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Attorney General Patricia A. Madrid

Protecting New Mexico

Patricia A. Madrid
Attorney General
State of New Mexico

2003 Annual Report

***A Message from
Attorney General Patricia A. Madrid***

Dear Fellow New Mexicans...

I am pleased to present the New Mexico Attorney General's Office Annual Report for 2003.

Each year we compile an annual report to provide a glimpse of the wide range of issues and major cases that we deal with on behalf of New Mexicans. I take pride in the efforts of my hardworking staff as evidenced in this report.



My duty as Attorney General is to find ways to protect the citizens and resources of New Mexico. I believe that you will see in this report that my office rises to the many challenges posed.

When times are hard and money is short, we try to find ways to tide ourselves over, and may become victims of scams and predatory business practices. We prosecuted a pyramid scheme, returning over \$300,000 to those affected. With other Attorneys General, we settled with Household Finance, forcing them to agree to change their lending practices and refund over \$2 million to New Mexico consumers.

Women and children today face more and more severe abuse. In 2003, I established a special prosecutions unit to prosecute complex cases of child abuse, as well as to assist local district attorneys with their prosecutions of child abuse. I also created and chair the New Mexico Crimes Against Children Task Force to bring together all the various organizations and agencies which deal with child abuse to work toward strategies to reduce these heinous crimes. We received a grant from the US Department of Justice to provide training to law enforcement officials, investigators, advocates and prosecutors who deal with domestic violence cases to enhance their skills and abilities so these crimes can be prosecuted more effectively at all levels.

Businesses trying to reduce their costs caught our attention. We investigated a nursing home, which had reduced its staffing to a level causing abuse and neglect of its patients. Our efforts recovered Medicaid funds and secured an agreement to provide appropriate levels of staff and care.

With the prolonged drought in our state, protecting our water is paramount as we look at the future demands for water for drinking, for agriculture and for business. We have worked diligently to negotiate with other states to make sure we're all treated fairly. Yet Texas continues to pursue a litigation strategy. My office is working tirelessly to be sure that, if we have to go to court, we'll be able to defend our water for our future needs.

Protecting New Mexico, its people and its resources, allows me to work with and know people from all over our great state. I am honored that you trust me to meet the current challenges and ensure that we are ready to meet the new challenges of our future.

Patricia A. Madrid

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Protecting Consumers

Protecting New Mexico's consumers is a priority of Attorney General Patricia Madrid. Whether staff is mediating a dispute between a consumer and a business, representing the interest of residential ratepayers in electricity matters, or taking legal action against unfair and deceptive lending and business practices, Attorney General Madrid assures that the interests of New Mexicans is paramount.

Two divisions within the Attorney General's Office are involved in protecting New Mexico's consumers: the Consumer Protection Division, headed by Director Joel Cruz-Esparza, and the Consumer Special Projects Division, headed by Don Trigg. The divisions have different responsibilities. The Consumer Protection Division focuses on these issues:

- Mediation of consumer and business disputes
- Litigation to address unfair and deceptive business practices
- Legislation to address consumer issues
- Education and outreach around the State

The Consumer Special Projects Division focuses on the following:

- Antitrust and multistate actions
- Health matters
- Charitable assets protection

Mediation of Consumer and Business Disputes

The Consumer Protection Division receives inquiries from consumers throughout New Mexico, averaging 75,000 calls per year. In addition to inquiries, the Division receives a large number of formal and written complaints. In 2003 the Division received 3,669 new complaints. During 2003, the Division successfully resolved approximately 77% of the complaints mediated. Refunds or restitutions to consumers amounted to **\$1,109,769.02**.

Litigation to Address Unfair and Deceptive Business Practices

During 2003 the Consumer Protection Division took a number of legal actions on behalf of New Mexico consumers. Highlights of these actions include

Lawsuits

"Free Dinner" Presentations A lawsuit was filed in December of 2002 in the District Court of the County of Bernalillo seeking refunds for consumers who bought magnetic pads with a 100 % refund policy if not completely satisfied with the product. The company, Magnetic Ideas, Inc., a Tennessee company, failed to comply with its warranty offer. Additionally, it did not acquire a business license from the city where it was conducting its sales and failed to provide the required notice of cancellation of three days under the New Mexico Door-to-Door Sales Act. The company agreed not to conduct any sales until the present lawsuit was resolved. Seventy-seven consumers purchased magnetic pads under high-pressured sales throughout New Mexico. The company made presentations in 2002 in Santa Fe, Albuquerque, Las Cruces, and Hobbs, among other cities in New Mexico.

Paving of Home Driveways and Roofing Repairs In the summer of 2003, the Consumer Protection Division received several complaints against home improvement companies and individuals who solicited consumers door-to-door. Several problems resulted from these transactions: the jobs were substandard; the jobs were never completed and no refunds were made; the final bills were significantly higher than the verbal proposals for the work; and the consumers were not provided with notice of their right to cancel within three (3) days under the Door-to-Door Sales Act.

Protecting New Mexicans

The Division filed lawsuits against the following companies seeking refunds for consumers and requiring them to follow the requirements of the law: Brunacini and Sons Construction, Alan's Asphalt, and Jack Sawyer Construction Company. The individuals acting as principals were also named as defendants.

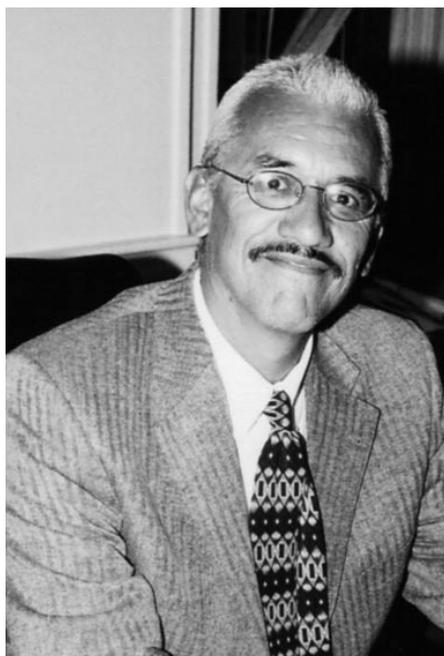
Cease and Desist Directives

In 2003, the Consumer Protection Division sent several cease and desist directives to businesses that have been involved in what the Division considered unfair or deceptive practices. These directives are sent after careful review of the facts and the law and are intended primarily to protect the public in future dealings with a particular business.

Legislation to Address Consumer Issues

Of all the consumer complaints received by the Consumer Protection Division auto sales and lending practices rank number one and number four respectively. In 2003, the Consumer Protection Division successfully lobbied for needed changes to New Mexico's laws.

Auto Sales. Many consumer complaints deal with mechanical failures soon after a used auto is purchased. Auto dealers resist placing any warranty of merchantability and use the "as is" as their main defense. A new law passed by the legislature would eliminate the "as is" for the first 15 days or 500 miles, whichever comes first. The law is effective on January 1, 2004.



Joel Cruz, Director
Consumer Protection Division

Consumers are filing complaints related to auto sale transactions that involve the following issues:

- Sale of wrecked or damaged cars
- Sale of used cars as new
- False advertising and "bait and switch" advertising
- Dealers refusal to return deposit or trade-in when the deal falls through even if it is not the fault of the buyer
- Hidden charges for sale of credit, life or disability insurance
- Hidden charges for sale of Extended Warranties

The New Mexico Home Loan Protection Act. Lending practices in New Mexico are one of the most frequent subjects of complaints to the Consumer Protection Division. During the 2003 New Mexico Legislative session the Office of the Attorney General strongly supported the passage of the New Mexico Home Loan Protection Act that regulates predatory mortgage loans. Signed into law in 2003, this Act provides strong protections for mortgage borrowers from predatory lenders.

Do Not Call. A study by the Office of the Attorney General provided evidence of New Mexicans' desire for a law to curb telemarketing practices. The

Attorney General presented the study to the Legislature with the recommendation that a Do Not Call Law was needed. During the 2003 Legislature Senate Bill 573, sponsored by Senator Dede Feldman, created a state Do Not Call Law. The law allowed New Mexicans to register their residential phone numbers with the Federal Trade Commission's national Do Not Call Registry. The law requires telemarketers to obtain the do not call lists and not make telephone sales solicitations to those numbers contained on the list. The Attorney General has joined with other states to work closely with the Federal Trade Commission and the Federal Communications Commission to make state and federal do not call laws complimentary and effective.

Informing Consumers

Consumer Outreach

The Consumer Protection Division has a toll-free number for residents outside the Santa Fe area. The Consumer Protection Division receives a ratio of 5 to 1 complaints from consumers in Santa Fe County to Dona Ana County despite the fact that the population of Dona Ana is greater. During 2003, the Consumer Protection Division began monthly visits to Southern New Mexico.

In addition, members of the Consumer Protection Division provide literature and speakers to groups statewide.



*Don Trigg, Director
Consumer Special Projects*

Attorney General Madrid Unveils Prescription Drug Pricing Initiative

(Albuquerque, NM) Attorney General Patricia Madrid announced her Prescription Drug Pricing Initiative at Barelas Senior Center in Albuquerque.

"Many of us are concerned about the high prices of prescription drugs. We have all heard of those who are forced to choose between taking medically necessary drugs and eating... To provide needed relief now, I have developed a Prescription Drug Pricing Initiative that I hope will help New Mexicans save money on their prescription drugs. One of the easiest ways to save money on prescription drugs is to shop around for the best price. I can help New Mexicans do that. My office will be pricing drugs and posting the prices on my web site..."

"The price of prescription drugs vary, even from one day to the next. The importance of the price comparisons we are offering is that it gives you an idea of what you could be paying. Obviously, the amount you want to pay is the lowest price with the best service," Madrid said. "I want New Mexicans to get the best price possible and I hope that the price comparisons we provide will help." (Press release)

Consumer Education

One of the most important weapons in the Attorney General's arsenal is educating New Mexicans to become wise and savvy consumers. Education can help consumers avoid many of the pitfalls that can surround major purchases. Importantly, savvy consumers are not likely to fall for the tremendous number of scams that can appear in a parking lot or at the front door. Attorney General Madrid is dedicated to helping New Mexicans spend wisely and avoid becoming victims of scams or unscrupulous business practices.

Young Consumer Initiative. In 2003 Attorney General Madrid developed an initiative targeting New Mexico's young consumers. The publication, *Young Consumer Survival Guide*, was developed. This reference book targets 18 year-olds with useful and usable information on a wide range of consumer topics. During 2004 outreach efforts will extend to high schools around the state to provide the guides during interactive sessions with members of the Consumer Protection Division.

Prescription Drug Pricing. The high cost of prescription drug prices is a concern to many New Mexican consumers. The Attorney General's role in prescription drug pricing typically involves lawsuits alleging such egregious practices as price fixing. Such cases may result in savings to consumers but tend to take a considerable amount of time.

While there are a number of factors that consumers consider when choosing a pharmacy, for many price is a major consideration and prices can vary from pharmacy to pharmacy. Attorney General Madrid wanted to provide consumers with information to allow them to reduce their own costs.

Protecting New Mexicans

Some of the suggested tips included:

- Talking to doctors about generic drugs, lower priced alternatives, and buying in bulk
- Shopping around -- comparing prices, and asking about special discounts, such as price matching and pill splitting
- The objective for consumers is to find the pharmacy services needed at the lowest price



Attorney General Madrid and Greg Hunter from ABC's
"Good Morning America"

In the fall of 2003, Attorney General Madrid unveiled her Prescription Drug Pricing Initiative. As part of this initiative, her office prices prescription drugs each month and makes price information available through her web site and through a toll-free phone number.

Consumers statewide have had a very positive reaction to the Drug Pricing Initiative. In addition, the office has been contacted by other states that are considering developing their own drug price initiatives.

You Should Know... *You Should Know...* is a web site-based educational initiative of Attorney General Madrid that will be unveiled in 2004. In addition to the prescription drug pricing initiative, identity theft and Internet safety will be addressed.

Antitrust and Multistate Actions

Household International, Inc.

New Mexico and 50 other states reached an historic agreement with Household International, Inc. (Household) regarding the giant lender's practices.

Under the settlement, Household agreed to pay \$484 million to the states to be distributed to eligible Household borrowers. This monetary settlement was the largest ever obtained by state attorneys general in a consumer protection case. As part of the settlement, Household also agreed to implement a series of reforms in its lending operations. The settlement includes court injunctions in all 50 states that restrict prepayment penalties on current and future home loans, prohibit loan "flipping," limit up-front points and origination fees, and improve loan disclosures.

Nearly 4,000 Household or Beneficial Finance borrowers received notice that they were eligible to share in the state's **\$2,139,996** settlement with Household International. New Mexicans who obtained a real estate-secured loan directly from Household from January 1999 through September 2002 were eligible and their claim payments ranged from approximately \$35 to over \$3,900.

Protecting New Mexicans

Bristol-Myers Squibb

Attorney General Madrid announced the final resolution with Bristol-Myers Squibb Company, settling an antitrust lawsuit involving a cancer-fighting drug, Taxol, generically known as paclitaxel.

New Mexico, in conjunction with the other 49 states and U.S. territories, reached a settlement with Bristol-Myers Squibb to recover \$55 million for the states' claims for damages, penalties and individual consumer redress. In addition, Bristol-Myers Squibb has agreed to strong injunctive relief for ten years to prevent the company from engaging in anti-competitive conduct in the future. Bristol Myers-Squibb has also agreed to provide free quantities of Taxol to DEA-approved healthcare facilities, provided the recipients meet certain eligibility requirements.

The states filed suit in the U.S. District Court for the District of Columbia and the settlement requires approval from that court to become effective. Approximately \$1 million will be available to compensate consumers nationwide who may have paid higher prices for Taxol.

In another case with Bristol-Myers Squibb, Attorney General Madrid announced the settlement of an antitrust lawsuit involving the drug, BuSpar, also known as buspirone chloride.

New Mexico, along with the other 49 states as well as Puerto Rico, the District of Columbia, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa, reached a settlement with Bristol-Myers Squibb to recover \$100 million for the states' claims for damages, penalties and individual consumer redress. In addition, Bristol-Myers Squibb has again agreed to strong injunctive relief for ten years to prevent the company from engaging in anti-competitive conduct in the future.

The settlement, filed in the U.S. District Court for the Southern District of New York, requires final approval from the court to become effective. Approximately \$41.7 million will be available to compensate consumers nationwide who may have paid higher prices for BuSpar or its generic equivalent. The states will recover \$63.5 million to compensate for state agency purchases as well as the costs of this litigation and the enforcement of the settlement.

Aventis Pharmaceuticals, Inc., and Andrx Corporation

Attorney General Madrid agreed to a settlement involving the popular heart medication, Cardizem CD. The 50 state settlement resolves an antitrust lawsuit filed by New Mexico and other state attorneys general against Aventis Pharmaceuticals Inc., (Aventis), Andrx Corporation (Andrx) and affiliated entities, all of which agreed to the terms. The prescription drug companies agreed to pay \$80 million to the 50 states in settlement.

The New Mexico Attorney General's Office and others alleged that Aventis and Andrx illegally agreed that Andrx would not introduce to the market a less expensive generic version of the drug Cardizem CD in return for Aventis paying Andrx nearly \$90 million. That allowed Aventis to be the sole source for the medication and to charge higher prices. This illegal activity resulted in higher prices for consumers and governmental agencies.

Under the settlement, Aventis and Andrx must pay \$80 million into a fund that will compensate consumers, as well as state agencies and insurance companies, who overpaid for Cardizem CD and its generic equivalents between January 1, 1998, and January 31, 2003. The settlement is in addition to a \$110 million settlement reached earlier between the companies and drug wholesalers involving the same alleged violations. In total, the drug companies will be required to pay over \$190 million.

Compact Disc Litigation

Attorney General Madrid and the Attorneys General of twenty-nine other states filed this multistate antitrust case on behalf of their respective citizens in U.S. District Court for the Southern District of New York in August 2000.

Protecting New Mexicans

Forty-five states are now parties. The defendants are five major record distributors and other co-conspirators who are alleged to have engaged in a conspiracy to maintain prices for recorded music, primarily compact discs, at a supracompetitive level. The nature of the practices was the denial of promotional incentives amounting to hundreds of thousands of dollars to retailers who chose to advertise in any way prices lower than those established by the distributors. This policy is called Minimum Advertised Price Policy (MAPP). The New York case was consolidated with a large number of similar private class actions; the parties have settled the case and distribution to the injured consumers is imminent. There is a cash settlement of \$65 million to those injured consumers who filed a claim – each will receive a check of approximately \$12.60 – and a \$75 million in-kind distribution of music compact discs to organizations best representing the injured consumers. In New Mexico that constitutes a package of over 37,000 music compact discs, valued at nearly **\$500,000**, for distribution to the public libraries and schools. Distribution of both the checks and the music compact discs should occur in early 2004.

Health Matters

Emergency Management Tri-Agency Work Group

In 2001, the New Mexico Legislature enacted Senate Joint Memorial 62 and House Joint Memorial 34, asking the Office of the Attorney General, the Department of Public Safety and the Department of Health to assess New Mexico's statutory and regulatory framework regarding Emergency Management and Preparedness in the state. The tri-agency work group recommended to the 2003 New Mexico Legislature an Emergency Powers Code re-compiling the current statutes that directly relate to emergency management and preparedness. A new act, the Public Health Emergency Response Act, provides for the care and well being of New Mexicans at a mass level in the event of a public health emergency while preserving civil liberties.

Protection of Charitable Assets

Los Alamos Hospital Settlement Distribution

Attorney General Madrid announced the distribution of **\$4.5 million** in charitable health care assets from the sale of Los Alamos Medical Center.

The Los Alamos Medical Center, previously owned by Banner Health Systems, was sold to Province HealthCare in May of 2002. Attorney General Madrid reviewed the sale and negotiated a **\$11.5 million** settlement. As part of that settlement, \$4.5 million in cash was preserved as charitable health care assets to remain in the communities that had been served by the Los Alamos Medical Center.

A Memorandum of Understanding was entered into with the Hospital Auxiliary and the Con Alma Foundation. Provisions of the MOU included

- Creation of the Local Advisory Committee to make needs assessments and grant making recommendations



Attorney General Madrid meets with members of the Los Alamos Hospital Auxiliary to discuss the sale of Los Alamos Hospital.

Protecting New Mexicans

- Provision dealing with allowable expenses and rights of audits
- Submission of an annual report to the Office of the Attorney General that will provide detailed information about the status of the funding received, including the identity and amounts of grants awarded with the funds provided in this distribution. The annual report will be publicly available under the Inspection of Public Records Act.

Native American Prep School

The Office of the Attorney General conducted an extensive review of the causes of the closing of the Native American Preparatory School. The review resulted in the initiation of negotiations between the Attorney General's Office and school officials. These negotiations resulted in the preservation of more than **\$1 million** as a scholarship fund to benefit Native American students pursuing a preparatory education. The school will change its name, remain located in New Mexico, and will be governed by a board of directors, a majority of whom will be Native Americans.

Criminal Prosecutions

Capital Litigation

In 1999, Attorney General Madrid established a Capital Litigation Unit with special experience to deal with death penalty cases. Assistant Attorney General Michael Cox directs the Unit, which includes investigators, prosecutors and appellate counsel who provide this expertise to district attorneys throughout New Mexico. Responding to the specific requests of the local district attorneys, the Unit provides a range of assistance. The unit provided assistance in capital cases in Gallup, Santa Rosa and Taos in 2003.

Special Prosecutions and Investigations

Forensic Evidence

The Special Prosecutions / Investigations Division has gained a reputation for effectively dealing with complex expert forensic evidence issues, and has taken the lead in such areas as polygraph admissibility, shaken baby syndrome, blood spatter evidence, computer forensics, and forensic entomology. Members of the Division recently represented the State in a hearing to determine the admissibility of polygraph evidence in New Mexico courts, and successfully excluded such evidence.



*Michael Cox, Director
Criminal Prosecutions*

Assistant Attorney General Curran Honored

(Albuquerque, NM) The Prosecutors Section of the State Bar Association has named Assistant Attorney General Jody Curran as the Legal Impact Prosecutor of the Year 2002. The presentation was made at the District Attorney's Annual Conference Banquet in Ruidoso April 3. The Legal Impact Prosecutor of the Year is given to a prosecutor whose dedication and resolve has had a significant positive impact or effect on the law. (Press release)

Conflicts

The Division prosecutes cases which are sent to the Attorney General by district attorneys who have conflicts. Such cases include the domestic violence homicide in Carlsbad, State v. Langley, the conviction of former Judge Charles Maestas in Santa Fe, and the prosecution of former Santa Fe policeman, James Lujan.

Protecting New Mexicans

International Prosecutions

Pursuant to Article 4 of the Constitution of Mexico, the Attorney General prosecutes individuals who commit crimes in New Mexico, and flee to Mexico. The Foreign Prosecutions Unit, initiated by the Attorney General, has successfully convicted individuals charged with crimes like murder and criminal sexual penetration, and recently secured the first extradition of a criminal defendant from Mexico.

Attorney General Madrid: Restitution in Pyramid Scheme Prosecutions Exceed \$300,000

(Albuquerque, NM) Attorney General Patricia Madrid today reported that New Mexicans have received over \$300,000 in restitution for victims of illegal pyramid scheme activity in the State.

"Pyramid scheme activity spread through New Mexico like a virus from late 2000 to mid-2001. ...Many New Mexicans lost money to the scheme. And a number of people have been convicted of felonies for promoting the scheme," Attorney General Madrid said...

"To date, more than \$300,000 in restitution has been given to 168 victims of pyramid schemes in our state. I hope that New Mexicans statewide understand that pyramid scheme activity is illegal. People who promote this activity can expect to be prosecuted..." (Press release)

Partnerships

Recently, in an effort to improve the response to cases of securities fraud and tax fraud, the Division has formed partnerships with the New Mexico Securities Division of Registration and Licensing, and the Taxation and Revenue Department. These partnerships allow cooperation in the investigation of economic crimes in these areas.

Pyramid Scheme Cases

The Attorney General instituted, in association with local district attorneys, a multi-level attack on the pyramid scheme crime wave. This attack included public education, judicial training, pre-prosecution probation, and aggressive prosecution. To date, over \$300,000 in restitution has been paid to the victims of such crimes. The attorney who spearheaded the program, Jody Curran, received the Legal Impact Prosecutor of the Year Award from the Prosecutor's Section of the State Bar for his efforts. During 2003 a pyramid case went to a jury trial and a guilty verdict was returned.

Attorney General Patricia Madrid today announced the formation of the Crimes Against Children Task Force.

(Santa Fe, NM)
"Crimes against children are intolerable. Unfortunately, achieving justice for a child who has been abused is often difficult. The purpose of the Crimes Against Children Task Force is to improve the investigation and prosecution of physical and sexual abuse crimes against children. The ultimate goal of this multi-disciplinary team is to hold offenders accountable for crimes they commit against New Mexico's children," Attorney General Madrid said. "The Crimes Against Children Task Force is committed to improving the criminal justice system for New Mexico's children."... (Press release)

Protecting Our Children

Child Abuse

Recognizing that child abuse threatens the most vulnerable in our society, Attorney General Madrid created and chairs the New Mexico Crimes Against Children Task Force, working with other New Mexico organizations and state agencies to coordinate efforts to improve the quality of the investigation of child abuse cases and aggressively prosecute offenders. The task force work includes the following:

- Recommending statutory change to improve systems
- Developing resources of communities and agencies
- Providing technical assistance to communities establishing multi-disciplinary teams of responders and safehouses for victims
- Supporting and providing continuing education to professional personnel
- Developing a data gathering and tracking system
- Overseeing compliance with statewide recommendations
- Developing protocols
- Prosecuting extraordinary cases

Protecting New Mexicans

Within the Office of the Attorney General, Attorney General Madrid established a special unit under the direction of Assistant Attorney General Maria Sanchez-Gagne to provide assistance and expertise in the investigation and prosecution of child abuse to local district attorneys.

Identifying, Tracking and Prosecuting Internet Predators

A growing number of homes in New Mexico have computers with Internet access. Realizing that many of those computers are used by children, Attorney General Madrid initiated a federal grant, bringing **\$47,612** to New Mexico to identify, track and prosecute child predators who use the Internet to lure victims. In 2003, the New Mexico Attorney General's Office, through its membership in the New Mexico Committee on Internet Crimes Against Children, conducted nine training seminars for law enforcement agencies, prosecutorial agencies and state agencies throughout New Mexico. The seminars, entitled "Introduction to Investigation and Prosecution of Internet Crimes Against Children," provided information regarding the use of the Internet by criminals to entice and sexually assault children. Training assistance was also provided by the Albuquerque Police Department and the Federal Bureau of Investigation.

In addition, over **\$14,000** worth of equipment purchased with NMCICAC funds was provided to the New Mexico Attorney General's office, the 12th Judicial District Attorney's Office and the Albuquerque Police Department. The Committee also funded advanced training opportunities for the New Mexico Attorney General's Office and the New Mexico State Police.

As the designated statewide contact for referrals from the National Center for Missing and Exploited Children, the Office of the Attorney General initiated or assisted in several criminal investigations involving Internet crimes against children. Further, the Office of the Attorney General provided computer forensics examinations for several New Mexico law enforcement agencies.

Domestic Violence

In addition to prosecuting certain crimes of violence against women, the Attorney General works to enhance the abilities of local jurisdictions to deal with these crimes. In 2003, the Office of the Attorney General received 3 competitive grants to provide training for local multi-disciplinary teams to enable them to enhance their abilities to respond to crimes of violence against women. The grants were



Attorney General Madrid and staff at a Taos event on domestic violence

- US Department of Justice, Office of Justice Programs funded a two year program for **\$566,217** to train multi-disciplinary teams in each judicial district to enhance the response to crimes of domestic violence and child victimization. A training team including law enforcement, domestic violence victims advocates, a physician, a nurse practitioner, and prosecutors has been assembled to provide the training.

Protecting New Mexicans

- STOP Violence Against Women provided a Formula Grant of **\$15,837** to conduct a needs assessment among members of the multi-disciplinary team to determine the topics which should be addressed at a tri-state training program addressing all aspects of violence against women.
- U.S. Center for Disease Control sub-grant of **\$16,000** through the New Mexico Department of Health funded a train-the-trainers program on the response to crimes of sexual assault. The pilot training program was presented to members of the Acoma and Laguna Pueblos as well as others in the Grants area.

Outreach

Other outreach efforts have addressed both professionals involved with domestic violence and the general public. Members of the Violence Against Women staff have presented information at the State Fair and in the media. Additionally, they provided twelve training seminars to professionals around the state on issues related to violence against women. A special effort addresses violence against Native American women, with the staff working closely with the tribes, the pueblos and the Coalition to Stop Violence Against Native American Women.

Medicaid Fraud

The New Mexico Medicaid Fraud Control Unit, directed by Assistant Attorney General Kathy Vincent, is administratively housed in the Office of the Attorney General. This Unit is set up under federal regulations with a mission to investigate and prosecute Medicaid provider fraud and the abuse, neglect, and exploitation of Medicaid recipients or persons in long-term care facilities funded by Medicaid. The Federal Government has expanded the Unit's jurisdiction to investigate fraud and abuse in board and care facilities, as well as to investigate Medicare fraud when it is committed in conjunction with Medicaid fraud. The Unit primarily investigates criminal allegations, but also examines cases of civil fraud allegations.

During 2003, some of the issues the Division dealt with included

Medicaid Fraud Recoupment Amounts FY2003

Total number recovery actions:	9
Number on-going recoveries:	5
Total overpayments identified:	\$ 6,632,422
TOTAL identified amount:	\$ 6,643,125
TOTAL actually collected:	\$ 822,790
Continuing recoupment recovery:	\$ 19,707
TOTAL ACTUAL RECOUPMENT:	\$ 842,497



*Kathy Vincent, Director
Medicaid Fraud*

First Significant Failure of Care Case

This fiscal year saw the completion of the Unit's first failure of care case. From an ordinary intake referral, a division investigator developed a substantial amount of evidence that low staffing levels in a nursing home detrimentally impacted the care the residents received. One resident received third-degree burns from being left in the desert sun too long; one resident did not have her mouth cleaned for over three weeks, leaving the cavity so encrusted with debris that she could not swallow. Assistant Attorney General David Hughes recovered Medicaid program funds from the provider for failure to provide adequate care and secured a unique corporate integrity agreement that required the provider to maintain adequate staffing levels, provide additional staff training, inspect and repair the defective physical plant and facility and install additional wander alarms.

Protecting New Mexicans

Attorney General Madrid Announces Medicaid Settlement of Over \$680,000 for New Mexico

(Santa Fe, NM) Attorney General Patricia Madrid today announced a settlement with Lovelace Health Systems that will pay \$686,045 to New Mexico's Department of Human Services. The settlement resolves allegations of fraud related to Medicaid cost reports submitted by Lovelace between 1988 and 1998.

"We are all aware that health care costs for the state continue to rise and government always needs to be vigilant to eliminate any fraudulent charges..." (Press release)

Significant Hospital Fraud Recovery Case

During this past year, the Unit assisted the U.S. Attorney's Office for the Southern District of California on the largest Medicare fraud recovery against a hospital. The Director received a call from the Assistant U.S. Attorney handling this qui tam case filed in California. The Assistant U.S. Attorney learned that New Mexico potentially had Medicaid funds involved and requested assistance. Chief Investigator Tom Buckner analyzed cost report data and information developed by the U.S. Attorney's Office and verified the amount of Medicaid funds to be repaid. The Unit Director wrote and secured the settlement agreement for a recovery of approximately **\$686,000**.

Statewide Law Enforcement Training Program

The Unit, primarily through Medical Care Investigator Glory Cochrane, continued to train law enforcement personnel throughout the state in the investigation and case preparation of elder abuse and neglect

cases. Five brochures were written and published on elder abuse and neglect issues (one brochure translated to Spanish) and a training video developed. The brochures and video continue to be effective and informative and the Unit receives continuing requests for them.

New Fraud Joint Protocol Statute

In an effort to improve the state's handling of provider fraud investigations, the 2003 New Mexico Legislature passed a new statutory requirement in the existing Medicaid Fraud Act, which will go into effect in FY 04. Essentially, the protocol requires the three departments receiving the majority of Medicaid funds and having concurrent responsibility for program audits and detecting fraud, to do the following:

- establish procedures to ensure prompt referral, any other necessary action, for the coordination and/or investigation of suspected provider fraud
- report to the Legislative Finance Committee the results of investigations and the disposition of recoveries

The Unit will use information developed by the agencies and decrease investigation time and efforts.

Development of Unit Information Management System

During the past year, the Information Systems Specialist, Danial Rodarte, completed the majority of work on the Unit's case management system. For the first time, the Unit now uses and stores case and statistical information electronically. The system has components for referrals and for cases with a merge capability when a referral is opened into a case. The system's data storage and retrieval are unique to the work of a Medicaid Fraud Unit. The system has a report capability to prepare the backup documentation and statistical information for the Unit's quarterly and annual statistical reports.

Services to Victims

Attorney General Madrid's Victim's Assistance Program continues to help crime victims through advocacy, counseling, referrals, and by monitoring the appeals processes of the perpetrators. Program staff network with the victim advocacy programs of the local district attorneys and the Crime Victims Reparations Commission to assist with appropriate services for crime victims as well as informing local advocates and victims about the status of perpetrators' appeals. Additionally, victims of crimes prosecuted by the Attorney General's Special Prosecutions Unit have access to the full range of services provided by the program.

Assistant Attorney General Lama Invited to South Korea

(Santa Fe, NM) The American Council of Young Political Leaders has invited Assistant Attorney General Al Lama to represent the United States on an educational mission to South Korea. Seven individuals were selected for the trip from a pool of 300 nominees. Lama, who serves as the Director of the Civil Division of the Office of the Attorney General, will spend thirteen days in South Korea. During the trip, Lama and the other delegates will meet with senior government and political officials, industry executives, and community leaders on a wide range of political, cultural, and economic issues. Lama was nominated to represent the United States by Attorney General Patricia Madrid. (Press release)

Open Government Advocate

Recognizing that an informed electorate is a vital component of a representative government, the Legislature of New Mexico enacted the "Open Meetings Act" and the "Inspection of Public Records Act". These Acts ensure that the public is afforded access to the greatest possible information regarding the official acts of those entrusted with the duty of representing them. Public access to the proceedings and decision-making processes of governmental boards, agencies and commissions facilitates our efforts to attain a truly open government.

The Civil Division is primarily responsible for the enforcement of the Open Meetings Act and the Inspection of Public Records Act. In this respect, the staff of the Civil Division took active measures in 2003 to ensure the public the maximum possible information regarding the affairs of their government.



*Al Lama, Director
Civil Division*

By the end of the calendar year, at the direction of the Attorney General, the Director and staff attorneys in the Civil Division conducted seventeen Open Meetings and Inspection of Public Records Acts seminars. They visited every corner of the state to educate and assist state and local officials, as well as the public, in understanding the provisions of these very important laws. The seminars conducted during these visits featured discussions of the requirements and applicability of these "sunshine laws". Sites visited in 2003 included Alamogordo, Albuquerque, Artesia, Chama, Española, Farmington, Gallup, Los Lunas, Moriarty, Socorro and Taos.

Since January 1, 2003, the Civil Division has responded to thirty-three complaints of alleged Open Meetings Act violations. The Civil Division has also responded to eighteen complaints of alleged Inspection of Public Records Act complaints. Investigations were conducted by the Civil Division staff to determine whether either Act had been violated. In addition, public bodies were advised regarding the actions which should be taken to ensure compliance.

Special Counsel for Indian Affairs

The Special Counsel for Indian Affairs serves as the direct liaison between the Attorney General and New Mexico's twenty-two sovereign Indian Nations, Tribes and Pueblos on a wide range of legal issues that mutually affect them. The activities of the Special Counsel this year were directed toward the goals of developing effective tribal-state partnerships; consultation and coordination with tribal representatives on the development of state policies, positions, and programs; and strengthening communication and collaboration between New Mexico's sovereign nations.

Protecting New Mexicans

In keeping with the spirit of Attorney General Madrid's initiative to facilitate increased understanding, cooperation and exchanges with New Mexico's Native American citizens, Special Counsel Steffani Cochran has executed numerous outreach efforts paramount to the process of developing such relationships. In 2003, these activities have included regular communication with tribal leadership on litigation involving and/or affecting tribal-state interests. In addition, Special Counsel Cochran has provided her expertise to numerous organizations, entities, and events including these:

Tobacco Product Compliance

As a result of the Tobacco Master Settlement Agreement of 1998, the Legislature has enacted several laws impacting the sale of tobacco products in New Mexico. The Attorney General established a Directory of manufacturers and their brands which may be sold in the state. The Directory is published on the web site of the Office of the Attorney General.



Attorney General Madrid

- the New Mexico Interim Indian Affairs Committee
- the Tribal-State Judicial Consortium
- 2003 New Mexico Tribal-State Economic Development Summit
- the Counsel on International Relations
- the New Mexico Indian Juvenile Justice Symposium on Policy.

The issue of Indian arts and crafts has recently emerged as a significant issue for the state and Native American communities. Both the State and the tribes share responsibility to protect consumers, individual artists, and cultural property, and the Attorney General's Office is charged with enforcing the NM Indian Arts and Crafts Act. Ms. Cochran has been actively involved in collaborations with organizations including the Community and Indian Legal Services, Inc., and the Attorney General's Consumer Protection Division to address mutual consumer issues and concerns. She continues to work diligently to pursue innovative approaches to resolving conflicts among all interested parties.

Protecting Our Water

Water of the Rio Grande

In 2001 the Texas Legislature appropriated \$6.2 million to the Texas Attorney General to sue the State of New Mexico for water from the Rio Grande. In 2003, the Texas Legislature appropriated an additional \$10.3 million to the Texas Attorney General for this purpose. In response, Attorney General Madrid requested and received an appropriation of \$9.2 million from the New Mexico Legislature to prepare New Mexico's defense of the anticipated litigation. She has retained the best lawyers, scientists and engineers with expertise in this area. While New Mexico did not seek this litigation and would prefer to attempt to negotiate an amicable agreement with Texas, Texas seems determined to bring litigation. Texas wants more water which means less water for New Mexico and New Mexicans. Given that and the potential for tens of millions of dollars in economic loss if Texas is successful, preparing for this unwelcome litigation is not only wise, it is a necessity.

Attorney General Madrid Announces Landmark Water Rights Settlement

(Albuquerque, NM) New Mexico Attorney General Patricia Madrid today announced the settlement of a major water rights dispute in southeastern New Mexico that has been in court since 1956. Attorney General Madrid signed the agreement on behalf of the State of New Mexico. The agreement is between the State of New Mexico, the United States, the Carlsbad Irrigation District, the Pecos Valley Artesian Conservancy District, and the Fort Sumner Irrigation District. "We all recognize that water is the life blood of our state. In the west, water has always been precious," Attorney General Madrid said. "New Mexico has many competing demands for our limited amount of water. The competing interests, cities, farmers and endangered species, frequently find themselves at odds. It is my firm belief that if we work together we can find a solution... From the State's perspective this settlement accomplishes a vital need. When fully implemented, this agreement will facilitate New Mexico's ability to meet our required water deliveries to Texas. New Mexico is under order of the U.S. Supreme Court to meet water delivery obligations to Texas," Madrid said. "This agreement brings much needed stability to the water situation in southern New Mexico." (Press release)

Acequia Users

Working in conjunction with the State Engineer and Mora County officials, the Water, Environment & Utilities Division was able to assist in determining whether permitted water rights holders were exceeding allowed limits for irrigation. This determined if rights of acequia users were being impaired during the summer drought of 2003. The impacts of the drought are far-reaching in northern New Mexico, and as a result of issues raised and resolved this summer, water masters will be installed to insure the protection of the ditch users in this part of the state. The practice may be extended to other areas where drought is impacting the access of acequia users to water.

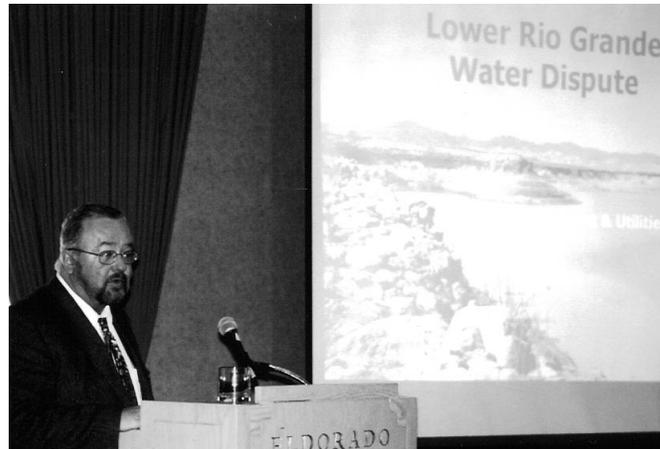
Protecting Endangered Species

Because of the importance of protecting both our water and endangered species, the Attorney General was one of the founding members of the Middle Rio Grande Endangered Species Act Collaborative Program. This group, composed of state and federal agencies, farmers, municipalities and environmentalists is seeking to resolve the conflict that litigation has been unable to resolve – the conflict between New Mexico's water and water rights and the recovery of endangered species. Founded before any litigation was filed, the group has been successful in such endeavors as habitat restoration, building a naturalized refugia for silvery minnows, rescuing fish from drying stretches of the river and purchasing water to aid the minnow. To date, the group has brought \$21 million in federal money into New Mexico for these purposes. The Attorney General is committed to this cooperative approach to problem solving and believes that it, rather than contentious litigation, is the better way to resolve the problem.

In 1999 several environmental groups sued the federal government under the Endangered Species Act to force the release of water owned by farmers and municipalities along the Rio Grande for the Rio Grande silvery minnow, an endangered species. Attorney General Madrid and the State of New Mexico

Protecting Our Water and Natural Resources

intervened in the lawsuit to protect the state and its citizens. While the Attorney General agrees that endangered species must be protected, this should not be done by taking water, without compensation, from the farmers and cities that own it. The litigation continues and is presently before the United States Tenth Circuit Court of Appeals. The Attorney General has asked for a rehearing by all of the judges in the Tenth Circuit. The case is of such importance to New Mexico's future that, if necessary, the Attorney General plans to appeal to the United States Supreme Court.



*Steve Farris, Director
Water, Environment and Utilities Division*

Protecting Our Environment and Natural Resources

Bravo Dome

This past year, the remaining Bravo Dome defendant, Amerada Hess, settled with the State of New Mexico over claims regarding the underpayment of royalties due on the production of carbon dioxide gas. The Attorney General originally brought the Bravo Dome lawsuit against three carbon dioxide gas producers. All three defendants have now settled with New Mexico. The settlement money has been received by the State Land Grant Permanent Fund, which benefits public school children statewide.

Waste Isolation Pilot Plant

The State regulates the Waste Isolation Pilot Plant (WIPP) through a permit issued under the Hazardous Waste Act. From time to time the U.S. Department of Energy seeks to amend that permit, usually to change methods of waste characterization and management. The Attorney General reviews these proposed amendments and provides comments to the New Mexico Environment Department to insure that the public health and safety is protected.

Los Alamos National Laboratory

The Attorney General's Office focuses on issues of environmental restoration, i.e., cleanup, of Los Alamos National Laboratory (LANL). LANL is regulated by a Hazardous Waste Act permit issued by the New Mexico Environment Department (NMED). Cleanup is covered by the Hazardous and Solid Waste (HSWA) module of the permit. NMED has issued a Corrective Action Order to LANL. The Attorney General is currently overseeing negotiations and must ultimately approve any settlement between NMED and LANL to resolve this matter.

Sandia National Laboratories

The Attorney General's Office has been supporting the New Mexico Environment Department in negotiations regarding the cleanup of hazardous waste. A proposed settlement is currently under review.

Natural Resources Damages

The Attorney General represents the Office of the Natural Resources Trustee (ONRT), which is empowered to seek recovery for injury to natural resources under the federal CERCLA statute. Working with the ONRT staff,

Protecting Our Water and Natural Resources

the Attorney General formed a cooperative relationship with the U.S. Department of the Interior and the U.S. Department of Agriculture under which the three agencies are jointly pursuing natural resource damage claims in cases where state and federal interests are involved.

South Valley Superfund

The Attorney General continues to prosecute the largest environmental damages lawsuit ever brought in the state over the injury to groundwater in Albuquerque's South Valley. The defendants are large multinational corporations, such as General Electric and Chevron-Texaco. The State maintains that these parties are responsible for polluting the Rio Grande Aquifer with many hazardous contaminants. Trial on the merits is scheduled to begin 2004.

Molycorp, Inc. - Questa Mine-Mill Site

The state and federal trustees have negotiated an agreement with Molycorp, Inc., under which Molycorp will finance the cost of assessing damages to natural resources in cooperation with the state and federal trustees. This cooperative assessment should lead to a cooperative agreement to restore or replace damaged natural resources.

Phelps Dodge, Inc. - Chino and Tyrone Sites

The Attorney General, the ONRT, and the federal trustees are in the process of negotiating an agreement with Phelps Dodge to create a cooperative approach to the assessment of natural resource damages from mining operations.



Attorney General Madrid and Senior Staff Glenn Smith, Sam Landee-Thompson, and Stuart Bluestone

Burlington Northern Santa Fe Railroad – Clovis Site

The Attorney General and the ONRT have negotiated a settlement agreement with Burlington Northern Santa Fe Railroad for natural resources damages at this site.

Burlington Northern Santa Fe Railroad – Albuquerque Tie Treater Site

The Attorney General and the ONRT are continuing negotiations on a settlement with the Burlington Northern Santa Fe Railroad for natural resources damages at this site.

Environmental Crimes

In recognition of the vital importance of maintaining New Mexico's precious environment, the Attorney General formally established the first Environmental Crimes Unit in the Water, Environment and Utilities Division. Working with the Prosecutions Division of the Attorney General's Office, this Unit investigates and criminally prosecutes violations of state environmental laws.

Hector Villa, Frontera Environmental

This case is the first litigated conviction of an environmental criminal in New Mexico. It is also the first time an environmental consultant has been held accountable for the advice and direction given to a business entity, in this case Valley By-Products, a Texas rendering plant which was illegally dumping its waste in New Mexico. The case presented the first opportunity to create criminal environmental case law in New Mexico, and gives future prosecutions guidelines for pursuing justice under the environmental laws of our state.

Attorney General Madrid Honored for "Opening Doors"

(Los Angeles, CA) Attorney General Patricia Madrid has been honored by the Latina Lawyers Bar Association with the prestigious Mary V. Orozco Abriendo Caminos Award. The award is named for the first Mexican American woman admitted to the State Bar of California. The Latina Lawyers Bar Association presents this award to a woman who has opened the path for other lawyers in the legal profession. Attorney General Madrid was honored as the first Hispanic woman attorney general in the nation.

"It is a great honor to receive this award. It is not easy to be the 'first' in any field. I have likened the role to walking the point in a reconnaissance patrol -- you are the one that takes the initial line of fire. But the rewards far outweigh the 'bullets.' What I have found most gratifying is to see the incredibly accomplished women lawyers who have come after me. I was the first woman elected to the district court bench in New Mexico -- look where we are now, twenty years later. The judiciary is filled with outstanding women at all levels. While I have been fortunate to have achieved a number of firsts -- I know I am the first in a line of talented women," Madrid said. The award was presented at the Latina Lawyers Bar Association Abriendo Caminos award dinner at the Millennium Biltmore Hotel in Los Angeles. (Press release)

The defendant was convicted and sentenced for eight felony counts of violating a permit pursued under New Mexico's Water Quality Act. He appealed his conviction to the New Mexico Court of Appeals. The Court of Appeals entered a decision October 10, 2003, reducing these crimes to attempts at violating a permit, thereby reducing the felonies to misdemeanors. The case has been remanded to the Third Judicial District Court for re-sentencing. Hector Villa's re-sentencing has not yet occurred.

Although the decision reduced the criminal liability for the defendant, the Court did not absolve defendant of all guilt for the acts he committed.



Attorney General Madrid

Indian Gaming

Special Counsel Chris Coppin continued to handle the litigation brought by Attorney General Madrid against the Mescalero Apache Tribe and the Pueblo of Pojoaque. The lawsuit was originally filed in June of 2000 against twelve tribes to collect the revenue sharing payments the tribes agreed to pay to the state under the tribal-state compact signed in 1997. The tribes immediately challenged the federal court's jurisdiction based upon the tribes' immunity. The federal district court rejected the tribes' immunity defense in the fall of 2000 and the tribes appealed that decision to the Tenth Circuit Court of Appeals in Denver. The case was held in

abeyance while the parties engaged in settlement discussions throughout the winter of 2000. The State was able to settle with ten of the twelve tribal defendants for the payment of \$91 million to the State in 2001. The settling tribes also pay the State approximately **\$32 million** per year under the new revenue sharing agreement the Legislature approved as a condition of the payment of the **\$91 million**. That left two tribes, the Mescalero Apache Tribe and the Pueblo of Pojoaque as defendants. After the settlement was concluded, the Tenth Circuit ruled against the remaining defendant tribes, upholding federal court jurisdiction to hear the State's claim against the tribes. The motion to compel arbitration was argued on September 29, 2003, and additional briefing on the issue was completed on October 29, 2003. The Federal Court ruled on December 5, 2003, that the case would not be sent to arbitration. The Mescalero Tribe has appealed that decision to the Tenth Circuit Court in Denver.



*Chris Coppin
Special Counsel to the Attorney General*

The State also appeared before the New Mexico Supreme Court on October 7, 2003, to argue whether the stay of the arbitration proceedings ordered by the Supreme Court in 2000 should be continued. The State argued the stay should remain in place until the federal court decided whether to send the matter to arbitration or to hear the case in federal court. The

Supreme Court ordered that the stay would remain in place until January 4, 2004, which should allow the federal court to decide the arbitration issue before then.

The Pueblo of Pojoaque filed a new lawsuit against the State of New Mexico and the United States claiming that the United States had improperly allowed the revenue sharing agreements to go into effect. The State filed a motion to dismiss the case based upon the State's constitutional immunity under the Eleventh Amendment. After the briefing was completed, the Pueblo agreed to dismiss the State from the case voluntarily.

Litigation

The Litigation Division defends all official functions of the State of New Mexico. The Litigation Division performs legal work in three areas: general litigation, administrative prosecutions and the representation of judges on civil writs. As requested, the Division also provides co-council and litigation support to other divisions or state agencies. The Division consists of ten lawyers and three legal assistants.

The Division is also the designated point of receipt for all Service of Process. Every action taken against any state agency must first be served upon the Office of the Attorney General.

General Litigation

The Division represents all boards, agencies, judges and state officers when sued in their official capacities in non-tort related claims.

The Division defends all constitutional challenges against state law, rules and statutes by appearing to defend Declaratory Judgment.

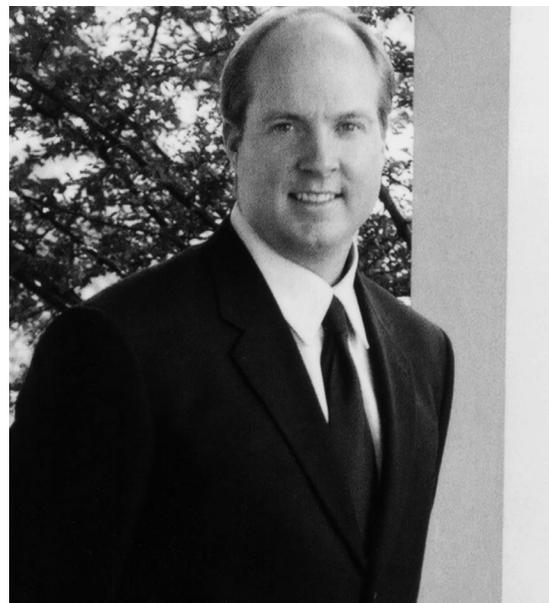
The Division also prosecutes and defends any appeals on cases in which the Division was involved. In FY02-03, the Division has been involved in approximately thirty appeals, both in the state and the federal courts.

Administrative Prosecutions

The Division serves as administrative prosecutor to thirty boards and commissions. A majority of the prosecutions are for violations of the Uniform Licensing Act and involves violations of rules and statutes governing licensed professionals. Sanctions range from fines to revocation of state-issued licenses. Additional prosecutions are for notary public violations. The Division also seeks injunctions in state court against individuals or organizations that either refuse to become licensed by the appropriate state agencies or continue to act after their licenses were revoked.

New Bankruptcy Section

The Attorney General determined that the increasingly prominent role of bankruptcies in the nation and the state merits greater attention. To this end, she hired experienced bankruptcy counsel to advise and represent the State in these matters. The Attorney General is determining what claims the State and its various agencies may have in the Enron and WorldCom bankruptcies, and is filing the pleadings in the appropriate bankruptcy courts needed to protect the State's interests in these and other national cases. On the local level, the Attorney General entered into an inter-agency agreement with the Taxation and Revenue Department to represent it in matters pending before the New Mexico Bankruptcy Court, where more than 8,000 New Mexico taxpayers are expected to seek relief in this and each of the coming years.



*David Thompson, Director
Litigation Division*

Clearinghouse for Miscellaneous Complaints

The Division receives and responds to miscellaneous complaints or inquiries by private citizens or inmates.

Protecting Our State

The Litigation Division serves as a resource on state-related issues to all state departments. The Division monitors all special commission assignments to make sure the interests of the state are being adequately protected and oversees 278 attorneys who have been specially commissioned to handle legal work on behalf of certain boards or agencies. The Division also serves as counsel to the Labor and Industrial Commission on all labor appeals.

2003 LITIGATION CASES

In the Matter of the Application of the NMDGF RE: the Upper West Fork of the Gila River

The Gila Trout was one of the first species listed as “endangered” under the Endangered Species Act. In 2002-2003, the Attorney General represented the Department of Game and Fish before the Water Quality Control Commission in a proceeding related to the restoration of native Gila Trout to the upper West Fork of the Gila River. In April, 2003, the WQCC approved the New Mexico Game and Fish Department’s (NMDGF) petition. The upper West Fork restoration project will increase the number of stream miles occupied by Gila Trout by 20% and may lead to listing the Gila Trout as threatened, rather than endangered.

Starko, Inc. v. N.M. Human Services Department, et al

This is a class action brought by retail pharmacies claiming that they have been under-reimbursed for filling Medicaid prescriptions. This suit, which is based on a state statute, is in its sixth year. Also pending is an appeal by the managed care defendants of the trial court’s recent order re-certifying the plaintiff class. If the plaintiffs’ claims are successful, the additional costs imposed on the Medicaid system will be significant.

Sacramento Grazing Co. v N.M. Game & Fish Department

Plaintiff ranchers were required to reduce the number of cattle grazing on leased federal land in the Lincoln National Forest due to depredation of ground cover and danger to endangered species. Plaintiffs claimed that elk were partly to blame for the depredation and that Game and Fish was required to reduce the elk herd in that area. The U.S. District Judge granted the State’s motion on behalf of the Game and Fish Department to dismiss the claims against the State, holding that the State had no obligation to reduce the number of wild animals.

The Coulston Foundation v. Patricia A. Madrid

The Attorney General issued an investigative subpoena under the Charitable Solicitations Act to this Foundation. The subpoena sought information concerning whether the Foundation had properly transferred certain trust funds associated with research chimpanzees. The Foundation sought to quash the subpoena on various legal theories, all of which were not accepted by the trial court which ordered the Foundation to comply with the subpoena. The Foundation has appealed and oral argument was held October 23, 2003.

Sommers v. TRD

Plaintiff sought a refund of personal income taxes assessed by the State of New Mexico for 1998, 1999, 2000 and 2001 (totaling approximately \$1,518,289), claiming primary residency in Texas. At trial a ruling was obtained in favor of the State, finding that although Mr. Sommers had bought a very large home in Austin, Texas, he had continued to reside in his Santa Fe home and work for Santa Fe Natural Tobacco Company until his retirement in early 2002, using the Austin property as a second or vacation house until that time.

Judicial Standards Commission v. Honorable Bill Richardson

Petitioners filed a Petition for Writ of Quo Warranto in the New Mexico Supreme Court seeking to stop the Governor from removing the six lay members of the Commission and replacing them with new gubernatorial appointees. A stay was issued while the Court proceeded with its determination. At issue was the Governor’s constitutional authority to remove prior gubernatorial appointees. State prevailed on its Motion to Dismiss, with

Protecting Our State

Court ruling that the governor need not explain a cause for removing a public official. Case has been appealed, but is not yet assigned to a calendar. This was a published opinion: State, ex rel. New Mexico Judicial Standards v. Espinosa 134 N.M. 59 2003. NMSC-017 (2003).

Attorney General Madrid Honored by the Government of Mexico

(Santa Fe, NM) Attorney General Patricia Madrid was honored by the Government of Mexico with the prestigious el Premio Ohtli. The award is presented to individuals in recognition of their work on behalf of the interest of Mexicans living abroad. The award will be presented to Attorney General Madrid at the conference of the National Association of Latino Elected and Appointed Officials (NALEO) Gala in Phoenix, Arizona on June 28.

"I am deeply honored by this award," Attorney General Madrid said. "It is always gratifying to be recognized for the quality of your work. I am fortunate to be in a position to help people in need and to make a difference in their lives. Being able to place a crime victim's advocate in the southern part of our state to work exclusively with immigrant women and children victims of domestic violence helped to address a problem that had plagued the region for too long."

Attorney General Madrid was also recognized for her outreach efforts into the Spanish speaking community in New Mexico. Madrid's Consumer Protection Division staff of bilingual personnel conduct educational efforts to a statewide audience of Spanish speakers.

Attorney General Madrid was nominated for this honor by the NALEO President Congressman Ed Pastor and NALEO Nominations Committee Chairwoman Commissioner Sylvia Garcia, on behalf of the NALEO Board of Directors.

(Press release)

State of New Mexico v. UU Bar

This case, brought by the Attorney General in 1998 and later joined by the State Game Commission, involves disputed ownership of a former state road that gives the general public access to approximately 45,000 acres of state trust land located in Colfax County. The adjacent landowner blocked the road, which was originally part of the historic Santa Fe Trail. A decision handed down in early 2002 by Judge Peggy Nelson gave control of the road to the Defendants, citing difficulties in the transfer of the property by the two state agencies. The Attorney General has appealed this decision. A three-judge panel has been assigned and oral arguments are scheduled for 2004.

Pearlman v. Vigil-Giron

On June 13, 2002, the Plaintiff filed a Complaint under 42 U.S.C. §1983 alleging that the Defendant will violate the United States Constitution and the Constitution of the State of New Mexico if she refuses to "expunge all printed candidate names" from voting ballots and does not allow the public "to freely write-in the name of any person to serve in any public office in all future elections." The relief the Plaintiff seeks is a writ of mandamus ordering the Defendant to "expunge all printed candidate names and replace with a space that any name may be written in for all elective offices on the November 5, 2002 general election ballot and all subsequent elections, or, in the alternative, to show cause..." The District Court found that Plaintiff's cause of action is barred by the Eleventh Amendment and should be dismissed for lack of federal subject matter jurisdiction. The Tenth Circuit Court of Appeals accepted oral argument on the matter and assigned a Constitutional Law professor from the University of New Mexico to represent the Plaintiff. The Tenth Circuit affirmed and Mr. Pearlman has sought review by the United States Supreme Court.

Shari Adams v. State of New Mexico, et. al

Federal lawsuit claiming that an out of state truck driver's constitutional rights were violated when she received and paid a New Mexico speeding ticket which later affected her California driver's license. Truck driver claimed she should have been told the consequences regarding her California driver's license. U.S. District Judge Bruce Black disagreed and dismissed the lawsuit with prejudice.

Matthew Gutierrez v. The Honorable Barbara J. Vigil

Plaintiff filed a Petition for Writ of Superintending Control asking the Supreme Court to require First Judicial District Court Judge Vigil to decline jurisdiction when the issue involved child support or child custody of children who are enrolled members of the Pueblo of Pojoaque Tribe. The Attorney General successfully argued that a district court of New Mexico, which is competent to decide child custody matters, has jurisdiction to make child

Protecting Our State

custody determinations if it is in the best interest of the child for New Mexico courts to assume jurisdiction, when at least one contestant (mother) had significant contacts within the state, and there was available to the courts substantial evidence of the child's present or future need for protection and personal relationships.

In Re Barry J. Byrnes

Barry Byrnes appealed both an Order of Contempt and Order of Suspension from the practice of law imposed by Judge Grace Duran, Division VI of the Third Judicial District Court. The Court of Appeals upheld the contempt, and the Court published the opinion and clarified the authority of courts to suspend attorneys from practicing before them. This case set precedent in the state and held that judges can suspend attorneys from practicing within their jurisdiction. The case also held that it was proper for the Attorney General to provide representation in this case, because the Office does not represent the district judge as a party, but rather represents the institution of the interests of the state.

Clinton Walker v. Honorable Sharon Walton and Honorable Sandra Clinton

The Attorney General appealed a District Court ruling which granted a Writ of Superintending Control finding that a defendant timely filed a notice of excusal on a re-filed case, thus terminating the presiding judge's jurisdiction, and obtaining a technical dismissal by running the six month rule. The Court of Appeals transferred the case to the Supreme Court as a matter of substantial public interest. The case was argued in front of the New Mexico Supreme Court. The Supreme Court then issued its ruling and reversed the District Court ruling. The Court held that a re-filed criminal complaint in Metro Court can be viewed as a reinstatement or continuation of the previous complaint. The Court also published the opinion and in turn held that a defendant's substantive and procedural rights were not abridged, modified or enlarged on re-filed cases, and giving a defendant another opportunity to peremptorily excuse a judge on a case was not contemplated by the rules.

Riverside Publishing v. State of New Mexico, Dept of Education

In two separate proceedings, Plaintiff (unsuccessful bidder in \$24M procurement for new statewide criterion-referenced test mandated by federal No Child Left Behind Act) brought actions for injunctive relief against the Department. District Court dismissed both actions, ruling that it lacked jurisdiction to grant preliminary injunction remedies (among other grounds). Contract has been successfully awarded and the work is in progress on test formulation, to be administered in 04-05 school year.



*Attorney General Madrid and Elizabeth Kupfer, Director
Administrative Services Division*

Aragon v. State of New Mexico, Dept of Education

In a special education matter, Plaintiff brought Writ of Mandamus proceedings against the Department, seeking judicial intervention in administrative proceeding and general reform of special education system. District Court held that it lacked jurisdiction to grant the relief requested and dismissed the case.

Taos Charter School v. State of New Mexico, Dept of Education

The Attorney General strove to support the public education system against a challenge, this time in the realm of operational funding. The school advanced an interpretation of the operational "funding formula" which the

Protecting Our State

State Department of Education believes is contrary to the legislative intent and injurious to districts statewide. The Attorney General is representing the State Department of Education in an appeal of the lower court ruling. Case is currently on General Calendar in the Court of Appeals in the briefing stage.

Zuni Public Schools v. State of New Mexico, Dept of Education

The State Department of Education was gratified to receive a ruling from the Special Master, former Chief Justice McKinnon. Contrary to the Plaintiffs' demands, the Special Master declined to find that the state's newly revised system for funding capital outlay in schools was unconstitutional or to find the state in contempt regarding its progress. Instead, the Special Master highlighted the progress the New Mexico Legislature had made in reforming the system. Later, Judge Rich, Eleventh Judicial District Judge, elected to adopt the Special Master's ruling in its entirety. Case is on-going.

ADMINISTRATIVE PROSECUTION CASES

Rio Grande College of Pharmacy

The Commission on Higher Education conducted an administrative proceeding to deny licensure to Rio Grande College of Pharmacy, an Internet institution based in Albuquerque that was granting Pharm. D. degrees, and a parallel District Court proceeding to enjoin the operation of the College. The basis of administrative action was that the College's faculty did not meet the requirements in the CHE's regulations and that the College's curriculum failed to meet the minimum standards set forth in the regulations. The College entered into a settlement agreement with the Attorney General under which it agreed to withdraw its application for licensure and cease its operations in an orderly manner that protects the interests of currently enrolled students.

Taos County Board of County Commissioners v. Tomada

Appeal in State District Court of Alcohol & Gaming Director's decision to grant a beer and wine license to a restaurant after local governing body denied application. Hearing was held 9/8/03 in Taos before Judge Nelson, upholding the Director's decision.

BANKRUPTCY CASES

WorldCom: The Attorney General participated with fourteen other states and the Department of Taxation and Revenue in investigating WorldCom's failure to report taxes on intellectual property royalties and obtaining an extension of time to submit claims which could reach \$8 million for New Mexico.

Kmart: Obtained relief from the automatic stay to proceed with the NM Supreme Court appeal of the Department of Taxation and Revenue's assessments against Kmart for unpaid income and gross receipts taxes, and defeated Kmart's attempt to re-litigate the \$5.4 million claim in the Bankruptcy Court, Northern District of Illinois.

Furr's Supermarkets: Defending the Department of Taxation and Revenue against the Furr's Trustee's attempt to recover as a preference \$8.2 million in tax payments. A summary judgment motion is pending.

E.E. Autrey: Prevented the Debtor's attempt to re-litigate \$980,000 in tax assessments by obtaining partial summary judgment. Trial of the remaining issue of the valuation of the Department of Taxation and Revenue's secured claim is set for December 2003.

New Mexico State Boards, Commissions and Departments represented by the Attorney General

Office of the Governor
Office of African American Affairs
Agency on Aging
Dept. of Agriculture
Board of Examiners for Architects
State Auditor
Commission for the Blind
Office of Information Technology Management
Children, Youth, and Families Department
Dept. of Corrections
Crime Victims Reparation Commission
Office of Cultural Affairs
Commission for Deaf and Hard of Hearing Persons
Developmental Disabilities Planning Council
Economic Development Department
Dept. of Education
Energy, Minerals, and Natural Resources Dept
Board of Registration for Professional Engineers and Surveyors
Environment Department
State Board of Finance
Dept. of Finance and Administration
Dept. of Game and Fish
Gaming Control Board
General Services Department
Governor's Committee on Concerns of the Handicapped
Dept. of Health
Health Policy Commission
Human Services Department
Dept. of Indian Affairs
Interstate Stream Commission
Judicial Standards Commission
Dept. of Labor
State Land Office
Legislature
State Library
New Mexico Lottery
Martin Luther King Jr. Commission
Board of Medical Examiners
Office of the Medical Investigator
Mortgage Finance Authority
New Mexico Sentencing Commission
Board of Nursing
State Personnel Office
Board of Pharmacy
Commission of Public Records
DPS
Public Regulation Commission
Racing Commission
Real Estate Commission
State Records Center and Archives
Regulation and Licensing Department
Office of the Secretary of State
State Engineer/Interstate Stream Commission
State Investment Council
Taxation and Revenue Department
Dept. of Tourism
Dept. of Transportation
State Treasurer
Dept. of Veterans' Services
Veterinary Board
Division of Vocational Rehabilitation
Women's Commission
Workers' Compensation Administration
Workforce Development Board

Representation of State Agencies, Boards and Commissions

The Civil Division of the Attorney General's Office is committed to promoting and protecting the public interest through providing high quality legal services to multiple state entities. Currently the Division's seventeen attorneys serve approximately one-hundred and twelve state agencies, administrative boards, commissions, departments, divisions and museums throughout New Mexico. In this capacity, Civil Division attorneys routinely advise their clients at meetings, administrative hearings and other proceedings. The Civil Division, often in conjunction with the Litigation Division, provides litigation support to clients in state and federal court. Division attorneys also provide day-to-day counsel to all clients.

In 2003, the Civil Division responded to the call to participate in The Governor's Orientation Program For Professional Licensing Boards and Commissions June 20, 2003 at the New Mexico State Capitol.

Criminal Appeals

At the direction of the Attorney General, the fifteen attorneys in the Appeals Division represent the State in all criminal appeals filed in the state. In addition, the Appeals Division represents wardens in state and federal habeas corpus cases, represents the State's interest in extraordinary writ cases, and reviews every extradition and rendition arising from a governor's warrant for a fugitive.

In FY03 the Appeals Division opened 382 new appeals files in criminal cases. During the past year, the Division filed a combined total of 391 briefs, memoranda and petition responses. In addition, Division attorneys participated in oral argument in twenty-seven cases in state and federal courts, as well as forty-eight evidentiary hearings.



*Artie Pepin, Director
Criminal Appeals Division*

Protecting Our State

The Appeals Division also litigates federal and state habeas corpus petitions in state courts as well as the Federal District Court, the Tenth Circuit Court of Appeals, and the United States Supreme Court. These cases usually last beyond one fiscal year. In FY03 the Division opened forty-seven new federal habeas cases and seventy-nine new state habeas cases. The Appeals Division filed a total of 153 responses and motions on state and federal writs.

Other tasks for the Appeals Division include the review of every governor's warrant, whether seeking extradition of a prisoner to another state or New Mexico seeking to have a prisoner held elsewhere returned to New Mexico. In FY03 the Appeals Division reviewed 249 extradition requests. The Division also analyzes bills proposed in the Legislature, including a total of eighty-six bill analyses this year.

2003 SIGNIFICANT CASES

State v. Kirby (and State v. Collins), 133 N.M. 782, 70 P.3d 772, 2003-NMCA-074, cert. denied (March 21, 2003 & May 28, 2003)

The Appellate Court held that the district courts in these cases wrongly dismissed prosecutions of defendants who had earlier been fined by the Securities Division of the State Regulation and Licensing Department. The administrative fines served mainly regulatory purposes and so did not erect a double jeopardy bar to later prosecutions of the defendants for securities frauds on the same facts that had resulted in the administrative fines. Although securities fraud is not a common area for prosecutions by the State, this case is important because it further clarifies the limits on double jeopardy when some administrative action that has punitive consequences is claimed to bar a later criminal prosecution.

State v. Wildgrube, 134 N.M. 262, 75 P.3d 862, 2003-NMCA-108 (6/23/03), cert. denied (August 15, 2003)

There was sufficient evidence of vehicular homicide from proof the defendant was drinking in a bar before driving, drove 45 miles-per-hour while looking down for his cell phone on a dark country road, and hit the victim as he walked on the shoulder of the road. In addition, the court rejected a challenge to a police officer's testimony, holding that he could testify regarding pictures generated by computer after he fed into the computer the measurements of the crash site that he had taken at the scene. The pictures were demonstrative aids to testimony. Lastly, the court held that it was not an invasion of the privilege to remain silent for the police officer to state the defendant answered some questions then asked for a lawyer when the prosecutor did not specifically solicit testimony about the invocation and did not exploit it. The prosecutor should not have cross-examined the defendant about the fact that he only asked for a lawyer when the officer asked how much he had to drink, but this error was harmless and did not require reversal.



*Senior Staff Sam Landee-Thompson, Director, Communications
Stuart Bluestone, Chief Deputy Attorney General, and
Glenn Smith, Deputy Attorney General*

Protecting Our State

State v. Augustin M., (and State v. Flenniken and State v. Chavez), 2003-NMCA-065, 133 N.M. 636, cert. granted (not in Chavez) and case argued in the New Mexico Supreme Court September 22, 2003

The rule requiring that a grand jury be instructed in the elements of the crime does not require that the grand jury be instructed in defenses, including defense of another and defense of property when shooting at a motor vehicle, proximate cause for a fatal vehicle-pedestrian collision, or the religious right to possess marijuana. The decision by the Court of Appeals is a significant recognition of the appropriate function of the grand jury. The cases have been argued in the New Mexico Supreme Court, which is expected to issue an opinion giving further guidance in this area.

State v. Vandenberg NMSC No.27,509 (and State v. Swanson, NMSC No.27,510),_N.M._,2003-NMSC-030

The June 2002 published opinion of the Court of Appeals is reversed. A deputy pulled over a car outside Alamogordo and released it, but called ahead to warn any other officers that caution was required if contact was made with the two occupants. An officer's radar in town clocked the car speeding and he pulled it over. While writing the ticket, the officer saw the two men behaving suspiciously. Before handing over the ticket he called for backup and told the driver to get out of the car. The driver reacted badly and the officers eventually located large bundles of marijuana in the pants of the driver and passenger. The police officer adequately articulated safety concerns to justify a weapons frisk before he concluded his conversation with the car's occupants. Officers do not have to risk being shot when giving a traffic citation.

State v. Abril, 134 N.M. 326, 2003-NMCA-11, cert. denied (September 9, 2003), and State v. Andazola, _N.M._, 82 P.3d 77

In these two cases, the appellate court applied the Earned Meritorious Deductions Act (EMDA), a new law that allows a court to require a violent offender to serve at least 85% of his sentence before parole. These two decisions made clear what kind of facts and circumstances the court has to find to warrant application of the EMDA. The court also held that adoption of the EMDA in 1999 was sufficient notice to defendants and the lack of a specific discussion of the EMDA does not render a guilty plea unknowing or involuntary.

State v. Tollardo, 134 N.M. 430, 2003-NMCA-122, cert. denied (October 8, 2003)

A computer-generated "animation" is a visual aid to illustrate an opinion formed without the use of the computer, and requires no scientific foundation but only a showing that it accurately shows the evidence. A "simulation" is when the computer analyzes data to draw a conclusion, and requires proof that the computer employs a scientifically or technologically valid method. Here the FBI expert used the computer to analyze data and produce an image upon which he relied in forming his opinion, a process that requires proof that the computer-generated evidence was generated in a scientifically valid manner. The expert's discussion of "off-the-shelf" programs (CAD and MAYA) was sufficient where those who gave the expert the information he fed into the computer testified and were subject to cross-examination.

State v. Rendleman (and State v. Barbosa) _N.M._, 2003-NMCA-150, cert. denied (Dec. 12, 2003)

These cases address the question of what standards apply to a pretrial challenge to the use of photographs and videotapes of naked children in a prosecution for sexual exploitation of children. The appellate court incorporated a constitutional obscenity standard into the statute and remanded the case for trial after the New Mexico Supreme Court's refusal to review these rulings.

Attorney General Opinions

The Attorney General is statutorily responsible for providing her Opinions on questions of law submitted to her by members of the state legislature, state officials and district attorneys. In 2003, the Attorney General fulfilled this duty by issuing six formal Opinions and forty-one Advisory Letters on legal matters of statewide concern. All Opinions and Advisory Letters are posted on the Attorney General's web site.

Opinions

ATTORNEY GENERAL OPINION 03-01

January 15, 2003

In an Opinion addressed to State Representative Ray Begaye, the Attorney General concluded that a state legislator who works for a private entity conducting business before the State Legislature should abide by certain general rules. First, a private entity, either for-profit or nonprofit, that has a state legislator within its organization may enter into a contract with the State provided the contracting process is conducted in accordance with constitutional and statutory requirements. Second, a legislator who complies with legislative rules is entitled to receive his legislative per diem, but his private sector employer is free to determine whether it should also compensate him for that day's work. Finally, a legislator should comply the Governmental Conduct Act, NMSA 1978, § 10-6-1 to -18, and his legislative body's code of ethics in deciding when it is proper to vote or abstain on a matter in front of the body.

ATTORNEY GENERAL OPINION 03-02

January 16, 2003

In response to the question posed by State Senator Steve Komadina, the Attorney General concluded that a mayor always has the right to break a tie vote even when a supermajority vote is required. This Opinion overruled New Mexico Attorney General Opinion 90-02 (1990). The Opinion reasoned that nothing in NMSA 1978, § 3-12-2(E) removes a mayor's right to vote in the event that the governing body's vote ends in a tie. Had the Legislature wished to preclude the mayor from voting in situations where a supermajority vote was required, the Legislature would have done so expressly.

ATTORNEY GENERAL OPINION 03-03

January 23, 2003

The opinion addresses a request submitted by Rhonda G. Faught, New Mexico Transportation Department Secretary, inquiring whether Indian tribes, pueblos and nations have authority to imposed taxes on non-tribal contractors working on highway projects for the State of New Mexico on Indian lands. The projects generally involve highways on right-of-way easements granted to the state under federal law. Generally, a tribe has no civil jurisdiction, which includes the power to impose taxes, over non-tribal members on non-Indian land. The opinion explained that, under pertinent U.S. Supreme Court decisions, a right-of-way easement on Indian land granted under federal law is considered alienated, non-Indian land for purposes of a tribe's exercise of civil jurisdiction. Accordingly, Indian tribes, pueblos and nations generally do not have inherent sovereign power to tax state contractors working on highway projects located on right-of-way easements.

Protecting Our State

ATTORNEY GENERAL OPINION 03-04

April 26, 2003

Responding to a request from State Senator Lidio Rainaldi, the Attorney General explained that courts of limited jurisdiction in New Mexico, except for metropolitan courts, have no jurisdiction to hold competency hearings when the issue of a defendant's competency to stand trial is raised. All courts of limited jurisdiction lack the authority to commit defendants to a mental health facility. The courts' jurisdiction is limited to the authority affirmatively granted them in the New Mexico Constitution Article VI, § 1 and 26 or by statute.

ATTORNEY GENERAL OPINION 03-05

August 1, 2003

Attorney General Opinion 03-05 found that a Public Regulation Commission commissioner elected to consecutive two-year and four-year terms may not now run again for another four-year term until one full term has intervened. This proposition is supported by New Mexico Constitution Article XI, § 1 and NMSA 1978, § 8-7-4(A). The Attorney General concluded that the most reasonable way to interpret these provisions is to recognize both a general two consecutive four-year term limit rule and a specific requirement for the first two commissioners chosen by lot to serve a first term of only two-years. Any other reading would undermine the plain terms and provision set forth in the New Mexico Constitution and applicable statute.

ATTORNEY GENERAL OPINION 03-06

November 19, 2003

This opinion, delivered to State Senator William H. Payne, addresses the legality of State Game Commission regulations governing the allocation of elk hunting licenses on the Valles Caldera National Preserve for the 2002-2003 season. The regulations provided that all licenses for hunting bull elk on the Preserve would be issued to persons who had obtained access to the Preserve for elk hunting through a nationwide lottery held by the Valles Caldera Trust. Effectively, therefore, the bull elk hunting licenses were issued by lottery. Although the lottery was held by the Trust, the Attorney General concluded that the Commission's regulations were inconsistent with NMSA 1978, § 17-3-16, which provides that 78% of hunting licenses issued by special drawing must be issued to New Mexico residents.

***Patricia A. Madrid
Attorney General
State of New Mexico***

2003 Annual Report

Credits

**Cover photograph Guadalupe River by Theodore Greer
Theodore Greer Photography, [www. TheodoreGreer.com](http://www.TheodoreGreer.com)**

**Formal portrait of Attorney General Madrid by Frank Frost
Frank Frost Photography, 12514 Menaul Blvd, NE, Albuquerque, NM 87112**

Candid photographs by Lisa Wood

**Our sincere thanks to all the Division Directors and other staff members of the Office of the Attorney General
for giving unstintingly of their time and information for this report.**