

manage said school and defray out of said fund the necessary expenses thereof.

Sec. 10. The Library Commission shall have absolute and complete direction control and charge of the Public Library and the school connected therewith, except as in this charter otherwise provided, and shall alone have authority to expend the Library Fund except as otherwise provided and shall alone have authority to expend and the Commission shall certify every such expenditure to the City Comptroller who shall issue his warrant to the City Treasurer money in the Library Fund not otherwise appropriated, provided that no sale or disposal of any work, article or object shall be made except by the unanimous vote of the entire Commission.

Sec. 11. There shall be a Librarian who shall be appointed by the Library Commission and hold his office at their pleasure. He shall be Clerk of said Commission. His duties shall be prescribed by the said Commission and he shall receive a salary to be paid out of the Library Fund, (as the Library Commission shall prescribe).

Sec. 12. The Library Commission shall appoint such other librarians, officers and assistants as they may deem required from time to time who shall be removable at the pleasure of the Library Commission and shall receive such compensation to be paid out of the Library Fund as the Library Commission shall prescribe.

Sec. 13. The Seattle Public Library Museum and Reading Rooms 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.

Sec. 2. The Corporation Counsel shall be elected by the qualified Electors of the City at the General Municipal Election provided for in this Charter, and shall hold office for the term...

Seattle City Attorney
Annual Report 2012



TABLE OF CONTENTS

3	Statement from the City Attorney
6	Precinct Liaison Division
6	Civil Division
28	Criminal Division
41	Administration Division

STATEMENT FROM THE CITY ATTORNEY

As 2012 dawned in Seattle, the City and the U.S. Justice Department were staking out dramatically different positions on local police practices; news had just broken that a Seattle expatriate had grand plans to bring back professional basketball, and the City Council was set to approve a resolution supporting a marriage equality bill in the state Legislature.

Throughout the year, attorneys, paralegals, legal assistants and support staff in the City Attorney's Office were enmeshed in these issues – clearly with enormously high stakes. They helped frame a federal consent decree to reform Seattle Police Department (SPD) norms, advised on contract and land use questions surrounding the basketball/hockey arena tentatively slated for the SoDo area, and updated city rules and codes to conform with the November passage of Referendum 74 affirming marriage equality.

Every legislative proposal, mayoral initiative and department project benefitted from the diligent and thorough efforts of CAO's 155 employees. Here are some of the seminal issues from 2012.

SPD, already one of CAO's largest clients, consumed even more bandwidth in 2012 because of the lengthy review of the Justice Department's critical report of certain police practices and the subsequent negotiations that culminated in a multi-year consent decree aimed at substantive reforms.

A settlement agreement was the right thing to do to protect civil liberties, and it made basic economic sense. The City chose to invest upfront in a better police force, rather than be saddled with unnecessary litigation costs and an even longer period of uncertainty.

Having already ended a no-bid contract for police defense work, in 2012 we hired our third assistant city attorney to complete the "police action team" that handles cases of alleged wrongful arrest and death, excessive use of force, police misconduct, and violations of federal civil rights.



Peter S. Holmes
Seattle City Attorney

STATEMENT FROM THE CITY ATTORNEY *continued*

Turning back a challenge by Seattle Police Officers Guild, the Public Employment Relations Commission upheld our decision to move the majority of police action work in-house. This makes for a stronger relationship with SPD, gives City management more control of the City's cases, and saves the City money. Our inhouse counsel's first police action trial, *Arsenault v. City of Seattle*, resulted in a defense verdict in 2012.

Of the many capital projects in development around the City in 2012, businessman Chris Hansen's proposal for a third professional sports venue captured the most attention. After a year of talks, the City, King County and Hansen (doing business as ArenaCo) agreed on a path forward to build the state-of-the-art multi-purpose sports and entertainment arena. The agreement was simultaneously approved by both councils.

The Law Department, together with our clients and outside arena counsel, Hogan Lovells, as well as local finance counsel, Foster Pepper and K&L Gates, spent months negotiating, drafting, re-negotiating and re-drafting the Memorandum of Understanding to produce an agreement that was thoroughly vetted for potential problems. Our office, in concert with the county and ArenaCo, then defended against two lawsuits spawned by that MOU.

Many other development projects, the largest of which was the deep bore tunnel along the waterfront, required time and attention in 2012. We also helped with the South Lake Union re-zone, represented the City in annexation proceedings, and helped redevelop the Shoreline Code for Council consideration.

Our Environmental Protection Section capped a very productive year by settling the Gas Works Park cleanup. After (only) 22 years, the City reached agreement with Puget Sound Energy, resolving that PSE will pay 80% of the future cleanup while the City's share is 20%.

One of CAO's most important duties is recovering funds owed the City, money that's diverted in a variety of ways. When SPU discovered an ex-employee had embezzled more than \$1 million over a period of years, our Employment and Torts



Pete Holmes at press conference, flanked by U.S. Attorney Jenny Durkan and Seattle Police Chief John Diaz



Pete Holmes with Future of the Law Institute students on April 17, 2012

STATEMENT FROM THE CITY ATTORNEY *continued*

attorneys teamed up to ensure he was civilly and criminally charged and to fully recover all the funds stolen from taxpayers. But that was not our only large recovery effort, as we returned \$1.2 million to SPU for pile-driving damage done to its infrastructure by a private company.

In the arena of civil rights, the City joined seven cities and numerous organizations around the nation in opposition to DOMA, the Defense of Marriage Act. Not only does DOMA perpetuate social injustice, it places a financial burden on local agencies in states with laws allowing same-sex marriage. Even though R-74 is now law, DOMA did not allow the City to recognize same-sex couples as legally married—so that health insurance coverage for their same-sex partners is taxable, while health insurance coverage for opposite-sex partners is not.

In the Criminal Division, we prosecuted thousands of cases, helping to keep domestic violence victims safe and take drunk drivers off the roads. We also prosecuted several higher-profile cases arising out of the “Occupy Seattle” and May Day protests.

The SMC Veterans Treatment Court celebrated its first year and saw significant progress from the participants. The court was recognized in the community for its innovation and the fact that SMC was the first municipal court in the state to develop such a program.

In a new effort with SPD, we are seeking to refocus our efforts to reduce prostitution by recognizing that prostitutes are victims. Though we will continue to arrest prostituted people, our focus will be on building relationships and providing aid rather than prosecution. The sex trade makes our streets less safe, and we must send the message that it will not be tolerated.

The Civil and Criminal, as well as Administration and Precinct Liaison divisions, teamed up to further the goals of the City’s Race and Social Justice Initiative. Simply put, the aim is to eliminate institutional racism.



TOP: Pete Holmes with Cafe Racer owner Kurt Geissel
BELOW: Pete with a constituent at Seattle’s Night Out in August

STATEMENT FROM THE CITY ATTORNEY *continued*

Starting in January 2010, when I took office, all Law Department employees have completed the RSJI training and a Change Team has been created to further the goals in and outside our office. In 2012, we launched a book group and organized several volunteer projects in the community. The Criminal Division has partnered with the Future of the Law Institute, a yearlong program for minority and economically disadvantaged high school students interested in learning more about a career in the law.

As testimony to our office's RSJI involvement, in December 2012 Chief of Staff Darby DuComb received Seattle Management Association's Management in Race and Social Justice Award. Given to the Law Department for the first time, the award "recognizes a person or team who has shown exceptional leadership in embracing cultural and ethnic diversity as an asset; eliminating institutional systems, practices, and policies that serve as barriers to race and social justice; and transforming civic and citizen engagement processes for greater inclusion and equity." Darby was recognized for our DWLS3 efforts, her one-day Ethics CLE on institutional racism and lawyer duties and her participation on a statewide Task Force on Race and the Criminal Justice System.



Seattle City Attorney



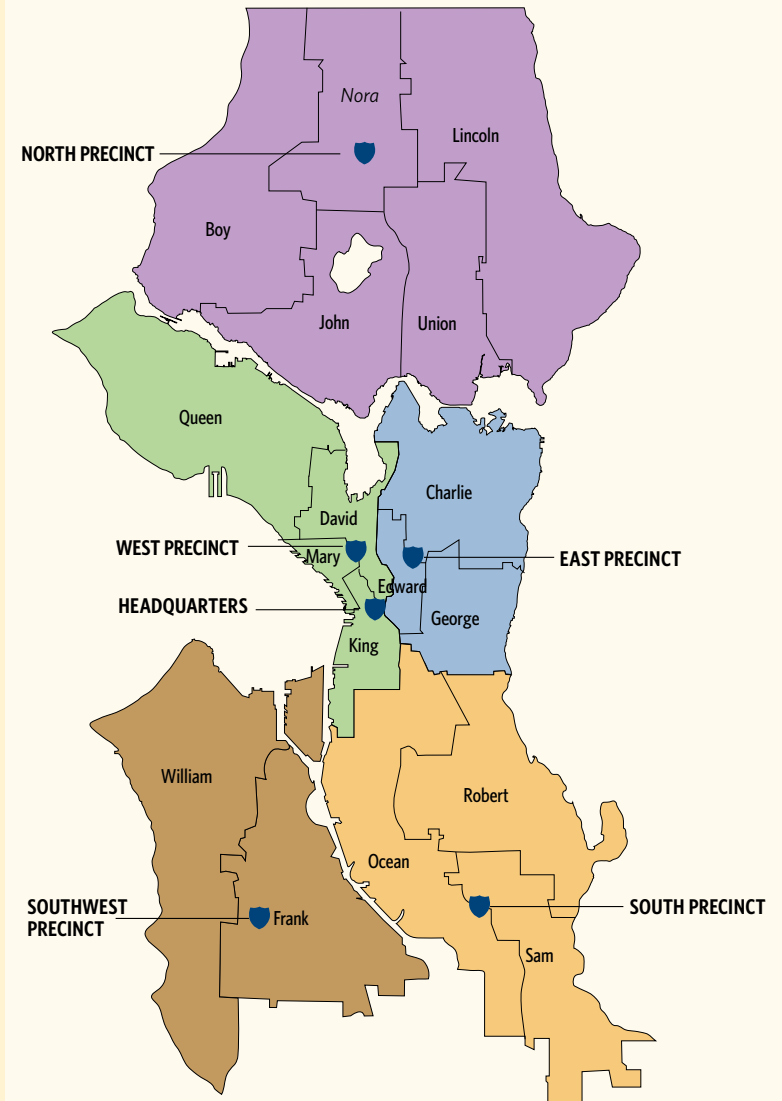
Pete Holmes and Darby DuComb, Chief of Staff, with the 2012 Management in Race and Social Justice Award, awarded to DuComb by Seattle Management Association

PRECINCT LIAISONS DIVISION



Like the police, prosecutors over time realized that some public safety and neighborhood livability problems are better addressed through proactive community-oriented problem-solving than by traditional “case-by-case” prosecution. Midway through his first term, Pete Holmes began revamping the Precinct Liaison Program, which had begun in the mid-1990s. In early 2012, he recruited a new team and assigned four attorneys to the five SPD precincts. A fifth attorney works for SPD’s Vice and High Risk Victims Section.

The precinct liaisons—Melissa Chin (South/Southwest), Jana Jorgensen (North), Sumeer Singla (West) and Matt York (East)—provide critical legal services on the issues of highest importance to their own precincts. They also manage a number of regulatory provisions in a more effective and efficient manner because they better understand the dynamics in their individual communities.



PRECINCT LIAISONS DIVISION *continued*



“It was an opportune time to launch a completely reengineered Precinct Liaison Program 2.0,” Holmes said, “simultaneously bringing closer together SPD’s five precincts, the City Attorney’s Office and Seattle’s diverse communities to better address local problems and concerns. Relying on input from across Seattle government, we retained what worked and rethought the challenges ahead. Our liaisons represent a direct link to me and are instrumental in helping Seattle to move forward while SPD is subject to the federal consent decree.”

Getting “outside the box” of traditional case-by-case prosecution means the City Attorney’s Office is making Seattle a safer and more livable city.

South and Southwest Precincts



As the only liaison attorney covering two precincts—South and Southwest—**Melissa Chin’s** work days in 2012 were consumed by virtually every issue imaginable, from Chronic Nuisance Properties and housing code violations to liquor establishments and nightlife venues to training police officers on legal issues.

Of particular significance to the South Precinct, Chin worked with SPD on three Chronic Nuisance Property declarations (two nightlife establishments and one residence).

“Reestablishing the precinct liaison attorney program reflects our desire to bring critical thinking and innovation to policing. We know that effective policing uses a wide variety of means beyond traditional police responses. These attorneys will partner with our officers to proactively tackle neighborhood safety and crime challenges . . .”

Pete Holmes

Studio 7, 110 S. Horton St., was the first to be declared a Chronic Nuisance Property. The club was holding all-ages raves, which created many public safety issues on the property, including drug overdoses, sales of Ecstasy, a rape, robberies, harassment and several assaults. Many of the raves attracted juveniles. This Chronic Nuisance Declaration was based on 14 nuisance activities on the property over a one-year period. Studio 7 and the property owner entered into a Correction Agreement with the City that included additional

safety measures and an end to all-ages raves. Since then, public safety calls to Studio 7 have decreased significantly.

Club El Reventon, 7047 E. Marginal Way S., was the second declared Chronic Nuisance Property in the South Precinct in 2012. This establishment was operating as an all-ages dance club and a 21+ bar. A mixture of alcohol and underage minors led to alcohol overdoses, assaults, rapes and domestic violence at the site. The club and the property owner entered into a Correction



“The City Attorney’s Office provides an integral legal insight not only into the civic affairs of Seattle’s citizens, but also into the relationship of our citizenry with our Seattle Police Department, . . . (The precinct liaison program) “provides a crucial element of support in each of our city’s precinct communities and builds a strong relationship between SPD, City Attorney’s Office and the public.

Pete Holmes, Aug. 3, 2011 at 11:39 a.m., *In Crime, West Seattle News*

Agreement with the City that included additional safety measures and restricted hours for minors on the premises. When public safety problems continued, the City requested that the property owner comply with the agreement, and so the owner evicted Club El Reventon. After eviction, Chin learned that the club owner was planning all-ages dance events at another building in White Center. However, this building and property owner were the subject of a permanent injunction from King County Superior Court that prohibits dance venues. Chin informed King County of the violation, and the county stopped the events before they could occur.

The third South Precinct site declared a Chronic Nuisance Property in 2012 was a residence in the 1500 block of S. Pearl St. where the tenants were served with two federal narcotics search warrants. The owners evicted the tenants and listed the house.

In the Southwest Precinct, as well as the South Precinct, Chin cooperated with the Community Police Teams (CPT) to proactively work with the owners of properties where public safety incidents recurred. In West Seattle, several abandoned houses attracted transients and burglars. In South Seattle, gang activity was noted at various properties. With Chin’s assistance, the landlords were able to abate the public safety problems before they expanded.

North Precinct



Shortly after she arrived at the North Precinct, **Jana Jorgensen** was inundated with officer complaints about the notorious Aurora Avenue motels. After several months of reviewing incident reports and attending motel interdiction training, she developed an action plan with the precinct’s CPT to address the ongoing criminal activities. In early July it was clear that the Orion Motel at 12500 Aurora Ave. N.

met the criteria under Seattle Municipal Code 10.09 to be declared a Chronic Nuisance Property. However, CPT Sgt. Dianne Newsom and Jorgensen agreed that before proceeding they should inform the Orion owners of their status. In July Jorgensen visited four Aurora motels—the Orion, Seals, Ambassador and Nites Inn—to invite owners and managers to a meeting with SPD to discuss the recurring problems of prostitution, narcotics activities and more serious crimes.

At the SPD-motel roundtable the parties discussed motel registration and security procedures, how to identify criminal behavior and ways to establish better relationships with the community and SPD. Jorgensen then explained the Chronic Nuisance Ordinance to all the owners. Although the Orion Motel met the nuisance declaration criteria, the owners were told the City would not proceed if they reduced criminal activity within 60 days. After

PRECINCT LIAISONS DIVISION *continued*



that period, criminal activity at every motel except one decreased. The City declared the Orion Motel a Chronic Nuisance Property on Nov. 7, 2012.

After a very productive meeting with the Orion owners less than a month later, the parties signed the Correction Agreement in early December. The owners agreed to take specific steps to abate the nuisance within 90 days, which included stricter guest and visitor policies, security checks, and greater cooperation with SPD. A week later SPD Officer Tim Ware remarked that he had checked on the Orion Motel and it “looked like a ghost town. They had even landscaped.”

Farther south on Aurora Avenue, Jorgensen employed her mediating skills to help resolve “a crisis in the arts” in the Fremont community that centered on a beloved mural on the wall at North 38th Street and Bridge Way under Aurora Avenue North.

In 1996 Patrick Gabriel, a local artist, had volunteered his time and money to paint the mural; due to the elements and some vandalism, the mural had faded and lost its original beauty. When Gabriel expressed his desire that the mural be restored, the City was unable to meet his requests for funding. Gabriel requested that it be painted out and his name removed from any association with the artwork. The Fremont community and the Fremont Arts Council were distraught with the thought that the mural, an integral part of the “Center of

“During my 20 years in the restaurant and nightlife industry, I’ve witnessed firsthand the value that the City Attorney’s precinct liaisons deliver to both local businesses and the neighborhoods they are situated in . . . The liaisons also play a critical role in facilitating proactive communications and ensuring a safe and vibrant nightlife economy.”

Pete Hanning, president of the Seattle Nightlife & Music Association and owner of the Red Door in Fremont

the Universe,” would vanish forever. Jorgensen reached out to Gabriel, who currently resides in Florida, and negotiated a deal. Gabriel gave the Fremont Arts Council permission and stewardship over maintenance of the mural with the understanding that Gabriel would have no further involvement except to retain his copyrights. In addition Gabriel released permission to the City to paint over the mural whenever the City deemed it necessary. “I am honored that individuals in the community of Fremont want to do whatever possible to keep it as long as possible or feasible with no permission or involvement required by the artists,” Gabriel wrote in his letter releasing his rights to the community.

West Precinct



Sometimes something small can be a big problem for a community. Such was the case when **Sumeer Singla** was asked for legal advice about a phone booth in the West Precinct. A CPT officer had received calls from community members complaining that one particular phone booth in the 1600 block of 1st Avenue was the source of criminal activity. They reported hearing the phone ring and different individuals picking up the call, talking for a few seconds and hanging up. Shortly after, an apparent drug transaction occurred in front of the phone booth. Community members also observed individuals consuming drugs and using the phone booth as cover.

PRECINCT LIAISONS DIVISION *continued*



“A lot of people call 911 with problems that really aren’t law enforcement issues. It might be feuding neighbors. It might be garbage that isn’t getting picked up. It might be streetlights that are burned out. These liaisons provide immediate relief to the police.”

Pete Holmes

The CPT officer identified the telecommunications service provider for the phone booth but couldn’t locate the actual owner. As is the case in many of these situations, the officer wanted Singla to “just take care of it.” The officer jokingly asked Singla, “I bet you never thought you would be dealing with getting rid of phone booths when you finished law school?” Singla replied, “Actually, we as lawyers do this sort of stuff quite a bit.”

The City could not immediately remove the phone booth because it was not on City property. The Metropolitan Improvement District (MID) identified the building owner who leased the space for the booth, but couldn’t find any record of a contract or lease. No one knew how the booth got there, how long it could be there and who owned the booth.

Singla reached out to his contacts at the state Utilities and Transportation Commission because the UTC regulates telecommunication service providers. The UTC staff person gave Singla information for specific individuals to contact for the service provider. Singla left messages for those individuals and received a call back within hours, and they were more than happy to help the City resolve the situation. They facilitated contact with the booth owner, who called Singla within 24 hours.

The owner was already aware of the issues surrounding his phone booth and agreed to work with the City. He wanted a few months to allow his contract

with the service provider to expire, and promised not to renew the contract. He further assured Singla he would only allow outgoing calls via a credit card and would block all incoming phone calls.

While waiting for the contract term to expire, community members expressed their concerns about the phone booth to Councilmember Tom Rasmussen. The councilmember’s office became heavily engaged in this issue and told Singla the phone might still be accepting incoming calls and was certainly allowing outgoing calls without the use of a credit card.

After Singla left several stern messages for the owner reminding him of his agreement with the City, he received an email from the MID director informing him that the phone booth had been removed. The community was persistent in bringing the problem to the attention of the necessary decision makers while the City Attorney’s Office played a critical role in facilitating the necessary contacts with the UTC, the service provider and the owner to resolve the issue.

It is unclear whether the phone booth’s removal had any significant impact in reducing criminal activity. But it is clear that the community feels safer and more engaged in the civic process. Small victories such as this one usually go unnoticed in the larger scheme of City problems, but these victories tend to have the biggest impact on community perception of public safety.

PRECINCT LIAISONS DIVISION *continued*



East Precinct



In the East Precinct, **Matthew York** found that noise pollution was not merely an inconvenience but a quality of life issue. In 2012, addressing community unhappiness with excessive noise at clubs consumed as much of York's attention as helping curb driveby shootings and ensuring code compliance at bars and nightclubs.

An adjacent nightclub or bar can significantly reduce a resident's enjoyment of her property and even have a direct impact on personal health. SMC 25.08.501, enacted by the City Council, requires the use of a noise meter and an official warning before an infraction can be issued. But no work to allow enforcement had been done in the City before York arrived. It is alleged that the decibel levels currently set as the maximum allowed are not effective in permitting property owners the full enjoyment of their property.

York's work is helping City agencies provide clarity on the effectiveness of the ordinance. Working closely with the Department of Finance and Administrative Services, York wrote the warning to be used should a violator be found. He also met with the Hearing Examiner's Office to determine how the office fits into the regulatory system once infractions are issued.

The East Precinct also has several problem locations where the residents

have experienced a high frequency of driveby shootings arising out of gang activities. While no systemic problems have been declared solved, York has worked directly with concerned community members and police to look for solutions to the larger problem while mitigating the immediate negative impacts. This has included direct communication with the owners of the properties in question as well as environmental improvements. With the cooperation of the Mayor's Office and other City agencies, the lighting in these locations has been updated to much more effective LED lights and the vegetation has been cut back to maximize use of the new lights. York also attended several meetings with concerned neighbors to educate them on the Chronic Nuisance Property Ordinance and its limitations. These meetings also focused on community-based solutions and options that go beyond the ability of the police and the courts.

The East Precinct's rich and vibrant nightlife also demanded York's attention in 2012. The precinct liaison is responsible for code enforcement and also serves a vital role in preventing clubs from becoming problem locations. It's common for York to communicate with club owners the responsibilities and behaviors that are expected. This has transpired in regular meetings with security staff members, owners, and bar staff of many bars and nightclubs. These preventive measures have helped avoid problems that may arise from violence, noise, over consumption, or minors being served.

PRECINCT LIAISONS DIVISION *continued*



Floating Liaison



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

In 2012, as in several previous years, a single house at 8433 55th Ave. S. absorbed a fair amount of Gappert's time—finally with a positive outcome for the surrounding Seward Park area.

For three decades, the neighborhood had been held hostage by a crime-infested property owned by a drug-dealing grandmother. Since 1989, at least five search warrants were served on the property, all seeking evidence of narcotics. The owner of the house, Sharon Stone has served numerous prison sentences for welfare fraud and numerous drug and weapons-related offenses. In 1992, the City successfully had the house declared a drug nuisance, and the property was closed by court order for a year. The criminal convictions, the prison sentences and the prior abatement did not deter Stone's criminal activities. Crime was so pervasive that the neighbors were afraid to let their children play in their own yards.

Working closely with SPD's South Precinct and the Narcotics unit, Gappert filed an abatement case against the property in 2011. That was followed by

a court-ordered closure of the property as a drug nuisance for a year. Lest the house return to its status as a crime magnet, Gappert, for SPD, sought forfeiture in 2012 so ownership of the property would vest with SPD. By this time, Stone had been criminally charged with two drug offenses and was facing a minimum prison sentence of five years. Over several meetings with the King County Prosecutor's Office, Stone and her criminal defense attorney, Gappert negotiated a settlement. Stone agreed to sell the property, split any proceeds with SPD and plead guilty to one criminal charge. In exchange, the prosecutor's office agreed not to recommend prison time. The agreement required Stone to list the property for sale by Oct. 1, 2012. If she failed to comply, the prosecutor's office would file additional charges against her and seek maximum prison sentences.

On the day the "for sale" sign went up, Stone accepted an offer. The buyer, having met with Gappert and SPD several times, understood the community's concerns about the property and was willing to do extensive renovations to make it habitable.

The house was vacant for over 18 months. Crime diminished significantly in this block since Stone moved. The City fully expects the problems associated with this house will disappear under new ownership.

CIVIL DIVISION



The City of Seattle confronts complex legal problems daily. From negotiating police practices with the U.S. Department of Justice to writing and reviewing documents for a proposed basketball/hockey arena, the City relies on experienced lawyers to guide the way. More than 50 in-house lawyers and 20 support staff in the Civil Division provide high-quality legal representation that would otherwise be done by costly outside counsel.

Six sections comprise the Civil Division: Contracts and Utilities, Environmental Protection, Employment, Government Affairs, Land

Use, and Torts. Lawyers shepherd a vast array of projects and cases, including this sampling from 2012:

- **Constitutional law:** We helped negotiate a settlement agreement to ensure constitutional police practices, defended the City's restrictions on strip clubs against First Amendment challenge, and drafted an emergency order and proclamation for May Day that protected free speech and private property;
- **Environmental law:** After years of anticipated litigation, we

CIVIL DIVISION *continued*

negotiated a settlement with Puget Sound Energy for the clean-up of Gas Works Park, and began preparing for an allocation process to clean up the Lower Duwamish;

- Land Use law:** We worked with the Department of Planning and Development to enforce laws against slum landlords and advised on the State Environmental Protection Act implications of the SoDo arena project;
- Tort law:** 2012 was a record low year for payouts on tort claims against the City (\$4.2 million) and we recovered \$1.5 million against a company that punctured a Seattle Public Utilities pipe on the bottom of Puget Sound;
- Contract law:** We helped negotiate the Memorandum of Understanding with ArenaCo, which has the potential to return the Sonics to Seattle, and resolved the lawsuit over Building 11 in Magnuson Park;
- Government regulation:** Our attorneys helped draft the City's sick leave ordinance and defended its first legal challenge;
- Finance:** We are advising on financing for the waterfront improvements and marijuana regulation and taxation;
- Labor and employment:** We defeated the police unions' claims that officers had a right to their own private law firm to represent them in excessive force cases;

- Utilities law:** Our lawyers continue to pursue legal action against energy sellers that overcharged during the 2000-2001 West Coast energy crisis and collected nearly \$2 million in 2012.

Civil Division assistant city attorneys and paralegals logged 102,662 hours in 2012. Given that a blended rate of \$249 per hour, the cost of outside counsel for that time would be \$24,844,204. Assuming personnel in the Civil Division cost about \$109 per hour on average (including overhead and benefits), our lawyers and paralegals saved the City \$13,654,046 in legal fees in 2012.

Besides advising City departments, the Mayor's Office and the City Council, our lawyers defend the City when sued, and guide departments on how to avoid lawsuits. The City's risk manager credits the Civil Division lawyers for continuing their "focus and follow-up on loss control issues discovered during the course of litigation."

2012 was also a banner year for Civil Division efforts to recover money for the City in taxes, damages and enforcement penalties. Our collections and torts attorneys recovered \$2,458,864 in damages owed to the City. Division tax lawyers collected \$2,052,000 in disputed taxes. Our Land Use Section collected \$218,000 in enforcement penalties for land use violations. In all the Civil Division recovered \$6,563,864.

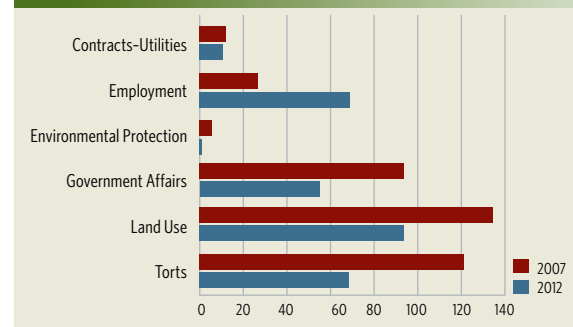


Jean Boler,
Civil Division Chief

SETTLEMENT PAYMENTS BY YEAR 2008-2012



2007 - 2012 OPEN CASE COMPARISON*



*removing admin/claims files

CIVIL DIVISION *continued*



At left, Pete Holmes and Jean Boler address the City Council in executive session.

Government Affairs Attorney Gary Smith, at right, monitors an executive session.

DIVISION PROJECTS

Settlement with the Department of Justice

Lawyers from different sections often team up on cases and projects. In 2012 the Civil Division Chief and lawyers from the Torts and Government Affairs sections represented the City in negotiations with the Justice Department over its allegations that the Seattle Police Department had engaged in a pattern or practice of using excessive force. After six months of negotiations and more than a week working non-stop with a mediator, the two parties settled in July. Now division attorneys are helping implement the agreement, which is under federal court jurisdiction.

City v. Saladino and Anderson et al. v. Saladino and the City

Landslides have plagued the Beach Drive area of

West Seattle for years and previous enforcement actions had met with delays. When area residents sued the City and the owner of a property above Beach Drive, attorneys for the City negotiated a multi-party settlement of enforcement and damages claims that required the property owner and his insurer to build deep retaining walls and a drainage system to stabilize the hillside at an estimated cost of \$2 million. No City money will fund the project but enforcement penalties were waived in exchange for the stabilization work.

City v. Phan

When Seattle Public Utilities discovered an employee had embezzled more than \$1 million, our office moved quickly to recover as much of the money as possible and work with the insurance company to ensure coverage for the remainder. Efforts by Employment and Torts

attorneys resulted in the recovery of nearly \$600,000, and the City's insurer has accepted the claim for the remainder.

Emergency Management

The City Attorney's Office has an important role to play when the City responds to an emergency. In 2012 we accomplished a major overhaul of the Law Department emergency management response materials. Our attorneys helped organize and enlarge the ranks of lawyer emergency responders and conducted training on our role in emergency management. An assistant city attorney serves as the point of contact for the Office of Emergency Management (OEM) and on the City-wide Disaster Management Committee, the Emergency Executive Board, the Strategic Work Group of the OEM and the multi-agency Omnibus Financial Agreement work group, among numerous state,

CIVIL DIVISION *continued*

federal and local government agencies. We also reviewed and edited the massive City-wide Seattle Disaster Response and Recovery Plan. During the May Day civil unrest, a division team advised SPD and the Mayor's Office on how to respond to threats of violence within constitutional limits.

CONTRACTS AND UTILITIES

The City contracts with public and private parties on projects as massive as the state-financed deep bore tunnel and as intriguing as a copyright on a totem pole. The City also owns and runs its own electrical, water and waste utilities, Seattle City Light and Seattle Public Utilities. All legal questions involving City contracts and the City's utilities eventually reach the 11 attorneys in the Contracts and Utilities Section. These lawyers advise clients, draft contracts and legislation, and defend lawsuits for capital projects, real property transactions, City purchasing, and intellectual property matters. Clients frequently draw upon the practical and business experience of section lawyers as well as their legal knowledge to support the complex operations of the City. Here is a sampling of the section's cases and projects from 2012:

LITIGATION

2000-2001 West Coast Energy Crisis Refunds

Litigation over the energy crisis at the turn of the millennium continues. Assistant city attorneys represent City Light in its appeal of Federal Energy Regulatory Commission's denial of refunds to City Light and others for over-priced energy

purchases during the energy crisis. In 2012, City Light settled with 12 entities, in a total amount of \$2,465,000. To date, \$1,835,000 of this amount has been paid. Remaining claims amount to tens of millions of dollars.

Building 11 at Magnuson Park

Building 11, a private developer that contracted with the City for the renovation, redevelopment and operation of Building 11 in Magnuson Park, sued the City in federal court. The suit alleged the City, by placing conditions on lease amendments that the developers claimed were necessary for the financial viability of the project, had breached the contract, and violated the duty of good faith and fair dealing and various provisions of the U.S. Constitution. The City maintained it was within its rights to assure the building use was consistent with community input. The case settled for \$7.5 million in January 2013, with the City agreeing to buy out the lease and capital improvements of the building that will now be managed by the Parks Department.

Elephants

Some taxpayers alleged the City had to oversee the conditions of the elephants at the Woodland Park Zoo, which receives City funds for its operations. A King County Superior Court judge agreed the City had no such obligation. The taxpayers' appeal was argued in July, and the City received a ruling in December that it did not have to oversee the elephants.



Building 11, Magnuson Park

CIVIL DIVISION *continued*

Seattle Indian Services Commission

After a scathing auditor's report and the revelation that the Indian Services Commission had failed to maintain the Pearl Warren Building (one of its two major real estate assets, which was in dire need of at least \$900,000 in repairs), the City Council authorized intervention by the Mayor under SMC 3.110.440. Some commission members were removed and one, the former chair, instituted a suit challenging the City's authority to do so. Our attorneys obtained a summary judgment ruling upholding the City's actions. Section attorneys continue to provide advice and legal representation to the Mayor and City Council as the City works in a more active role with the commission to address the significant challenges facing the organization.

Taxes and Rates

Our attorneys work with City Light to make sure it isn't being over taxed and its rates are correctly regulated. One lawsuit was brought to force Oregon to recognize a municipal exemption from certain property taxes. In another case, City Light is joining with other public utilities to make sure they are being treated fairly in setting rates related to the Residential Exchange Program.

Yellow Pages Ordinance

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

PROJECTS AND CONTRACTS

12th Avenue Arts Condominium

Just under the New Year's deadline, the City and one of its public development authorities, Capitol Hill Housing Improvement Project (CHHIP), closed an extremely complicated finance and real estate deal to fund a new facility in the Capitol Hill neighborhood that will have a state-of-the-art parking garage for the East Precinct headquarters, unique community arts space, and four stories of low-income housing. Section attorneys advised and negotiated this high-priority project for the Mayor's Office and the City Council, which unanimously supported it. Complex elements were involved on both the financing and real estate



Rendering Courtesy of SMR Architects



Site of the 12th Avenue Arts Condominium

CIVIL DIVISION *continued*

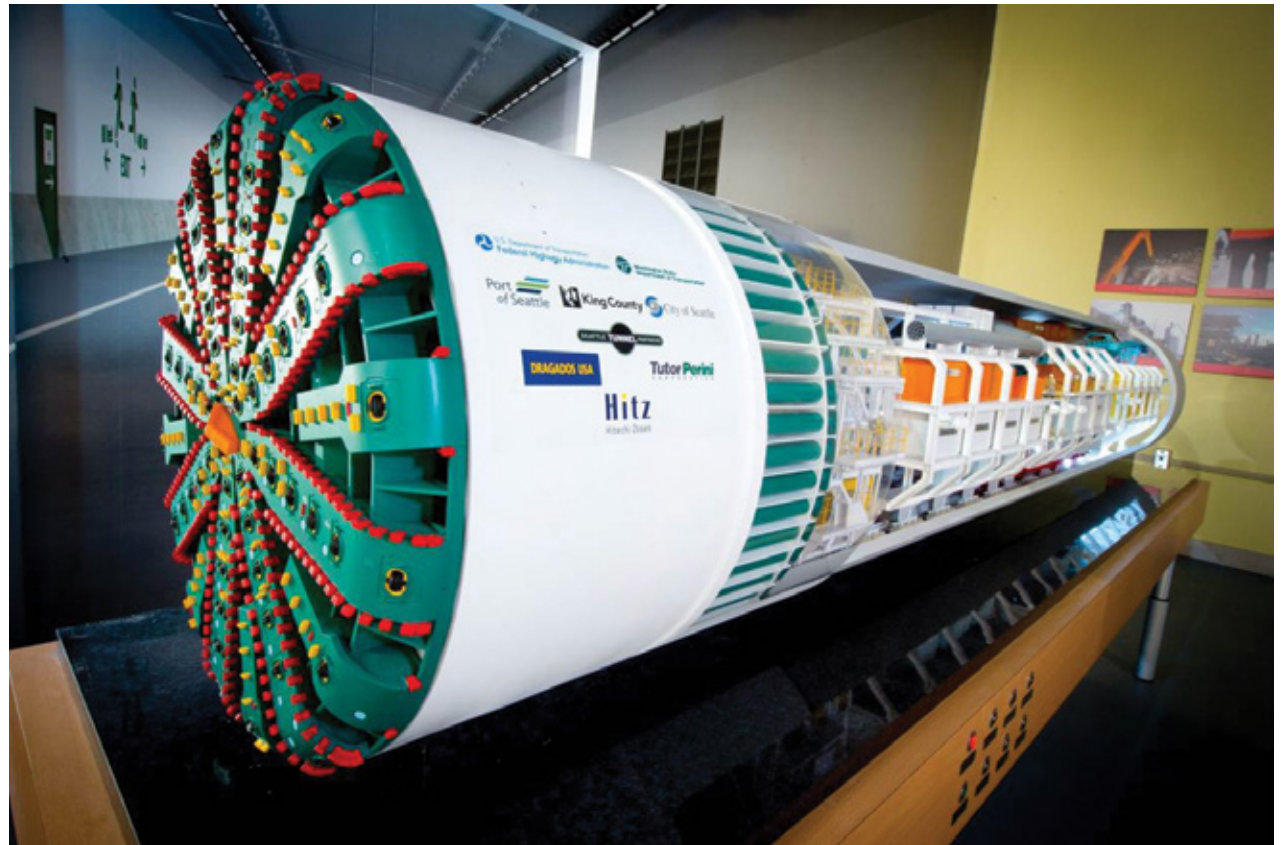
sides of the transaction. Different departments with divergent interests had to be reconciled. Ultimately, it took over a year to draft, review and approve more than 400 financing and real estate documents, plus work with multiple local and national law firms representing two out-of-state investors and CHHIP.

Alaskan Way Viaduct Bored Tunnel Project

As work on the tunnel project progresses, Contracts and Utilities attorneys continue to advise City Light and SPU regarding the protection and relocation of their facilities, and other implementation issues relevant to their contracts with the Washington State Department of Transportation. When a City Light cable was discovered to have been damaged either before or during its installation as part of the relocation of City Light's transmission lines for the Alaskan Way Viaduct Replacement Program, attorneys negotiated and successfully obtained an extended warranty from both the manufacturer and the contractor who installed the cable.

Arena

After more than a year of negotiation, the City, King County and ArenaCo agreed on a possible path forward to build a multi-purpose sports and entertainment arena. This agreement was simultaneously approved by both councils. Assistant city attorneys, client departments and outside counsel spent countless hours negotiating, drafting, re-negotiating and re-drafting



Model of tunneling machine on display at Milepost 31, an award winning information center at First Avenue South.

the Memorandum of Understanding ultimately passed by the legislative bodies. Much work lies ahead, including the environmental process and transaction document drafting, negotiation and submittal to City Council for a final decision on whether to participate in the proposal.

Boundary Dam Relicensing

During 2012, section attorneys continued to

work on City Light's Boundary Dam Relicensing team, finalizing the application process at FERC for the new license. These efforts include Council approval of an ordinance authorizing City Light to accept the license. Because of its own administrative delay, FERC has not yet issued the license, and the City team is considering options to prompt FERC to that end.

Broadband

The Mayor's goal to improve and expand high-speed internet services to Seattle businesses and residents required legal advice on many fronts, including advice and strategy on legislation that would allow the City to lease excess fiber and infrastructure to third parties.

Cable Communications Code Revisions

Section attorneys have been advising the Department of Information Technology on a complete review and revision of the City's telecommunications ordinance, which hasn't been updated in many years. The revised code will be finalized in 2013 and sent to the Council for approval.

Capital Projects Advisory Review Board

In 2005, the state Legislature created the Capital Projects Advisory Review Board (CPARB) to help review alternative public works contracting procedures and provide guidance to state legislatures. An attorney from the section is appointed to CPARB and has been working with the legislature committees regarding reauthorization of the alternative public works legislation, which is scheduled to sunset in 2013. This is critical legislation for our City and for public entities everywhere. Our attorney worked on negotiating and drafting the overall reauthorization bill and also on the job order contracting subcommittee. Job order contracting is a device that is especially important to the City since it is a vehicle to increase minority, small and disadvantaged business participation in public works contracting.

Cascade Water Alliance and Cedar Watershed projects

Our attorneys advised and assisted in negotiation of a long-term extension of the declining block water supply contract to Cascade Water Alliance. They also drafted, negotiated and successfully finalized a settlement agreement with property owners adjacent to the Cedar River Watershed that were extracting water from the watershed.

Women and Minorities (WMBE) Public Works Program

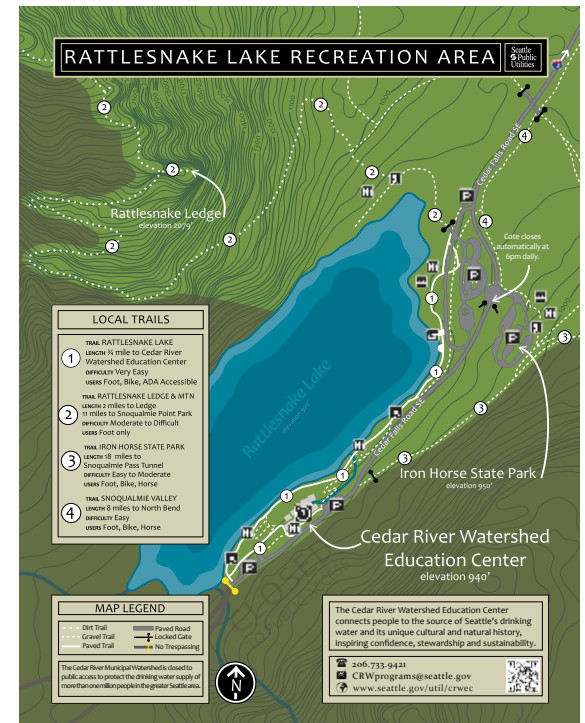
WMBE support is an important City goal. Our attorneys provided legal advice, analysis and drafting of the City's new WMBE Inclusion Plan for public works projects.

Energy Delivery

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

Families and Education Levy

The 2012 Families and Education Levy ("FEL Levy") will raise more than \$231 million over seven years. Almost all programs funded by the FEL Levy are being implemented through City contracts with the Seattle School District,



Rattlesnake Lake, site of the Cedar River Watershed Education Center

CIVIL DIVISION *continued*

community-based organizations, non-profits, public agencies and education professionals. The Mayor's Office of Education, working closely with stakeholders and Council, implemented a new outcome-based funding program through new selection processes and contract documents. Our attorneys provided advice and assistance in the new contract processes and the contract documents for the first phase of the Families and Education Levy contracts.

John T. Williams Totem Pole Copyright

There was a great community outcry when John T. Williams, a Native American woodcarver, was shot by a Seattle police officer in August 2010. In February 2012 family and friends raised a totem pole at Seattle Center in his honor. Our attorneys assisted the Office of Arts and Cultural Affairs with complex copyright issues relating to the various interested parties' rights in this memorial artwork.

Organics Processing RFP

We have advised SPU on its Request for Proposal (RFP) for a new organics processing contract. After several months of negotiations with proposers, the utility has finalized the contract terms. A legislative package for approving the contracts is also in process.

Port of Seattle

The Port presents many opportunities and legal challenges for the City. Last year, our attorneys helped respond to the Port's need to use city streets next to its terminals, the City's corresponding needs

for access to Port property, and our mutual need to allow City Light to assist the Port in an emergency repair of a Port substation facility serving cargo cranes on the East Waterway, which is part of the Duwamish Waterway.

Power and Renewable Energy Credit purchases

In 2012 section attorneys continued to advise City Light on the purchase and sale of energy, renewable energy credits and transmission, including counterparty credit issues.

Public works and alternative public works

During the year, our attorneys worked on an extensive re-write of hundreds of pages of documents necessary to the City's alternative public works process for SPU's Combined Sewer Overflow, North Transfer Station, Landsburg Chlorination Facility, and Morse Lake Pump Plant Projects. These projects have cumulative project costs of more than \$280 million. Our attorneys work on each major capital project's Core Team for SPU, which involve them from the earliest project stages and require them to give both legal and project development advice. They also participate as non-voting members of Consultant Evaluation Committees for selection of design professionals and GC/CM.

Real Property

Our attorneys provided ongoing advice on purchases, dispositions, and leases of real property related to utility operations, and land management issues, including easements,



John T. Williams Memorial Totem Pole at Seattle Center

CIVIL DIVISION *continued*

encroachments, trespass and illegal dumping. We also advised regarding interdepartmental issues for multiple use real property.

Seattle Center Next Fifty Projects

In 2012, the Seattle Center celebrated the 50th anniversary of its beginning at the 1962 World's Fair. Section attorneys gave legal advice and assistance regarding numerous contracts related to the Next Fifty celebration, including agreements for the redeveloped food services in the Armory (aka The Center House).

South Recycling and Disposal Station

SPU's construction of this new transfer and recycling station commenced in November 2010. The project delivery approach is "design-build," a method in which a contractor/design team is hired before significant design work. During 2012 our attorneys continued to assist SPU in resolving a complex dispute with the design build contractor and provided project advice and claims management.

SR 519 Project

The section participated in the office's cross-specialty attorney team, helping to negotiate and prepare agreements between the City and the state to transfer infrastructure improvements and real property to the City.

Wave Ownership Transfer

Wave is a major cable television franchise provider in Seattle. Section attorneys advised and assisted DoIT with a complex sale of Wave to new

owners. After difficult multi-party negotiations, the sale succeeded and the franchise was transferred to the new owners with Council approval.

EMPLOYMENT

Most of the City's roughly 10,000 employees are represented by unions and protected by civil service. The section's nine attorneys advise departments on legal requirements related to labor and employment law and represent the City in legal disputes with employees and labor unions.

Advice

Employment law has many gray areas and questions with no clear answers. We have an employee whose behavior has changed, and we're concerned about safety—what can we do? What are the best ways to manage employees' performance? How can we accomplish our Race and Social Justice Initiative goals without violating state Initiative 200 and the Constitution? What do we do when an employee asks to be transferred to another department because of a stress-related disability?

As our attorneys work with human resources professionals, managers and department directors, they continually strive to provide solid legal advice that allows City operations to proceed efficiently and fairly. They monitor developments in diverse aspects of employment and labor law. A collaborative approach within the section allows the attorneys to take advantage of each other's expertise on such topics as the



CIVIL DIVISION *continued*

Americans with Disabilities Act, the Washington Law Against Discrimination, wage and hour laws, personnel rules, workers' compensation statutes, and the state and federal constitutions.

As a general rule, City managers and employees are dedicated, conscientious public servants who face difficult, day-to-day challenges. Employment attorneys often serve as trusted advisors as these challenges turn into personnel legal issues. During 2012, attorneys worked closely with departments in addressing and defending disciplinary decisions that were significantly complicated by the highly publicized incidents of misconduct. One can easily find comments to online media reports that forcefully demand, "fire them all!" But navigating civil service, collective bargaining and other restrictions often calls for a more nuanced approach. Our attorneys—by conducting training, giving advice and engaging in litigation—provide valuable assistance to department managers as they seek to implement the shared goal of preventing and redressing improper use of City funds and other misconduct.

Litigation

When employment disputes lead to litigation, our attorneys represent the City in federal and state courts—from the initial response to lawsuits, through extensive discovery, in motion practice, through trial, all appeals and implementation of decisions. 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 claims. A few examples:

Paramedic v. Seattle Fire Department

A complex case from the Seattle Fire Department provides an example of the long and tortuous path employee disputes can take. During the course of personal disputes among SFD paramedics, one of the paramedics distributed a "survey" that was viewed by other paramedics as a tool for harassment. The survey distributor was temporarily transferred while the department conducted an investigation, resulting in a suit against the Fire Department and two fellow paramedics. He alleged, among other things, defamation and violation of his right to free speech. Because the plaintiff included allegations implicating his federal constitutional rights, the City removed the matter from state to federal court. Ultimately the City obtained dismissal because distributing a survey to co-employees about internal office affairs is not protected speech under the First Amendment. The dismissal has been affirmed by the 9th Circuit Court of Appeals.

Employees v. City Light

Employees are occasionally repeat customers of the section's litigation teams. For example, two City Light employees have pursued similar claims in three actions in federal court, state court and arbitration. The employees assert they have



Seattle Fire Department Paramedics

CIVIL DIVISION *continued*

been treated poorly through discipline and lost advancement opportunities. The City has prevailed in virtually every case because City Light's promotional decisions are reasonable and thoroughly documented. In fact both plaintiffs have been promoted. In 2012, the section obtained dismissal of most claims asserted in the latest state court lawsuit. Notably, the judge affirmed an employer's right to evaluate evidence of employees' alleged mental distress when they sue for money damages claiming mental distress. This case, too, is headed for appeal.

SPOG v. City

Our lawyers often litigate the fine line between management rights and the obligation to bargain with unions over changes in the workplace. Two cases brought by the Seattle Police Officers Guild (SPOG) illustrate the controversies that can arise:

- **Bargaining rights v. the Public Records Act:** Based on changes in the state public records law, the SPD notified SPOG it would no longer redact (black out) the names of officers found to have engaged in misconduct when the department provided discipline files in response to public records requests. SPOG grieved the change, arguing it had to be bargained with the union. The arbitrator agreed with the guild's assertion that the City was, by contract, required to maintain its practice of redactions. Our attorneys appealed the arbitrator's decision to superior court, and the judge vacated the arbitrator's decision,



SPD offers a one-day or multi-week course that gives residents a better understanding of how the department functions. Dennis the bomb dog was center stage of this 2012 class.

agreeing with the City that redacting names would violate the Public Records Act.

- **In-house v. private counsel for police officers:** In another case, SPOG challenged the City Attorney's decision to use in-house assistant city attorneys to defend police officers in civil rights lawsuits. Usually, police officers—like other City employees—receive free legal services and protection against judgments when sued for actions taken in the course and scope of their employment. For many years, the City hired outside lawyers, at great expense, to represent police officers because the guild's collective bargaining agreement appeared to require it. When the most recent contract expired, the City Attorney changed

course and began using in-house lawyers to defend most cases against police officers. The Public Employment Relations Commission Hearing Examiner upheld the City Attorney's actions. The examiner agreed that the hiring and supervision of lawyers was an important managerial function for the City Attorney that outweighed any minimal affects on the police officers' wages and working conditions. The guild has appealed the examiner's decision to the full commission.

Alternative Dispute Resolution

Our employment attorneys fully recognize the value of resolving disputes between employees and management through Alternative Dispute Resolution (ADR). They frequently engage

CIVIL DIVISION *continued*

in mediation efforts, both before and during litigation. For example, in one case, an attorney 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. This case typifies the ways our attorneys help clients carefully balance the risks, rewards and interests of litigation and settlement.

Training

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

ENVIRONMENTAL PROTECTION

The four attorneys in the Environmental Protection Section advise on a wide spectrum of environmental legal issues, from what to do when contamination is discovered on City property to how to protect the drinking water supply for the greater Seattle area. Their projects often are "high stakes," involving many millions of dollars. A small but significant part of their responsibilities is to help staff at Seattle Public Utilities who enforce City ordinances regarding storm drains and side sewers. They also advise on legal issues related to Native American tribes and water rights.

Issues handled by these attorneys include:

The City Parks Department has the opportunity to acquire property adjacent to an existing park, but the property is known to have been contaminated by the former operation of a dry cleaning establishment. What should Parks do to assess the contamination before buying the property? What contract provisions in the purchase and sale agreement will protect Parks if more contamination is discovered following the purchase? If there is future litigation over who should pay to clean up the contamination, what does Parks need to do to limit its potential liability?

SPU operates a drainage system for storm water in many parts of Seattle. By conveying the storm water to Lake Washington and other bodies of water, the City protects homeowners and businesses from flooding. Yet the storm water picks up contaminants on its way, such as oil that dripped onto parking lots and streets, metal particles from brake pads, and plasticizers from all the plastic products we take for granted. State and federal laws regulate contamination in storm water discharged from the City's outfalls. Questions include: What level of contamination requires SPU to report to the state Department of Ecology? Must SPU install expensive technologies in the near future to reduce the contaminants? What can the City require private property owners to do to prevent contamination from their properties entering the City's storm



Madison Valley Stormwater Project



Walking paths in the 30th Avenue East and East John Street holding area

Madison Valley Stormwater Project Area Map

CIVIL DIVISION *continued*

drain system? Regulations on contaminants in storm water are evolving rapidly, making this area of law especially challenging.

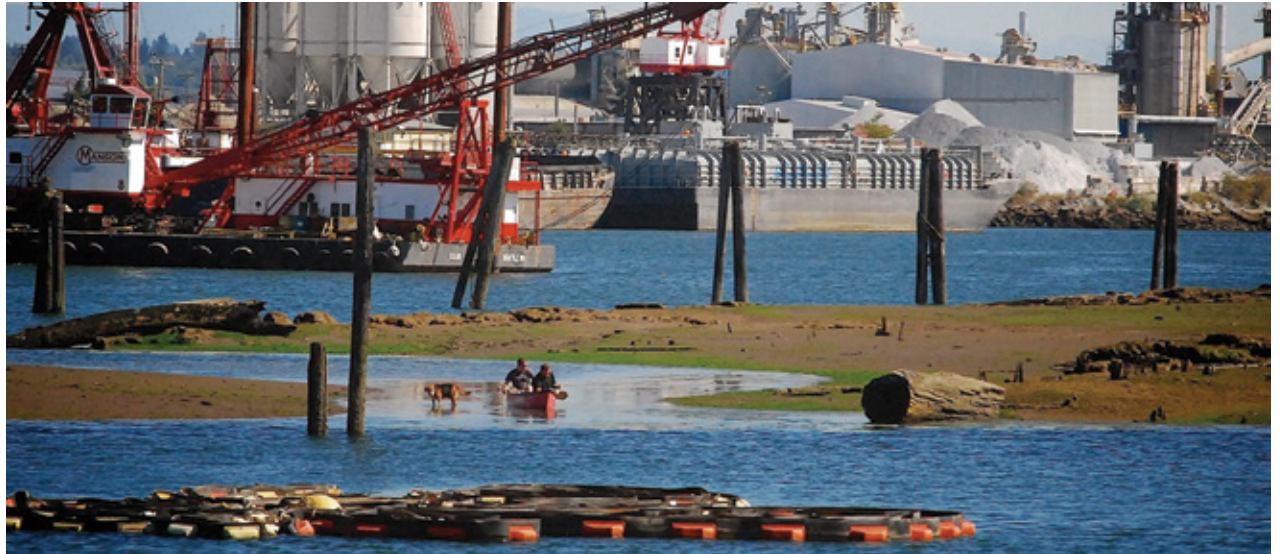
In 2012, the section's significant projects included:

Gasworks Park

Gasworks Park is a beloved Seattle icon now, but it used to be an industrial site where coal and oil were “cracked” to produce gas for heating homes and businesses. The process of manufacturing gas was messy, leaving tar and other contaminants behind. When the City acquired the property in 1973, most of the environmental laws we now take for granted had not been enacted.

The City has been working with state and federal regulators since 1984 to protect the public and the environment from the remaining contaminants. In 1990 the City and Puget Sound Energy, the successor to the original gas manufacturer, signed an agreement with the Washington Department of Ecology and did a cleanup in the park that removed some contaminants and put a cap of soil over others to prevent the public from coming into contact with them. More recently PSE and the City have been developing plans to clean up contamination in the shoreline and underwater sediments adjacent to the park.

Although they have worked together for the past 22 years, PSE and the City prepared to eventually battle each other in court over who should pay for the cleanup work. In November 2012 they



Duwamish River

resolved their differences. PSE agreed to do the work and pay 80% of most costs.

The settlement took some creative drafting by our attorneys. One issue was whether the City could legally commit to pay cleanup costs not due until years in the future. That question was addressed by requiring annual Council approval of the estimated costs for the coming year and by capping the total costs the City could pay without further Council approval. Achieving this settlement saves the City money it would have spent on expensive litigation and technical consultants. The settlement moves us closer to a cleaner Gasworks Park.

Duwamish Natural Resource Damages

Federal and state agencies and Indian tribes (known as the “Trustees”) can sue entities that



Gasworks Park, where PSE agreed to pay 80% of most costs for cleaning contamination.



LEFT: KUOW reporter interviews Pete Holmes after a press conference on DOMA.



RIGHT: Councilman Tom Rasmussen joins Pete at DOMA press conference.

have released contaminants and damaged natural resources. Since the early 1900s, City pipes have discharged storm water and sewage to the Duwamish River. Sewage now goes to a treatment plant, except when one outfall overflows, and storm water is far cleaner than it used to be. Still, the City faced being sued by the Trustees for damage caused by contamination in its discharges and the City's ownership and operation of City Light facilities adjacent to the river.

Our lawyer has been negotiating the terms of a settlement with the Trustees with some unusual aspects. The City facilitated the creation of habitat that will benefit fish and wildlife along the river, by leasing undeveloped street ends and other properties to a private company that will create these habitats. The City was then able to offset its liability for damage to natural resources by buying shares of the habitat being created.

GOVERNMENT AFFAIRS

Every day legal issues arise related to the powers and duties of local government and the distinct branches within local government. The 10 attorneys in the Government Affairs Section advise on government power and litigate cases that challenge the City's ability to do such things as regulate strip clubs, guns and marijuana; withhold police records on open investigations, and tax companies.

Challenges to the City's regulation of strip clubs, sick leave and marijuana

ATL v. City of Seattle

Our attorneys litigated a three-day trial in federal district court on whether the City owed more than \$1.6 million in lost profits plus attorneys' fees to a prospective strip club operator denied a permit. The 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 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 in that it should have had a deadline for processing a strip club license application, and that the City caused a short delay in processing a separate land use application. The court awarded the plaintiff \$1 in nominal damages for each of the two violations, and almost \$40,000 in attorney's fees.

BNSF v. City of Seattle

The City Attorney's Office successfully settled a railroad challenge to the City's new sick leave law, leaving the law intact. The law requires employers in Seattle to provide certain minimum sick leave days for employees.

Public Records

Fisher Broadcasting v. City of Seattle:

KOMO TV reporter Tracy Vedder requested SPD's in-car video recordings. 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. KOMO has appealed and the case is pending before the Washington Supreme Court.

Sargent v. SPD

The Public Records Act allows police departments to withhold records that are "essential to effective law enforcement," including records of open investigations. Our attorneys litigated the parameters of that exclusion in a case that went to the Washington Supreme Court. The high court is considering whether a law enforcement agency can withhold investigatory records that have been turned over to a prosecutor for charging and then returned to police to conduct a further investigation, and whether a request for an open disciplinary investigation of a police officer should remain pending and open until the investigation closes and the documents may be released.

Taxes

Getty Images (Seattle) LLP

A taxpayer with 450 employees in Seattle that provides administrative services for affiliated companies challenged the City's tax assessment of

\$1,552,000 in unpaid taxes. The taxpayer created a separate entity in California and claimed its income belonged to the California company, which had no employees or property. The hearing examiner and superior court ruled in favor of the City and the Washington Court of Appeals affirmed. In 2012, the Washington Supreme Court declined to review the case, terminating the appeal in the City's favor.

American Honda, Jaguar, Land Rover

Three taxpayers appealed tax assessments totaling about \$500,000. The taxpayers are automobile manufacturers that sell vehicles manufactured outside the country at wholesale to dealers in Seattle. The automakers claim they are exempt from the City's B&O tax under the Import-Export Clause of the U.S. Constitution. The superior court ruled for the City and the Washington Court of Appeals affirmed.

Collections

This section collects debts owed to the City by taking the creditors to court. Last year it collected \$1,258,864 in debts owed. Below is a sampling of cases.

Central Area Youth Association

This case provides a good example why the City extends judgments. The City obtained the original judgment in 1997 for \$89,980.57. In 1998, the City collected \$44,990 from CAYA as partial satisfaction. In 2007, the City extended the judgment. In 2012, the City recovered an additional



Central Area Youth Association

CIVIL DIVISION *continued*

\$62,000 to satisfy the judgment. It took 15 years, but the City was able to recover what it was owed and not put CAYA out of business.

Samnang & Pich, Ellis

These cases represent matters in which the City received final payments after lengthy payment arrangements. In the Samnang & Pich matter, the judgment was entered in 2005 for \$4,662.84 and payment arrangements were established in 2009 and completed in 2012. In Ellis, the judgment entered in 2005 for \$7,437 and payment arrangements were established in 2005 and completed in 2012.

900 4th Ave. Property

This case represents the largest single recovery for 2012. The City was able to collect \$97,997.95 within six months of sending out a demand without suing.

LAND USE

The Land Use Section supports two primary City functions. First, as a regulator of land use, the City must plan for growth and development, adopt development regulations (from zoning codes to building and electrical codes, and from critical areas protections to historic preservation), decide applications for building and land use permits, and enforce regulations. Second, as an owner of significant property (including rights of way) and a funder of low-income housing projects, the City must manage real property

and engage in a host of real estate and finance transactions.

Because land use law permeates so much of the City's activities, the section's 10 attorneys work with elected officials and a wide range of departments—DPD, SDOT, Neighborhoods, and Parks among the most active—to help them comply with Washington's complex land use laws. Besides advising clients, our lawyers represent the City in venues that include the City hearing examiner and municipal, state and federal courts.

Litigation in state and federal court

City v. Davis

When the Jiggles strip club opened within 800 feet of a school, day care, community center and public park, our attorneys moved for an injunction. The injunction was granted and upheld by the Court of Appeals, permanently shuttering the University District strip club.

International Longshore and Warehouse Union, Local 19

The proposed sports arena in SoDo spawned two lawsuits. The Longshoremen filed an action in October 2012 claiming that the City had to perform State Environmental Protection Act review before signing a Memorandum of Understanding with King County and ArenaCo establishing the financial terms of a proposal to construct and fund the arena. Because the MOU conditions any final decision on SEPA

review, the City and other parties requested, and were granted, dismissal.

Lemire v. Washington State Department of Ecology

An assistant city attorney led the drafting of an *amicus* (friend of the court) brief for the Washington State Association of Municipal Attorneys, the Washington Association of Prosecuting Attorneys, and Futurewise, urging the Washington Supreme Court to reform Washington's takings law by adopting the federal takings analysis.

Neighbors for Notice v. City

Neighbors of a property where a backyard house was built sued DPD, arguing the City owes them damages because they did not have sufficient notice the house was being built. Our attorneys are defending the suit in federal court.

Salmon Bay Sand & Gravel v. City

The Burke-Gilman Trail is the City's premier public multi-use trail. Since 2008, the City has been trying to complete the 1.5-mile "missing link" of the trail that extends from the Ballard Fred Meyer to the Hiram M. Chittenden Locks. Our attorneys appeared before the hearing examiner and in superior court, defending the City's SEPA review of the "missing link" project opposed by area businesses. The court ordered further review.

Sisley v. City

Notorious Roosevelt area landlords Hugh and

CIVIL DIVISION *continued*

Martha Sisley sued the City, alleging they should not have been penalized for code violations on their properties and the City should pay *them* an amount equal to the penalties imposed for their troubles. After a five-day trial, the jury rejected their claims.

Total Outdoor

Our office is defending the City against nearly half a dozen appeals in various venues brought by a media company challenging the City's attempts to block continued use of an unlawful billboard.

Litigation in administrative tribunals

Many land use actions are successfully defended at the administrative hearing stage. Here is a sampling:

- *Coalition for a Sustainable 520*. Along with attorneys for Washington state, we successfully defended a challenge brought before the Shoreline Hearings Board for the SR 520 replacement project.
- *Northgate Plaza*. In response to a challenge to conditions proposed for a rezone of a block north of Northgate Mall, our attorneys orchestrated a multi-party mediation leading to a set of conditions endorsed by all parties and the City Council.
- *Laurelhurst Community Club*. We defeated a SEPA challenge regarding proposed amendments to the City's essential public facilities regulations.
- *Struthers*. The City turned back a challenge

raising SEPA and other claims against a SPU project to improve its Meadowbrook Pond storm water management facility.

- *Tukwila annexation*. Our attorneys helped secure rejection by the Boundary Review Board of a proposal by the City of Tukwila to annex the area commonly referred to the "Duwamish Triangle," which Seattle has long contemplated annexing.

Enforcement actions

Enforcement matters involve a specialized type of litigation usually beginning in Seattle Municipal Court. The Land Use Section attorneys who handle an enforcement docket advise the section's primary enforcement client, DPD, regarding code enforcement issues; review and file enforcement actions; coordinate settlement negotiations, and conduct trials. In 2012, our attorneys reviewed roughly 100 cases referred by DPD for possible action and filed 72 actions. We won judgments of more than \$2.5 million and 12 abatement orders. Because DPD places a premium on bringing property into compliance, most judgments are settled for compliance and a greatly reduced payment. In 2012, we collected roughly \$160,000 for DPD and nearly \$58,000 for Seattle Department of Transportation. The following are examples of some of the issues addressed in this high-volume enforcement practice:

- cutting of trees in violation of the tree protection ordinance;
- unpermitted structures in and over City right-of-way;



3224 Portage Bay East

CIVIL DIVISION *continued*

- unpermitted uses and structures within the Lake Union neighborhood;
- construction of over-water and roof-top decks without permits on the Lake Washington shoreline;
- structures built improperly on a steep slope;
- drug-nuisance property left unsecured and posing hazards to the neighborhood;
- junk storage and unpermitted construction in a residential zone; and
- dwelling units created in violation of housing and land use codes.

Enforcement appeals

Appeals of City enforcement judgments have the potential to set precedent that could affect the ability of Washington cities to enforce their land use laws. Some examples of those appeals in 2012 are:

- *Sisley*. Our attorneys ensured that the Court of Appeals and Washington Supreme Court denied appeals by the Sisleys seeking to overturn penalties for violating the City's relocation assistance ordinance.
- *Sisley II*. After securing a published decision from the Washington Court Appeals rejecting the Sisleys' appeal of more than \$600,000 in penalties assessed by the Seattle Municipal Court, we defeated the Sisleys' request for review by the Washington Supreme Court and continued to fight attempts by the Sisleys to evade the penalties by bringing new motions in Municipal Court and Superior Court.
- *Borjesson*. We defended appeals in Superior Court

and the Court of Appeals of penalties imposed by the Municipal Court for numerous code violations, including for several unpermitted structures and significant junk storage.

Ordinances

At least half of the Seattle Municipal Code comprises land, street and park use regulations. Our attorneys review all amendments to these code sections. The Land Use Section remains the primary point of contact for work on building and maintaining the Code Drafting Manual and conducting training on its use. Ordinances reviewed by the section in 2012 dealt with several topics, including: shoreline regulation; site-specific and area-wide rezoning; wall signs; incentive zoning provisions; design review guidelines; Growth Management Act policies; rental housing inspections; and street trees.

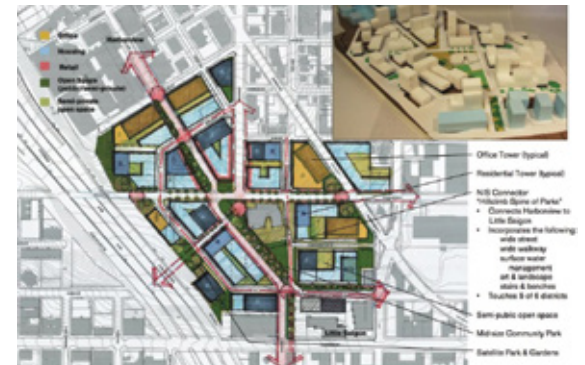
Transactions

The following are examples of some of projects supporting the City as the owner of property and a funder for low-income housing projects:

- *Yesler Terrace*. We advised on and crafted complex ordinances and agreements and resolved a host of HUD and other regulatory issues for this ambitious Seattle Housing Authority project.
- *Multiple financing projects for the Office of Housing*, including: loan and condo documents for Impact Family Village; a loan for the 12th Avenue Arts project; a loan for housing on the former Cyndi's Pancake site; leases



Yesler Terrace model – screen shot from SHA informational video



One of several concept drawings for Yesler Terrace

CIVIL DIVISION *continued*

and loans for the Sand Point Housing project; bridge loans for Downtown Emergency Services Center and Compass housing projects; a variety of transactions for the Keystone project; and a linkage agreement for the SoDo North Lot developer to support an InterIm Community Development project.

- *Park acquisitions.* Completed complex acquisitions of commercial property using Parks Levy funding for future redevelopment as parks.
- *First Hill Streetcar.* With attorneys from the Contracts and Utilities Section, resolved a dispute between SDOT and the state regarding the streetcar's crossing under Interstate 5 at Jackson Street.

TORTS

The primary responsibility of the Torts Section is to handle the defense of lawsuits against the City where plaintiffs seek money damages for either personal injury or property damage. These lawsuits arise out of a wide variety of circumstances. Occasionally the Torts Section will take the lead in pursuing large claims for damage to City property due to the negligence, and also pursue insurance companies that fail to defend the City when required under our contracts. Historically the section has handled workers' compensation matters; however, that body of work was transferred to the Employment Section at the end of 2012. The most important development in the Torts Section in 2012 was the continued expansion of the in-house defense of police action cases.

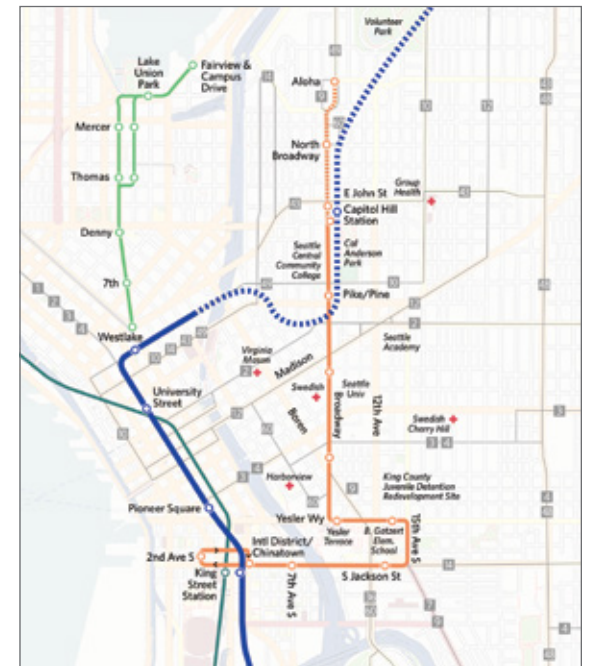
TOTALS BY DEPARTMENT FOR CASES SETTLED OVER \$100,000 IN 2012			
DEPARTMENT	TOTAL PAYMENT	# OF CASES	COMMENTS
SDOT	\$ 669,853.59	3	Land slide repair; sidewalk trip and fall; railroad crossings
SPD	\$ 280,000	2	Excessive force
SCL	\$ 2,095,000	2	SCL vehicle accident; electrical vault leak
Total	\$ 3,044,853.59	7	

Police Action Litigation

Historically, the City's defense of police actions was handled entirely by outside counsel. In 2011, the City Attorney brought most police action litigation in-house, and two attorneys and a half-time paralegal were added to handle these cases. Seventeen of the 21 police action cases that were opened that year, along with six non-litigation projects, were handled by in-house counsel. During 2012, 16 police action cases and five projects were opened; 13 of the 16 new cases are being handled in-house. Three were assigned to outside counsel either because the matters were already in pending litigation with outside counsel or, in one case, because of a conflict of interest. To increase our capacity to defend police action lawsuits in-house, an additional attorney was added during 2012.

The police action team also provides ongoing legal advice and coordination to implement the settlement agreement with the Department of Justice.

Bringing police action work in-house continues to prove successful. In 2012, the section's police



First Hill Streetcar map



action team obtained numerous dismissals and advantageous settlements. Eleven cases were closed without payment and eight cases were settled for amounts ranging from \$10,000 to \$150,000, for \$501,502. Two cases filed in prior years were tried to juries, one by outside counsel (*James*) and one by in-house counsel (*Arsenault*). Both resulted in verdicts for the City.

Arsenault v. City was the first police action case tried to a jury by assistant city attorneys in the office's new police action group. The City retained an expert videographer who was able to sync the audio and video from a security camera at the nearby drinking establishment where the plaintiff, Che Arsenault, was arrested with SPD's in-car

video to show the flaws in the plaintiff's allegations. The City obtained a defense verdict; plaintiff did not appeal.

During 2012 outside counsel handled one inquest into the shooting death of Eric Evans, a suspect who had robbed a storage facility and murdered the 84-year-old attendant at the facility on Oct. 22, 2011. Detectives located the suspect near Fifth and Denny on Oct. 23. When they moved to take the suspect into custody he rushed the detective, grabbed at the detective's firearm, and the detective shot him. The inquest jury unanimously concluded that the detective had reason to believe Evans was attempting to grab his weapon and that Evans presented an imminent risk.

Sample Police Action Cases

Anderson v. City

William Anderson claimed he was wrongfully arrested and prosecuted for selling Mariners tickets outside the stadium. A jury found for the City and the Seattle officers who arrested him. An appeal to the 9th Circuit is pending.

Hays v. City

Mark Hays filed two actions, one in federal court alleging excessive force in connection with an arrest and one in state court alleging assault and battery arising out of the same incident. Both actions were dismissed by the trial courts. He appealed the federal action to the 9th Circuit. The City prevailed on appeal during 2012.

CIVIL DIVISION *continued*

Hoston v. City

After an undercover officer was attacked another officer followed a man he believed to have participated in the attack into a convenience store. When the man did not respond to orders to get on the floor, the officer kicked him three times to subdue him. D'Vontaveous Hoston sued claiming excessive force. The case settled for \$42,000.

Kita v. City

An officer saw the plaintiff push his girlfriend to the ground and ordered him over to the patrol car. When John Kita did not appear to be responding to the officer's commands to show his hands, the officer struck him on the back of his head to disorient him and then took him to the ground to handcuff him. Kita sued claiming excessive force. After the trial court declined to dismiss the case on grounds of qualified immunity, the City appealed to the 9th Circuit. During 2012 the 9th Circuit held the officer was not entitled to qualified immunity and remanded the case for trial. Late in 2012, the City settled the case for \$75,000.

Monetti v. City

Officers stopped Martin Monetti as they were looking for machete wielding robbery suspects near Lake Union. The suspect continued moving after he was told to lay face down on the ground; he alleged officers used excessive force to restrain him. One officer made a comment referring to the suspect's race. Monetti sued claiming excessive force and discrimination. The City settled the case for \$150,000.

Rutherford v. City

An off-duty police officer followed a car driving erratically to a neighborhood street and called for back-up. When the driver and passengers emerged from the vehicle, the officer told them to sit on the curb until back-up arrived and pulled his gun when one of the passengers moved toward him. One passenger, Andrew Rutherford, sued alleging he was wrongfully detained and subjected to excessive force. A jury found for the City except on one claim. Plaintiff was awarded \$1 in damages and \$90,042.12 in attorneys' fees and costs. The City appealed to the 9th Circuit. In early 2013, the 9th Circuit affirmed the judgment and the City asked for additional review.

Weed v. City

Officers were called to the Weeds' house to address a noise complaint. When officers asked to speak to the owner, David and James Weed reacted and became aggressive. Plaintiffs alleged they were wrongfully arrested and that excessive force was used against them. A jury found in the City's favor during 2011. Plaintiffs' appeal is pending.

Saechao v. City

Officers responding to a call that someone had been attacked with a knife at a party found Naito Saechao in a back bedroom. When he failed to respond to commands, and made movements indicating he may be hiding a knife, he was restrained by multiple officers and tased. The case was settled for \$90,000 plus attorneys fees of \$40,000.

New Lawsuits Declined

The section opened 87 cases and 21 project files in 2012. Of the 87, 19 were workers' compensation cases and 68 were a variety of personal injury and property damage cases. This is a reduction in new lawsuits compared with recent years.

During 2006-2008, the number of lawsuits filed each year varied between 118 and 121. During 2009-2011, the section opened between 98 and 106 lawsuits. However, when workers' compensation cases are excluded from the total, the number of other tort cases opened remained stable throughout this six-year period, in the narrow range of 80-82 cases per year.

A possible explanation for the decrease in new cases may be the increased focus on loss prevention efforts by the City as a whole and by the attorneys in the Torts Section. The attorneys work extensively with the Risk Manager and with operating departments on liability issues and represent the Law Department in the City's Risk Management Advisory Group. To decrease exposure, we focus our efforts on the departments most frequently involved in litigation due to their work. Those departments have historically included, and continue to include, the Police Department, the Department of Transportation and Seattle Public Utilities; this year, other departments, including Parks and City Light, have been reaching out to lawyers in the City Attorney's Office with greater frequency. While this advisory

CIVIL DIVISION *continued*

function necessitates additional work and attorney time, the reduction in new lawsuits may mean these efforts ultimately lead to reduced liability exposure, not just in terms of settlements or judgments but in overall litigation costs.

The Torts Section expanded from 12 to 13 attorneys during 2012 to increase the ability of the City Attorney's Office to defend police action cases in-house. The transfer of the workers' compensation work to the Employment Section resulted in transferring one attorney and one paralegal. The Torts Section closed the year with 12 attorneys.

Risk Management

Our attorneys engage in an extensive and wide-ranging advisory practice that focuses on loss prevention and litigation avoidance. We provide legal support for risk management in the operating departments and direct training to operating departments on risk management techniques and approaches.

Recoveries for the City

City v. Lehigh

While the City Attorney's Office defends the City against suits, it also sues others for the City, as it did when it sued Lehigh Cement Co. and Manson Construction Co. seeking recovery of \$1.5 million in costs related to the installation of a new sewer force main pipe from Harbor Island to West Seattle under the Duwamish. The City alleged the defendants damaged the pipe during pile driving.

Lehigh and Manson agreed to pay the City \$1.2 million in damages.

City of Seattle v. Darwin Insurance Co.

The City was an additional insured under an insurance policy obtained by Ballard Terminal Railway Co. (BTR) when a series of bicycle accidents occurred at one of the railroad crossings. Lawsuits involving multiple plaintiffs were brought against the City and the railroad. When the insurance company ignored the City's request that the insurance company defend and indemnify the City, our lawyers sued the insurance company. The underlying cases were settled during 2011 without payment by the City. The City eventually recovered all costs and fees incurred by our attorneys at market rates, amounting to \$547,000.

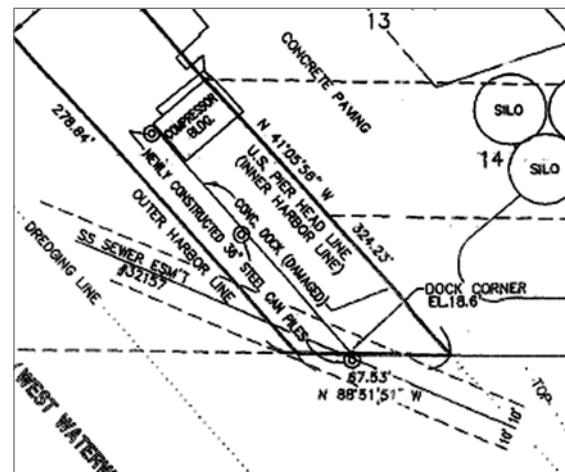
Personal Injury and Property Damage Litigation

The City faces a variety of tort claims each year with injuries ranging from broken bones to death and alleged causes ranging from negligent road design, to contact with high-voltage power lines, sidewalk trip and falls, and automobile accidents. Property damage cases include allegations of surface water flooding, sewer backups, and landslides. The following sampling of cases were tried, settled and dismissed in 2012.

Verdicts

Elzy v. City

Plaintiff claimed to be severely injured when his vehicle was rear-ended by a Seattle police officer.



Evidence of the leaking pipe in City v. Lehigh.

CIVIL DIVISION *continued*

After trial he was awarded just over \$10,000.

Erb v. City

A bicycle collided with a car on a residential street. The bicyclist claimed the City should have posted warnings that a fence at an intersection partially blocked his view. The jury found the City not negligent and apportioned liability at 75% to the plaintiff and 25% to the driver.

Nguyen v. City

A U-Haul truck collided with a tree branch. The driver claimed the City should have trimmed the tree. The court held that (1) the truck driver failed to show that the City had actual or constructive notice that the tree presented a hazard, (2) the City breached no duty to truck driver and (3) no act or omission of the City proximately caused plaintiff's injuries. The appeal by the plaintiff is pending.

Dismissals and settlements

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

4th and Pike LLC v. City

The electrical switchgear in the subbasement of the 4th and Pike building was damaged by water from the Red Lion sprinkler system that leaked through conduit openings in a City Light vault. The water was discharged into the alley during Simplex Grinnell's testing of the hotel's sprinkler system. The case settled, with the City contributing \$145,000 to the total settlement because of

allegations that City Light's vault cover in the alley was not appropriately marked.

Blacktongue v. City, and King County

A Metro bus rider descended the stairs of a bus and stepped onto a grassy planting strip. The planting strip had a small depression, or hole, that caused the bus rider to fall. The claims were dismissed on summary judgment based on the lack of notice of the condition and the rider ultimately settled with King County.

Dean v. City and BNSF

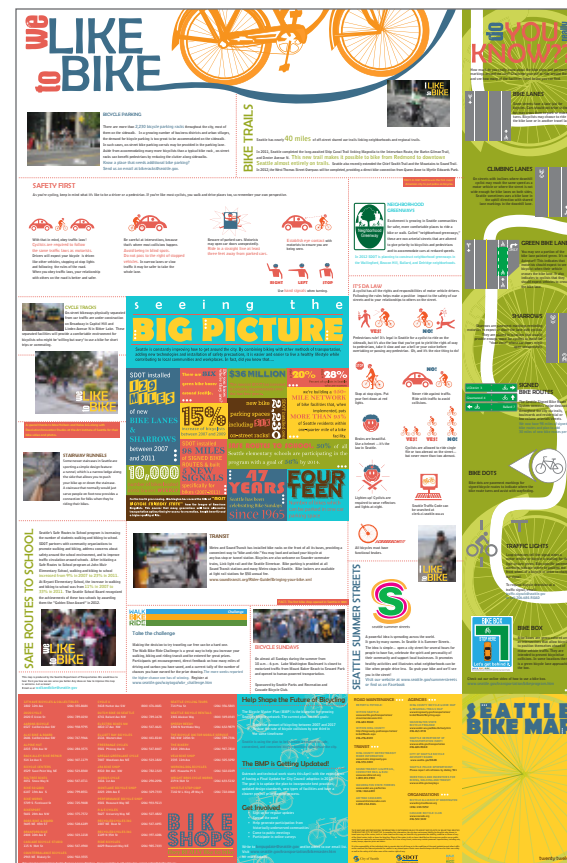
This lawsuit arose out of a train/vehicle collision. The City contributed \$110,000 toward a total settlement of \$510,000 with the railroad paying the rest.

Gary Merlino Construction Co. v. City

Merlino argued that an off-duty police officer injured while working for Merlino should be covered under the City's workers' compensation plan and not its own. The Court of Appeals held the officer was not working as an employee of the City and was not covered under the City's system. He could receive coverage under Merlino's plan.

Lenssen et al. v. City

Six bicyclists had similar accidents when their tires became caught in the flange gaps of street-car tracks at various locations in the South Lake Union neighborhood. After the City successfully severed the lawsuit into six cases, each case was dismissed based upon (1) discretionary immunity for the decision where to place the tracks and (2)





*The water side of the
Pike Place Market*

failure to prove any breach of a standard of care. The court also found the City did not need to install warning signs because the bicyclists knew the tracks were there and the flange gaps could be hazardous.

Moore v. City Light

When accidents happen, they can be costly. A City Light bucket truck pulled out in front of a motorcyclist, who was seriously injured. The City Light driver was attempting to turn left onto NE Northgate Way in front of the approaching motorcyclist. The case settled for \$1,950,000.

Woolery v. City

Sometimes the City is partially responsible for dangerous conditions on the sidewalk. In this case a woman was seriously injured when she tripped on an uplifted sidewalk. She sued the City, along with the owner of the adjacent property. The 2"-inch sidewalk uplift was likely caused by a private tree on the planting strip. The City contributed \$262,500 toward the total settlement.

Appeals

Cases against the City are often appealed. Here are results from some high-profile appeals:

Jones v. City

After a seven-week trial in 2009, the jury found the City liable when a firefighter fell down a fire pole hole at a firehouse and awarded the firefighter \$12,752,094 in damages. While the case was on appeal to Division I of the Court of Appeals, the City's insurers filed motion for a new trial based upon newly discovered evidence obtained by surveillance. The trial judge denied the motion and the appeal of that order was consolidated with the appeal of the verdict. During 2012 the Court of Appeals affirmed the judgment and the City's insurers filed a petition for review to

the Washington Supreme Court. The petition has since been granted.

Workers' Compensation Litigation and Advice

The City Attorney's Office represents the City in workers' compensation litigation before the Board of Industrial Insurance Appeals and in the courts. The last few years has seen a drop in worker compensation cases, from 39 in 2008 to 19 in 2012.

The workers' compensation attorney also provides legal advice to the Workers' Compensation Unit of the Personnel Department and monitors legislative developments that affect the City's workers' compensation programs.

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 under street use permits. In 2012, section attorneys aggressively asserted the City's interests in insurance coverage often in the face of denial or delay. Below are sample cases:

- *City v. Phan/Le* – City seeking recovery from insurer for theft of substantial funds by a SPU employee.
- *Gangwer v. City* – An employee challenged a lien for medical coverage provided by Aetna on her settlement for injuries sustained in a car crash by suing the City. Aetna accepted our



Cyclist in Seattle

tender and the case was dismissed on summary judgment.

- *Goitom v. City* – Plaintiff sued the City, the University of Washington and Sound Transit, alleging injuries resulting from tripping on a piece of rebar sticking out of a sidewalk. Sound Transit accepted the City's tender and settled the case without City contribution.
- *Lassman v. City* – A bicycle accident occurred on a King County utility hatch on a City street. After tender, King County settled without payment by the City.
- *Slee/McDaniel v. City, et al.* – When a utility vault under construction collapsed and employees of the contractor were killed and seriously injured, we tendered the case to Liberty Mutual, the insurer for the general contractor that settled without payment by the



Broken Seattle sidewalk in the Central District

City. We continue to pursue Liberty Mutual for attorney time and costs.

- *Tuliebitz v. City and Pike Place Market PDA* – When a person fell down an outside stairway behind the Pike Place Market, we tendered the case to the market's insurer based on the City's additional insured status on the market's insurance policy.

CITY INVESTIGATOR

The City Investigator provides investigative services for the City primarily when City employees complain of discriminatory or retaliatory treatment. The investigator also trains human resources professionals and others in the City on how to conduct investigations and best practices. Through the investigator, the City's use of contract investigators has declined significantly, saving thousands of dollars annually.

CRIMINAL DIVISION



CRIMINAL DIVISION

Emphasizing public safety and restorative justice, the Criminal Division prosecutes misdemeanors and some traffic infractions that occur within the City. Highlights for 2012 included attention on reducing the demand for prostitution and establishing a relicensing program to complement our Driving While License Suspended in the Third Degree (DWLS 3) policy, which reduced the number and type of DWLS 3 cases our office filed. We continued to use technology and updated protocols for case filing preparation.

Prior to 2012, charging decisions were divided among several attorneys besides their other duties. In 2012 we created the **Orange Team**, also known as the Filing Unit. The Orange Team reviews the majority of non-domestic violence (DV) reports received for filing decisions and was established to create greater charging consistency.

We continued to participate in the evolution and growth of the Seattle Veterans Treatment Court (VTC), launched in 2011. Seattle VTC is a

CRIMINAL DIVISION *continued*

therapeutic program created through the collaborative efforts of our office, Associated Counsel for the Accused, state and federal departments of veteran affairs, King County Department of Community and Human Services and the Seattle Municipal Court (SMC). Seattle VTC is the first at a municipal level in the state, and the fifth court for veterans statewide. Seattle VTC is designed to serve the needs of veterans negatively impacted by their military service.

We also participated in the Criminal Justice Planning Workgroup. This work group comprises all Municipal Court stakeholders; the goal is to collectively identify ways to create greater efficiencies in the criminal justice system.

Patronizing a Prostitute—Sentencing Guidelines

In 2012 our office focused on reducing the demand for prostitution in Seattle. After attending conferences, speaking with experts and reading studies, we decided we could reduce demand by increasing penalties for those charged with patronizing a prostitute.

Our sentencing guidelines were redrafted. Before, most people charged with patronizing a prostitute qualified for a pretrial diversion. Pretrial diversions are available to those who have no prior criminal history and are not charged with a crime against a person. The pretrial diversion agreement provided that, if the defendant stayed out of trouble for 90 days, paid all fines and fees and completed eight hours of community service the case would be

dismissed. We eliminated pretrial diversion for those charged with patronizing a prostitute. Now the minimum sentence is a one-year dispositional continuance, 80 hours of community service, payment of all fines and fees (totaling more than \$2,500 in mandatory fines), attendance at “john” school, completion of an HIV test, and staying out of areas of prostitution.

If a person has been previously charged with patronizing a prostitute, the minimum sentence will be at least 10 days in jail, along with all fines and fees, tests and classes. If a person has been charged two or more times with patronizing a prostitute, the sentencing recommendation will be at least 30 days in jail, along with all fines and fees, tests and classes.

Our office is aware these guidelines will likely increase the number of patronizing cases that go to trial, and we may lose those trials. We believe, however, that stricter penalties may deter potential sex buyers and may reduce the victimization of commercially sexually exploited people.

Probable Cause Findings on Weekends and Holidays

Seattle Municipal Court officials recently realized that, for a few number of defendants, they were not determining probable cause within 48 hours of arrest. Most of these defendants were arrested during a small window of time, from about midnight to about 10 a.m. on Saturday mornings. The court reached out to our office,



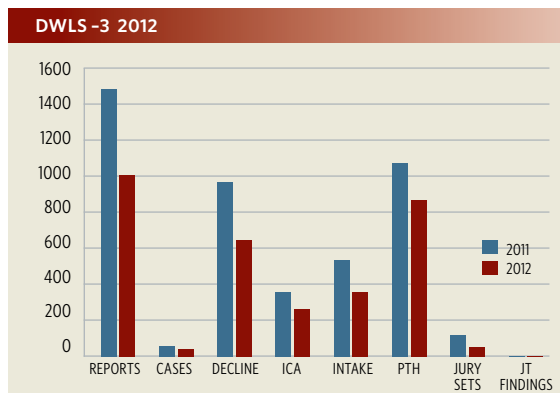
Craig Sims, Criminal Division Chief

CRIMINAL DIVISION *continued*

SPD, the jail and the public defender agencies to resolve the problem.

Everyone assisted in crafting a process that allows judges to review eSuperforms—an electronic document created for every individual booked into the King County Jail—and determine probable cause from that document. Officers already prepared eSuperforms, and the eSuperforms include a statement of probable cause. The new process allows judges to review those eSuperforms from any secured computer. The judges then make written findings of probable cause and either increase bail or leave bail at a scheduled amount. If a defendant has been arrested for a DV crime, the judge can also issue a written no-contact order. These documents are sent to the jail where the court’s personal recognizance screeners review them with the defendant and have the defendant sign, if necessary.

This new process guarantees the court is protecting the defendants’ constitutional rights and

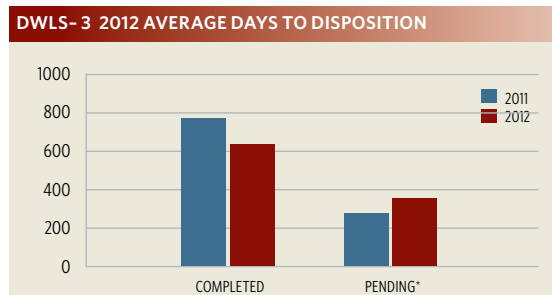


allows the court to eliminate full arraignment calendars on holidays.

Policy Changes

On May 23, 2012, a new **Retail Theft Policy** was implemented. Our office will continue to file retail theft cases where the value of the merchandise is more than \$25. For most cases where the value is less than \$25, SPD will hold the report until the suspect commits a second offense within six to eight months. In that event, both reports will be referred to the CAO for a filing decision. We will not offer pretrial diversions to defendants with more than one charge at the same time. We will also not offer Community Court to those charged with three or more charges at the same time.

In June 2012, our office updated the **Drug Traffic Loitering Standards**. A person is guilty of drug traffic loitering if he or she remains in a public place and intentionally solicits, induces, entices or procures another to engage in unlawful conduct contrary to Chapter 69.50 (Uniform Controlled Substances Act), Chapter 69.41 (Legend Drug



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

DWLS-3 2012**	2012 compared to 2011
2011 Reports Rec'd	1,479
2012 Reports Rec'd	1,012
DIFF 2012-2011	(467)
% Change	-32%
2011 Cases Filed	522
2012 Cases Filed	370
DIFF 2012-2011	(152)
% Change	-29%
2011 Reports Declined***	969
2012 Reports Declined	640
DIFF 2012-2011	(329)
% Change	-34%
2011 % Reports Received were Declined	66%
2012 % Reports Received were Declined	63%
2011 Avg. # Days From Date Rec'd to Dispo	774
2012 Avg. # Days From Date Rec'd to Dispo	630
2011 In Custody Arrg.	356
2012 In Custody Arrg.	262
DIFF 2012-2011	(94)
% Change	-26%
2011 Total # Bookings	194
2012 Total # Bookings	66
DIFF 2012-2011	(128)
% Change	-66%
2011 Total Booked w/Case Declined at ICA	30
2012 Total Booked w/Case Declined at ICA	0
DIFF 2012-2011	(21)
% Change	-70%
2011 % Total Booked w/Case Declined	15%
2012 % Total Booked w/Case Declined	14%
2011 Intake	538
2012 Intake	377
DIFF 2012-2011	(161)
% Change	-30%
2011 PTH Setting	1,073
2012 PTH Setting	867
DIFF 2012-2011	(206)
% Change	-19%
2011 Jury Trial Settings	123
2012 Jury Trial Settings	52
DIFF 2012-2011	(71)
% Change	-58%
2011 Jury Trials with Finding	4
2012 Jury Trials with Finding	1
DIFF 2012-2011	(3)
% Change	-75%

** As of 10/1/10 DWLS 3 policy change went into effect

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

CRIMINAL DIVISION *continued*

Act) or Chapter 69.52 (Imitation Controlled Substances Act), Revised Code of Washington. SMC 12A.20.050B

Based on the difficulty of successfully prosecuting these cases, we adjusted our filing standards to ensure there is admissible evidence of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

As of Dec. 6, 2012 (with the enactment of **Initiative 502**) a per-se limit for marijuana DUIs was created. The new limit is 5ng of active THC in blood. We expect an increase in marijuana-related DUIs in 2013.

Our office has two trial teams handling non-DV prosecutions. Each team has five prosecutors and one assistant paralegal. The prosecutors handle significant trial and motion work; each prosecutor commonly averages seven to 10 trials per week, with motion hearings on most Thursday and Friday afternoons. This heavy motion practice gave us greater experience and confidence handling complex cases in 2012, including Blood-Draw DUIs, protest cases, co-defendant cases, pro se defendant cases, and other complex matters. We tried nearly 150 cases during the year.

Our office provided supervising mentors for Rule 9 attorneys (usually law students) who gained trial experience while assisting us in handling the overall caseload. The supervising attorneys

devoted a great deal of time and attention to these law students.

One of our prosecutors was called to military duty twice in 2012, for a total of eight months. The office responded with initiative and flexibility by bringing aboard a cadre of attorneys to help. The hard work and enthusiasm of these attorneys, who handled all aspects of criminal prosecution, allowed them to gain valuable experience and knowledge.

DUI Prosecutions

DUIs continue to account for a significant portion of Criminal Division cases and are afforded a high priority given their undeniable impact on public safety. Besides the serious nature of these crimes, prosecutors face a well-funded and specialized defense bar dedicated to defending DUI cases. To address the complexity of these cases, the Criminal Division maintains a designated prosecutor to review filings and respond to DUI specific issues and motions. The designated DUI prosecutor also coordinates with SPD to improve and facilitate officer training.

2012 brought some statewide changes to DUI sentencing, allowing for additional penalties when an individual drives under the influence with a child under the age of 16. The new penalties include increased fines and extended ignition interlock requirements upon conviction. The Legislature also added penalties for repeat offenders convicted of an amended charge of Reckless Driving or Negligent Driving in the First

CRIMINAL DIVISION OVERALL: 2012		2012 compared to 2011
2011 Reports Rec'd		15,476
2012 Reports Rec'd		15,305
Diff 2012-2011		(171)
% Change		-1%
2011 Cases Filed		9,345
2012 Cases Filed		8,170
DIFF 2012-2011		(1,175)
% Change		-13%
2011 Reports Declined		5,829
2012 Reports Declined		6,468
DIFF 2012-2011		639
% Change		11%
2011 % Reports Received were Declined		38%
2012 % Reports Received were Declined		42%
2011 Avg. # Days From Date Rec'd to Dispo		450
2012 Avg. # Days From Date Rec'd to Dispo		406
2011 In Custody Arrg.		7,745
2012 In Custody Arrg.		7,269
DIFF 2012-2011		(476)
% Change		-6%
2011 Total # Bookings		5,551
2012 Total # Bookings		4,833
DIFF 2012-2011		(718)
% Change		-13%
2011 Total Booked w/Case Declined at ICA		936
2012 Total Booked w/Case Declined at ICA		1,042
DIFF 2012-2011		106
% Change		11%
2011 % Total Booked w/Case Declined		17%
2012 % Total Booked w/Case Declined		22%
2011 Intake		6,007
2012 Intake		5,765
DIFF 2012-2011		(242)
% Change		-4%
2011 PTH Setting		16,030
2012 PTH Setting		16,026
DIFF 2012-2011		(4)
% Change		0%
2011 Jury Trial Settings		1,186
2012 Jury Trial Settings		873
DIFF 2012-2011		(313)
% Change		-26%
2011 Jury Trials with Finding		158
2012 Jury Trials with Finding		174
DIFF 2012-2011		16
% Change		10%

CRIMINAL DIVISION *continued*

Degree where the original charge was DUI. These changes require courts to impose an ignition interlock device for six months where previously there were no mandatory penalties.

Our office faced various obstacles to DUI prosecution in 2012, with the most significant being repeated challenges to the reliability of the Datamaster Breath Test Instrument. The state recently announced its intention to replace the instrument with a more modern device. In response, the defense bar brought multiple challenges at trial and presented the testimony of expert witnesses who attempted to exclude breath test results or cast doubt on their reliability based on the idea that the Datamaster is "obsolete." Despite these challenges, our office, aided by the testimony of WSP breath test technicians and toxicologists, obtained convictions.

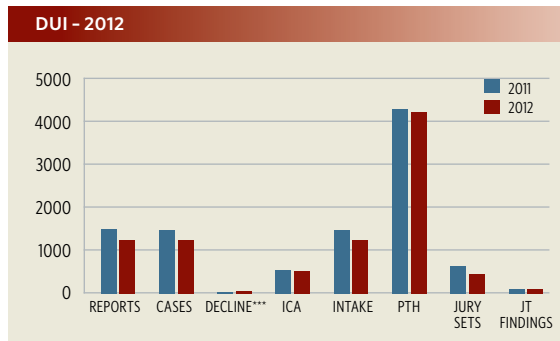
CASE HIGHLIGHTS

City v. Garth Haynes

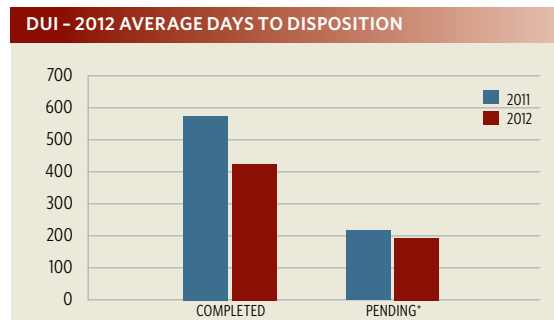
The City Attorney charged SPD Officer Garth

Haynes with one count of Fourth-Degree Assault, a gross misdemeanor, following an SPD investigation of a Dec. 12, 2010 fight outside a Ballard bar. A dash-cam video showed the off-duty officer kicking a suspect in the head while the suspect was handcuffed and laying face down on the ground. After the responding on-duty officers reported Haynes' head-kick to their SPD superiors, the King County Prosecuting Attorney's Office initially charged the prone suspect and two companions with felony assault of a police officer. When Haynes refused to testify without a grant of immunity from prosecution, however, those felony charges were dismissed with prejudice.

Haynes' trial in SMC was held March 14-21, 2012 in front of the Honorable Judge Karen Donohue. Shortly before the start of the trial, the defendant was allowed to present information from an expert witness that his actions were not intentional as he was suffering from a concussion at the time of the assault. The jury found Haynes not guilty.



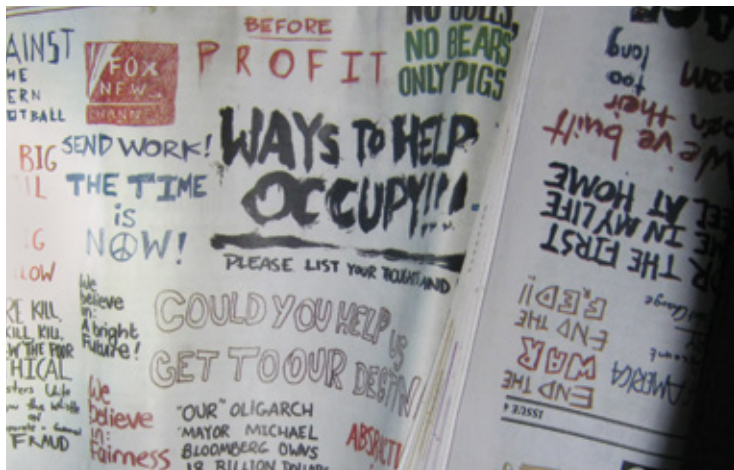
*** Decline code not used until 7/1/2011. 2011 only reflects numbers for 6 months.



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

DUI 2012	2012 compared to 2011
2011 Reports Rec'd	1,504
2012 Reports Rec'd	1,277
Diff 2012-2011	(227)
% Change	-15%
2011 Cases Filed	1,498
2012 Cases Filed	1,249
DIFF 2012-2011	(249)
% Change	-17%
2011 Reports Declined	33
2012 Reports Declined	52
DIFF 2012-2011	19
% Change	58%
2011 % Reports Received were Declined	2%
2012 % Reports Received were Declined	4%
2011 Avg. # Days From Date Rec'd to Dispo	576
2012 Avg. # Days From Date Rec'd to Dispo	422
2011 In Custody Arrg.	528
2012 In Custody Arrg.	500
DIFF 2012-2011	(28)
% Change	-5%
2011 Total # Bookings	279
2012 Total # Bookings	183
DIFF 2012-2011	(96)
% Change	-34%
2011 Total Booked w/Case Declined at ICA	2
2012 Total Booked w/Case Declined at ICA	7
DIFF 2012-2011	5
% Change	250%
2011 % Total Booked w/Case Declined	1%
2012 % Total Booked w/Case Declined	4%
2011 Intake	1,499
2012 Intake	1,246
DIFF 2012-2011	(253)
% Change	-17%
2011 PTH Setting	4,295
2012 PTH Setting**	4,221
DIFF 2012-2011	(74)
% Change	-2%
2011 Jury Trial Settings	648
2012 Jury Trial Settings**	441
DIFF 2012-2011	(207)
% Change	-32%
2011 Jury Trials with Finding	43
2012 Jury Trials with Finding	47
DIFF 2012-2011	4
% Change	9%

** SPD DUI Squad Investigation conducted 3/2012 through 6/2012. CAO was notified of findings on 7/25/2012.



City v. Timothy Fountain

The City Attorney charged SPD Sgt. Timothy Fountain with one count of Reckless Driving and one count of Hit and Run Property Damage following a WSP/SPD investigation of a Feb. 10, 2012 incident. On that date, two SPD officers observed Fountain hit a road sign while making a high-speed turn the wrong way down a one-way street. Fountain did not stop after hitting and knocking over the sign, but continued down the one-way street at a high rate of speed before turning the wrong way onto another one-way street.

Once officers stopped and recognized Fountain, they called for the WSP to investigate the potential he was under the influence. The county prosecutor declined to file any charges given the lack of evidence of DUI. CAO reviewed the report and determined Reckless Driving and

Hit and Run Charges were appropriate given Fountain's driving.

After negotiation, Fountain entered into a dispositional continuance on the Reckless Driving charge in exchange for dismissal of the Hit and Run charge. The dispositional continuance requires Fountain to abide by probation conditions for one year.

Occupy Seattle Protests

While respecting an individual's First Amendment right to protest, the Criminal Division prosecuted several individuals engaged in criminal acts of protest related to the Occupy Seattle events. Prosecutors, sometimes working alone and sometimes teaming with other prosecutors, convicted those individuals who turned civil dissent into more violent or destructive actions.

Domestic Violence Unit

Domestic violence is a high priority in the Criminal Division. Each area below describes how the Domestic Violence Unit (DVU) prosecutes cases and provides coordinated victim advocacy to advance the goals of increasing victim safety and maximizing offender accountability. The DVU prosecutes all cases involving domestic violence between intimate partners, child abuse cases and elder abuse cases.

Defendants and victims are men and women representing every community in Seattle, including all racial groups and religions, all ages from children to elders, immigrants and refugees, sexual minorities, and individuals from all economic circumstances. The diversity of the people involved in our cases presents unique challenges and opportunities.

The DVU strives to refer victims to community-based DV services culturally appropriate and

CRIMINAL DIVISION *continued*

language-accessible. We are fortunate to have many such services in Seattle and King County, and the DVU has excellent working relationships with these providers. Typical court orders refer defendants to treatment agencies that address a variety of needs and ensure each defendant's probation experience is productive and serves the purposes of safety and accountability. The DVU is honored to serve such a diverse community, and we endeavor to serve it in a way that helps victims and their families thrive.

DVU Staff

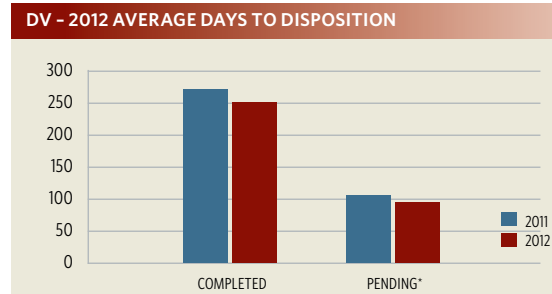
The DVU is staffed with five trial prosecutors, one of whom handles high-risk cases and elder abuse cases at all times. The DVU also has eight victim advocates, two of whom specialize in child abuse cases while two provide advocacy in elder abuse cases. Administrative staff for the DVU includes an Investigator/Assistant Paralegal and an Administrative Assistant. The DVU is headed by a Director and a Victim Advocate Supervisor.

Filing Cases

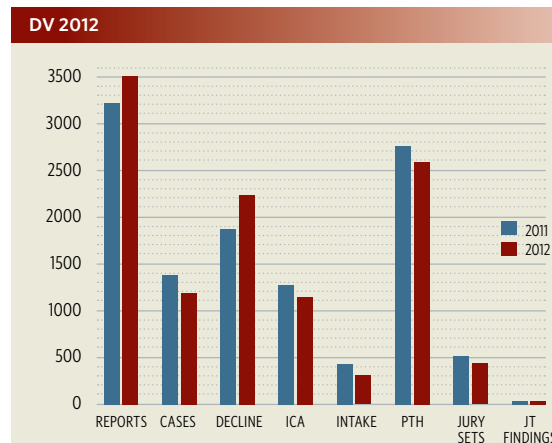
When the police have arrested the suspect, the DVU typically makes a filing decision within 24 hours. When no arrest has been made, the DVU still strives to make filing decisions in a timely manner, as undue filing delays can have a negative impact on victim safety. Advocates attempt contact with victims in all cases prior to filing, and prosecutors will consider the information obtained from those contacts when available.

Vertical Prosecution

The DVU continues to use a vertical prosecution model, in which the same prosecutor litigates a case from filing to sentencing. This practice encourages thorough and consistent preparation of each case, and allows prosecutors to maintain meaningful contact with victims throughout the case. Calendar coverage and workloads have been carefully balanced so each prosecutor has the ability to devote sufficient time to case preparation. The DVU has worked hard to maintain this model



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



DV UNIT	2012	2012 compared to 2011
2011 Reports Rec'd		3,254
2012 Reports Rec'd		3,512
DIFF 2012-2011		258
% Change		8%
2011 Cases Filed		1,394
2012 Cases Filed		1,185
DIFF 2012-2011		(209)
% Change		-15%
2011 Reports Declined		1,887
2012 Reports Declined		2,225
DIFF 2012-2011		338
% Change		18%
2011 % Reports Received were Declined		58%
2012 % Reports Received were Declined		63%
2011 Avg. # Days From Date Rec'd to Dispo		271
2012 Avg. # Days From Date Rec'd to Dispo		251
2011 In Custody Arrg.		1,287
2012 In Custody Arrg.		1,128
DIFF 2012-2011		(159)
% Change		-12%
2011 Total # Bookings		1,473
2012 Total # Bookings		1,460
DIFF 2012-2011		(13)
% Change		-1%
2011 Total Booked w/Case Declined at ICA		455
2012 Total Booked w/Case Declined at ICA		508
DIFF 2012-2011		53
% Change		12%
2011 % Total Booked w/Case Declined		31%
2012 % Total Booked w/Case Declined		35%
2011 Intake		433
2012 Intake		301
DIFF 2012-2011		(132)
% Change		30%
2011 PTH Setting		2,763
2012 PTH Setting		2,572
DIFF 2012-2011		(191)
% Change		-7%
2011 Jury Trial Settings		513
2012 Jury Trial Settings		431
DIFF 2012-2011		(82)
% Change		-16%
2011 Jury Trials with Finding		31
2012 Jury Trials with Finding		27
DIFF 2012-2011		(4)
% Change		-13%

CRIMINAL DIVISION *continued*

because it is vital to the quality of domestic violence litigation.

System Improvements

The DVU has enthusiastically embraced opportunities to improve our practices by implementing new procedures. The DVU has worked with the SMC, SMC Probation and the defense bar to implement procedures and forms that improve clarity in domestic violence practice.

The DV Court team revamped its Stipulated Order of Continuance (SOC) form for proceedings where lower-risk offenders enter agreements to comply with treatment and other probation conditions and receive dismissals at the end of the probationary period. This SOC program has shown a high rate of compliance success over the years. The new forms make the waiver of rights and probation conditions more clear and they also account for the impact of immigration consequences on some defendants.

The DVU and the DV Court now uses a new No Contact Order form that is more intuitive and reduces the risk of error. The form follows statewide forms and is designed to be easier for law enforcement data entry, patrol-level interpretation, and consistency across jurisdictions. It also includes a default expiration date consistent with recent legislation that expanded misdemeanor courts' maximum probation jurisdiction to five years.

Domestic violence cases typically involve more

follow-up documentation and supplemental evidence than other misdemeanor cases. Changes in SPD's misdemeanor case management have required our office to adjust its follow-up procedures for cases. We receive most of the reports from patrol, and occasionally follow-up investigation is needed. Our office is working with patrol units to streamline investigation by patrol officers. This practice will expand the capability for the kind of prompt, in-person follow-up with victims that increases the likelihood of victim cooperation and strengthens each case.

DV cases also frequently include photographs, 911 recordings, recorded statements, medical records, and court records from cases in other jurisdictions. The DVU has continued to work toward streamlining both the acquisition and discovery of supplemental evidence. The DVU's administrative staff is responsible for this challenging task and their hard work resulted in obtaining discovery more quickly at the pretrial phase, which promoted more efficient litigation of cases and has contributed to a reduction in the time to litigate a DV case by about 30 days.

Coordination with the King County Prosecutor's Office

The DVU continued to have a co-located King County Prosecuting Attorney working in our office for 20 hours each week in 2012. Her presence in the DVU has had an enormous impact on improving victims' safety and offender accountability. This prosecutor reviews eligible cases for felony referral

and coordinates prosecution efforts when an offender has pending cases or probation matters in both the Municipal and Superior 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 success of Seattle's co-located prosecutor program inspired the launch of a similar program for several smaller cities in South King County two years ago, and that program has provided similar benefits to those jurisdictions.

Coordination with Community-Based Agencies

The DVU continues to have a program, funded by the City's Human Services Department and our office, in which a community-based victim advocate, provided by the Salvation Army, works in our DVU and SPD's DVU. The Salvation Army advocate divides their time between both units, and facilitates expedited and proactive outreach to victims immediately needing services such as housing and transportation. The Salvation Army advocate is supported by coordinated staff, which helps to 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. The DVU has worked hard to have a rich collaboration with the Salvation Army while maintaining the confidentiality necessary to keep victims safe.

CRIMINAL DIVISION *continued*

High-Risk Offenders

DVU devotes one attorney to prosecuting cases identified as having 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. This prosecutor also litigates cases with unusually complicated facts or evidence. The special attention given to these cases resulted in many successful outcomes with especially dangerous offenders, including significant jail sentences where appropriate. Analysis of case data from recent years shows that cases handled in this program have much stronger positive outcomes than other DV cases.

Elder Abuse

The attorney in the high-risk offender position also prosecutes all elder abuse cases, so one prosecutor with special training and experience handles these matters consistently. These cases include those with vulnerable adult victims who are not elders, and they can include cases involving neglect or abuse by a caregiver, financial exploitation, or domestic violence where the victim is uniquely vulnerable due to age or ability.

CASE HIGHLIGHTS

City v. Paul Hermosillo

This was a harassment and violation of a protection order case where the defendant was a Seattle firefighter. The case raised high concerns due to

the defendant's mental health issues and drug use. The defendant had threatened family members and persistently contacted an ex-girlfriend in violation of a protection order. The prosecutor fought to keep Hermosillo in custody despite several pre-trial release motions. The prosecutor also worked closely with an SPD Crisis Intervention Officer to litigate these motions and resolve the case appropriately. The defendant was eventually sentenced to six-months of jail time, mental health treatment, domestic violence treatment, chemical dependency treatment, as well as a no contact order and other conditions.

City v. Douglas Wrenn

In this Cyber Stalking and Violation of a Protection Order case, the defendant contacted and harassed the victim repeatedly via text message, email, and voice mail over a three-month period. The constant harassment ended only because he was apprehended and taken into custody after our office sought a warrant and the defendant was apprehended with the help of FBI cellular tracking technology. The case was among the largest our office has handled in terms of the volume of documentary, photographic and electronic evidence. The prosecutors and victim advocate reviewed several dozen calls by the defendant from the jail to various parties involved in the case, and the information was helpful in resolving the case. The defendant eventually pleaded guilty and was sentenced to 364 days in jail, and five years probation.



Cyber stalking

CRIMINAL DIVISION *continued*

City v. Clayton Miller

This assault case was set for trial because the defendant was certain the victim would not appear to testify. The day of trial, the victim and her mother appeared and the parties conducted a defense interview. The victim confirmed that the defendant assaulted her on that day and many other occasions, but she appeared very vulnerable and wanted to continue their relationship. The prosecutor spoke with the victim's mother and learned she previously had been hospitalized for mental health breakdowns. After the interview, the prosecutor researched the jail calls and found that the defendant had made more than 100 calls to the victim. She listened to every call, added two counts of Violation of a No Contact Order, and agreed not to refer the case to the county prosecutor for Witness Tampering charges if the defendant pleaded guilty to the existing charges. He accepted the offer, which spared the victim the stress of testifying while facing her abuser.

City v. Derrick Morris

Collaboration with the county prosecutor was very important in this case. We had filed misdemeanor assault charges against a man who slammed his girlfriend's head against two trailer windows so hard that the windows broke. The victim was uncooperative, but we developed the case due to excellent work by the officers who responded. Recognizing the defendant was very dangerous and that the case could result in felony charges, the City prosecutor and the co-located deputy

prosecuting attorney collaborated to have the case filed in King County Superior Court. This case was the defendant's second "strike" and resulted in a prison sentence and community custody.

Community Court

Seattle Community Court (SCC) offers an alternative to the traditional prosecution of cases. Defendants who have committed "quality of life" crimes, such as theft or criminal trespass, are given the opportunity to have their cases dismissed or jail time curtailed by completing a program designed to address the underlying problems causing them to commit their crimes. Following a restorative justice model, defendants also give back to the community they have harmed by performing community service.

Defendants who enter into SCC are assessed by probation counselors who conduct a needs assessment to determine what social service contacts would most benefit the defendant. Those contacts may include meeting representatives for chemical dependency or mental health treatment, employment assistance (including resume writing), housing assistance, and DSHS benefits.

Community service hours are assigned to a defendant based upon the level of crime and number of times a defendant has been through the SCC program. The hours range from 16-56. Those hours must be completed at one of the partner Community Service Sites. For 2012, some of those sites were:

- The Metropolitan Improvement District/
Downtown Seattle Association
- Operation Sack Lunch
- St. Vincent de Paul Food Bank
- Emergency Feeding Program
- City's Neighborhood Pea Patch Program
- City's Office of Emergency Management
- Danny Woo Community Garden
- Seattle Education Access

For 2012, more than 7,000 hours of community service were completed at those locations and other partner sites by SCC participants. The service hours resulted in cleaner streets, food bank groceries sorted and carried out to people's cars, lunches prepared, and emergency management information readied to be sent to Seattle residents.

Successful participants of SCC are given a certificate of completion by the court. More importantly, they are given the chance to set their life in a new direction.

While most defendants who enter SCC follow the standard program, the intensive court engagement with each defendant allows flexibility to craft changes to the program to assist a particular defendant. In 2012, the Court tailored the requirements for a 23-year-old woman named L¹. Charged with stealing clothes from Nordstrom, L entered

¹ Name has been changed.

CRIMINAL DIVISION *continued*

SCC with requirements to complete 16 community service hours, attend the Theft Awareness Class and make social service contacts for chemical dependency treatment, mental health treatment, employment assistance, and DSHS benefits. Shortly after her entry, the Court discovered the difficulties L would have completing the program because she was arrested again for the theft of alcohol while in an alcoholic blackout state. Pregnant and in a downward spiral of binge drinking and drugs, L returned to SCC expecting to be jailed and then sent on her way. Instead, an inpatient bed was found for her at Swedish Hospital in Ballard in a chemical dependency program for pregnant women. When L next appeared in court, she had completed the program. She told the Court this had been her first period of sobriety since she started abusing alcohol at age 18. She thanked the Court and the City for the trust placed in her and for the opportunity to complete treatment, as well as for her new-found mental clarity.

Another example is A², a 22-year-old woman charged with prostitution. Although she initially entered into SCC in 2011, she did not return to address her SCC obligations until August 2012 because she had been moved by her pimp to New Jersey, then to Portland. Back in SCC and facing jail, probation counselors crafted a personalized program for A. Emergency housing was found for her and she worked daily with probation to gain life skills, complete her GED

and pursue employment opportunities. At her final SCC review, A had completed all her obligations and had been accepted into the Job Corps program.

While not the most common cases, L's and A's cases demonstrate the underlying goals of SCC being met, and show the profound effect SCC can have on the life of a defendant.

Theft Awareness Class

In 2012, in response to the high percentage of theft cases coming through SCC, a Theft Awareness Class was added as a requirement for SCC defendants charged with theft. The innovative class was not designed to lecture defendants on the evils of stealing, but rather uses an interactive approach that enables defendants to look at the reasons they are stealing and to help them develop tools to encourage them to make successful choices. Defendants who complete the Theft Awareness Class are also required to make at least one commitment for change at the end of the class.

The all-day class, run by a retired school principal and AmeriCorps volunteers, includes a community panel discussion about the impact thefts have on local businesses. In the past year more than 300 defendants have completed the Theft Awareness Class and it has become a very positive part of SCC.

Defendant participants have offered positive feedback about the class:



"I was happily surprised by this class. It really opened my mind and motivated me to be a better me."

"I learned that theft is more serious than I thought it was . . . I'm a better person than the person I have been lately. I know better."

"There is still hope in my future. I haven't chosen a negative path that has to be permanent."

Veterans Treatment Court

The program, as first described at the forefront of this section, is designed to serve the needs of veterans negatively impacted by their military service. Veterans who suffer from an Axis I diagnoses in the DSM-4, such as Post Traumatic Stress Disorder, Substance Abuse Disorder and Major Depressive Disorder, may apply. Once the veteran's eligibility is determined by the Court Monitor, the defendant's

^[2] Name has been changed.

CRIMINAL DIVISION *continued*

case will be added to the calendar so the veteran can meet the team and observe the Court.

The Court operates differently than traditional courts. Following the mental health court model, 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 jail, and termination from the program is a last resort. The most significant difference from a mainstream court is the 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 veteran defendants.

National Training

As a new program, the VTC team strives to expand its knowledge base regarding evidence-based practices and issues related to veterans. The VTC team was selected to attend the 2012 Veterans Treatment Court Planning Initiative presented by the Bureau of Justice Assistance and the National Drug Court Institute. Seven members of the VTC team attended the five-day training in San Jose, CA in January 2012. The team continues to refine the program policy and procedures based on information gleaned at that training.

Outreach in the Community

Members of the SMC VTC team presented to the National Black Police Association

convention on April 26, 2012 in Bellevue. The team was composed of the judge, defense, prosecution and probation. Attendees from across the country were interested to hear about our innovative program and how they could assist veterans in their own communities.

The First Year

The Seattle Veterans Treatment Court celebrated its first year on Sept. 18, 2012. The event followed the regularly scheduled VTC calendar so attendees who arrived early observed a calendar first hand. Honorable Judge Steve Rosen presided over the program, which included formal comments from the City Attorney and Associated Counsel for the Accused Supervisor Burns Petersen. Two VTC participants, both Vietnam era veterans, spoke from the heart about what the program has meant to them and the real need to have a therapeutic program to address the needs of our service men and women returning from conflict.

VTC participants in attendance were presented with a Challenge Coin to mark their participation in the program. The coin was created for VTC and carries the program logo and the seal of each branch of the military. The coin will be presented to incoming VTC participants when they opt-in to the program.

As we head in to the second year in service, we continue to look for ways to improve the court, to increase services for veterans and to ensure public safety. This will be an ongoing effort but a



Veterans Treatment Court 1st Anniversary Celebration

CRIMINAL DIVISION *continued*

rewarding one as we applaud the achievements of our veteran defendants who face their issues head on.

Contested Infractions Practice

The City Attorney hired a full-time infractions prosecutor who has overseen the prosecution of thousands of cases, including all serious injury and fatality matters. The infractions prosecutor, and interns, also aid our office in prosecuting the majority of limousine solicitation, business, and animal control violations for the City.

Besides prosecution, our office compiled and created training materials for infractions prosecution and put into place several procedures designed to streamline and improve the City's infractions practice, both internally and in cooperation with SMC representatives. Further, we consulted on infractions-related issues with enforcement officials and members of both the Civil and Criminal Divisions.

These efforts have significantly increased the City's success rate in prosecuting infractions cases, and generated revenue for the City. Most importantly, the City's presence in the courtroom has been extremely helpful for the Court and victims. Both have commented on the efficiency in which the cases are presented and the professionalism of the prosecutors appearing.

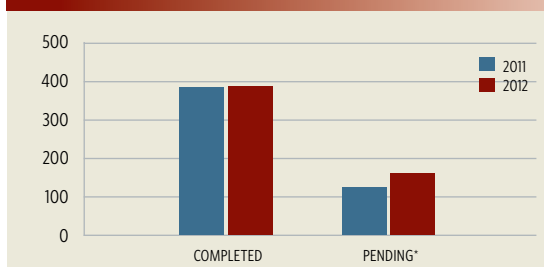
Appeals

During 2012, the Appeals team prepared and argued 52 criminal appeals and writs in King

County Superior Court. In addition, 17 other cases were resolved without briefing or argument. The attorneys staffing this team have significant other duties, as well. One staffs Mental Health Court three days per week and also reviews police reports for defendants in custody and the other staffs the jail courtroom one day per week and also reviews police reports for defendants out of custody. The number of appeals and writs filed during the year declined 6% from 2011.

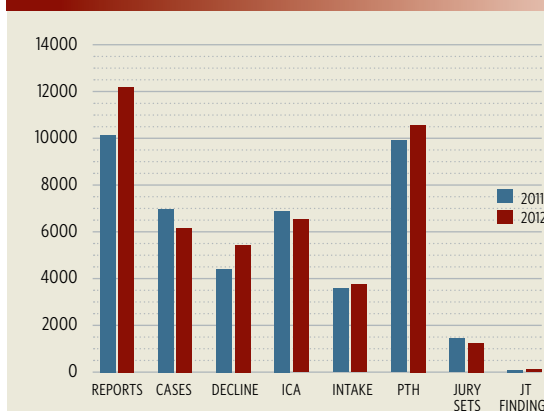
In 2012, we presented argument to the

CRIMINAL NON-TRAFFIC - 2012 AVERAGE DAYS TO DISPOSITION



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

CRIMINAL NON-TRAFFIC - 2012



CRIMINAL NON-TRAFFIC 2012 (includes DV)	2012 compared to 2012
2011 Reports Rec'd	11,471
2012 Reports Rec'd	12,206
DIFF 2012-2011	735
% Change	6%
2011 Cases Filed	6,951
2012 Cases Filed	6,182
DIFF 2012-2011	(769)
% Change	-11%
2011 Reports Declined	4,425
2012 Reports Declined	5,482
DIFF 2012-2011	1,057
% Change	24%
2011 % Reports Received were Declined	31%
2012 % Reports Received were Declined	58%
2011 Avg. # Days From Date Rec'd to Dispo	385
2012 Avg. # Days From Date Rec'd to Dispo	389
2011 In Custody Arrg.	6,802
2012 In Custody Arrg.	6,524
DIFF 2012-2011	(278)
% Change	-4%
2011 Total # Bookings	4,892
2012 Total # Bookings	4,419
DIFF 2012-2011	(473)
% Change	-10%
2011 Total Booked w/Case Declined at ICA	843
2012 Total Booked w/Case Declined at ICA	967
DIFF 2012-2011	124
% Change	15%
2011 % Total Booked w/Case Declined	17%
2012 % Total Booked w/Case Declined	22%
2011 Intake	3,626
2012 Intake	3,790
DIFF 2012-2011	164
% Change	5%
2011 PTH Setting	9,991
2012 PTH Setting	10,558
DIFF 2012-2011	567
% Change	6%
2011 Jury Trial Settings	1,431
2012 Jury Trial Settings	1,255
DIFF 2012-2011	(176)
% Change	-12%
2011 Jury Trials with Finding	101
2012 Jury Trials with Finding	118
DIFF 2012-2011	17
% Change	17%

CRIMINAL DIVISION *continued*

Washington Supreme Court in *Seattle v. Fuller*, which concerned the authority of Seattle Municipal Court to order a convicted defendant to pay restitution. The defendant, Donald Fuller, had been convicted of Obstructing a Public Servant and ordered to pay for the officer's glasses, which were broken during the physical altercation. The Superior Court had upheld this restitution order, and the Supreme Court followed suit in 2013.

Case Prep

The Case Preparation team gathers information from multiple agencies for assistant city prosecutors to make case filing decisions. In 2012, the team made progress in three key areas:

In 2012, the team entered 100% of the information from reports received by SPD. Data entry was a time consuming and repetitive task with the potential for clerical mistakes. Throughout 2012, our office, SPD and SMC worked toward electronically transferring the details of SPD reports into software used internally by our office. This will save time and eliminate data entry errors, ensuring all reports released to us are tracked and disposed of in a more efficient and accurate manner. Since this project has gone live in 2013, our office has been able to save time and eliminate data entry errors.

Providing initial Discovery to defense attorneys and public defender agencies is another essential function of the team. In 2012, we began entering defense counsel's information into our database rather than relying on SMC's docket. The office

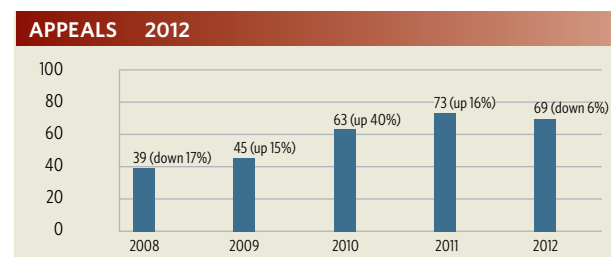
also created templates to standardize the format and method of Discovery production. This change has expedited the delivery of Discovery and has resulted in compliments for our reliability from several defense attorneys.

The Case Preparation team is also responsible for records retention. With limited space and resources, keeping files for the required retention period filled our file room to capacity. Our goal was to create a system that would accurately track a file's retention date, resulting in the prevention of files being stored offsite at an additional cost. This new system will reduce the number of hours needed to search for files that have met their retention period.

2012 Statistical Overview

Overall: The number of reports received tracked fairly closely with 2011. However, the number of cases filed was down 13%. Our office declined to file on 11% more reports in 2012. The number of cases set for jury trial declined just over 25% but "trials resulting in findings" increased by 10%. The average number of days to disposition for Pretrial Diversion, Deferred Prosecution, Stipulated Order of Continuance, and Dispositional Continuance increased by about 30 days; however, the number of days until final disposition decreased by about 40 days.

Domestic Violence Unit: The number of reports received increased by 8%. However, our office filed on 15% fewer cases and declined 5% more cases in 2012 compared with 2011. The DVU declined 20%



of reports received in 2012 compared with 14% in 2011 for lack of victim participation.

Criminal Non-Traffic: The statistics had minimal change with the exception of 24% more cases declined in 2012; the majority of these declines are assault (including DV), harassment, and theft. Cases set for Pre-Trial Hearing increased along with jury trials resulting in finding. Jury trial settings were down 12%.

Criminal Traffic: The statistics continued to drop. Our office declined 26% fewer cases in 2012; approximately 76% of the cases declined were DWLS 3 compared with 85% in 2011.

Driving Under the Influence (DUI): The number of reports received dropped 15% and, of those, we filed 17% fewer cases. We declined 19 additional reports in 2012. Jury trial settings also decreased; however, four additional trials resulted in guilty or not guilty findings.

DWLS 3: The number of reports received and cases filed continue to decrease for the second year. Fifty-two cases were set for trial and one resulted in a finding.

ADMINISTRATION DIVISION



1., 2., & 3. Standing in line for lunch, and Race and Social Justice Initiative volunteers & Pete Holmes serving food for Operation Sack Lunch 2012.



4. & 5. RSJI volunteers cleaning up El Centro de la Raza grounds.

The Administration Division provides executive leadership, communications and operational support for the 155-employee department as well as numerous interns and volunteers. The division is comprised of the City Attorney, his immediate staff and the Accounting, Human Resources and Information Technology sections.

In keeping with the City Attorney'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*, the Administration staff prepared a bi-monthly internal employee newsletter, *In Brief*.

ADMINISTRATION DIVISION *continued*

Budget

The Administration Division was instrumental in helping the office achieve its budget goals for 2012. After achieving significant savings in 2011 by hiring two attorneys and bringing police action cases in-house, the City Council provided funding for a third attorney to defend Seattle police officers in civil rights cases. Outside counsel still handle some of these cases but the majority now remain in-house at a significantly lower cost to the City.

In 2012, CAO received additional budget support to add one full-time attorney to work on the infraction (ticket) prosecution program in Seattle Municipal Court. The attorney continued to use trained volunteers and together they represented the City on more than 3,900 contested hearings.

The accounting staff provided ongoing review and management of the 2012 operating budget and support for the development of the 2013 budget. In addition to providing the City Budget Office and City Council with quarterly statistics and policy changes, the Administration team also responded 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 2012. Announcements of job openings for attorneys and paralegals were posted with local minority bar associations as we aim to broaden our

recruiting efforts and seek as diverse an applicant pool as possible.

The Criminal Division contracted with a language service provider to translate letters and forms sent to the City's non-native English-speaking population. Translations are provided in 14 languages. Victims are advised when charges have been filed and a No Contact or Anti-Harassment Order has been entered that prohibits the named defendant from contacting them.

Human Resources continued to organize emergency preparedness trainings as well as notify employees of numerous other City-sponsored trainings and wellness events.

Volunteer and Externship Programs

CAO has a long history of providing opportunities for volunteers and student interns to learn more about the legal process and criminal justice system. Law students work side by side with prosecutors to learn the basics of case preparation, filing and trial work. Administrators in the Criminal Division managed an extensive volunteer program, including undergraduate and law students. The experience provided volunteers an opportunity to learn more about the criminal justice system while combining classroom knowledge with on-the-job training for a well-rounded learning experience. During 2012, a total of 35 volunteers donated about 9,700 hours; that amounted to more than four and a half full-time positions (compared with 32 volunteers who



Dana Anderson, Administration Division Chief

ADMINISTRATION DIVISION *continued*

provided more than 6,100 service hours in 2011). Of the 35 volunteers, 19 volunteers were male and 16 were female.

The Civil Division hosted 13 volunteer legal interns (10 male and three female) last year. Law students conducted legal research, observed court proceedings, and assisted on a variety of employment, land use, government affairs and torts cases in 2012.

Information Technology

On a daily basis, the IT staff supports 180 desktop computers for staff in the Civil and Criminal divisions and five Seattle police precincts. In addition, the IT team works collaboratively with the senior planning and management staff in the City's Department of Information Technology (DoIT) to implement improvements to City-wide data systems and security.

One of the major issues facing IT in 2012 was the demand for mobile technology and Cloud Services (the ability to store electronic files separate of City resources). Although attorneys find these tools necessary in the workplace, the job of the IT team was to focus on security requirements and develop policies and procedures to protect the City and the Law Department data. After many hours of testing, the office adopted a policy and a system for Cloud access (temporary storage of files or documents) to manage documents at work and on mobile devices while protecting the City from hackers and other risks.

Requests to locate, organize and produce email in electronic form continued to increase City-wide last year. The IT group responded by further expanding the previous year's deployment of the Mimosa tools. In 2012 the IT team, along with other key City staff, implemented the "eDiscovery" (electronic discovery) tool to more City departments. Using a newly-refined process across departments, producing relevant records was streamlined for greater consistency and efficiency. The goal is to deploy this tool in all departments in 2013.

As more records are created, stored and produced electronically, the Law Department also requires a huge amount of disk storage and a means to search them. In 2012 alone, the Law Department consumed more than one Terabyte (1099511627776 - bytes) of disk storage. We added additional storage to our system, but searching for documents remains a challenge. In 2013, we are looking for an effective means of both adding storage and being able to locate electronic documents more efficiently.

Looking ahead and planning for the department's needs are critical from an IT perspective. In anticipation of the City-wide migration to Windows 7 in mid-2013, the IT team began testing and modifying applications in 2012. In addition, this migration will be the department's first time using automated tools, which will minimize the hands-on time previously required to perform this type of work.

Public Records Requests

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



Seattle City Attorney Annual Report 2012

Kimberly Mills
Communications Director
206.684.8602
Kimberly.Mills@Seattle.Gov