

## INTRODUCTION

**DATE:** May 12, 2006  
**TO:** Honorable Mayor and City Councilmembers  
**FROM:** City Attorney Michael J. Aguirre  
**SUBJECT:** Office of the San Diego City Attorney Comprehensive Report

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The Office of the San Diego City Attorney is responsible for providing vigorous defense of the City in civil lawsuits, advising the Council and City Departments on matters of law, and prosecuting misdemeanors as obligated by the City Charter.

The Office played a critical role in charting the legal course to ensure a smooth transition from a Council-City Manager form of government to a Strong Mayor government structure as called for in Proposition F and approved by voters in November 2004. What had been a theoretical discussion is now a successful working model that San Diegans can celebrate.

This new government system and other challenges has provided guidance on how to restructure the City Attorney's Office to provide the best legal services to the citizens and taxpayers of the City of San Diego. Today we have a level of specialized legal expertise that has enhanced the services we provide to the City.

The Civil Division has three primary functions. The General Litigation section defends and protects the City from losses when lawsuits are filed against it. It also seeks monetary recovery on behalf of the City. The Civil Advisory Sections provide legal support and advice to the City Council, the City Manager, and all City Departments.

Last year we focused on the need to provide more specialized legal services with an emphasis on Securities Law, Contract Administration, and Revenue Recovery. I am pleased to report that we have made significant progress in all three areas.

As the City of San Diego continues to experience the unfortunate legal and financial entanglements associated with its troubled pension system, the public can be confident that this Office continues to pursue a resolution that protects both the taxpayer and city worker. My effort in this regard is to ensure that our hard-working San Diego city employees can be confident that an adequate and funded pension awaits them when they retire.

Our Criminal Division has a public safety mission, mandated by the City Charter, to prosecute State misdemeanor offenses that are committed within City limits. I believe that we carry out this obligation efficiently and effectively and that the City receives full value for the dollars spent.

The Criminal Division, which each year reviews upwards of 50,000 misdemeanor cases, maintains units assigned to neighborhood prosecution, code enforcement, domestic violence, gang and drug abatement, and consumer and environmental protection. These units have successfully developed and routinely employed numerous non-traditional methods to address societal problems, including community courts and programs for the homeless and serial inebriates.

The budget for the Office of the San Diego City Attorney submitted by Mayor Jerry Sanders is \$36,291,478 million, up approximately \$2 million from FY 2006. For Fiscal Year 2007, the salary and benefit adjustments calculated by the Mayor for the City Attorney's Office is \$2,368,499, over which the City Attorney had no discretion.

With a budget increase from Fiscal Year 2006 to the Proposed Fiscal Year 2007 Budget of \$2,109,333, the City Attorney's Office is again reducing discretionary spending, this time by \$259,166.

In an effort to present a budget that more accurately reflects actual practice, the Mayor has added 9.11 supplemental positions to the budget at a cost of \$1,009,428. This cost was more than offset by vacancy savings of \$1,257,519.

For your review, I have attached a comprehensive report of the City Attorney's Office.

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MICHAEL J. AGUIRRE, City Attorney

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San Diego City Attorney's  
**APPELLATE UNIT**  
Criminal Division



**UNIT SCOPE OF WORK**

The Appellate Unit provides legal support for the Criminal Division. Led by Head Deputy City Attorney Steven Hansen, the Unit handles all pre-trial motions and writs for cases in the general misdemeanor unit and post-trial appeals for both the general misdemeanor unit and the Domestic Violence and Special Victims Unit.

The Appellate Unit also provides training, research, and trial support for the Criminal Division. Appellate deputies periodically provide the office with case law updates and legal memoranda. They also conduct training in the areas of constitutional law, criminal procedure, and discovery. The Appellate Unit also plays a big part in training in the office. The deputy city attorneys assigned to the Unit train all new deputies on screening and arraignment, discovery, trial and sentencing issues. Law students gain extensive experience while volunteering in Appellate, and in exchange help with the Unit's workload.

The Appellate Unit provides a wide range of legal services to the Criminal Division, primarily involving legal research and writing. Unit responsibilities include the following:

- **Pre-trial Motions**

The Appellate Unit handles all pre-trial motions on behalf of the General Misdemeanor Unit. Typical motions include defense motions such as motions to suppress evidence and motions to dismiss based upon the Fifth and Sixth Amendments.

- **Appeals**

The Appellate Unit handles all appeal matters on behalf of the General Misdemeanor Unit as well as the Domestic Violence and Special Victims Unit. Most appeals are filed by defendants after convictions, but the Appellate Unit also files appeals to correct judicial errors.

- **Training**

The Appellate Unit takes part in training each new class of deputy city attorneys. The Unit trains new deputies on such topics as trial procedures, appellate issues, and Fourth Amendment issues.

- **Legal Advice**

The Appellate Unit serves as a resource for deputies who have questions on criminal law and procedure. Trial deputies, screening deputies, and arraignment court deputies seek legal advice on a daily basis.

In FY 2006, the Unit will handle over 600 pre-trial motions, winning more than 90 percent of the motions argued at hearing. Typical issues include suppression of evidence, speedy trial, plea withdrawal, invalidation of prior conviction, double jeopardy, and demurrers. The Unit handles appeals and writs before both the Appellate Department of the San Diego Superior Court and the Fourth District Court of Appeal. The staff has handled more than 100 writs and appeals with more than 95 percent decided in the People's favor.

- The Appellate Unit handled a record number of pre-trial motions, resolving over 600 motions. The Unit enjoyed over a 90 percent success rate while operating with one unfilled deputy position.
- The Appellate Unit handled more than 120 appeals and pre-trial writs. The Unit practiced primarily in the Appellate Division of the Superior Court but also handled cases in the Court of Appeal and the California Supreme Court. The Unit enjoyed an over 95 percent success rate.
- The Appellate Unit responded to over 1,300 requests for assistance from deputy city attorneys needing help with trial issues, arraignment court problems, and screening and arraignment questions.
- The Appellate Unit assisted in training two new classes of deputy city attorneys. The Unit trained new deputies on screening and arraignment issues, trial procedures, evidence rules, driving under the influence prosecutions, and constitutional issues.

### **HIGHLIGHTS**

- The Appellate Unit successfully defended the use of sobriety checkpoints to catch drunk drivers.
- The Unit continued its defense of driving under the influence prosecutions that used blood alcohol evidence obtained from the use of unlicensed phlebotomists. The Unit has successfully defended these prosecutions at all levels of trial and appellate court, all the way to the United States Supreme Court.
- The Appellate Unit assisted in the Criminal Divisions transition from horizontal to vertical prosecution.
- The Unit also began vertical prosecution of pre-trial motions, substantially adding to its work load.
- After a municipal ordinance prohibiting hosting parties where minors drink alcohol was found unconstitutional, the Unit assisted in revising the ordinance to ensure its legality.

- The Unit successfully defended the filing of juvenile traffic tickets in Traffic Court, rather than Juvenile Court.

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San Diego City Attorney's Office  
**CASE ORIGATION UNIT/SCREENING  
& ARRAIGNMENT**  
Criminal Division



**UNIT SCOPE OF WORK**

The Case Origination Unit, also known as the Screening and Arraignment Unit, operates within the General Criminal Prosecution Unit of the Criminal Division of the San Diego City Attorney's Office. Led by Head Deputy City Attorney Michelle Garland, the Screening and Arraignment Unit is responsible for receiving, processing, and reviewing thousands of citations, arrest reports, and crime reports submitted by local law enforcement agencies. Staff members and attorneys in the Unit process and review misdemeanor violations that occur within the City of San Diego and certain misdemeanors that occur within the City of Poway. Various infraction violations are also handled within the Unit.

In 2005, the Criminal Division of the City Attorney's Office received approximately 41,840 cases for processing and review. After attorney review of each case, charges were filed in approximately 31,350 cases.<sup>1</sup> This includes 5,117 driving under the influence cases and 2,670 felony wobbler cases.<sup>2</sup>

The Screening and Arraignment Unit also reviews and files, among others, theft cases, drug cases, battery/assault cases, vandalism cases, trespass cases, driver's license cases, and weapons cases. For instance, the Unit issued 1,064 petty and grand theft cases in 2005.

• **Cooperation with Law Enforcement Agencies**

The Screening and Arraignment Unit receives cases from a variety of law enforcement agencies. We work closely with each agency to ensure successful prosecution of each viable case submitted to us. These agencies include: San Diego Police Department, San Diego County Sheriff, California Highway Patrol, Harbor Police, San Diego State University Police, University of California San Diego Police, San Diego Community College Police, San Diego City School Police, Animal Control, Department of Fish and Game, Park Rangers, San Diego Lifeguards, MTDB, Department of Alcoholic Beverage Control, Department of Justice, and the United States Postal Inspectors.

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<sup>1</sup> These statistics represent the total number of cases submitted to the Criminal Division. They include cases submitted directly to specialized units in addition to cases submitted to the Screening and Arraignment Unit.

<sup>2</sup> A felony wobbler is a crime that may be charged either as a felony or a misdemeanor at the discretion of the prosecutor.

- **Specialized Committees Established**

Certain types of charges require specialized knowledge or handling. To this end, the Screening and Arraignment Unit has several subject matter committees. Sex crimes, for example, are vertically prosecuted by Head Deputy City Attorney Tracy Rogers. Throughout 2005, the Sex Crimes Committee issued forty-seven violations of Penal Code section 290, requiring certain individuals to register as sex offenders. This committee also handles sexual battery cases, indecent exposure cases, peeping cases, and lewd act in public cases.

Fish and game cases and utility theft/fraud cases are centrally issued by Deputy City Attorney Charles Taylor. Deputy City Attorney Han Hershman heads the gangs/graffiti committee, as well as the tuberculosis and prescription fraud committee. Animal control cases and harassing telephone call cases are issued exclusively by Deputy City Attorney David Uyar. Finally, restraining order violation cases are centrally issued by Deputy City Attorney Kristen Fossler.

Fraud and forgery cases are also specially handled by the Screening and Arraignment Unit, in conjunction with the Trial Unit, in order to ensure appropriate charges and penalties. These cases may include misdemeanor credit card fraud, check fraud, embezzlement, counterfeit currency, counterfeit identification, and identify theft. Given the recent societal proliferation of identity theft and credit card fraud, this committee takes its task very seriously. Issuing fraud/forgery deputies charge aggressively and request increased penalties for offenders.

- **Dispute Resolution Office**

Many cases received in the Screening and Arraignment Unit are resolved without a formal criminal complaint ever being filed. Founded in 1977, our Dispute Resolution Office manages cases where the interests of justice, the victims, and often the defendants, are better served by resolving the case outside of the courtroom.

Led by Mike Littlefield, the Dispute Resolution Office receives many types of cases, including battery, vandalism, restraining order violations, city permit cases, harassing telephone calls cases, animal control cases, consumer fraud cases, and minor hit and run cases. Many of the cases referred to the program involve family disputes, neighbor disputes, or other situations where the criminal conduct is the result of a larger underlying issue that would not be adequately addressed by the traditional criminal process.

Defendants are asked to complete various tasks in an effort to address the issues and resolve the case. If the assigned tasks are successfully completed, the case is closed and no charges are filed. Defendants may be asked, for example, to attend anger management classes, driving classes, Alcoholics Anonymous meetings, animal safety classes, perform community service, or pay fines and restitution.

In addition, the Dispute Resolution Office administered the Parenting Project through June 2005. The Parenting Project was a hearing program designed to assist parents of children in trouble with the law. The hearings were intervention oriented and

designed to hold parents responsible for providing proper care and guidance to their children. The Program developed a wide network of community resources and placed parents in parenting classes and mentoring programs. The Program was completed in June 2005, and the Dispute Resolution Office increased its focus on resolving criminal cases through alternative avenues. After the conclusion of the Parenting Project, case referrals to the Dispute Resolution Office increased dramatically to an average of 87 cases per month. This is an increase from an average of thirty-six case referrals per month during the administration of the Project.

Overall in 2005, the Dispute Resolution program was a great success. A total of 741 cases were referred to the program. More than Ninety-seven percent of the cases referred were resolved or otherwise closed without further action. Approximately 1,140 victims received services through the program and approximately \$21,090 was collected in restitution.<sup>3</sup> Of that amount, approximately \$1,250 represents fines and fees paid to the City. Additionally, the program has generated over \$8,914 in credits or refunds for victims of consumer fraud.

- **Victim Services Coordinator**

The Screening and Arraignment Unit also offers services to crime victims through our Victim Services Coordinator. The Coordinator, Lori Wheeler, makes contact with crime victims during the case issuing stage. Wheeler ensures that each victim is willing to testify in court, explains the criminal case process, and helps victims to gather their out of pocket expenses incurred as a result of the criminal offense in order to recover restitution. In some cases, the Coordinator also conducts victim interviews in order to clarify factual questions affecting the nature of the charges filed. Additionally, the Coordinator makes contacts with witnesses in order to obtain additional information or evidence necessary for a thorough case evaluation by the deputy city attorneys. In 2005, more than 830 cases were referred to the Victim Services Coordinator.

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<sup>3</sup> Approximately \$16,500 of this total was paid to one victim for medical bills incurred as a result of a battery. Although the victim was injured, the case would have been extremely difficult to prove beyond a reasonable doubt at trial. The Dispute Resolution program, however, was able to obtain restitution enabling the victim to pay her medical bills and recoup her out of pocket expenses.



San Diego City Attorney's Office  
**CASE RESOLUTION / TRIAL UNIT**  
Criminal Division



**UNIT SCOPE OF WORK**

Led by Head Deputy City Attorney Karen Li, the Case Resolution Unit, more commonly known as the Trial Unit, conducts all the courtroom proceedings, negotiates resolutions on the majority of the cases, reviews each case to determine its feasibility at trial, tries the cases, and ascertains what sentencing parameters are appropriate.

The cases prosecuted and tried by the Trial Unit impact the public in their daily lives, and effective prosecution of these cases is vital to the quality of life in San Diego. Cases that made up the work of the Trial Unit in 2005 included:

- Driving Under the Influence of Alcohol and/or Drugs
- Resisting Arrest
- Hit-and-Run
- Shoplifting and Other Forms of Theft
- Assaults and Batteries
- Brandishing or Possessing Illegal Weapons
- Vandalism
- Under the Influence of or Possessing Illegal Drugs
- Prostitution
- Indecent Exposure or Other Sexual Crimes
- Hate Crimes
- Driver's License-Related Offenses
- Road Rage
- Reckless Driving,
- Illegal Street Racing
- Vehicular Manslaughter Cases

Other types of cases that contributed to a significant portion of the Trial Unit's caseload included:

- Municipal Code Violations
- Fish and Game/Animal Violations
- Illegal Lodging
- Drunk in Public
- Trespass
- Failures to Appear
- Furnishing Alcohol to Minors

- Minors in Possession of Alcohol

We were often dealing proactively with chronic and nuisance problems in specific neighborhoods. This protected the citizens of the City, addressed the negative impact some crimes have on our environment, and saved the taxpayers' money.

## **HIGHLIGHTS**

- **Vertical Prosecution**

The General Unit experienced a transitional year to a more effective prosecution system in 2005, converting from a horizontal to a vertical format.

Prior to March 2005, cases were prosecuted horizontally. This meant that for each case, potentially, a different Deputy City Attorney was screening the report and issuing the charges, arraigning the defendant, appearing at the readiness conference, appearing at each subsequent hearing, preparing the case for trial, and actually trying the case.

With the change to vertical prosecution, the Trial Unit now had a core group of screening or issuing deputies, which provided more consistency in the process. In addition to the core group, Trial deputies also rotated into the Screening and Arraignment Unit for four months at a time to gain experience and develop their issuing skills. When not in that rotation, Trial deputies were assigned their trials as soon as the case was set for trial. They were then responsible for assessing the evidence, preparing the case for trial, which included developing the evidence and exhibits, negotiating the terms of any possible settlement, and trying those cases.

Vertical prosecution afforded the trial deputies their own case loads, a sense of ownership, and a higher level of preparation on the cases. It allowed for more time to support one another in trial by exchanging ideas and strategies, helping put together exhibits, and offering each other the benefit of experience and other trial materials. It also facilitated more opportunities for discussions and training to resolve evidentiary issues and novel trial defenses.

In addition to the preparation and conducting of trials, Trial deputies were assigned to appear at all of the courtroom proceedings and issued a minimal amount of weekly and Fraud Forgery Committee cases.

- **Money Saved**

A few years back, in cooperation with the San Diego Police Department, our office developed a step-subpoena process with the goal of saving the City money. This resource-saving device came to fruition from years of experience and the reality that generally, the jury trial process did not provide a prosecutor enough time on the first day of trial to call to the witness stand more than two law enforcement witnesses. Prosecutors had to argue pre-trial motions, put on evidence in any pre-trial evidentiary hearings, conduct the jury selection, and perform their opening statements before the first witness testified. Furthermore, on the day of trial, many defendants would plead guilty, fail to appear, or the case would be continued. Knowing that, we began subpoenaing the third officer (and any more officers) for the next day after the original jury trial date. If a case

resolved on the date set for trial, we were able to call-off the second-day officers. By not having all the officers appear on the first day of trial through 2005, this collaborative resource-saving process allowed 91 SDPD officers to be on the streets enforcing laws and protecting the public instead of waiting for a few hours just to be told to come back. This also prevented the City from having to pay overtime for those second-day-subpoena officers who were on the night shift and previously would have had to come straight to court on the first day.

- **Long-term alcohol treatment**

A person who was repeatedly drunk in public and passed out on the street could significantly drain City police and paramedic resources. For these offenders, we encouraged long term alcohol treatment or argued in the alternative for custody to keep them off the streets. Deputy City Attorney Michelle Kolker had a case where a citizen called SDPD to report that a man stumbled across the road and fell into the San Diego riverbed. When contacted, the Defendant smelled of alcohol, had slurred speech, resisted and kicked at the officers, and repeatedly banged his head in the patrol car. Michelle Kolker was able to convict the defendant and brought him one step closer to treating his mental and alcoholic issues.

- **Theft Cases**

Another example was our prosecution of theft cases. People who steal from stores would eventually cause increased prices for the average law-abiding citizen. By holding these offenders responsible for their actions at the misdemeanor level, we hope to educate them and prevent recidivism into felony level crimes.

- **Guilty Plea Before Trial**

Most of the cases handled by the Trial Unit resulted in a criminal conviction based on a guilty plea before trial. The Trial Unit appeared at the plea and sentencing hearings to ensure the correct plea was entered and to argue for appropriate sentencing based on the defendant's conduct. However, each month, over 150 cases were set for trial. Each of those cases were reviewed and prepared for trial. The process of trial preparation included subpoenaing and interviewing witnesses, preparation of exhibits, and securing the presence of physical evidence such as photographs, 911 tapes, weapons, and blood vials, to name a few. Once this preparation was completed, many cases resolved with a guilty plea on the eve or day of trial. Nonetheless, 214 cases went to trial in 2005. From that number, about 35 percent resulted in a guilty verdict on at least one count of the case; about 29 percent pleaded guilty or no contest; about 7 percent of the cases resulted in a dismissal for various reasons; about 10 percent resulted in a verdict of not guilty on all counts of the case; and about 19 percent of the cases were continued for different reasons or had a mistrial declared.

In 2005, the Trial deputies were able to convict defendants on all of the types of cases mentioned before. These trial successes were due in part to our office working closely with a variety of law enforcement and prosecuting agencies to ensure that defendants were brought to justice and that victims were made whole.

- **Restitution Hearing**

A critical and growing component of the work of the Trial Unit involved seeking restitution for persons victimized by crime. Often, a “Restitution Hearing” was held even if the defendant pleaded guilty because the dollar amount of the harm to the victim may be difficult to ascertain. Trial deputies appeared regularly at these hearings to argue for orders that required convicted defendants to compensate those whom they have victimized.

### **SIGNIFICANT CASES**

- Deputy City Attorney Lea Fields successfully convicted three co-defendants of picketing in front of former Mayor Dick Murphy’s private residence. The offenders had been given many opportunities to leave, but they refused. The offenders would not accept the pre-trial settlement offers and were all found guilty by the jury.
- Deputy City Attorney Amanda Fates was assigned to a case where the defendant was charged with driving under the influence (DUI) of both alcohol and drugs with a prior conviction for the same, along with 14 counts of hit and run. The defendant pleaded to the DUI with a prior conviction and seven counts of hit and run. In addition to the mandatory custody, Amanda was able to successfully argue for 30 days of public work service and \$9,000 in victim restitution.
- Deputy City Attorney Jeremy Fonseca was assigned a DUI where the defendant was a California Highway Patrol officer. Despite the seasoned defense counsel’s many requests for a reduced offer, Jeremy did not concede and the defendant pleaded guilty on the morning of trial.

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**San Diego City Attorney's  
CODE ENFORCEMENT UNIT  
Criminal Division**



**UNIT SCOPE OF WORK**

The City Attorney's Code Enforcement Unit [CEU] prosecutes a variety of public nuisances and code violations throughout the City, as well as works in partnership with code enforcement personnel, community groups, and individual citizens to improve the quality of life in San Diego's neighborhoods. The Unit is led by Head Deputy City Attorney Diane Silva-Martinez. Types of violations referred to CEU for prosecution range from:

- Substandard housing to illegal businesses
- Building and zoning violations
- Public nuisances, illegal grading
- Fire hazards
- Illegal dumping
- Water theft
- Destruction of sensitive resources
- Abandoned structures and numerous other violations.

CEU receives cases from various City Departments, primarily Neighborhood Code Compliance, Environmental Services, Police Department as well as community groups and volunteers. The City Attorney's involvement in addressing code violations is essential so that violators are held accountable and problem properties are quickly put to legal productive use. Early involvement by the City Attorney's Office ensures that code violations are timely and aggressively prosecuted so properties do not further deteriorate, attract crime, or diminish community pride.

The City Attorney's Code Enforcement Unit plays an integral role in maintaining a high quality of life for San Diegans by increasing the public's safety, preventing deterioration and blight in our neighborhoods, and protecting property values throughout the City. Cases prosecuted by the City Attorney's Office result in significant criminal fines and civil penalties; the recovery of investigative costs; and innovative creative sentencing terms. These creative sentencing terms require that restitution be paid by code violators to the community harmed by ongoing public nuisances and code violations.

**HIGHLIGHTS**

Through aggressive civil and criminal prosecution in the past 14 months, the Code Enforcement Unit obtained court orders requiring code violators to pay the following monies:

- **\$245,404 in civil penalties.** These civil penalties are paid directly to the City and are used for the continued enhancement of code enforcement efforts.
- **\$58,072 in investigative costs** was paid by defendants as a requirement of settling both civil and criminal actions. These monies directly reimburse the City for time spent by inspectors in investigating and monitoring the case.
- **\$56,844 in restitution** was paid by defendants as a creative sentencing requirement aimed at restoring the harm caused to the community by the violations. Violators were required as part of their settlement with CEU to pay donations to community groups and non-profits dedicated to improving the community where the violations occur. In water theft cases, restitution monies were paid directly to the City by developers who had illegally used water.
- **\$57,150 in relocation costs** were ordered paid as part of civil settlements with property owners who allowed their tenants to live in substandard housing conditions.

The Code Enforcement Unit presently staffs four attorneys, one legal assistant, two investigators and two legal secretaries. Each attorney carries a caseload ranging from 35 to 45 cases, many of which are complex civil cases involving protracted litigation. In addition to prosecuting cases, other duties performed by the deputies include attending community meetings and regular meetings with City departments and Council Offices, advising Departments on enforcement issues, training code enforcement personnel, working closely with the Police Department on identifying public nuisance properties, representing Departments at administrative enforcement hearings, drafting ordinances, and serving on task forces and projects important to the community.

The below summary highlights some of CEU's more significant cases and accomplishments this past year:

## **SIGNIFICANT CASES**

### **PROTECTION OF ENVIRONMENTALLY SENSITIVE LAND**

The City Attorney's Office remains an integral member of the City's Grading Violation Assessment Team or "GVAT" which was created by the City Council in 2003 in response to numerous citizens' complaints that San Diego's protected resources-canyons, wetlands, and environmentally sensitive land-were being destroyed by unpermitted grading and development. The GVAT team consists of a land development investigator from the Neighborhood Code Compliance Department [NCCD], an engineer from the Development Services Department [DSD], a biologist from DSD, and an investigator from the City Attorney's Code Enforcement Unit. The GVAT team is charged with quickly responding to complaints of illegal grading, properly assessing what damage has occurred to environmentally sensitive land, and what mitigation is necessary.

Requiring adequate erosion control is essential to prevent further damage to natural habitat. CEU continues to work in partnership with these departments to vigorously protect San Diego's natural habitat.

CEU deputies regularly prosecute illegal grading cases against developers and private property owners. Through civil and criminal prosecution, developers and property owners are required to obtain proper permits, restore natural vegetation, and mitigate the harm caused to sensitive habitat. Civil injunctions and criminal plea bargains also require that erosion control measures are quickly put into place to protect further damage to slopes and natural habitat. Two significant cases recently prosecuted are:

- ***City of San Diego v. McKean Natural Gas Co., Inc.***

CEU's civil complaint alleged the destruction of environmentally sensitive land in a pristine area of Carmel Valley. The property owner of a very large parcel constructed a perimeter fence around his property without permit. A settlement was reached requiring the defendant to pay \$20,000 in civil penalties and over \$1,000 in investigative costs. The injunction also requires that the site be revegetated and proper permits obtained.

- ***City of San Diego v. Gawle, et al.***

CEU's civil complaint alleged illegal grading, and unpermitted dumping on a large parcel on Del Mar Mesa Road. The settlement included the payment of \$20,000 in civil penalties and \$1,000 in investigative costs as well as requiring the implementation of erosion control measures and mitigation.

In addition, regular meetings are scheduled with CEU deputies and City staff to review illegal grading cases to ensure that they are properly monitored and processed for review, development, or mitigation. Meetings are also scheduled to ensure that staff is adequately trained on the enforcement and prosecution of illegal grading cases.

## **PROSECUTION OF WATER THEFT**

Cases referred to CEU by the Water Department for water theft violations are aggressively prosecuted. Cases may involve residential water theft by private property owners and tenants. More commonly, commercial developers are prosecuted for illegally using water at construction sites. Three significant water theft cases which were aggressively prosecuted by the Code Enforcement Unit this past year are:

- ***People v. Coffman, Inc.***

CEU prosecuted a commercial developer who allegedly used City water without the required water meters. The settlement required that the developer pay \$83,132 in civil penalties; \$28,176 in restitution for stolen water; and \$13,692 in investigative costs. In addition, as a creative sentencing term, the developer was required to provide the Water Department with 10,000 copies of an instructional video on proper uses of the San Diego Water System. These videos are now regularly distributed by the Development Services Department to developers and contractors in San Diego.

- ***People v. Greystone Homes, Inc., et al.***

Illegal water connections resulted in unmetered water at the construction site of this developer. The case was civilly prosecuted by CEU and the settlement required the payment of \$17,811 in civil penalties, over \$1,400 in investigative costs, and \$699 in restitution.

- ***People v. Del Mar Development, LLC, et al.***

The commercial developer in this case allegedly stole water by using illegal connections to the water system throughout the construction site. Through a civil prosecution, the corporation was required to pay \$9,460 in civil penalties, and reimburse the City \$5,000 in investigative costs and \$540 in restitution.

## **THE REHABILITATION OF VACANT PROPERTIES**

CEU deputies continue to work closely with NCCD's Vacant Properties Coordinator and the Police Department to proactively address vacant structures throughout the City. Vacant structures are fire hazards and have a devastating effect on surrounding neighborhoods. Not only are they eyesores, but vacant properties continually attract public nuisance activity and crime such as illegal dumping, transients, drug use, prostitution, and graffiti. CEU deputies regularly file civil and criminal actions against the owners of vacant structures where there is continual nuisance activity, or the property has been vacant for many years. Often times, the City is forced to repeatedly board and secure the property. Through prosecution, the owners are put on a strict timeline which requires them to either timely rehabilitate the property or sell it. Pending rehabilitation, the owners are required to work with the Police Department to take measures to prevent ongoing crime at the property.

San Diego's Vacant Property Program has earned national recognition for its proactive efforts to rehabilitate vacant properties and preserve affordable housing stock. San Diego's program offers resources and assistance to property owners to put their vacant property to productive use. If voluntary compliance is not possible, or nuisance activity is occurring, a combination of administrative and judicial remedies is available. Head Deputy Diane Silva-Martinez serves as an advisor to the "National Vacant Properties Campaign," an initiative of Smart Growth America, the Local Initiatives Support Corporation, and the International City/County Management Association. CEU serves as a resource to other cities that are seeking to implement innovative ways to address their vacant housing stock and provide affordable housing to their citizens.

- ***Amendments to the Vacant Property Ordinance***

In February 2006, a joint press conference was held with the Mayor at the site of a property with multiple vacant units at 17<sup>th</sup> Street and Imperial Avenue. The graffiti covered units were filthy and had been continuously broken into by transients. Litter was strewn throughout the property. Numerous arrests had been made by the Police at this address for drugs and miscellaneous crimes. Deputy City Attorney Bryan Ziegler had recently served the owner with a letter notifying him that the property constituted a public nuisance and demanded that the units be immediately cleaned, boarded and secured. The press conference highlighted the problems of vacant properties and announced recent ordinance amendments drafted by CEU to strengthen the City's Vacant Property



ordinance. The amendments would allow the City to more effectively address properties such as 17<sup>th</sup> Street and Imperial Avenue. The new ordinance now allows for higher administrative penalties which may be assessed against the owner of a vacant structure for failure to comply with the ordinance (from \$2,500 to \$5,000 a year); requires that a “Statement of Intent” now be filed annually by the owner; and authorizes the City to issue a more comprehensive notice to the owner of a vacant property to address other code violations such as storage, litter, and waste violations on the property, and require fencing.

## **SUBSTANDARD HOUSING**

One of CEU’s top priorities continues to be the aggressive prosecution of slumlords. It is imperative that building and housing laws are aggressively enforced to ensure that all of San Diego’s residents are provided safe, decent housing. CEU and NCCD work in partnership to proactively identify substandard housing, and in many instances, require the relocation of the tenants to decent housing. CEU has spent significant time this past year in updating City policies and procedures governing substandard housing and providing training to City staff in how to properly enforce under the California Health and Safety Code. Two significant cases prosecuted this past year are:

- ***People v. Reyes***

This case involved a single mother and small daughter who lived in a substandard single-family dwelling in San Ysidro. Despite notices and requests to rehabilitate the property, the owner remained uncooperative. Additional zoning violations existed at the property including an employee living in a recreational vehicle with illegal hookups. This office and NCCD worked together to relocate the tenant to decent housing. The owner was prosecuted civilly and the case was settled. The civil settlement requires the owner to rehabilitate or demolish the uninhabitable structure, reimburse the City for relocation costs in the amount of \$2,150, and pay investigative costs in the amount of \$608. Civil penalties in the amount of \$10,000 were suspended pending compliance with the terms of the stipulation.

- ***People v. Ing-Wen Hwang dba Valli-Hi Motor Motel***

CEU civilly prosecuted the owner of a 100 room substandard motel in San Ysidro which was a problem property to the police due to the constant nuisance activity. There were constant calls for service and arrests for drug activity, loitering, fights, and alcohol related offenses. Inoperable vehicles and trash were visible throughout the parking lot. A comprehensive inspection of the dilapidated motel by the CEU and NCCD revealed a severe rat infestation, multiple fire code and electrical violations, and substandard conditions in the rooms. Another significant problem was poor property management; therefore, tenants were not properly screened. The San Diego Municipal Code requires that residents at motels may only stay 30 days or less. Some of the residents, mainly elderly, had been residing at the motel for over 10 years. The case was prosecuted civilly and the settlement included the following terms:

- Pay \$225,000 in civil penalties (\$75,000 payable forthwith and the remainder suspended pending compliance with all code violations).

- Immediately deposit \$55,000 in a trust account to relocate approximately 35 long term residents at the Valli-Hi Motel.
- Immediately hire a state licensed, uniformed security officer to patrol the property from 10:00 p.m. to 6:00 a.m. daily.
- Pay investigative costs to the City of San Diego in the amount of \$13,368.
- Work with the Police Department to properly screen all residents and improve property management.
- A \$5,000 donation to a non-profit agency in the San Ysidro area whose mission includes, but is not limited to assisting the elderly, homeless, or poor.
- Substantially improve the aesthetic appearance of the property by complying with all landscaping requirements on the property required by the San Diego Municipal Code.

The Code Enforcement Unit is currently assisting in relocating approximately 30 long-term residents to decent, affordable housing.

- ***Participation in Receivership Symposium in Los Angeles***

In March 2006, Bet Tzedek Legal Services Center together with the Los Angeles Housing Department and the UCLA Public Interest Law Program hosted a participatory workshop designed to address the urgent need for slum housing repair in Los Angeles. Specifically, the City of Los Angeles was seeking to explore how health and safety receiverships - whereby the Court appoints a neutral third party to take over control and management of slum or nuisance properties – could assist the City in addressing slum conditions and preserve affordable housing. (Due to CEU’s expertise in the area of substandard housing and strong track record of aggressive prosecution, Head Deputy City Attorney Diane Silva-Martinez was asked to participate to highlight some of San Diego’s successful cases and best practices.)

- ***Participation in the City’s Lead Task Force***

CEU serves on San Diego’s Lead Task Force established by Council Districts 6 and 8. CEU deputies and investigators work closely with City Departments and community groups to quickly respond to complaints of lead hazards. Deputies also assist in developing policies and procedures to ensure that lead hazards are quickly abated. This past year CEU has spent time training lead inspectors on investigative techniques and how to refer a case for prosecution.

## **GENERAL PUBLIC NUISANCE VIOLATIONS AND ILLEGAL USES**

This past year CEU deputies and investigators continued to spend considerable time responding to general public nuisance complaints and referrals from the Police Department, NCCD, Environmental Services, and community groups. CEU’s early

involvement in these cases resulted in the quick abatement of the nuisance activity. Examples of these cases include: illegal businesses or incompatible uses in residential zones; storage or building violations; transients living on vacant lots; and “pack-rat” cases. A considerable portion of CEU’s time is spent assisting elderly property owners who are victims of trespassers or who are being taken advantage of by family members. Case highlights include:

- ***People v. Tresco***

CEU civilly prosecuted a property owner in Ocean Beach who illegally built a two-story structure that joined two apartment buildings together. The owner was profiting from illegal rents from units in the unpermitted structure. The violations were especially blatant as the owner had been told by the City prior to construction that the structure could not be permitted. The civil settlement requires that the owner pay \$15,000 in civil penalties, submit plans, and obtain permits to demolish the illegal structure.

- ***4552 Acoma Avenue***

This case involved an elderly woman who owned her own home, was living in substandard conditions, and was being taken advantage of by individuals with criminal records who frequented the property. Investigator Dennis Smith was instrumental in this case, especially in evicting a male who had been living rent free at the property and who had taken over a room in the house. “Pack rat” conditions existed throughout the property and the living conditions were deplorable. An individual handling the owner’s finances was not correcting any of the violations at the property or properly assisting her. Deputy City Attorney Daniela Davidian worked with Environmental Services Department, NCCD, and the owner to abate the excess storage and identify how the owner could be further assisted. CEU is now working with the Public Guardian and Adult Protective Services so that this elderly citizen is protected and residing in a safe, clean home.

## **TRAINING OF CITY DEPARTMENTS**

Crucial to the entire code enforcement process is adequate training of City code enforcement inspectors so that violations are adequately and comprehensively addressed. During this past year, CEU provided substantive training to NCCD staff on the prosecution of illegal grading and substandard housing. Formal training was also provided to the Fire Prevention Bureau on how to issue misdemeanor citations and prepare a case for prosecution. Continued training helps ensure that proper evidence is obtained and cases can be timely prosecuted.

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San Diego City Attorney's  
**CONSUMER AND ENVIRONMENTAL  
PROTECTION UNIT**  
Criminal Division



**UNIT SCOPE OF WORK**

The Consumer and Environmental Protection Unit (CEPU) prosecutes a wide range of criminal and civil consumer fraud and environmental offenses. The Unit is led by Head Deputy City Attorney Cindy Davis. CEPU cases originate from several sources, including:

- **Agency Referrals**

CEPU receives cases directly from numerous law enforcement and licensing agencies, including the National Internet Fraud Complaint Center, Contractors State Licensing Board, State Bureau of Automotive Repair, State Department of Fish and Game, County Department of Agriculture Weights and Measures, County Department of Environmental Health, San Diego Police Department, City Storm Water Pollution Prevention Unit, and many others.

- **Citizen Complaints**

CEPU received more than 500 written consumer complaints from San Diegans last year. Each complaint was screened by an investigator and an attorney before it was investigated and/or prosecuted, referred to another agency, filed for future reference, or declined. In addition to written complaints, CEPU also operates a Consumer and Environmental Helpline. The Helpline received more than 1,000 calls last year.

- **By Invitation**

Because of their proven expertise, CEPU deputies are invited to join District Attorney and City Attorney offices throughout the state in multi-jurisdictional civil consumer and environmental protection litigation. The offices benefit through shared resources and statewide judgments.

- **Self Generation**

CEPU members and office staff generate cases by reporting consumer and environmental offenses they observe or become aware of.

- **Community Outreach**

CEPU members made 23 presentations to various community groups on numerous topics including how to avoid internet fraud and how not to become a victim of identity theft. CEPU co-sponsored the second annual Consumer Protection Day with the District Attorney's Office and participated on a panel discussion of Identity Theft. More than 1,200 consumers attended this community educational event. Deputy Joan McNamara was a presenter at the National eNotary Conference. Head Deputy Cindy

Davis and Deputy Steven Gold served as presenters and trainers at the Statewide Consumer Prosecution Conference.

## **HIGHLIGHTS**

- CEPU filed 104 civil and criminal cases with 4 deputies last year. Cases included a wide variety of criminal prosecutions and civil law enforcement actions. In addition, CEPU has several complex statewide civil unlawful business practice cases in various stages of litigation.
- Consumer and Environmental Helpline received more than 1,000 calls last year. CEPU received and reviewed more than 500 written complaints. In addition to calling the Helpline, consumers can now download and print consumer complaint forms and submit them directly to CEPU for review.
- Additionally, CEPU processed more than 100 consumer internet fraud complaints. Approximately half of the complaints were referred to the Dispute Resolution Office, who successfully resolved many of them. A number of the remaining complaints were investigated by CEPU and either prosecuted or referred to the appropriate agency.
- In a consumer protection initiative, CEPU authored a written opinion sent to the State Attorney General recommending that eBay seller “drop off” businesses be licensed as secondhand dealers. The Attorney General adopted the recommendation, which should reduce the internet trafficking of stolen property on eBay.
- CEPU obtained court orders totaling:
  - \$2,143,000 in restitution for consumer victims
  - \$65,000 in criminal fines
  - \$25,000 in investigative costs to agencies
  - \$3.6 million in civil penalties with \$730,000 paid into the Proposition 64 Consumer Protection Enforcement Fund<sup>4</sup>
  - \$1.3 million in civil costs with more than \$275,000 paid directly to the City of San Diego.

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<sup>4</sup> Beginning in 2005, civil penalties obtained in false advertising and unlawful business practice cases are now restricted by law in their use. Pursuant to Business and Professions Code section 17206, these funds may only be used by the prosecuting agency for the "enforcement of consumer protection" laws. The City Attorney's Office has created a segregated Proposition 64 Consumer Protection Enforcement Fund in which to deposit these funds.

## **Successful Prosecutions**

- 27 illegal dumping and hazardous waste disposal cases
- 39 unlicensed professionals and unlicensed contractor cases
- 7 water pollution and storm water violation cases
- 14 commercial fish and game violation cases.

## **SIGNIFICANT CASES**

- ***Equilon***

Equilon, a subsidiary of Shell Oil Company, was ordered to pay \$10.75 million for countywide environmental health violations relating to its gas stations' underground storage tanks. The judgment required 62 Shell gas stations to install new tamper-resistant underground sensors and increase maintenance and inspections. Deputy City Attorney Steven Gold was the lead prosecutor in the case, which included the District Attorney's and County Counsel's offices.

- ***Veteran's Charity Fraud***

Douglas Dees bilked more than \$80,000 from more than 1,500 donors in San Diego in a phony Veterans charity fraud. Dees was sentenced to 270 days in jail for operating the phony charity. Head Deputy City Attorney Cindy Davis prosecuted the case in partnership with the Department of Veterans Affairs Office of Inspector General.

- ***Anti-Gas Gouging Ordinance***

After the City Council passed its anti gas-gouging ordinance, CEPU monitored gas station prices and put many owners personally on notice of the new ordinance.

- ***Fish Poachers***

Deputy City Attorneys Kathryn Lange and Michael Rivo successfully prosecuted two fish poachers for spearing a 170-pound female giant sea bass in the La Jolla Ecological Reserve. The defendants were banned from fishing in the reserve for three years, ordered to forfeit their diving equipment, and ordered to perform public work service among other terms of probation.

- ***Unlicensed Contractors***

Working with the State Contractors Licensing Board, Deputy City Attorney Joan McNamara prosecuted nine unlicensed contractors who were arrested in a sting operation in the Scripps Ranch area.

- ***Thorton Capitol Advisors***

Deputy City Attorney Joan McNamara successfully prosecuted *Thornton Capital Advisors* and its president for electronically forging a notary's name and seal and coercing a notary to use her seal improperly. The defendants were ordered to pay for a statewide educational campaign for notaries regarding electronic notarization in addition to a \$10,000 fine.

- ***Pacific Beach Portraits***

Victims of Pacific Beach Portraits received more than \$50,000 in restitution after the business owners pleaded guilty to grand theft and false advertising for failing to deliver more than 60 wedding photography packages.

- ***BP West Coast Products***

BP West Coast Products, which owns and franchises 83 Arco stations, was successfully prosecuted for failing to follow a 2003 court order to update its underground storage tank sensors to detect gasoline leaks. The 2003 order was a result of a prior prosecution by CEPU. The 2005 prosecution requires BP/Arco to install the sensors and hire additional trainers and inspectors. The defendant was ordered to pay \$1.3 million in costs and penalties (including \$150,000 to the Proposition 64 Consumer Protection Enforcement Fund) and initiate a training program for station owners.

- ***Mobile Food Vendors***

Responding to a serious outbreak of Salmonella poisoning affecting more than 40 people in the County, Deputy City Attorney Joan McNamara successfully prosecuted two mobile food vendors for selling adulterated soft cheese.

- ***WalMart and Walgreens***

CEPU successfully stopped the sale of unapproved medical devices, namely AbEnergizer stomach toning belts. Some consumers received burns caused by these unapproved devices. WalMart and Walgreens were ordered to pay more than \$650,000 in restitution, penalties and costs for the retail sale of the devices.

- ***Sick Puppies for Sale***

Margarita Diaz pleaded guilty to selling parvo virus-infected puppies to unsuspecting consumers. CEPU worked with the media to warn consumers about the smuggling and sale of sick puppies.

- ***Stereo 1 Warehouse***

CEPU and the District Attorney's Office filed a false advertising and unlawful business practices case against *Stereo 1 Warehouse* arising out of the sale and installation of car stereos. More than 40 consumers filed complaints against the business.

- ***Unlicensed Business Owner***

CEPU successfully prosecuted a number of unlicensed individuals doing business in the City, including an unlicensed chiropractor who injured his client, an unlicensed dental hygienist practicing in the City, unlicensed car dealers and unlicensed secondhand dealers, in addition to the usual large number of unlicensed contractors.

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San Diego City Attorney's  
**DOMESTIC VIOLENCE AND  
SPECIAL VICTIMS UNIT**  
Criminal Division



**UNIT SCOPE OF WORK**

The Domestic Violence and Special Victims Unit, led by Head Deputy City Attorney Gina Rippel, is responsible for the vertical prosecution of all misdemeanor domestic violence (including same sex cases), stalking, elder abuse and child abuse cases within the City of San Diego and Poway. In addition, the Unit actively participates in training, outreach and prevention efforts.

- The Unit provides aggressive, comprehensive, and early prosecution of domestic violence cases resulting in a reduction of violence escalation and homicides in the City of San Diego. In 2005, the Unit reviewed approximately 4,000 police reports. The main concern is to maintain victim safety while holding batterers accountable for their actions.
- The Domestic Violence and Special Victims Unit is a founding partner of the San Diego Family Justice Center, America's most comprehensive center for families who are dealing with domestic violence. It is unique because it's the first facility of its kind that houses the entire domestic violence units of a police department and a prosecutor's office.

**HIGHLIGHTS**

- **Evidence Based Prosecution**

The Domestic Violence and Special Victims Unit is a leader in "Evidence Based Prosecution." Historically, domestic violence prosecution was stifled when a victim declined to prosecute. However, our attorneys are specially trained in the prosecution of cases without the victim's participation in the case. Further, our attorneys train other prosecutors around the country to promote aggressive prosecution techniques, respond to weekly requests from other prosecutors outside the jurisdiction for advice, and conduct trainings for law enforcement organizations, the United States Military and community groups.

- **Child Abuse Prosecution**

In 2005, approximately 300 child abuse cases were screened for issuing. These cases include child abuse and neglect, molestation, sexual battery, statutory rape and child pornography.



In addition to prosecution, the City Attorney's Office is also focused on improving the lives of children through our participation in the School Attendance Review Board (SARB) and the Teen Relationship Violence Council.

- **SARB (School Attendance Review Board)**

Our office is also responsible for filing Education Code violations arising out of referrals from San Diego City Schools. These cases involve parents who have not been complying with compulsory education laws in having their children attend school regularly. It is the parents' responsibility to get their children under 12 to school on a regular basis. If there have been numerous unexcused absences and the parents have failed to cooperate with the School District's efforts to improve the attendance problem, they will be referred to us for prosecution. We are also responsible for attending any review hearings in juvenile court to ensure the parents are complying with all court orders and that the minor's school attendance has improved.

- **Domestic Violence Council – Teen Relationship Violence (TRV) Committee**

Deputy City Attorney Judy Taschner currently serves as Chair to this multi-agency committee which addresses issues in our community involving violence among teens in relationships. The TRV Committee is comprised of individuals from Probation, Law Enforcement, City Schools, County Schools, District and City Attorney's Office, Office of Violence Prevention, SANDAG, and local community based organizations. The Committee recently completed a Public Service Announcement on TRV that has been aired on numerous television stations, updated the Teen Yellow Pages (a resource created by teens for teens), developed TRV awareness cards for law enforcement and completed a countywide survey on teens' attitudes and experiences with TRV.

- **Elder Abuse**

The City Attorney's Office continues to not only prosecute domestic violence, but also focus on the prevention of elder abuse. Through prosecution, the City Attorney's Office seeks justice and protection for elders. Further, the safety of elders in our community is pursued through outreach and training efforts. The City Attorney's Office also ensures that elders are educated about services that could aid in their safety and well-being.

We are an active participant in the Elder Abuse Council (EAC). During these meetings, police officers, prosecutors and licensing agency representatives meet to discuss issues of elder abuse in the law enforcement community.

- **Elder Death Review Team**

Additionally, we serve as a member of the San Diego County Elder Death Review Team (EDRT). The EDRT meets every two months to review suspicious deaths of elders. The EDRT consists of prosecutors, representatives of Aging and Independence Services, a medical examiner, a forensic nurse, a representative of the Public Guardian, and others. The team reviews these cases and makes joint recommendations as to whether further investigation of these cases should be conducted, and makes recommendations as to how elder abuse cases can be handled more effectively in the future to prevent more deaths from occurring.

- **San Diego Family Justice Center**

We work closely with the Department of the Family Justice Center, located at 707 Broadway in downtown San Diego. The Domestic Violence Units of the City Attorney's Office and the San Diego Police Department are also housed in the same location to ensure that victims of domestic violence have access to services that lead to their safety, information to lessen the emotional toll of being a victim, and assistance in going through the court process. Being an onsite partner of the FJC allows frequent contact with the SDPD Domestic Violence and Elder Abuse units. This consistent communication enables the Unit to receive investigative reports, learn vital information immediately, and secure the necessary response if a victim is in imminent harm. In addition to nearly daily contact between members of our Unit and members of the FJC or SDPD, key Unit staff attends biweekly "site committee" meetings with the FJC and SDPD to continue to improve communication amongst the partners. This communication ultimately leads to improved victim safety and more successful prosecution of our cases.

### **SIGNIFICANT CASES**

- ***People v. Federico Quintero***

The complaint alleged Defendant violated a restraining order by calling the victim and threatening to have two of his friends kill the victim if she went to an upcoming court hearing. The next day, two men went to the victim's home and demanded to speak to her. The men had a photo of the victim with them and told the victim's mother, "We have a message for your daughter. She better not show up at court." Additionally, defendant was in possession of five guns, also a violation of the restraining order. The jury convicted defendant of all twelve counts charged, including making a criminal threat. In addition to being ordered to have no contact with the victim for three years, Defendant was sentenced to 180 days custody, three years probation and a 52 week domestic violence treatment program. The judge ordered the weapons to be destroyed.

- ***People v. Jason Marchan***

The complaint alleged Defendant grabbed the victim, who was two months pregnant, by the hair, dragged her across the room and pushed her outside of their apartment because she would not give Defendant any money. We proceeded with the case despite the fact there were no direct witnesses and the victim had moved out of the state and was not present to testify at the trial. The jury convicted Defendant of violating Penal Code section 273.5 – battery on a significant other with injury.

- ***People v. Lakeith Lathan***

The complaint alleged Defendant kicked in the bathroom door while the victim was taking a shower. Defendant hit her all over her body until she fell to the floor. Once Defendant left the bathroom, the victim crawled out of the shower to close the door. Before she could, Defendant returned and punched the victim in the eye. Defendant also broke the victim's cell phone and tore the phone cord out of the wall. The jury found Defendant guilty of violating Penal Code sections 273.5 – battery on a significant other with injury; Section 243(e)(1) – battery on a significant other; and Section 591 – destroying a phone line. He was sentenced to 365 days custody, three years probation, and a 52 week domestic violence treatment program. Additionally, he was ordered to have no contact with the victim for three years.

- ***People v. Stephen Barnes***

The complaint alleged the 13-year-old victim's dad was intoxicated, threatened to kill the victim, hit her on the head and strangled her by wrapping a towel around her neck. When the victim called 911, Defendant fled and got arrested for DUI, as well. Defendant pled guilty to Penal Code sections 273a(a) – child endangerment section; 422 – making a criminal threat, 242-243(a) – battery; and Vehicle Code section 23152(a) – driving under the influence of alcohol. He was sentenced to 365 days custody plus 280 days consecutive jail time, and formal probation with terms including 52 week child abuse counseling. The court ordered Defendant to have no contact with the victim for three years.

- ***People v. Gregory Pavlicek***

Defendant was apprehended during an international investigation of websites that sell child pornography. Defendant was purchasing access to those illegal websites via credit card. A search warrant revealed possession of hundreds of images and movies of hard core child pornography. Following negotiations, Defendant pled guilty to 10 counts of Penal Code section 311.11 – possession of child pornography and is serving 120 days in custody. His sentence also included formal probation with sex offender treatment, a monetary donation to the National Center for Missing and Exploited Children, 4<sup>th</sup> Amendment waiver, and mandated registration as a sex offender. Additionally, Defendant was also ordered to forfeit all of his computer equipment.

- ***People v. Johna Glen***

The complaint alleged Defendant stood over the 72-year-old victim while pointing a knife at him and yelling “You better hope I don’t do this . . . I’m ready to go to jail.” The jury convicted Defendant of violating Penal Code section 417(a)(1) – brandishing a weapon; and section 245(a)(1) – assault with a deadly weapon. Defendant was ordered to have no contact with the victim for three years and was sentenced to 220 days custody, three years probation, a treatment program and substance abuse counseling.

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San Diego City Attorney's  
**DRUG ABATEMENT RESPONSE TEAM**  
Criminal Division



**UNIT SCOPE OF WORK**

The Drug Abatement Response Team (DART) targets nuisance properties and businesses throughout the City of San Diego using a multi-agency task force approach coordinated by two DART prosecutors within the City Attorney's Office. DART is led by Head Deputy City Attorney Makini Hammond. The principal members of the DART task force also include the San Diego Police Department (SDPD) and inspectors from the Neighborhood Code Compliance Department (NCCD).

- DART community prosecutors primarily utilize the *civil* nuisance abatement remedy although they use the criminal and administrative judicial systems when appropriate. Through these avenues they seek to address chronic problems found in a variety of different types of properties and businesses that are negatively impacting San Diego communities.
- DART prosecutors work with various city, county, state, private agencies, and departments depending on the specific problems that need to be addressed. As community prosecutors, they also attend community meetings and functions to work with community members and to learn issues and concerns firsthand. Until January 2005, the DART prosecutors were part of the Code Enforcement Unit in the City Attorney's Office.
- DART prosecutors meet on a weekly basis with a designated DART narcotic detective who investigates nuisance problems city-wide. Based on our success in addressing public nuisance and drug properties and problems, Western, Central, and Mid-City SDPD divisions have assigned dedicated officers to specifically address nuisance properties in their jurisdiction. As a result, DART prosecutors have had a substantial impact in helping to reduce calls for police service at specific problem locations while at the same time, making areas of the City, particularly communities within Western, Central, and Mid-City Divisions, safer and more secure.

**HIGHLIGHTS**

In 2005, DART prosecutors carried a caseload of approximately 141 open cases and opened more than 50 new cases. Between October 2004 and August 2005, statistics compiled by SDPD Western Division demonstrate DART's partnership has reduced approximately 1,472 calls to police and 1,810 out-of-service hours at nuisance properties within Western Division alone. Given the limited police resources, the work of the DART prosecutors is an invaluable resource to both the Police Department and the San Diego community.

- ***Nuisance Motels***

These motels are often characterized by negligent or corrupt management/ownership which results in prolific narcotic, prostitution and nuisance activity occurring at various hours of the day and night. Not uncommonly, community residents are aware of these problems as they have personally seen hand-to-hand transactions occur or even been solicited for this illicit activity themselves. Oftentimes, these motels also have many years of deferred maintenance and extensive code violations which act as a magnet attracting a criminal population to the property because it sends a loud and clear message that this is a place where anything goes. In order to address these serious problems, DART prosecutors coordinate with patrol officers and detectives to conduct enforcement and where warranted, sophisticated undercover operations, to document the problems as well as management's awareness and lack of concern.

- ***Problem Bars and Nightclubs***

DART prosecutors have dealt city-wide with a number of problem bars and nightclubs but particularly in the Gaslamp District and beach areas where they are concentrated. These problem bars and nightclubs significantly drain scarce law enforcement resources. The large numbers of inebriated individuals poses a significant problem for the limited number of patrol officers available in these areas who are forced to involve their entire squad (for officer safety reasons) to control the crowds. As a result, there are often few or no officers available to respond to calls for service in other areas.

In response to the problem, DART prosecutors have partnered with various enforcement agencies including San Diego Police Department Vice Unit, California State Department of Alcohol Beverage Control (ABC), Fire Marshals, Centre City Development Corporation (CCDC), and Neighborhood Code Compliance Department (NCCD), to comprehensively address these issues.

Since 2005, this task force began meeting on a regular basis to identify problem bars and nightclubs whose business operations are frequently characterized by one or more of the following: chronic over-serving of alcohol; over-crowding well beyond established occupancy levels; failing to properly regulate the crowds on both the interior and exterior of their establishment as required by law; and, illegally expanding their premises without proper permits and approvals. These poor business practices substantially contribute to the associated criminal and nuisance activity such as fights, assaults, batteries, public urination, public drunkenness, noise disturbances, and even homicides.

- ***Gang Properties and Problems***

DART prosecutors address gang problems by identifying properties where gang members loiter and hang out. These properties are often focal points for drug trafficking and gang violence, particularly drive-by shootings, as rival gang members seek to retaliate for past transgressions or revenge for a drug deal gone bad. Where the nuisance and gang violence affects a larger geographic area, DART prosecutors have obtained court-ordered injunctions against local gang sets. These gang injunctions often require many months to prepare because they are extremely labor-intensive requiring extensive use of San Diego Police Department resources, especially the Gang Unit, to identify and

document problem gang members and gang hangout locations from which they should be enjoined.

In 1998, DART prosecutors obtained the first gang injunction within the City of San Diego against the Lincoln Park criminal street gang. DART prosecutors working with the gang unit have filed a civil gang abatement case against another local gang set.

- ***Drug Properties***

DART was originally formed in 1989 to address the proliferation of narcotic-related problems throughout the City of San Diego. Today, DART prosecutors have expanded their focus to address a variety of different public nuisance properties to meet the increasing and complex needs of the community and the San Diego Police Department. Nevertheless, the majority of cases DART handles still involve narcotics.

Properties plagued with illegal narcotic trafficking and use within the City of San Diego come in a variety of shapes and sizes. They include single-family residences, condominiums, and apartment complexes including large Section 8 housing developments regulated by the federal Department of Housing and Urban Development (HUD). Some properties are known as gang hangouts where gang members congregate to traffic and use narcotics. Others are characterized as narcotic “flop houses,” where transients and/or criminals gather for temporary shelter and to smoke and deal narcotics. In these situations, when the property is owner-occupied, then the property owner is undoubtedly aware of, if not directly involved in, the narcotics activity.

When the property is not owner-occupied, frequently the property owner is a close family relative of the tenant, the property owner hereby essentially enables the drug and criminal activity to occur on the property by offering a comfortable living arrangement with little or no responsibility on the part of the tenant to work or pay rent. Oftentimes, these properties are visible eyesores in their communities and have a whole host of code violations and many years of deferred maintenance requiring the intervention of the NCCD Inspector to help “rehabilitate” the property.

The other kind of situation that is unfortunately becoming more prevalent is the abuse of dependent elderly property owners. Oftentimes, dependent elderly property owners will unwittingly allow narcotics users and dealers to live on the property in the guise of being “caretakers”. At other times, the narcotic users and dealers are even close relatives of the property owner such as adult grandchildren. In addition to the civil remedies available to DART in these situations, DART prosecutors have worked in conjunction with County Adult Protective Services or the County Public Guardian’s Office to provide for the protection and long-term care needs of these elderly individuals.

- ***Nuisance Public Pay Telephones***

DART also has the responsibility to address nuisance public pay telephones. Public pay telephones located in high crime areas may become magnets for drug users, dealers, prostitutes, felons, and other criminals. In these situations, the payphones are used to directly and indirectly facilitate drug trafficking, prostitution, gang activity, public drinking, urinating in public and other public nuisance activity. In addition to being used to place calls in furtherance of illicit activity, the problem payphones are also

used as a ruse to avoid law enforcement contact and to legitimize their loitering at that particular problem location. These problem payphones are also used at times to conceal contraband and other illegal substances in the pedestal, housing, or even the coin return slot.

- ***Nuisance Smoke Shops***

DART prosecutors also address problem smoke and head shops that sell illegal narcotic paraphernalia in the guise of tobacco products. These business establishments are located city-wide with the highest concentrations in the college and beach areas. Oftentimes, these problem smoke shops ignite intense community outrage and protest, particularly when they are located near schools, churches, candy stores, and other areas frequented by children. Additionally, these stores attract drug users and dealers to the store's location to make drug transactions thereby creating substantial negative secondary effects. Some of these establishments offer for sale everything needed to traffic and use narcotics with the exception of the drugs themselves including, but not limited to, plastic baggies, weighing scales, crack pipes, spoons, and products to allow drug users to test clean. Although DART prosecutors have forced the closure of several smoke shops, due to limited staffing resources, DART has only been able to address such nuisance activity on a store by store basis.

- ***Multi-Jurisdictional Efforts***

In the majority of cases, DART prosecutors deal with an owner of a single nuisance property or business in a single City Council district where enforcement is conducted by a particular police division. On occasion, however, DART prosecutors have had to address a single property owner who owns multiple nuisance properties throughout the City of San Diego. These types of cases are more complex and require even more of a coordinated effort by DART prosecutors and our task force partners because of needed consistent enforcement across Council district lines and police division jurisdictions.

An example of this multi-jurisdictional effort involved several nuisance properties owned by a single owner in Council Districts 2, 4, and 7 in various police divisions including Mid-City, Western, and Southeastern. All of the properties were characterized by problem tenants coupled with varying degrees of code violations. In the single-family property at Weaver Street, officers found an elaborate marijuana grow in the crawl space of the property and arrested several individuals for illegal possession and trafficking of marijuana. In the single-family property on Juan Street in Old Town, officers found substantial quantities of marijuana and methamphetamines, illegal weapons including brass knuckles and loaded firearms, and stolen checks. On both properties, the property owner was also stealing electricity with illegal connections to either the neighbor's property or to San Diego Gas and Electric's overhead transmission line.

In response to these problems, DART prosecutors filed a civil lawsuit and obtained a court-ordered injunction against the owner to enjoin him from committing code and criminal violations at all of his properties. The property at Weaver Street was deemed uninhabitable and is under court order not to be occupied until certain repairs are made. In addition, among other things, the owner is required to keep certain identified problem individuals away from his properties and to have a professional property management company handle the management responsibilities on his rental properties.

DART prosecutors are currently preparing to take further legal action against the owner for his continued violations of the injunction and the law.

### **SIGNIFICANT CASES:**

#### **Council District 2**

*Establishments* - DART has developed a close working relationships with the SDPD Vice Unit, Fire Marshals, and ABC. As a result, DART is pro-actively involved in addressing serious concerns involving problem bars, nightclubs, and even parking lots associated with these establishments city-wide but especially in the Gaslamp District and the beach areas. By doing so, DART is relied upon as a law enforcement tool to support the police with making these areas safe and secure for the many patrons, tourists and visitors who patronize these attractive entertainment and tourist locations. In the past year, DART has met with numerous bar and nightclub owners to inform them of the particular problems and suggest ways to improve their business operations in the areas of reducing the over-service of alcohol, improving crowd control, and correcting code violations.

When the problems at a particular establishment are too severe or the owner's cooperation is not forthcoming and the problems continue, DART is forced to take a more aggressive approach to protect the public safety and welfare. In 2005, DART filed a civil abatement lawsuit against the owners of Margarita Rocks, a Pacific Beach nightclub, and obtained a court-ordered injunction which required the owner to pay civil penalties, as well as reduce music and noise levels, maintain a "do not admit" list of problem individuals, increase security staffing, and take extra precautions to avoid over-serving alcohol to patrons.

Also in 2005, DART assisted City fire marshals in shutting down Antonio's, a problem nightclub in the downtown area which had serious fire code violations. In addition to the fire code violations, nightclub patrons and gang members were involved in numerous altercations. One such incident involved shootings at a nearby large open downtown parking lot used by the patrons of this club. These kinds of problems required the SDPD's Central Division to station numerous officers at that location on a regular basis to respond to incidents and maintain order and security. In response to this tremendous drain on limited police resources, DART also met with the owner and operators of the public parking lot located at 1169 8<sup>th</sup> Avenue to discuss these issues. As a result, the parking lot has installed high-tech surveillance cameras, limited the hours of parking, and erected signage and barriers to better control their parking lot.

#### **Council District 3**

The DART Unit has a close partnership with the SDPD's Western Division as a result of their designation of a full-time officer to work with us to address nuisance problems within their jurisdiction. In particular, the constituents of Council District 3 have been the direct beneficiaries of this successful partnership. There have been several problem properties and businesses in this past year alone that have garnered considerable community outrage that have been abated as a result of the DART task force partnership with Western Division.



- ***Motels***

The Park View Inn Motel on Lincoln Avenue was the source of substantial community attention because of the drug and prostitution activity that was prevalent there. As a result of DART's involvement working with Western Division and the community, the motel is now closed for business and has been sold to a developer who is in the process of developing it into residential apartments. The DART Unit also recently obtained a court-ordered permanent injunction against the owners of the Welcome Inn Motel because of the proliferation of drug and prostitution activity facilitated by motel management. There an undercover police operation revealed that the motel management was directly facilitating prostitution activity. Among other things, the management would place prostitutes in certain rooms to avoid detection by law enforcement and would place calls to rooms to warn prostitutes and others of police presence on the property.

- ***Private Properties***

A number of residential properties in the North Park area have been chronic problems for the community. Neighbors frequently complained about transients, drug users, drug dealers, and gang members who engage in various crimes such as fights and other violent-related incidents. On one of the properties located on 4115 Utah Street, DART obtained a court-ordered injunction to help resolve the problems. There was narcotic activity and the property was an attraction for local drug users, prostitutes, and transients who had set up an encampment in the rear yard. The DART Unit also enlisted the County Public Guardian's Office to establish a conservatorship for the mentally ill property owner and to have the property sold. The new owner has repaired and rehabilitated the property. Likewise, DART prosecutors addressed ongoing problems involving drugs, fights, and public disturbances at 2882 Polk Avenue. DART prosecutors successfully worked with the property owner to evict the problem tenant and to properly board and secure the property.

- ***Smoke Shop***

DART prosecutors were involved in addressing the sales of illegal narcotics paraphernalia at a local smoke shop known as 69 Video & Gifts located at 3711 El Cajon Boulevard. DART worked with Mid-City patrol officers to document the sales of illegal narcotics paraphernalia from this establishment. Rather than face prosecution, the business owners decided to shut down their establishment.

#### **Council District 4**

- ***HUD Regulated Apartment Complexes***

DART has continued to work diligently in addressing a number of drug properties and gang-related problems at various locations within Council District 4 to improve the safety and security of local residents and the public. The problem properties DART addressed includes businesses and single-family residences as well as large apartment communities that are HUD-regulated, which were the location of shootings and/or recent youth homicides. These locations are commonly used by gang members to loiter and engage in criminal activities such as narcotic trafficking and weapons possession.

In particular, the problem HUD-regulated apartment complexes contain several hundred apartment units which, among other things, were characterized by poor management and lack of proper security that fostered a dangerous out-of-control environment. After DART's involvement with the Meadowbrook Apartments, working in close partnership with the Council office and the Southeastern Division, the management has made substantial security improvements to the property by installing surveillance cameras and improved fencing.

- ***Retail Establishment***

Along with the San Diego Police Department, DART has partnered with the Recording Industry Association of America and the Motion Picture Association of America to address a chronic public nuisance business within the community. FAM MART Discount Store is a large indoor swap meet-type business comprised of approximately twenty-five individual vendors. Many of the FAM MART vendors were involved in selling pirated music and movie merchandise, as well as counterfeit clothing. As a result of these illegal business practices inside FAM MART, individuals including gang members were involved in the illegal sales of DVDs, CDs and clothing in the parking lot. There were also arrests for drug sales. As a result of this blatant criminal activity both inside and outside, gun violence was a common occurrence at FAM MART. On 17 November 2005, DART prosecutors working with the Mid City Division organized a sweep of FAM MART resulting in the arrest of 16 individuals representing ten (10) separate businesses operating inside of FAM MART. In total, over 5,500 items of illegal counterfeit and/or pirated merchandise were seized with a value of over \$100,000. The City Attorney's Office has filed a civil complaint and is presently negotiating a settlement agreement with the business owner.

- ***Nightclub***

DART prosecutors have also addressed the Rio Nilo, a longtime problem nightclub that was located on Home Avenue which had significant problems despite the fact that they did not have a liquor license. Nevertheless, police would find individuals inside the club with alcohol and individuals would be arrested for fighting in the parking lot. The nightclub had repeated code violations such as emergency exiting. In addition to these issues, the owner and managers would allow the property to be used by transients to illegally store belongings and to illegally connect electricity. After DART intervened and the business owner signed an agreement with the property owner to vacate the property and terminate the lease by April 2006. The property is now vacant and the property owner has begun obtaining the permits for demolition.

## **Council Districts 6 and 7**

- ***Drug House***

DART prosecutors have addressed several problem properties and businesses within these districts. These referrals are usually generated either directly from frustrated community residents or from individual officers who recognize that making arrests alone have not adequately stopped the nuisance or criminal activity.

In Council District 6, DART prosecutors filed a civil lawsuit against an out-of-state owner of a problem residential property on 1380 Knoxville Street. The property was

referred by neighbors who were frustrated with narcotics and other public nuisances activity occurring there. The injunction required the owner to vacate the property by evicting the problem tenant—her brother—and to hire a property management company to properly screen and rent out the property.

- ***Public Safety***

In Council District 7, the captain of SDPD's Eastern Division requested DART's and Western Division's assistance to address a problem residential property on 6961 Renkrib Avenue. The property had suffered fire damage and the owner was living in a dilapidated recreational vehicle in the driveway. The owner caused repeated concerns for the public safety and welfare of the neighborhood. The fire department was required to respond on an emergency basis on multiple occasions because the owner had improperly and illegally tapped into the electricity panels creating a severe fire hazard. The swimming pool, with its stagnant green water, also presented a potential threat for the spread of West Nile Virus. The owner was unstable and felt paranoid that the neighbors were out to get him. He had been in an altercation with one of the neighbors and left threatening messages with others. In order to address the variety of problems on the property, DART prosecutors coordinated with various agencies including the City's fire department, San Diego Gas & Electric, and County Environmental Services to develop a coordinated response. As DART prosecutors were preparing to file a civil lawsuit against the owner, the property was sold at foreclosure. DART prosecutors immediately contacted the new owner and expedited the eviction of the previous owner from the property. The new owner has now fully rehabilitated the property.

### **Council District 8**

- ***Bars***

DART prosecutors have been involved in addressing a variety of problem properties within Council District 8. In particular, the El Morelense Bar that was located in close proximity to SDPD's Central Division presented chronic problems to the police and the community and has now been permanently abated. At the El Morelense, the scene could best be described as the "Wild, Wild West". In addition to repeated ABC and code violations, drug trafficking and recurring incidents of violence-including stabbings and shootings-frequently occurred at the bar. In one incident two males came in with guns and shot bullets in the air after not being able to find the individual they were looking for. At least one of the bullets ended up hitting a patrol sergeant's vehicle. After a DART prosecutor intervened and got the property owner involved, the bar was shut down and is no longer a problem for the police or the community.

- ***Smoke Shops***

In addition to handling problem bars, DART worked with the community to shut down A&A Smoke Shop, a local smoke shop at 2964 Imperial Avenue. The store was engaged in the sales of illegal drug paraphernalia, including but not limited to crack pipes, plastic baggies, and scales. The store was located next to a candy store and across the street from an after-school program. DART prosecutors followed up on a well-publicized local community rally to protest the sales of illegal narcotics paraphernalia by organizing a meeting with the property owner and the business owners. At the meeting, DART prosecutors and the DART detective advised them of the illegality of selling drug

paraphernalia and the legal consequences of continued violations. In order to avoid the sanctions of criminal prosecution and a civil injunction, the smoke shop owners agreed to immediately shut down their operation.

- ***Nuisance Pay Phones***

DART prosecutors have worked closely with Central Division officers to address a nuisance public payphone located at 3101 Imperial Avenue. As a result of the presence of these payphones, this location has been the site of two homicides and a tremendous amount of criminal activity. The payphones acted as a magnet attracting prostitutes, drug users, dealers, parolees, and other criminals. The payphones directly facilitated narcotic and prostitution activity because they were used by prostitutes and drug runners to coordinate the timing of narcotic drop-offs and prostitution hook-ups. Even the housing and coin return slot of the payphones themselves were used as an instrumentality to hide and conceal illegal contraband. As a result of DART's efforts working with Central Division, the payphones have been removed, bringing immediate relief to the surrounding community as the problem individuals no longer congregate at that location. Consequently, the time spent by patrol officers addressing the serious problems at this location is now being focused in other areas of the City that warrant their attention. However, the payphone owner is currently appealing the removal of the payphones and the matter has been set for an administrative hearing. Likewise, DART prosecutors were instrumental in having public nuisance payphones at 2014 K Street removed. At that location, the property owner is an elderly widow who was complaining about the ongoing gang activity and loitering of problem individuals.

- ***Gang House***

DART prosecutors have also been involved with turning around a residential property on 3151 Clay Avenue, well-known to the police and neighbors as a local gang house. The location was home to a documented West Coast Crip gang member. Officers routinely contacted numerous documented gang members loitering at of the house. On several occasions, officers driving by on patrol would have rocks and bottles thrown at them from crowds as large as 50-100 people on the property. Officers frequently recovered firearms from the location as these gang members would flee to avoid being contacted by police. In the process of fleeing, these gang members would discard their firearms to avoid arrest. In March 2005, there was a drive-by shooting as rival gang members would often "roll up" on the gang members loitering there. As a result of the work of DART prosecutors with SDPD's Gang Suppression Team, the property owner evicted the tenants, rehabilitated the property, and re-rented it. The problems have disappeared.

- ***Gang Abatement Action***

In conjunction with the SDPD Gang Unit, DART prosecutors have filed a civil gang abatement action and are in the process of obtaining a court-ordered injunction to address the gang activity that is creating a public nuisance for the residents of this community.

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San Diego City Attorney's  
**MISDEMEANOR DRIVER'S  
LICENSE PROSECUTIONS**  
Criminal Division



**UNIT SCOPE OF WORK**

The San Diego City's Attorney's Office is part of the San Diego Police Department's STOP Team which was established in 1997. The primary focus is to prosecute suspended, revoked, and unlicensed drivers. Deputy City Attorney Linda Peter litigates all cases where the state seeks to forfeit the vehicles of habitual traffic offenders. We also work closely with officers to prosecute illegal street racers and spectators that gather on city streets. Deputy City Attorney Peter is a liaison on prosecution issues related to other traffic matters, including DUI enforcement, hit and run investigations, and incidents of road rage and reckless driving.

**SIGNIFICANT CASES:**

- **People v. Montoro.**

A routine traffic stop for a broken tail lamp led to the prosecution of Defendant for multiple driver's license violations. Defendant's driver's license was expired. Plus, his driving privilege had been suspended or revoked by DMV six times since 1994 for DUI-related offenses and convictions, and for accidents. A jury found Defendant guilty and he was ordered to pay a fine of \$1844, serve 30 days in custody, placed on three years probation, and ordered to have an ignition interlock device installed on his vehicle.

- **People v. Pagoaga**

Police were called to investigate a collision where a vehicle crashed into a fence and then a tree. Defendant was found behind the wheel. He had no driver's license issued and his driving privilege had been suspended for a medical condition. Defendant was found guilty by a jury and he was placed on probation and ordered to pay a fine of \$1,000.

- **People v. 2005 Cadillac (Young)**

In February 2005, the registered owner of this vehicle was arrested for DUI and driving on a suspended license. The defendant's license was expired, and his driving privilege was suspended and revoked seven times for various reasons, including previous DUI offenses and convictions. Because of the defendant's driving history, including three prior convictions for driving on a suspended license, a judge ordered the vehicle forfeited in April 2005.

- **People v. 1996 Landrover (Toliver)**

In September 2005, this vehicle was forfeited from a repeat offender. The defendant had an expired license, and his driving privilege was revoked twice for a

previous DUI arrest and conviction. He also had two prior convictions for driving on a suspended license. The same vehicle was subject to forfeiture in 2002, but it was returned to the registered owner when he was able to clear his driving record before forfeiture proceedings were concluded.

Below are statistics that illustrate the meaningful impact STOP has had in its efforts to keep habitual traffic offenders off the streets:

| Calendar Year | Cases Submitted by SDPD | Cases Submitted by All Other Agencies | Total Number of Cases Submitted | Total Number of Cases Prosecuted | Percentage of Cases Prosecuted |
|---------------|-------------------------|---------------------------------------|---------------------------------|----------------------------------|--------------------------------|
| 1997          | 2,048                   | 406                                   | 2,454                           | 2,111                            | 86%                            |
| 1998          | 6,037                   | 1,102                                 | 7,139                           | 6,846                            | 96%                            |
| 1999          | 6,560                   | 1,185                                 | 7,745                           | 7,571                            | 98%                            |
| 2000          | 6,569                   | 1,054                                 | 7,623                           | 7,522                            | 99%                            |
| 2001          | 7,454                   | 1,213                                 | 8,667                           | 8,354                            | 96%                            |
| 2002          | 7,685                   | 1,261                                 | 8,946                           | 8,453                            | 94%                            |
| 2003          | 6,940                   | 1,416                                 | 8,356                           | 7,971                            | 95%                            |
| 2004          | 6,251                   | 2,483                                 | 8,734                           | 8,529                            | 98%                            |
| 2005          | 5,861                   | 2,480                                 | 8,341                           | 7,467                            | 90%                            |

**STOP TEAM VEHICLE FORFEITURES (CY STATS, VC § 14607.6 )**

| Calendar Year | Forfeitures | To Date |
|---------------|-------------|---------|
| 1997          | 132         | 132     |
| 1998          | 167         | 299     |
| 1999          | 191         | 490     |
| 2000          | 152         | 642     |
| 2001          | 158         | 800     |
| 2002          | 142         | 942     |
| 2003          | 115         | 1,057   |
| 2004          | 138         | 1,195   |
| 2005          | 127         | 1,322   |

**REVENUE GENERATED FOR CITY ( FY STATS )**

| Fiscal Year | Unlicensed Driver Fees* | Forfeiture Proceeds** | Vehicles Forfeited ( Fiscal Year ) |
|-------------|-------------------------|-----------------------|------------------------------------|
| 1997        | \$ 684,618              | \$ 2,497              | --                                 |
| 1998        | \$ 1,059,520            | \$ 46,103             | --                                 |
| 1999        | \$ 1,088,169            | \$ 52,813             | --                                 |
| 2000        | \$ 1,055,955            | \$ 80,890             | 181                                |
| 2001        | \$ 1,296,601            | \$ 41,933             | 153                                |
| 2002        | \$ 1,288,661            | \$ 51,536             | 140                                |
| 2003        | \$ 1,020,085            | \$ 27,425             | 139                                |

|                         |              |           |     |
|-------------------------|--------------|-----------|-----|
| 2004                    | \$ 1,382,273 | \$ 97,833 | 125 |
| 2005                    | \$ 1,222,886 | \$ 63,390 | 117 |
| 2006<br>(thru 12/31/05) | \$ 550,939   | \$ 25,100 | 73  |

\* Unlicensed Driver Fees (ULD) are collected on all impounded vehicles when they are operated by suspended, revoked, or unlicensed drivers, or when a driver is arrested and taken into custody. (Cost recovery is authorized by VC § 22850.5(a). Currently, the fee is \$72 per vehicle. ULD fees are earmarked for the SDPD STOP Team and related programs. Thus, the fund pays for the continued operation of the STOP Team and all its operating expenses, among other things.

\*\* After storage and impound fees are paid, and after any liens are satisfied, remaining proceeds from vehicle auctions are shared equally between the city and the state. (VC § 14607.6(i)). Accordingly, these proceeds represent only the city's portion; the state also received funds in equal amounts.

**SPEED CONTEST CASES PROSECUTED ( VC § 23109(a) )**

|         |     |
|---------|-----|
| CY 1999 | 147 |
| CY 2000 | 161 |
| CY 2001 | 290 |
| CY 2002 | 155 |
| CY 2003 | 60  |
| CY 2004 | 58  |
| CY 2005 | 47  |

**SPEED CONTEST RELATED COLLISIONS ( REPORTED BY SDPD )**

| <b>CY 2002</b>    |                            | <b>Deaths</b> | <b>Injuries</b> |
|-------------------|----------------------------|---------------|-----------------|
| City of SD        | City streets only          | 8             | 16              |
| All Others        | City freeways & all County | 6             | 15              |
| <b>TOTAL 2002</b> |                            | 14            | 31              |
| <b>CY 2003</b>    |                            | <b>Deaths</b> | <b>Injuries</b> |
| City of SD        | City streets only          | 1             | 2               |
| All Others        | City freeways & all County | 3             | 4               |
| <b>TOTAL 2003</b> |                            | 4             | 6               |
| <b>CY 2004</b>    |                            | <b>Deaths</b> | <b>Injuries</b> |
| City of SD        | City streets only          | 0             | 4               |
| All Others        | City freeways & all County | 6             | 16              |
| <b>TOTAL 2004</b> |                            | 6             | 20              |
| <b>CY 2005 *</b>  |                            |               |                 |
|                   | City streets only          | 0             |                 |
|                   | City freeways & all County |               |                 |
| <b>TOTAL 2005</b> |                            |               |                 |

\* 2005 stats not available. SDPD confirms zero deaths related to speed contests on city streets during 2005.

**SPECTATOR CASES PROSECUTED ( MC §§ 52.5203(a) and (b) )**

|         |    |
|---------|----|
| CY 2003 | 11 |
| CY 2004 | 2  |
| CY 2005 | 8  |

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San Diego City Attorney's  
**NEIGHBORHOOD PROSECUTION UNIT**  
Criminal Division



**UNIT SCOPE OF WORK**

The Neighborhood Prosecution Unit works in partnership with the San Diego Police Department, community organizations and leaders, and other agencies to aggressively and creatively combat crimes that impact quality of life. Led by Head Deputy City Attorney Angie Reddish-Day, the goals of the Unit are to improve quality of life in targeted neighborhoods; build meaningful partnerships to solve community crime problems; expand the prosecutorial tools to more effectively address neighborhood quality-of-life crime priorities; and hold offenders accountable in the criminal justice system and to the community.

Five neighborhood prosecutors are assigned to various divisions of the San Diego Police Department (SDPD), including Central, Mid-City, Northern, and Western Divisions, and beginning in 2005, Southern Division:

- Deputy City Attorney Regan Savalla, assigned to SDPD's Northern and Western Divisions. Target areas are Pacific Beach, Mission Beach, Mission Bay Park, Ocean Beach, Hillcrest, and North Park.
- Deputy City Attorney Gabriela Brannan, assigned to SDPD's Southern Division. Target area is San Ysidro.
- Deputy City Attorney Lea Fields, assigned to SDPD's Central Division. Target areas are Barrio Logan, Golden Hill, Grant Hill, Logan Heights, Sherman Heights, and Stockton.
- Deputy City Attorney Nicole Pedone, assigned to SDPD's Central Division. Target areas are Central Downtown, Gaslamp District, Little Italy, and Balboa Park.
- Deputy City Attorney Kristin Beattie, assigned to SDPD's Mid-City Division. Target areas are City Heights and surrounding Mid-City communities.

Neighborhood prosecutors regularly attend community meetings and community events to bring information on quality-of-life crime problems back to SDPD and the City Attorney's Office for attention. Each neighborhood prosecutor has an office at her assigned SDPD division. Neighborhood prosecutors work on both short-term and long-term problem-solving efforts, such as illegal lodging in the San Diego Riverbed, drug activity on "C" Street, transient crimes Downtown, prostitution in Mid-City, and loud parties with underage drinking in the College and beach areas, to name a few.

The Neighborhood Prosecution Unit operates several problem-solving courts in the community to address quality-of-life crimes. These courts include Downtown Community Court, Mid-City Community Court, Homeless Court, and new in 2005, the Beach Area Community Court. By proactively going out into the community to work on addressing community crime problems, the Neighborhood Prosecution Unit is contributing to crime prevention efforts and the improvement of quality-of-life for San Diego residents.

## **HIGHLIGHTS**

### **• Problem-Solving Efforts**

The Neighborhood Prosecution Unit supports the efforts of SDPD with problem-oriented policing projects and enforcement efforts. The Unit not only prosecutes offenders arrested in these enforcement efforts, but also works on solutions to problems that often do not involve the prosecution of offenders. Transient-related issues continued to generate numerous problem-solving efforts throughout the City in 2005. New in 2005 was the addition of a neighborhood prosecutor to SDPD's Southern Division to begin problem-solving efforts in the San Ysidro community and the development of the Central Division Neighborhood Resource Team to more proactively address quality-of-life issues in Central Division.

### **• Transient Related Issues in the City of San Diego**

Issues related to chronic homelessness and transient-related criminal activity remained an ongoing problem-solving effort for the Neighborhood Prosecution Unit in 2005. The Unit not only participates in the monthly Homeless Court, but also pursues a number of alternative sentencing options designed to provide rehabilitative services for the homeless. The SDPD's Homeless Outreach Team (HOT) continues to effectively assess and place the chronically homeless in shelters. The Neighborhood Prosecution Unit works in partnership with HOT and community-based organizations to develop both short and long-term solutions.

As this is an increasingly important issue that effected many San Diego communities in 2005, each neighborhood prosecutor works on projects to address transient-related issues that impact their respective neighborhoods. An ongoing and very difficult problem that continues to be addressed in Western and Eastern Divisions is the transient activity and encampments in the San Diego Riverbed. Deputy City Attorney Savalla continues to collaborate with SDPD on efforts to clean up the riverbed area. There are several large transient camps, many of which are quite elaborate with tents, room dividers, solar panels, car batteries, televisions, other electronic equipment, furniture, and makeshift restrooms. These clusters create virtual tent cities in the riverbed that create waste and garbage that collects and runs down the San Diego River into the Bay and the Pacific Ocean. Officers are also finding heroin, methamphetamine, marijuana, and morphine, along with needles and scales.

Deputy City Attorney Savalla issues the cases that originate in the riverbed, including Eastern and Western Divisions, in order to better monitor defendants who simply relocate between each Division in an attempt to circumvent criminal stay away orders. Deputy City Attorney Savalla has issued approximately 230 cases

originating from the riverbed. Most of the cases involve illegal lodging; however, some involve weapons and drug charges. There have been more than 180 convictions to date, with many other cases still open or at warrant status. Most defendants are being ordered to serve time in custody and to stay away from the riverbed on their release. 150 defendants currently on the stay away order list who cannot lawfully return to the riverbed. In 2005, there were approximately 37 probation revocations against defendants who did return, and most were sentenced to additional time in custody.

In addition to the riverbed project, the Unit continues to work on related issues in multiple areas in Central Division. Transient-related crimes have been identified through crime statistics, police contacts, and community complaints as a primary quality of life concern affecting Central Division. As a result, Central Division Neighborhood Prosecutors Nicole Pedone and Lea Fields devote significant energy and resources to transient-related issues and problem-solving efforts to address this major community concern. Pedone and Fields regularly meet with officers from the SDPD's Homeless Outreach Team, who continue to assess and place the chronically homeless in available shelters. They review reports, make offers with geographic probation restrictions, conduct necessary follow-up, and provide court dockets on chronic offenders to be entered into the Officer Notification System.

In 2005, Pedone began a new project in Balboa Park, located in Central Division, due to the increasing crime and transient activity. Not only have quality of life crimes increased in the park, but violent crime has increased as well. The rise in transient activity has caused an increase in citizen complaints, illegal lodging, littering, alcohol violations and abuse, narcotic sales and abuse, thefts, lewd acts, brush fires, fights, medical calls, stabbings and rapes. Pedone has collaborated with a Senior Park Ranger on the potential solutions to the problems. A key effort has been the documentation of transient camps in the park and the collection of maps and photographs. Sweeps have begun and expansive stay away orders from Balboa Park are being ordered by the Superior Court.

Deputy City Attorney Pedone also embarked on several coordinated meetings with social service agencies, in order to address community complaints about facilities that negatively impacted neighboring residents and businesses. Pedone, along with the Neighborhood Resource Team, spoke with the operators of these facilities about the complaints and provided suggestions on how to improve their operations. Through this proactive effort, there has been compliance and some positive changes with most agencies. It is this type of cooperative relationship that the Pedone and the Neighborhood Resource Team strive to develop with all the downtown social service providers.

The targeted neighborhoods of Central Division Neighborhood Prosecutor Lea Fields are the communities directly to the east of East Village. These areas continue to experience an increase in transient-related criminal activity. Sherman Heights, Grant Hill, Barrio Logan, and Logan Heights have seen an increase in alcohol related crimes and illegal lodging, Deputy City Attorney Fields addresses problem locations where there is frequent drinking in public and illegal lodging, and requests stay away

orders as appropriate. Problem locations in which stay away orders are frequently ordered include Chicano Park, Memorial Park, Imperial Avenue, and others.

In 2005, Northern Division Neighborhood Prosecutor Regan Savalla worked with SDPD's Northern Division Beach Team on enforcement of transient-related crimes in the beach area. In addition to alcohol-related crimes, there was an increase in transient activity, aggressive panhandling, and theft. The Beach Team increased enforcement, issued more citations and made more arrests on or near the boardwalk. The Unit supported that enforcement by seeking expansive stay away orders that encompass the boardwalk and nearby beach. After a few weeks of enforcement, the feedback from the community was very positive and the Beach Team was able to utilize the stay away orders to contact and arrest chronic offenders who returned to the area.

- **Development of the SDPD Central Division Neighborhood Resource Team**

In 2005, the Unit assisted in the development of Central Division's new Neighborhood Resource Team that includes a police sergeant, five police officers, two community relations officers, two neighborhood prosecutors, and a Homeless Outreach Team officer. The Neighborhood Resource Team uses traditional policing techniques while embracing the philosophy of community policing and the strategy of problem solving. The team addresses the full range of community and crime problems with the goal of enhancing the quality of life within the community. The team regularly attends community meetings and events to solicit information on crime issues and priorities. The team is encouraged to create innovative ideas and strategies, which will assist in the reduction of crime and increase officer effectiveness and safety. The team also works collaboratively with the Neighborhood Prosecution Unit to insure the successful prosecution of chronic offenders.

This team is in its early stages, but is quickly addressing major problems in Central Division. In addition to community-focused activities, the team made 63 arrests in their first week and over 100 arrests in their second week. Many of these arrests have been successfully prosecuted by Central Division Neighborhood Prosecutors Nicole Pedone and Lea Fields and have resulted stay away orders from problem locations. The existence of such teams allows neighborhood prosecutors to more effectively serve the community in collaboration with SDPD.

- **Neighborhood Prosecutor Assigned to San Ysidro in 2005**

After assessing the needs of the communities in SDPD's Southern Division, an additional neighborhood prosecutor was added to the Unit in August 2005 and Central Division Neighborhood Prosecutor Gabriela Brannan was reassigned to Southern Division. Brannan immediately began attending community meetings in San Ysidro and developing partnerships with community groups and officers to assess the needs of the community. Brannan dedicates a portion of her time and resources to code enforcement cases in cooperation with the Code Enforcement Unit.

To that end, Brannan began working in San Ysidro in September 2005, with several code enforcement cases. The most significant case was the Valli Hi Motor Motel, identified by the San Ysidro community, Council District Eight, and SDPD as

a problem location that needed immediate attention. Brannan assisted the Code Enforcement Unit in prosecuting the owner of a 100-room substandard motel with public nuisance activity. Brannan continues to assist with the relocation of motel tenants and monitoring the rehabilitation of the property. The community is extremely pleased that a neighborhood prosecutor has been assigned to San Ysidro.

Another priority identified immediately in San Ysidro are of illegal transportation providers who are unlicensed, uninsured, and illegally solicit business within the border zone. Brannan is in the early stages of developing an action plan to target this illegal activity, in collaboration with SDPD, Council District Eight, MTS, the Public Utilities Commission, the Border Transportation Council, and the Consumer and Environmental Protection Unit. Coordinated enforcement operations are commencing in 2006.

- **Prostitution Activity in Mid-City**

Mid-City Neighborhood Prosecutor Kristin Beattie collaborates with SDPD to reduce the prostitution activity on El Cajon Boulevard, a high priority for Mid-City Division. The City Attorney's Office currently prosecutes prostitution through traditional prosecutorial methods by filing cases, securing convictions, and aggressively pursuing revocations when terms of probation are violated. An effective tool in combating prostitution activity on El Cajon Boulevard has been the use of geographic probation. When prostitutes are convicted of soliciting for prostitution, they often have street conditions imposed by the court that include restrictions on engaging in certain acts near the location of the offense. When a prostitute goes back to the same area in which she committed the offense and commits certain acts that put her in violation of her probationary terms, the Neighborhood Prosecution Unit files an Order to Show Cause in court to seek a revocation of probation.

Beginning in 2005, Beattie started reviewing and issuing not only prostitution cases originating in Mid-City, but all prostitution cases in the entire City of San Diego. Beattie also serves as the liaison to SDPD's Vice Unit, allowing for a more comprehensive and consistent approach to prostitution crimes in Mid-City and throughout San Diego. The Prostitution Impact Panel and other alternative sentencing options, such as Survivors of the Streets (S.O.S.), continue to be available to offer educational and vocations skills programs for both male and female offenders.

Under Beattie's leadership, the Mid-City Prostitution Task Force convened again on September 12, 2005. The meeting was attended by several service providers, community groups, and law enforcement. Service providers updated the other Task Force members on their involvement with the prostitute population. Because much of the prostitution problem can be solved through effective means of deterrence, one proposed component of the solution will be the installation of cameras on El Cajon Boulevard to monitor the area. In collaboration with Mid-City Officer Steve Rosenbloom in 2005, the appropriate camera system was researched and sources of funding were being sought. To that end, Beattie attended multiple business association and business association sub-committee meetings to gain support for the project and assist with locating possible funding sources.

- **Narcotics and Other Criminal Activity**

Downtown Neighborhood Prosecutor Nicole Pedone is continuing the proactive problem solving efforts on the C Street Project to address narcotics and other criminal activity in the 300 to 900 blocks of C Street. The project was created to target criminal activity by creating partnerships with other law enforcement agencies to facilitate a uniform approach to enforcement and prosecute cases and obtain stay away orders. Pedone collaborates with officers, business owners, and Downtown San Diego Partnership's Clean and Safe Program, to effectively deter, combat, and ultimately prosecute misdemeanor crimes committed on C Street.

Pedone organized a C Street walk-along in 2005 that was attended by a Community Relations Officer and the Executive Director of the Clean & Safe Program. The group walked up and down C Street and spoke with local residents and business owners and distributed a flier regarding the development of a C Street Community Meeting/Neighborhood Watch Meeting, whereby local residents and business owners could come voice their concerns and share their observations. The first meeting was conducted on May 19, 2005. An observation form was developed where the community could record pertinent information regarding any criminal activity they witnessed in their neighborhood. Pedone continues to walk C Street on a regular basis with officers or staff from the Downtown Partnership, reaching out to the local business community.

Another area in downtown where there are active problem-solving efforts underway is in the Park and Market area, part of the San Diego Trolley route. Due to an increase in reported problems, Pedone, along with the Central Division Neighborhood Resource Team, gathered business owners and area residents to express concerns, report problems, access resources, and form a neighborhood watch. The first meeting was successful in identifying an apartment complex with problem tenants who attract problem visitors, generating complaints about narcotics activity. The apartment complex managers agreed to work with SDPD and have offered space for officers to utilize, creating a law enforcement presence. In addition, they are providing SDPD with a list of problem tenants and are strictly enforcing the lease provisions regarding criminal activity of residents. This is just one example of many similar problem-solving projects underway in the downtown area.

Another problem-solving project to address quality of life issues at 30th and Imperial is being facilitated by Central Division Neighborhood Prosecutor Lea Fields. The four corners of this intersection attract loiterers and transients who congregate for the purposes of selling drugs, drinking alcohol, soliciting prostitution, or simply loitering in the area, which deters customers from entering the businesses. In August 2005, Central Division Neighborhood Prosecutor Lea Fields, along with Officer Mangum, set up weekly meetings with the affected business owners. Since that time, with the help of representatives from Council District Eight, the owners have been successful in deterring the presence of loitering by adding additional lighting to their businesses, working with the City to add red-curbing to the streets, relocating a nearby bus stop, and removing a nearby payphone. This problem-solving effort has resulted in significant improvements to this area.

- **Chronic Offenders**

Another important focus of the Neighborhood Prosecution Unit is to solve problems that are created by repeat and chronic offenders. The Unit vertically prosecutes chronic offenders to ensure that those offenders who are creating problems for SDPD and the community are aggressively prosecuted, convicted, and sentenced appropriately, including but not limited to stay away orders from the impacted community. In 2005, the Neighborhood Prosecution Unit issued in excess of 500 cases, most of which were repeat and chronic offenders or were offenders that had committed an offense in a targeted enforcement area.

Defendants with active stay away orders are entered into the Officer Notification System (ONS), a tool to advise officers about the terms and conditions of probation for chronic offenders. Currently, there are in excess of 200 offenders within the ONS system. By filing probation revocation motions, the Unit is holding chronic offenders accountable for their probation violations, resulting in jail time and other sanctions, including probation terms designed for rehabilitation. The Unit initiates an average of seven probation revocation proceedings a month involving offenders currently on probation and in violation of their probation. In 2005, a total of 86 motions were filed with the court seeking a probation revocation of a chronic offender. These offenders include prostitutes who are violating their street conditions, transients in the San Diego Riverbed, canyons, and Balboa Park, downtown neighborhoods, and on the boardwalk in Mission Beach and Pacific Beach, all of whom are in violation of their stay away orders and other conditions of probation.

Prior to being re-assigned to Southern Division, Central Division Neighborhood Prosecutor Gabriela Brannan successfully prosecuted several chronic alcoholics for being drunk in public as part of the City of San Diego's Serial Inebriate Program (SIP). The SIP program uses the power of the court to get alcohol offenders into rehabilitation. The Unit handles the prosecution of individual chronic offenders who are drunk in public, as part of the SIP Program, and obtains stay away orders to keep them out of the neighborhoods where they are committing the crimes.

Several chronic offenders in Western Division are vertically prosecuted by Western Division Neighborhood Prosecutor Regan Savalla. One chronic offender is a sex offender who continues to commit misdemeanors and has been arrested several times for public nudity and indecent exposure. He is currently on probation for three years after pleading guilty to public nudity in 2003, and Savalla has pursued various probation revocations since that time. In 2005, the defendant resurfaced in Hillcrest, bothering business owners and community members. He was arrested for petty theft and, in October 2005, Savalla took his case to trial. He was convicted of petty theft, as part of his sentence he was given a comprehensive stay away order from the area of Hillcrest where he had been a persistent problem. Western division and the affected business and community members were very pleased with this outcome.

- **Community-Oriented Criminal Justice**

The Neighborhood Prosecution Unit staffs four problem-solving courts and an alternative sentencing program in San Diego: the Prostitution Impact Panel, Homeless

Court, Downtown Community Court, Mid-City Community Court, and the newly developed Beach Area Community Court. The City Attorney's Office assisted in the creation of each of these innovative courts and alternative sentencing programs, and remains integral to their continued operation. Each community court gives offenders the opportunity to repair the harm they have caused to communities by participating in community work service, while providing referrals to community-based social service providers for rehabilitative, educational, and preventative programs designed to deter future criminal conduct. In addition, community members are involved in the programs through participation in Impact Panels, Sanctioning Panels, and Advisory Boards.

- **Downtown Community Court**

The Downtown Community Court is a collaborative effort between the City Attorney's Office, San Diego Superior Court, Office of the Public Defender, Downtown San Diego Partnership, and San Diego Police Department, to require offenders who commit specific misdemeanor offenses to perform community work service as a means of restorative justice to the community. The Downtown Community Court, a post-filing court, operates out of the Misdemeanor Arraignment Department of the San Diego Superior Court. Since its implementation in 2002, the court has received state and national attention. Downtown Neighborhood Prosecutor Nicole Pedone is the prosecutor assigned to this community court.

Offenders who commit misdemeanor crimes in downtown area, including petty theft, graffiti, trespassing, drinking in public, and possession of marijuana, are eligible to participate in the Downtown Community Court. If the offender accepts a Downtown Community Court offer, the offender pleads guilty to the charge and is ordered to perform community work service downtown. The Downtown San Diego Partnership's Clean and Safe Program supervises the community work service. The Downtown Community Court Coordinator monitors offenders for six months and provides referrals to social services as needed. Since the Court opened, offenders have been ordered to perform in excess of 2,200 hours of community service work, including cleaning sidewalks, removing graffiti, picking up trash, and landscaping. If an offender completes the work service, pays court fines, and remains law-abiding, the Superior Court dismisses the offender's violations in six months.

In 2005, Pedone continued to collaborate with the Downtown Community Court partners to expand the reach of Community Court by adding new charges, improving communication with offenders, improving the failure to appear rate, and continually training new squads of Central Division officers at each shift change.

- **Mid-City Community Court**

The Mid-City Community Court, a pre-filing court, serves 12 communities in the Mid-City area of San Diego. The Court is held weekly on Monday afternoons at the San Diego Police Department's Multi-Cultural Community Relations Office in the City Heights area. Mid-City Neighborhood Prosecutor Kristin Beattie determines eligibility and refers appropriate offenders to the Community Court, based on established guidelines. Participating offenders, who commit misdemeanor quality-of-life crimes in Mid-City, are sanctioned by the Community Court Sanctioning Panel.



The panel is composed of a neighborhood prosecutor, case manager, and two trained community volunteers. Typical charges that qualify for Mid-City Community Court include graffiti, prostitution, possession of marijuana, and excessive noise. Typical sanctions include community work service in the Mid-City community, attend rehabilitative and educational programs, draft letters of apology to victims, observe drug court, and pay fees.

Cases that often come through Mid-City Community Court involve problem-solving projects that the Neighborhood Prosecution Unit regularly handles, such as loud parties in the College area and prostitution activity on El Cajon Boulevard. If offenders remain out of trouble for one year and complete the sanctions imposed, they avoid having formal criminal charges filed against them. Like the Downtown Community Court, the goals of this community court are greater accountability of offenders to the community and greater community involvement in the criminal justice process.

Since its implementation in February, 2003, the Mid-City Community Court has sanctioned over 300 offenders, resulting in significant community service hours in the Mid-City community, referrals to various rehabilitative programs, and most importantly, providing a voice for the community in the justice system. The Mid-City Community Court Advisory Board consists of a representative from each Mid-City neighborhood, law enforcement, and the City Attorney's Office, and convenes quarterly on the third Monday of the month. With the input of the Advisory Board, the Neighborhood Prosecution Unit and the San Diego Police Department continue to evaluate proposed changes and methods to increase participation in Mid-City Community Court.

- **Prostitution Impact Panel**

In 2005, the Prostitution Impact Panel (PIP) continued to play an integral role in curbing prostitution in San Diego. Created in January 2002, PIP is an educational community-based victim impact panel designed to inform "john offenders" - those who solicit or agree to engage in prostitution activity - about the far-reaching impact of prostitution on a community. Offenders hear from community members impacted by prostitution, former prostitutes, social service and health care workers, and police officers. The monthly PIP sessions are coordinated by Mid-City Neighborhood Prosecutor Kristin Beattie and Mid-City Officer Steve Rosenbloom. There have been 403 john offenders that have attended the program through December 2005. As of that time, there have been zero repeat prostitution arrests out of the john offenders that have participated in PIP. The nonexistence of recidivism is evidence that the Prostitution Impact Panel has been effective in communicating to john offenders the detrimental impacts of prostitution.

- **Homeless Court**

The Neighborhood Prosecution Unit is collaborating with San Diego Superior Court, homeless service providers, and the Public Defender's Office in operating the Homeless Court. Homeless Court is an opportunity for individuals with low-level misdemeanor and infraction cases to have their warrants cleared and cases processed in an efficient manner. Homeless Court sessions are held monthly at two local

homeless shelters, rotating between the Veterans Village of San Diego and St. Vincent de Paul's Village. The sessions are handled with the seriousness of a court proceeding while, at the same time, celebrating the success of homeless participants who have taken that first step toward a better future.

In 2005, approximately 848 defendants with a total of 2,538 cases were heard in Homeless Court. These cases were resolved with defendants participating in rehabilitative programs designed to get them off the streets and provide a first step to making positive and productive changes in their lives. Because San Diego's Homeless Court was the first of its kind in the nation, it is a model that continues to be replicated nationwide, while regularly receiving significant attention at the state and national level. In September, 2005, Head Deputy Angie Reddish-Day and Neighborhood Prosecutor Gabriela Brannan participated as faculty at the 2005 Statewide Judicial Branch Conference, educating members of the California judiciary and court management personnel about the successful Homeless Court program.

The Unit also participates in the annual Stand Down event every year in July, where a wide array of services are offered to homeless veterans over an entire weekend, including an opportunity for participants to have their misdemeanor cases processed and warrants cleared. In 2005, a total of 256 homeless veterans registered to participate in the court proceedings, resulting in over 780 cases to be researched by the Unit. Of those defendants, 108 veterans actually participated in the court proceedings, resulting in a total of 454 adjudicated cases in one weekend.

- **Beach Area Community Court**

Early in 2005, the Neighborhood Prosecution Unit began the development of a community court in the beach area to serve the communities of Pacific Beach, Mission Beach, and Mission Bay Park. According to Police Department statistics, quality-of-life crimes that could be addressed in the community court are primarily alcohol-related offenses, including possession of an open alcohol container, possession of a glass container in a park or on the beach, urinating in public and related disorderly conduct and disturbing the peace charges. The first formal beach area community forum was held in March 2005, and there was complete support from the community members and community-based organizations that attended. A Planning Committee was developed to collect input in the planning process of the community court.

A successful Pilot Program was implemented in the summer of 2005, with the first Beach Area Community Court session held on August 20, 2005. Over a period of two weekends in July, nearly 100 offenders were provided the option of attending the Beach Area Community Court in lieu of appearing in San Diego Superior Court. Twenty-six offenders exercised that option by participating in a community impact panel and completing three hours of community service in the beach area, supervised by Discover Pacific Beach.

In September, 2005, the Neighborhood Prosecution Unit was awarded \$200,000 in grant funding from the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, under a grant entitled the FY 2005

Community-Based Problem-Solving Criminal Justice Initiative. Funding was awarded solely for the purpose of planning and implementing the Beach Area Community Court, to serve the Pacific Beach, Mission Beach, and Mission Bay Park communities in the City of San Diego. The lead agency is the Office of the San Diego City Attorney, working in partnership with the San Diego Police Department, San Diego Superior Court, other criminal justice agencies, community-based organizations, and community members. Now that grant funding has been secured, implementation planning is well underway.

Upon full implementation, anticipated in May of 2006, the Beach Area Community Court will be a prosecutorial diversion program for adult offenders who commit misdemeanors and infractions, primarily low-level alcohol-related offenses. Eligible offenders who choose to participate will be diverted from the San Diego Superior Court. They will be held accountable to the community by attending a community impact panel, in which community members and business owners will share with offenders how crimes impact quality-of-life in the beach area. Offenders will then perform community service in the beach area, participate in a brief substance abuse screening tool, and obtain referrals to educational and rehabilitative programs in an effort to curb future criminal conduct.

- **San Diego Police Department Vice Unit Liaison**

In addition to her duties as a Mid-City Neighborhood Prosecutor, Kristin Beattie is also the designated City Attorney liaison to the Vice Unit of the San Diego Police Department. She maintains regular contact with Vice Unit sergeants and detectives, and screens all of the prostitution, lewd act in public, and loitering for prostitution cases for possible issuing. Beattie has issued more than 200 Vice Unit cases in her first six months in the Unit. She also attends lineups and conducts trainings for the Vice Unit on a monthly basis, answers questions about investigations and larger unit-wide issues, and strategizes enforcement possibilities.

- **Hate Crimes Liaison**

In addition to her duties as a Central Division Neighborhood Prosecutor, Lea Fields is also the Hate Crimes Prosecutor for the City Attorney's Office. Fields is Vice-Chair of the San Diego Regional Hate Crimes Coalition (SDRHCC), an organization comprised of prosecutors, law enforcement and community-based organizations. Fields is also Co-chair of the SDRHCC Education Subcommittee. Fields reviews all potential hate crimes cases that are received in the Criminal Division, makes the appropriate charging decisions, and handles the cases at every stage of the court proceedings. In 2005, Fields reviewed approximately 25 cases for prosecution, and issued hate crime charges against 9 defendants. In 2005, Lea also took a three-defendant hate crime case to trial in which she received a conviction against all three defendants. The cases are handled in an aggressive and consistent fashion.

## **Law Enforcement Training and Community Outreach**

- **Training Law Enforcement and the Community**

In 2005, each neighborhood prosecutor conducted regular line-up trainings at Northern, Western, Central, Mid-City, and Southern Divisions, in order to provide information on misdemeanor prosecution issues and ensure successful prosecution of misdemeanor crimes in the City of San Diego. The Unit provides additional training to the San Diego Police Department on specific topics as the need arises, in addition to training at the Police Academy.

Additionally, each neighborhood prosecutor participates in numerous meetings, regularly scheduled and otherwise, with SDPD officers and civilian personnel on various issues and projects as they arise. This includes Task Force meetings, Advisory Committee meetings, Problem-Solving meetings, and regular meetings with Captains, Lieutenants, Sergeants, and Officers at their respective Divisions. Such meetings, tailored to the needs of each area command, are too numerous to summarize in this report. However, the meetings serve not only as training opportunities but also as the foundation for the outstanding relationship between the Neighborhood Prosecutors and the San Diego Police Department, as communication is enhanced and partnerships are built.

By being present at the substations with officers at their respective commands, neighborhood prosecutors are able to stay in touch with the issues and the problems being addressed by each SDPD division. This not only includes attending regular meetings at the divisions, being present in their substation office to answer officers' questions, but also includes getting out into the community with officers on ride-alongs in order to see the problems first-hand. This allows the neighborhood prosecutors to not only see the problems in the neighborhoods, but also to gain valuable perspective of the officers that are specially trained to deal with a particular problem, whether it be homelessness, narcotics, or prostitution activity.

Additionally, neighborhood prosecutors are regularly called upon by outside organizations, area colleges, and other law enforcement agencies to provide training and information. Examples, include presentations on prostitution enforcement and sentencing alternatives at the formation meeting for ACTION (Against Child Trafficking and Teen Prostitution in Our Neighborhoods); a presentation at the BDSM Community Forum in Hillcrest about sex crimes and Vice Unit prosecution issues; a presentation at Miramar College regarding transient crimes and the community; and presentations at various functions regarding underage drinking, including the annual meeting of the Institute for Public Strategies and the new class orientations of University of San Diego and San Diego State University.

Neighborhood prosecutors also serve as a resource to community prosecutors throughout California and the nation. Neighborhood prosecutors were faculty at the California District Attorney's Association (CDA) Community Prosecution Seminar in April 2005, providing instruction on the Community Courts in San Diego, the Prostitution Impact Panel, and the Serial Inebriate Program. In October 2005, Head

Deputy Angie Reddish-Day served as faculty for the national Advanced Community Prosecution Workshop in Austin, Texas.

- **Juveniles and Justice Program**

The Unit also created and operates the Juveniles and Justice Program designed to teach students about the criminal justice system and about participating in their community. The program allows students to learn and interact with each other about judicial and police issues as they explore topics such as basic police investigation, evidence chain of custody, court testimony, differences between the roles of prosecutors and defense attorneys, and how a case proceeds through the judicial system. During the program, the students visit a courtroom and police headquarters to see the reality of what they have learned in the classroom. In February and March, 2006, Neighborhood Prosecutors Gabriela Brannan and Lea Fields conducted the Juveniles and Justice Program with two sixth-grade classes at Smythe Elementary School in San Ysidro. A total of 100 students participated in the seven week program. The program is a model of early intervention through education of San Diego's youth. Additional elementary schools will be selected to receive this innovative program in 2006.

- **Community Meetings, Events, and Recognition**

In addition to the numerous meetings at SDPD, neighborhood prosecutors regularly attend a large number of community meetings and community events in order to listen to community concerns, share information about the progress of collaborative initiatives, and bring information on quality-of-life crime problems back to the Criminal Division for attention and problem-solving. A list of the Unit's regular community meetings is extensive, including Town Councils, Community Councils, Advisory Boards, Neighborhood Associations, Task Force Meetings, Committee Meetings, Police Problem-Solving meetings, and community forums organized by council members in communities throughout San Diego. Participation and attendance at the listed meetings is an integral part of each Neighborhood Prosecutors' duties. Regular attendance at multiple community meetings provides an open line of communication between the City Attorney's Office and the communities that we serve.

Neighborhood prosecutors also regularly participate in community events and SDPD events to show their support for the communities they serve. Examples include participation in events hosted by the San Diego County Policy Panel on Youth Access to Alcohol; National Night Out; East Village Mural Dedication Celebration; Memorial Park Safety Fair; Memorial Boys and Girls Club Pancake Breakfast; Mexican Independence Day celebration in Sherman Heights; Bronze Triangle Youth Empowerment Conference Unity Coalition Community Breakfast in Barrio Logan; Family Health Center's Collaborator's Breakfast; Central Elementary Read-In; Cesar Chavez's Annual Breakfast; Barrio Station Holiday event; the City's toy drive to local homeless shelters; and various forums organized by council members and local community groups.

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San Diego City Attorney's  
**PUBLIC INTEGRITY UNIT**  
Criminal Division



**UNIT SCOPE OF WORK**

The Public Integrity Unit focuses on the investigation and prosecution of complex cases involving (1) fraud such as the misuse or misappropriation of public funds, false claims, and procurement fraud and (2) official misconduct by elected and appointed officials, including intentional violations of the Political Reform Act and Government Code, conflicts of interest, the Brown Act, and incompatible activities.

In addition to prosecuting cases in superior court, the Public Integrity Unit conducts inquiries and fact findings based on complaints from other public agencies and concerned San Diego area residents, and uses measures short of litigation to prevent violations of local, state, and federal laws.

When appropriate, the Public Integrity Unit works jointly with other prosecutorial offices and law enforcement agencies.

The City Attorney revitalized its Public Integrity Unit last year to add enforcement “teeth” in cases of serious state and local ethics violations which exceed administrative sanctions:

- Criminal conviction of former City Council Chief of Staff Tommy Hightower for failing to disclose economic interests,
- Fact-finding report regarding undue influence within the City’s Neighborhood Code Compliance Department
- Several current confidential inquiries concerning alleged misuse of City funds at Montgomery Field airport, possible conflicts of interest among public agency Board members and City officials
- Misappropriation of money from a non-profit organization funded partially by the City of San Diego (a joint investigation with the City Attorney’s Consumer Environmental Protection Unit)
- Brown Act violations during City advisory committee meetings
- Lobbying violations within the City of San Diego

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San Diego City Attorney's  
**EMPLOYMENT AND SAFETY  
SERVICES UNIT**  
Civil Division



**UNIT SCOPE OF WORK**

The Employment and Safety Services Unit (ESSU) is under the supervision of lead Deputy City Attorney Jessica Falk Michelli. The unit provides legal services in a variety of areas, including:

- Employment
- Labor relations
- Retirement
- Fire and life safety services

The unit consists of three attorneys who provide legal support and counsel on labor relations matters, including advice to the meet and confer process with the five labor organizations representing municipal employees. The attorneys in this group also defend the City against any alleged unfair labor practices in actions before the Public Employment Relations Board. Moreover, the group serves as legal advisors to all City departments regarding a range of employment and personnel related issues, such as discipline, leave, Equal Employment Opportunity laws, and the Americans with Disabilities Act.

The unit provides specific legal support to the Auditor and to the Risk Management and Personnel Departments on a variety of matters, including payroll, benefits such as SPSP and 401(k), and background checks. The unit also assists these departments in responding to public record requests related to personnel matters and provides training to departments city-wide on such topics as the Family Medical Leave Act and the Health Insurance Portability and Accountability Act.

In addition, the ESSU serves as legal advisor to the City on matters related to the San Diego Fire Rescue Department and the City's EMS program. The scope of services includes advice and supervision of legal issues that deal with personnel, contracts, public records requests, and other special projects. During 2005, the unit provided support for the City's fire-rescue helicopter program, in particular the legal work necessary to assist the City in the purchase of its own helicopter earlier this year.

During this last fiscal year, the major projects of the employment attorneys included drafting the Mayor's two ballot measures for the November 2006 general election. These two measures include San Diego City Charter amendments that would allow the City to contract out services traditionally performed by Civil Service employees and require voter approval of enhancements to employee pension benefits. In addition,

the employment attorneys assisted in successfully negotiating labor contracts with the International Association of Fire Fighters Local 145 and the Deputy City Attorneys Association.

Finally, the unit is legal advisor to several City boards and commissions, including the Human Relations Commission, the Citizens' Review Board on Police Practices, and the Civil Service Commission.

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**San Diego City Attorney's  
GOVERNMENT AFFAIRS UNIT  
Civil Division**



**UNIT SCOPE OF WORK**

The Government Affairs Unit, formerly known as the Public Policy Unit, has been an integral part of the City Attorney's Office for several years. Led by Chief Deputy City Attorney Catherine Bradley, the unit was heavily involved in advising the City Council on the transition to a Mayor-Council (Strong Mayor) form of governance and served as the legal advisor to the Mayor, City Council, Library, Clerk's Office, the Family Justice Center, and the Office of the Chief Information Officer.

During 2005, the unit handled several issues involving the transition to a new form of governance. The unit drafted the ordinance creating the Office of Independent Budget Analyst, assisted in the revision of the City Council Permanent Rules, and provided advice on the roles of the Mayor and Council.

The other major issues handled during 2005 were election related matters due to the resignation of the Mayor and two Councilmembers and the timing of the special elections. As part of this and other election related issues, the unit assisted the Council and Clerk's Office in creating the Elections Task Force that will meet during 2006 to address many election related issues. Also noteworthy was the unit's assistance in preparing the ordinance to create the Commission on Gang Prevention and Intervention.

Also during this time, the unit continued to advise the following City Council standing committees and Charter created commissions:

- Committee on Rules, Finance, and Intergovernmental Relations
- Committee on Government Efficiency and Openness
- City Council Transition Committee
- Civil Service Commission
- Salary Setting Commission
- Select Committee (a subcommittee of the Rules Committee)
- Funds Commission

The day to day items handled by the unit include appointments to boards and commissions, handling public records act requests, drafting and reviewing contracts and grants, researching and drafting of legal memoranda and reports, and assisting City departments with various matters. The legal issues and assignments handled during 2005 included:

- Elections and ballot measures
- Conflicts of interest

- Public records requests (over 100)
- Open meeting laws
- Freedom of speech
- Appointments to boards and commissions (31)
- Creation of banner districts
- Records management
- Transition to a Mayor-Council form of governance
- Preparation of resolutions and ordinances (375)
- Contracts
- Mass mailing requirements
- The annual appropriations ordinance and salary ordinance
- Legal memoranda, reports, and opinions (20)
- Information technology
- Intellectual property
- Cable and television franchise agreements

One of the major projects for 2006 will be working with the Clerk's Office and City Departments to review and update their conflicts of interest codes. A review of the conflict codes is required to take place every two years and forms the basis for determining appropriate reporting of financial interests by City employees on the annual Statement of Economic Interest forms. Also in 2006 the unit will continue its review of the Charter and Municipal Code related to City elections and provide advice on the Mayor-Council form of governance as issues arise.

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San Diego City Attorney's  
**LAND USE AND ENVIRONMENTAL  
REVIEW UNIT**  
Civil Division



**UNIT SCOPE OF WORK**

The Land Use and Environmental Review Unit is a new Unit in the City Attorney's office, which was created to address development process concerns and to strengthen environmental review.

Over the past several years, the City has been subject to an increasing number of lawsuits brought under the California Environmental Quality Act (CEQA). At the same time, state law allowing for appeals to the City Council of environmental determinations made at any level has resulted in a greater scrutiny of the City's environmental review processes. These factors, coupled with recognition of the importance of protecting our City's natural resources, prompted the City Attorney to establish the Land Use and Environmental Review Unit.

This Unit, comprised of specially trained attorneys and staff, engages proactively with the Development Services Department, Environmental Assessment Section, and the Planning Department to ensure that projects that are processed at all levels not only comply with the technicalities of CEQA, but with the spirit and intent of the environmental regulations as well. The Unit also advises the Planning Commission, Natural Resources and Culture Committee, Board of Building Appeals, Historical Resources Board, the Code Monitoring Team, the Technical Advisory Board, and the DSD hearing officers. Attorneys within the Unit respond to citizen inquiries regarding development projects.

The Unit has coordinated environmental review across the City departments. For example, the Unit participated in the review of the Environmental Impact Report for the CCDC Downtown Community Plan.

Over the past year, in conjunction with the City Attorney's Office, the Development Services Department has been working on developing tracking software for agreements related to development. The justification for such software is that there is not currently a comprehensive tracking system in place nor is there a specific department responsible for tracking all the agreements. A centralized system accessible to numerous departments would reduce the opportunity for city staff to miss essential contract milestones and deadlines, ultimately ensuring that developers provide all the benefits due to the community and meet all the conditions of the agreements. The software is currently being tested on a small scale, and we hope to implement it by 2007.

As the City was unable to bond over the past few years, a major developer was unable to go forward with infrastructure improvements that were anticipated to be financed through Mello-Roos. This was resolved by our office and the developer by establishing a Joint Community Facilities District with Poway, whereby Poway would bond, the developer would obtain the financing, and the City would obtain essential infrastructure without spending a dime or having any obligations under the bonds.

The Unit works towards the preservation of the assets of the City. Attorneys in the Unit have been active in advising on issues relating to the San Pasqual Vision Plan. The Unit has also increased awareness in the City departments of the numerous regulations pertaining to archeology and Native American artifacts in particular.

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San Diego City Attorney's  
**POLICE LEGAL ADVISER'S UNIT**  
Civil Division



**UNIT SCOPE OF WORK**

The Police Legal Advisor's Unit provides legal advice to the members of the San Diego Police Department. Led by Chief Deputy City Attorney Mary Nuesca, the Unit members work closely with the Police Chief and his Assistants, and with commanding officers, both sworn and civilian.

Unit members respond to questions and assist with projects from all levels and members of the Department. The Unit's general practice includes the following subjects:

- Advising on discipline, labor, employment, equal opportunity, and disability issues;
- Drafting ordinances, resolutions, memoranda of understanding, contracts;
- statutory interpretation, including the Peace Officer Bill of Rights;
- Responding to subpoenas and requests for public records;
- Litigation including administrative matters involving police permits and civil service hearings; and
- Pitchess motions seeking access to confidential police personnel records, retention of firearms, alcohol license-related issues, and the appeals from those hearings.

**HIGHLIGHTS**

In 2005, the Unit handled 186 Pitchess motions, 45 firearm motions, and 15 appeals. One appeal to the Fourth District Court of Appeal involving the suspension of an adult entertainment permit resulted in a published opinion with a favorable result for the City. *Krontz v. City of San Diego*, 136 Cal. App. 4<sup>th</sup> 1126 (2006). Between April 2001 and January 2002, Vice officers observed at least 38 violations of the City's no-touch rule and the six-foot rule (the no touch rule prohibits touching during any performance; the six foot rule requires entertainers to be six feet away from patrons when nude) at Deja Vu, a strip club on Midway Drive. After a number of warnings and meetings, SDPD suspended the permit for 10 days, which was reduced to a 7 day suspension by an administrative hearing officer.

On appeal, Mr. Krontz, the permittee for Déjà Vu, argued that the suspension functioned as a prior restraint on his and his entertainers' First Amendment rights. The

appellate court disagreed, finding the suspension a lawful punishment. Appellant is currently seeking review by the California Supreme Court.

Unit members also represented the PD in administrative matters, including the suspension of the entertainment permit of a downtown nightclub's entertainment permit. The club failed to properly control crime in the establishment, and had a variety of violations related to alcohol and the fire code.

The Unit responded to approximately one thousand California Public Records Act requests and took action in response to approximately five hundred subpoenas on behalf of the Department.

Unit members are involved from the inception in many of the police department's major enforcement efforts:

- Use of Global Positioning Systems tracking devices (commonly referred to as GPS)
- Diversion of juveniles from the criminal courts into community and peer courts
- Use of video camera surveillance in high narcotic trafficking areas.

In addition, the Unit was involved in the creation of an Early Identification and Information System or EIIS, which is designed to bring together information from a variety of sources into one database so that both individual officers and management can pinpoint trends in officer behavior, identify training issues, and other potential problems. EIIS is currently in the development stage.

Unit members also drafted documents such as the resolution securing more than 1.5 million in state funding to upgrade the 911 communication system, and made amendments to the City's social host ordinance, which is aimed at preventing underage drinking.

Unit members assisted the Vice Unit in addressing pending legislation changing the way pawnbrokers are regulated in the state. Unit members represented the PD's concerns to the appropriate state Legislators, and the legislation as proposed died. Unit members are currently monitoring newly proposed legislation on pawnbrokers.

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San Diego City Attorney's  
**PUBLIC FINANCE, SECURITIES AND  
DISCLOSURE UNIT**  
Civil Division



**UNIT SCOPE OF WORK**

The Public Finance, Securities and Disclosure Unit provides structuring and legal advice to various City departments relative to the issuance by the City and its related entities of debt obligations, including the issuance of debt obligation by the Housing Authority, the Redevelopment Agency of the City of San Diego, the Wastewater Department, the Water Department and obligations payable from the City's General Fund.

Led by Chief Deputy City Attorney Mark Blake, the Public Finance, Securities and Disclosure Unit provides structuring and legal advice to various other entities that have issued debt on behalf of the City including the Public Facilities Financing Authority, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/Metropolitan Transit Development Board Authority, the Convention Center Expansion Authority, the Open Space Facilities District and the various community facilities districts and assessment districts.

The Public Finance, Securities and Disclosure Unit also assists the City Attorney to carry out the requirements of Ordinance No. 19320 (October 10, 2004) through the administration of the Disclosure Practices Working Group to ensure that all City financial disclosures, including financial disclosures contained in any disclosure documents, comply with federal and state securities laws.

**HIGHLIGHTS**

During the 2005-06 Fiscal Year, the Public Finance, Securities and Disclosure Unit provided lead legal advice and support for the following activities of the City and its related entities:

• **Debt Financings:**

1. \$155,000,000 2005-2006 Tax Anticipation Notes [Completed];
2. \$152,000,000 Subordinated Sewer Revenue Bonds, Series 2006 [Completed];
3. \$16,000,000 Community Facilities District No. 3 (Liberty Station) Special Tax Bonds Series 2005 Series A of 2005 (private placement with Stone & Youngberg) [Pending];

4. \$400,000 Housing Authority of the City of San Diego Multifamily Housing Supplemental Revenue Bonds (Rancho Del Norte) [Completed].
5. \$10,928,000 Housing Authority of the City of San Diego Multifamily Housing Supplemental Bonds (Sagewood Apartments) [Completed].
6. \$9,000,000 Housing Authority of the City of San Diego Variable Rate Demand Revenue Bonds (Delta Village Apartments) Series 2005A [Completed].
7. \$30,000,000 Housing Authority of the City of San Diego Multifamily Housing Authority Bonds (Fairbanks Ridge) [Completed].

• **Secondary Market Annual Reports**

The Public Finance, Securities and Disclosure Unit assisted in the review of the following annual reports provided by the City and its related entities.

1. General Fund
  - a. Balboa Park/Mission Bay Park Series 1996A and 1996B; Fire and Life Safety Series 2002B; Jack Murphy Stadium Series 1996A
  - b. Lease Revenue Bonds, Series 2002 (Ballpark Project)
  - c. Convention Center Expansion Authority Lease Revenue Bonds, Series 1998A
2. Wastewater System
  - a. Series 1995; 1997A and 1997B; and 1999A and 1999B
3. Water Enterprise
  - a. Water Revenue Bonds Series 1998 and 2002
4. Redevelopment Agency Tax Allocation Bonds [TABs]
  - a. City Heights TABs Series 1999A and 1999B; City Heights Housing TABs Series 2003A and 2003B
  - b. North Bay TABs Series 2000; North Park TABs Series 2000; North Park TABs Series 2003A and 2003B
5. Community Facilities Districts---Special Districts
  - a. CFD No. 1 – Miramar Ranch North 1998
  - b. CFD No. 2 – Santaluz Area #1 Series 2002A and Series 2004A
  - c. CFD No. 2 – Santaluz Area #3 Series 2000B
  - d. CFD No. 2 – Santaluz Area #4 Series 2004A
  - e. Reassessment District No. 1999-1 Series 1999A and 1999B
  - f. Reassessment District No. 2003-1
  - g. Assessment District No. 4096 – Piper Ranch Series 2003
6. Centre City Development Corporation [CCDC]
7. South Eastern Development Corporation [SEDC]



- **DPWG**

The Public Finance, Securities and Disclosure Unit also assisted in the administration of the Disclosure Practices Working Group in accordance with Ordinance No. 19320 (October 10, 2004). In accordance therewith the Public Finance, Securities and Disclosure Unit assisted in the preparation and/or review of the DPWG's Controls and Procedures and the preparation and review of the first annual report of the DPWG.

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San Diego City Attorney's  
**PUBLIC WORKS SECTION**  
Civil Division



**UNIT SCOPE OF WORK**

The Public Works Section worked closely with the City Manager's staff on the successful completion of several major construction projects, including upgrades to several libraries, fire and life safety facilities, and water and sewer facilities. The Unit is led by Chief Deputy City Attorney Tom Zeleny.

The Public Works attorneys worked closely with the Engineering and Capital Projects Department, the Water Department, the Metropolitan Wastewater Department, the Equal Opportunity in Contracting program, the General Services Department, the community and Economic Development Department, Park and Recreation Department, and the Commission for Arts and Culture to see these projects through from inception to completion.

Additionally, they worked with the Environmental Services Department on solid waste and sustainable and reliable energy issues. In their capacity as legal advisors, the deputies reviewed and advised the departments on such matters as contracts; requests for proposals; 1544's and 1472's; applicable state, federal, and municipal laws; mediation; and change orders.

The Public Works Section also provided legal advice on several of the City's special projects, including the construction of infrastructure related to the downtown redevelopment project, the settlement of claims with the San Diego BayKeeper and the Surfrider Foundation [BayKeeper/Surfrider] and the Federal Environmental Protection Agency [EPA], and the new Main Library.

**HIGHLIGHTS**

• **Engineering and Capital Projects Department**

The Public Works Section provided ongoing legal advice to the Transportation and Engineering Division's Underground Utility Program. Using surcharge moneys collected pursuant to the franchise agreement with San Diego Gas and Electric, the City has been working to eliminate overhead utility lines and place them underground. The surcharge allows the City to accelerate the elimination of these utility lines and to extend projects into previously ineligible neighborhoods. Deputy City Attorneys Jeremy Jung and Zeleny have been advising the division on the capital projects associated with this program as well as the responsibilities of the utilities in relocating their lines.

They have also assisted the division on the long-running dispute with Southwestern Bell Communications [SBC] regarding the Underground Utility Program. A year of negotiations finally resulted in a settlement agreement whereby SBC filed an

application with the Public Utilities Commission [PUC] for cost recovery. If the application is successful, SBC will fully participate in the Underground Utility Program. The application is being opposed by UCAN and a group of Competitive Local Exchange Carriers [CLECs]. They filed a motion to dismiss the application, which was successfully opposed by the City and SBC. Evidence and testimony in support of the application is currently being submitted to the PUC, with evidentiary hearings scheduled for May 15-17, 2006. The Public Works Section will be assisting the Engineering and Capital Projects Department in supporting the application with the goal of getting the application approved.

For the Architectural Engineering & Contracts Services Division, the Transportation Engineering Division, and the Water and Sewer Design Division, Deputy City Attorneys Christina Bellows, Jung, and Eric Swenson provided advisory services on the City's capital projects. These services included resolution of bid protest disputes; resolution of contract and insurance disputes; representation of the department in administrative hearings; drafting of City Council resolutions related to financing and approval of capital projects; and issuing memoranda on a broad range of issues. Deputy City Attorney Swenson assisted the department in resolving disputes related to relocation of utilities, alleged errors and omissions on the part of design consultants, and potential claims brought by individual homeowners for inverse condemnation.

Work is being continued by Deputy City Attorney Jim Lancaster on revisions to the City's standard consultant agreement. These revisions will enhance the effectiveness of the City in implementing, negotiating, and enforcing contracts with outside consultants. The standard agreement is proposed mainly for engineering and architectural consultants; however, the format will allow other uses throughout the City.

Deputy City Attorney Swenson represented the City Attorney's Office on the Mayor's Contracts Functional Review Team [Team], which performed a Contracting Re-engineering Study of the City's contracts processes. The Team was assigned to review and re-engineer the City's procurement processes and procedures; develop recommendations to improve the efficiency and effectiveness of existing processes and procedures; and improve the quality and accountability of the procurement process.

Deputies worked on assisting the department on drafting the first construction manager at risk contract for use on the City's new main library project. It is believed that this contract will be the template for future construction manager at risk contracts for the City's capital improvement program. The deputies have also been tasked with drafting an implementation ordinance for future construction manager at risk contracts.

As the attorney advising the Field Division of the Engineering Capital Projects Department, Deputy City Attorney Marie Wright-Travis interfaces with all of the departments and divisions for which the Field Engineers perform construction management services. These departments and divisions include the Park & Recreation Department, the Water and Sewer Design Division, the Metropolitan Wastewater Department, the Water Department, and the Environmental Services Department. In fiscal Year 2005-2006, Deputy City Attorney Wright-Travis provided legal advice on administration and enforcement issues for the City's construction contracts and major

public work projects, including libraries, fire stations, sewer and water facilities, underground utilities, park and recreation facilities, and traffic signals.

Deputy City Attorney Wright-Travis provides training to departments on prompt payment, stop notice procedures and claims, and teaches at the Construction Management Academy. In Fiscal Year 2005-2006, Deputy City Attorney Wright-Travis successfully negotiated and enforced an agreement with to receive a two-year extension on a \$3,000,000 warranty bond.

- **Metropolitan Wastewater Department**

Deputy City Attorneys Lancaster, Tim Miller, and Zeleny provide legal advice to the Metropolitan Wastewater Department [MWWD] on matters related to the construction, maintenance, and operation of the City's sewer system, and also handle litigation related to regulatory compliance. In addition to regular review of 1472s, 1544s, and change orders, legal issues often arise from MWWD's numerous contractual relationships with contractors, developers, and local agencies that send their sewage to San Diego for treatment.

The City currently has agreements with certain cities and agencies<sup>5</sup> whereby the City of San Diego transports their sewage through City owned lines to the Metropolitan Sewerage System for treatment at the Point Loma Wastewater Treatment Plant in return for the payment of a "transportation charge." MWWD advisory attorneys continue to work with MWWD staff and these agencies to draft and negotiate the terms of new standard agreements, including the amount and methodology of computing the transportation charge. This work is ongoing.

MWWD occasionally shares in the costs of expanding, repairing, or replacing existing facilities when the required work exceeds what is attributable to a developer's particular project. The Public Works Section attorneys assist MWWD in drafting cost-sharing agreements and determining a cost reimbursement mechanism to repay MWWD from future developments.

The Public Works Section provided early intervention in disputes with contractors and consultants. Where in years past most claims involved contractors seeking additional compensation from the City, recently MWWD is pursuing more claims against contractors for defective workmanship at various facilities. The Public Works Section assisted MWWD in recovering costs associated with repairing defective work and will continue to pursue additional claims against contractors for such work.

The Public Works Section attorneys continue to participate with MWWD in ongoing discussions with environmental groups and regulatory agencies regarding the City's waiver from secondary treatment at the Point Loma Wastewater Treatment Plant. The City's current waiver expires in 2008, and opposition to renewal of that waiver is expected. The Public Works Section will be assisting MWWD in future discussions with

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<sup>5</sup> Poway, Del Mar, County of San Diego, Otay Mesa, Spring Valley, Lakeside/Alpine, La Mesa, El Cajon, Wintergardens, Chula Vista, and Lemon Grove.

environmental groups, the EPA, and the Regional Water Quality Control Board regarding the National Pollutant Discharge Elimination System [NPDES] permit at the Point Loma Wastewater Treatment Plant.

The Public Works Section also handles litigation related to regulatory compliance. In *United States v. City of San Diego*, U.S. District Court No. 03-CV-1349, the EPA and, the BayKeeper/Surfrider filed claims for penalties and injunctive relief for sanitary sewer overflows [SSO's] from December 1996 to the present. A Partial Consent Decree was entered on September 13, 2005, that commits to upgraded operations and maintenance through June 30, 2006. The parties are negotiating the contents of a Final Consent Decree which would commit the City to completing certain capital projects by the year 2013, and to continuing the enhanced operations and maintenance program to reduce sewer spills.

In *Association of Concerned Taxpayers v. City of San Diego*, Superior Court Case No. GIC 857292, a taxpayers group filed a lawsuit to halt the City's study of the feasibility of recycling wastewater to potable water standards. The study was requested by the City Council, but the results have not yet been presented to the City Council for consideration. The City has filed a motion seeking dismissal of the lawsuit. The motion is currently off calendar while plaintiffs seek to retain new legal counsel.

- **Water Department**

The Public Works Section, through Deputy City Attorneys Lori Girard and John Kirk, provides legal support to the Water Department. The Water Department's Capital Program for Fiscal Year 2005-2006 was approximately \$113.2 million. This included such projects as upgrades to the Alvarado, Otay, and Miramar Water Treatment plants; rehabilitation of the Rancho Bernardo Reservoir; construction of pump stations; and the expansion and rehabilitation of pipelines throughout the City. The Deputy City Attorneys provided ongoing legal advice and support to the department on its capital program.

The Public Works Section also continues to work with the Water Department on insuring a safe and dependable future water supply for the citizens of San Diego. In that capacity, the deputies participate in discussions and provide legal advice on such matters as ground water, reclaimed water, water recycling, and other water conservation programs. In Fiscal Year 2005-2006, Deputy City Attorney Kirk worked with the Water Department in pursuing grant funding for security upgrades throughout the City's Water system, as well as in implementing these security upgrade projects.

Deputy City Attorney Kirk worked closely with the Water Department in establishing and obtaining approval for the Mandatory Reuse Ordinance implementation criteria, as well as obtaining grant funding for the department's Commercial Landscape Conservation program. He also assisted the department in pursuing collection of substantial unpaid water bills. These efforts resulted in the recovery of tens of thousands of dollars on behalf of the Department. Additionally, Deputy City Attorney Kirk assisted in the implementation of the Water Department Customer Advocate position, assuring that billing disputes are properly investigated that the results are clearly communicated to customers.

Deputy City Attorney Girard worked closely with the Water Department on negotiating and implementing contracts with developers to design and construct reclaimed water infrastructure in order to implement the City's Water Reclamation Master Plan and pursue the City's long-term goal of reducing reliance on imported water. By reducing the reliance on imported water, substantial savings may be realized for the Department and City ratepayers on the purchase of water. To this end, Deputy City Attorney Girard also participated in negotiating and/or implementing contracts for the sale of the City's reclaimed water supply to public and private entities.

She also continues to assist the Department in its efforts to obtain Proposition 50 grant funds to develop and/or implement: (1) an integrated regional water management plan in cooperation with the San Diego County Water Authority and the County of San Diego; (2) a water use efficiency study for re-circulating hot water systems; (3) brackish ground water desalination projects; (4) security upgrades for components of the City's water system; and (5) upgrades to the Miramar and Otay water Treatment Plants.

Deputy City Attorney Girard has also been working with the Department on pursuing the goals of the City's Long-Range Water Resources Plan [Plan], including advising on issues related to the City's water rights. She assists in developing consultant agreements, and cooperative agreements with the United States Bureau of Reclamation, to assist the Department in research activities related to implementation of the Plan. She also works closely with the Department in drafting and implementing consultant agreements for the design work necessary for the Department's implementation of its capital program.

In addition, she has been advising the Department on the many issues associated with implementation of the Emergency Storage project, including implementation of the City's agreements with the San Diego County Water Authority. Her work also includes reviewing and advising the Department on its various real estate transactions, lease agreements, grant deeds, and easements.

- **Environmental Services Department**

Deputy City Attorneys Grace Lowenberg and Fritz Ortlieb serve as the advisory attorneys to the Environmental Services Department. Deputy City Attorney Lowenberg is a member of the Department's Executive Team and is participating in the Department's long-term strategic planning process, which includes future business planning for all aspects of the department's solid waste management responsibilities. She has assisted the Department in obtaining a \$1,000,000 settlement from Shell Oil Company for its portion of the plume of contamination under Qualcomm Stadium, and is involved in ongoing negotiations with the party responsible for the core contamination under the Qualcomm Stadium and with the RWQCB for clean-up of the site.

Deputy City Attorney Lowenberg also advises various task forces the Department assembles to provide input on solid waste matters. For example, she advised the Lead Poisoning Prevention Task Force and drafted the new Lead Hazard Prevention & Control Ordinance. This ordinance will be going to the City Council before the end of the fiscal year. She also advised the City's Mission Bay Landfill Technical Advisory

Committee in connection with the City's comprehensive Mission Bay Landfill site assessment. This project is currently underway and will continue into the next fiscal year.

Additional legislative drafting resulted in a new illegal dumping ordinance and a new Construction and Demolition Debris Diversion Ordinance. Together, these ordinances will assist the City in prolonging the useful life of the City's Miramar Landfill as well as prevent illegal dumping of construction and other debris in the City of San Diego. All of these ordinances will have a significant benefit to our environment and the health and safety of the citizens of San Diego, and a long term financial benefit to the City. As part of the implementation of these ordinances, she drafted an agreement for the design, construction, and operation of a construction and demolition facility at the Miramar Landfill.

In addition to her everyday review of contracts and other legal matters for the Environmental Services Department, Deputy City Attorney Lowenberg assisted the department in the negotiating and drafting an exclusive negotiating agreement for a proposed baseball/golf learning center at the closed South Chollas Landfill.

In another environmental matter, she successfully defended the City against a Notice of Violation from the San Diego County Department of Environmental Health for an abandoned underground storage tank. She was able to clearly establish for the County agency that the City was not the responsible party, thereby saving the City substantial fines and contamination removal and restoration costs. She also represented the department before the City's Civil Service Commission, the RWQCB, the Air Pollution Control District, and the Integrated Waste Management Board.

Deputy City Attorney Ortlieb serves as the legal adviser to the Mayor and City Council on energy and public utility matters, and he supports the Environmental Services Department's Energy division. In Fiscal Year 2005-2006, he provided legal services toward objectives in Council Policies 900-2, 900-14, and 900-18 for the attainment of a reliable and sustainable energy future for San Diego.

Mr. Ortlieb is the City Attorney's liaison with San Diego Gas and Electric Company [SDG&E] and reviews matters relating to the utility's gas and electric franchises and SDG&E's regulation by the California Public Utility Commission. Mr. Ortlieb's work includes preparation of contracts for energy efficiency and renewable energy projects in City facilities, and assistance in application for administration of state utility incentives for energy efficiency, renewable energy, and distributed generation.

In 2005-2006, Deputy City Attorney Ortlieb continues to manage the legal affairs of the 19 megawatts of renewable self-generation facilities owned or controlled by the City. A recent example is a privatized 1 megawatt solar panel system that will serve the electric loads of the Water Department's Alvarado Treatment Plant for at least 20 years at favorable rates.

Mr. Ortlieb has handled the legal affairs of the City's landfill and digester gas cogeneration projects from their inception. The projects, a mixture of public and private, will save the City tens of millions of dollars over the project life, and in measure will

promote a cleaner and more sustainable energy future for the City. More projects will be evaluated, planned, negotiated, and presented to the City Council for consideration in the coming fiscal year.

Deputy City Attorney Ortlieb also advises the City's Sustainable Energy Advisory Board. He has intervened for the City in cases at the California Public Utilities Commission that will be significant to the region's energy future, or which affect tariffs on City accounts. Availability of reliable, cost-effective, and clean energy is an important economic and environmental consideration for the City's own accounts and interests, as well as those of its commercial and residential constituents. Mr. Ortlieb's advocacy has been focused, from the City's perspective, as one of SDG&E's largest customers, and also on protecting the interests of residential and commercial customers.

Current proceedings include SDG&E's Long-Term Resource Plan case, the State Rate Stabilization case, a rulemaking proceeding for Distributed Generation, rulemaking cases for a Renewable Portfolio Standard and for Energy Efficiency and Public Goods Charge funds, and SDG&E's 2006 Rate Design Window application. In 2006-2007, Mr. Ortlieb will also be reviewing and, if necessary, litigating SDG&E's application to build the Sunrise Powerlink, a 500 kV electrical transmission line proposed by SDG&E to be built from the Imperial Valley into the City of San Diego.

Other energy-related litigation currently directed by the Public Works Section includes an ongoing complaint case at the CPUC arising from the formation of a utility underground district and a pending appeal in the Ninth Circuit Court of Appeals against the Federal Energy Regulatory Commission for errant orders stemming from the 2000 energy crisis. Superior Court actions include a pending case against natural gas wholesalers for market-rigging in 2000, and an action against SDG&E to enforce the conditions of the utility's franchise as it relates to the relocation of streets in the downtown Ballpark District.

- **Equal Opportunity in Contracting**

Deputy City Attorneys Jung and Wright-Travis continue to assist the Equal Opportunity in Contracting Program in its day-to-day operations. The attorneys also advised the Labor Compliance Program in reviewing whether certain contracts and contractors are subject to prevailing wage requirements as well as state and federal labor compliance standards. Additionally, Deputy City Attorney Wright-Travis advised the Citizens Equal Opportunity Commission on legal matters.

- **Americans with Disabilities Act/Title 24 of the California Code of Regulations, and Purchasing Department**

Deputy City Attorney Rahbeka Harris provides legal advice on the City's obligations under the Americans with Disability Act [ADA] and Title 24 of the California Code of Regulations [the California Building Code], collectively the federal and state access regulations. In this capacity, she provides comprehensive legal advice to multiple City departments on issues related to accessibility as required under the federal and state access regulations, which include providing oral and written analyses of and advice on legal issues. This includes advising the Disability Services program and other City



departments as the City updates and implements its Transition Plan, which includes reviewing the City of San Diego's programs, services and activities for accessibility.

Deputy City Attorney Harris provides general legal support and advice to City departments on accessibility issues relating to existing City facilities slated for expansion or remodeling, which may trigger compliance with the federal and state access regulations. In addition, Deputy City Attorney Harris provides legal support and advice to City departments on accessibility issues relating to new construction projects.

Deputy City Attorney Harris provides and assists in developing training on the requirements of the federal and state access regulations to various City departments to ensure that City departments are sensitive to accessibility issues when designing programs, services, and activities, and when evaluating architectural plans.

As a member of the Citywide Access Law Group [CALG] and the Access Law Technical Group [ALTG], Deputy City Attorney Harris actively participates in their regular meetings and provides legal advice. These groups are dedicated to clarifying access law ambiguity and developing policies geared toward creating accessibility for all individuals.

She prepares and reviews proposed contracts to be entered into by the City to address accessibility issues. Additionally, Deputy City Attorney Harris prepares resolutions, and reviews and approves ordinances and other documents and materials necessary for City Council action. Her duties include working with the Development Services Department on updates to the Land Development Code to implement new regulations pertaining to reasonable accommodations.

In addition to advising on ADA issues, Ms. Harris advises the Purchasing Department. In addition to reviewing contracts, 1472's, and 1544's, she works with the department on bid protests, contractor disputes, and preparation of requests for proposals.

- **General Services Department, and Storm Water Program**

The City's General Services Department merged with the Transportation Department in Fiscal Year 2004-2005. As part of that reorganization, the Storm Water Program, formerly in the General Services Department, was moved to the Metropolitan Wastewater Department. The Public Works Section now advises the General Services Department and the Storm Water Program. Deputy City Attorney Miller is the advisory attorney for the General Services Department and the Storm Water Program. Recently, Mr. Miller has been working closely with the Storm Water Division in response to orders of the Regional Water Quality Control Board regarding pollution in Chollas Creek and San Diego Bay.

- **Qualcomm Stadium, Petco Park, and Special Events**

Legal advisory services on Qualcomm Stadium, Petco Park, and Special Events matters are provided in the Public Works Section. Stadium staff receives advice on issues pertaining to Use Permits and other tenant. Additionally, assistance is provided to the Mayor's staff on the administration of the Joint Use and management Agreement for Petco Park.

The Special Events program conducts events throughout the year. Many of the events are recurring; others are new and provide unique challenges in negotiating terms and conditions for their performance. Advice is also provided to the Special Events program on such negotiations and other legal matters pertaining to these events.

- **Commission for Arts and Culture**

Deputy City Attorney Swenson advises the Commission for Arts and Culture. In Fiscal Year 2005-2006, Deputy City Attorney Swenson negotiated agreements with Metropolitan Transit Services involving the installation of an artwork adjacent to the Cesar Chavez Trolley Station at 25<sup>th</sup> and Commercial. He also assisted with some agreements and amendments to agreements concerning the design of artworks which are to be installed in the Central Police Facility, the Mission Hills Branch Library, and the New Main Library. Additionally, he worked with the Commission for Arts and Culture to perform a conservation survey of the City's art collection.

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San Diego City Attorney's  
**REAL PROPERTY UNIT**  
Civil Division



**UNIT SCOPE OF WORK**

The Real Property Section provides legal support to numerous departments and agencies with respect to use of real property within the City and the administration of property owned by the City. Major departments and agencies include Real Estate Assets, Park and Recreation, Community Services and Economic Development, Airports, Housing Authority, and others.

The Unit is led by Deputy City Attorney Leslie FitzGerald. Deputies work closely with their assigned departments, agencies, boards, and commissions to meet their day-to-day legal needs. Deputies provide legal guidance and advice in several different forms including input at project meetings, telephone and e-mail advice, drafting, review, and negotiation of leases, permits, purchase and sale, developer, and other real property agreements, and through written letters, memoranda, and legal opinions. Deputies draft Council resolutions and ordinances for the approval of agreements, the expenditure of funds, and the adoption of new or amended policies and law. Deputies often interact with attorneys representing private interests regarding a particular agreement or project. Deputies also regularly interact with the Mayor, Council Members, and their staffs.

Deputies in the Real Property Section use Matter Management System software. This software tracks matters within the Unit by Deputy.

The following positions are within the Real Property Unit:

- Community Services and Economic Development
  - Community Services
  - Economic Development
  - Business Improvement Districts
  - Maintenance Assessment Districts
  
- Housing Authority/Housing Commission
- Housing Advisory and Appeals Board
- Land Use and Housing Committee
- Neighborhood Code Compliance Department
- Park and Recreation Department
  - Community Parks I
  - Community Parks II
  - Park Planning
  - Regional Parks (Balboa, Mission Bay, Mission Trails)
  - Open Space

- Golf (Torrey Pines, Balboa, Mission Bay)
- Maintenance Assessment Districts
- Park and Recreation Board
  
- Parking Task Force
  - Real Estate Assets Department
  - Airports
  - Montgomery Field
  - Brown Field
  - Acquisition and Valuation
  - Asset Management and Marketing

## **HIGHLIGHTS**

Legal Review and Analysis of Many Issues Facing the City were provided:

- De Anza and Mission Bay Park;
- Single Room Occupancy Hotel Regulations;
- Proper Uses of Brown Field Property;
- Foreign Trade-Zone Agreement;
- La Jolla Children’s Pool;
- Rental Agreements on Sunset Cliffs Park Property;
- Torrey Pines Clubhouse;
- Potential Amendment to City’s Noise Ordinance;
- Fairbanks Ranch Agreements;
- Affordable Housing Programs Including Housing Set-Aside Funds;
- Use of Silent Video Surveillance in Waste Tire Enforcement Program;
- Syringe Exchange Program;
- Condominium Conversion Issues;
- Sunset Cliffs Master Plan;
- Sports Arena Agreements;
- Revising Special Use Permits for Recreation Councils;
- Torrey Pines Golf Course;
- Torrey Pines Gliderport;
- Conflicts of Interest; and
- Miscellaneous Land Use Issues.
  
- Drafted Legal Memoranda on a Wide Variety of Issues in Response to Requests by City Staff, Including, for Example:
  - Amateur Radio Antennas;
  - Potential Large Retail Ordinance;
  - Potential Superstore Ordinance to Protect the General Welfare;
  - Ownership of Concourse Client List;
  - Sale of City-owned Property;
  - Vacation of Navy Easement;

- Newsrack Storage;
  - Possible Conflict of Interest for Airports Advisory Committee;
  - San Diego River Park Master Plan;
  - Memos re New Cases or Legislation;
  - Potential Conflicts of Interest; and
  - Memoranda for Closed Session Meetings of the City Council.
- Drafted Hundreds of Resolutions for Council Actions.
- Drafted Ordinances Enacting New or Amending Existing Municipal Code Provisions, Including:
    - Reformatting the City's 19 Planned District Ordinances;
    - Newsrack Ordinance;
    - Electrical Fence;
    - Sign Ordinance Changes Related to Ongoing Billboard Litigation;
    - Park Fees;
    - Linkage Fee;
    - Needle Exchange;
    - Fourth and Fifth Land Development Code Updates;
    - Brush Management Regulations;
    - Use of Goats in Brush Management; and
    - Single Room Occupancy Hotel Regulations.
- Drafted Amendments to Council Policies;
- Formulated Responses to Other Public Agencies, Including:
    - Memorandum of Law to Attorney General Regarding Conflicts of Interest and Maintenance Assessment Districts/Property and Business Improvement Districts;
    - Brief and Legal Argument before the Coastal Commission Regarding the Use of Buoys at La Jolla Shores;
    - Response to NOAA Regarding the Children's Pool;
    - Del Mar Union School District; and
    - Other Responses, as Requested.
- Legal Drafting, Review and Analysis of all Contracts and Permits Presented by CS&ED, Park & Recreation, Real Estate Assets, and Neighborhood Code for Whatever Purpose, Including:
    - Leases and Permits for the Commercial Use of City property;
    - Ensuring Lease Rents Reflect Market Rates;
    - Leases and Permits for the use of Park Property by Non-profit Organizations for Museums, Theatre, Youth Sports and Recreation, Music and Other Uses;
    - Concession Agreements for Vendors on City Property;
    - Exchange and Construction Agreement for Fire Station 4;
    - Leases and permits for the City's Use of Property not Owned by the City;

- Agreements for Homeless Shelters and Other Services on City property;
  - Consultant Agreements;
  - Requests for Proposals for Use of City Property;
  - Requests for Qualifications for Services Sought by the City;
  - Agreements with Developers for the Construction of Public Parks, Streets, and other Improvements;
  - Purchase and Sale Agreements for the Sale or Purchase of Real Property;
  - Agreements for the use of CDBG, SBEP, and TOT funds;
  - Agreements to Expend Grant Funds for “6 to 6” Program;
  - Agreements for the Section 108 Loan Program;
  - Grant Agreements;
  - Other Agreements for the Continued Operation/Management of the Storefront Improvement Program, Business Improvement Districts, and Community Parking Districts;
  - Easements and Deeds Conveying Property Rights;
  - Conservation Easements;
  - License Agreements;
  - Estoppel Agreements;
  - Joint Use Agreements for Parks and Schools;
  - Joint Exercise of Powers Agreement for Otay Valley Regional Park;
  - Multi-jurisdictional Agreements for the Development and Use of Park Land;
  - Agreements with other Public Agencies for the Sale or Exchange of Real Property Interests;
  - Community Service Center Agreements;
  - Consents to Subleases and Assignments;
  - Telecommunication Leases and Subleases; and
  - Other Agreements Necessary to Accomplish the City’s Business.
- Provided Legal Support to City staff at Administrative Hearings.
  - Responded on Behalf of the City or Assisted Staff in Responding to Many Public Records Act Requests.

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**San Diego City Attorney's  
REDEVELOPMENT AGENCY  
Civil Division**



**UNIT SCOPE OF WORK**

The Redevelopment Agency of the City of San Diego was created by the City Council in 1958 to alleviate conditions of blight in older, urban areas. The Redevelopment Agency is able to use special legal and financial mechanisms to eliminate blight and improve economic and physical conditions in designated areas of the City. The City Attorney's Redevelopment Unit works in conjunction with Agency Staff to accomplish redevelopment projects within the City, whether downtown or in outlying areas that have been designated as Redevelopment Areas.

Redevelopment of urban areas allows the idea of "smart growth" to occur, because it allows the reuse or redevelopment of previously developed areas, rather than encouraging suburban sprawl, i.e., growth spreading outside the existing infrastructure and into previously untouched and environmentally sensitive areas. Proper implementation of the concept of redevelopment induces efficient and optimal use of the City's urban lands. Redevelopment plays a crucial role in transforming blighted areas of the city, where property values are low, crime is prevalent and financial incentive is weak with respect to investing development dollars. Redevelopment works to generate interest and give financial assistance to create new development in areas that suffer from disrepair and neglect. In addition to providing much needed housing, with an emphasis on affordable housing, redevelopment assists in allowing the City to provide public use facilities, such as YMCAs; rehabilitation facilities; parks; and restoration of historic structures.

The City gains from redevelopment, through the transformation of run down, unsightly and depressed areas into new, renovated and revitalized areas, the creation of housing and the ultimate influx of tax dollars generated from the new growth, through property tax, sales tax and transit occupancy tax. In addition, redevelopment creates the money that it ultimately distributes to help projects, through a process called "tax increment" where a percentage of the increased tax revenues is directed back into the redevelopment funding mechanism. Consequently, the more successful redevelopment is, the more money it creates to sponsor new projects and programs.

**HIGHLIGHTS**

In the past year, the City Attorney's Redevelopment Unit has worked with Centre City Redevelopment Corporation [CCDC], Southeastern Economic Development Corporation [SEDC] and the City's Community & Economic Development Department/Redevelopment Division [City Redevelopment] to attract developer interest in blighted areas; negotiate development agreements with developers; formulate redevelopment projects that are consistent with the law, city policies and objectives of

redevelopment in eliminating blight; and completing those projects. Some of those projects are:

- **Veteran’s Village of San Diego**

This project involves the transformation of a small, rundown motel into a state-of-the-art rehabilitation facility for homeless veterans. Due to its magnitude, this project is being accomplished in phases and is currently in its second phase.

- **Balboa Theatre**

The historic Balboa Theatre is being restored, using original design construction details as much as possible.

- **Talmadge Senior Village**

This project created 80 affordable units for senior citizens and is expected to open in June 2006.

- **City Heights Square Senior Housing project**

This project will create 150 affordable apartments for seniors, as well as on-site support services. The groundbreaking for the project was on February 24, 2006.

- **Storefront Improvement Program**

This program gives store owners in blighted areas funding incentives to renovate and restore their storefronts.

- **Naval Training Center**

This project is in its second phase which consists of the construction of office buildings, a park and two hotels. The project includes renovation of historic buildings in the NTC Promenade Centre.

- **North Park Theatre**

This project involved the complete renovation of the historic North Park Theatre which opened on September 30, 2005.

- **Las Americas**

This project involved the creation of a new retail development in San Ysidro.

The foregoing projects are only some examples of projects that have been worked on by the City Attorney’s Redevelopment Unit in the past year. There are many projects that were completed in the last year but are not listed above, such as a number of condominium towers and retail establishments created in downtown, Petco Park, and the renovation of Little Italy and the Gaslamp Quarter. In addition, many projects are not listed that are in varying stages of progress in the development process.

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San Diego City Attorney's  
**TRIAL UNIT**  
Civil Division



**UNIT SCOPE OF WORK**

The San Diego City Attorney's Trial Unit consists of the following sections: General Litigation, Eminent Domain and Land Use, Civil Revenue and Recovery, Construction Litigation, and Worker's Compensation. The Trial Unit led by Assistant City Attorney Eugene Gordon is responsible for defending the City of San Diego and its employees, officials and departments in civil actions, and bringing civil suits on behalf of the City:

- Personal injury cases based on allegations of negligence, dangerous conditions of public property, traffic accidents involving City vehicles, and police misconduct cases, including allegations of violations of the state and federal constitutions, unlawful entries into homes, unlawful searches and seizures, false arrest, and excessive force.
- Challenges to the constitutionality of City ordinances and City policies or practices. Defend employment-related cases which include claims of discrimination, harassment and retaliation.
- Defend and initiate land use cases, including writs of mandamus and prohibition, CEQA writs, and property damage claims arising from floods, sewer backups, soil subsidence, etc.
- Defend other writs and challenges, including employment-related administrative writs, alleged Brown Act and Public Records Act violations, election challenges, and actions involving provisions in the City Charter and Municipal Code.
- Defend breach of contract and construction claims which commonly involve issues of contract interpretation, changed conditions, extra work, differing site conditions, liquidated damages, delay and disruption, and stop notices.
- Defend workers' compensation actions before the Workers' Compensation Appeals Board, and represents the various City departments in hearings before the Civil Service Commission.
- Prosecute revenue and recovery cases which include actions for false claims, unfair business practices, environmental contamination, overcharging, breach of contract, breach of development agreements, liquidated damages, tax collection, unpaid rent, damage to City property, and various other matters. The Unit also

seeks reimbursement from third parties for workers' compensation payments the City made to employees because of injuries caused by the third parties.

## **HIGHLIGHTS**

Approximately 250 –300 civil lawsuits were filed against the City in 2005. Most of those cases were or will be resolved without any monetary payment or by the payment of a nominal sum. Many of those cases were or will be disposed of by court orders granting motions filed by the City, voluntary dismissals, or by trial. Other cases were or will be resolved after settlement negotiations between the parties, settlement conferences, mediation, or arbitration.

- **Construction Litigation**

In a plaintiff's action, *City of San Diego v. Calif. Southwest Construction, Inc., et al.*, the Construction Litigation Section of the Trial Unit obtained a settlement in the amount of \$750,000 from a private contractor to reimburse the City's Metropolitan Wastewater Department for a water main rupture caused by the contractor when it was installing a sewer main under a City contract. The Construction Litigation Section also initiated a \$1.57 million lawsuit against the City's supplier of construction equipment at the Miramar Landfill to recover lease payments made in excess of the amount specified in the lease agreement. In another matter, the Section is in mediation with a contractor on a Water Department project where the City claims approximately \$3.7 million in liquidated damages for project delay. The Construction Litigation Section is also defending various construction related actions against the City. In addition, the Section is assisting advisory attorneys with evaluations and mediations involving both claims by and against the City related to construction contracts.

- **Workers' Compensation Section**

The Workers' Compensation Section of the Trial Unit had in excess of 700 open, active cases during 2005. The attorneys handled all aspects of litigation at the Workers' Compensation Appeals Board including trials, mandatory settlement conferences, expedited hearings, appeals, medical liens, death benefits, petitions to dismiss, and declarations of readiness. The Workers' Compensation Section also handled legal actions to recover workers' compensation costs from outside parties, and during 2005 recovered \$215,882 from third parties responsible for causing injury to City employees.

- **Civil Revenue and Recovery Section**

Plaintiff's litigation and revenue matters prosecuted by the City Attorney's Office Civil Division have resulted in judgments, settlements, or other recoveries for the City in the amount of \$6,670,775 from July 2005 through April 2006. This amount includes litigation settlements or judgments of approximately \$3,420,687, the recovery of a \$1,800,000 federal grant, the creation of \$900,088 in new revenue, and the recovery of \$550,000 in delinquent debts. In addition, up to \$2.1 million goes directly to the General Fund. These matters include:

- \$1,000,000 settlement from a developer for breach of a development agreement;
- \$750,000 settlement with a City contractor for breach of contract involving a ruptured water main;
- \$428,000 stipulated judgment against the president of a company that inundated City fax machines with junk faxes;
- \$326,000 summary judgment granted in the City's favor plus attorney's fees of \$191,475 in a dispute with SDG&E over relocation of power lines in the Ball Park District; and
- \$725,212 in settlements or judgments in various matters including recovery for unpaid rent, unpaid utility fees, damage to City property, and injury to City employees.

## **HIGHLIGHTS:**

- **Brown Field Federal Grant Reinstated and New Revenue**

Actions instituted by the City Attorney's Office resulted in the reinstatement of a \$1,800,000 federal grant for Brown Field and will provide \$900,088 in new revenue from the airport property. In August 2005, the FAA withdrew the federal grant for Brown Field due to City property management issues which included allowing City tenants to occupy areas affecting the safety of airport operations and allowing non aeronautic uses of the airport property. The City Attorney's Office undertook numerous eviction actions to remove tenants from those areas deemed unsafe by the FAA, and negotiated with the FAA to allow short term non aeronautic uses on other areas of the property. These actions resulted in the reinstatement of the federal grant in October of 2005.

The City Attorney's Office also undertook eviction actions at Brown Field against tenants for unpaid rent, holding over after expiration of leases, or persons on the property without lease agreements with the City. After these actions regained control of the property, and with the FAA's approval, the City Attorney's Office negotiated new right-of-entry permits with tenants that will provide new revenue to the City of \$900,088 over twelve months. The City's Airport's Division is utilizing data generated by the City Attorney's Office to increase revenue in other areas of airport property.

- **Recovery of Delinquent Debts**

In addition to the above matters, City Attorney plaintiff's litigation attorneys undertook a campaign with the City Treasurer's Office Collections Division to publicize, through the media and letters to debtors, the thousands of delinquent debts owed to the City. The Collections Division has determined that as a result of these joint efforts, from October 2005 to February 2006, the City has collected \$550,000 in delinquent debts. The City Attorney's Office works closely with the City Treasurer's Collections Division in prosecuting cases against delinquent debtors to recover money owed the City.

- **Potential Multi-million Dollar Revenue & Recovery**

Potential million and multi-million dollar plaintiff's revenue and recovery matters currently being handled by the City Attorney's office include:

- Four pension related matters for professional negligence;
- Contamination claim for a fuel plume under Qualcomm Stadium;
- Action against internet hotel booking companies for failure to pay Transient Occupancy Tax (TOT);
- Action for breach of a development agreement;
- Construction contract claim for liquidated damages for delay;
- Unfair business practices action relating to price fixing by natural gas wholesalers;
- Action against a heavy equipment supplier for excessive lease charges;
- Action for soil contamination from an underground fuel tank affecting construction of a sewer pump station;
- Claim for contamination and damage to City property from an industrial accident;
- Claim for breach of contract and negligence for faulty construction plans for a sewer pump station; and
- False claims action against a manufacturer of water works parts, purchased by the City, for misrepresenting that its products met certain industry standards.

- **Other Significant Potential Revenue & Recovery Matters**

Plaintiff's matters being handled by the City Attorney's Office with potential six figure dollar recoveries (\$100,000 to less than \$1,000,000) include:

- Four breach of contract actions for defective work, materials, or liquidated damages;
- Bankruptcy matter to obtain conservation property and endowment funds from a bankrupt environmental entity;
- Bankruptcy matter to recover fines from a car rental agency;
- Two actions for back rent owed on City property;
- Action for false claims involving procurement of City contracts;
- False claims action relating to collection of TOT;
- Claim for breach of an insurance contract for failure to pay a loss claim; and
- Action to recover an administrative penalty.

Resolution of these cases varies from a few months to up to three years depending on the complexity of the litigation and the potential for settlement prior to trial. If desired by the Mayor and or Council, these pending litigation matters may be discussed in more detail in Closed Session.

The number of plaintiff's litigation and revenue matters with a potential recovery in excess of \$50,000 being handled by the City Attorney's Office has significantly increased between July 2005 and April 2006. In July 2005, there were approximately 16 matters in excess of \$50,000 being handled by the City Attorney's Office however by the end of April 2006 this number has increased to 39 matters. Additional matters with a potential recovery in excess of \$50,000 are currently being evaluated for litigation.

From July 2005 through April 2006, the City Attorney's Office has or is handling in excess of 40 revenue and recovery matters with potential recoveries below \$50,000.

Although these matters individually have a potential recovery of \$50,000 or less, in the aggregate they can provide significant revenue for the City. Since July 2005, 23 such matters handled by the City Attorney's Office have resulted in settlements or judgments for the City of \$401,137.

During Fiscal Year 2006, the emphasis on plaintiff's litigation and recovery matters by the City Attorney's Office has resulted in an increase of more than 100% in the number of matters it is handling with a potential recovery in excess of \$50,000. Review of additional matters is ongoing and further plaintiff's litigation on behalf of the City will be initiated.

- **Insurance & Indemnity Claims**

The City Attorney's Office itself or in concert with outside counsel is also actively pursuing insurance and or indemnity claims to protect the City from significant financial exposure. Insurance has been identified that will likely cover the City's portion of the multi-million dollar expense for clean-up of San Diego Bay that allegedly resulted from contamination by a City refuse disposal site that ceased operation several decades ago. The City is also pursuing a cross-complaint for indemnity related to alleged claims the City's sewer rate fee structure was unlawful. The City is asserting that if it is found liable, others who received the benefit of the rate structure should reimburse the City.

In addition, the Federal District Court recently ruled that the City's insurance company was required to defend the City in all three of the De La Fuente cases (Border Business Park, National Enterprises, and Otay Acquisitions) and that the amount of coverage for the City's behalf on a particular policy was \$8 million, rather than \$2 million as the insurance company had claimed. The Federal Court also held that upon completion of the De La Fuente cases in state court, the City could seek contract damages and attorney's fees against the insurance company.

- **Revenue & Recovery Training**

As part of an ongoing effort to increase plaintiff's litigation on behalf of the City, City Attorney plaintiff's litigation attorneys have met with the City Auditor's Office External Audit Division to provide legal information on asserting False Claims Act actions based upon improprieties uncovered by the Auditor's Office during their audits of those paying rent or transient occupancy taxes (TOT) to the City. In a False Claims Act action, the City can recover treble damages and civil penalties. As a result, the Auditor's Office has recently referred for legal action a matter where their audit determined a hotel operator had significantly under paid TOT. The City Attorney's Office has also provided internal training of its attorneys in the area of False Claims, and as a result of this training, additional matters are currently being evaluated for litigation.

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