically as opposed to burning copies on discs or printing photographs. Further, the

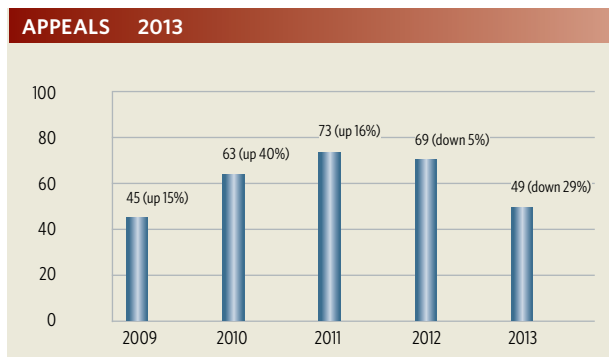
division prepared to transition to paperless files. With funding assistance from SMC, we purchased the tools that will allow us to maintain paperless files through our DAMION database and also electronically transfer discovery materials to defense attorneys.

The division's internal organization has also evolved. In 2013, the CAO reached a historic milestone in the approval of the first attorney-union labor contract with Local-21PA. The Criminal Division lawyers became a recognized organization in the fall of 2010. The contract allows for a predictable salary increase for lawyers up to six years and also serves

CRIMINAL DIVISION *continued*

to document many currently existing policies and practices. Pete looks forward to forging ahead with Local-21PA in making the Criminal Division one of the best prosecuting authorities in the country and the world.

Highlights for 2013 included an evolution of thought as to how the Criminal Division addresses the crime of prostitution. In 2012, our office focused on reducing the demand for prostitution in Seattle. In 2013, we focused on ensuring public safety while also providing the much-needed help for prostituted people. After a highly controversial move by the West Precinct captain to prosecute a number of homeless people for Failure to Respond – though the City could not identify them as a public safety priority -- CAO and SPD finalized the City Center Initiative policy to address unwelcomed behavior in the downtown corridor. The Criminal Division joined a citywide multi-disciplinary team in addressing the root problem of poverty and homelessness and not continuing the cycle of blindly charging people with the crime of Failure to Respond to a Notice of Civil Infraction.



DUI

In 2013 the Criminal Division continued its dedication to the prosecution of DUIs, which represent a significant danger to the residents of Seattle and everyone traveling on the City's roads. The designated DUI prosecutor continues to oversee the filing and prosecution of all DUI cases, as well as working on statewide policy issues.

In early 2013, the designated DUI prosecutor filed charges against two Seattle police officers for driving while under the influence while off-duty. The cases were extremely difficult, with a non-cooperative and unidentified civilian who called 911. But thanks to the dedicated and professional work of multiple police officers, the City prevailed on pre-trial motions and resolved both cases short of trial. The officers accepted plea offers of reckless driving and were sentenced to jail time, fines, community service and probation. These cases serve as a reminder that DUI is a crime that transcends all segments of our society, and that it is important that every DUI offender be held to the same standard of accountability.

2013 brought many changes to the prosecution of DUIs. The end of 2012 ushered in a significant change in the law with the legalization of marijuana and the creation of a per-se standard for driving while impaired on marijuana. While CAO has always prosecuted drivers impaired by any substance, the new legal framework introduced new challenges and legal questions. Because marijuana can only be detected in blood, our office, in partnership with the Washington State Patrol Traffic Safety Resource

CRIMINAL DIVISION OVERALL: 2013		2012 compared to 2013**
2012 Reports Rec'd		15,305
2013 Reports Rec'd		13,953
DIFF 2013-2012		(1,352)
% Change		-9%
2012 Cases Filed		8,170
2013 Cases Filed		7,818
DIFF 2013-2012		(352)
% Change		-4%
2012 Reports Declined		6,468
2013 Reports Declined		5,740
DIFF 2013-2012		(728)
% Change		-11%
2012 % Reports Received were Declined		42%
2013 % Reports Received were Declined		41%
2012 Avg # Days From Date Rec'd to Dispo this Qtr		406
2013 Avg # Days From Date Rec'd to Dispo this Qtr***		351
2012 In Custody Arrg		7,269
2013 In Custody Arrg		8,000
DIFF 2013-2012		731
% Change		10%
2012 Total # Bookings		4,833
2013 Total # Bookings		4,609
DIFF 2013-2012		(224)
% Change		-5%
2012 Total Booked w/Case Declined at ICA		1,042
2013 Total Booked w/Case Declined at ICA		867
DIFF 2013-2012		(175)
% Change		-17%
2012 % Total Booked w/Case Declined		22%
2013 % Total Booked w/Case Declined		19%
2012 Intake		5,765
2013 Intake		5,405
DIFF 2013-2012		(360)
% Change		-6%
2013 Motion Settings****		722
2012 PTH Setting		16,026
2013 PTH Setting		15,733
DIFF 2013-2012		(293)
% Change		-2%
2012 Jury Trial Settings		873
2013 Jury Trial Settings		821
DIFF 2013-2012		(52)
% Change		-6%
2012 Jury Trials with Finding		174
2013 Jury Trials with Finding		128
DIFF 2013-2012		(46)
% Change		???

** New DWLS 3 charge codes were created 2/2012 and report did not capture codes: 11.56.320(D)(2), 11.56.320(D)(5), 11.56.320(D)(5)*, 11.56.320(D)(5)***, and 11.56.320(d)(6) in Q1 2012

*** Average Number of Days to Dispo beginning 2013 no longer include Dismissals Due to Age

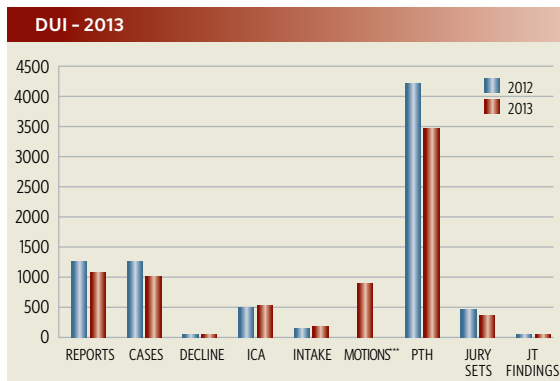
**** Motion settings were not counted until Q1 2013

CRIMINAL DIVISION *continued*

Prosecutors, reached out to local law enforcement to provide training and resources in marijuana detection and obtaining a legal blood sample when drug impairment is suspected.

The new year also brought with it reminders of why DUI enforcement is so vital and brought a renewed interest on the part of state lawmakers to strengthen DUI laws statewide. The City Attorney's Office, through its designated DUI prosecutor, took an active role in advocating for new legislation to protect the public from impaired drivers. As a result of the statewide efforts, new laws ensure that repeat DUI offenders are booked into jail upon arrest, and are required to install ignition interlock devices into their cars if they are released from jail.

There were also a host of new legal challenges raised by the DUI defense bar in 2013. The Criminal Division was able to prevail on repeated challenges to the authority of the SMC magistrates to hear and decide DUI search warrants. By successfully responding to these challenges the office ensured

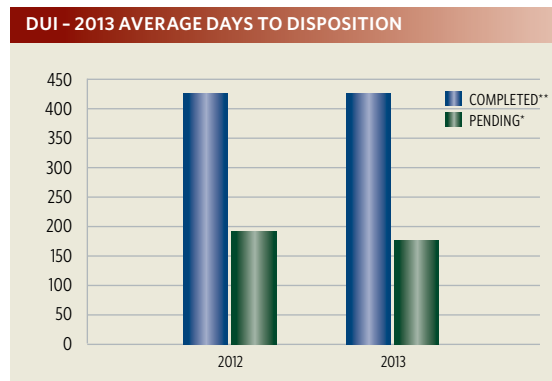


*** Decline code not used until 7/1/2011. 2011 only reflects numbers for 6 months.

that officers will always have qualified judicial officers available when they need to gather the vital evidence of a DUI crime. Additionally, the U.S. Supreme Court held in *Missouri v. McNeely* that a warrant must first be obtained for any blood draws sought by police. It is expected that more DUI cases will involve blood draws as a result and that the number of days from when a report is received until a case is filed may increase due to waiting for toxicology results.

Community Court

In October 2013, CAO, along with Associated Counsel for the Accused and SMC, launched an update to its innovative Community Court program, which began in 2005. Community Court was originally created to halt the revolving door of criminal justice that saw defendants who continually committed non-violent "quality of life" offenses (shoplifting, trespass in parks, prostitution etc.) from simply serving an increasing amount of jail time—only to be released to recommit those same



**Average Number of Days to Dispo beginning 2013 no longer include Dismissals Due to Age
*Pending dispo = start date of PT, DP, SOC and DC

DUI 2013	2013 compared to 2012
2012 Reports Rec'd	1,277
2013 Reports Rec'd	1,118
DIFF 2013-2012	(159)
% Change	-12%
2012 Cases Filed	1,249
2013 Cases Filed	1,030
DIFF 2013-2012	(219)
% Change	-18%
2012 Reports Declined	52
2013 Reports Declined	12
DIFF 2013-2012	(40)
% Change	-77%
2012 % Reports Received were Declined	4%
2013 % Reports Received were Declined	1%
2012 Avg. # Days From Date Rec'd to Dispo	422
2013 Avg. # Days From Date Rec'd to Dispo	421
2012 In Custody Arrg.	500
2013 In Custody Arrg.	550
DIFF 2013-2012	50
% Change	10%
2012 Total # Bookings	183
2013 Total # Bookings	206
DIFF 2013-2012	23
% Change	13%
2012 Total Booked w/Case Declined at ICA	7
2013 Total Booked w/Case Declined at ICA	2
DIFF 2013-2012	(5)
% Change	-71%
2012 % Total Booked w/Case Declined	4%
2013 % Total Booked w/Case Declined	1%
2012 Intake	1,246
2013 Intake	982
DIFF 2013-2012	(264)
% Change	-21%
2013 Motion Settings****	722
2012 PTH Setting	4,221
2013 PTH Setting**	3,449
DIFF 2013-2012	(772)
% Change	-18%
2012 Jury Trial Settings	441
2013 Jury Trial Settings**	361
DIFF 2013-2012	(80)
% Change	-18%
2012 Jury Trials with Finding	47
2013 Jury Trials with Finding	32
DIFF 2013-2012	(15)
% Change	-32%

*** Motion settings were not counted until Q1 2013

CRIMINAL DIVISION *continued*

crimes. Adhering to the ideals of restorative justice, instead of serving jail time, defendants who entered into Community Court worked to give back to the community by performing community service at local non-profits (Operation Sack Lunch, St. Vincent DePaul, Danny Woo Community Garden, etc). Also, defendants were screened for social service needs and were required to meet with applicable providers to get information about addressing those needs.

Community Court 2.0 has taken the core tenets of the original model and expanded the social services component to both require more from defendants to address the conditions that may have led them to their criminal behavior (homelessness, chemical dependency issues, lack of social security benefits, etc.), while at the same time offering additional opportunities to help defendants to meet their respective needs. A major emphasis of the new program is on the individualized concerns of each defendant, recognizing that the prior two-week length of the original program was not enough to provide the structure and stability that some defendants needed to regain their footing. Under the new model, defendants can stay in the program for up to six months of supervision before their cases are completed.

In Community Court 2.0, a probation counselor conducts an extensive needs assessment for each defendant that identifies those areas that a defendant could benefit from Community Court intervention and designs a plan for defendants to meet those needs. Probation counselors might also require more frequent meetings so defendants in the program can talk about problems they are having in

the community. Some of the social service options offered by probation in Community Court 2.0 are:

- Attending a self-awareness class where participants address the choices they are making and learn how to be more conscious of those decisions.
- Chemical Dependency and Mental Health treatment assistance.
- General Education Degree classes
- Employment/ Resume assistance
- Library: Participants are given a tour of the library, introduced to computer resources, and given a library card.
- Housing assistance.
- DSHS assistance (food stamps, SSI, etc.)

Along with the increased social service requirements, defendants entering Community Court are still required to give back to the community by performing 16 - 56 hours of service depending on how many times they have been through the program. In 2013 Community Court augmented its list of service partners with the Seattle Indian Center, the Union Gospel Mission and the YWCA of Seattle/ King County. Through the court's continuing partnership with the AmeriCorps program, AmeriCorps volunteers help transport and supervise defendants at these Community service sites.

While much has changed with Community Court, the partnerships among the City Attorney's Office, SMC, Assigned Counsel for the Accused Division of the King County Office of Public Defense, and



Pete meets with youth ambassadors to the Criminal Division

CRIMINAL DIVISION *continued*



the community remains the same. Each organization pledges to help people who have committed crimes to put them in a better position so that they do not repeat their offenses. Originally Community Court was designed as a court with an “uncommon approach to a common problem.” Community Court 2.0 advances that idea; we hope that with greater structure and assistance for participants, the court can have an even more positive influence on the lives of defendants.

Veterans Treatment Court

Veterans Treatment Court (VTC) began serving eligible veterans in September 2011. It was created to serve the needs of veterans negatively impacted by their military service. It is a voluntary court-monitored therapeutic treatment program that balances the mental health, substance abuse and/or other needs of the veteran defendants with the need for public safety. It began through the collaborative efforts of our office, Associated Counsel for the Accused, the state Department of Veteran Affairs, the U.S. Department of Veteran Affairs, King County Department of Community and Human Services and SMC. Seattle VTC is the first

at a municipal level in the state; there are now about eight such courts statewide.

Any person who has served at least two years of active duty in the armed forces, was discharged honorably or generally under honorable conditions, receives (or is eligible to receive) VA benefits, has an Axis 1 diagnosis and/or substance abuse need can be referred to VTC. The court monitor meets with interested veterans to confirm their VA status and eligible diagnosis/substance abuse need, and determines whether they are amenable to treatment. Amenity contemplates prior treatment compliance, the veteran defendant’s insight into their diagnosis and/or addiction, as well as their motivation for recovery. Eligible veterans are asked to meet the team and observe the court.

VTC operates differently than traditional courts. Following the mental health court model, veteran defendants must attend treatment, maintain abstinence from alcohol and non-prescribed drugs, and attend frequent court reviews. Graduated sanctions are employed to encourage compliance, with termination from the program as the last resort. The most significant difference from a traditional court is the



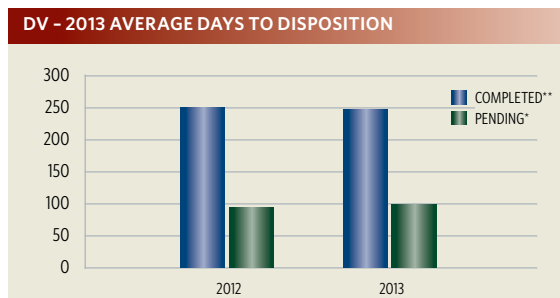
SMC Judge Fred Bonner congratulates a veteran at graduation

CRIMINAL DIVISION *continued*

cohort effect achieved by having veterans assemble as a group for the hearing. Rather than leaving court when their hearing is finished, veterans must stay for the entire calendar so they observe the struggles and accomplishments of their fellow defendants.

The VTC team includes an assistant city prosecutor, two defense attorneys from the Associated Counsel for the Accused, two court monitors from Milspec Vets, a Veteran Justice Outreach Social Worker from the VA, a representative from the state Department of Veteran Affairs, a SMC probation counselor, and the judge. With the exception of the judge, the VTC team attends a weekly pre-court meeting to discuss each veteran defendant to be sure all expectations of the court and individual needs are being met. The team then appears together before the VTC judge to make a record of the veteran defendants' progress. More often than not, VTC reviews are positive and the team is able to focus on incremental accomplishments, rather than compliance issues, as one would expect in a traditional court.

2013 welcomed 12 new veteran defendants into

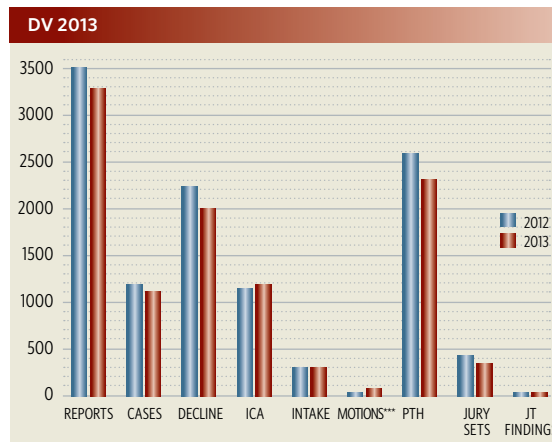


**Average Number of Days to Dispo beginning 2013 no longer include Dismissals Due to Age
*Pending dispo = start date of PT, DP, SOC and DC

VTC and the court also graduated its first 10 veteran defendants. To celebrate their VTC accomplishments, each graduate received a framed Certificate of Graduation, a VTC lapel pin, and a military patch reflecting their military branch of service. Graduation ceremonies afforded Pete and past/present VTC team members the opportunity to express their pride in the veteran defendants' success. All graduates had previously experienced traditional court, and expressed heartfelt gratitude for the structure, respect, support and assistance of VTC. The VTC team and the camaraderie of military colleagues made for a positive experience filled with growth, hope and new beginnings.

Domestic Violence Unit

Technology affects peoples' lives in every way imaginable, and the area of domestic violence is no exception. In 2013, the Domestic Violence Unit worked hard to maximize its ability to improve victim safety and hold offenders accountable.



*** Motion settings were not counted until Q1 2013

DV UNIT	2013	2013 compared to 2012
2012 Reports Rec'd	3,512	
2013 Reports Rec'd	3,299	
Diff 2013-2012	(213)	
% Change	-6%	
2012 Cases Filed	1,185	
2013 Cases Filed	1,154	
DIFF 2013-2012	(31)	
% Change	-3%	
2012 Reports Declined	2,225	
2013 Reports Declined	2,033	
DIFF 2013-2012	(192)	
% Change	-9%	
2012 % Reports Received were Declined	63%	
2013 % Reports Received were Declined	62%	
2012 Avg. # Days From Date Rec'd to Dispo	251	
2013 Avg. # Days From Date Rec'd to Dispo	248	
2012 In Custody Arrg.	1,128	
2013 In Custody Arrg.	1,163	
DIFF 2013-2012	35	
% Change	3%	
2012 Total # Bookings	1,460	
2013 Total # Bookings	1,339	
DIFF 2013-2012	(121)	
% Change	-8%	
2012 Total Booked w/Case Declined at ICA	508	
2013 Total Booked w/Case Declined at ICA	427	
DIFF 2013-2012	(81)	
% Change	-16%	
2012 % Total Booked w/Case Declined	35%	
2013 % Total Booked w/Case Declined	32%	
2012 Intake	301	
2013 Intake	300	
DIFF 2013-2012	(1)	
% Change	0%	
2013 Motion Settings***	61	
2012 PTH Setting	2,572	
2013 PTH Setting	2,297	
DIFF 2013-2012	(275)	
% Change	-11%	
2012 Jury Trial Settings	431	
2013 Jury Trial Settings	369	
DIFF 2013-2012	(62)	
% Change	-14%	
2012 Jury Trials with Finding	27	
2013 Jury Trials with Finding	31	
DIFF 2013-2012	4	
% Change	15%	

*** Motion settings were not counted until Q1 2013



Technological changes sometimes helped with that task and sometimes presented unique challenges. At the same time, we saw excellent examples of how our continuing relationships with agencies outside CAO were critical in helping us to provide victims with outcomes that not only enhanced their safety but also helped provide services critical to supporting long-term stability.

In *City v. Jimi King*, Seattle police officers contacted a man and a woman near a motel on Aurora Avenue. The woman had a black eye and was very reluctant to talk about it; after speaking with the officers alone she eventually told them King had punched her and that there was an escalating pattern of abuse. This abuse culminated in her hiding in a clothing store dressing room for several hours after he punched her that day. She was extremely fearful

of what would happen when he got out of jail if he was arrested for hitting her. The case was designated as high-risk due to the nature of the incident and the defendant's long criminal history. In this program, the highest-risk offenders are prosecuted by a single prosecutor, who carries a lower caseload and can devote more time to each case.

That prosecutor, Lorna Sylvester, asked that the King County Jail produce recordings of the man's calls to the woman while he was in custody. The recordings revealed that he was coaching her to lie to the court about the incident, including giving her a story to tell about how she was injured. Sylvester worked with Kim Wyatt, our co-located King County deputy prosecuting attorney, to develop the case for a felony charge of witness tampering. The misdemeanor case was dismissed and all charges were pursued in



“When someone receives a card, they almost immediately toss the envelope away. They throw it away as meaningless. However, the envelope protects the card as God protects us. So I hope you will at least keep the envelope and share it and keep it as long as the card. I once was told that if someone took the time to help you, they are showing God's love without knowing it. This is why I want to thank you for showing your love to us. We definitely needed it. Thank you for listening, encouraging, and for your compassion. Praise God who has put you in this path to glorify his name!”

- From a 40-year-old woman who had been married 14 years and had two sons.

CRIMINAL DIVISION *continued*

superior court, where the defendant pleaded guilty and was sentenced.

An extremely high rate of witness tampering goes on in domestic violence cases before trial. We have worked to find creative solutions to address this significant problem. The DVU has collaborated with the jail to expand our capacity for receiving jail calls and we have trained our staff to use these calls effectively in litigating cases. Our office is using volunteer resources to conduct the time-consuming task of listening to these calls. In 2013, a new court rule expanded the types of evidence that may be admissible when a defendant attempts to tamper with a witness from jail, and we are working to maximize this tool to enhance offender accountability.

As noted above, the DVU devotes one attorney to prosecuting cases that are identified with high-risk factors for victim safety and a high risk of re-offense. These factors include the offender's criminal history, the offender's domestic violence history, and other factors such as violence toward children and stalking. The DVU continued to have a co-located county prosecutor in our office for 20 hours each week in 2013. The DPA reviews eligible cases for felony referral and coordinates prosecution efforts when an offender has pending cases or probation matters in both city and county courts. Since these are often the most troubling cases and dangerous offenders that the DVU prosecutes, the value of this position to the safety of victims in Seattle cannot be overstated.

The DVU also has unique opportunities to serve survivors from immigrant and refugee communities,

whose barriers to safety can be exacerbated by language or immigration concerns. In *City v. Tewolde Gebremariam*, a woman from Eritrea was threatened over the course of a year by an ex-boyfriend who terrorized her so thoroughly that she was convinced that there was nothing that would stop him from killing her. She was staying in a domestic violence shelter, yet he was calling her and accurately describing her clothing and who she was with as he threatened her. She eventually called the police to report these incidents, and the man was arrested. The woman had been very reluctant to access any services, as she had no hope that anyone could keep her safe. She was also very embarrassed to talk about the obscene language and graphic threats the defendant had made.

The prosecutor and victim advocate worked hard to form a relationship with the victim and earn her trust, even though they sometimes had to communicate through an interpreter. She testified at trial in spite of her fears, and the defendant was convicted and sentenced to almost two years in jail due to the severity of his harassment. During the defendant's incarceration, the victim began to work with both the CAO advocate and community-based advocates, and she gained stability, confidence and independence. Due to the long sentence, she has been able to thrive and move on to experience a life free from fear.

In *City v. Jesus Gonzalez-Alfaro*, a defendant struck his Spanish-speaking girlfriend's face several times, causing her eye and ear to bleed. She was four months pregnant with his child. After hitting her, he pushed down hard on her abdomen, yelling "I will

“I'm not sure how often people thank you for the work you do, but I wanted to tell you once again how appreciative I am of everything you've done to help me. These kinds of things are hard to articulate but I hope you have some understanding of my gratitude. Many, many thanks to you and your office for keeping people like me safe.”

- From a young woman who thought she could deal with the defendant's behavior herself until he sent her a video of a woman chopping up her boyfriend's body and burying the parts in the yard.

CRIMINAL DIVISION *continued*

leave you nothing of mine!” He showed her a knife and ordered that she kill him; then he threatened to hit her more, and then he bit her lip. Shortly after the incident, the victim became uncooperative because she said she wanted the defendant to be in the child’s life. The case went to trial using an interpreter for the witnesses, and the victim denied that the incident took place. Other concerned family members, however, testified to what the victim had told them about the assault and about their fears for her safety. The defendant was convicted and sentenced to six months in jail.

These cases highlight the need for multilingual resources for victims and culturally competent victim services. The DVU added a Spanish-speaking victim advocate in 2013, and we also have advocates who speak Vietnamese, Chinese and Tagalog. Seattle domestic violence victims continue to benefit from the unit’s co-located advocacy program. In previous years, this program placed a community advocate from the Salvation Army, funded by the City’s Human Services Department, in both CAO and SPD to work directly with the victims in criminal cases.

In 2013 we expanded the program to include a second advocate from Consejo, a specialized program that provides culturally competent advocacy, support and services to the Latino community. This advocate works closely with our new Spanish-speaking advocate. Both co-located advocates are supported by coordinated staff in their respective agencies, which has helped them expand service capacity. All of the stakeholders in this program have seen success stories where victims were able

to improve their safety by having their immediate needs met. In addition, the DVU has worked hard to collaborate with each participating agency while maintaining the confidentiality necessary to keep victims safe.

The DVU also expanded the advocacy services offered to victims to include Saturday contacts this year by creating a collaborative partnership among CAO, SPD’s Victim Support Team and the jail. The Victim Support Team (VST) is a group of volunteers that works with SPD on weekends responding to domestic violence calls. The VST agreed to reach out to victims in the DVU’s weekend cases as well, so that victims whose abusers were being seen in court on Saturday could know the outcome and receive safety planning and resource referral. The jail assisted by providing a space where the prosecutor could leave the information for VST volunteers to pick up.

The vast majority of our misdemeanor cases come from patrol officers, who respond to 911 calls and conduct an initial investigation. If the offender is still at the scene, they have to decide whether to make an arrest at that time, and they are frequently managing very emotional scenes with high safety concerns. This is very demanding work that has become more technologically complex in recent years. The DVU is working with SPD’s Investigations Bureau to develop a training curriculum for patrol officers that will help support their initial domestic violence investigations. This training will highlight the collection of electronic evidence, such as text messages and emails, as well as other types of evidence such as photographs, clothing and weapons.

“She kept me informed with the developments of the case by calling me, leaving me voicemail messages, clearly advising me of the next steps. Each time she indicated she would call me, she followed through. I imagine her workload is huge yet she made time in her busy day to stay on top of this case and communicate those developments to me. She was very professional and well informed with the particulars of this case as well as the process necessary to reach a resolution. The case ended with the accused pleading guilty and the judge offered a fair judgment.”

- From a person who was an eyewitness to an incident and had been anxious about testifying; commenting on the prosecutor.

**Driving While License Suspended
in the Third Degree**

In 2013, the number of Driving While License Suspended (DWLS 3) cases filed slightly increased from 2012, yet remains dramatically lower than previous years. This continued decline of DWLS 3 cases is primarily due to the change in our filing policy implemented at the end of 2010. Initially, this policy was crafted in response to budget cuts and a reduction of attorneys and staff in 2010. The data and experience regarding DWLS 3 demonstrated that prosecuting these offenses in the traditional manner required a great deal of time preparing the cases for filing and court hearings, assigning public defenders and holding court hearings. Many cases set for hearings were either held over to allow defendants an opportunity to obtain their license or comply with court-imposed conditions. Additionally, many hearings were canceled as the defendants

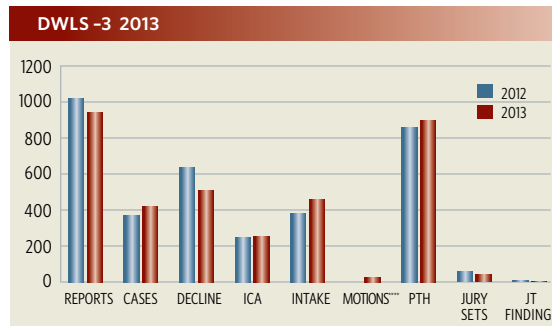
DWLS-3 Cases Filed						
2009						
Race	Population*	No. of Cases Filed	Total Cases Filed**	Percentage of Cases Filed	Ratio	Reduced Ratio
Asian	14%	265	3956	7%	1:2	.5:1
Black	8%	1682	3956	43%	43:8	5:1
American Indian	1%	21	3956	1%	1:1	1:1
White/Other Race	77%	1790	3956	45%	45:77	.6:1
Unknown***	—	198	3956	5%	—	—
2010						
Race	Population*	No. of Cases Filed	Total Cases Filed**	Percentage of Cases Filed	Ratio	Reduced Ratio
Asian	14%	190	3355	6%	3:7	.4:1
Black	8%	1375	3355	41%	41:8	5:1
American Indian	1%	15	3355	0%	0:1	0:1
White/Other Race	77%	1599	3355	48%	48:77	.6:1
Unknown***	—	176	3355	5%	—	—
2011						
Race	Population*	No. of Cases Filed	Total Cases Filed**	Percentage of Cases Filed	Ratio	Reduced Ratio
Asian	14%	11	238	5%	5:14	.3:1
Black	8%	113	238	47%	47:8	6:1
American Indian	1%	1	238	0%	0:1	0:1
White/Other Race	77%	94	238	39%	39:77	.5:1
Unknown***	—	19	238	8%	—	—
2012						
Race	Population*	No. of Cases Filed	Total Cases Filed**	Percentage of Cases Filed	Ratio	Reduced Ratio
Asian	14%	15	242	6%	3:7	.4:1
Black	8%	101	242	42%	21:4	5:1
American Indian	1%	4	242	2%	2:1	2:1
White/Other Race	77%	114	242	47%	47:77	.6:1
Unknown***	—	8	242	3%	—	—
2013						
Race	Population*	No. of Cases Filed	Total Cases Filed**	Percentage of Cases Filed	Ratio	Reduced Ratio
Asian	14%	7	47	3%	3:14	.2:1
Black	8%	93	247	38%	19:4	5:1
American Indian	1%	1	247	0%	0:1	0:1
White/Other Race	77%	99	247	40%	40:77	.5:1
Unknown***	—	47	247	19%	—	—

*Population is based on 2010 U.S. Census Data
 ** Not all cases filed in SMC are residents of City of Seattle
 *** Unknown includes cases filed with no race listed or race unknown in DAMION

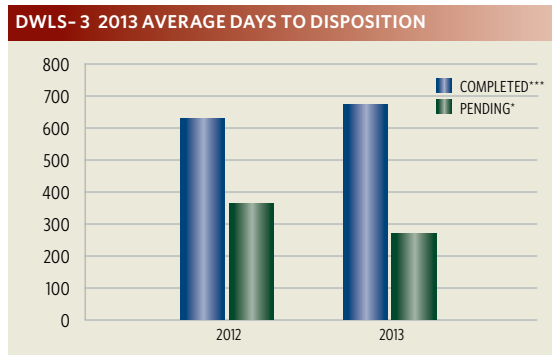
CRIMINAL DIVISION *continued*

failed to appear, resulting in bench warrants being issued. This continued cycle caused increased jail costs and perpetuated inefficient use of system resources.

In analyzing this issue through the lens of the City's Race and Social Justice Initiative, we further determined that the crime of DWLS 3 has a disproportionate impact on Seattle's African-American community. Although the current census shows Seattle's African-American population is roughly 8 percent, the data shows they have historically been charged with DWLS 3 at rate of 40+ percent of the overall charges filed. Our policy has not yet completely eradicated the deeply entrenched disproportionate racial impact; however, we are heading in the right direction.



**** Motion settings were not counted until Q1 2013



***Average Number of Days to Dispo beginning 2013 no longer include Dismissals Due to Age
* Pending disposition = start date of PT, DP, SOC and DC

DWLS-3 2013**	2013 compared to 2012
2012 Reports Rec'd	1,012
2013 Reports Rec'd	932
Diff 2013-2012	(80)
% Change	-8%
2012 Cases Filed	370
2013 Cases Filed	419
DIFF 2013-2012	49
% Change	13%
2012 Reports Declined***	640
2013 Reports Declined	513
DIFF 2013-2012	(127)
% Change	-20%
2012 % Reports Received were Declined	63%
2013 % Reports Received were Declined	55%
2012 Avg. # Days From Date Rec'd to Dispo	630
2013 Avg. # Days From Date Rec'd to Dispo	668
2012 In Custody Arrg.	262
2013 In Custody Arrg.	268
DIFF 2013-2012	6
% Change	2%
2012 Total # Bookings	66
2013 Total # Bookings	87
DIFF 2013-2012	21
% Change	32%
2012 Total Booked w/Case Declined at ICA	9
2013 Total Booked w/Case Declined at ICA	16
DIFF 2013-2012	7
% Change	78%
2012 Intake	377
2013 Intake	461
DIFF 2013-2012	84
% Change	22%
2013 Motion Setting****	28
2012 PTH Setting	867
2013 PTH Setting	909
DIFF 2013-2012	42
% Change	5%
2012 Jury Trial Settings	52
2013 Jury Trial Settings	45
DIFF 2013-2012	(7)
% Change	-13%
2012 Jury Trials with Finding	1
2013 Jury Trials with Finding	0
DIFF 2013-2012	(1)
% Change	-100%

** New DWLS 3 charge codes were created 2/2012 and report did not capture codes: 11.56.320(D)(2), 11.56.320(D)(5), 11.56.320(D)(S)*, 11.56.320(D)(S)***, and 11.56.320(d)(6) in Q1 2012

CRIMINAL DIVISION *continued*

The same technological advancements that bring convenience and connectivity to the general public can also greatly complicate domestic violence investigation and prosecution. The tools that increase everybody's communication options are also used by abusers to terrorize, track or embarrass their victims. In *City v. Andrea Lister*, a woman harassed her ex-boyfriend multiple times in violation of a protection order, tracking him down even though he used a confidential cell phone number. She called him several times a day, hacked his voice mails, and sent him unwanted emails; she even showed up at his place of work just after one of her calls. The combination of persistent physical stalking and cyberstalking raised enough safety concerns that the case was eventually pursued by the county prosecutor as a felony stalking case. It also underscored the importance of supporting patrol investigations of electronic communications, as repeated contacts must be well-documented.

In 2013 SPD added three misdemeanor detectives to its Domestic Violence Unit. These detectives assist with screening and conduct follow-up investigations on misdemeanor domestic violence cases. Patrol officers cannot usually conduct the kind of follow-up investigation that a DV case frequently needs, such as photographing serious bruising or swelling that is not obvious immediately after an assault when the patrol response occurs. Detectives will be able to contact victims and other witnesses in the days after the incident to gather additional information and collect evidence that wasn't obtained at the initial contact. The CAO is very excited about this

renewed working relationship, as the work of these detectives was invaluable in the past.

Infraction Project

In 2013, the Criminal Division handled 4,867 contested infraction cases, generating approximately \$549,000 in civil penalties. The division continued to improve the efficiency of its contested infractions practice while transitioning to an entirely new staff. 2013 also saw the initiation of a new relicensing program, new court procedures for handling complex infraction litigation, and the integration of the City's infraction prosecution into the DAMION computer system.

In January, the City initiated a new relicensing program. The program, which employs a court ombudsperson to screen and enroll eligible participants at weekly intake hearings, encourages relicensing by requiring participants to eliminate their debt to the City, to refrain from driving without a valid license or insurance, and to not commit new criminal or traffic violations. Forty individuals have entered the program since enrollment began in February 2013. In March 2013, SMC opened a new courtroom to handle the City's more complex contested infraction hearings in order to relieve court congestion.

The additional courtroom handles serious injury and fatality traffic accident cases, dog bite and other complex animal control cases, and limousine regulation violations. As a result, the City has been able to give these types of sensitive infraction cases much-needed additional attention, and the regular contested infractions calendar was less congested in 2013.



One of the most impactful changes to the traffic laws in 2013 was the addition of the new “Negligent Driving in the Second Degree with a Vulnerable User” (Neg 2 VU) infraction. The new ordinance seeks to protect vulnerable users (pedestrians, bicyclists, etc.) on City streets by allowing for stiff civil penalties (up to \$10,287) against drivers who negligently injure such users. The Criminal Division actively enforced the Neg 2 VU ordinance in 2013 by filing and successfully prosecuting several Neg 2 VU charges in SMC, and by training the police department on identifying and investigating incidents involving vulnerable users.

In the latter part of 2013 the infractions staff and Law Department IT staff made big strides towards integrating the City’s infractions prosecution into the DAMION database system. The integration of the City’s infractions prosecution into DAMION

will allow for much greater efficiency in preparing infraction cases for hearing, and it will give the City the ability to conduct a more detailed statistical analysis of the City’s infractions practice as we proceed into 2014.

Mental Health Court

Seattle’s Mental Health Court (MHC) continued its 14th year in operation to improve public safety, reduce jail use and interaction with the criminal justice system for persons with mental illness, and connect participating defendants to mental health services. MHC is a voluntary program in which defendants must be willing and competent to comply by conditions set out by the court. The MHC Team consists of the judge, prosecuting and defense attorneys, probation counselors and mental health professionals.

CRIMINAL DIVISION *continued*

One of MHC's success stories in 2013 was in *City v. SW*. SW was a 31-year-old woman charged with assaulting an acquaintance in September 2011. She had a lengthy criminal history, including felony harassment, malicious mischief 2nd degree and drug possession. At the time of arrest she was mentally ill and not on medications. She was also addicted to cocaine and eight months pregnant. At arraignment SW was angry and inappropriate in court. The MHC liaison and her attorney lobbied the City and court to release her on strict conditions of release. Because of her history, the City was not optimistic but agreed. At the first few reviews, SW tested positive for illegal drugs. With the support of the Mental Health Team, SW started chemical dependency treatment and maintained regular contact with her case manager and the court liaison. Her attitude about the MHC program slowly and steadily improved. After her baby was born in October, SW agreed to resume her psychiatric medications that she had refused for several years. SW opted in to MHC in November 2011. She appeared in court for nine review hearings and continued to be in full compliance with no new criminal law violations until her graduation in October 2013.

Another function of the Mental Health Court is to resolve all competency issues. When a defendant is found incompetent to stand trial, the City cannot proceed with the criminal charges and must dismiss the case. Under the current law, an incompetent defendant who is charged with a serious offense, such as assault or harassment,

and who will not likely gain competence with medications within a few weeks, must be referred to a psychiatric evaluation and treatment facility for a possible civil commitment. Under the current practice, all defendants were referred to Western State Hospital (WSH). However, during the past two years WSH has been unable to accept all of them due to a lack of bed space. When Western cannot accept a defendant, he or she is referred to Harborview Medical Center or the King County Designated Mental Health Professionals for evaluation. WSH estimates that between 50-60% of the defendants that are referred to them by SMC are not civilly detained and believes that a major part of the problem is that many unnecessary referrals take up the limited number of patient beds.

In an attempt to streamline the process, and possibly create a new model for a legislative change, a work group with representatives from WSH, HMC, King County Crisis and Commitments, the City, defense attorneys, and others was created in 2013. An interim program in which a mental health professional from HMC (the "Triage Evaluator") will make an initial assessment of all defendants to determine whether the referral should be made to WSH or HMC for the civil commitment evaluation. All defendants will still be evaluated, but the Triage Evaluator will decide the most appropriate facility for the evaluation. The hope is that this will avoid unnecessary transports to WSH and keep more of their evaluation beds available for those with the direst needs.



Harborview Medical Center

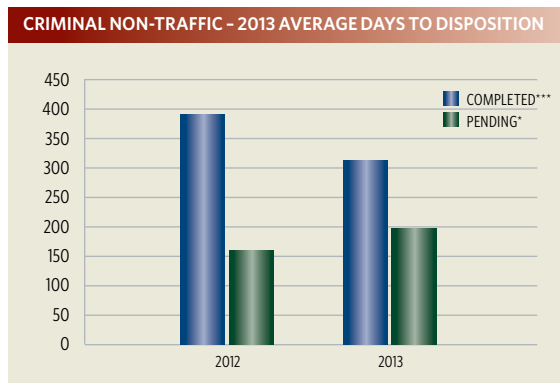
CRIMINAL DIVISION *continued*

EXPANDING THE MUNICIPAL CODE

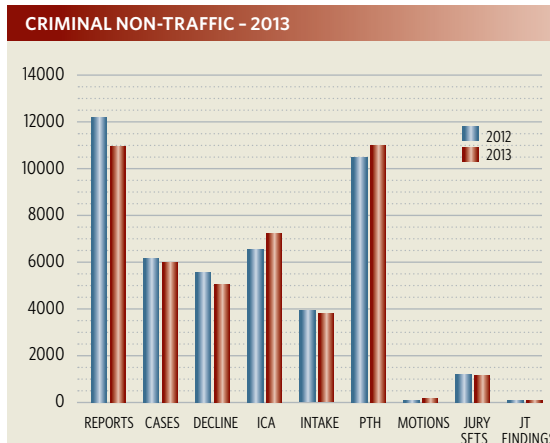
Criminal Division lawyers also assisted the City Council with the adoption of several new municipal ordinances. The impetus was a Washington Supreme Court ruling in *City of Auburn v. Gauntt*, 174 Wn.2d 321 (2012). This decision created uncertainty as to the authority of a city attorney to prosecute state statutes in a municipal court. Many of the impacted charges are those we have historically charged in the City Attorney's Office. Examples of the new municipal criminal ordinances are:

- Prohibition of an employer from paying less than minimum wage
- Sale of tobacco products to a minor.
- Assault with sexual motivation.
- Authorization of the Municipal Court to issue a stalking no-contact order as a condition of pretrial release or as a condition of sentence.
- Unlawful imprisonment
- Forgery

- Identity theft
- Trafficking in stolen property
- Computer trespass
- Indecent exposure
- Communicating with a minor for immoral purposes
- Displaying a firearm to intimidate.
- Failure to register as a firearms offender
- Unlawful carrying a pistol
- Possessing a loaded rifle in a car
- Possessing a weapon at a school
- Possessing a weapon at a jail, court, mental health facility, tavern or airport
- Prohibition of a gun dealer from delivering a pistol to an unauthorized person.
- Making a false statement to a public servant
- Selling alcohol without a license
- Prohibition to the sale of food stamps
- Trafficking in food stamps



**Average Number of Days to Dispo beginning 2013 no longer include Dismissals Due to Age
*Pending dispo = start date of PT, DP, SOC and DC



* Pending disposition = start date of PT, DP, SOC and DC

CRIMINAL NON-TRAFFIC 2013 (includes DV)	2013 compared to 2012
2012 Reports Rec'd	12,206
2013 Reports Rec'd	10,860
DIFF 2013-2012	(1,346)
% Change	-11%
2012 Cases Filed	6,182
2013 Cases Filed	5,993
DIFF 2013-2012	(189)
% Change	-3%
2012 Reports Declined	5,482
2013 Reports Declined	4,998
DIFF 2013-2012	(484)
% Change	-9%
2012 % Reports Received were Declined	45%
2013 % Reports Received were Declined	46%
2012 Avg. # Days From Date Rec'd to Dispo	389
2013 Avg. # Days From Date Rec'd to Dispo	319
2012 In Custody Arrg.	6,524
2013 In Custody Arrg.	7,195
DIFF 2013-2012	671
% Change	10%
2012 Total # Bookings	4,419
2013 Total # Bookings	4,162
DIFF 2013-2012	(257)
% Change	-6%
2012 Total Booked w/Case Declined at ICA	967
2013 Total Booked w/Case Declined at ICA	828
DIFF 2013-2012	(139)
% Change	-6%
2012 % Total Booked w/Case Declined	22%
2013 % Total Booked w/Case Declined	23%
2012 Intake	3,790
2013 Intake	3,583
DIFF 2013-2012	(207)
% Change	-5%
2013 Motion Settings***	61
2012 PTH Setting	10,558
2013 PTH Setting	10,967
DIFF 2013-2012	409
% Change	4%
2012 Jury Trial Settings	1,255
2013 Jury Trial Settings	1,168
DIFF 2013-2012	(87)
% Change	-7%
2012 Jury Trials with Finding	118
2013 Jury Trials with Finding	92
DIFF 2013-2012	(26)
% Change	-22%

CRIMINAL DIVISION *continued*

- Creation of an infraction for operating a watercraft and refusing to submit to breath or blood test for alcohol or drugs.

CASES IN CONTRAST

Among the many misdemeanor charges brought in 2013, two cases stand out as mirrors of each other. In one, an SPD officer was charged with assaulting a handcuffed suspect. In the other, a civilian was accused of assaulting an officer. Here are their stories.

City of Seattle v. Christopher Hairston

On Sept. 24, 2012, at about 9:50 p.m., SPD police officers Kevin Jones and Katherine (Katie) Hairston responded to an incident at Seattle Central Community College. As they were investigating, they encountered two individuals in an unrelated matter.

The officers made contact with two individuals and asked for identification. One of the individuals attempted to leave the scene. Officer Katie Hairston informed him that he was not free to leave. Soon thereafter, a struggle ensued between both officers and the individual, John Ross. Jones radioed for “back-up” assistance.

A “fast back” call went out on the SPD radio channel. Such a call is meant for officers in adjacent sectors, within the same precinct, to assist the requesting officer. For example, this incident occurred in the East Precinct. A “fast back” call would mean that officers working in adjacent areas within the East Precinct would be required to respond and assist the officer. It is infrequent and unusual for officers from outside the precinct to respond to such a call.

SPD officers Sandra Delafuente and Randy Shelhorse, both of whom work in the East Precinct, responded to the call. Delafuente also engaged Ross, subdued him, and placed him in handcuffs. They escorted Ross to Delafuente’s patrol car and began to search his person.

Ross was handcuffed with his hands behind his back. He was bent over with his face on the hood of Delafuente’s car. The officers were emptying his pockets. Sunderland arrived at the patrol car and was reading Ross his *Miranda* warnings.

Defendant Chris Hairston is married to Officer Katherine Hairston, and also is an SPD officer assigned to the K-9 unit. He is assigned to the South Precinct and responds to locations when requested. He responded to the call about his wife being involved in a struggle with Ross.

After he arrived on the scene, Chris Hairston first went to see his wife, and saw Fire Department medics caring for her. He also learned that she had been in a struggle with Ross. Chris Hairston did not stay with Katie Hairston, and did not accompany her to Harborview Medical Center.

Instead, he decided to walk towards the area where Ross was handcuffed and undergoing a search by three officers. Hairston walked at brisk pace towards Ross. While the officers were crowding Ross, Hairston inserted himself between them and directly faced Ross.

Hairston then knelt down and faced Ross. He said something to him, and immediately struck

CRIMINAL DIVISION *continued*

Ross on the back of his neck with an open hand and pushed his face further into the hood of the patrol car. Immediately thereafter, Hairston grabbed Ross's face with his other hand, covered his nose and squeezed his mouth as he lifted his head towards him. Ross' hands were handcuffed behind his back the entire time. Hairston said something to the effect of "How do you hit a woman?!"

The other officers pulled Hairston off of Ross and kept him at bay. Ross was shocked and exclaimed, "What the hell?!" "What are you doing?!"

Hairston called his unit sergeant and stated, "I messed up." Sgt. Diamond, upon learning about the behavior, initiated an investigation and ordered all officers involved to write a statement. At the police precinct, Hairston apologized to all officers involved about "putting them through the mess." He did not apologize to Ross.

The fourth-degree assault charge against Hairston was scheduled for a jury trial in January 2014. It was resolved with a dispositional continuance, meaning it will be dismissed in two years if Hairston performs 120 hours of community service, has no new criminal violations and has no contact with Ross.

City of Seattle v. Francesca Currie On June 16, 2012 Officers Corey Williams and Brett Schoenberg were assigned to nightclub emphasis around the Broadway and Pike/Pine Corridor. The area has a high concentration of bars, nightclubs and patrons. The emphasis is both a deterrent and proactive—it allows officers to be immediately

available to respond to 911 calls in the area and on viewed disturbances.

The officers were standing outside their patrol car, which was parked in the Shell gas station parking lot at Broadway and Pike. Shortly before 1 a.m., they observed a man running west on Pike in a full-out sprint. He wasn't wearing a shirt and appeared to be in distress. The officers watched as he ran diagonally through the intersection, ignoring the existing vehicle traffic. The man continued to run north along Broadway. The officers began to follow him in their car in anticipation of a 911 call regarding a disturbance.

The man then ran diagonally across East Pine outside the crosswalk and against the light. The officers decided to initiate a stop for the two crossing violations. They activated their overhead lights right behind the man. The man looked back at the officers and continued walking. The officers stopped their car (Williams was the driver, Schoenberg the passenger). Schoenberg yelled to the man to come over to the car. The officers were unaware that the man was running to meet up with his wife, Francesca Currie.

Completely without warning or provocation, Currie placed herself between the officers and the man and aggressively yelled at the officers. Neither officer noticed Currie until she grabbed Williams by the arm in an attempt to prevent any contact with the man. Williams did a defensive move and twisted out of Currie's grasp. He then had to pull Currie to the ground to get her under control. The entire incident was captured on the in-car video (ICV).

Currie was arrested for assault and then charged with obstruction and assault.

The City originally offered Currie a one-year dispositional continuance with 40 community service hours and Alcohol Drug Information School. Currie rejected the offer and the case went to trial. On the day of trial the City dismissed the obstruction charge. The City submitted only the assault to the jury, which found Currie guilty.

Throughout the trial the defense argued that Williams' conduct was aggressive and over-reactive, trying to put SPD on trial instead. Jurors, however, stated after the trial that the jaywalking and police takedown was of little interest to them. They focused their deliberation on Currie's actions and concluded that she was assaultive.

The case was difficult case for Officer Williams, given the police investigation and defense accusations. He maintained a calm and professional attitude throughout. He made himself available whenever needed. He was respectful and patient. It was an honor to seek justice on his behalf.

ADMINISTRATION DIVISION



The Administration Division provides executive leadership, communications and operational support for the 160-employee department as well as numerous interns and volunteers. The division is comprised of City Attorney Pete Holmes, his immediate staff and the Accounting, Human Resources and Information Technology sections.

In keeping with Pete's commitment to ensuring the office is transparent and accessible to the people of Seattle, the office continued to produce and circulate a bi-monthly electronic newsletter for the public (*E-Newsletter*). The newsletter is intended to update the public on new legislation, current events, significant cases and news links. In addition to the *E-Newsletter*, Administration

staff also prepares a bi-monthly internal employee newsletter, *In Brief*.

Budget

The Administration Division is instrumental in helping the office achieve its budget goals. As part of the budget process, the department combined several part-time positions to add one full-time attorney to the Contracts/Utilities Section, as well as one paralegal to the Police Action Team (in the Civil Division). In addition, the department received a position and funding for a much-needed part-time IT Systems Analyst.

The three-person accounting staff provides ongoing review and management of the operating budget and support for the development of the next

budget. The Administration team also responds to numerous requests for supplemental information during the budget review process.

Human Resources

Human Resources staff continued its commitment to the City's Race and Social Justice Initiative in 2013. Last year it focused on broadening recruiting efforts in order to guarantee a diverse applicant pool. Job announcements for attorney and paralegal positions were posted with local minority bar associations and other diverse networks to reach the most qualified applicants.

The safety, security and well-being of the staff are a top priority. Human Resources organized emergency preparedness trainings as well as notified employees of numerous other city-sponsored trainings and wellness events.

Volunteer and Externship Programs

The City Attorney's Office has a long history of providing opportunities for volunteers and students to learn more about the legal process and justice system. The Criminal Division program offers opportunities to both undergraduate and law students, while the Civil Division program focuses exclusively on law students and lawyers.

Criminal Division program: Participants learn about the criminal justice system while combining classroom knowledge with on-the-job training. Law students work side by side with prosecutors to learn the basics of case preparation, filing and trial work. During 2013, a total of 39 volunteers and law

students donated approximately 9,377 hours—the equivalent of about 4.5 full-time positions. Of the 39 volunteers, 15 were male and 24 were female.

Civil Division program: The Civil Division program hosted 11 volunteers (five male and six female) last year. Law students conducted legal research, wrote briefs, observed court proceedings and assisted lawyers with a variety of employment, land use, government affairs and torts cases in 2013.

Information Technology

On a daily basis, the IT staff supports 180 desktop computers and four department-specific servers for all staff, including precinct liaison attorneys in five Seattle police precincts. In addition, the IT team collaborates with the senior planning and management staff in the city's Department of Information Technology (DoIT) to implement improvements to citywide data systems and security.

Department-wide Projects:

One of the major IT projects tackled in 2013 was upgrading all staff computers to the Windows 7 operating system. The process was completed using a new tool to "push" the computer image and settings from a remote location, thereby greatly reducing the deployment time and resulting in a smooth transition to the new operating system. This new method of remote management has paved the way to more efficiencies on future computer projects. Storage requirements for electronic documents remain an issue for the department. Although more storage was added in 2013, the storage needs continue to increase exponentially, causing new

issues in the area of backup and a breakdown of the department's computers one busy day. In 2014, we will adopt even more efficient means of handling space and disk backup issues when dealing with the department's many terabytes of information.

Civil Division:

The IT team spent many hours working on a replacement for the Civil Division's case management application. The replacement will be a revised "off the shelf" solution for monitoring our civil litigation cases and the department hopes to have it in place in 2014. In addition, the application used for tracking the division's litigation case hours was re-engineered in 2013, allowing it to be moved to the new case management database once it goes live.

Criminal Division:

New data exchanges were enabled between SPD and the City Attorney's Office, resulting in a huge reduction in the number of employee hours spent entering data from police incident reports. Now, after police officers complete their reports, a large amount of information is electronically "released" to the Criminal Division. Information that was received in paper form is instead automatically loaded into the database, resulting in not only far fewer paper copies but also a significant reduction in staff hours spent entering data into our system. Work continues toward an "all electronic" case review, filing and discovery process with the addition of a new eDiscovery module. The new module, set to go live in 2014, will manage all data used in a given case, monitor incoming and outgoing discovery, and allow

prosecutors to easily view this information in something other than the current paper format.

Public Records Requests

Throughout the year, the Administration team facilitated responses to 157 state Public Records Act requests received by the City Attorney's Office, up from 145 in 2012. Also, assistant city attorneys provided extensive legal advice and compliance training regarding public disclosure requests to our employees, staff from other departments, the Mayor's Office and the City Council.

RACE AND SOCIAL JUSTICE INITIATIVE

The Race and Social Justice Initiative continues to be a high priority for the City Attorney's Office. In the area of education, CAO continued its support of the Future in the Law Institute to foster an increase in law school enrollment and completion for students of color. We hosted students for a job shadow program as well as attended the annual Future in the Law workshop.

Considering equitable development, our employee volunteer program continued community outreach and service opportunities. Activities varied between hands-on and in-kind contributions benefiting local organizations such as Operation Sack Lunch, Julia's Place, Children's Country Home and International Rescue Committee. Staff also participated in the citywide committee on economic equity, working to promote income, gender and contracting equity for the City.

In the area of employment, the office developed strategies for recruitment and retention of minority employees, such as posting all attorney openings with minority bar associations. We continued our Externship Program with local law schools and attended minority job fairs. Monthly training bulletins were distributed to foster skill development of support staff. The office also exceeded citywide percentages for Women and Minority Business Enterprise purchasing and contracting.

Strides have been made in the area of criminal justice as well. Victim assistance forms were translated into most commonly spoken languages, and policies and procedures on witness and victim tampering were reviewed. Financial empowerment counseling services were embedded into domestic violence programs through advocate training.

Concerning the environment, the office developed options to assist businesses in the Duwamish area with funding river cleanup.

Regarding service equity, all new employees were required to participate in "Anti-Racism Basics" or "Race: The Power of an Illusion" training. We developed workplace expectations, and all performance evaluations were updated to include a section on the Initiative. We provided better service to English language learners by using a language line, and prepared an insert to accompany collection notices advising of translation services available. The office participated in the Governing for Racial Equity Conference, and trained CASA staff on deployment of the "Race: The Power of an Illusion" training.

Sec. 1. The Seattle Public Library Museum and Reading Room shall be open for use to the public under such regulations as the City Council shall by ordinance prescribe.

Article XV

The Law Department.

Section 1. The Law Department of the City of Seattle shall consist of a Corporation Counsel and a City Attorney.

Section 2. The Corporation Counsel shall be elected by the Electors of the City at the General Municipal Election.

for in this Charter, and shall hold office for the term of years and until his successor is duly elected and qualified. The Corporation Counsel must be an Attorney of the Supreme Court.

Seattle City Attorney
Annual Report 2013

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