

2012

Annual Report



Front row (l to r): Mary Jo Lanzafame, Tanya Tomlinson, Tricia Pummill, Jon Heller, Jan Goldsmith, Marlea Dell Anno, Angie Reddish-Day
Back row (l to r): Gina Coburn, Carmen Sandoval, Andrew Jones, Don Worley



Office of the San Diego City
Attorney

1200 Third Avenue, Suite 1620
San Diego, CA 92101
(619) 236-6220



Message from City Attorney Jan Goldsmith:

It has been my privilege to serve as the San Diego City Attorney for the past four years to ensure that City Hall functions smoothly, effectively and transparently to the benefit of all.

When I first took office in 2008, the office had over a 90% turnover, lacked the basics of a functional law firm, had no client relationship, lacked much trial experience and was over budget by over \$1 million in mid-fiscal year. Many projected that it would take a generation to rebuild an office of this size into a functional law firm. Instead, the office was rebuilt within four years into a quality municipal law firm, starting from the ground up. A new structure was created similar to a private law firm, complete with an executive committee, partners and junior partners. Quality control and training processes were established and the office added computerized case management systems both for calendar and notes (thereby eliminating use of the front of the case file as the calendaring system). The office was brought into the 21st century. Settlement and trial decisions on civil litigation and advisory opinions are now based upon the facts and law, not politics. In the process of rebuilding the office, we helped improve the City's overall ability to function effectively. What's more, the budget deficit was overcome and the office has balanced its budget each of the four years.

Our mission statement:

Integrity matters! We can best help our city by maintaining our integrity, providing timely, accurate and high quality legal representation to the City of San Diego. We will be firm, independent and professional, stopping illegalities while suggesting solutions. We will never forget that we are accountable to the "people" of San Diego and that we represent the City of San Diego.

A couple of significant cases that you will read about in this annual report include a \$27 million dollar settlement that our Civil Litigation Division achieved with SDG&E. This settlement resolves the City's claims against SDG&E arising from the 2007 wildfires. The City losses included fire emergency response costs, loss of lease revenue, damage to City structures including the City's reservoir, and ecological/habitat damage.

Our Consumer & Environmental Protection Unit joined prosecutors in nearly every California County to bring two large retailers to court for illegally disposing of household hazardous materials. CVS Pharmacy and Walgreen Co. disposed of products they sell which had become damaged and which were hazardous to the environment, by sending them to landfills. CVS paid penalties and costs of \$13.7 million and Walgreen paid penalties and costs of over \$16.5 million to resolve these lawsuits. They also instituted programs to ensure that future similar wastes will be handled as required by the Hazardous Waste Control Act.

This annual report is just a brief overview of the tireless efforts and hard work by all of our employees. I would like to thank each and every one of them for all that they do in helping me serve as City Attorney.

Jan I. Goldsmith

Table of Contents

COMMUNITY JUSTICE DIVISION:

| | |
|---|----|
| CONSUMER & ENVIRONMENTAL PROTECTION UNIT..... | 4 |
| CODE ENFORCEMENT UNIT..... | 10 |

CRIMINAL DIVISION:

| | |
|--|----|
| CASE ISSUANCE UNIT..... | 17 |
| GENERAL TRIAL UNIT..... | 22 |
| DOMESTIC VIOLENCE & SEX CRIMES UNIT..... | 30 |
| NEIGHBORHOOD PROSECUTION UNIT..... | 36 |
| APPELLATE UNIT..... | 47 |

CIVIL LITIGATION DIVISION:

| | |
|---------------------------------|----|
| CIVIL PROSECUTION UNIT..... | 48 |
| WORKERS' COMPENSATION UNIT..... | 49 |
| GENERAL LITIGATION UNIT..... | 50 |
| LAND USE LITIGATION UNIT..... | 55 |
| SPECIAL LITIGATION UNIT..... | 59 |

CIVIL ADVISORY DIVISION:

| | |
|--|----|
| REAL PROPERTY & ECONOMIC DEVELOPMENT SECTION..... | 62 |
| PUBLIC WORKS UNIT..... | 66 |
| GOVERNMENT AFFAIRS SECTION..... | 68 |
| PUBLIC FINANCE SECURITIES & DISCLOSURE SECTION..... | 71 |
| PUBLIC SAFETY, LABOR, EMPLOYMENT & TRAINING SECTION..... | 72 |



The Office of the San Diego City Attorney is structured like a private law firm model and has been serving the needs of representation for the City. The office is divided into four divisions: Community Justice, Criminal, Civil Litigation and Civil Advisory. These divisions are subdivided into units and sections which allow the attorneys to specialize in areas of practice.

Community Justice Division – The Community Justice Division prosecutes cases that the community has identified as important to quality of life. Prosecutors work with the community, police and other law enforcement agencies to establish and maintain security, fair business dealing and to promote justice. The Community Justice Division is divided into two units, including Consumer & Environmental Protection Unit and Code Enforcement Unit. Assistant City Attorney Tricia Pummill is head of this division.

Consumer & Environmental Protection Unit



The Consumer & Environmental Protection Unit (CEPU) successfully concluded 61 cases (52 criminal and 9 civil), all involving unfair business practices affecting consumers or the environment. The civil cases resulted in penalties and costs totaling over \$30 million. The criminal cases resulted in restitution orders for \$49,604 and fines of \$47,454. In 28 of the criminal cases, offenders were ordered to serve time in jail or to do work service to the community. The unit accomplished the following in 2012:

- Prosecuted cases for false advertising, false packaging, sale of counterfeit products and scanner overcharges;
- Hired an investigator to handle complaints of real estate fraud and obtained a conviction of the owner of a loan modification business;
- Prosecuted businesses violating laws that deplete or endanger marine resources;
- Worked with prosecutors throughout California to resolve two large civil cases against retailers for unlawful disposal of household hazardous wastes;
- Secured convictions in theft cases, including a loan shark;
- Prosecuted individuals for a variety of unlicensed professional activities;
- Continued enforcement of the laws regulating tow companies, securing two convictions of tow company owners; and
- Provided information to the public through media outlets, a consumer phone bank, speeches, and the publication of monthly newsletters.

False Advertising

The CEPU resolved nine significant cases involving various forms of false advertising by individuals selling goods or services. False advertising can involve a false statement or a product that is deceptively packaged to look larger than it really is. The Unit filed a case alleging that Horizon Group distributed packages of jewelry-making kits under the name “Disney Princess” that were deceptively large for the quantity of goods inside. The package was half empty:



Outside of kit

Opened kit

Horizon was ordered by the Court to pay \$225,000 penalties and costs and not to distribute similarly packaged products in the future. See Press Release at:

<http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease121115.pdf>

The CEPU also addressed false advertising of prices by major retailers. Two cases involved retailers who advertised one price on store shelves or in printed ads and charged a higher price at the time of checkout. These cases are referred to as “scanner overcharge” cases and were investigated by the County of San Diego Department of Agriculture, Weights and Measures. They involved violations statewide so other counties’ weights and measures offices also provided reports of violations. Wal-Mart, Inc. paid \$2.1 million in penalties and costs and was ordered to extend its “Get it Free” program whereby consumers who are overcharged at checkout get the item for free or \$3 off the lowest price. The owner of CarQuest Auto Parts, Golden State Supply, was ordered to pay over \$212,000 in penalties and costs for scanner overcharges.



The Rite Aid Corporation was ordered to pay \$725,000 in penalties and costs for misleading consumers about the discounts they would receive if they had a “+Up Rewards” or “Wellness” card from Rite-Aid. Rite-Aid advertised prices in its stores and in print ads that reflected a discount as though it was immediately available, when, in truth, the consumer would receive that discount only if he/she returned to the store within a certain time period to purchase the same item. In addition, Rite Aid employees refused to provide cash back when a consumer used a gift card and the value remaining was under \$10. See Press Release at:

<http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease121010.pdf>

Two criminal cases also involved false advertising. Laverne Bosse doing business as Rent San Diego Properties advertised for sale a listing of available rental properties. She did not obtain the permission of the owners of the properties to list them and she provided false information on her lists. She was convicted and, as part of her sentence, she was required to pay back four victims a total of \$362, and surrender her license from the Department of Real Estate. The second case involved charity fraud. Patricia Sanchez pleaded guilty to a crime after she solicited funds for charity outside a YMCA and she kept the money for herself.

Another group of cases involved selling counterfeit products. Jeffrey Butler sold counterfeit California driver's licenses to students at UCSD for them to use to purchase alcohol. Ysmael Munoz sold DVDs of recent movie releases that were not yet on DVD. Melvin Plant sold sports shirts at Qualcomm stadium that were not licensed by the NFL. All three were convicted and forfeited the goods they had offered for sale.

Loan Modification Fraud

The CEPU applied for and received a grant from the California Department of Justice to enable us to expand our enforcement of the laws regulating businesses that offer to modify mortgage loans on better terms for homeowners. State law prohibits these businesses from receiving an advance fee for their services. The grant was used to hire an investigator in June 2012, for one year. The CEPU is accepting complaints from the public and referrals from other agencies of these cases. The CEPU successfully prosecuted Yvette Mercado, doing business as Coastal Home Solutions, for taking advance fees. In addition to paying fines, she was ordered to pay \$1850 restitution to the victim. Several other cases have been filed against similar businesses and there are numerous ongoing investigations.

Press Releases: <http://www.sandiego.gov/cityattorney/pdf/news/2012/grant120321.pdf>
<http://www.sandiego.gov/cityattorney/pdf/2012/newsrelease120301.pdf>

Protecting Marine Resources

The CEPU Environmental prosecutor obtained convictions in 14 cases involving individuals who violated laws regulating our marine resources. Twelve cases involved individuals taking undersize lobsters, often from our protected waters in the La Jolla Marine Reserve. One of the defendants, Binh Chau, was a three-time violator. He served 270 days in custody.

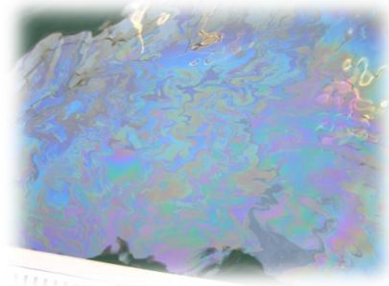


Undersize lobsters

The remaining individuals were ordered to pay hefty fines and perform Public Work Service. The remaining cases involved violations by sport fishing businesses of

regulations enforced by the California Department of Fish & Game.

The Unit also addressed activities by businesses which pollute our ocean and bay. We obtained a criminal conviction of a boat owner who discharged lubricant oil into San Diego Bay and we prosecuted a hotel owner for discharging pool chlorine to a storm drain that drained directly into Mission Bay. Finally, a concrete etching business, Valley Pacific Concrete paid penalties and costs for washing concrete etching solution into City storm drains. Water that goes into storm drains is not treated, but flows directly to our bays and the ocean.



Oil Slick in San Diego Bay

Retailers Disposing of Hazardous Materials

The CEPU joined prosecutors in nearly every California County to bring two large retailers to court for illegally disposing of household hazardous materials. CVS Pharmacy and Walgreen Co. disposed of products they sell which had become damaged and which were hazardous to the environment, by sending them to landfills. CVS paid penalties and costs of \$13.7 million and Walgreen paid penalties and costs of over \$16.5 million to resolve these lawsuits. They also instituted programs to ensure that future similar wastes will be handled as required by the Hazardous Waste Control Act.

Theft Cases

The CEPU prosecuted four significant cases involving theft by business people. Lirio Ramos was convicted of loan sharking. She charged 20-30% interest compounded every two weeks on loans she made to co-workers whom she supervised. She paid restitution totaling \$23,953 to 12 victims as part of her sentence. See Press Release at:

<http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease120531.pdf>

Mohammed Atta, doing business as Cox Auto Service, charged customers for auto repair work he did not perform and charged for work not necessary. He was ordered to pay restitution of \$2339.95 as part of his criminal sentence. The CEPU saw an increase in rental scams where a person would advertise a room for rent and take money from victims without delivering the room. Jasmine Ford ran a rental scam, taking money from 10 victims. She was convicted and ordered to pay restitution totaling \$3,545, in addition to serving 6 months in jail. Press Release: <http://www.sandiego.gov/cityattorney/pdf/2012/newsrelease120302.pdf>

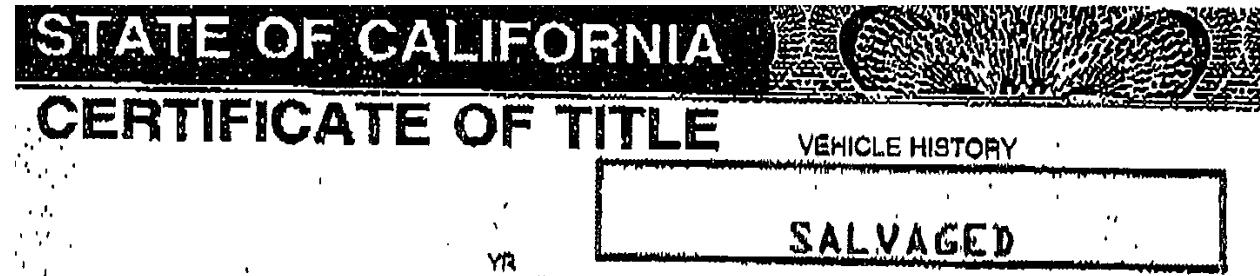
**\$305 Great Deal.Need Some1 ASAp No Deposit.
2Bd 1Bath Ready....! (San Diego) (map)**

Jasmine Ford's advertisement

In a similar scam, Brandon Stephens offered a car for sale, took \$400 from a prospective buyer, and left the scene with the car. He was ordered by the court to pay restitution to the victim.

Unlicensed Activities

The CEPU works with the agencies that license and regulate various professions to ensure that individuals offering to do work that requires a license are properly licensed. The Unit obtained convictions in cases involving 8 different professions: cosmetology, contracting, auto repair, law, auto sales, sale of food, sale of liquor, and party buses. The Contractors State License Board conducted a sting operation to find unlicensed contractors. The CEPU secured convictions against 11 unlicensed contractors from this operation. In addition, Amipeliasi Afungia, doing business as Perry Construction, pleaded guilty to unlicensed contracting and paid back a homeowner \$3250 in restitution. Also noteworthy, was the conviction of Pablo Toscano, doing business as 619 Presents, who ran a party bus without a PUC permit. In another, Massoud Gitforooz, doing business as California Exotic Autos advertised vehicles for sale and sold vehicles with salvaged titles to people without disclosing they were salvaged and that he was not a licensed dealer. See this press release about a woman practicing law without a license: <http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease121108a.pdf>



Tow Companies

The CEPU continued its efforts to address violations of law by tow operators towing vehicles from public parking lots without the owner's permission in violation of state laws. Arnold

Rodriguez, doing business as City Wide Towing pleaded guilty to unlawful towing and paid \$3,160 restitution to 11 victims. See Press Release at:

<http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease120611.pdf>



Michelle Calderon, doing business as Mac Cal Towing, pleaded guilty to charging an excessive tow rate, and paid \$365 to one victim.

Community Outreach

One of the goals of the CEPU is to reduce the incidence of fraud by educating the public to recognize it before becoming a victim. To meet this goal, the CEPU provides information through media outlets, speeches, and newsletters. In 2012, CEPU staff appeared on local television news programs discussing specific consumer issues. In March, as part of National Consumer Protection Week, the CEPU joined with the San Diego District Attorney's Office and the San Diego Better Business Bureau to staff a phone bank at 10 News during the evening news hour, which answered questions from members of the public about consumer issues. In recognition of this program, the San Diego City Council proclaimed March 7, 2012, "Consumer Protection Day." See Press Release at <http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease120307.pdf>

In addition, CEPU staff presented information to the City of San Diego Retired Employees' Association and California Western School of Law.

The CEPU maintains a page on the City Attorney's webpage with monthly newsletter topics. In 2012, the newsletters covered the following topics:

2012

- [January](#) "New Laws 2012" (PDF)
- [February](#) "Credit Service Organizations and Proraters" (PDF)
- [March](#) "Beware Unlicensed Car Dealers Posing as Private Sellers" (PDF)
- [April](#) "Scanner Overcharges" (PDF)
- [May](#) "Children's Identity Theft" (PDF)
- [June](#) "Home Pest Control" (PDF)
- [July](#) "Child Labor Laws" (PDF)
- [August](#) "Dating Services" (PDF)
- [September](#) "Sweepstakes Contests and Lotteries" (PDF)
- [October](#) "Consumer Protection Agencies" (PDF)
- [November](#) "Internet Sales Fraud" (PDF)
- [December](#) "Education Scams" (PDF)



Code Enforcement Unit

In 2012 the Code Enforcement Unit (CEU) continued to aggressively prosecute a variety of code enforcement and public nuisance cases. Violations included unpermitted uses negatively affecting neighborhoods, substandard housing, illegal construction, fire and safety violations, destruction of environmental resources, and numerous zoning violations. Public nuisance cases

included problem properties with serious drug activity. Code deputies worked with community members, police officers, and code inspectors to achieve a long term solution to properties attracting nuisance activity and jeopardizing the safety of neighborhoods. CEU investigators assisted code enforcement inspectors with investigations, provided trainings, and obtained inspection warrants as necessary. Below are some of the Unit's major accomplishments in 2012:

SUBSTANDARD HOUSING

An important function of CEU is to ensure that citizens are living in safe decent housing and that landlords are held accountable to only rent units which meet the requirements of the California Health and Safety Code. Below are some examples of cases that were prosecuted:

In re Gordon - This problem property located in Otay Mesa Nestor, was referred by police officers who observed seriously substandard rental conditions when responding to a call for service. Inspections by the City's housing inspector revealed two families living in severely dilapidated structures which were partially boarded. One family had a small infant and was also caring for a friend who was blind. The structures had no windows, crumbling stucco, no hot water, and exposed sewage. Propane tanks were the only source of heat. Investigation by CEU showed that the property owner was recently deceased. In partnership with the City's Code Enforcement Services Division, CEU required representatives of the estate to pay relocation funds of \$5,512 to the tenants as authorized by the Health and Safety Code. The families were able to relocate to decent housing before the holidays.

City v. 4838 Market Street Property, LLC – CEU had previously obtained \$2,800 in tenant relocation costs from the owner of this property who was renting a substantially substandard dwelling to two adults and an infant. The property had numerous building, electrical, and housing violations. A storage room had been converted into two non permitted bedrooms which lacked adequate foundation and did not meet the proper egress

requirements. A non permitted gas water heater was located in one of the rooms next to the child's crib, presenting a serious hazard. There was also an insect and mold and mildew infestation. In 2012 CEU moved forward with a civil prosecution against the property owner, resulting in a permanent injunction prohibiting him from maintaining code violations at the property and requiring him to fully repair the violations. The owner paid \$4,643 in investigative costs and \$5,000 in civil penalties with an additional \$27,000 in civil penalties stayed pending full compliance with the court ordered settlement.

PUBLIC NUISANCE CASES AND CODE VIOLATIONS

People v. Bernardini, et. al – The San Diego Police Department referred this case to CEU and City code inspectors, as residents on Rex Avenue in Mid City were constantly being harassed and intimidated by the commercial tenants and patrons of an auto repair business operating in their neighborhood. Residents complained of continual nuisance activity, noise, trash, and traffic caused by this business operating in a residential zone. CEU filed a criminal complaint against the property owner and the tenants. One of the tenants pleaded guilty to a misdemeanor and was required to immediately vacate the property and clean it. The owner pleaded guilty to 8 misdemeanor counts and was placed on 3 years probation. He paid \$1,000 in fines with \$7,000 additional fines suspended on the condition he complies with all terms of probation. The owner also paid \$1,274 in investigative costs and was required to maintain the lot vacant, as it had never been legally developed. All inoperable vehicles, hazardous waste, trash, weeds, illegal storage, and auto parts were removed. The illegal structures were required to be demolished. The neighbors expressed gratitude to the City for putting an end to the nuisance activity in their neighborhood.

City v. Alpert - Police officers in Mid City also referred this case to CEU due to nuisance activity and crime at a large commercial warehouse and a nightclub on University Avenue. Inspections revealed significant unsafe construction throughout the warehouse as well as electrical and plumbing violations. Numerous businesses were operating within the warehouse. Some of the commercial tenants were subleasing and allowing individuals to sleep on the premises. Five businesses were ordered to immediately vacate. Zoning research showed that the nightclub did not have a required conditional use permit. CEU met with the property owner who had recently purchased the property with full knowledge of the extensive code violations. A civil settlement was reached to ensure that the unpermitted businesses immediately vacated the premises and that all required permits be obtained for the nightclub. The owner was required to remove all unpermitted construction and either restore the property to its original configuration or propose new development. The court ordered settlement also required a payment of \$3,000 in investigative costs and \$25,000 in civil penalties, suspended on the condition the owners comply with the injunction.

City v. Heinz Gietz Autohaus, Inc. CEU civilly prosecuted this automotive service and repair center which dispensed and stored flammable liquids as part of their auto dealership. The Fire Department had previously cited the business for failure to obtain the required permits for a 374 gallon above ground tank used to store engine oil. CEU filed for injunctive relief to compel compliance and correct the fire safety hazards. A civil settlement was reached and the court enjoined the business from violating any applicable fire codes, building codes, or land development codes at the property and from performing any construction or remodeling work without the required permits. The business was also ordered to pay \$2,000 in civil penalties with an additional \$6,000 in civil penalties suspended, to be imposed if defendants violate the terms of the settlement. In addition, the defendants paid \$1,664 in investigative costs.

People v. Tucker - CEU successfully argued a motion to revoke the probation of the property owner of a commercial building in Kearny Mesa due to his non-compliance with his terms of probation and the falsification of documents he provided to the court. The owner had previously pleaded no contest to four misdemeanor counts for maintaining fire safety violations at his commercial property which was leased for office space. He was under court probation to correct fire violations and was also required to perform 120 hours of community volunteer work. At an evidentiary hearing to revoke probation, the Court found that the defendant had not completed the required volunteer work and that documents submitted by defendant were false. The Court revoked and denied further probation for the defendant and ordered him to serve 30 days of custody in jail.

People v. Utt – The owner of this property in the community of Talmadge refused to move forward with rehabilitating and developing the property which had become an eyesore to the community and a source of frustration. Permits had been obtained over the years but the owner failed to follow through with rehabilitating the structure. CEU filed a criminal complaint against the owner and he pleaded no contest to four misdemeanor counts. \$4,000 in fines were suspended on the condition he cease all residential use of the property, clear all storage, debris, wood piles, weeds, and keep the property free of graffiti. He is required to develop the property within a court ordered timeline. He has now submitted plans for development which have been approved by the City and CEU is monitoring his progress.

People v. Edwards - CEU filed criminally against the property owner of a historic home in Sherman Heights which was being rented with significant building violations. The violations included unpermitted foundation work, unpermitted roofing and defective plumbing. The defendant pleaded guilty to one misdemeanor count, paid \$1,500 in investigative costs, and decided to sell the property to a more responsible owner who is rehabilitating the structure.

City v. Hoang-Yen Thi Dang – this case was referred to CEU due to numerous citizen complaints of significant slope failure on a residential slope in La Jolla. The slope failure resulted in collapsed retaining walls and the razing of a significant area of environmentally sensitive land. Essentially, an entire hillside was left bare as a result of a broken irrigation system and unpermitted retaining walls. A civil settlement was reached with the property owner identified

as responsible for the slope damage. The court ordered injunction required the owner to restore her property as well as 3 adjacent properties to their previous topography. She was also ordered to hire a biological consultant, civil engineer or geotechnical engineer to prepare revegetation plans in accordance with the City's Biological Guidelines. Essential to the case was the immediate implementation of proper erosion control. The owner also paid \$2,239 in investigative costs and \$15,000 in civil penalties to the City. Another \$15,000 in civil penalties was suspended, to be imposed if the terms of the injunction were not met.

VACANT PROPERTIES

This past year CEU prosecutors also worked closely with code inspectors, police, and neighborhoods to quickly address crime and nuisance activity occurring at vacant structures throughout San Diego. These properties present fire hazards to the community and are often frequented by transients. Police regularly respond to incidents of prostitution, drug activity, and alcohol use on the premises. It is not enough to ensure that the vacant structures are properly secured; rather, it is imperative that they be rehabilitated and put to productive use as quickly as possible.

In 2012, CEU spent a significant amount of time working with City Departments, community groups, and the Land Use and Housing Committee (LU&H) to expand existing regulations to address vacant lots, all vacant structures irrespective if they are boarded or secured, and defaulted or foreclosed vacant properties. At the direction of LU&H, CEU drafted the "Abandoned Properties Ordinance" and authored a report and legal analysis regarding the ordinance. The direction to the City Attorney was to make all abandoned properties in San Diego subject to the City's abatement authority, expand property maintenance requirements, and require that property owners submit forms declaring how they intend to timely rehabilitate the property. Amendments would also require owners to provide letters of agency to the Police to arrest trespassers. The Abandoned Properties Ordinance was passed by Council in September 2012.

In October 2012 CEU was further directed by LU&H to draft the "Property Value Protection Ordinance" to require that lenders of defaulted residential properties and legal owners of real estate owned properties register their properties with the City upon issuing a Notice of Default or upon foreclosure. The intent of the ordinance is to facilitate the tracking and monitoring of properties facing foreclosure and make easily available the contact information of those responsible for the properties.

Both these ordinances will assist code enforcement inspectors and police in addressing crime which commonly occurs at these properties and better protect neighborhoods from nuisance activity, blight, and declining property values.

DRUG ABATEMENT RESPONSE TEAM (DART)

CEU is an important member of the City's Drug Abatement Response Team (DART). Other team members are San Diego Police DART detectives, narcotics teams, and code inspectors. The team focuses on problem properties with ongoing narcotic activity; develop an appropriate long term strategy to abate the nuisance activity; and ensure that all code violations are corrected. Problem properties resolved by the Drug Abatement Response Team in 2012 include:

947 57th Street - this case was referred by the Gang Unit of the Police Department. The property had a long history of drug sales and gang activity by the tenants. The tenant's son was involved in a gang related assault against a neighbor and then he participated in a drive by shooting in the neighborhood. A search warrant was executed at the property and officers recovered unregistered firearms, ammunition, and marijuana. DART met with the property owner who was not aware of the criminal activity but understood he could be held liable for the illegal activity at his property. The owner evicted the tenants. As the tenant was a recipient of Section 8 housing benefits, the San Diego Housing Commission rescinded the benefits.

4844 Winona Avenue – Due to continued community complaints of drug and nuisance activity, police officers frequently visited the property. The criminal history of the property included numerous arrests for marijuana cultivation, large quantities of the synthetic drug "GHB", and methamphetamines. It was discovered that the tenant at the property was subleasing rooms without the knowledge or consent of the property owners. DART met with the owners who immediately evicted the tenant. The property is now rehabilitated and owner occupied.

6556 Comly Street - Several 4th waiver searches were conducted at this property, resulting in the recovery of drugs. The Police Department then executed a search warrant. Marijuana, digital scales, and meth pipes were recovered. The property was full of trash and debris. People were living in the garage, as well as in the house. It was determined that the owner had died, and the property was never probated by the decedent's children who were occupying the house. DART met with the executor of the property to discuss the crime history. The executor retained an attorney, probated the property, and evicted the tenants. The code violations were corrected and the property was then sold.

MARIJUANA DISPENSARY LITIGATION

In 2012, CEU continued to receive cases from code inspectors and police officers regarding marijuana dispensaries operating in violation of the City's zoning laws. In addition, the businesses were not even operating as dispensaries solely for medical marijuana patients, in accordance with the California Attorney General guidelines. Due to the refusal by the dispensary operator or property owner to comply with Notices of Violation from the City, CEU filed 13 civil complaints against dispensaries in 2012. Each of these cases had long histories of citizen complaints regarding the negative effects of the dispensaries on the surrounding neighborhood, such as drug sales, loitering, traffic, and crime. In the majority of cases filed, robberies or burglaries had occurred at the dispensary due to the large amount of cash and drugs on the premises. One dispensary was within 600 feet of a school in violation of the California Health and Safety Code. Significant building and safety violations also existed at these dispensaries such as lack of proper egress, unpermitted construction, and serious electrical violations.

In *City of San Diego v. GSC WELLNESS, et. al*, CEU filed a contempt action against a particularly problematic dispensary in South Bay which re-opened in flagrant violation of an existing court order that it remained closed. The dispensary was located directly across the street from a drug treatment and services provider for the San Diego County Drug Court Program. The Court found the dispensary and operator in contempt and ordered the operator to pay \$11,360 in civil penalties and costs and complete six days of manual labor in the County's Work Projects Program. An additional month of custody and \$90,000 in civil penalties were suspended, to be immediately imposed in the event of any future violations.

TRAININGS AND PRESENTATIONS

CEU often attends community meetings or provides training on specific topics to law enforcement, code inspectors, and community groups. Some presentations provided by CEU in 2012 are:

- Presentation by DART on the use of the Drug Abatement Act and nuisance laws to combat drugs and crime at problem properties. The training was for property owners and property managers as part of the Crime Free Multi Housing Training series;
- Trainings for SDPD narcotics detectives and code enforcement inspectors to educate them about the DART team and appropriate cases for referral;

- Training for code inspectors on the Health and Safety Code, substandard housing laws, and how to prepare a case to relocate tenants;
- Training by CEU Investigator to code inspectors on how to obtain administrative inspection warrants and when they are justified;
- Trainings to new code enforcement inspectors on administrative and judicial remedies; how to prepare a case for prosecution and courtroom testimony;
- Training to County Housing and Community Development Office and public housing inspectors on substandard housing and how to handle cases involving hoarders;
- Presentation to County Animal Control Supervisors and officers on code enforcement, substandard housing, and how to effectively handle hoarding cases.

CEU is also a founding member and Steering Committee member of the “San Diego Hoarding Collaborative” (SDHC). SDHC is a collaborative team effort consisting of diverse agencies seeking to identify and understand the issues, difficulties, and causes of hoarding behavior; educate the public about these behaviors; and develop an effective case treatment approach.

MONIES COLLECTED

The prosecution of code violations and nuisance activity in San Diego’s neighborhoods not only results in the reduction of crime in neighborhoods but greatly improves the quality of life for San Diego residents. In addition to improving the safety and appearance of properties, prosecutorial actions result in the imposition of fines and penalties; the recovery of investigative costs; and other appropriate sentencing terms. In 2012, through aggressive prosecution, CEU obtained court orders requiring code violators to pay the following monies:

- **\$271,450 in judicial civil penalties**
- **\$1,600 in criminal fines**
- **\$76,359.12 in investigative and costs reimbursed to City Departments**
- **\$2,800 in relocation costs paid by landlords to tenants living in substandard conditions**



Criminal Division: The Criminal Division prosecutes criminal misdemeanors and infractions committed within the city limits. The Criminal Division is divided into five units: Case Issuance, General Trial, Domestic Violence, Neighborhood Prosecution and Appellate and is under the leadership of Assistant City Attorneys Marlea Dell Anno and Angie Reddish-Day.

Case Issuing Unit

Overview of the Case Issuing Unit

The Case Issuing Unit operates within the Criminal Division of the San Diego City Attorney's Office. The Case Issuing Unit is responsible for receiving, processing, and reviewing all citations, arrest reports, and crime reports submitted by local law enforcement agencies. Attorneys in the Unit review misdemeanor and infraction violations occurring within the City of San Diego, the City of Poway, and the unincorporated area known as 4S Ranch.

The Case Issuing Unit can file three types of charges:

- **Felony Wobblers:** these are crimes that may be prosecuted either as misdemeanors or felonies at the discretion of the prosecutor. The District Attorney's Office elects to send certain felony cases to the City Attorney's Office for misdemeanor prosecution.
- **Misdemeanors:** misdemeanors are crimes that are punishable by a fine and one year or less in the county jail.
- **Infractions:** infractions are crimes punishable only by a fine.

Thousands of cases are received and processed each month. In turn, over 1,300 complaints are filed in court each month. Each case is reviewed by an attorney who decides whether charges should be filed and, if so, what the charges should be. If charges are filed, the case is prepared for arraignment. The Unit is jointly responsible with the Trial Unit for ensuring the proper arraignment of each individual charged with a criminal offense.

The Case Issuing Unit reviews hundreds of types of violations. Our cases range from minor violations such as local park and beach violations to more serious offenses such as driving under the influence, identity theft, credit card and check fraud, and weapons possession.

Finally, the supervisors within the Unit are responsible for the training and development of new attorneys and staff members. Attorneys are trained in the legal requirements of reviewing cases and issuing appropriate charges against an individual. Staff members are trained to understand office and court procedures used in order to correctly file cases in court. Some staff members are also trained to work in the Misdemeanor Arraignment Courtroom as vital assistants to the attorneys, judicial officers, and courtroom personnel.

Staffing of the Case Issuing Unit

The Case Issuing Unit is led by Chief Deputy City Attorney Michelle Garland and supported by nine Deputy City Attorneys and twenty-six staff members. The staff members within the Unit are divided into three distinct groups, Case Intake, In-Custody Cases, and Complaints and Data Entry. Each group is tasked with a unique set of responsibilities within the case issuing process.

Cooperation with Law Enforcement Agencies

The Case Issuing 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, San Diego County Sheriff, California Highway Patrol, San Diego Harbor Police, San Diego State University Police, University of California - San Diego Police, San Diego Community College Police, San Diego City School Police, Department of Animal Services, The Humane Society, Department of Health Services, Department of Fish and Game, San Diego Park Rangers, San Diego Lifeguards, Metropolitan Transit District, and the Department of Alcoholic Beverage Control.

Attorneys from the Case Issuing Unit work with our partner law enforcement agencies to facilitate open communication, free flow of necessary information, and an ongoing dialogue regarding prosecution of misdemeanor cases. The chief deputy frequently attends law enforcement meetings in an effort to answer questions and maintain consistency throughout the law enforcement community.

Case Issuing Statistical Information

In 2012, the Case Issuing Unit received approximately 19,619 cases directly from law enforcement or the District Attorney's Office. This represents roughly seventy-seven percent of the criminal cases submitted to the City Attorney's Office as a whole. Each of these cases is processed by a staff member and reviewed by an attorney. The Case Issuing Unit transfers some cases to other units for vertical prosecution, and often receives cases from other units for general review. In 2012, Case Issuing filed charges in approximately 15,925 cases. As a general case review unit, we review a large variety of charges. In 2012, for example, we filed approximately:

- 5,298 driving under the influence of alcohol or drugs cases
- 32 unlawful possession of a firearm cases
- 359 felony wobbler drug possession cases
- 29 assault with a deadly weapon/deadly force and battery with serious bodily injury cases
- 1,869 petty theft cases
- 32 grand theft cases
- 19 identity theft related cases
- 26 credit card or check fraud cases
- 474 prostitution, loitering for prostitution, and aiding prostitution cases
- 743 resisting arrest cases
- 44 restraining order violations or harassing telephone call cases
- 58 furnishing alcohol to a minor cases
- 336 vehicular “hit and run” cases

This is only a sampling of some common offenses reviewed by Case Issuing. We also review and file other types of drug cases, suspended driver’s license cases, municipal code violations, environmental violations, trespass violations, and many more.

San Diego Traffic Offenders Program (S.T.O.P.)

The Case Issuing Unit assigns a deputy city attorney to the San Diego Police Department as part of the San Diego Traffic Offenders Program (S.T.O.P.). In 2012, the S.T.O.P. position was filled by both LeAnna Shields and Markecia Simmons. The S.T.O.P. deputy appears in court on vehicle impound and vehicle forfeiture hearings generated by unlicensed driver enforcement by the San Diego Police. The deputy also reviews and prosecutes all driver license citations issued by San Diego Police Traffic Motor officers. In 2012, the S.T.O.P. deputy filed 335 cases, conducted one criminal trial, and prepared and obtained successful resolutions in three other criminal trials.

In addition to the prosecutorial duties, in 2012, the S.T.O.P. deputy conducted twenty-three vehicle impound hearings and forfeited thirty-two vehicles pursuant to various procedures in the California Vehicle Code. Depending on the details of the case, the money from the sale of the forfeited vehicles goes either to the state and the city general funds or is donated to the San Diego Youth & Community Services, Mid-City Community Center. Additionally, the S.T.O.P. deputy was successful in obtaining orders for eight vehicles to be destroyed for having components without the proper serial numbers.

Overall, the S.T.O.P. deputy acts as a liaison between the City Attorney's Office and the San Diego Police Department's Traffic Division, handling matters that arise from the Tow Administration Unit, Photo Red Light Unit, the DUI team, and the Auto Theft Unit. Finally, the S.T.O.P. deputy serves as a great resource to other deputy city attorneys on traffic and vehicle related matters.

Highlights of 2012

The year 2012 brought interesting and challenging work to Case Issuing. Below are a few examples.

Harassing Calls to San Diego Police

In May 2012, the Case Issuing Unit received a case from San Diego Police involving a person continuously calling the Police Department without a police matter to discuss. The calls began in 2011, and have amounted to well over 250 calls. The police dispatchers and detectives have spent in excess of sixty hours handling the calls from this individual. The individual never reported a crime or suffered from an emergency during the calls.

Case Issuing filed a complaint charging the defendant with various violations for the repeated telephone calls between August 2011 and July 2012. The issuing deputies worked closely with the detective assigned to the case to ensure that documentation of all calls was in order. The case was heard in court in August 2012, where the defendant pleaded guilty and was ordered not to call the San Diego Police Department absent a report of a crime or a police matter.

The defendant, however, abided by the order for less than a month before the calls started again. Case Issuing again coordinated with the detective to document each violation of the court order. The case is currently pending a probation revocation hearing, at which we will seek additional sentencing terms designed to stop the phone calls and preserve the resources of the San Diego Police Department.

Cat Hoarding Case

This year Case Issuing received an interesting cat hoarding case from the Department of Animal Services. The case involved a local woman who ran a non-profit cat rescue organization. Instead of effectively rescuing the cats, however, the woman hoarded cats and failed to provide them with the necessary care.

The Department of Animal Services became involved and found approximately eighty cats in her possession. The cats were seized, and thirty-three of them ultimately had to be euthanized.

The case was submitted to the Case Issuing Unit in February 2012. Case Issuing developed the case, researched the law, and did the initial case review. After determining that the case could be filed, Case Issuing partnered with the Trial Unit to assign a vertical prosecutor equipped to handle a case of this size. Working together with the Trial Unit deputy city attorney, a complaint was filed in September 2012, alleging eighty-nine counts related to the defendant's failure to care for the cats in her possession. The case is currently pending in court.

Court Coverage

In the spring and summer of 2012, Case Issuing endeavored to reconnect with the arraignment courts. Between April and August 2012, Case Issuing assigned an attorney to the arraignment departments at court each morning.

The benefits of court coverage were many. Our attorneys reconnected with the courtroom, the judicial officers, and the local defense attorneys. We were also able to follow-through on cases we issued and see their resolution in plea bargain negotiations. During the busy times at court, our deputy city attorneys were able to assist the calendar deputy with negotiations, discovery requests, paperwork, and appearing in front of the judicial officer.

Although it lasted only a few months, it was a valuable experience for the Case Issuing attorneys.

Law Enforcement Outreach

Case Issuing also reached out to the law enforcement community this year. In February 2012, Case Issuing attorneys provided training to San Diego Lifeguards regarding report writing, case submission, and trial testimony. The training was held every Wednesday for five weeks, ensuring that all lifeguards were able to attend one of the sessions.

Likewise, in March 2012, Case Issuing provided training to the San Diego Police Department on writing affidavits in support of arrest warrants. This is a critical task within the life of many misdemeanor cases, and we were pleased to be asked by law enforcement to provide guidance on both procedure and substance.

Finally, in January 2012, Case Issuing volunteered to participate in a county-wide meeting with the District Attorney's Office and the Department of Alcoholic Beverage Control regarding consistent enforcement of under-age alcohol related violations. Because the City Attorney's Office specializes in misdemeanor prosecution, which covers most under-age alcohol violations, we were able to offer valuable insight to the other agencies. Throughout the year, Case Issuing attorneys have served as the point of contact for the Department of Alcoholic Beverage Control regarding cases occurring within our jurisdiction.

Outlook for 2013

During these challenging economic times the Case Issuing Unit has been greatly impacted by the shortage of attorneys in the Criminal Division. We have consistently been without multiple attorneys, and have struggled to meet the demands of our case load. It is only due to the commitment and diligence of our attorneys and staff members that we are able to meet the daily issuing requirements and continue to partner with our local law enforcement agencies.

In 2013, we look forward to being fully staffed. The leadership of the Case Issuing Unit will continue working to prioritize and manage the misdemeanor case load to ensure that justice and the needs of our community continue to be served. We will work hard to foster and maintain collaborative relationships with court and law enforcement personnel and to ensure the timely review and appropriate outcome of all cases submitted to the Case Issuing Unit.

General Trial Unit

UNIT SCOPE OF WORK

The General Trial Unit of the Criminal Division (Trial Unit) conducts all post-issuance courtroom proceedings, including arraignment, negotiating offers, reviewing each case to determine its

provability at trial, trying the case, and ascertaining what sentencing parameters are appropriate based on the defendant's conduct and any aggravating or mitigating circumstances. Once a case is filed, our role is that of an advocate for the People.

In 2012, the Trial Unit was led by Chief Deputy City Attorney Karen Li from January through March, and then Senior Deputy City Attorneys Mark Skeels and Eric Pooch from April through December. The Trial Unit consisted of fifteen (15) full-time attorneys, 1 paralegal, 2 legal secretaries, 2 investigators, 3 trial support assistants, and 18 clerical staff in the Discovery and Records and Information Units.

Cases prosecuted by the Trial Unit impact the public and their daily lives. 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 2012 included:

- Driving under the influence of alcohol and/or drugs;
- Resisting arrest;
- Hit-and-run;
- Shoplifting and other forms of theft;
- Fraud and forgery;
- Assaults and batteries;
- Brandishing or possessing illegal weapons;
- Vandalism;
- Being under the influence of and/or possessing illegal drugs;
- Prostitution;
- Hate crimes;
- Environmental crimes;
- Driver's license-related offenses;
- Illegal lodging;
- Drunk in public;
- Trespass;

- Failures to appear;
- Furnishing alcohol to minors;
- Reckless driving;
- Illegal street racing; and
- Vehicular manslaughter.

Various violations of the San Diego Municipal Code also contributed to a significant portion of the Trial Unit's caseload. Through collaboration with the deputy city attorneys in the Neighborhood Prosecution Unit, we were often proactively addressing the chronic and nuisance problems in specific neighborhoods. These prosecution efforts protect the citizens of San Diego, reduce the negative impact some crimes have on our environment and community, and save the taxpayers' money.

HIGHLIGHTS

- **Vertical Prosecution**

Prior to 2006, the Trial Unit prosecuted cases horizontally, meaning that for each level of prosecution a different deputy would issue the case, appear at each court hearing, negotiate the case, prepare the case for trial, and try the case in front of a jury. The trial deputy would receive most of his or her cases the day before the jury trial was set and was expected to try the case the next day.

Since 2006, the Trial Unit has created specialized units which streamline the prosecution of cases. The first step was to establish a core group of experienced screening deputies in the Case Issuance Unit, thus providing more consistency in the issuing process. To gain experience and develop their issuing skills, deputies from the Trial Unit can rotate into the Case issuance Unit for six month rotations. When not in that rotation, trial deputies are assigned trials as soon as a jury trial date is set. The trial deputies are then responsible for assessing the evidence and preparing those cases for trial. This preparation includes developing the witness list, interviewing witnesses, creating exhibits, analyzing the state of the evidence and possible defenses, considering the mandatory and/or desired terms of any possible settlement, and trying the case. The current semi-vertical prosecution model means that the trial deputies manage their own caseloads, giving them a greater sense of ownership, and better opportunity for a higher level of preparation on each case.

Sensitive cases involving charges such as vehicular manslaughter or hate crimes present special challenges because of the nature of the crimes and the need to establish a relationship and

rapport with the victim and/or the victim's family. As such, these types of cases are assigned to trial deputies for review and preparation before an issuing decision is made. After personal interviews with the victims and witnesses, the trial deputy assigned to the case meets with a supervisor and together they make an issuing decision on the case. If the case is filed, the trial deputy will appear at all subsequent hearings on that particular case, including trial if necessary, so that the prosecutor can work closely with the victim and/or the victim's family to make sure that the case is handled by one prosecutor who can provide regular updates on the progress of the case. This model of vertical prosecution lends itself to thorough preparation and understanding of the most sensitive cases handled by the Trial Unit.

- **Trial Statistics**

Most of the cases handled by the Trial Unit result in a criminal conviction based upon a guilty plea before trial. Trial deputies appear at the plea and sentencing hearings to make sure the correct plea is entered and to argue for appropriate sentencing terms based upon the defendant's conduct. The Trial Unit has demonstrated a renewed effort to argue for additional sentencing terms in cases that warrant punishment beyond the standard sentencing guidelines.

For cases that do not reach a disposition, each case set for jury trial was reviewed by a supervising prosecutor and prepared for trial. The process of trial preparation includes interviewing witnesses, sending subpoenas to witnesses, preparation of exhibits, obtaining police reports, ordering documentation from several crime laboratories, and securing the physical evidence such as photographs, 911 tapes, weapons, and blood vials. Once this trial preparation is completed, many cases resolve with a guilty plea on the day of trial in either the Presiding department or in an assigned trial department.

In 2012, 8,179 defendants pled not guilty at arraignment and their cases were handled by the Trial Unit in some fashion. 721 cases did not reach a disposition until the day of trial, which required a significant effort by the attorneys and staff to prepare each case for jury trial. 98 cases proceeded to jury trial. For cases where a verdict was rendered, 71 cases (85%) resulted in a guilty verdict on at least one count of the complaint and 13 cases (15%) resulted in an acquittal. The remaining 14 cases resulted in a hung jury, where a mistrial was declared and then the case was resolved in a plea bargain or a dismissal.

After the completion of the first quarter in 2012 (January-March), the implementation of new policies and procedures resulted in a significant increase in the percentage of guilty verdicts on cases that proceeded to jury trial. In the first quarter of 2012 (January – March), the Trial Unit had a 75.0% conviction rate (24 guilty verdicts, 8 not guilty verdicts). In the remaining three quarters of 2012 (April – December), the Trial Unit had a 90.4% conviction rate (47 guilty verdicts, 5 not guilty verdicts).

- **Training for Prosecutors**

Historically, when a new class of deputy city attorneys was hired, the Criminal Division offered a 4-6 week training program for the new attorneys. With decreasing resources and budgetary constraints since 2009, the more experienced deputy city attorneys have provided more on-the-job training for their fellow prosecutors. The Trial Unit continues to use senior prosecutors from the San Diego City Attorney's Office and other local agencies to provide training for both new hires and current prosecutors on all phases of criminal prosecution. The training includes both live presentations and the review of previously recorded trainings with updated live commentary. Some of the topics covered in these trainings have included ethics and prosecutorial obligations, elements of charges for issuing purposes, constitutional law, DUI law and trial issues, evidentiary foundations, trial techniques, trial preparation, sentencing, and alternative sentencing options. Additional training has included field trips to nearby agencies such as the Bio-Tox Laboratory and the San Diego County Probation Department to meet with their staff with whom our prosecutors regularly interact, observe their work product, learn about their procedures, and foster closer working relationships with our partners in law enforcement.

- **Arraignment and Readiness Court Coverage**

The consistent staffing of experienced deputies from the Trial Unit has improved the efficiency and quality of the prosecution efforts in our coverage of the arraignment and readiness courts. In 2012, Deputy City Attorney Sam Park provided increased consistency in the handling of out-of-custody arraignments and further proceedings in Department 1 of the San Diego Superior Court. Deputy City Attorney Heily Hernandez managed a large in-custody caseload in Department 3 of the San Diego Superior Court that included arraignments, bail reviews, readiness conferences, sentencing's, and proof hearings. These cases are challenging for a readiness deputy because the defendants are in custody, there are constitutional issues such as speedy trial rights to consider, and many cases require consideration of other charges pending with the San Diego District Attorney's Office and probation or parole revocations. Deputy City Attorney Mark Robertson implemented more effective systematic procedures for readiness cases in Department 9 of the San Diego Superior Court, which helped increase the disposition rate of cases and reduce the amount of time between issuance and conviction. Deputies from the Neighborhood Prosecution Unit also helped provide support and coverage on a rotating basis in Departments 1 and 3.

A major challenge in 2012 was presented when Department 2 of the San Diego Superior Court was closed due to budgetary considerations. Our three court coverage deputies worked closely with Assistant City Attorneys Marlea Dell'Anno and Angie Reddish-Day to think of efficient and creative ways to deal with the closure of a key misdemeanor department and still prosecute

cases in a competent and professional manner. In the end, the City Attorney's Office worked collaboratively with both the San Diego Superior Court and the San Diego County Public Defender's Office to redesign the flow of misdemeanor cases through the court system more efficiently, while still providing outstanding service to the victims and citizens of San Diego.

- **Criminal Case Management System**

The Trial Unit continues to utilize the criminal case management system (CMS) implemented in November 2009. CMS allows for an increased ability to gather a variety of statistics, capture the different trends of cases, and collaborate with the San Diego District Attorney's Office. We are better able to ascertain whether our policies and procedures, including offers and dispositions, are sound. The use of different modules in CMS allows our office to observe the practical effects of our policies and procedures and allows for efficient changes as needed.

- **Victim Restitution**

A critical component of the work of the Trial Unit involves seeking restitution for persons victimized by crime. In many cases, a defendant pleads guilty to a criminal charge but demands a restitution hearing to determine the amount of financial loss to the victim. Trial deputies handle these hearings as part of their duties, which involves the need to subpoena victims, civilian witnesses, and police officers to prove the amount of financial loss, and then obtain a court order to enforce the amount of financial loss. A criminal restitution order can require significant effort and skill to obtain, but it has the unique feature that it cannot be discharged in bankruptcy court, thereby providing the victim some measure of restorative justice. In 2012, Trial Unit deputies were able to successfully advocate for court orders in the amount of \$706,478.43 on behalf of crime victims.

In addition to restitution ordered after a hearing, we were also able to help the effort towards supporting the victims by employing the assistance of the Victim Compensation and Government Claims Board and victim advocates to guide the victims through the criminal justice system. Since the implementation of Marsy's Law, our trial deputies have worked diligently to be cognizant of victims' rights and to vigorously seek restitution as required by law.

- **Money Saved**

In cooperation with the San Diego Police Department (SDPD), our office utilizes a step-subpoena process wherein we issue subpoenas to some officers for the second day of trial instead of the actual trial date. With the goal of saving money, this resource-conserving procedure is the product of years of trial experience and the reality that the jury trial process generally did not allow the prosecutor enough time on the first day of trial to call to the witness stand more than two law enforcement witnesses. On the first day of trial, prosecutors argue

pre-trial motions, present evidence in pre-trial evidentiary hearings, conduct voir dire and jury selection, and present their opening statements before a witness is called to the witness stand to testify.

Moreover, the need for witnesses on the first day of trial may be obviated when the defendant either pleads guilty or fails to appear for trial. With this understanding, we now subpoena the third officer (and any additional officers) for the next day after the scheduled jury trial date. If a case reaches a disposition or is continued to another trial date (often over our objection), we are able to call-off the officers subpoenaed for the second day of trial. By not having all of the potential law enforcement witnesses appear on the first day of trial, this collaborative resource-saving process allows more SDPD officers, detectives, and sergeants to remain in the field to protect and serve the citizens of San Diego. In addition, there is a significant cost savings in being able to avoid having to pay overtime for those officers scheduled to testify on the second day of trial who often work the night shift and would have had to otherwise come straight to court following their shift for the first day of trial.

In addition, the attorneys and staff in the Trial Unit have implemented new policies and procedures regarding the digital scanning of police reports and initial discovery packets. The use of this technology significantly reduces the collateral costs of paper, ink, and staff time, while providing a framework for the future implementation of an electronic discovery process.

The Trial Unit also streamlined the process of settlement negotiations by restructuring the way that cases are pulled, scheduled, and discussed with defense counsel. By moving this process from the office to the courtroom, the Trial Unit has seen a significant savings in time and staff resources for the unit.

- **Cases Involving Charges of Driving Under the Influence of Alcohol and/or Drugs**

This preventable crime remains a pervasive issue in our society. The deputies in the Trial Unit receive highly-specialized training on these serious cases, learning how to properly review the police reports, order necessary documentation from various crime laboratories, and interview police officers, civilian witnesses, and criminalists. Our deputies have developed considerable skill in prosecuting cases involving defendants who are driving a vehicle while impaired by alcohol and/or drugs to a degree that they no longer drive with the caution and care characteristic of sober drivers. Many of these cases involve collisions with other vehicles or property, and some include injuries sustained by drivers, passengers, and others.

Our court coverage deputies and our trial deputies review thousands of these cases. A proper review must consider the blood alcohol level of the driver, the prior criminal history of the defendant, whether or not there was a pattern of bad driving, and any viable defenses that may

be presented at trial. In 2012, the Trial Unit handled 5,550 cases involving charges of driving under the influence of alcohol and/or drugs. Due to the training and expertise of the prosecutors in the Trial Unit, we obtained a remarkable 99.3% conviction rate on these serious cases. The Trial Unit will continue to demonstrate a commitment to public safety by vigorously prosecuting these crimes in 2013.

- **Hate Crimes**

Penal Code section 422.55 defines a hate crime as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: disability, gender, nationality, race/ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.

The San Diego City Attorney's Office prosecutes hate crimes cases in a vertical manner to ensure that a single prosecutor works directly with the victim and the police officers. In 2012, the Trial Unit prosecuted six (6) cases that were referred to or initiated as hate crimes. Two (2) of the cases resulted in successful prosecution and the remaining four (4) cases are still pending.

- **Vehicular Manslaughter**

Penal Code section 192(c) (2) states that vehicular manslaughter is the unlawful killing of a human being without malice. These types of cases are difficult to prove because the defendant's conduct does not amount to gross negligence and the jury trials present challenging evidentiary issues.

In 2012, the Trial Unit vertically prosecuted eight (8) vehicular manslaughter cases and obtained outstanding results. The sentences for the convicted offenders included a combination of custody, significant amounts of volunteer work service, driver safety education classes, court fines, and restitution for the decedents' families. Here is a sampling of the vehicular manslaughter cases:

1. *People v. Thomas Theodore Chulvo De La Cruz* (M143069): The defendant was convicted of vehicular manslaughter after speeding and driving recklessly in bad weather, losing control of his vehicle, and striking a motorcyclist.
2. *People v. Vida Montano* (M156870): The defendant was convicted of vehicular manslaughter after making an unsafe U-turn into the path of an oncoming motorcyclist.
3. *People v. Sheena Saranita* (M147356): The defendant was convicted of vehicular manslaughter after losing control of her vehicle, crossing all lanes of traffic, and striking a bicyclist.

4. *People v. San Nguyen* (M155676): The defendant was convicted of vehicular manslaughter after making an unsafe turn and striking a pedestrian.

Of the remaining four cases, two are still pending disposition (*People v. Bradshaw* – M160763 – and *People v. Reimers* – M150869), one resulted in a guilty plea to a lesser related charge (*People v. Ostrowski* – M138253), and one resulted in a hung jury at trial (*People v. Fuller* – M136210).

SUMMARY

The attorneys and staff members in the Trial Unit demonstrated a commitment to excellence in 2012 by vigorously prosecuting criminal cases in San Diego and achieving outstanding results. The Trial Unit will continue to make proper decisions at each stage of the criminal process in order to achieve our primary goals of enhancing public safety and maintaining the citizens' quality of life through the thoughtful prosecution of misdemeanants.

Domestic Violence and Sex Crimes Unit

Domestic Violence is a tragic reality that dramatically impacts children and families within our community. The San Diego City Attorney's Office recognizes the importance of meaningful intervention at the earliest stages of family violence and the need to dedicate resources in order to ensure that offenders are held accountable for their crimes. In recognition of the critical importance of domestic violence crimes, the need to protect victims of abuse and the legal complexities intrinsic in misdemeanor domestic violence prosecution, the City Attorney maintains a dedicated, specialized unit of vertical prosecutors to handle these cases. The Domestic Violence and Sex Crimes Unit (DVSC Unit) reviews, issues and tries all misdemeanor domestic violence, child abuse, elder abuse, and sexual assault crimes occurring in the City of San Diego, Poway and 4S Ranch. In a vertical prosecution unit, one attorney handles each case from beginning to end, giving each victim a sense of consistency in what can be an extremely overwhelming process. Although domestic violence crimes are generally thought to be confined to crimes involving physical violence, this is not always the case. Domestic Violence is predicated on a batterer's need to exert power and control over the abused partner. Since power and control is achieved through intimidation, it is not always necessary for an abuser to use physical violence in order to intimidate their partner. Consequently, the DVSC Unit routinely prosecutes a variety of other crimes intended to intimidate victims, including vandalism, stalking, witness threats and restraining order violations.

In 2012, the DVSC Unit was led by ACA Marlea Dell'Anno and Senior DCAs Jonathan Siladi and Christy Bowles. Senior DCA Michael Ficken acts as a full-time liaison to the Family Justice

Center, where he works closely with our law enforcement partners to ensure that all cases are handled as effectively and efficiently as possible. The DVSC Unit is comprised of 13 vertical prosecutors, three investigators, three victim witness advocates and nine support staff. In 2014, the number of prosecutors staffing the unit will increase to 14. In 2012, the DVSC Unit issued 935 cases, achieving an overall conviction rate of 91.8%. In addition to the cases issued, prosecutors referred 256 cases for felony prosecution or probation/parole revocation in lieu of misdemeanor prosecution. When cases are redirected in this manner, offenders are exposed to more serious consequences and longer possible sentences than would be available under the misdemeanor sentencing structure. In 2012, prosecutors tried 81 cases, up from 66 in 2011. The conviction rate for cases taken to trial was 77%, which continues to be a very successful rate of conviction given the unpredictability and difficulty inherent in trying misdemeanor domestic violence cases.

The significant budget challenges faced by the San Diego Superior Court presented a unique challenge to our DVSC Unit in 2012. Faced with severe budget shortfalls, the Presiding Judge of the San Diego Superior Court gave notice of the Court's intent to shut down several courtrooms, including Department 9 (D9), the only downtown courtroom dedicated to domestic violence, child abuse, sexual assault and elder abuse cases. D9 had played a pivotal role for many years in giving domestic violence cases the attention and oversight they demanded. Staffed by a permanent judge well-versed in the law and dynamics of domestic violence cases, an experienced probation officer and superior court staff, domestic violence offenders and victims were given the utmost attention and oversight. It is our belief that the type of oversight and monitoring made possible by a specialized DV Court is an essential component of any quest to meaningfully address family violence and stem recidivism. Understanding the gravity of the impending fiscal crisis, our office worked diligently with the Court, the San Diego Public Defender's Office, and court staff to arrive at an alternative solution to a complete closure of D9. We were pleased when the collaborative and creative result of all of our efforts was a reversal of the decision to close D9. Instead of closing this department, D9 opened its doors to handle other types of cases, while maintaining a dedicated judge and probation officer, as well as a dedicated domestic violence calendar.

The DVSC Unit has embraced a multi-faceted approach in our efforts to target all forms of family violence in our community. While the central focus of our work is to maintain victim safety and aggressively prosecute batterers, the DVSC Unit is committed to combating violence in a variety of other ways, including specialized education for our attorneys, outreach and education to raise awareness about domestic violence in our community and collaborative participation with our community partners.

Specialized Training Highlights:

Strangulation Training: Non-fatal strangulation is recognized as a significant risk factor in predicting future intimate partner homicide and cases that involve this type of conduct are extremely serious. Given the nature of this type of violence, victims of strangulation often have delayed symptoms and no visible injuries, making felony prosecution difficult. Consequently, the City Attorney's Office handles a significant number of strangulation cases and prosecutes them to the fullest extent possible under the law. In 2012, several of our DVSC Unit prosecutors attended multi-day training events in San Diego focused on strangulation in DV cases. One training event focused on handling expert testimony in strangulation cases and the other was a "train the trainer" event on strangulation evidence and investigation of strangulation cases. The trainings were presented and funded by the National Strangulation Training Institute and as a result, several of our prosecutors are now qualified to train others on the knowledge and skills they obtained.

Elder Abuse Training: Two prosecutors from the DVSC Unit attended training on elder abuse federally funded by the Office of Violence Against Women. The training taught specialized skills for the investigation and prosecution of elder abuse cases and bolstered the knowledge base that our office currently uses to train local law enforcement in elder abuse investigations.

Education and Awareness:

A cornerstone of the effort to end family violence requires a strong commitment to educating others about family violence and raising awareness in our community. DVSC Unit prosecutors provide trainings for multiple community agencies and are frequently asked to lecture in their areas of skill and expertise. Some examples include:

California District Attorneys Association: Prosecuting Domestic Violence Misdemeanors

Investigation and Charging DV Cases for Misdemeanor Prosecutors by DCA Christy Bowles

Restraining Orders by ACA Marlea Dell'Anno

University of California San Diego Forensic Nursing Conference

Prosecuting Domestic Violence Cases and Testifying in Court by ACA Marlea Dell'Anno

San Diego Domestic Violence Council: DV Essentials

DV Prosecution and Restraining Orders by ACA Marlea Dell'Anno

YWCA of San Diego County

Role of the City Attorney in DV Prosecution by ACA Marlea Dell'Anno

CYF Family Services

San Diego High Risk Team by ACA Marlea Dell'Anno

San Diego Domestic Violence Council

DV Prosecution by DCA Michael Ficken

Crime Free Multi-Housing

Domestic Violence Crimes by DCA Jonathan Siladi

Continuing Education Center of Rancho Bernardo

Domestic Violence Prosecution by DCA Jonathan Siladi

Family Justice Center Alliance

Prosecuting Domestic Violence Cases by DCA Jonathan Siladi

San Diego Law Enforcement Agencies (SDPD, SDSO, Chula Vista PD, Coronado PD, Carlsbad PD, San Diego Probation Department)

Elder Abuse Investigations by DCA Jonathan Siladi



Community Partner Involvement:

In addition to our valued partnership with the San Diego Family Justice Center, our prosecutors are active participants with several other community partners. Marlea Dell'Anno serves on the San Diego Domestic Violence Council's Executive Board and is the facilitator for the San Diego High Risk Team. Jonathan Siladi is an active participant and trainer for the Center for Community Solution's Hope Team which seeks to protect and support elder abuse victims. In addition, our prosecutors are active members of the San Diego Domestic Violence Fatality Review Team and the Sex Offender Management Council. On October 13, 2012, our DVSC Unit participated in the 10th Anniversary Hope in the Park event. The all-day event took place in Balboa Park and offered fun events for families, outreach to victims of domestic violence and recognition of community leaders in the field. For the second time in three years, a Victim Service Coordinator from the City Attorney's DVSC Unit, Juan Gonzalez, was awarded the Andrea O'Donnell Award for being "an outstanding champion for victims of domestic violence in the San Diego community."

<http://www.sandiego.gov/cityattorney/pdf/news/2012/newsrelease121011.pdf>



Elder Abuse Prosecution

Elder Abuse crimes are classified as crimes against a victim who is 65 years of age or older or is a “dependent adult” due to a physical or mental disability. The DVSC Unit prosecutes these cases vertically because elder abuse victims are particularly vulnerable and benefit greatly when a single, dedicated prosecutor is assigned to their case. Elder Abuse crimes carry increased sentences and probation conditions under the law which can be monitored more effectively in a vertical unit. In addition to “typical” assault and battery crimes, the unit aggressively prosecutes all other crimes against elders and dependent adults, including but not limited to restraining order violations, destruction of properties (vandalism), criminal threats, and theft-related crimes. All of these crimes can be equally intimidating and devastating to elder victims and are therefore prosecuted with utmost diligence and attention. Highlights of some of the City’s elder abuse prosecutions can be found in the quarterly “Safe Seniors” newsletter published by the County of San Diego’s District Attorney’s Office and Aging and Independent Services.

Child Abuse Prosecution

The DVSC Unit handles all misdemeanor child abuse cases in the City of San Diego, Poway and 4S Ranch. These cases are handled vertically by prosecutors, investigators and advocates with the specialized knowledge and skills needed to build a rapport with child victims and support them throughout the court process. Child victims are referred to the Kids in Court program in order to familiarize them with the courtroom setting and help alleviate any fear they might have of testifying against their abusers. DVSC Unit prosecutors attend bi-weekly meetings with child abuse detectives and other law enforcement representatives in order to ensure that all child abuse cases are handled effectively, efficiently and conscientiously within our community.

Sexual Assault Prosecution

The DVSC Unit is committed to the diligent prosecution of sex offenders in our community. Our prosecutors work hard to ensure that all offenders committing sex crimes against adults and children in our community are punished to the fullest extent of the law. While many of our cases require mandatory lifetime sex offender registration upon conviction, some sex crimes leave the decision of whether or not to impose lifetime sex offender registration to the discretion of the judge presiding over the case. When facts and circumstances warrant it, our prosecutors have been successful in arguing for and obtaining orders for discretionary lifetime sex offender registration from the court. In 2012, the City Attorney’s office met and conferred with the court in an effort to have all sexual assault cases heard in Department 9, along with all other DVSC Unit cases. The Court granted our request and the DVSC Unit was able to work closely with court staff to ensure a smooth transition of these cases to their new location. The ability to have all sex offense cases handled in a dedicated courtroom with a dedicated judge

and probation staff benefits public safety by ensuring more consistent monitoring of sex offenders on probation.

In order to combat sexual violence in our community, the best response is a coordinated response that includes every law enforcement and prosecution agency in our community. When these partnerships are strong, communication and information sharing between agencies is enhanced to the detriment of offenders. Our prosecutors work closely with the San Diego Police Department's Sexual Assault and Sex Offender Registration units and other law enforcement agencies to aggressively prosecute sex offenders and ensure that they are in compliance with sex offender registration requirements.

Notable Cases handled by the Domestic Violence & Sex Crimes Unit in 2012

People v. Romo: Defendant attacked his girlfriend and mother of his child by grabbing her by the hair and kicking her in the ribs. Defendant then let go of victim, and started packing a bag with clothes. He picked up the baby as if to leave, and told the baby, "Don't worry, I am going to get you a better mommy." Victim tried to get the baby, but defendant pushed her away, and then kicked her again. The defendant ultimately grabbed the victim by the throat with both hands and strangled her. Defendant told her, "I don't care if you die." Officers arrived, took victim's statement, photographed victim, and obtained an emergency protective order. Defendant called victim from jail in violation of the protective order; the calls were recorded and presented at trial. The victim completely changed her statement at trial to protect defendant. The City Attorney's Office presented expert testimony on both strangulation and psychological dynamics of intimate partner battering. A jury convicted defendant of inflicting corporal injury on a significant other, battery on a significant other, and making criminal threats. Defendant was sentenced to 90 days in custody along with several probation terms such as 52 weeks of DVRP counseling and a criminal protective order. He faces up to 3 years in jail if he violates his probation.

People v. Eros Domingos: Defendant committed sexual battery against four random strangers. Three of the victims were females whose buttocks were grabbed by defendant in public in broad daylight and a fourth victim was grabbed in the breast by defendant. Defendant was convicted of three counts sexual battery and ordered to register for life as a sex offender. Defendant was sentenced to 180 days in custody as well as placed on formal probation with a GPS ankle monitor. A few months later, while defendant was still on probation for the sexual batteries, defendant approached another random female from behind. He grabbed her by both of her breasts from behind. When he was pushed away, defendant grabbed for the victim's breast again. Defendant fled the scene but was eventually apprehended and convicted of sexual battery after jury trial. Defendant was sentenced to 269 days in custody while continuing on formal probation with a GPS ankle monitor.

People v. Kahmsai Lathornvang: Defendant was seen standing across the street from an elementary school with his pants around his ankles, masturbating. A citizen who was driving by made a U-turn, pulled into a nearby driveway to confirm what she saw and called police. Defendant noticed the woman on the phone and started to walk away with his pants still around his ankles. After a few feet he pulled up his pants and walked to the corner. The witness followed defendant in her car until the police arrived. Defendant was convicted after trial of indecent exposure and committing a lewd act in public. Defendant was sentenced to 180 days custody (the maximum time allowed for these offenses) and ordered to register as a sex offender.

People v. Pierce: Defendant, an amateur MMA fighter, pushed his girlfriend's head against a door frame several times during an argument. The argument continued in the bedroom where defendant got on top of victim, placed his hand over her mouth and pinched her nose to prevent her from breathing. Defendant put his forearm on victim's throat and pressed down, strangling her. Defendant left the residence, but returned a few hours later and again strangled and suffocated victim. He then put victim into the shower with her clothes on and turned on the water. Victim was eventually able to flee and call police. At trial, the defense played the classic "blame the victim" game. They called defendant's friends to say that victim was a liar and violent person, and that she worked as a dancer. With a lot of collaboration with the Center for Community Solutions and City Attorney Victim Services Coordinators, the prosecutor was able to effectively present the victim's testimony and undermined the defense's case. Defendant was convicted by jury of four counts battery on a significant other and one count false imprisonment. He was sentenced to 400 days in custody.

People v. Nunez: Victim, 67 years old, had been abused by her husband throughout the course of their 45 year marriage. Victim had never reported the abuse to the police because of the defendant's manipulation and various cultural and economic reasons. Victim and defendant finally decided to divorce, which was still pending in 2012. In May 2012, defendant and victim had an argument. Defendant grabbed victim by her arms causing bruises. As victim turned to leave, defendant shoved her into a door frame, causing a bruise to victim's eye. At trial, the defense tried to portray victim as a vindictive spouse who was upset about the pending divorce and that she was lying since she never reported the abuse until now. Dr. Diane Lass testified as an expert in domestic violence relationships and explained to the jury why someone might stay in an abusive relationship. Defendant was ultimately convicted of inflicting corporal injury on his spouse and elder abuse after jury trial.



The Neighborhood Prosecution Unit (NPU) is composed of 7 attorneys and 5 staff members. NPU partners with the San Diego Police Department (SDPD), community organizations and leaders to aggressively and creatively combat crimes that impact quality of life. NPU's goals are to improve quality of life in targeted neighborhoods; build partnerships to solve community crime problems; expand prosecutorial tools to more effectively address neighborhood crime priorities; and hold offenders accountable in the criminal justice system and to

the harmed community. The Neighborhood Prosecutors (NPs) are assigned to 7 of the 9 SDPD command divisions: Central, Eastern, Mid-City, Northern, Southeastern, Southern, and Western, spanning seven of the nine City Council districts¹.

The NPs are liaisons to the police commands and to the communities they serve. They attend community meetings and events to relay information on quality-of-life crime problems to SDPD and the City Attorney's Office. The NPs screen, issue, revoke probation and take cases to trial on chronic offenders in their areas and/or cases that need special attention or alternative sentencing options. Finally, each NP conducts regular line-up trainings at each assigned division, providing information on prosecution issues and ensuring successful prosecution of misdemeanor crimes in the City of San Diego. NPs also serve as resources to community prosecutors throughout California and the nation.

NPU operates five² problem solving courts using restorative justice principles to address quality-of-life crimes: Beach Area Community Court (BACC), Downtown Community Court (DCC), Homeless Court (HC), Behavioral Health Court Calendar (BHC), and the Veterans Treatment Review Calendar (VTRC). NPU also implements a number of alternative sentencing options such as the Prostitution Impact Panel (PIP) and the Serial Inebriate Program (SIP). Finally, NPU organizes and conducts innovative community events and crime prevention initiatives to promote positive community engagement.

1. Calendar Year 2012 Accomplishments

- a. **Cases:** In addition to cases handled in the problem solving courts outlined below, NPU screened/processed 2448 quality of life cases in 2012. This includes, graffiti cases³ handled by our Western and Southeastern NPs (serves as liaison to SDPD's Graffiti Strike

¹ Communities in SDPD's Northeastern and Northwestern Divisions, and in Council Districts 1 and 5 do not currently have assigned NPs, however the assigned Community Relations Officers work with the Chief Deputy as a resource and on a case by case or project by project basis.

² Mid-City Community Court (MCCC), a pre-filing court launched in 2003, is the sixth court and is still on hiatus during its redevelopment. It previously utilized a community sanctioning panel and community service to address quality-of-life crimes such as loud parties and marijuana offenses in the college area. MCCC has been on hiatus since 2011 given the need for re-development and the beat re-districting of the S.D.P.D.

³ NPU screened approximately 122 graffiti cases in 2012.

Force), gang cases⁴ handled by our Southeastern NP and affidavits for arrest warrants⁵. 255 of those cases were set for trial, with all but seven resolving before testimony was given; 5 court trials and 2 jury trials were conducted. NPs also staffed an attorney throughout this year in arraignment court on a daily basis to improve efficiency and direct cases into the appropriate community court or alternative sentencing option.

b. **Probation Revocations:** NPU works with SDPD to monitor compliance of chronic offenders with probationary conditions, including stay away orders (SAOs), and files probation revocation motions when appropriate. NPU reviewed 204 violation reports and filed 154 revocations, revoked probation on 123 defendants involving 152 cases.⁶ This is a 55% (average) increase from 2011. The custody ordered ranged from 8-180 days per case. A total of 7790 days (21.3 years) of custody was ordered/imposed/served, 1375 days (3.8 years) was imposed but stayed pending successful completion of probation, and an additional 720 days (1.9 years) of custody was imposed but satisfied by residential rehabilitation through our Serial Inebriate Program. The custody ordered is a 47% (average) increase from 2011.

c. **Problem Solving Courts:**

1. **Beach Area:** A pre-filing court launched in 2006 educating low level offenders with a community impact panel, and requires offenders to restore the harmed community through community service.

- BACC serves Pacific Beach, Mission Beach, and Mission Bay Park communities.
- BACC hosted 10 court sessions, seeing a 108% increase in participation from 2011; BACC addressed 277 participants, and facilitated 1108 hours of community service in the beach area.
- Instance Justice: Additionally, BACC hosted two special Instant Justice sessions in March and July, allowing people who received eligible citations to just show up at a designated location after the busy weekend to immediately complete community service and resolve their citation. The community, business, and SDPD partnered to launch the events which received a high volume of positive media attention. There were 73 participants completing 438 hours of community service.
- \$37,382⁷ of labor was given back to the beach communities in 2012 through BACC.

2. **Behavioral Health Court:** A post-filing court launched in 2010 dedicated to address problems presented by mentally ill offenders. It combines the resources and expertise of the mental health and criminal justice communities to hold accountable, stabilize and reduce recidivism in the target population.

⁴ NPU screened approximately 31 gang related cases in 2012.


⁵ NPU filed approximately 119 affidavits in 2012.

⁶ These defendants are repeat offenders resulting in multiple motions being filed at various stages of the probationary period.

⁷ All labor calculations in this document use the nationally designated \$24.18/hour rate for volunteer work. See

http://www.independentsector.org/volunteer_time and/or http://www.volunteeringinamerica.gov/pressroom/value_states.cfm

Please note that 2010 is the latest year for which state-by-state numbers are available. There is a lag of at least one year in the government's release of state level data which explains why the state volunteering values are at least one year behind the national value.

- The BHC Team reviewed approximately 87 candidates and cases. 68 candidates were determined qualified by Team and screened by the contracted service provider, Exodus.
 - Throughout the 12 Court sessions, 16 candidates were accepted into program.
 - BHC is at capacity with 31 candidates currently proceeding through the 18 month program.⁸
 - BHC will host its first graduation ceremony for 5 participants on February 26, 2013.
3. Downtown: A court with a post-filing and pre-filing arm launched in 2002 (and expanded in 2010) requiring offenders who commit specific misdemeanor offenses in Downtown to perform community service as a means of restorative justice. It operates daily from the arraignment department of the San Diego Superior Court.
- Post-filing: This year 86 cases were eligible for DCC, and the court addressed 65 offenders and facilitated 2,812 hours of community service⁹.
 - Pre-filing: This year 181 cases were eligible, 9 participants registered, and 5 have completed 40 hours of community service.
 - DCC saw a 16% increase in participants and a 47% increase in community service hours ordered by the court, resulting in \$68,961 of labor given back to the downtown communities in 2012.
4. Homeless Court and Stand Down: NPU partners with various agencies to clear warrants and efficiently process cases for homeless individuals with low-level misdemeanor and infraction offenses. HC is held monthly at two local homeless shelters. NPU does the same for homeless veterans at the annual Stand Down event in July.
- 
- HC addressed 533 defendants with a total of 2,087 cases and a 92% attendance rate.
 - 375 homeless veterans registered to participate in the Stand Down court proceedings, resulting in 1415 cases addressed by NPU. Of those defendants, 195 actually participated in the court proceedings, resulting in a total of 701 cases adjudicated in one weekend, a 27% increase from 2011.
5. Veterans Treatment Review Calendar (VTRC): A post-filing initiative launched in 2011 dedicated to address problems presented by military veteran offenders with a medical diagnosis involving post traumatic stress disorder. It combines the resources and expertise of mental health providers, substance abuse counselors, and criminal justice professionals to

⁸ Year end 2011 total was 24. 6 people were disqualified throughout 2012. Due to the funding restrictions the initiative is limited to approximately 30 participants.

⁹ Some CWS is still pending as it was ordered in 2012 but not yet completed.

hold accountable, stabilize, and reduce recidivism in the target population. The VTRC meets every two weeks to evaluate the status of the participants and host a court session bimonthly. VTRC hosted 24 court sessions addressing 26 participants^{10[1]}.

d. Alternative Sentencing Options, Prevention Programs and New Strategies/Developments

- 1. Prostitution Impact Panel (PIP) (citywide):** an educational community-based victim impact panel designed to inform offenders who solicit or agree to engage in prostitution activity about the far-reaching impact of prostitution on a community. The panel consists of a former prostitute, former offender, health practitioner, SDPD vice officer and community member.
- b. 5 PIP sessions were conducted, addressing 84 defendants.
- c. PIP included a new female advocate to address the panel this year. She is a 25 year old ex-prostitute from Minnesota who has been out of the life for approximately five years who provides a fresh perspective for the offenders.
- d. This year our partners, Family Health Centers of San Diego, began offering free HIV testing and counseling to the offenders that attend PIP¹¹. The confidential testing and counseling occurs onsite.
- e. The PIP recidivism study was completed in April of 2012. 808 offenders completed PIP from 2002-2011 with only 28 offenders committing a same or similar crime since attending the panel, resulting in an approximate 3.5% recidivism rate.¹²
 - 1. Serial Inebriate Program (SIP)¹³:** Initiative created to attempt to stop the revolving door of serial inebriates entering the criminal justice system. When a chronic offender is charged with violating Penal Code 647(f), they are given the option of choosing treatment in lieu of custody. The SIP team provides transport from jail, extensive case management, job training, housing, and education:
 - f. 70% of those clients entering SIP are successful in completing at least a 30-day intervention program of which 30% complete the entire program.
 - g. 91 potential clients were referred for assessment for appropriateness of admission. Of those 73 were actually assessed.¹⁴
 - h. 58 clients were accepted into the program and 42 enrolled. 29 of those were readmissions. Another 9 rolled over from the previous year.
 - i. 18 clients chose to complete custody instead of participate.
 - j. At the end of the reporting period, 12 clients were still enrolled and attending treatment. 99% of successful clients were employed, preparing for employment, or permanently disabled at the time of discharge.

^{10[1]} 3 are currently misdemeanors with the City Attorney. The entire team evaluates each case regardless of level of offense.

¹¹ HIV testing and/or counseling is often ordered as a condition of probation for these offenders.

¹² The recidivist conduct evaluated included citations, arrests and convictions.

¹³ The statistics for SIP are based on a Fiscal Year calendar. FY2011 is from July 1, 2011-June 30, 2012.

¹⁴ The others were never produced, released, declined assessment or did not meet eligibility criteria.

1. Problem Solving Court Development:

- k. Instant Justice is being evaluated to expand into Eastern and Mid-City divisions;
- l. Structural evaluation of the current courts and formats continues to ensure operational efficiency and allow more people to participate in community courts;
- m. Before the launch of any new formats in 2013, the following was done in 2012: expanding community partnerships; identifying ways to incorporate an assessment tool into each court to help steer participants into services; and using our case management system to track community court cases and outcomes.
 - 1. **2nd Annual Skate with the Pros, and Southeastern X-Fest:** Through the innovative approach and hard work of both the Southeastern NP and the Southeastern Division SDPD Juvenile Services Team, the Southeastern community experience unprecedented community events to promote public safety through healthy and legal activity. These events brought professional athletes, car enthusiasts, community based organizations, local businesses, and high level dignitaries, such as Mayor Sanders and City Attorney Jan Goldsmith together.
 - 2. **Crime Free Multi-Housing Program**
 - NPU partnered with SDPD and SAY San Diego to implement a Crime Free Multi-Housing Project in the City of San Diego, similar to that of San Diego County.
 - Project focuses on educating apartment managers about community and law enforcement resources available to them to address crime in multi-housing complexes
 - Training is city-wide with a total of 3 trainings in 2012 addressing 61 property managers.
 - 3. **Illegal Cigarette Sales (Central):**
- n. NPU worked with business owners, shelter operators and residents regarding their numerous complaints to SDPD about illegal sales of cigarettes downtown attracting crime to their neighborhood.
- o. Sellers are standing on the streets with bags of unstamped cigarettes often from duty free border stores. They are also seen by transit security selling to travelers. Citizens who live and work in East Village are constantly harassed by the sellers, who also walk up to cars. Combined with the actual drug activity, this conduct contributes to the overall drug market feel of the neighborhood. Additionally, some sellers are entering stores and soliciting patrons which take away from the legitimate sales.
- p. Using the Business and Professions Code, NPU has created an offer and sentencing strategy which includes a stay away order from the problem location.
- q. Coupled with SDPD's Neighborhood Resource Team, NPU continues to address this number one complaint in the East Village, reviewing 28 cases in 2012, 17 of which were issued. Defendant's cited this year were not repeat offenders, indicating that the enforcement strategy appears to have a deterrent effect.
 - a. **Meaningful Dispositions for Chronic Offenders:** NPU vertically prosecutes chronic offenders to ensure they are aggressively prosecuted, convicted, and sentenced appropriately, including but not limited to stay away orders from the impacted community.

1. *People v. Carter: Northern*

- Defendant was the source of multiple complaints from civilians and business owners, and was a problem for SDPD and Lifeguards in the area of the foot of Grand Ave., and nearby Mission and Ocean Boulevards.
- In December 2011, Defendant violated two very recent SAOs and committed a new felony PC 245(a) (1). Defendant pled guilty on the felony case and all misdemeanor cases, including SAOs were terminated. Defendant was granted release pending sentencing. While awaiting sentencing, Defendant was arrested for being drunk in public and trespassing. The DA was contacted and the judge placed a no bail hold on Defendant pending his sentencing date.
- Being the most knowledgeable about Defendant's history, the NP was brought in on all of the discussions regarding sentencing on the felony case, particularly the needs of and impact on the community. At the NPs urging, a probation report and SIP evaluation was ordered. Defendant was sentenced to 180 days in jail, a 4th waiver, to abstain from alcohol, and to stay away from all of Pacific Beach and the zip code 92129.
- Defendant was released from custody on March 4th and immediately went back to Pacific Beach and was arrested for violating his probation terms and for being drunk in public. The NP immediately notified the DA and the judge and an evidentiary hearing was set. Defendant's Public Defender represented that they were trying to facilitate Defendant's return to his family in Arizona.
- Defendant returned to terrorize the beach in June, getting arrested 4 times between June 26th and July 12th. The DA requested the NP conduct the evidentiary hearings and Defendant was sentenced to 365 days custody to max out all of his local time and was strongly admonished by the judge (who decided to keep personal jurisdiction over Defendant) that any future violations would result in actual prison time. Defendant has not been seen since his release from jail on August 25th, 2012.

2. *People v. Le: Western*

- Defendant fixated on a woman in a shopping center and became violent. Victim obtained a restraining order against Defendant in January 2012, but Defendant refused to comply and violated the order three times in February, and again in April 2012. The NP revoked his probation and he served 180 days in custody.
- In May, he was again charged with violating the restraining order. This case went to jury trial and the jury was unable to reach a verdict due to Defendant's mental health issues. Defendant later plead guilty to that charge and was ordered to credit for time served.
- Defendant violated his probation again in July, and based upon his history and acknowledgment of culpability, the NP successfully argued for the balance of Defendant's custody to be imposed (270 days custody).
- The NP will continue to work with law enforcement to protect the victim.

3. *People v. Coronado: Eastern / SDSU*

- Defendant is found riding a stolen bicycle on SDSU campus and a search of his backpack yields lock cutters. Defendant gives a fake name to police but eventually provides a full admission that he came to campus with the intent to steal, and that he had done so in the past. The DA dropped the case to us, despite the fact that Defendant was on felony probation on two separate cases, one of which was theft related. The NP charged Defendant with PC 484 and PC 148.9.
- Rather than obtaining another misdemeanor conviction, the NP wanted to utilize the facts of the current case to revoke Defendant's felony probation. The NP met with a DA Chief to discuss strategy, and a Deputy DA was assigned to work with the NP.
- Defendant was violated on his felony probation and was sentenced to 240 days custody and was ordered to stay away from the entire SDSU campus.
- Defendant then pleads guilty to the misdemeanor theft case, and was denied probation for 180 days custody to be served concurrent with his felony sentence. The NP held Defendant accountable, spared trial resources, and protected the community with a creative approach to what appeared to be a simple theft case.

4. *People v. Lopez: Southern*

- Defendant is a serial inebriate transient in south bay with contacts for drunk in public, illegal lodging and theft. Defendant appears to have mental health issues as he is always covered in urine and feces. All attempts at offering services to Defendant have been unsuccessful.
- In 2010 Defendant was put on probation after pleading guilty to Penal Code 647(f) drunk in public.
- Defendant was brought back to our attention with a string of SAO violations in August and September 2012. While waiting to answer up to the alleged violations, Defendant was arrested for trespassing. In order to best advocate for the most meaningful disposition, as part of a plea deal, the NP terminated his case in south bay court and filed all new cases downtown. In October, 2012 he plead guilty to violating SDMC 52.80.01(b) and was sentenced to 3 years probation and a SAO from the store where he was a continual problem.
- Just a few weeks later Defendant was arrested for stealing at two separate stores in the area where he frequents. The NP tried to elevate the case to a felony due to Defendant's multiple prior theft convictions, but to no avail. Defendant pleads guilty to petty theft, and was sentenced to 3 years probation, 60 days custody, and SAOs from both stores.
- In December, Defendant was charged with illegally lodging as he was found sleeping behind a gas station around piles of human feces. Defendant, himself, is covered in feces including inside the arms of his sweater. The NP used this case to revoke his probation in his previous case, hoping to acquire services to

address his mental health issues. Defendant admitted the violation and was ordered to serve 60 days custody through placement with the Homeless Outreach Team (HOT). Unfortunately, when HOT went to visit Defendant in custody, he refused to come out of his cell.

- In January, Defendant again admitted a violation of his probation, where he was caught stealing from the Lucky's store. Defendant was sentenced to 60 days custody, which was the remainder of potential custody time on his case, effectively ending his probation. SDPD and the NP will continue to steer him toward services when contacted in the future.

5. ***People v. Macias: Southeastern***

- Defendant is a graffiti vandal with gang affiliations. In September 2012, officers on patrol witnessed Defendant tagging gang monikers under a bridge. She was arrested and charged with vandalism and graffiti tools.
- Defendant pleaded not guilty and the case was set for readiness and jury trial. That very evening, Defendant went to Wal-Mart, and purchased three cans of spray paint. Officers on patrol witnessed Defendant tagging another building and she was again arrested.
- The NP made a global offer with increased terms from the original case. Defendant pleaded guilty without the standard charge reduction for this type of crime, and agreed to complete 45 days of custody with full graffiti terms including restitution to the victim, a 4th Amendment waiver, volunteer work service, and an order to not associate with taggers, a SAO and a license suspension.

6. ***People v. Smith: Southeastern***

- Defendant has a long history of drug offenses. He is a constant problem and involved in narcotics activity along Euclid Avenue. Defendant was ordered to stay away from the location as a result of a conviction for being under the influence of a controlled substance.
- His probation conditions were relayed to patrol officers, and seven days after his release, he was arrested for being under the influence of cocaine and violating the SAO.
- The NP filed the new case and Defendant pleaded guilty, was sentenced to 180 days of custody and a 5 year term of probation, including a SAO from the area.
- The NP arranged for HOT to meet with Defendant while he is in jail to determine what services he may be eligible for.

7. ***People v. Walker: Mid-City, Western, and Eastern***

- Prior to NPU's involvement, Defendant had four adjudicated misdemeanor cases and numerous infractions. Defendant was contacted over fifty times by SDPD within a few months. He stood in the middle of intersections with a squeegee and wandered in an out of traffic. He caused numerous traffic delays, threatened multiple motorists, and damaged vehicles.
- While working with SDPD, the NP gathered all of the outstanding reports and citations and evaluated them resulting in a 13 count complaint; charges included

vandalism, battery, aggressive solicitation, and operating a business without the proper businesses tax certificate.

- Defendant bonded out of custody, and while released continued to be cited for illegal behavior until he was eventually brought back into custody. He pleads guilty to one count of Penal Code 602(k) Trespass and was sentenced to 30 days custody with an expansive SAO.
- The NP distributed all of Defendant's terms of probation throughout the SDPD commands, and within 2 days, and officer identified him in the area of his SAO. He was sentenced to additional 60 days custody for his violation.

8. ***People v. Davison: Central***

- Defendant was on probation in 7 cases with offenses ranging from battery and resisting arrest to animal cruelty.
- In September, 2012, an employee of the US Grant Hotel in Downtown was walking near the hotel. Defendant blocked her on the sidewalk and was screaming in her face without reason. The woman tried to avoid Defendant and walk past him. Defendant suddenly kicked the woman in the small of her back, knocking her to the ground. It took a couple days for police to identify Defendant and a warrant was issued, leading to his arrest.
- On the day of trial, it was revealed that the Defendant had mental health issues that may be the source behind his violent outbursts. Defendant took responsibility for his actions by admitting his probation violation, and he was ordered to remain in custody while a psychological evaluation and probation report were conducted.
- Based upon those reports, Defendant received multiple mental health referrals, and was accepted into a voluntary treatment program in December 2012 after serving 95 days in jail.
- This was a significant result for a defendant who until now received no significant consequences to his criminal conduct.

9. ***People v. Bennett: Central***

- Defendant is a chronic drug offender who has been in and out of rehabilitation facilities. She has 28 drug-related convictions since 2002.
- This year her behavior escalated to include weapons and vandalism offenses, creating a public safety risk.
- The NP worked with the assigned public defender to find an appropriate treatment option for Defendant. Once that was done, Defendant accepted the 365 day custody commitment as it could be satisfied through Cross Roads Rehab Center.
- Since April, 2012, Defendant has been sober and in compliance at each proof appearance and is no longer a quality of life crime problem downtown.

b. **Recognized Leaders in Neighborhood Prosecution**

1. **Member, Community Prosecution Advisory Council (CPAC):** This council is comprised of elected district attorneys and city prosecutors who have been identified as national experts and leaders in the area of community prosecution. The purpose of the council is to provide guidance to our nation's prosecutors in their efforts to advance community prosecution. The council discusses issues such as the changing role of the prosecutor in community-based crime prevention efforts and how to provide community members with a voice in the criminal justice process. CPAC met in Washington, D.C. this year (attended by Assistant City Attorney Marlea Dell'Anno).

2. **San Diego Military Advisor Council (SDMAC) Achievement Award:** SDMAC, a nonprofit dedicated to supporting and promoting the local military and defense industry community, honored organizations who make extraordinary contributions to the welfare of the San Diego military community. Homeless Court was one of the recipients, given the unique way the court, prosecution, public defender, and local service providers collaborate to help the local homeless population. Upwards of 35% of San Diego's homeless population are veterans and Homeless Court gives many of these veterans and opportunity to get their lives back on track. The Homeless Court Team was nominated by their partner DLA Piper, and Chief Deputy City Attorney Regan Savalla was the City Attorney's representative to accept the award this December.

3. **National Association of Counties (NACo) Achievement Award:** San Diego's VTRC was recognized in June by NACo, for implementing an innovative county government program to better serve area residents. VTRC was praised for improving service delivery, achieving greater cost efficiency, and providing finer customer service. "On behalf of the nation's counties, I commend San Diego County...", said NACo President Lenny Eliason.

4. **Community Justice 2012: 2nd International Conference of Community Courts:** Chief Deputy Regan Savalla served as faculty, hosting a session entitled, "Community: What's the Role of the Justice System?" It was a general session which all conference members attended, posing questions involving community engagement and how it can strengthen the role of the courts and vice versa.

5. **Grand Jury Civic Success Recipient:** : San Diego's Behavioral Health Court was recognized on May 10, 2012 for being one of San Diego County's civic successes. In its report, the Grand Jury recognized BHC as displaying exemplary public service for successfully filling the historical gap in the justice system that had existed regarding mentally ill offenders, helping them to become self sufficient and increasing their level of functioning in the community.

Appellate Unit

The Appellate Unit provides legal support for the Criminal Division. In 2012 the Unit was reduced in size and now consists of two deputy city attorneys supervised by Chief Deputy Steve Hansen and is supported by two and one-half clerical positions. The Unit handles all pre-trial motions, writs, and appeals for both the General Misdemeanor Unit and the Domestic Violence Unit. Most appeals are handled in the San Diego Superior Court Appellate Division, but the Unit also has cases in the Fourth District Court of Appeal and the California Supreme Court.

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

The Appellate Unit also handles all post-trial motions on behalf of the Criminal Division. Typical motions include motions for new trial, motions to withdraw guilty pleas, motions to vacate judgment, and motions to seal records.

The Appellate Unit handles all appeal matters on behalf of the Criminal Division. Most appeals are filed by defendants after convictions, but the Appellate Unit also files appeals on behalf of the People to correct judicial errors. The Unit also responds to writs of habeas corpus, coram nobis, and mandate, and on behalf of the People initiates writs of mandate to correct judicial error.

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

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

HIGHLIGHTS of 2012

Even though the Appellate Unit operated with one fewer deputies, the number of pre-trial motions handled by the Unit exceeded last year's record high volume. In 2012 the Unit resolved over 1000 pre-trial motions and enjoyed a success rate of more than 97%.

The Appellate Unit also handled a high number of appeals and writs, processing around 160 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 a success rate of more than 96%. While the great majority of cases involved the Unit defending against appeals brought by convicted defendants, the Unit also initiated appeals and writs to correct judicial error.

One of the Unit's highlights was Deputy City Attorney Jonathan Lapin's completion of the appellate briefing in *People v. Vangelder*, which is currently awaiting oral argument in the California Supreme Court. The *Vangelder* case concerns the admissibility of evidence attacking the Intoxilyzer, the breath test device used to measure the defendant's blood alcohol level in a drunk driving case. The Fourth District Court of Appeal held that the defendant should have been allowed to introduce evidence that the Intoxilyzer did not properly measure the alcohol in the defendant's breath. Because this decision could significantly impact the prosecution of drunk driving cases the Unit appealed the case to the California Supreme Court.



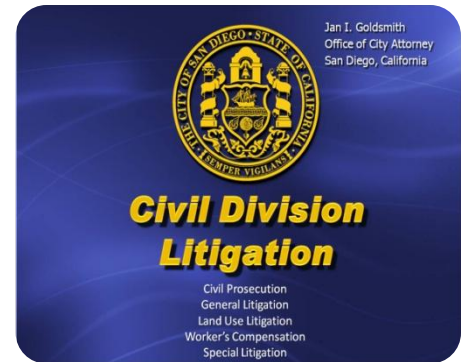
Civil Litigation Division: The Civil Litigation

Division prosecutes or defends civil lawsuits in which the City is a party. The Civil Litigation Division is divided into five



units: Civil Prosecution, Workers' Compensation, Land Use Litigation, General Litigation and Special Litigation. Andrew

Jones, Executive Assistant City Attorney and Don Worley, Assistant City Attorney are heading this division. Mr. Worley has over 30 years in private practice in land use, real estate, and business litigation.



Civil Prosecution Unit

The Civil Prosecution Unit (CPU) is charged with a number of tasks, among these is to initiate litigation against those that owe the City money and/or have damaged the City in some manner. The CPU initiates civil cases, engages outside council to litigate some cases, and coordinates and monitors other litigations that are initiated for the benefit of the City. The CPU is responsible for litigating matters referred to the City Attorney from the Treasurer's office to collect from debtors that have been invoiced for services, but who have not paid. In a different vein, the CPU is also charged with representing the City in construction cases.



2012 was a banner year for the CPU, recovering \$40,329,250.22 for the City. \$27,000,000 of that sum was recovered by Bruce Bailey's team of "fire lawyers" (Bruce, Travis Phelps, and Dan Bamberg) in the settlement of the litigation against SDG&E and CoxCom, Inc. for the damages suffered by the City as a result of the 2007 wildfires.

Another \$10,764,314.54 was recovered by Paul Prather's "tax and settlement recovery" team (Paul, Molly Hoot and Jon Taylor) in garnering \$3,828,548.25 from the Maday Trust

settlement and another \$6,935,766.29 from the Property Tax Administrative Fee settlement with the County of San Diego.

The balance (well in excess of \$2,000,000) of the sum brought in by the CPU in this banner year of 2012 was recovered by Clay Welsh and his "Treasurer's cases" team (Clay, Paul Prather, and Molly Hoot).

In addition to recovering money by representing the City as plaintiff in recovery lawsuits, the CPU's Jon Taylor and his "construction litigation" team (Jon and Molly Hoot) successfully defeated more than \$8,500,000 in claims against the City arising out of construction case.

The attorneys, secretaries, paralegals, and investigators in the Civil Prosecution Unit are proud of the results we achieved through our dedication and hard work on behalf of the City in 2012.

The Workers' Compensation Unit

The Workers' Compensation Unit has four attorneys, Diana Adams, Linda Godinez, Michael Herrin and Thomas Griffin, whose primary responsibility is to work closely with the Risk Management Department by providing timely, accurate and high quality legal advice. The attorneys provide legal advice to 18 claims adjusters on a multitude of workers' compensation issues.

The goal of the Unit's attorneys is to ensure that every City employee that is injured on the job receives all legally entitled benefits, while preventing fraudulent claims and abuses. Accomplishing these seemingly conflicting objectives requires a strong emphasis on personal integrity and professional independence.

The Unit's worth is immeasurable, since its contributions to cost savings occur on a daily basis while guiding the handling of Workers' Compensation claims. Due to continual reformation in the workers' compensation system, the attorneys are charged with providing advice to the Risk Management Department on a wide range of issues, from interpretation of wholesale legislative changes such as those of 2004 and 2012, to day to day operational decisions regarding medical care.

In its advisory role, the Unit's attorneys provide savings of hundreds of thousands of dollars, by preventing over payment of benefits, redirecting medical expenditures, and limiting exposure to penalties.

In addition to its advisory role, the unit's attorneys defend the City against fraudulent and abusive workers' compensation claims by handling all aspects of litigation at the Workers' Compensation Appeals Board including trials, mandatory settlement conferences, expedited hearings, appeals, medical liens, death benefits, discovery, motions and other petitions.

In 2012 the unit had over 1,501 open, active cases, resulting in 338 hearings, 80 depositions, 1 appeal, and 37 trials at the Workers' Compensation Appeals Board. These actions resulted in cost savings of more than \$6,228,099 for the City of San Diego.

General Litigation Unit

The San Diego City Attorney's General Litigation Unit consists of Chief Deputy City Attorney Donald F. Shanahan, Deputy City Attorneys Jane Boardman, Bonny Hsu, Keith Phillips, Jennifer Gilman, Catherine Turner, John Riley, Stacy Plotkin-Wolff, Kathy Steinman and Christina Milligan. Each attorney handles a heavy case load, defending the City of San Diego, agencies within the City, and its agents. The types of cases handled by the General Litigation Unit include, but are not limited to, police excessive force cases, state common law torts, constitutional issues, dangerous condition cases, motor vehicle accidents, and an assortment of other tort and personal injury cases. The attorneys in the General Litigation Unit were highly successful in resolving a variety of lawsuits favorable to the City. Numerous summary judgment motions, motions to dismiss, and demurrers were obtained for our City clients.

During the past year, the General Litigation Unit received 114 new cases, in addition to the carry-over of cases from 2011. Seventy-Six (76) cases were disposed of through trials, motion practice, tender letters, and settlement negotiations. In addition to resolving cases which monetarily benefit the City, the General Litigation Unit obtained legally significant rulings. Several examples include:

Jeffrey Gorman v. City of San Diego, et al.

Plaintiff, a quadriplegic, sued the City of San Diego and four of its police officers for assault, battery, excessive force, and constitutional violations. The genesis of the complaint stems from a vehicular stop by an SDPD police officer for a vehicle violation. After a brief discussion, the officer determined plaintiff was driving under the influence, but refused to take the PAS test for confirmation. When told he would be arrested if continued his non-compliance, he became belligerent and antagonistic. Gorman demanded that he be transported to police headquarters in an ambulance rather than a police patrol vehicle. Gorman claimed that he was thrown into the back of the vehicle, was not seat belted, was treated in a rude manner and incurred additional injuries because of the intentional, irresponsible and deliberate manner in which the officer drove the vehicle. Upon reaching headquarters, plaintiff stated that if the officers attempted a forced blood draw he would fight them. Thus, in order to ensure both plaintiff and

officer's safety, it was determined that the forced blood draw would be accomplished by placing plaintiff on the garage floor rather than attempting to carry a resistive suspect over to the restraining chair.

Plaintiff claimed the manner in which the forced blood draw was executed was unconstitutional. Finally, Gorman claimed that when taken to the County Jail for booking, he was improperly removed from the police vehicle causing a rotator cuff injury and head trauma from being dropped to the floor. After a two-week jury trial, all the Defendants were exonerated from all of Plaintiff's claims.

Christopher Morgan v. City of San Diego, et al.

This case stems from an ongoing neighborly dispute. One neighbor accused the Plaintiff of stealing miscellaneous junk from her garage like a hose and a broom. Officers arrested the Plaintiff and a dispute arose whether the officers illegally entered the Plaintiff's residence to effectuate the arrest. The City Attorney's office did not prosecute the burglary or trespass case. Internal Affairs concluded the officers did not have probable cause to arrest the Plaintiff and suspended Detective Davis for arresting the Plaintiff. Plaintiff's arrest records were expunged. Mike Marrinan was Plaintiff's lawyer. Judge Huff supervised the jury trial. Despite the Internal Affairs conclusion, the jury was unanimous that Det. Davis had probable cause to arrest the Plaintiff and did not violate the Plaintiff's Constitutional rights during the arrest.

Authorized Towing Company (Act) v. City of San Diego

The City was sued in three lawsuits related to its contracts with towing vendors. In December 2012, the City settled two of these lawsuits and received payment in excess of \$4.4 million. The remaining lawsuit filed by ACT against the City was, in the words of the Court, a complicated, multi-party dispute among successful and unsuccessful bidders for computerized towing dispatch contracts with the City. A cross-complaint by the company known as DTS alleged that DTS developed and owned certain software relating to the towing industry. DTS claimed that entities, including the City, improperly used the software and misappropriated its trade secrets. The City Attorney jointly defended against ACT claims. Pursuant to a motion for summary judgment the City was dismissed relative to ACT claims. Pursuant to the City's vendor contract with a co-defendant – AutoReturn - the City was defended against the remaining DTS claims by outside paid for by AutoReturn. The remaining claims against the City by DTS also proceeded to a motion for summary judgment. In the role of monitoring the City's defense, the City prevailed in that motion for summary judgment. Based on that judgment, the Court awarded attorneys fees against DTS in the amount of \$450,000.

Dunn Pargo v. City of San Diego, et al.

Plaintiff alleged that San Diego Police Department officers unlawfully chased a suspect into her home. She claims that when she questioned the officers' presence in her home, she heard an officer say "We found what we was looking for" and then she was struck in the face, rendered unconscious and she woke up in the back of a police car. She could not identify any of the officers who purportedly struck her. The officers contend that on the night of the incident, they were monitoring the area adjacent to Plaintiff's house for drug and gang activity. They observed what they believed to be a drug transaction and chased a suspect, who fled into Plaintiff's open garage and into her house. They ultimately apprehended the suspect inside the home after a struggle. The Plaintiff approached the officers as they were struggling with the suspect and she struck one of the officers in the back several times. Another officer had to pull Plaintiff away from the area so the officers could handcuff the suspect. They denied striking the Plaintiff. Plaintiff was later handcuffed, cited for battery on a peace officer and obstructing an officer in the course of his duties and released at the scene.

The unlawful entry claim and the Monell claims against the City were dismissed on summary judgment. The remaining claims for civil rights violations, false arrest, assault, battery and negligence were tried. Plaintiff dismissed her negligence and California Civil Code section 52.2 claims prior to submission to the jury. The jury returned a complete defense verdict. Costs in the amount of \$9,634.07 were awarded to Defendants.

Ortega v. City of San Diego

The Seals Tour aquatic bus turned from Westbound West Harbor Drive onto Northbound Pacific Highway in front of Embassy Suites. As it did so, it ran over and killed Virginia Ortega, visiting from Phoenix. Seven months ago a Seals Tour aquatic bus ran over and nearly killed another person at the exact same spot. Plaintiffs Carrie and Walter Ortega are her parents and were in San Diego on vacation at the time with their daughter Virginia. The City filed a motion for summary judgment based upon design immunity which the Gomez Law Firm hotly contested. The Honorable Judith Hayes agreed with the City and summarily adjudicated all causes of action against the City in the City's favor. The Seal Tour Bus company settled for \$550,000.

Isabel Carrasco v. City of San Diego, Officers Schnick and Widner

Late one night Officers Schnick and Widner investigated a domestic disturbance. The officers spoke to the female complainant outside who let them into the residence to speak to the male resident. When the officers entered the male's bedroom and roused him from a drunken sleep, he threw the cover off wielding a 13 inch knife and came at the officers. Both officers fired a total of 9 shots at him killing him, including one shot to the top rear of the head through the eyeball which looked like an execution shot. The decedent had a 7 year old and 3 year old daughter. Gene Iredale was Plaintiff's counsel. After much discovery and many depositions, Mr. Iredale finally agreed to settle the case for a waiver of costs after his demands for a monetary payment were rejected.

Harris v. City of San Diego.

On May 2, 2009, San Diego Police Officers Bueno and Bligh witnessed Plaintiff, Willie Lee Harris, a known parolee with previous narcotics offenses, perform a hand-to-hand drug transaction. The officers contacted Plaintiff, who immediately became belligerent and combative, cursing at the officers. Plaintiff, a 6'3" man who weighed 310 pounds at the time of arrest, actively resisted arrest, was uncooperative, and physically fought with the officers who arrested him. On February 26, 2010, Plaintiff filed a lawsuit against the City and Police Officers Bueno and Bligh, alleging excessive force and violations of his constitutional rights. Ultimately, Plaintiff was sentenced for possession of cocaine and a parole violation. His release date from prison was set for June 12, 2012. At the August 2, 2011 Final Pretrial Conference before Judge Moskowitz, Plaintiff indicated that he couldn't bring his case while he was incarcerated and still had to find witnesses and other evidence. Following a number of procedural and discovery events, the trial date in the case was set for September 10, 2012. Plaintiff was released from jail in June of 2012. Following his release, he did not contact his attorney; he did not change his address with the Court; he did not assist in the prosecution of his case. He did not appear at hearings where the judge ordered him personally present. The Court set a hearing on an Order to Show Cause why the case should not be dismissed. Plaintiff did not appear on that date, did not contact his attorney, and did not provide a reason for his previous absences. On August 27, 2012, Judge Moskowitz dismissed the case without prejudice pursuant to Federal Rule of Civil Procedure Rule 16.

Alexander Hubble v. TC Comm, Inc, Steve Suraci. (Cross-Complaint by TC Comm, Inc. against the City of San Diego.)

On or about March 26, 2009, Plaintiff Alexander Hubble was riding his bicycle at or near the 7400 block of Charmant Drive in La Jolla, CA, when he was involved in a collision with a dump truck owned by Defendant TC Comm, Inc., and operated by Defendant Steve Suraci. On March 24, 2011, Plaintiff filed a lawsuit against TC Comm, Inc. Plaintiff did not sue the City, but TC Comm, Inc. filed a cross-complaint against the City for equitable indemnity or partial equitable indemnity on October 11, 2011. At the same time it filed its cross-complaint, TC Comm filed its Claim against the City of San Diego pursuant to California Government Code section 905. In Section 2a of the Claim form, TC Comm, Inc. indicated that March 25, 2009 was the date of the occurrence or transaction which gave rise to the claim. Thus, according to the information provided on the claim form, the Cross-Complainant therefore filed its Claim 1 year, 10 months, and 11 days after the date of the occurrence that gave rise to the claim. Because the Cross-Complainant filed its claim very late based on the date it provided, the claim was returned because it was not presented within six months of the event. TC Comm did not apply to the City for leave to present a late claim under the provisions of Government Code section 911.4; nor did it petition the court for an order relieving the petitioner from Government Code section 945.4, the procedures for which are set out in California Government Code section 946.6. The City of San Diego therefore demurred to TC Comm, Inc.'s Cross-Complaint. On March 17, 2012, Judge Taylor sustained the City's demurrer without leave to amend.

Xaypanya v. City of San Diego.

On July 9, 2010, Samuel Metu was driving a 2000 Chevrolet Malibu eastbound in front of 6700 Madrone Avenue in San Diego. As Mr. Metu drove down the street, Jameson Darapheth,

the 4-year-old son of the Plaintiff, ran out into the road in order to cross the street. Mr. Metu struck Plaintiff's son with his vehicle. Plaintiff's son was transported from the scene by paramedics to Children's Hospital where he was pronounced dead. The medical examiner concluded that Plaintiff's son was killed by blunt force head injury. On August 24, 2011, Plaintiff filed a complaint against the City of San Diego alleging dangerous condition of public property and claiming that an alleged dangerous condition of the City's street prevented drivers from striking pedestrians. Plaintiff's Claim against the City of San Diego indicated she was seeking non-economic damages in the amount of \$10,000,000.00. The deposition of Plaintiff's surviving son, 14-year-old Jace Vilichay – the only percipient witness to the event – took place on November 6, 2012. Following a very emotional deposition by the young boy, the parties discussed the evidence that had come of it and the City's intention to file a Motion for Summary Judgment based on the evidence at hand. After Plaintiff had the opportunity to consider the City's position, on December 17, 2012, Plaintiff executed a Request for Dismissal with prejudice.

Dowell v. City of San Diego

On December 17, 2008, Dowell was observed in East Village driving a white Ford pickup. Zdunich executed a traffic stop on Dowell for a tail light violation. Detectives responded, obtained Dowell's house keys and proceeded to execute a search at Dowell's reported residence. Marijuana, a scale with cocaine residue, and a loaded handgun were found in Dowell's apartment. During the search of the residence, Dowell's wife Natalie Clark Dowell arrived home and stated that the narcotics were not hers and that the handgun belonged to Donald Dowell. This case was tried on March 29, 2012. A full defense verdict was rendered on April 4, 2012.

Rettig v. City of San Diego, et al.

On February 3, 2009, Plaintiff was walking in Little Italy and tripped and fell face first onto the sidewalk. Plaintiff tripped on a 1 5/8 inch height differential where adjoining sidewalk panels met. The fall resulted in injuries to her face, lip, teeth, nose and abrasions to her legs. Plaintiff experienced head, neck and right-hand pain, and felt nauseous. In addition to the above physical injuries, Plaintiff alleged severe emotional damages. She claimed that prior to this fall, she was an independent energetic 91 year old lady, after the fall she claimed to have suffered from anxiety, and depression. Plaintiff requested \$250,000. A six day trial commenced in March 2012 resulting in a full defense verdict.

Burke, et al. v. City of San Diego, et al.

Plaintiffs alleged premises liability based on dangerous condition of public property. Early in the morning, during a strong rain and wind storm, a palm tree [1st tree] fell down and hit Plaintiffs' car. Later that morning, as he was walking to a friend's car after retrieving his laptop from the back of his damaged car, a 2nd tree that was next to the 1st tree fell and struck Plaintiff. Plaintiffs

alleged that the trees were in a dangerous condition, and had been for at least 10 years, because they were old, very tall, were tapering at the top, had only a few, yellow leaves and the roots were rotted and decayed. The City argued that the trees were not in a dangerous condition at the time of the accident, that the trees' condition and appearance was consistent with a mature tree and not an indication that the tree was unhealthy, that it did not have actual or constructive notice of an alleged dangerous condition of the trees prior to the accident, and that lab reports confirmed that the tree roots were not rotted or decayed. Plaintiff sustained serious crushing injuries to his lower extremities. He underwent over 20 medical surgeries and procedures, however remains unable to walk and will be in a wheelchair the remainder of his life. Plaintiffs alleged damages for lost wages, loss of future earnings, past medical damages of \$1.3 million, future medical damages, loss of consortium and pain and suffering. Prior to trial Plaintiffs made a demand of \$19.5 million dollars. The trial was bifurcated and was strenuously defended by the City. Ultimately the jury found in favor of Plaintiffs at the conclusion of the liability phase of the trial. During the damages phase of the trial, Plaintiffs asked the jury for a total of \$37 million dollars in damages, however the jury awarded Plaintiff Michael Burke \$7,175,589.00 in damages and plaintiff Edith Burke \$500,000.00 in damages.

Land Use Litigation Unit

The Land Use Litigation Unit prosecutes and defends all real property, land use, development and environmental actions on behalf of the City of San Diego. The unit has 6 attorneys plus staff and is under the direction of Chief Deputy City Attorney Christine Leone.

LULU provides specialized knowledge and representation of the City in the following types of litigation:

- Prosecutes and defends legal actions involving the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA)
 - Prosecutes and defends state and federal eminent domain actions
 - Prosecutes and defends state and federal constitutional challenges to City's permit process and its decisions as it relates to the use of land, real estate valuation and real estate development
 - Defends actions relating to administrative decisions by the City involving the subdivision map act, zoning, permitting and other administrative procedures
 - Defends and initiates land use cases, including writs of mandamus and prohibition, CEQA writs, and property damage claims arising from floods, sewer backups, soil subsidence, etc.
 - Defends federal actions under the Religious Land Use and Institutionalized Persons Act, Telecommunications Act and the Endangered Species Act
 - Defends cases involving direct and regulatory inverse condemnation matters

- Advises City Council and City Departments relating to potential litigation and settlement of claims involving land use matters

These specialized skills are important to the City in that land use cases typically have enormous political and economic implications for the City. Without attorneys capable of navigating the complex and unique issues land use cases raise, the City could be liable for significant damages and attorneys' fee claims and lose its ability to regulate the use of its land.

Last year the Land Use Litigation Unit handled approximately 75 cases as well as advising various City Departments on potential litigation matters.

CURRENT MAJOR CASES/PROJECTS

Chelsea San Diego Finance, LLC v. City of San Diego and City Council of the City of San Diego (Shamrock/Las Americas Venture I LLC and Shamrock Group, LLC, Real Parties in Interest)

This matter is a CEQA action challenging the City's approval of the Outlets at the Border project located at 4211 Camino de La Plaza in the San Ysidro neighborhood.

Chollas Restoration, Enhancement and Conservancy Community Development Corporation and San Diegans for Open Government v. City of San Diego

Petitioner challenges the environmental review related to the approval of a project known as the Wightman Street Neighborhood Park, a children's park located near 5024 Wightman Street.

City of San Diego v. Board of Trustees of California State University

The City of San Diego brought an administrative mandamus action challenging the decision of the Board of Trustees of the California State University to certify and adopt the Final Environmental Impact Report relating to the approval of the San Diego State University 2007 Campus Master Plan Revision without providing for payment of mitigation measures addressing significant traffic impacts on the surrounding community. This case is currently under review in the California Supreme Court.

Coalition for Resp. Conv. Ctr. Planning v. City of San Diego

This case arises from the formation of the Convention Center Facilities District (CCFD) and certification of a vote of the CCFD electorate on a special tax to fund an expansion of the convention center.

Fox, et al. v. City of San Diego, et al.

Petitioners challenge the constitutionality of the recently passed Senate Bill 863 by the State Legislature and the involvement by the City of San Diego, City Council of the City of San Diego, Redevelopment Agency, and Centre City Development Corporation.

Freepb.Org v. City of San Diego

Plaintiff brings a federal action challenging the constitutionality of City's permit process of park use.

In re Wireless Litigation

This federal matter involves seven consolidated actions challenging the City's application of its telecommunication regulations. This case effects City's ability to regulate the use and aesthetics of telecommunication structures in its communities. City was successful in the trial court. Plaintiffs have appealed and the matter is pending before the Ninth Circuit.

Save Our Heritage Organisation v. City of San Diego, City Council of City of San Diego and Real Party in Interest, Plaza de Panama Committee

Petitioner challenges the sufficiency of the Environmental Impact Report certified by the City Council for improvements to Balboa Park for the 2015 Centennial Celebration.

MAJOR CASES/PROJECTS *

Success in land use litigation matters are significant because City's right to use and regulate its land is crucial to our economy and preservation of our communities. Also, significantly, most land use cases, if lost, require the City to pay an attorneys' fee award. In general, in civil litigation, parties incur their own fees cases and costs. However, land use cases (CEQA, mandate, and inverse condemnation) provide for a statutory award of fees to a successful Petitioner. Thus, victories are not only significant to protect the City's land use, zoning, planning and development decisions but also to preclude money awards against the City.

5020 Wightman LLC v. City of San Diego

Property owner filed inverse condemnation action seeking money for damage allegedly caused by City's failure to maintain a drainage easement. The case was dismissed with City paying no money.

Citizens Against Flower Hill's Excessive Expansion v. City of San Diego

Plaintiff challenged expansion of Flower Hill shopping mall. City prevailed on all causes of action.

City of San Diego v. Sweetwater Authority

City sued to prevent the expansion of a desalination project because the project would violate City's water rights. City sued complaining that Sweetwater did not adequately analyze and mitigate these significant impacts on City's water rights. The Court issued a final ruling in the City's favor. The City obtained \$12,000 in costs.

CREED-21 v. City of San Diego (Cross-Border Facility)

This case concerns the City's approval of a private project entitled "Otay-Tijuana Cross Border Facility Development Project" (Cross Border Facility). The Cross Border Facility involves the development of a private facility that will facilitate international border crossings. The case was settled without any damages to City or retraction of any project approvals or permits.

Coalition for Safe and Healthy Economic Progress v. City of San Diego

Petitioner challenged City's issuance of demolition and building permits for construction of supermarket in downtown area. City prevailed on all issues.

Related California Urban Housing LLC et al v. City of San Diego

Plaintiffs filed an action for breach of contract action against the City, RDA and other named defendants, claiming the parties breached an exclusive negotiating agreement. Plaintiffs claim the breach caused over \$3.8 million dollars in damages. Case was settled with no damages awarded against the City.

San Diego Gas and Electric Cases

These are eminent domain lawsuits brought by San Diego Gas & Electric (SDGE) to facilitate the Sunrise Powerlink Transmission project (Project). The Project involves the construction of a 120-mile electric superhighway between an existing substation in Imperial Valley and SDGE's Sycamore Canyon Substation located in central San Diego County. SDGE filed this lawsuit, among many others, to obtain the easements needed for the construction and placement of the powerlink and related structures. The City was able to successfully negotiated settlements providing funds for taking of property.

Zouras v. City of San Diego

Challenge to Administrative Order for illegal grading and dumping. Court granted City's motion to dismiss.

Special Litigation Unit

Under the direction of Chief Deputy City Attorney Joe Cordileone, the Special Litigation Unit defends the City of San Diego, its employees, officials and departments in civil actions that are not considered "General Litigation" matters. The following are examples of the type of work performed by the Special Litigation Unit:

- Defend the City in class action lawsuits.
- Defend challenges to the constitutionality of City ordinances and City policies or practices.
- Defend employment-related cases which include claims of discrimination, harassment, retaliation and FLSA wage and hour matters.
- Defend the City in complex litigation — whenever any lawsuit against the City, by virtue of its size or level of difficulty requires extra attention from the court, it is declared "complex," and its defense is transferred to the Special Litigation Unit.
- Represent various City departments in administrative hearings before the Civil Service Commission and CalOSHA.
- Prosecute and defend all appeals in State and Federal Courts.
- Defend writs or other non-standard legal 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.

Case Examples:

Employment Cases:

The City was successful in defense of various employment matters. Often the cases allege discrimination in one form or another as the basis for adverse employment actions including discipline, failure to promote and termination. In many cases, our deputies satisfied either state or federal trial judges that the cases were so lacking in merit that a trial was unnecessary resulting in many frivolous lawsuits being dismissed by the Court without the need for trial. The City also utilizes a program whereby it conducts a detailed early assessment of employment cases and, if there is any validity to the claim, it offers a fair and reasonable settlement early on with a goal to saving both sides the expense and inconvenience of protracted litigation.

Calderon v City of San Diego

Employment discrimination and harassment suit.

After City's Demurrers and Motion for Summary Adjudication and an appeal which eliminated all but one of the claims, the single remaining claim was tried to a jury and resulted in a quick and unanimous verdict for the City.

Civil Service Commission cases:

Appeal of Bursey:
Termination upheld

Appeal of Cooper:
Termination upheld

Appeal of Miranda:
Suspension upheld

Appeal of Patmon:
Demotion upheld

Appeal of Taylor:
Termination upheld

Other Employee Related Cases:

Abbe v. San Diego City Employees' Retirement System and the City of San Diego:

Approximately 350 past and present City employees sued the City and the Employee Retirement System for millions of dollars in monetary damages relating to SDCERS requirement that employees contribute additional funds to pay for the additional retirement years they had purchased earlier at an illegal discount. The City prevailed and the employees were required to make more equitable payments for the credit.

AFSCME Local 127 v City of San Diego:

A local union filed a challenge with the Public Employee Relations Board attacking the City's decision to release a probationary employee contending that the decision was made to intimidate the union. After a two-day hearing, a PERB administrative law judge found the charges to be without any basis.

Outside the Employment Arena the Special Litigation Section Has Been Busy with Cases Such as:

Browning, Gonzales, and Unite HERE Local 30 v. San Diego City Council

Petitioners (a local labor union and two individuals) challenged a Council Resolution which formed the Convention Center Facilities District (CCFD), and the special tax levy approved by the CCFD to finance the Phase III expansion of the San Diego Convention Center. They contended the resolution violated sections of the State Constitution dealing with imposition of taxes. The Court sustained the City's demurrer without leave to amend. Thus ending the case at a very early stage in the proceedings.

Scott and Cox v. City of San Diego:

Plaintiffs sued to set aside the penalty for illegal construction which required them to pay in excess of \$25,000 in penalties and administrative costs for their construction of an unpermitted deck over steep hillsides on environmentally sensitive lands on their Kensington property. The Order also required Plaintiffs to tear down the subject deck. The Court ruled in favor of the City on all counts.

Hylton v. City of San Diego:

Plaintiff sued in federal court alleging illegal search and seizure of his vehicle, violation of public policy and civil rights violations resulting from a traffic stop wherein Plaintiff was stopped for displaying expired registration and his car was subsequently impounded for having a registration expired greater than six months. City prevailed on motion for summary judgment and was awarded costs of the suit.

Shapiro v. City of San Diego:

This was a suit under the guise of the Public Records Act seeking confidential records of people who could be characterized as anonymous whistleblowers. After the City prevailed at the trial level in protecting the confidentiality of hotline complaint documents Plaintiff filed a petition in the Court of Appeals. The City prevailed at the appellate level as well.

Tuer v. City of San Diego:

Petitioner filed writ to overturn Administrative Hearing Officer's decision upholding noise citations against them. After negotiation, Petitioner's agreed to dismiss suit and pay City \$981.00 in fines.

Wisdom Organics v. City Treasurer:

Petitioner was a medical marijuana delivery co-op that sought a business license which the City Treasurer refused to issue because it would advance an illegal act (the U.S. Attorney was, and is, enforcing federal laws prohibiting distribution of marijuana even if done for medical purposes which are permitted by state law). The Court agreed that the Treasurer could not be required to issue a license for illegal activities and a demurrer was sustained thus ending the case.



Civil Division Advisory

Government Affairs & Finance
Public Safety and Employment Services
Public Works
Real Property
Land Use
Redevelopment

Civil Advisory Division: The Civil Advisory



Division provides advice to the City and each of its

departments, including the City Council and Mayor. The Civil Advisory Division is divided into five sections: Government Affairs and Finance, Real Property and Economic Development, Public Works, Public Safety and Employment Services. This division is under the direction of Assistant City Attorney Mary Jo Lanzafame who has over 26 years of experience as a municipal

lawyer in areas of practice including the California Environmental Quality Act (CEQA), planning and zoning, conflict of interest, the Brown Act, real estate and public works.

Real Property and Economic Development Section

The fourteen attorneys in the Real Property and Economic Development Section provide legal advice to the City on issues involving the management and leasing of the City's extensive real estate portfolio, public and private development projects, and economic development. Primary areas of responsibility include the Airports, Community Services, Development Services, Economic Development, Facilities Financing, Park and Recreation, Parking, Planning, Real Estate Assets, post-Redevelopment, Special Events, and various Stadium facilities, including Qualcomm, Petco Park, and the Valley View Casino Center (Sports Arena). The lawyers frequently draft memoranda of law, opinions, reports, resolutions, and ordinances for the City departments, as well as draft and review property-related contracts, documents, and correspondence. Additionally, these lawyers staff and provide advice to the Planning Commission, Historical Resources Board, Hearing Officers, Airport Advisory Committee, Land Use and Housing Committee, Park and Recreation Board, Housing Authority, and the Successor Agency to the former Redevelopment Agency. They also provide the City departments with advice on conflict of interest, Ralph M. Brown Act (open meeting law), and Public Records Act issues.

Real Estate The Real Estate attorneys assist staff in the City's Real Estate Assets Department in managing the City's extensive portfolio of owned and leased property. The attorneys negotiate, draft and review numerous real property-related contracts and associated documents, including purchase and sale agreements, leases, right-of entry permits and deeds. The attorneys also draft and review revisions to the San Diego Municipal Code, and assist Department staff with legal issues involving key assets of the City, including Montgomery Field and Brown Field Airports, Qualcomm Stadium, Petco Park, and the Valley View Casino Center. This assistance regularly involves interactions with other governmental agencies, such as the

Federal Aviation Administration, Caltrans, various branches of the military, and other state and federal agencies.

Land Use The Land Use attorneys assist City staff with all aspects of public and private development in the City, including land use entitlements, condominium conversions, telecommunication facilities, building code issues, community planning issues, financing issues, housing projects, and the associated environmental review. These lawyers review environmental documents to ensure the City's compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and advise on compliance with the Multiple Species Conservation Program (MSCP), and the state and federal Endangered Species Act. In addition, the attorneys draft or review deferred improvement agreements, subdivision improvement agreements, reimbursement agreements for the construction of public facilities, public facilities financing plans, landscape maintenance agreements, development agreements, contracts for consultant services, grant applications and awards, right of entry permits and special use permits. They also assist staff with revisions to the Land Development Code, the General Plan and Community Plans.

Economic Development The Economic Development lawyers advise City staff on post-redevelopment issues that arose from the complex statutory scheme that dissolved redevelopment agencies as of February 2012. They advise the City as Successor Agency to the former Redevelopment Agency of the City of San Diego and the City as Successor Housing Entity, attend meetings of the Oversight Board, and work with staff to protect and preserve public assets and projects, such as the North Embarcadero Visionary Plan, the redevelopment of Horton Plaza, and numerous affordable housing projects. These lawyers also assist staff with the creation and funding of Maintenance Assessment Districts (MADs), Business Improvement Districts (BIDs), and the Tourism Marketing District (TMD). Further, they assist City staff with issues and agreements involving Community Development Block Grant (CDBG) and Transient Occupancy Tax (TOT) funds. The lawyers also advise staff regarding the San Diego Workforce Partnership, the City's Storefront Improvement Program, the Small Business Enhancement Program, the San Diego Regional Enterprise Zone, and the Foreign-Trade Zone, in support of the City's goal of increasing economic development.

Highlights for 2012

Real Estate

- Drafted and reviewed documentation necessary for the submission of the Declaration of Dedication of Parkland, which listed more than 6,400 acres of real property to be set aside for park and recreation purposes by California Senate Bill 1169 on January 1, 2013.

As a result of these dedications, any non-park and recreation use of these properties will now require approval by a 2/3 vote at a citywide election.

- Drafted and reviewed documentation necessary to amend the Joint Use and Management Agreement for the operation and management of Petco Park in order to better promote and secure more consistent use of the Park during the off-season from major league baseball.
- Drafted and reviewed documentation necessary for the preparation of a new 50-year lease with San Diego Theatres, Inc. that contemplates a minimum \$30 million renovation of the San Diego Civic Theatre.
- Drafted and reviewed documentation necessary to ensure current and future funding for the City's homeless programs in an annual amount of up to \$1.3 million.
- Drafted and reviewed documentation that allowed City tenants to refinance and receive better loan terms.
- Drafted and reviewed documentation necessary to sell excess City real property.

Land Use

- Drafted and reviewed legal documents associated with various public and private development proposals, including the proposed new State Courthouse, Plaza de Panama, the Cross Border Facility in Otay Mesa, the Southview Project in Otay Mesa, the Fat City Lofts, the La Jolla Crossroads II Project in University City, the Outlets at the Border shopping center in San Ysidro, the proposed Quail Brush Generation Project, the Old Town Transitional Housing Project, the Shawnee/Riverbend mixed use project in Mission Valley, the proposed Castlerock de-annexation of more than 100 acres of property to Santee, and various "green" development projects proposed under the City's sustainable building expedite program.
- Assisted staff in updating Public Facilities Financing Plans for various areas of benefit throughout the City, which fund critical public infrastructure.
- Assisted staff in obtaining grant funding for parks and transit-oriented development.
- Reviewed and updated many legal forms used by City staff that allows proposed development projects to be processed more efficiently.
- Processed numerous amendments to the San Diego Municipal Code, including reviewing and codifying land use-related City Council policies, to make City rules clearer and easier to understand by the public.
- Reviewed a number of environmental impact reports and other environmental analyses for private and public projects and plans, including those for the San Diego River Park Master Plan and several Community Plan updates.
- Advised staff on numerous topics of public interest, including the Children's Pool, Sycamore Landfill, amending the City Heights Area Planning Committee's bylaws to allow youth members, the downtown Agua Caliente sign, the proposed North City Power Plant, the Golf Business Plan and the Hillcrest Rainbow Flag.

Economic Development

MADs and BIDs

- Assisted with the ongoing operation of 57 MADs and 20 BIDs throughout the City.
- Advised staff concerning various legal issues associated with the renewal of the TMD in downtown San Diego for 39.5 years until 2053. The TMD will raise approximately \$30 million per year for tourism development, including coordinated joint marketing and promotion of San Diego, in order to retain and expand the tourism industry which is one of the largest revenue generators for the San Diego economy and a key employment sector.
- Advised staff with respect to the formation of the first MAD in the Barrio Logan neighborhood, which will provide funding for the ongoing maintenance, operation and servicing of landscaping, sidewalks and gutters, trash removal, graffiti abatement and other improvements within the public rights-of-way.

Incentive Programs

- Advised and assisted staff with the negotiation of contracts resulting in the distribution of funds to numerous small businesses throughout San Diego. With the assistance of a federally matched grant, the City provided loans of \$25,000 to \$500,000 to small and mid-sized local businesses, to promote business expansion and job creation. Fifteen local small businesses received a total of \$540,000 in grant funds under the City's Economic Development & Tourism Support Program for the purpose of advancing the City's economy through business attraction and employment development. Additional grant funds were distributed to local non-profit organizations that provide services directly to small businesses for the purpose of creating, growing and retaining small businesses in San Diego.
- Advised and assisted staff with the drafting and negotiation of contracts to maintain the City's offering of business incentives and benefits through tax credits and deferral or exemption of duties on imported and exported goods within the City's Enterprise Zone and Foreign-Trade Zone.

Redevelopment

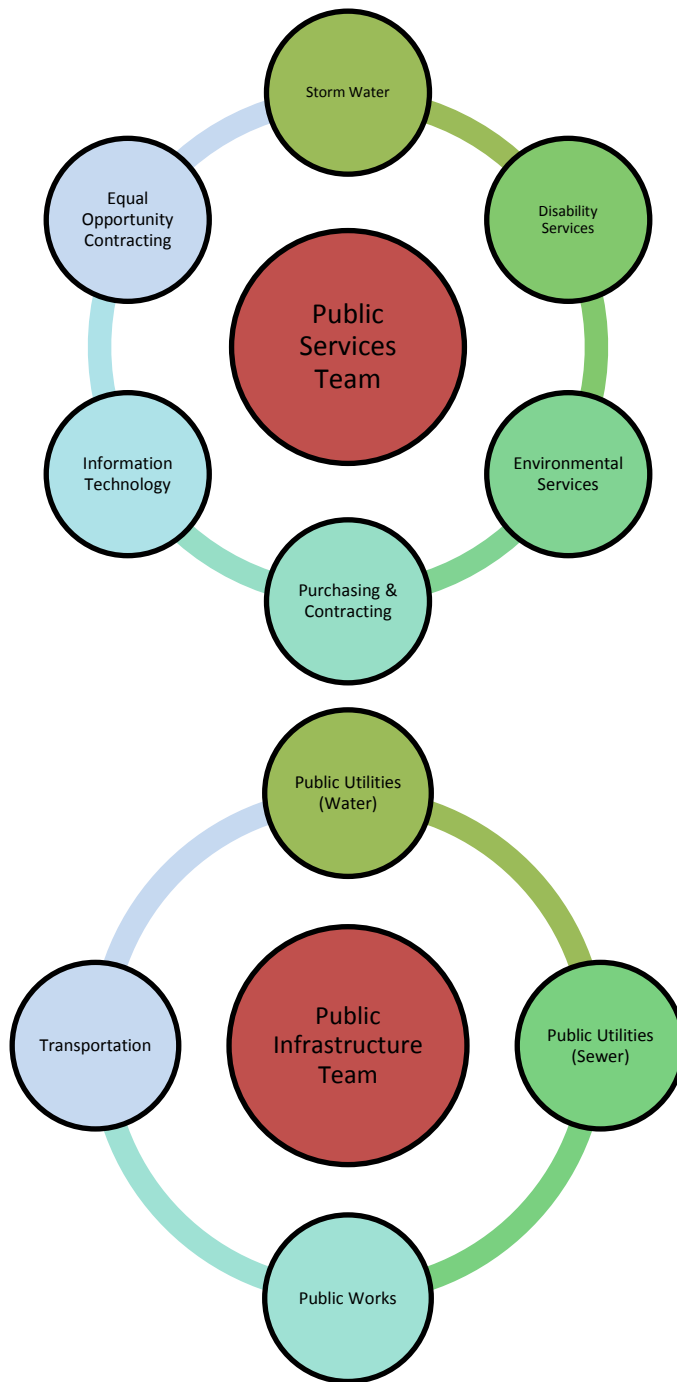
- Assisted the City, as Successor Agency to the former Redevelopment Agency, in complying with new State laws related to the winding down of redevelopment operations and the fulfillment of existing contractual and financial obligations.
- Assisted staff in persuading the State to reverse numerous preliminary decisions that, if left intact, would have resulted in the loss of more than \$45 million in redevelopment funding for local projects. As a result, several important projects, such as the new

Connections Housing year-round homeless facility, the anticipated Ninth and Broadway 250-unit affordable housing project, and the North Embarcadero Visionary Plan public improvements, have been allowed to proceed.

- Negotiated and drafted numerous documents, and provided legal advice related to the Ninth and Broadway affordable housing project. It is anticipated that the project will involve construction of a 17-story apartment building with approximately 250 affordable rental units, 88 of which will be supportive housing available for the homeless, ground floor retail space, and underground parking.
- Negotiated and drafted numerous documents, and provided legal advice related to the anticipated COMM22 project in the Logan Heights neighborhood. It is anticipated that this project will include 197 affordable units for family and senior rental housing, and will include a child care facility, community-serving commercial and retail space, underground parking, market rate lofts and office space.
- Provided legal advice and transactional support related to the continued redevelopment of the former Naval Training Center, now known as Liberty Station. Recent transactions will allow for rehabilitation of additional buildings in the Civic, Arts, and Cultural Center in Liberty Station, and for the lease of those buildings by various tenants. One new tenant will be Stone Brewing Co., which plans to open a new brewery and restaurant in 2013.

Public Works Unit

The Public Works Unit consists of fourteen attorneys offering legal advice on the construction, operation and maintenance of public buildings, streets, utilities and other infrastructure; public services such as water, sewer, trash collection and recycling; and other support services such as energy efficiency, regulatory compliance, and purchasing of supplies and equipment. The Public Works Unit is divided into two teams, Public Services and Public Infrastructure, shown here with their primary client departments.



Our attorneys are generally described as in-house counsel for various City departments. We are responsible for reviewing and drafting a variety of documents including contracts, ordinances, resolutions, municipal codes, and regulations, RFPs, RFBs and RFQs. We advise and represent the City at local, state and federal administrative proceedings and at mediation to resolve disputes with contractors and vendors. We provide legal advice in diverse areas of law including intellectual property, taxes and fees, solid waste management, competitive bidding, bonds and insurance, contracts, prevailing wages, the Clean Water Act, the Safe Drinking Water Act, and

the Americans with Disabilities Act. We encourage our attorneys to bring their boots and a hard hat to help our City employees in the field and resolve legal issues quickly and inexpensively.

Much of the work we do is behind-the-scenes and protected by attorney-client privilege. On occasion, though, our attorneys take the lead on projects that are of public interest and knowledge. Here are a few highlights of some of these projects.

Highlights of 2012

Streamlining of Public Works Contracts. With direction from the Mayor and City Council, we revised four Divisions of the Municipal Code to streamline the City's process to award public works contracts. The changes included submitting CIP projects for City Council approval with the City budget, rather than submitting CIP projects for approval individually throughout the year, and increasing the Mayor's authority to award contracts without City Council approval. The City also committed to making more project information available to the public by posting project descriptions, status and schedules on the City's website.

Multiple Award Design-Build Contracts. We also revised the Municipal Code to add a new project delivery method, based on a federal model known as multiple award construction contracts. Instead of processing a new contract for each project, the City awards contracts to multiple firms that obligate them to bid on certain projects as they come up. The winning bidder is awarded a task order under its existing contract to complete the project. This process is designed to shorten the time between when the bids are submitted and when work begins. The City recently awarded the first Multiple Award Design-Build Contracts for water and sewer pipeline projects.

Convention Center Phase III Expansion Project. We assisted the Public Works Department in preparing the bid and contract documents for the pre-construction services phase of the convention center expansion, using the Construction Manager at Risk project delivery method. The firm that won the contract is currently reviewing plans and preparing cost estimates to prepare a guaranteed maximum price for construction of the project for the City to consider before deciding whether to move forward with construction.

Government Affairs Section

The section consists of five full-time and two part-time attorneys who provide advice and legal support to the City Council, Mayor's Office, City Clerk, Independent Budget Analyst, City Auditor, Treasurer, Financial Management, Library, Commission on Arts and Culture, Redistricting Commission, Funds Commission, Civil Service Commission, Salary Setting Commission, Council Committee on Rules, Open Government and Intergovernmental Relations, Council Committee on Economic Development and Strategies, Audit Committee, and the Ethics Commission. Supervised by Chief Deputy City Attorney Catherine Bradley, the section provides legal opinions and analysis concerning core municipal functions relating to the City Charter, San Diego Municipal Code, Mayor-Council form of governance, open meeting laws, public records,

record retention, ethics and conflicts of interest, boards and commissions, taxes, corporate partnerships, contracts, and elections.

Highlights of 2012

Convention Center Expansion: The section provided advice related to the City's actions as a responsible party for environmental review of the Phase III expansion project and participated in negotiations with the Port to amend agreements between the Port, the City, and the Convention Center Corporation to transfer the property rights for the expansion to the City, and to provide for future agreements related to construction, operation, and management of the newly expanded Center. The section provided advice and support for defense and settlement of claims filed challenging the Port's and the City's actions related to environmental review and approval of the expansion project. We also provided legal advice regarding the mail ballot election to generate tax revenue from hoteliers to expand San Diego's convention center.

Balboa Park: The section provided legal advice on issues of importance to the future of Balboa Park. We worked with Council offices and the Balboa Park 2015 Committee to amend the agreement and provide additional funding for the Centennial Celebration. The section also provided support to the litigation division in its defense of the preliminary agreement for proposed improvements to the Plaza de Panama.

Corporate Partnership: The section worked closely with the corporate partnership program to bring agreements for several corporate partnerships forward to Council for its consideration. Those include a marketing partnership with Utility Service Partners to offer utility service line warranties to the City's homeowners in exchange for payment by USPPL to the City of a marketing rights fee of \$242,000 paid over three years and a licensing fee of 12% of the total gross revenue collected from sales of sewer and water line warranties; a 5-year agreement with Rainbow Vending to install, service, and maintain snack vending machines on City property and pay the City commissions of 20% of gross sales, 30% of net advertising revenues, including a \$30,000 advance payment; an agreement with the San Diego Metropolitan Credit Union that includes special benefits for employee members and payment to City of a marketing rights fee; and an agreement for a pilot for a television production featuring the City's Fire-Rescue Department. The section also provided advice and support on the proposal process, selection, and negotiation of a commission-based agreement for a consultant agency to develop community and program partnerships to generate up to \$100,000 annually to the City's general fund.

Responsible Banking Ordinances: The section worked with the Council President on the adoption of ordinances requiring financial institutions wishing to do business with the City to demonstrate their commitment through a Community Reinvestment Plan to provide financial services to local underserved communities and annual reports demonstrating commitment to

the Reinvestment Plan. The ordinances established the City's Community Reinvestment Review Committee to provide annual review and report to the City Council on the program.

PACE (Property Assessed Clean Energy) Programs: PACE programs provide an affordable financing mechanism and means for property owners to make improvements to property to be more energy efficient, reducing greenhouse gases and saving energy costs. In the process, the programs create local jobs for installation of energy efficiency measures. The section worked with the Mayor's office to obtain Council approval of two such programs in 2012 – CaliforniaFIRST and Figtree PACE. These programs are estimated to make millions of dollars in low cost property assessed financing available to property owners in the coming years.

Comprehensive User Fee Study: Under Council Policy 100-05, general fund departments are required to conduct comprehensive user fee studies every three years. These fee studies ensure City departments identify and recover all reasonable and allowable costs incurred in providing government services. The section worked closely with Financial Management and the deputy city attorneys assigned to eleven general fund departments to ensure that all proposed fee adjustments and additions were in compliance with Proposition 26.

Elections: One of the section's primary functions is to provide legal work and advice to the City Clerk regarding all issues related to municipal elections. During 2012, the section oversaw legal work related to the first election for the new Ninth Council District seat, along with elections for four other Council offices, Mayor, and City Attorney. The section prepared impartial analyses for the ballot pamphlet sent to registered voters, including the impartial analysis of a measure that restructured the City's pension system (Proposition B) and a measure involving project labor agreements for certain municipal construction projects (Proposition A). The section provided advice on all City ballot arguments, referenda and initiatives.

Redistricting: The section provided legal advice that guided the City and its Departments to implement new redistricting maps and restructure boundaries to add a new Council District for the first time since the 1960s. The section also prepared ordinances to restructure City boards and commissions to allow for appointments to be made by the new Councilmember from the Ninth Council District, in the first expansion of the Council in decades. The section prepared a response to a Grand Jury report regarding the City's redistricting process.

Conflict of Interest Codes: The section also oversaw the City's bi-annual review and revision of the conflict of interest codes for all City departments, boards and commissions, and agencies, and worked closely with the City Clerk's Office and all City departments to amend their codes. These conflict of interest codes form the basis for determining appropriate reporting of financial interests by City employees and consultants on the annual Statement of Economic Interest forms. More than 80 codes were reviewed; 28 City departments, boards and commissions, and agencies required amendments to their conflict of interest codes that required approval by the City Council.

Records Management: In 1980, the City established a Citywide Records Management Program and in 1982 adopted procedures in the San Diego Municipal Code governing the management of City. Since then, the City Council approved minor amendments to the Municipal Code, but

had not substantively updated it in more than thirty years. In light of new case law and evolving records management procedures and technologies, we assisted the City Clerk in drafting the Municipal Code amendments to make the City's procedures more transparent and user-friendly.

Public Finance, Securities and Disclosure Section

The section currently is composed of three Deputy City Attorneys whose primary responsibility is to provide legal advice to the City and its related entities regarding the City's disclosure obligations with respect to state and federal securities laws. The section works closely with the departments of Debt Management, Financial Management, and Public Utilities, as well as the Office of the City Comptroller. It also provides advice to the Council Committee on Budget and Finance and the Budget Review Committee.

The City also has a variety of related entities, such as the Housing Authority and the special tax and assessment districts, which issue debt publicly and are advised by the section. As the City's primary legal advisors with respect to debt obligations, the section serves as general counsel to a number of City financing entities such as the Public Facilities Financing Authority (PFFA), the Tobacco Settlement Revenue Corporation and the Convention Center Expansion Financing Authority. The section provides legal advice with respect to the issuance of new debt and the City's continuing disclosure obligations.

The primary vehicle for the review of City disclosure documents and discussion regarding City disclosure obligations is the Disclosure Practices Working Group (DPWG). This group, consisting of the Chief Operating Officer, the Chief Financial Officer, the Director of Debt Management, the City's outside disclosure counsel and two deputy city attorneys, is coordinated by the section.

Highlights of 2012

Debt Issues: 2012 was a busy year for debt issuances. The City issued approximately \$91 million in new money and refunding bonds for capital improvements and refunded approximately \$140 million in bonds originally issued to finance the second expansion of the San Diego Convention Center. The City also issued a \$101 million Tax and Revenue Anticipation Note, which was sold through a competitive bidding process. This resulted in significantly reduced borrowing costs for the City. The Public Utilities Department also refunded approximately \$189 million of water revenue bonds. The City also refunded approximately \$25 million in special tax bonds on behalf of Community Facilities District No. 1 (Miramar Ranch North).

Disclosure Issues: The dissolution of the Redevelopment Agency (RDA) continues to raise disclosure and governance issues for the City and the section. On the disclosure side, the section has worked closely with DPWG, Civic San Diego and other members of the City Attorney's office in crafting appropriate disclosures for the City's audited financial statements and offering documents. On the governance side, the eventual termination of the successor agency to the RDA required the City to amend the joint exercise of powers agreement forming the PFFA to allow it to continue to issue bonds on behalf of the City. Continuing disclosure obligations for tax allocation bonds issued by the RDA will continue to be a challenge as the state no longer recognizes the tax increment pledged to repay such bonds.

Convention Center District: The City continued to move forward with the formation of the Convention Center Facilities District. The District will be used to finance the proposed expansion of the San Diego Convention Center. The formation process has been completed and the District is waiting on a ruling whether the District and associated special tax are valid. If validated, the District will represent a significant milestone for the City and a new financing model for other California Cities.

Public Safety, Labor, Employment, and Training Section

Supervised by Chief Deputy City Attorney Mary Nuesca, this Section provides a wide array of legal services to other City departments, City Council, and internally to the City Attorney's Office. Section attorneys advise on public safety, assisting the Police Department, including the Family Justice Center; the Fire-Rescue Department, including the Lifeguards, Emergency Medical Services, and the Office of Homeland Security; and the Permit Issuance and Code Enforcement Division of the Development Services Department (also known as "Neighborhood Code Compliance"). Additionally, attorneys advise the Public Safety and Neighborhood Services Committee. Section attorneys advise City-wide management on labor and employment related issues, and are members of the Americans with Disability Act Committee, Labor & Advisory Committee, and Threat Assessment Team. Section attorneys advise the Human Resources Department, Personnel Department, Risk Department, and SPSP/401(k) Board.

Section attorneys advise on special projects including matters such as the Managed Competition Program, and belong to the City Attorney's Crisis Response Team. Members advise the Citizen's Review Board on Police Practices, the Human Relations Commission, the Managed Competition Independent Review Board, and the Commission on Gang Prevention and Intervention.

This Section also runs and oversees the office-wide attorney professional development program which allows attorneys to fulfill their state-mandated continuing education by attending in-house training sessions, and which provides opportunities for attorneys to further their skills.

Public Safety Unit

Supervised by lead attorney John Hemmerling, Deputy City Attorneys Linda Peter, Paige Folkman, and Paul Cooper work closely with the Police Chief, his Assistants, and commanding

officers, both sworn and civilian; Deputy City Attorney Noah Brazier advises the Fire Chief and his Assistants, including the Lifeguard Chief; and Deputy City Attorney Karen Li advises Neighborhood Code Compliance, the Citizen’s Review Board on Police Practices, the Human Relations Commission, and manages the Temporary Restraining Order process for City employee victims. Unit members respond to questions and assist with projects from all levels and members of those departments, as described below.

Unit Scope of Work: Police Department

- Advising on discipline, labor, employment, equal opportunity, and disability issues.
- Drafting ordinances, resolutions, memoranda of understanding and contracts.
- Drafting and presenting reports to the Mayor and Council, drafting legal opinions and memoranda of law.
- Interpreting statutes, including the Public Safety Officers Procedural Bill of Rights Act, and other legal documents.
- Responding to subpoenas and requests for public records.
- Monitoring and advising on new case law and new legislation.
- Litigating administrative matters involving police permits, discipline, alcohol license-related matters, and appeals from those hearings.
- Representing the Department in *Pitchess* motions seeking access to confidential police personnel records, in motions seeking retention of seized firearms, in motions seeking the return of seized property, and handling writs and appeals related to those motions.

Unit Scope of Work: Family Justice Center

- Advising on discipline, labor, employment, equal opportunity and disability issues.
- Drafting ordinances, resolutions, memoranda of understanding and contracts.
- Interpreting statutes and other legal documents.
- Responding to subpoenas and requests for public records.
- Monitoring and advising on new case law and new legislation.

Unit Scope of Work: Fire-Rescue Department/Lifeguards

- Advising on discipline, labor, employment, equal opportunity and disability issues.
- Drafting ordinances, resolutions, memoranda of understanding and contracts.
- Drafting and presenting reports to the Mayor and Council, drafting legal opinions and memoranda of law.
- Interpreting statutes, including the Firefighters Procedural Bill of Rights Act and ocean safety and maritime law.
- Responding to subpoenas and requests for public records.

- Monitoring and advising on new case law and new legislation.
- Advising the Office of Homeland Security, including participating in regional efforts to maximize emergency preparedness while efficiently using and sharing resources.

Unit Scope of Work: Public Safety and Neighborhood Services Committee

- Advising the Committee on Brown Act and other legal issues.
- Coordinating legal assignments from the Committee.

Unit Scope of Work: Commission on Gang Prevention and Intervention

- Advising on Brown Act issues.
- Drafting ordinances, resolutions, and other legal documents.
- Interpreting statutes and other legal documents.
- Monitoring and advising on new case law and new legislation.

Unit Scope of Work: Human Relations Commission

- Advising on Brown Act issues.
- Drafting ordinances, resolutions, and other legal documents.
- Interpreting statutes and other legal documents.
- Monitoring and advising on new case law and new legislation.

Unit Scope of Work: Citizens Review Board on Police Practices

- Advising on Brown Act issues.
- Interpreting statutes and other legal documents.
- Monitoring and advising on new case law and legislation.
- Responding to subpoenas and requests for public records.

Unit Scope of Work: Neighborhood Code Compliance Division (now known as Permit Issuance and Code Enforcement Division)

- Drafting ordinances, resolutions, memoranda of understanding and contracts.
- Interpreting statutes and other legal documents.
- Responding to subpoenas and requests for public records.
- Monitoring and advising on new case law and new legislation.

HIGHLIGHTS 2012

The Unit handled approximately 85 *Pitchess* motions, 33 firearms motions, several motions to quash subpoenas, and 3 motions to return property. Unit members filed and responded to several writs filed in Superior Court challenging the outcome of *Pitchess* motions. After an

adverse court order, unit members successfully convinced the Court to preserve the confidentiality of the San Diego Police Department's gang files. Members reviewed over 55 San Diego Police Department policies.

Unit members defended the City's ordinance prohibiting the operation of nude entertainment establishments between 2:00 a.m. and 6:00 a.m. Ten's Show Club had repeatedly violated that ordinance, and after administrative action by the Chief of Police, the case ended up at the Fourth District Court of Appeal. Ten's alleged that the ordinance infringed upon First Amendment rights; the Court concluded otherwise and upheld the City's ordinance as constitutional.

In July 2012, unit members prepared items for Council, all relating to the San Diego Police Department towing program, including two resolutions and an ordinance, updating the Council Policy, authorizing new cost recovery fees for the tow program, and updating San Diego Municipal Code provisions regarding impounds, notice and post-storage hearings. Unit members worked with litigators to conclude towing lawsuits, resulting in payment of \$4 million to the City in February 2012. The payment represented fees owed to the City under previous tow contracts, but withheld by tow companies.

Unit members represented the Chief of Police in a July 2012 Civil Service Hearing officer appeal of that officer's termination. The Civil Service Commission upheld the termination.

The Unit remains involved in issues such as medical marijuana, homelessness, and the "Open Carry" movement, which advocates for the Second Amendment by openly carrying unloaded firearms.

Deputy City Attorney Noah Brazier assisted the Fire Department, including the Office of Homeland Security, with several ordinances, including adopting the State Fire Code with City-specific amendments. He assisted with implementing the False Alarm Ordinance, developing a program to share information between emergency responders and medical providers in the County, and developing Office of Homeland Security continuity of operations plans.

Deputy City Attorney Karen Li assisted City staff in responding to the Grand Jury related to the Grand Jury's Report on the Citizens Review Board. She also assisted with training for new Board members.

Employment Services Unit

The Employment Services Unit, under the supervision of lead Deputy City Attorney Joan Dawson, provides legal services in a variety of areas, including employment, labor relations, and retirement. Deputy City Attorneys Lori Thacker, Roxanne Story Parks, Bill Gersten, and Paul Cooper, with the assistance of provisional attorney Sharon Marshall, provide legal advice to the Human Resources Department, Risk Management Department, Personnel Department, the SPSP/401(k) Board, the Human Relations Commission, and the Managed Competition Independent Review Board. Unit members also advise City-wide management on all labor and employment related issues, and are members of the Americans with Disabilities Act Committee,

Labor and Advisory Committee, and Threat Assessment Team. Unit members also handle special projects including advising on complex citywide Public Records Act requests.

Unit Scope of Work: Employment Services Unit

- Advising management on the Family and Medical Leave Act, Americans with Disabilities Act, Title VII of the Civil Rights Act, Fair Employment and Housing Act, California Family Rights Act, Fair Labor Standards Act, Pregnancy Disability Leave, Firefighters Procedural Bill of Rights Act, Meyers-Milias-Brown Act, Uniformed Services Employment and Reemployment Rights Act, and other relevant employment and labor laws.
- Advising management on pensions and benefit implementation and administration.
- Assisting management throughout the employee discipline, appeal, and grievance process to ensure compliance with City policies and procedures and applicable laws.
- Advising management on labor, equal opportunity, diversity, privacy, medical leave, disability, and other personnel related issues.
- Conducting investigations and fact findings concerning employee related discipline and complaints.
- Conducting training on employment related matters, the Brown Act, and California Public Records Act.
- Representing the City in Domestic Relations Orders, workplace Temporary Restraining Orders, and Order to Show Cause hearings.
- Responding to agency complaints and charges regarding employment related matters. The agencies involved include the Department of Labor, Division of Labor Standards Enforcement, Equal Employment Opportunity Commission, Department of Fair Employment and Housing, and the California Occupational Safety and Health Administration.
- Assisting departments in responding to subpoenas, discovery motions, and requests for public records.
- Drafting ordinances, resolutions, memoranda of understanding, and contracts.
- Drafting and presenting reports to the Mayor and Council, drafting legal opinions and memoranda of law.
- Representing the City in labor negotiations, meet and confer meetings, settlement conferences and mediations.
- Advising management during the meet and confer process with the City's six labor unions and on interpretation and implementation of memorandums of understanding with the labor unions.
- Defending the City against any alleged unfair labor practices in actions before the Public Employment Relations Board (PERB).
- Monitoring and advising on new case law and new legislation.

HIGHLIGHTS 2012

The Unit obtained approximately six TROs and preliminary injunctions to protect the workplace from violence perpetrated against City employees. The Unit also responded to numerous discovery motions, discrimination complaints and charges from various government agencies, PERB complaints, and assisted in employment and labor related litigation cases. In all (non-pending) cases, the complaints were dismissed or favorable judgments or resolutions were obtained for the City.

The Unit assisted with the City's medical and disability process to ensure legal compliance, assisting City management through medical and disability related matters. The Unit also assisted City management through many various and complex personnel issues, including advising on issues such as due process, the accommodations process, and disciplinary actions and plans, including creating and implementing a new administrative appeal process for firefighters.

Unit members assisted City staff in addressing issues related to the use of volunteers and participated in a committee to look at those issues. Unit members provided advice and drafted legal reports and opinions on the implementation of Proposition B, a citizen's initiative amending the Charter relating to pension benefits, and assisted with ongoing litigation related to Proposition B. Unit members assisted in updating the Mayoral Department Guide for Public Records Acts, reviewed and advised on administrative regulations, and document retention.

Unit members drafted various legal opinions, memorandum of law, and reports to Council, covering such topics as: the legality of AB 1248, the state legislation related to mandatory social security coverage for City of San Diego employees; continued funding of the supplemental COLA benefit; elimination of the cost of living annuity under the City's retirement plan; modification of the reimbursement of Medicare Part B premiums under IRMAA; workers' compensation offset of industrial disability retirement benefits; and managed competition and service levels.

Crisis Response Team

The Crisis Response Team is the City Attorney's own team of in-house experts on disaster management. The Team put together a comprehensive manual to be used to advise City management in the event of a disaster. The Team attends multi-jurisdictional preparedness trainings and updates the manual and City staff on any changes in the law.

Training

The Civil Division continues its in-house training program. Practice groups meet to discuss and train on current issues in the following areas: land use, public records, employment, personal injury, and contracts. The Civil Division held special training sessions on advisory matters, including legal writing, social media, civil rights cases, the Brown Act, ethics, substance abuse, and litigation matters, including insurance coverage and economic damages. Various City department heads also provided information and training about their departments.

The Criminal Division continues its monthly "Professional Development Program" training series. Prosecutors, investigators and paralegals meet monthly to discuss and receive training in specialized issues, current trends and general advocacy skills. Training highlights from 2012 include: consumer protection law; mobile phone forensics; AB109, the 2011 Realignment Legislation; prosecutorial misconduct; and advocacy and trends in motion practice.



