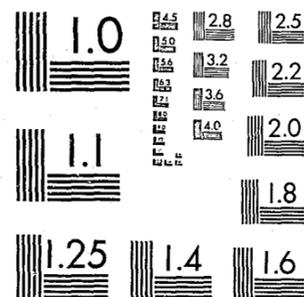


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United States Department of Justice
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8/11/83

New York State
Department of Law
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From The Attorney General



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

To The Governor and The Legislature:

The year 1981 was particularly significant to those of us in the Department of Law because it saw many of our initiatives from earlier years come to fruition. Major cases affecting broad cross-sections of New Yorkers were successfully concluded, resulting in refunds to defrauded consumers or other relief that significantly protected the public.

Among our major successes were the following:

- The Public Service Commission ruled in our favor that Con Edison had been negligent in the operation of its nuclear power plant at Indian Point. The PSC ordered the company to refund \$38 million it had charged consumers when a massive flooding incident caused a lengthy plant shutdown.
- The U.S. Supreme Court handed New York and seven other states a victory by declaring unconstitutional a Louisiana tax on natural gas. Virtually every gas consumer in the state received a refund, and the total, \$70 million, is the largest utility refund in the state's history.
- Agreement was reached with Hooker Chemicals & Plastics Corp. for the cleanup of one of the most hazardous toxic waste dumpsites in the nation – the Hyde Park landfill in Niagara County. Hooker must implement the most complete and thorough cleanup of an environmental disaster ever attempted, with costs expected to reach at least \$50 million.
- The Department's investigation of milk price-fixing resulted in the most extensive antitrust action ever undertaken by the state. Two dozen dairies and 51 individuals were indicted, and one of the largest dairies in the state, Queens Farms, pleaded guilty to a felony – only the second felony antitrust conviction in state history.
- The Department successfully defended the constitutionality of many significant state laws, including the Generic Drug Law, the rent control law and the gross receipts tax on oil companies. In the Generic Drug Law case, I personally argued before the Court of Appeals, the first time an Attorney General had done so in over 40 years.
- The Department successfully defended against nearly 1,000 suits seeking over \$1 billion in damage payments from the state treasury. Major cases such as land claims by Indian nations were dismissed entirely.
- The Department continued its outstanding record in the state's highest court. In 1981, we prevailed in 73% of our Court of Appeals cases, while the average litigant was successful 50% of the time.
- The Department's recruitment efforts continued to attract outstanding lawyers, both from major private law firms and from the public interest bar.
- The modernization of the office continued, with further progress on the development and implementation of computer systems for case management and keeping track of nearly 100,000 filings in the charities, real estate and securities areas.
- The Department expanded its internal training programs and sent attorneys to intensive skills development programs offered by the National Institute of Trial Advocacy. The Department also strengthened its ties to law schools and developed programs under which law students served internships in the Department's regional offices.
- Finally, in 1981, I issued an influential report opposing casino gambling, because of my concerns that it would lead to increased street crime, organized crime and corruption in concerns that it would lead to increased street crime, organized crime and corruption in government. I also objected to plans to introduce video blackjack and poker into New York, and as a result the idea was dropped.

Sincerely,

Robert Abrams

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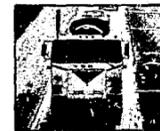
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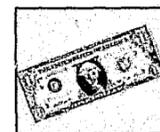
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Introduction

1981 Annual Report

The New York State Department of Law represents the people and State of New York. Headed by the Attorney General and staffed by 1,206 employees — including 469 attorneys — the Department is one of the largest and most active law offices in the nation. The Department has main offices in Albany and New York City, as well as 13 regional offices which serve New Yorkers in each of the state's 62 counties. Responsibility for its legal work is divided among three statewide divisions.

- The Division of State Counsel defends suits against the state, its agencies and officials, as well as the Governor, the judiciary, and the Legislature. The Division, which is headed by the First Assistant Attorney General and includes nearly two-thirds of the Department's attorneys, also undertakes criminal investigations and prosecutions on behalf of state agencies.

- The Division of Appeals and Opinions handles the Department's appellate litigation in state and federal courts. Headed by the Solicitor General and staffed by 28 attorneys, the Division also prepares the Attorney General's opinions to

state agencies and local officials interpreting state law. In addition, the Division performs the Attorney General's duties as bond counsel to the state.

- The Division of Public Advocacy carries out all activities under statutory or common law authority in which the Attorney General directly represents the people of New York. The Division's attorneys enforce consumer protection laws safeguarding New Yorkers against fraud and deception, securities laws barring fraudulent investment schemes, and antitrust laws prohibiting monopolistic and anti-competitive business practices. In addition, the Division takes legal action to prevent or clean up environmental and health hazards, protects against violations of federal or state civil rights laws and represents the interests of residential and commercial consumers in utility rate cases. It protects the public in connection with offerings of cooperative and condominium housing by seeking to insure full and fair disclosure. Finally, it safeguards the public interest against fundraising, solicitation and other abuses involving charitable entities.

Initiatives In The Public Interest

In carrying out its broad mandate to protect the public interest, the Department seeks to concentrate its resources on cases that have a broad impact on large numbers of New Yorkers. Cases which exemplify this approach include our investigation of rent overcharging, which has so far resulted in \$5 million in refunds for over 45,000 tenants; our agreement with Citibank providing for refunds of illegally high interest charges to 91,000 people; and our pending lawsuit charging General Motors with installing defective and faulty transmissions in tens of thousands of automobiles.

Many far-reaching cases were concluded successfully in 1981. Of particular significance was a pair of victories that led to the two largest refunds to utility consumers in the state's history. In December, the Public Service Commission granted a motion we had filed and ordered Consolidated Edison to refund \$38 million to its 2.7 million electricity customers. The PSC agreed with our expert witnesses that Con Ed had been negligent in operating its nuclear power plant at Indian Point. As a result, the PSC said, the company — not consumers — should be required to pay the extra costs resulting from a massive flooding incident in October 1980 that led to a lengthy plant shutdown.

In February, the U.S. Supreme Court ruled in favor of New York and seven other states in a suit we had filed against the State of Louisiana. The ruling invalidated a tax Louisiana had imposed on natural gas from the Outer Continental Shelf. Because New York relies heavily on gas from Louisiana, our refund, \$70 million, was the largest of any state's. Virtually every natural gas consumer in the state got a refund as a result of this ruling.



Landmark suits brought the largest utility refunds in state history; natural gas consumers won \$70 million and Con Ed customers \$38 million.

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Introduction

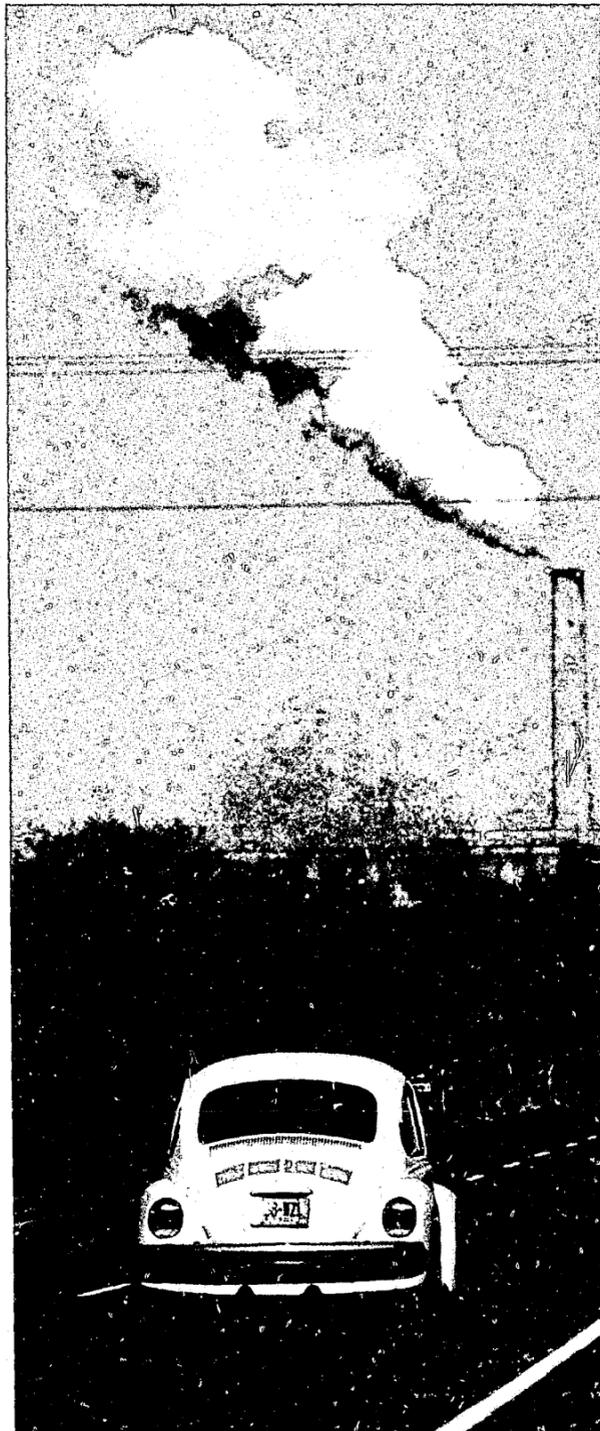
The Department's Energy and Utilities Section was also active in the rate increase request by New York Telephone. The section presented the legal case on behalf of a coalition of consumer groups and agencies, including the State Consumer Protection Board, New York City Comptroller's office, City Department of Consumer Affairs and the New York Public Interest Research Group. The final PSC decision reflected our arguments in many respects. The final rate award was \$308 million less than the company had requested, and the company's petition to increase the cost of a pay phone call from 10¢ to 25¢ was rejected entirely.

Another major success for the office was the agreement providing for a cleanup of one of the largest toxic waste dumpsites in the state. The Hyde Park landfill, located in Niagara County, was used by Hooker Chemicals & Plastics Corp. for dumping more than 80,000 tons of hazardous chemicals between 1953 and 1974. The agreement requires Hooker to implement the most complete and thorough cleanup of an environmental disaster ever attempted. The company will first have to conduct an extensive survey and testing program to determine the extent that toxic chemicals have moved beyond the dumpsite. Then, any contaminated areas found must be either cleaned up or contained, and an extensive containment system must be built to prevent any flow of contaminants outside the dumpsite. Hooker is required to monitor and maintain the remedial system for a period of 35 years, and longer if necessary. The cleanup's cost is estimated to be at least 50 million dollars.

The Hyde Park case is one of four which the Department and the U.S. Justice Department have filed against Hooker and its parent company, Occidental Petroleum. Negotiations are underway regarding the site known as "S" area, and discussions are expected concerning 102nd Street in Niagara Falls. However, the case concerning Love Canal, where the state purchased over 200 homes to help people relocate away from the leaking dump area, is being actively litigated. A special appropriation from the Legislature has been used to set up a highly sophisticated computer system for managing and prosecuting the case quickly and effectively.

The Department also brought suits concerning toxic chemical contamination of groundwater in Long Island and Broome, Greene, Rensselaer and Tioga counties.

In another environmental matter, the Department launched the largest legal assault on the acid rain problem in the nation's history. The Environmental Protection Bureau intervened in nearly two dozen administrative proceedings and filed several lawsuits to oppose efforts by midwestern utilities to increase allowable sulfur dioxide emissions. These sulfur emissions are carried by prevailing westerly winds over New York and other northeastern states, where the pollutants combine with water vapor to produce a highly acidic rainfall. Rain that is 1,000 times more acidic than normal has been



With environmental protection a priority, the Attorney General sued to limit midwest air pollution which causes acid rain in New York.

Introduction

found in New York, and the State Department of Environmental Conservation has found hundreds of lakes and streams that have become so acidic that fish and other aquatic life can no longer survive.

There were several major developments this year in the Department's investigation concerning milk price-fixing in the downstate metropolitan area. Grand juries in The Bronx, Queens and Brooklyn indicted 24 corporations and 49 individuals, bringing to 76 the total number of indictments in this probe of an alleged conspiracy to fix prices and restrain competition in the milk industry. In addition, one major company, Queens Farms Dairy, and three of its employees pleaded guilty. The company's plea represented only the second felony antitrust conviction in state history, and the fines, which totalled \$100,000, were the largest ever in an antitrust case.

Dairylea, one of the largest milk processors and distributors in the state, agreed during the year to a \$1 million refund program to compensate consumers for the cost of the price-fixing conspiracy. The specific details of the refund program are now being discussed.

Effective Counsel For The State

Suits challenging acts of the state Legislature, agencies and officials are growing in number and complexity. Increasingly, these cases could potentially require substantial expenditures of taxpayers' money and plaintiffs often seek remedies that could fundamentally alter the operations of state government.

In one significant Department case, for example, 30 school districts are challenging the constitutionality of the present system for distributing state aid to public education. An adverse decision could radically alter school aid funding formulas and cost taxpayers billions of dollars annually. In another case, the Attorney General has intervened to prevent an estimated \$3 billion shift in property tax burdens resulting from a court order requiring full value assessment of real property in New York City and Nassau County.

The Department is also defending the constitutionality of a 2% tax on oil company gross receipts. The Legislature passed the tax which helps fund mass transit with a small portion of rapidly growing oil company profits. At stake is an extra \$235 million annually for the state's ailing public transportation system. In all of these cases, the Attorney General faces the challenge of protecting the state's vital interests while, at the same time, ensuring that the state's legal positions are responsible and consistent with the spirit of the law.

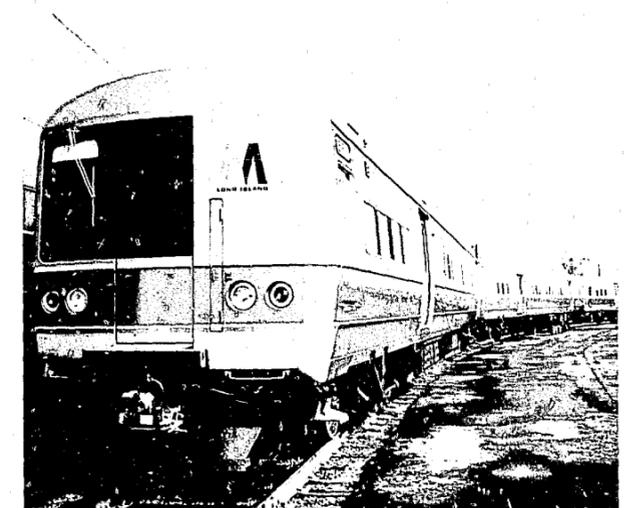
Prisoner-related litigation is the largest category of State Counsel Division cases. While most of these cases seek remedies affecting only the individual petitioner, a growing number are brought as class actions seeking far-reaching changes in the correctional system. Among the major issues in current cases are the state's operating special housing units for prisoners

who have seriously violated prison rules; using the strip-search where warranted to prevent smuggling of dangerous weapons and drugs into prisons; and utilizing protective custody to protect certain inmates and to maintain prison security. In addition, the problem of overcrowding in the state's 33 correctional facilities has led to a suit which could prevent the state from housing additional prisoners unless the inmate population is substantially reduced.

The Department is also defending the state in numerous lawsuits involving the care of patients at state-run institutions for the mentally ill and mentally retarded. In these cases, the state is faced with the dilemma of trying to provide the best care and treatment possible within the limitations of budgets, staff and facilities.

Cases which potentially affect the constitutionality of statutes, the budget process and revenue sources, the conduct of state and municipal business and the regulation of public health and welfare account for a significant portion of the Department's work. The challenge of handling these cases increases as caseloads rise steadily.

A recent U.S. Supreme Court decision which significantly expanded the grounds for challenging state actions under federal law also expanded the Department's caseload. Specifically, under an 1870 Civil Rights Act individuals may sue state and local government employees for violating their civil rights. In 1980, the court ruled in *Maine v. Thiboutot* that such actions can provide a remedy not only to individuals deprived of rights under the federal constitution or civil rights statutes, but also to those deprived of rights as a result of violations of any federal law. This decision enables individuals aggrieved by state actions on federally funded or mandated programs — such as corrections, mental health, social welfare or housing — to seek relief in either federal or state court.



The Department is defending a tax on oil company profits, which will help fund our ailing mass transit system.

Introduction

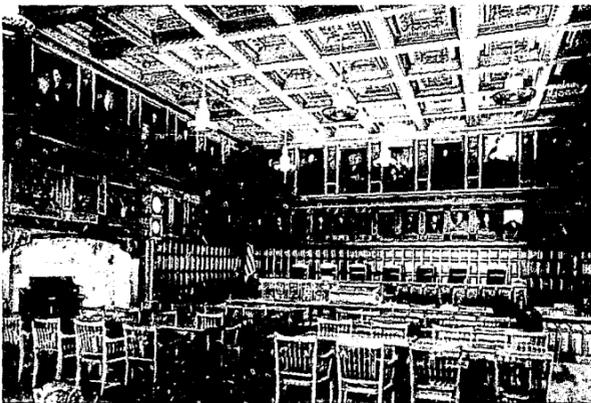


U.S. Supreme Court Chief Justice Warren Burger and Attorney General Abrams.

In such lawsuits, plaintiffs can collect attorneys' fees if they prevail in whole or in part. This, too, has led to a substantial increase in the Department's work because after a substantive matter at issue has been acted on, a second, separate proceeding is often needed to determine fair awards of attorneys' fees.

To meet effectively the demands of growing caseloads, the Department has taken many steps to maximize legal resources. These include closely coordinating the activities of the Department's offices; adopting a team approach to major cases; creating specialized bureaus and units, such as Prisoner Litigation, to handle certain categories of cases; and developing closer working relationships with client agencies.

Assuring Quality And Consistency Of Appeals



The Department had an unusually high success rate, 80%, when defending cases in the State Court of Appeals. The Attorney General personally defended New York's Generic Drug Law, which the Court upheld unanimously.

The professionalism and effectiveness of the Department's lawyers can be judged by their success before the state's highest tribunal, the Court of Appeals. In 1981, the Court held in favor of the Department in 80% of the cases in which it defended lower-court decisions as respondent — compared to a 64% average for all respondents. And when the Department sought reversals of lower-court decisions, the Court of Appeals supported the Department in 52% of the cases — compared to 25% for all appellants.

The Solicitor General is the Attorney General's liaison to the Court of Appeals. Early this year, the court requested that attorneys in the Division of Appeals and Opinions comment extensively on an experimental program granting summary review of cases involving straightforward issues of law. Instead of requiring full briefing and oral argument, the court requested a simple letter brief on the merits of the case. Many of our recommendations were directly incorporated into the court's final rules.

The Attorney General submits *amicus* briefs to the United States Supreme Court in cases which may involve a state interest and in which the state should make known its views. In 1981, the Department submitted *amicus* briefs in a case involving New York's statute on the burden of proof in juvenile permanent neglect proceedings; in support of the right of manufacturers of generic drugs to encapsulate their drugs similarly to name-brand drugs and thereby eliminate consumer confusion; in support of an Illinois law requiring full and fair disclosure in corporate tender offers; and in support of a state's consideration of an individual's prior transfer of assets in determining Medicaid eligibility.

In addition, the Attorney General joined in briefs supporting the right of states to tax certain private contractors who perform work for the federal government; in support of the Federal Trade Commission's jurisdiction over anti-competitive practices of professional organizations; of the application of antitrust laws to the regulation of cable television by home-rule cities and to minimum fee-setting by doctors.

The Attorney General also acts as intervenor or *amicus* in support of the constitutionality of New York statutes challenged by a party in private litigation. State law requires that notice be given to the Attorney General whenever such a constitutional challenge is made. Dozens of such interventions take place each year.

For example, in 1981, the Attorney General intervened in several criminal appeals by New York defendants attacking the constitutionality of the statutes under which they were convicted. In *People v. Whidden*, the Department urged the U.S. Supreme Court to decline to review an unsuccessful challenge to the state's statutory rape laws. The Department also filed a brief in the Court of Appeals supporting a section of the Criminal Procedure Law which does not allow for a jury trial in mandatory youthful offender cases.

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Other cases in state courts challenged the Penal Law's sentencing provisions. For example, the Department intervened in a criminal appeal to defend the validity of statutes that mandate greater penalties for felony repeaters, and that require consecutive sentencing rather than concurrent sentencing for second offenders.

In another area, Department lawyers filed briefs countering challenges to a provision of the Social Service Law allowing for the termination of parental rights for unfitness caused by mental disability. And in *Anonymous v. Cancro*, the Department intervened arguing that the state law which sets the standard for involuntary civil commitment of mentally ill persons satisfied due process standards.

The Attorney General participated as *amicus* in a federal court case involving the penalty provisions of the Taylor Law, which bars strikes by public employees. And in a state court action, he defended an attack on the 1974 Emergency Tenant Protection Act, which authorizes rent controls in Nassau County.

As legal advisor to state agencies, the Attorney General issued 31 formal opinions in 1981 on proposed agency actions, determining their constitutionality or defining the extent of agency powers under state law. Of particular importance was a September opinion responding to plans by the State Lottery Division to install video blackjack and poker games in hotels and bars in the New York City area and in Albany. The state constitution contains a general ban on gambling but allows for certain exceptions, including state-run lotteries. The Attorney General ruled that video blackjack and poker games are illegal, holding that they are, in reality, slot machines rather than lotteries and are thus barred by both the state constitution and the lottery law.

Another important opinion issued in 1981 related to the growing practice of selling houses or co-op apartments through lotteries. After extensive legal research on this issue by the Department's attorneys, the Attorney General ruled that the transfer of real estate by means of a lottery was illegal, that winners of such lotteries could not obtain legal title to property so acquired and that they therefore risked the possibility of financial losses or future loss of the property. The Attorney General also held that selling property through a lottery is a violation of the Penal Law and could subject homeowners to criminal prosecution.

Occasionally, efforts to improve an agency's administrative practices will raise legal or constitutional questions on which the Attorney General is asked to opine. In such an instance, Comptroller Edward Regan solicited the Attorney General's advice as to whether the institution of a planned program to audit a statistical sample of state vouchers ran afoul of the Comptroller's constitutional duty to audit all state vouchers. In finding that the program was constitutionally permissible as long as the sampling was in accord with generally accepted auditing principles, the Attorney General was



As state bond counsel, the Attorney General opined on the validity and tax exempt status of over \$3.3 billion in state bonds and notes.

able to assist the Comptroller's office while also clarifying the meaning of a constitutional provision.

In an opinion rendered to the Office of the Advocate for the Disabled, the Attorney General helped to insure the right of handicapped motorists to park in publicly owned lots. Several localities argued that the statute requiring the designation of parking spots for the handicapped did not confer on handicapped motorists a right of access into the parking facilities. The Attorney General found that both the clear statutory language and the intent of the Legislature gave handicapped motorists a substantive right to park in spots for the disabled and that localities could not frustrate that right by imposing other qualifications, such as residency requirements.

In addition to issuing formal opinions, the Attorney General issued 127 informal opinions to municipal attorneys in 1981 on questions concerning the extent of local authority under existing state and federal statutes. Among the most important holdings in these opinions were that park land may not be sold or diverted to other uses without authorization by the state Legislature, and that under local law a county may exercise its police power to prohibit the importation of out-of-county solid waste or to regulate private landfills.



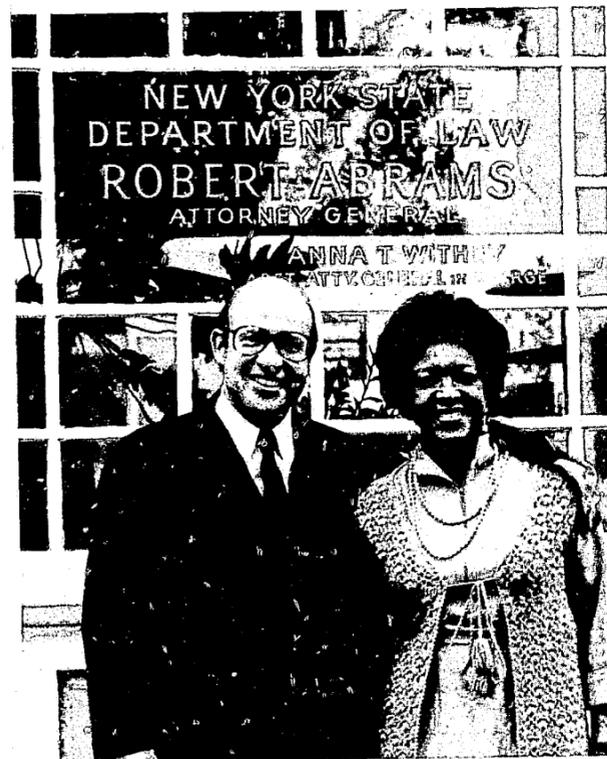
A report by the Attorney General is credited with defeating proposals for casino gambling in New York. He also ruled that video blackjack and poker games are unconstitutional.

Introduction

As the state's bond counsel regarding public financing, the Attorney General rendered opinions as to the validity and tax exempt status of over \$3.3 billion in state bonds and notes. In connection with such sales, the Department is responsible for disclosing all pending litigation which, if decided adversely to the state, could have a significant fiscal impact or which could affect the state's ability to maintain a balanced financial plan.

In 1981, the Attorney General also issued 172 opinions advising the Legislature on the effect of proposed amendments to the state's constitution upon other provisions of the constitution. In addition, the Attorney General submits memoranda to the Governor concerning bills which have passed the Legislature and are awaiting his action.

As part of the opinion function, the Division maintains liaison with the Advisory Committee on Ethical Standards. Appointed by the Attorney General and chaired by Robert McKay, former dean of New York University Law School, the committee assists the Attorney General in making determinations about the conduct of public officials under the State Code of Ethics. And in 1981, the committee once again provided admirable, outstanding volunteer services to the Attorney General.



The Department's 13 regional offices sponsor a consumer outreach program which helps New Yorkers statewide. Anna Withey (L) heads the Monticello office.

Regional Office Network

During 1981, the Attorney General continued efforts to upgrade his 13 regional offices to enable them to handle their rapidly growing caseloads more effectively and to ensure that services are available to citizens across the state.

The year saw the opening of a new regional office in Nassau County to serve the area's 1.5 million residents. Between June and December, the first six months of its operations, the Nassau County office handled more than 600 consumer fraud cases and recovered for consumers nearly \$140,000 in cash, goods and services. The office also defended the state in more than 100 cases.

The consumer outreach program created in 1979 continued to grow this year and made the Department's services more widely accessible in the state's rural communities and other less-populated areas. Through the cooperation of municipal authorities who made public space available, Department attorneys made regular monthly visits to every rural and suburban county of the state and assisted hundreds of citizens with consumer fraud problems and other matters. A major initiative this year expanded the outreach program to serve residents of inner-city communities. This expansion was aided by the assistance of Urban League chapters in Albany, Buffalo, Rochester, Syracuse and Hempstead.

The success of the consumer outreach program in many offices contributed to dramatic increases in refunds for consumers. In Rochester, for example, which handled approximately 2,000 complaints this year, consumer recoveries increased from a little over \$40,000 in 1980 to \$110,700 in 1981. And the Harlem office, which handled more than 900 cases this year, recovered in excess of a quarter of a million dollars for consumers, more than three times the amount recovered in 1980.

The regional offices also handled an increasing number of cases relating to representation of the state. For example, offices whose geographic areas encompass large state correctional facilities continued to experience a steady growth in the volume of prison-related litigation. The Buffalo office, which is responsible for cases at the Attica Correctional Facility, received 1,664 cases in 1981. More than 400 cases came to the Poughkeepsie office from the Downstate Correctional Facility at Fishkill and the Green Haven Correctional Facility. This represented a 15% jump over last year and a 65% increase since 1979.

In other offices, cases relating to the Department of Mental Hygiene continued to mount. For example, the Syracuse office handled 178 such matters, a 21% increase over 1980. In Poughkeepsie, Syracuse and other offices, an upward trend continued in the number of claims brought against the state and the amount of restitution being sought, particularly with respect to negligence claims.

Introduction

To meet the challenge of growing caseloads, many offices took steps to improve management and staffing. In Buffalo, for example, where prisoner cases number 65 per week, a full-time position was created for an attorney with special expertise in these matters. Responsibility for claims litigation pending in the Rochester District Court of Claims was transferred from the Buffalo office to the Rochester office. This eliminates the need for Buffalo attorneys to travel to Rochester to handle these cases and frees them to concentrate on matters in their own region. The Rochester office's effectiveness in handling claims cases is evidenced by the fact that since April, it has represented the state in 15 trials involving 18 separate claims. Sixteen of these claims, in which the amount sought exceeded \$22 million, were dismissed.

Improvements In Management And Operations

Streamlined management, computerization, aggressive recruitment and new training programs have greatly increased the Department's productivity. This has enabled the Department to continue to undertake major efforts to protect the public interest and to stay abreast of huge and growing caseloads, without any increase in the size of its legal staff.

Progress was made in 1981 on developing a computerized case management system that will track the approximately 35,000 cases litigated by the Department. It will also handle non-litigation matters and provide a wide range of information critical to management decision making. The system, which uses a modified version of the Prosecutor's Management Information System (PROMIS) developed by the Institute for Law and Social Research, will be operational in a pilot bureau in 1982 and agency-wide in 1983.

In addition, each year, nearly 100,000 filings are received from non-profit corporations, securities dealers, sponsors of co-op and condominium plans and others who are required to register with the Department of Law. 1981 saw continued progress on the implementation of computerized systems to keep track of filings within the Charities, Trusts and Estates Bureau, the Real Estate Financing Bureau and the Investor Protection and Securities Bureau.

Also this year, productivity improvements were obtained by introducing video display typing systems in critical locations. Replacing obsolete equipment with these new word-processing units — along with achieving greatly needed increases in support staff — has contributed enormously to the efficient preparation of high quality legal work.

In another area, the Bureau of Legal Training, Recruitment and Development continued its successful efforts to attract highly qualified attorneys and to provide training and continuing education to both new and experienced lawyers.



Computerized case management and state-of-the-art word processing are revolutionizing the Department and increasing productivity.

Supported by federal funds obtained through a program administered by the New York Secretary of State, 15 attorneys attended an intensive trial skills training course offered by the National Institute of Trial Advocacy. At the same time, the Department continued to develop its own pre-trial litigation skills programs and management supervisory workshops. Also this year, the Department conducted two statewide training conferences, one in Albany and one in New York. Experts from within and outside the Department made presentations on recent legal developments and litigation skills, including appellate practice. Individual bureaus, including Claims, Consumer Frauds and Real Estate Financing, also conducted training programs tailored to their particular needs.

The Department has continued to attract experienced attorneys dedicated to public service. The Department's recruitment success is reflected by a recent survey of 29 lawyers who had left prestigious New York City law firms since 1979 to join the Department of Law. Most of these attorneys had been admitted to practice for between three and six years. Seventeen lawyers took salary cuts of more than \$5,000, and nine accepted salaries at least \$15,000 less than they had previously earned. At the same time, dozens of talented attorneys have joined the Department from public interest legal organizations and government agencies. These lawyers have already made significant financial sacrifices to pursue their public careers.

In its ongoing affirmative action program, and to reach as many qualified candidates as possible, the Department continued to seek the assistance of law schools and of minority, women's and other specialized bar groups. Since Robert Abrams assumed office in 1979, 14% of those appointed assistant attorneys general have been minority-group members and 44% have been women.

1981 was a year of significant accomplishments for the Department of Law. These successes in representing the people and State of New York reflect the hard work of a dedicated, professional staff of public servants.

Consumer Protection

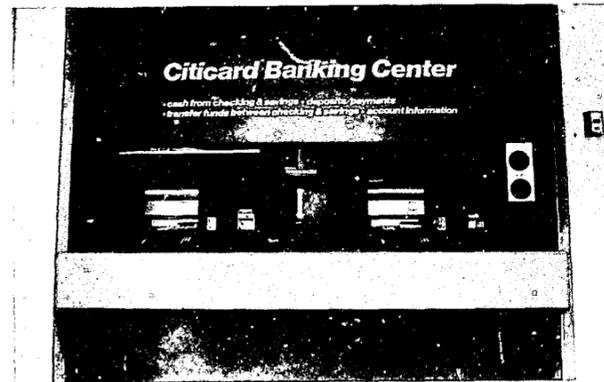
Among the most significant functions of the Attorney General is his role as advocate for consumers in the retail marketplace. The consumer protection section of the Executive Law gives the Attorney General broad authority to uproot patterns of fraud and illegality and to seek restitution and damages on behalf of victims. The office's mandate has also been significantly broadened since the 1970's through the passage of numerous statutes to redress abuses within specific industries. Examples include: The Debt Collection Procedures Act (1971), the Fair Credit Billing Act (1973), the Mail Order Merchandise Statute (1974), the Mobile Home Warranties Bill (1975), the Performing Artists Law (1977), the Price Gouging Law (1979), the Truth-In-Storage Law (1979), and the Bulk Meat Sales and Merchandise Delivery Acts of 1981.

Because of these increased responsibilities, the Attorney General has adopted a policy of concentrating legal resources on serious cases which affect large numbers of consumers and involve substantial amounts of money. At the same time, the office has adopted streamlined procedures for dealing more efficiently with individual consumer complaints, including the use of mediation, whenever possible, to resolve disputes; increased use of paralegals; and the creation of a consumer outreach program to respond more effectively to consumer complaints in small communities across the state.

As a result, in 1981, the office was able to obtain \$61,012,120 statewide in restitution in both goods and services for consumers, and to bring a series of significant legal actions against major violators of consumer protection laws.



The Department has broad legal authority to protect and advocate consumers' rights. This year, our cases resulted in \$61 million in restitution to New York consumers.



The Attorney General charges that Citibank — and not its customers — should pay the losses from a con game involving its electronic cash machines; it is the first suit in the nation under a new federal law.

Credit And Lending Services

The past decade has seen an astounding growth in the use of credit, not just for financing a home or other major investment, but also for the purchase of everyday necessities. Unfortunately, consumers' increased reliance on credit has also led to a precipitous rise in abuses by the credit card industry in particular and lending institutions in general. In response, the Attorney General has stepped up enforcement efforts in this area in a number of cases involving large creditors and financial institutions.

In May, an historic settlement was reached in a lawsuit against the state's third largest consumer loan company, Avco Financial Services of New York, which was charged with illegally and often maliciously abusing and harassing individuals in the collection of debts. The company's improper practices included threats of death and physical injury as well as abusive phone calls to debtors and their friends, employers and families. The Attorney General obtained a total of \$85,000 as compensation to over 100 consumers who had been victimized. The settlement marked the first time that a state attorney general's office obtained money for individuals as compensation for the emotional distress they suffered when harassed by debt collectors. Avco consented to an injunction barring it from further illegal practices and, to prevent abuses in the future, it agreed to improve supervision of employees and establish a toll-free hotline to handle consumer complaints.

In another unprecedented action, the Attorney General commenced a lawsuit against Citibank, New York State's largest bank, seeking to recover tens of thousands of dollars reported missing or stolen from the accounts of customers using its electronic cash machines. An investigation by the Attorney General revealed that large numbers of Citibank customers were the victims of a con game, whereby criminals

were able to secretly observe customers while making a transaction, learn their "personal identification code," and withdraw up to \$600 from their accounts. The Attorney General's lawsuit, which seeks restitution and damages for complainants, is the first in the nation to be brought under a 1978 federal law which makes banks and other financial institutions — not consumers — liable for losses due to fraud or error during electronic banking transactions.

Also this year, attorneys in the Consumer Frauds and Protection Bureau settled another suit brought against Citibank which stemmed from complaints that the bank had charged excessive interest rates in two of its credit programs. Specifically, the bank improperly applied an increase in its interest rates retroactively to the balance on loans made before the new rate went into effect. The Attorney General's action in the matter resulted in refunds to consumers totaling nearly a quarter of a million dollars.

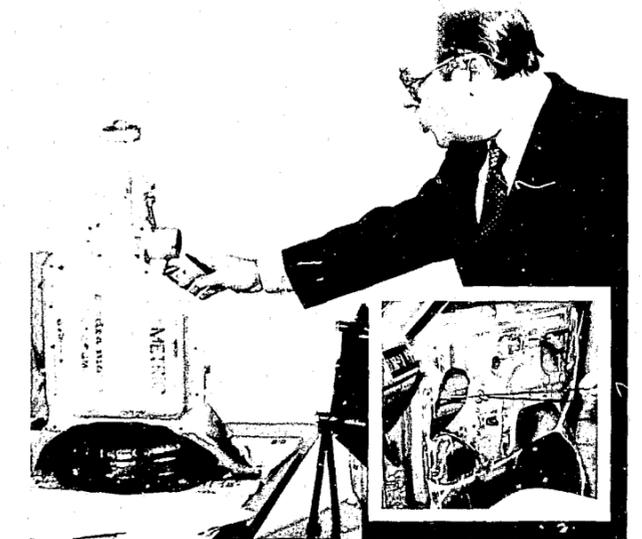
The Attorney General also came to the aid of former clients of the Consumer Credit Counseling Service of New York, a debt management program which abruptly closed its doors this year amid charges of conflict of interest and fraudulent trade practices. An investigation by the Attorney General revealed that although Consumer Credit Counseling Service represented itself as a service to consumers, it actually performed more like a debt collection agency for a number of banks, large department stores and other creditor institutions which dominated its management. In many cases, the program rather than helping consumers actually aggravated their financial problems. Following an agreement negotiated this year, the Consumer Credit Counseling Service consented to permanently cease its operations, but not until all of its clients received the services necessary to resolve their debt problems satisfactorily.

Auto Sales And Repairs

Final preparations were made for a lawsuit to be brought early in 1982 against General Motors, which will charge that the company is responsible for the premature failure of thousands of lightweight transmissions installed in cars since 1976. To date, the Department has received complaints regarding these defective transmissions from 2,300 consumers, the majority of whom have had to pay repair costs averaging more than \$400. The suit will seek restitution on their behalf. If successful, this landmark case would firmly establish the responsibility of auto and other manufacturers to disclose and correct serious defects in their products.

Also this year, the Attorney General undertook a major investigation into complaints of widespread faulty workmanship in the sale of rustproofing by automobile dealerships. The investigation disclosed that New York consumers are defrauded of \$11 million annually by dealers who provide

defective rustproofing services. Abuses were particularly serious in the New York metropolitan area, where 96% of the rustproofing jobs on cars inspected by investigators from the Attorney General's office failed to meet industry standards. The investigation also revealed that warranties for dealer-applied rustproofing are riddled with loopholes that protect the rustproofing company and the dealer from legitimate claims. To alleviate these and other abuses, the Attorney General is pursuing agreements with new car dealers throughout the state which would require them to inspect and redo unsatisfactory rustproofing jobs. The Attorney General is also seeking legislation to establish minimum standards for rustproofing warranty protection.



GM is being investigated for allegedly installing defective auto transmissions (L) while another probe found that defective rustproofing costs New Yorkers \$11 million annually (R).

In addition, through the mediation efforts of the Consumer Frauds Bureau and the regional offices, hundreds of individual complaints involving deceptive auto sales practices, fraudulent repair work and failure to honor warranties were successfully resolved. In Rochester, for example, when Palmyra Motors, a high-volume automobile dealership, closed down without delivering on customers' outstanding orders, the Attorney General got back a total of \$15,000 in deposits for 45 consumers and arranged for the delivery of automobiles to 10 others. In addition, numerous consumers complained that while the dealership was in business, it had engaged in a number of deceptive sales practices, including "bumping up" or raising the agreed-upon sales price of a vehicle between purchase and delivery. The Rochester office is involved in proceedings to recover a total of \$56,000 for 125 consumers who were victims of this and other illegal sales practices.

Representing The Public

Career Counseling And Training

Rising unemployment and the tight job market have given rise to so-called "career counseling" firms, which typically solicit individuals seeking professional or management-level positions and charge very high fees — as much as several thousand dollars. Many consumers have been lured into contracts with these firms after being promised placement in lucrative jobs. In fact these firms often do little more than write letters for their clients and send them to a list of companies drawn from a standard source, such as the *Yellow Pages*.



An investigation showed many vocational schools fail to provide accurate placement data to prospective students. So far, 18 agreed to correct illegalities.

One typical case involved a Madison Avenue firm, Franklin Career Search International, which catered to highly-paid middle managers and executives, promising them access to a "hidden job market" used by corporate insiders. Job seekers were required to put up advance payments of between \$1,500 and \$7,500 which they were told would be refunded if no job were found. In fact, most of the firm's clients neither found employment, nor received the full refund promised in the contract. The case was successfully resolved by a court order closing down the agency and prohibiting its principals from re-entering the career counseling field. In addition, restitution totaling \$70,000 will be made to aggrieved consumers.

To curb abuses in the growing field of career counseling, the Attorney General secured passage of legislation which prohibits such firms from charging advance fees and requires them to obtain a license.

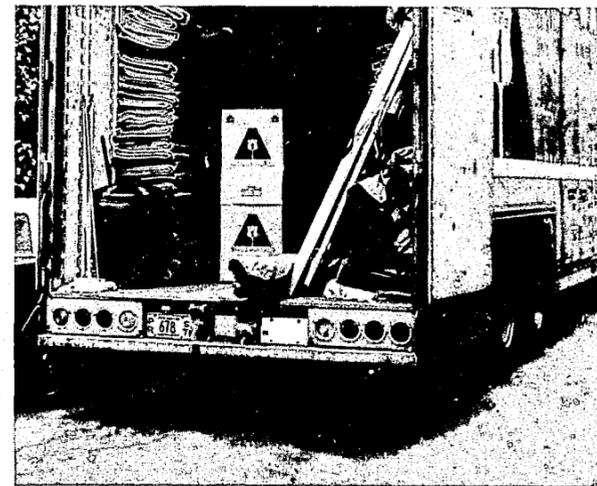
Also in 1981, the Attorney General launched an investigation into the practices of New York's private vocational and trade schools. State regulations require these schools to provide prospective students with accurate information on the average drop-out rates and their past record in finding jobs for graduates. However, a majority of schools visited by investigators for the Attorney General's office failed to do so. To date, 18 of these schools have signed agreements to correct their illegal practices.

In another section, the Attorney General's Nassau County office obtained refunds totaling approximately \$100,000 for students enrolled in Control Data Institute in Garden City, which offers courses in computer programming. The action was taken following numerous complaints of inadequate staffing, facilities and curriculum by students who had paid enrollment fees of \$4,500. Negotiations are underway to require the school to upgrade its program.

Moving And Storage

In 1981, the Attorney General stepped up enforcement of the two-year-old state Truth-In-Storage Act which protects consumers from overcharges by moving and storage companies, one of the most frequent sources of complaints received by his office. After a survey by the Department indicated that the law was being routinely violated, the Attorney General began negotiations with New York's two major storage trade associations, both of which ultimately signed agreements to bring into compliance with the law as many of their members as possible. The two groups have 300 members — the vast majority of the industry.

The Truth-In-Storage Act was passed in 1979 at the Attorney General's request primarily to counteract "low-balling" — the practice of luring customers into contracts by drastically underestimating the cost of storage. The law requires that warehouse operators provide customers with written estimates of monthly service charges, and the actual charge cannot exceed the estimate by more than 10%. The Attorney General is conducting a follow-up survey of practices by warehouses throughout the state and will take further legal action where violations persist.



Agreements with moving and storage trade groups should increase compliance with the Department-sponsored Truth-In-Storage Act.

Representing The Public

In another action, attorneys in the Binghamton office moved against a local storage company which closed down suddenly without providing for the return of customers' household goods. Acting on the complaints of 30 consumers, the Department succeeded in obtaining the return of their belongings, the total value of which exceeded \$143,000.

In 1980, the Consumer Frauds Bureau won a court judgment against the El Faro de Cabo Rojo Shipping Company, which had promised to transport the household possessions of 70 families from New York to Puerto Rico, but instead, abandoned the goods in Florida. The Attorney General arranged for free shipment and delivery of the consumers' possessions. The company and its owners were also ordered to make full restitution of the shipping fees paid by consumers, but failed to do so. This year, after learning that one of the owners had won a judgment against the Puerto Rican Maritime Shipping Authority, the Department sued the Authority to have the money turned over instead to the Attorney General so that restitution could be made to consumers. A total of \$15,000 was recovered.

Other Major Actions

Problems with mail order firms account for one of the largest categories of complaints received by the Department of Law in every area of the state. In a typical action, the Department's Albany Office obtained \$60,000 in restitution for consumers when a Saratoga children's clothing and toy manufacturer failed to ship mail order goods. Also this year, the Attorney General successfully invoked for the first time the Mail Order Merchandise Law against an out-of-state company. The well-known Washington, D.C. retail chain Camalier & Buckley had licensed its name to a New York mail order company that became insolvent, leaving thousands of consumers throughout the country with unfilled orders. The Attorney General sued the Washington, D.C. company, arguing that it was liable for the New York firm's debts, and the case was successfully settled with the refunding of approximately \$180,000 to consumers.

The Attorney General also acted on behalf of hundreds of consumers who had attempted to save money on their food bills by purchasing frozen meat and other foods in bulk on installment plans, only to find that they were grossly misled about the savings involved. A lawsuit was brought in December against the nation's largest home food service, Natpac of New York City, after more than 100 consumers complained that despite promised savings, the plan was twice as expensive as supermarket shopping. The Attorney General's lawsuit also charges that deceptive practices were used to get consumers to purchase microwave ovens and freezers at higher than retail prices. The suit seeks restitution for defrauded customers and cancellation of their installment contracts.

To combat widespread fraud and misrepresentation in the sale of home food service plans, the Attorney General drafted and secured passage of legislation which requires more detailed disclosure of the cost of these plans compared to supermarket shopping, including an itemized list of the price and weight of all food sold.

Abuses in the travel and recreation industry were another major source of complaints in many regional offices. When an upstate tour operator failed to tell people travelling to Las Vegas of changes in flight schedules and hotel accommodations, the Rochester office got back partial refunds for 40 aggrieved consumers from across the state. Attorneys in the Rochester office also obtained \$19,000 in restitution for 250 consumers when a planned local health club failed to open as promised or to return deposits. And in Poughkeepsie, 25 health spas and tennis clubs which were not advising consumers of their legal right to cancel contracts within three days agreed to change their practices.

Also during the year, the Attorney General took action to alert the public to widespread health violations on major passenger cruise ships which sail out of New York. Although the Quarantine Division of the U.S. Public Health Service regularly conducts sanitation inspections of passenger cruise ships arriving at U.S. ports, few vacationers are aware of these

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Holland America

Actions on cruise ship health violations had unique results; Holland America consented to alert the public to health inspections.

Representing The Public

inspections. Thus when 237 passengers aboard a Holland America cruise ship contracted food poisoning during one of the ship's weekly cruises to Bermuda last June, the ship kept on sailing without the public knowing that the problems had not been corrected. In the first settlement of its kind in the country, Holland America consented to alert consumers to the existence of the federal inspections in all future advertising and to provide copies of the reports upon request. In addition, the Attorney General is seeking state legislation and changes in federal regulations to make sure that any ship which fails two consecutive health inspections publicly discloses this fact in its advertising.

Mediation

Through the Attorney General's consumer outreach program, Department attorneys make regularly scheduled visits to virtually every county in the state to provide direct assistance to consumers with legitimate problems. At least 60% of the hundreds of complaints received through this program each year are satisfactorily resolved out of court through mediation. Overall, in 1981 the Consumer Assistance Unit of the New York City Consumer Frauds Bureau and the 13 regional offices obtained an estimated \$3,734,592 in refunds, replacement merchandise and services for consumers.

A high percentage of the disputes mediated by the Department concern faulty or undelivered merchandise or services. For example, the Nassau County office got a Farmingdale furniture store to take back \$2,000 worth of furniture which a customer said was delivered with defects. In Albany, when a watch repair shop closed down and the owner left town without notifying consumers, the Attorney General's office succeeded in obtaining the return of \$37,000 worth of merchandise which had been left for repair.

In the area of moving and storage, attorneys in the Harlem office assisted a consumer who could not locate \$30,000 worth of her household goods which a defunct moving company had failed to ship. After finding the consumer's belongings, the Department arranged for another company to deliver the goods at no extra charge to the consumer. As a result of mediation efforts of the New York City office, approximately \$10,000 in refunds were made to consumers who were dissatisfied with services performed by career counselors and employment agencies.

Mediation was also used to resolve hundreds of complaints against auto dealers and repair shops. A typical case involved a consumer who had paid \$2,600 to a Cayuga County Chevrolet dealer for a used car which broke down beyond repair after approximately one month's use. The Attorney General's Auburn office intervened and got another used car for the consumer.

Representing The Public

Tenant, Homeowner And Homebuyer Protection

To safeguard the rights of New Yorkers in one of the tightest housing markets in the state's history, the Attorney General mounted a vigorous campaign to stop unscrupulous practices by landlords and to prevent abuses in the conversion and sale of cooperatives and condominiums.

Apartment Rentals

The first elected public official to sue New York City landlords for rent gouging, the Attorney General has in three years recouped more than \$5 million in rent overcharge refunds for New York City tenants. In 1981, the Attorney General extended his enforcement program to Nassau and Westchester Counties, making significant recoveries in these areas as well.

In a major case resolved this year, Charles H. Greenthal & Co., one of the leading real estate management companies in New York, Queens and Nassau Counties, and refund overcharges in all instances where rents are not within the legal limits. A preliminary review of just four of these buildings found overcharges of \$190,000 over the past 12 years. Based on that survey, it is estimated that nearly \$1 million in overcharges for the same period will be found in the 79 properties. charges in all instances where rents are not within the legal limits. A preliminary review of just four of these buildings found overcharges of \$190,000 over the past 12 years. Based on that survey, it is estimated that nearly \$1 million in overcharges for the same period will be found in the 79 properties.

The Attorney General's investigation also disclosed that Greenthal was violating an important provision of the state's rent stabilization laws requiring that tenants be provided with the rental history of their apartments so that they can determine whether their rent has been calculated properly. This violation will be corrected.

In another major action this year, the Attorney General brought a lawsuit against a Brooklyn landlord, the Spodek family, to recover rent overcharges for up to 3,000 tenants in 39 buildings. In addition to rent overcharging, the Spodeks are being charged with a long list of other illegal practices, including collecting illegal broker's fees, misusing tenants' security deposits, and failing to correct thousands of building code violations.

Also this year, a major investigation by the Consumer Frauds Bureau disclosed serious abuses by the Rent Stabilization Association of New York, the agency responsible for policing the 25,000 New York City landlords with apartments in the rent stabilization system. The investigation disclosed that over the last four years RSA has illegally funneled nearly \$1 million into lobbying, lawsuits and other activities designed to gut the rent stabilization program and rent regulation in general. This is a serious perversion of the Legislature's intent in setting up the RSA as a quasi-public organization charged with protecting tenants from rent overcharges and other illegal practices by landlords. By year's end, no action had been taken on the Attorney General's petition to the New York City Department of Housing Preservation and Development to halt RSA's illegal activities. The Attorney General is preparing court action in 1982 unless HPD acts favorably.

The Consumer Frauds Bureau also responded to some 1,400 complaints of mishandled apartment rent security deposits. Department staff tracked down landlords who failed to turn over security deposits after sale of a building; required landlords to open escrow bank accounts for rent deposits as required by law; and to pay accumulated interest to tenants where they had failed to do so. In 1981, the Department refunded or placed in escrow almost \$90,000 in tenants' rent security deposits.

Because an alert and educated tenant is the best deterrent to illegal conduct by landlords, the Department's lawyers devoted considerable energy this year to ensuring that the standard apartment lease used by New York landlords complied with the Plain Language Law. The revised lease, obtained after two years of negotiations with the Real Estate Board of New York, is far more readable and, in addition, contains many important changes beneficial to tenants.



\$5 million in rent overcharges have been recouped for tenants; one settlement, with Greenthal, affects almost 8,680 residents of 79 buildings.

Representing The Public

Cooperatives And Condominiums

Conversions of rental housing to cooperative and condominium ownership in New York State are increasing at an extraordinary pace. In 1976, 67 prospectuses for cooperative and condominium conversions were submitted to the Attorney General's Real Estate Financing Bureau, the agency responsible for overseeing public offerings of real estate securities in New York State. In 1981, 667 plans were submitted — a ten-fold increase.

Under normal circumstances, the increase in cooperative and condominium conversions could be a healthy trend for New York State, offering tenants the opportunity to own homes and preserve their neighborhoods. Unfortunately, in these times of scarce mortgages, escalating interest rates and high maintenance charges, some tenants cannot readily afford to purchase their own apartments, and because most conversions are structured as eviction plans, tenants who cannot or do not wish to buy their apartments are subject to eviction.

One matter investigated this year exemplifies the kinds of abuses that can occur in the co-op conversion process. In



The Department is fighting to block the nation's largest co-op converter, American Invsco, from evicting 89 elderly and handicapped persons from this building, Plaza 400.

response to numerous tenant complaints, the Attorney General investigated charges that the sponsors of a conversion plan in the Park Slope section of Brooklyn engaged in repeated acts of fraud and harassment in an effort to drive non-purchasing tenants out of their apartments. Specifically, the sponsors were allegedly attempting to circumvent a state law which requires that 35% of tenants must buy their apartments before a building can be converted and all non-purchasing tenants evicted. The investigation disclosed that the sponsors signed leases with friends, relatives and business associates who never actually lived in the apartments but who agreed to buy them to help the sponsor obtain the 35% of tenant purchasers needed to convert the building and evict non-purchasing tenants. In addition, tenants reported that they were the targets of repeated acts of harassment, including frivolous lawsuits, illegal rent overcharges and threats to cut off essential services. By year's end, attorneys in the Real Estate Financing Bureau were preparing a lawsuit to stop the conversion of the building and to put the sponsors out of the co-op business permanently.

In another case, the Attorney General halted an \$11.6 million co-op conversion plan for a Park Avenue apartment building in Manhattan which would have given tenant cooperators an unmortgageable long-term lease on the building and land, but no actual ownership. Like a normal co-op, purchasers would buy shares in a cooperative corporation, but instead of the corporation owning the building, a 99-year lease would be provided by the landlord, whose descendants would regain complete control at the end of that period. Under the plan, the tenant shareholders would be required to maintain and repair the building and replace it if it were destroyed, despite the fact that they would be unable to obtain conventional mortgage financing to pay for repairs or improvements. If the co-op shareholders breached this duty, the landlord could declare a default, and the tenants would lose their investment and their homes. In rejecting the plan, the Attorney General noted that these and other risks were not fully disclosed as required by law. He also cited the danger that the co-op corporation and the tenants would be unable to obtain financing for needed repairs, and that the owner would have a prior claim on insurance proceeds in the event of fire or other major casualty.

Also this year, the Attorney General blocked an effort by American Invsco Co., the nation's largest converter of co-ops and condominiums, to evict 89 elderly and handicapped persons who rent apartments at Plaza 400, a luxury high-rise in mid-Manhattan that was recently converted into a cooperative. The tenants had claimed exemptions from eviction under a state law which provides that when buildings are converted to co-ops, elderly persons who meet certain income requirements and handicapped tenants can continue to rent their apartments until they die or choose to move. Invsco, however, is pursuing the matter and was appealing at year's end.

Representing The Public

One of the Attorney General's most important tools in protecting purchasers of co-op and condominiums is a state law requiring the filing of detailed offering plans for review by his office. The bureau's attorneys took action in 1981 to assure that this law is obeyed, not only by real estate promoters based in New York State, but also by out-of-state companies as well. As a result of a lawsuit filed against 11 out-of-state companies who were illegally offering condominiums for sale in New York, the companies agreed to stop violating New York State laws and to pay costs of \$2,000 each to the state.

To better protect tenants in buildings undergoing co-op conversion, and to ensure that the process is an orderly and equitable one, the Attorney General proposed a 20-point program of reforms in the relevant state statutes. The program proposes an increase from 35 to 51 percent in the proportion of tenants who must agree to buy their apartments before any tenants can be evicted; a longer period for tenants to decide whether to buy their apartments; more time to relocate for tenants who choose not to buy; and broader protections for senior citizens and the handicapped to exempt them totally from possible eviction. In addition, to provide a more consistent framework for the enforcement of existing laws, the Attorney General's program calls for an extension of certain protections now provided only to New York City residents to the rest of the state, at local option.

A comprehensive bill containing these proposals passed the New York State Assembly in May 1981, but did not pass the Senate.

Homeowner Protection

With the cost of owning and maintaining a home steadily rising, the Attorney General moved forcefully to resolve complaints against contractors who failed to complete work after



A Poughkeepsie suit barred a home repair contractor from doing business in the state after he defrauded elderly homeowners.

payment had been made or who did defective work. Typical was the case of a Binghamton homeowner who, after paying \$150 to an area contractor to waterproof his cellar, discovered that the cellar still leaked. The Binghamton office contacted the contractor, and after several letters requesting that the work be done properly, the job was completed to the consumer's satisfaction.

In several areas of the state, the Attorney General came to the aid of elderly homeowners who were victims of fraudulent home repair schemes. In Buffalo for example, a local con artist extracted \$200,000 from six elderly homeowners by misrepresenting that fire and other safety hazards existed in their homes which necessitated immediate and costly repairs. The Attorney General has gone to court to put the defendant in this case out of business permanently and to obtain restitution for consumers. In Poughkeepsie, the Attorney General filed a lawsuit against a local contractor who tricked elderly homeowners into making full payment in advance for repairs at exorbitant prices and then failed to complete the job. A permanent injunction was issued against the contractor barring him from doing home improvement work in New York State, and partial restitution was obtained for homeowners. (At year's end, litigation was continuing to obtain additional restitution from the defendant's partner.)

In response to concerns about the dangers of polyurea formaldehyde foam for home insulation, the Attorney General's Buffalo office undertook an investigation to determine whether area contractors were warning consumers of these hazards as required by state law. The Attorney General issued subpoenas against a number of local contractors who had ignored his requests for copies of contracts and other records. Further action was rendered unnecessary, however, when, in February, the federal government imposed a nationwide ban on formaldehyde foam, an action which the Attorney General had long advocated.

In an action taken under the 1975 Mobile Home Warranties Bill, the Albany office cracked down on Hallmark Homes, Inc., a major mobile home manufacturer whose warranty did not cover important parts of the home, including the tires, furnace, water heater and windows. Restitution was obtained for a consumer for expenses which should have been covered by the warranty and the manufacturer agreed to provide adequate warranty protection to all customers in the future.

The Attorney General also took action on behalf of many homeowners who complained of pricing violations by home heating oil dealers. In one case in Nassau County, the Attorney General moved against a home heating oil dealer who was illegally raising the price per gallon between the time of purchase and the time of delivery. The case was resolved by a court order barring the company from its illegal practices and compelling it to make refunds to overcharged customers.

Energy And Utility Services

Soaring energy costs are squeezing the budgets of New Yorkers, forcing them in some cases to cut back on food and other necessities just to pay their utility bills. Because of the crisis in energy rates, one of the Attorney General's chief priorities upon assuming office was the creation of an Energy and Utilities Unit to protect the public from unjustified and inflationary rate increases. This year, the unit's involvement in a number of important cases helped to save hundreds of millions of dollars in utility costs for consumers across the state.

Utility Rates

The unit's attorneys focused their attention in 1981 on fighting a request by the New York Telephone Company for an \$889 million rate increase — the largest rate increase ever sought in the history of the state. The Attorney General prosecuted the case against the rate increase on behalf of a broad



Telephone customers were saved \$300 million in rate hikes as a result of a Department action before the Public Service Commission.

coalition of governmental agencies and public officials. In a stunning vindication of the coalition's case, the Public Service Commission ultimately denied a third of the request, saving telephone customers more than \$300 million. In addition, due in part to the coalition's intervention, the price of public pay phones was kept at 10 cents.

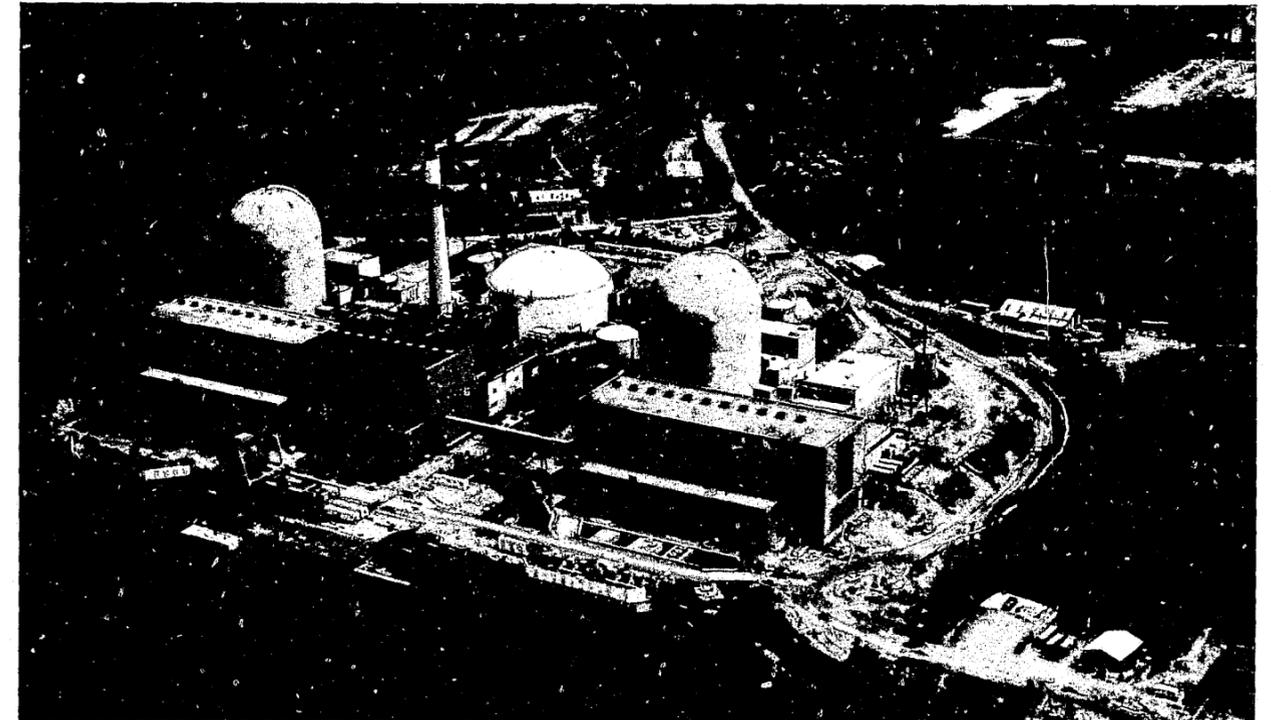
The Attorney General also helped to persuade the Commission to deny portions of rate hike requests by five other utility companies: Brooklyn Union Gas, Central Hudson Gas and Electric Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, and Long Island Lighting Company. The total amount saved for residential ratepayers in these cases was \$34 million.

Concerned about the staggering costs involved in the proliferation of nuclear power plants, the Attorney General intervened in an investigation of the construction costs for Long Island Lighting Company's nuclear generating plant at Shoreham. By the time it is completed, the plant is expected to cost 13 times what was originally projected, or \$2.5 billion. The Attorney General's chief concern is to ensure that consumers do not bear the financial burden of the serious errors made by management in constructing the plant.

Also during the year, the Attorney General filed major lawsuits against Consolidated Edison and the New York Telephone Company seeking to recoup for consumers over \$1.5 billion in "phantom taxes" collected over the past 10 years. These funds have been represented by the utilities as federal tax liabilities, but because of tax loopholes, were never actually paid to the IRS. If successful, the two lawsuits could affect phantom tax overcharges by all of the state's major utilities, an estimated \$2.7 billion.

Fuel Oil And Gas Overcharges

Disruption in the world's oil markets beginning in 1973 with the Arab oil embargo has had disastrous effects on the prices paid by New Yorkers for gasoline and home heating oil. The problem was exacerbated by the fact that oil companies used the Arab oil embargo as an excuse to boost profits by raising prices to unfairly high levels. During the year, an important case was resolved in which the Ashland Oil Company had been accused of overcharging its customers across the country by more than \$52 million. Ten percent of Ashland's gasoline sales are made in New York State, and the Attorney General had intervened in an administrative proceeding brought by the federal Department of Energy because he wanted to make sure that all reimbursements which were ordered went to consumers, not to the federal treasury. Late in 1981, the case was settled and refunds of approximately \$2.5 million were ordered to Ashland's New York customers. The successful resolution of the case could have a positive impact on other



When the Attorney General proved that Con Ed's negligence caused Indian Point II's breakdown, the company was forced to pay \$38 million to 2.8 million customers — the largest utility refund in state history.

cases involving overcharges by major oil companies to New York consumers.

Also this year, due to the Attorney General's efforts, more than \$70 million in refunds were ordered for New York's natural gas consumers. The refunds stemmed from a successful action brought by the Attorneys General of New York, Maryland, and six other states to get the U.S. Supreme Court to overturn a Louisiana tax on natural gas. The tax was imposed only on natural gas taken from the Outer Continental Shelf that was consumed in other states. The case was important to New York, because half of its natural gas comes from Louisiana. In throwing out the tax, the court adopted the Attorney General's arguments that it placed an unconstitutional burden on interstate commerce, unfairly discriminated against out-of-state natural gas users and interfered with federal regulations setting the price of natural gas.

Indian Point II Nuclear Plant

In a major and historic victory, the Attorney General won a \$38 million refund for consumers who had been forced to pay higher electric rates following a breakdown at one of Con Edison's nuclear generating plants. The refund stemmed

from a complaint filed by the Attorney General and his aggressive participation in a year-long investigation conducted by the State Public Service Commission. In hundreds of pages of testimony and exhibits, the Attorney General and expert witnesses appearing on his behalf successfully argued that a 1980 flooding incident at Indian Point II was the result of the company's negligence, and that therefore, consumers should not bear the burden of increased generating costs. The flooding incident had caused an unscheduled outage at the plant for two months, during which time Con Edison used the fuel adjustment clause to pass on to its 2.8 million customers the extra costs of more expensive replacement power — some \$850,000 a day. (Under the fuel adjustment clause, a utility may increase its monthly rates automatically based upon minor increases in the cost of fuel to the utility. However, in this case, the increase amounted to a full 10% of Con Edison customers' bills.)

To protect the public from such major rate increases in the future due to nuclear accidents and other errors by utilities, the Attorney General drafted and secured passage of legislation that restricts the use of the fuel adjustment clause. The legislation empowers the Public Service Commission to order refunds to consumers in all instances where rate increases passed along through the fuel adjustment clause result from a utility's negligence.

Representing The Public

Environmental Protection

In the face of increasingly serious threats to the public's health and safety caused by air pollution, the handling and disposal of hazardous wastes and the proliferation of nuclear power, the Environmental Protection Bureau initiates affirmative litigation to protect the public in these vital areas. Acting at the request of the State Departments of Environmental Conservation and Health, and the Adirondack Park Agency, the bureau also takes legal action to enforce environmental standards, and defends these state agencies when their regulatory actions are challenged in court. In addition, the bureau's attorneys and technical staff investigate and respond to citizen complaints and prepare reports on major environmental problems in the state.

Toxic Wastes

One of the most serious environmental threats of our time is caused by the careless and illegal disposal of hazardous chemical wastes. In 1981, the Environmental Protection Bureau expended more effort on hazardous waste litigation



The Department seeks "complete and permanent" remedial action and \$635 million in damages in its historic Love Canal suit. A special computer tracks 800,000 pages of documents collected for the trial.

than on any other type of case. During the year, the bureau pressed forward on a \$635 million lawsuit filed against Hooker Chemical & Plastics Corp. for its alleged dumping of hazardous wastes at Love Canal. One of the nation's largest environmental lawsuits, it seeks "complete and permanent" remedial action; recovery of all expenses incurred by the state in taking emergency remedial action at the site, including the cost of relocating residents; and \$635 million in damages. Throughout 1981, the bureau's attorneys participated in complex discovery in the Love Canal case, turning over to Hooker approximately 100,000 pages of documents. In addition, during the year, the Department established a computer system to keep track of the 800,000 pages of documents that have been collected to date in preparation for trial.

Progress was also made on other actions pending against Hooker for its alleged dumping at three landfill sites in Niagara County. A landmark settlement agreement reached in the case involving the Hyde Park landfill was filed with the court for approval. The cleanup program required by the settlement will be the most comprehensive effort ever made to clean up toxic waste contamination. Hooker's obligations for implementation of the program will cost up to \$50 million and will continue over a 35-year period. Also, by year's end, negotiations were underway in the suit concerning the so-called S-Area site, and Hooker had indicated a willingness to enter into discussions about the landfill known as 102nd Street.

In other actions to fight toxic dumping, the bureau brought suit against eight companies across the state whose persistent flouting of state environmental protection laws caused serious threats to groundwater or drinking water. A special area of concern was Long Island where all drinking water is obtained from particularly fragile aquifers, and the Attorney General filed a total of three lawsuits this year against Long Island companies accused of mishandling hazardous chemicals. For example, the Attorney General went to court against the Purex Corporation, the well-known bleach manufacturer. Purex was the owner of a former chemical storage facility in Garden City, where hazardous chemicals, including known carcinogens, had been improperly handled for many years, resulting in serious contamination of the site. The Attorney General's lawsuit seeks to force Purex to clean up the site entirely, including decontamination of the groundwater. It also seeks up to \$50 million in damages.

In another important action commenced in Vestal, a town just outside of Binghamton, the Attorney General filed a lawsuit alleging that a series of chemical spills caused the pollution of a public water supply well. The suit seeks several million dollars in punitive damages and the cost of building a water filtration plant. In a unique development, the town itself joined the Attorney General as co-plaintiff in the suit, marking the first time that the State of New York and a locality have brought joint legal action to fight toxic dumping.

Representing The Public



The Department and the Town of Vestal launched a suit charging that toxic chemicals dumped from a Monarch Chemical Inc. site contaminated the Broome County town's drinking water.

The Attorney General's efforts to combat toxic dumping were not limited to actions against private companies. Acting on behalf of the Department of Environmental Conservation, the Attorney General sent a notice to the federal government of the state's intention to sue in connection with major spills of military jet fuel alleged to have occurred at the Suffolk County Airport in the 1960's, when the airport was run by the Air Force. As a result of the spills, it is alleged that tens of thousands of gallons of jet fuel, which contains the carcinogen benzene, leached into the groundwater. Already the wells of several families who live south of the airport have become contaminated and the Attorney General is concerned about a possible ecological threat to nearby Moriches Bay.

Also as a result of the Attorney General's efforts this year, the state acquired a powerful new weapon to crack down on illegal toxic dumping — a new law which imposes felony sanctions for this crime. Prior to passage of this law, the state's inadequate penalties made New York one of the most attractive states in the northeast for illegal dumping. Under the new law which was drafted by the Attorney General, violators can receive up to seven years in prison and a fine equal to \$100,000 or the amount needed to restore the area damaged by the dumping.

Acid Rain And Other Pollution Problems

In 1981, the Attorney General filed a series of unprecedented lawsuits against the U.S. Environmental Protection Agency (EPA) regarding its inaction on acid rain, one of the most serious pollution problems facing New York State.

Over the past two years, the Attorney General has become increasingly concerned about an apparent trend towards relaxing emission standards for large midwestern coal-burning power plants. Sulfur dioxide from these plants is carried by prevailing winds to New York where it mixes with moisture in the atmosphere to form acid rain. Acid rain has poisoned hundreds of Adirondack lakes and streams which have been left virtually devoid of fish life by the water's high acidity. In addition, acid rain destroys historic buildings and monuments, threatens crops, and can leach heavy metals from soil or plumbing, thereby making drinking water unsafe.

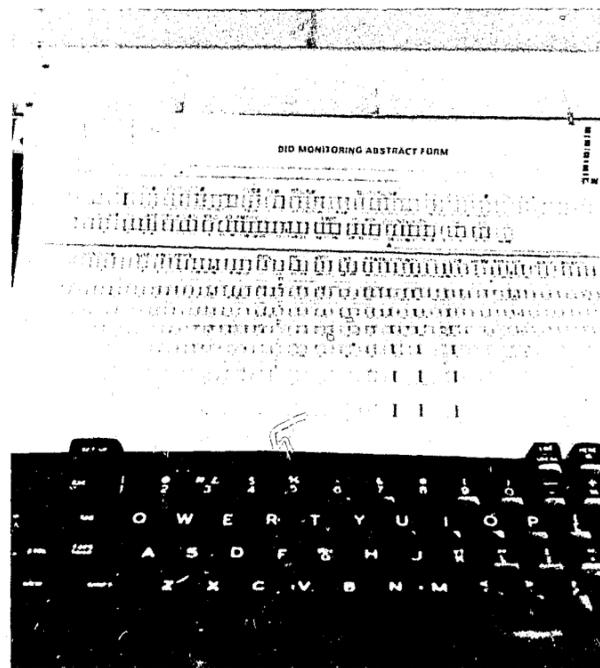


In testimony in Washington, the Attorney General urged Congress to strengthen the Clean Air Act. He was joined by Assistant Attorneys General Mary Lyndon (L) and Marcia Cleveland (R).

In response to the EPA's refusal to take action on this problem, the Attorney General has launched the largest litigation effort against acid rain in the nation's history. Beginning in January, his office filed petitions with EPA opposing sulfur dioxide emission increases for 24 midwestern power plants. And in response to EPA's subsequent approval of increases for six of these plants, the Attorney General commenced five lawsuits in federal court.

With respect to other air pollution problems, the Attorney General sued EPA to compel it to regulate arsenic, a highly toxic heavy metal, which is emitted from the industrialized areas of northern New Jersey and carried by prevailing winds to New York, posing a particular hazard to Staten Island residents. The Attorney General also sent notices of intent to sue EPA to compel regulation of other hazardous pollutants including cadmium and polycyclic organic matter or POM's. These notices are the beginning of a major litigation program focusing on hazardous air pollution.

Representing The Public



Funded by a federal grant, the Department launched a computer analysis to detect collusive bidding in state contract awards.

adversely affected the prices New York and other states paid for stationery and other paper supplies. After winning an appeal in the United States Court of Appeals, the Attorney General negotiated a \$220,000 settlement for the 26 states; New York will receive approximately \$75,000.

Also in 1981, the Attorney General cracked down on an antitrust conspiracy by the state's 104 leading title insurance companies and title examiners. A lawsuit brought by the Attorney General charged that the defendants illegally fixed the fees for title searches and abstracts, which are usually required for any home purchase. To settle the matter, the companies paid the state \$175,000 in civil penalties and attorneys' fees.

Another important effort undertaken by the Antitrust Bureau this year was the launching of a statewide bid monitoring project that will utilize computer analysis to secure evidence of collusive bidding in the awarding of public contracts. Until now there has been no effective way to monitor the integrity of the bidding process for billions of dollars worth of contracts awarded annually by the state and its municipalities for such items as building materials and school supplies. Funded by a federal grant, the project will initially analyze competitive bidding in approximately 100 towns and villages throughout the state. Where statistical evidence of collusion is uncovered, the bureau will bring the appropriate criminal or civil action.

Representing The Public

Civil Rights

Using his authority under the State Human Rights Law to combat discrimination based on race, religion, national origin, sex, age, marital status and disability, the Attorney General initiated and prevailed this year in cases of major legal significance on a broad range of civil rights issues. Lawyers for the Civil Rights Bureau also made extensive use of federal courts and laws to raise important civil rights matters.

Combating Discrimination

In a major action, the Attorney General filed a lawsuit against the New York City Transit Authority charging that it was unlawfully denying female bus drivers opportunities for promotion. The suit, filed in State Supreme Court in Brooklyn, sought to stop the Transit Authority from using a seniority system to grant bus drivers provisional promotions to positions as bus dispatchers, an entry level management position. The Attorney General argued that the use of the seniority system as a basis for promotions was unfair because, as a result of the long history of discrimination by the Transit Authority, no women had been able to acquire more than three years of seniority as a bus driver. Thus, the Attorney General maintained, women were effectively disqualified from promotion. The court agreed and issued a preliminary order requiring the Transit Authority to scrap the seniority system in favor of a merit system for bus dispatcher appointments. The Transit Authority is appealing this ruling.

Also in the area of employment, the bureau's attorneys prepared for trial in a suit charging the U.S. Department of Labor with failing to enforce federal affirmative action regulations in the construction industry. The suit alleges that the percentage of minorities and women employed in New York City's construction trades falls far short of the current federal goals. In conjunction with this action, the Attorney General submitted formal comments opposing proposals by the Reagan Administration to weaken affirmative action requirements for federal construction contractors.

Also in 1981, as a result of efforts by the Attorney General, the Legislature amended the Disability Benefits Law to afford pregnant women who become disabled the same rights to benefits as other workers who suffer disabilities.

In a landmark case involving the civil rights of mentally retarded citizens, the Attorney General successfully sued a group of Long Islanders who attempted to prevent the state from creating a community residence for the retarded. The State Office of Mental Retardation and Developmental Disabilities had arranged to buy a house and set it up as a residence



A major lawsuit charged the New York City Transit Authority with illegally denying promotion opportunities to women bus drivers, including Arlene Dobler.

for eight moderately retarded adults and support staff. However, after the agency gave public notice of its purchase plan, a group of neighborhood residents bought the house, so that it could not be sold to the state. A decision rendered after a three-day trial in federal court concluded that the neighbors' conduct violated the Human Rights Law which prohibits housing discrimination against the disabled. The decision is an important precedent, enhancing the state's ability to aid thousands of mentally retarded adults relegated to institutions who could function in the community if given a chance.

Also this year, the bureau prepared for trial in a case against a Nassau County real estate firm accused of racial steering in violation of federal fair housing laws. A Queens neighborhood association which had been engaging in the same practice settled the matter out of court by consenting to stop violating the law. In a case involving yet another type of housing discrimination, the Civil Rights Bureau is appealing a 1981 Appellate Term decision which cleared the way for a landlord to evict a couple from their apartment because they are not married.

Representing The Public

The Attorney General took a strong stand in support of extension of the federal Voting Rights Act. In testimony presented before a subcommittee of the House Judiciary Committee in Washington, the Attorney General urged the extension of the Act's preclearance requirement, which requires the Justice Department to review proposed changes in voting laws or practices to make sure they do not discriminate against racial or language minorities. The Attorney General's commitment to protecting the voting rights of New Yorkers also led to an investigation into a proposed redistricting plan by the New York City Council. Arguing that the plan would unlawfully dilute the voting strength of the city's growing minority population, the Attorney General urged the U.S. Justice Department to reject it, which it ultimately did.

Unfortunately, New Yorkers' voting rights also received a setback this year when a panel of the Second Circuit of the United States Court of Appeals failed to sustain a decision that New York's population was undercounted by about one million people in the 1980 census. The decision was rendered in connection with a suit brought last year by the Attorney General against the U.S. Bureau of the Census which charged that if the undercount is not corrected, New Yorkers will lose representation in the House of Representatives. The Court of Appeals ruled that a new trial must be held because the lower court had improperly excluded evidence. The Attorney General has petitioned the Supreme Court to hear the case.

Recognizing that the most effective force in the fight against discrimination is an informed and alert public, the Attorney General published *Civil Rights in New York State: A Guide and Directory for New Yorkers to Help Combat Discrimination*. The guide attempts to raise the public's awareness of illegal discriminatory practices in employment, housing, credit, places of public accommodation and education, and explains how to file complaints on these subjects.



Civil rights suits charged real estate brokers with illegal racial steering.

Representing The Public

Protection Of Workers

In this time of painful economic dislocation for working people, particularly in the northeast, an ongoing priority of the Attorney General's office has been the vigorous protection of workers from exploitation in the workplace.

The Department of Law's Labor Bureau safeguards the rights of wage earners, injured employees and dependents of deceased employees by enforcing the provisions of the New York State Labor Law, the State Industrial Code, the Workers' Compensation Law, the Disability Benefits Law and the General Business Law in the civil and criminal courts. In 1981, actions by the bureau resulted in restitution to employees of nearly \$1,750,000 in unpaid wages, fringe benefits and workers' compensation awards. Approximately \$100,000 in fines and penalties were also imposed.

Enforcement Actions

The Labor Bureau takes action against the failure by employers to provide workers' compensation coverage and death benefits for employees; and employers' failure to pay wages and fringe benefits of all kinds. Significantly, the Attorney General can proceed criminally against officers of corporate employers for violations of the Labor Law, thereby preventing these individuals from being shielded by a corporate entity.

In one typical case, a telephone equipment sales and installation company in Long Island City was charged with failing to pay wages and commissions to its employees before going into bankruptcy. Labor Bureau attorneys had previously gotten the president of the company to make restitution of \$12,500 to 12 employees. This year, the Attorney General intervened on behalf of 35 more workers and obtained additional restitution of approximately \$40,000.

In another case, a criminal prosecution was instituted against a Queens nursing home, which after losing its federal Medicare funding refused to pay wages to employees who continued to work until the nursing home was closed. The nursing home was fined \$10,000 and its operator, who was also convicted, was required to pay restitution of more than \$32,000.

The Department was also successful in a number of cases seeking to collect workers' compensation awards from non-insured employers. Under law, all employers must protect their employees by providing insurance coverage against disability or death. In a typical case of this kind, the bureau's attorneys obtained \$26,000 in restitution for an employee of a



The Attorney General and Labor Commissioner Lillian Roberts distributed back wages won for former workers at Lockport's Norton Labs.

large Brooklyn supermarket who had sustained serious injuries after being shot in a hold-up.

In addition to these enforcement actions by the Labor Bureau, a three-month investigation by the Attorney General's Buffalo office and the State Department of Labor led to the recovery of nearly one-quarter of a million dollars for former workers of two bankrupt companies in upstate New York. The two companies, Norton Laboratories, Inc. of Lockport and Auburn Plastics, Inc. of Auburn, had been in financial difficulty for sometime, and failed to pay workers for three months before abruptly closing their doors in July. Following action by the Attorney General, the top executives of the two companies agreed to refund all back wages plus interest to a total of 183 employees.

In 1981, the Attorney General also defended in the appellate courts more than \$360,000 in disability and death benefits awards by the Workers' Compensation Board which had been challenged by insurance companies or employers.

Other Cases

In 1981, the Attorney General's office successfully represented the State Industrial Commissioner and the Workers' Compensation Board in a number of significant cases affirming the state's policies on worker protection.

In a case upholding the authority of the Industrial Commissioner to control the activities of employment agencies, a Monticello employment agency was prohibited from charging the maximum referral fee to hotel workers whose food expenses were to be deducted from their wages.

The bureau's attorneys also affirmed the right of the chairman of the Workers' Compensation Board to suspend a physician because of his refusal to answer questions in an investigation of alleged misconduct.

A decision won in the Appellate Division, First Department, blocked efforts by the New York State Chiropractic Association to force the chairman of the Workers' Compensation Board to promulgate higher medical fees for the treatment of injured workers.

Investor Protection

As investors seek new ways to increase their incomes as a hedge against inflation, they tend to become increasingly vulnerable to fraudulent investment schemes. The Attorney General moved forcefully in 1981 to protect the public from such frauds, utilizing the full criminal enforcement powers of his office under the Martin Act and the federal Commodity Futures Trading Act.

Boiler Room Schemes

The year saw a tremendous increase in the Attorney General's criminal prosecution of individuals involved in illegal "boiler room" operations. Typically, these are high pressure telephone operations, offering investors attractive-sounding opportunities to buy options or futures contracts for precious metals, oil and other valuable commodities. Typically, the risks are not disclosed and the value of the commodity is grossly misrepresented.



Department investigators and State Police officers raided the Mineral Resources boiler room, arresting its principals and telephone solicitors. Felony indictments were returned in this \$1.4 million fraud case.

In 1981, the Attorney General's office attracted nationwide attention by closing down six of these operations and arresting more than 50 individuals. In the largest crackdown on a boiler room ever conducted by any prosecuting agency in the country, state police and investigators assigned to the Investor Protection and Securities Bureau raided the downtown offices of Mineral Resources, Inc. and arrested the firm's principals and salespersons. Mineral Resources was dealing in an increasingly popular form of investment — strategic metals. In this case, the metal tantalum was allegedly being offered to unsuspecting investors at a highly inflated price of \$300 to \$400 per pound. Purchasers were allegedly told that the tantalum was suitable for use in the electronics industry when in fact it was scrap metal and had already been rejected by companies in this field. The scheme attracted over \$1.4 million in investments from more than a hundred people in numerous states. Felony indictments charging the defendants with grand larceny and scheme to defraud were returned in August after witnesses were brought to New York from across the country. A trial is expected in 1982.

In a boiler room case which was the first to be brought in a federal court, the Attorney General, in conjunction with the Commodity Futures Trading Commission, obtained a decision shutting down an international boiler room network dealing in oil futures contracts. In addition, the operators were ordered to return to investors millions of dollars they had obtained. The court adopted the Attorney General's position that commodity futures sales are illegal if not made on a licensed commodity exchange, giving authorities a new and important weapon in combatting boiler room operations.

Securities Fraud

During the year, the bureau's attorneys successfully resolved the largest securities fraud case in upstate New York in nearly a decade. Three Albany residents, who had been indicted as a result of an investigation by the Attorney General, pleaded guilty to defrauding elderly New Yorkers of more than \$2.4 million. The originator of the scheme was sentenced to two to four years in prison. The defendants had tricked 250 mostly elderly persons into investing in a limited partnership by guaranteeing them profits of up to 30%. False financial statements were then issued to investors, whose money had in fact been lost by the defendants in risky stock option speculations.

Also this year, an international con man wanted in several countries for crimes committed over a 30-year period was convicted and sentenced to a long prison term. The defendant, Eduardo Rabi, a 50-year old native of Iraq, was indicted in 1980 following an investigation by the Attorney General on charges of grand larceny in the second degree. He allegedly defrauded a Mexican heiress studying in the United States of

more than \$150,000 by representing that he was investing her money in a meat company and a food franchise that did not exist. During a trial that lasted almost a month, witnesses and documents were flown in from all over the world, and a special \$5,000 grant was provided by a prominent securities association to pay for translations of foreign documents and transcriptions of previous court proceedings. He is currently serving two consecutive seven year prison terms.

In a case initiated this year, a Connecticut man was arrested and charged with defrauding a California church of more than \$100,000 worth of diamonds. Operating as a registered investment broker out of a plush Manhattan office, the man allegedly received diamonds from the church and from at least four individuals who wanted them sold. The Attorney General commenced an investigation after the church complained that the defendant neither returned the diamonds nor turned over the proceeds from the sale. The matter is pending before a grand jury.

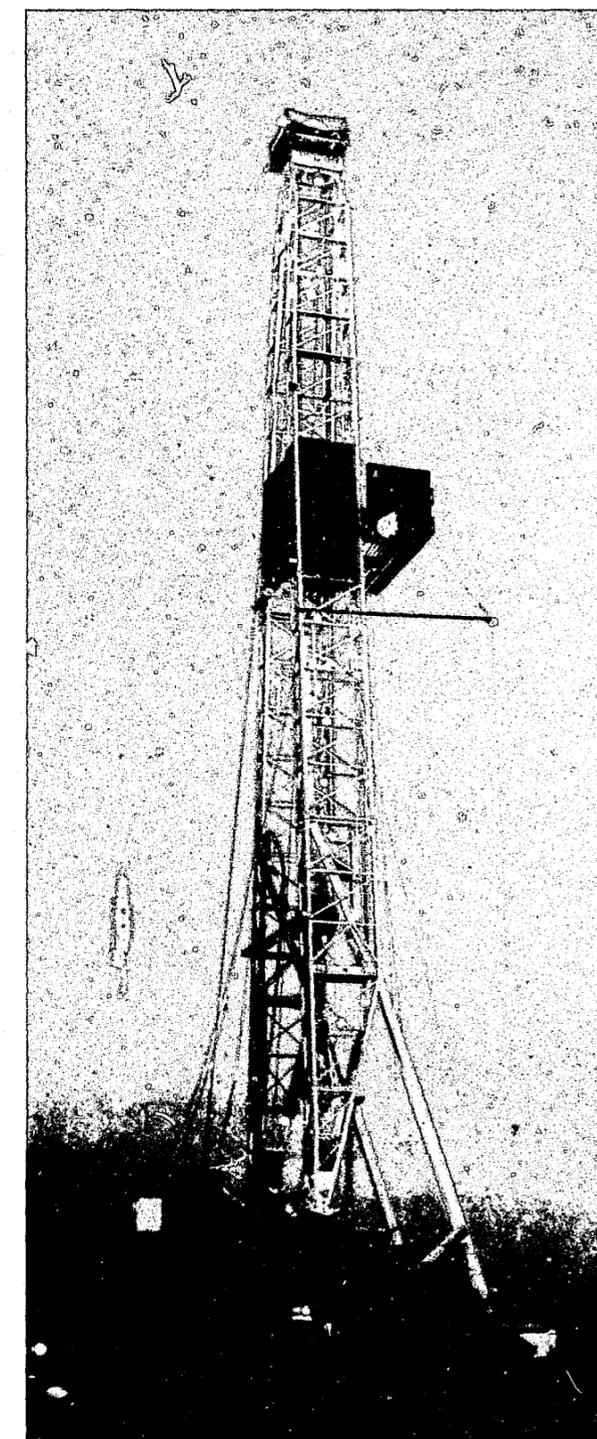
Other criminal actions commenced during the year include the first insider trading case ever prosecuted under the state's securities law. A lawyer who was a partner in a firm representing clients involved in mergers, acquisitions and takeover bids was accused of using his client's confidential information for his own benefit. An investigation revealed that within a period of months, the defendant increased his own securities trading account by a sum in excess of \$1 million. The defendant is awaiting trial in New York Criminal Court.

Pyramid Schemes

The year saw a winding down of the pyramid craze that swept New York in the summer of 1980. Strong action by the Attorney General put these operations out of business, punished their promoters and warned the public of their fraudulent nature. The cases of nearly a dozen persons who had been arrested as a result of the Attorney General's infiltration of meetings were successfully resolved in 1981 through consent injunctions.

Art Sales

The growing demand for art work as a form of investment has led to an increase in consumer complaints regarding abuses in the marketing and sale of art objects, particularly prints, photographs and other art multiples. It is crucial that prospective buyers of art multiples be told all facts relevant to their potential value. In 1981, the Attorney General was successful in securing passage of a bill which toughens disclosure requirements in this area. The new law requires the disclosure by the art merchant of information which will enable consumers to distinguish between a valuable fine art work and a worthless facsimile. It also will limit the all-too-frequent abuses connected with the use of phrases such as "limited



Criminal actions were taken in investment fraud cases, including oil-drilling schemes.

Representing The Public

editions" and "signed and numbered editions." As a result of this new legislation, the burden is placed on sellers to make sure that information about art multiples is accurate and complete, and the law also requires that refunds be made to any consumer whom a dealer misinforms.

Franchise Protection

1981 was the first full year of operation of a law which was drafted by the Attorney General to protect the public from fraud and other abuses in the sale of franchises. The new law requires full and truthful pre-sale disclosure in any franchise transaction, requires filing of offering and sales materials with the Department and gives the Attorney General increased civil and criminal jurisdiction.

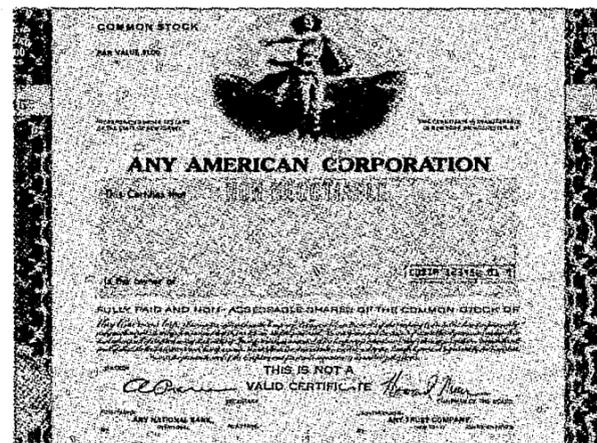
As a result of this expanded authority, the bureau's attorneys stopped several individuals with prior felony convictions from entering New York's franchise industry. The Attorney General also protected the public by preventing several franchise companies from advertising without registering with his office. It is expected that the new law will lead to increased enforcement activity against franchise fraud in 1982.

Securities Takeover Activities

Under this authority to enforce the Security Takeover Disclosure Act, the Attorney General reviewed this year filings for 17 takeover attempts involving a total of \$5 billion. Seven of the filings were the subject of detailed investigations by the bureau, including a \$450 million bid by the Dallas-based LTV

Corporation to take over the Grumman Corporation, Long Island's largest company. Following a public hearing, the Attorney General determined that LTV had not made sufficient disclosure to its shareholders and ordered the company to provide additional information. Soon thereafter, a federal court injunction resulted in LTV's withdrawal of the offer.

Also during the year, the bureau's attorneys successfully defended the Security Takeover Disclosure Act in four actions challenging its constitutionality in federal court. The Act was challenged on the grounds that federal laws should preempt state laws in this area. All of these actions were rendered moot before decisions were reached by the court.



The Attorney General enforces significant securities laws including the Security Takeover Disclosure Act. In addition, the first insider trading prosecution under New York law was handled this year.

Representing The Public

Regulation Of Charities And Trusts

Non-profit organizations play an indispensable role in American life, providing the resources to fulfill many of society's unmet needs and often serving as a marketplace for the development of public policy ideas. New Yorkers donate more than \$4 billion each year to charitable organizations which have total revenues of more than \$11 billion, making New York's voluntary sector one of the state's largest industries. The Attorney General's role in this area protects the vitality of the charitable community while promoting the interests of the public as the ultimate beneficiary of charitable activity. The Department's specific regulatory and enforcement duties are derived from the state Not-For-Profit Corporation Law and the Estates, Power and Trusts Law.

Enforcement Activities

State laws regulating charitable organizations require that they operate for the public good and not for the private benefit of any individual. One of the principle objectives of the Attorney General's office has been to ensure that those responsible for the management of non-profit institutions are held to high standards of conduct and are prohibited from self-dealing, conflicts of interest and other abuses.

In one significant case this year, the Attorney General filed a lawsuit against William J. Levitt, director and president of the Levitt Foundation, charging him with improper conduct and seeking to prevent him from further exercising control over the foundation. An investigation conducted by the Attorney General revealed that, beginning in 1974, Mr. Levitt engaged in a number of illegal financial practices involving millions of dollars, including the conversion of foundation funds for his personal use and the authorization of loans to a private business corporation owned by him and his wife. The lawsuit, which seeks to hold Levitt liable for any losses to the foundation which occurred as a result of these unlawful activities, will proceed to trial this year.

Another major investigation by the Department's attorneys focused on alleged financial abuses by Odyssey House, the well-known treatment and rehabilitation program for drug addicts, and Odyssey's founder and director, Dr. Judianne Densen-Gerber. The investigation found that personal expenses charged to the Odyssey House program by Dr. Densen-Gerber, including some \$7,000 in entertainment and travel expenses, were exorbitant and unrelated to the operation of the program. Following action by the Attorney General, Dr. Densen-Gerber agreed to pay back \$20,000 in

excessive personal expenses. In addition, to prevent such abuses in the future, major organizational and structural changes are being made to improve Odyssey's management practices.

At the end of the year, the office settled a lawsuit brought against the Congress of Racial Equality and its national director, Roy Innis, charging abuses in the organization's fundraising practices. For example, it was found that potential donors were subjected to foul language over the telephone and threats of recriminatory action if they did not contribute. The agreement corrected the abuses by imposing strict controls on how C.O.R.E. raises money, including a requirement that in all future telephone solicitations, employees carefully follow a written text approved by the Attorney General. As part of the settlement, Mr. Innis agreed to pay \$38,000 to C.O.R.E. as compensation for his use of C.O.R.E. funds for personal travel, entertainment and other activities.

Department attorneys also went to trial this year on a lawsuit against the Life Science Church. The organization was charged with selling ministers' credentials to members of the public by falsely telling them that they would become legally exempt from federal, state and local taxes. The Attorney General is seeking to put the promoters of the scheme out of business and to obtain damages and restitution for thousands of New Yorkers, each of whom paid the church some \$3,500 to become ministers. The court's decision is expected in early 1982.

In addition to its enforcement activities, the bureau also strives to take on cases which have important public policy implications for the voluntary sector. A significant example of such an action was the bureau's submission of an *amicus curiae* brief in a case involving a non-profit organization's claim of exemption from New York City real property taxes. The organization, "Symphony Space," provides low-cost music entertainment and training to needy artists. The case is significant because it could affect the financial viability of many other



Clerks process filings from over 25,000 charitable organizations. When irregularities are found, the Department takes enforcement actions, such as when Odyssey House's head was charged with financial abuses and C.O.R.E. with abusive fund-raising practices.

Representing The Public

New York City non-profit organizations whose real property tax exemptions have been challenged. In his brief filed in the Appellate Division, First Department, the Attorney General argued that allowing exemption claims by non-profit organizations such as "Symphony Space" would not significantly dilute New York City's tax base. The Attorney General also argued in favor of a broad application of the state law entitling those types of organizations to claim real property tax exemptions. A decision in the matter is pending.

Because present laws governing charitable activities are often unnecessarily burdensome to many legitimate institutions and also leave many potential beneficiaries unprotected, the Attorney General worked for legislative changes, which, if adopted, would mark the first comprehensive revision in 25 years of the laws governing charitable solicitation. The proposals would minimize the regulatory burden on thousands of smaller charitable organizations; eliminate loopholes that allow arbitrary exceptions to existing laws; provide a broader range of administrative sanctions to make effective enforcement action appropriate to the seriousness of the offense; require full disclosure to potential donors of an organization's programs and operating costs; and curb the fees allowed professional fundraisers and the fundraising expenses of charities themselves.

In addition, because of a large number of complaints regarding fundraising abuses by professional solicitors working for police associations and other law enforcement groups, the Attorney General proposed legislation specifically aimed at curbing abuses in this area. Due to the fact that professional fundraisers are paid a percentage of each dollar they raise, there is a great incentive to use any tactic, even harassment or fraud, to obtain contributions. For example, the Attorney General has learned of numerous instances where fundraisers threatened that local businesses would not receive adequate



Surrogate's Court cases protect charitable interests and estates.

protection unless contributions were made, or resorted to abusive language or even physical threats. The Attorney General's proposed legislation, which would apply to New York City, would eliminate these abuses by banning the use of professional fundraisers by law enforcement groups. It would require that all solicitations for charitable contributions be conducted solely by unpaid volunteers or by law enforcement officers themselves.

Trusts And Estates

Using his authority under the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act, the Attorney General obtained a number of court decisions this year which affirm and enhance his power to protect the rights of charitable beneficiaries.

One significant case involved a prized primitive art collection left to the Smithsonian and Peabody Museums by the famous photographer, Eliot Elisofon. Seven years after the gift was made, Elisofon's two daughters attempted to use a legal technicality to claim for themselves a substantial part of the collection. The New York County Surrogate's Court granted the Attorney General's motion to dismiss the claim on the grounds that the daughters had previously waived their rights. In addition, the Surrogate ruled that the daughters waited too long to act, since the museums had already spent considerable amounts of money to maintain and exhibit the collection.

Another case involved the proposed sale by the Manhattan School of Music of property on Long Island, which because of its location on a severely eroded sand dune was in danger of falling into the sea. The Attorney General opposed the intervention of a contiguous landowner who sought to block the sale. The landowner claimed that the sale violated certain conditions under which the land had been donated to the school. In denying intervention, the New York County Surrogate's Court found that the Attorney General more than adequately represented the public's interest in determining the charitable intent of the decedent and that the school should be allowed to dispose of the property and use the proceeds for much needed student dormitory facilities.

In the many faceted litigation entailed in the Estate of Charles Gilman, the Attorney General successfully represented the interests of a private foundation which had been established by the owner of the country's largest privately-owned paper company. The foundation has an interest in any profits which would be realized in the event that the company is sold within the next five years. The court adopted the Attorney General's suggestions in restructuring the employment contracts of the company's two owner-executives, thereby saving the company more than \$4.5 million. This could increase the benefits to the foundation in the event of a sale, making more funds available for grants and other foundation activities.

Representing The Public

Criminal Investigations And Prosecutions

The criminal work of the Attorney General's office is carried out by several of the Department's bureaus. For example, as detailed elsewhere in this report, the Antitrust Bureau obtained 73 grand jury indictments this year against milk companies and their employees for alleged price-fixing. Criminal action was also brought by the Investor Protection and Securities Bureau in connection with several major illegal boiler room operations and fraud cases. In addition, the Department's Special Prosecutions Bureau handles major prosecutions of white collar crimes in such areas as large scale tax fraud and insurance swindles. The number of criminal matters handled in 1981 by the bureau was 127. Grand juries impaneled by the bureau to investigate these matters returned 50 indictments.

Tax Evasion

The Department was successful this year in a major new effort to obtain stiffer penalties for tax evaders. Under state law, tax evasion is a misdemeanor. But, beginning in 1979, for the first time in history, individuals who failed to turn over sales tax monies to the state were indicted for grand larceny, a felony, under the theory that these monies belong to the state once they are paid by consumers, and a retailer's failure to turn them over constitutes theft. In a major development this year, the Appellate Division in *People v. Lyon*, upheld the Department's interpretation of the Penal Law in this situation. This means that for the first time, felony penalties of up to seven years in prison and a fine of \$5,000 can be imposed on sales tax evaders.

Altogether in 1981, actions by the bureau resulted in the indictment of 29 individuals and corporations which withheld sales tax monies from the state. The Tax Department also referred a significant number of cases involving failure to file income tax returns, the filing of false income tax returns and various violations of the franchise tax statutes.

Some important tax matters handled by the bureau in 1981 were:

- The owner of the Palace and Proof of the Pudding restaurants in Manhattan was found guilty of grand larceny in the second degree, arising out of his failure to pay nearly \$250,000 in sales tax monies to the state. The court imposed a 60-day jail sentence and a corporate fine of \$10,000.

- An auditor in the State Department of Taxation and Finance was convicted after trial in Queens Supreme Court for taking a bribe in exchange for giving a taxpayer a favorable audit. The defendant was sentenced to an intermittent period of incarceration and four years probation.

- A street peddler in Manhattan pleaded guilty to a felony charge arising from his filing phony state sales tax returns and cheating the state out of tax monies on \$50,000 in customer sales. The defendant will be sentenced in March 1982.

- The operators of a gasoline station in Nassau County pleaded guilty to a felony, stemming from charges that they under-reported sales to the Tax Department. The defendants were ordered to make complete restitution to the state of \$30,000 and were placed on five years probation.

A second major category of criminal cases handled by the bureau involves significant unemployment insurance fraud. In 1981, nine such matters were referred to the Special Prosecutions Bureau by the Department of Labor. In one typical case, a defendant who had filed fictitious unemployment claims totaling \$45,000 pleaded guilty to grand larceny in the second degree and was sentenced to serve up to three years in state prison.

Sweatshop Probe

During the year, an ongoing investigation conducted with the State Department of Labor and the State Workers' Compensation Board led to the arrest of nine employers in Manhattan's garment industry accused of exploiting workers in the operation of sweatshops. The defendants operate eight



Undercover Department investigations evidenced that sweatshop conditions have returned to some garment industry firms; this shop was raided in June.

Representing The Public

apparel factories employing an estimated 250 to 400 workers. The charges included failure to provide employees with workers' compensation benefits and disability insurance and failure to maintain records of wages and hours, thus making it impossible to determine whether employees were being paid the minimum wage. In addition, the investigation disclosed numerous instances of unsafe and unhealthy working conditions which were referred to federal authorities for appropriate action.

During the year, all but one of the defendants either pleaded guilty or were convicted after trial. (One of the defendants is a fugitive from justice and a warrant has been issued for his arrest.) The defendants were also ordered to undertake a comprehensive program to bring their businesses into full compliance with the state's worker protection laws.

Other Criminal Enforcement Activities

An investigation into illegal apartment referral services led to the closing of seven firms which comprised a major portion of this industry in New York City.

The firms had attracted clients with newspaper advertisements describing apartments which were supposedly available in desirable locations and at extremely reasonable rates. However, upon responding to these ads, consumers were provided with listings of apartments which either did not match the description in the ads, were not available or did not exist at all. The firms charged fees of up to \$60 and refused to make refunds even though they almost never found an apartment for any of their clients. To date, grand jury indictments have been returned against the owner and an employee of the largest of these agencies. Additional indictments are expected soon.

The bureau also cracked down on the owner of a large Nassau County insurance brokerage firm who pocketed at least \$50,000 in deposits paid by consumers toward the purchase of automobile insurance, thus leaving these consumers without coverage. The defendant pleaded guilty to the top count of a felony indictment and will be sentenced early next year.

Another action this year was the first successful prosecution for the illegal sale of term papers in New York. Following the execution of a search warrant, investigators assigned to the Special Prosecutions Bureau seized a truckload of term papers which were being offered for sale to metropolitan area students. The owner of the business was subsequently arrested and convicted on misdemeanor charges of violating the State Education Law. Because the illegal sale of term papers is a serious problem that penalizes students who do their own work and lowers the state's overall standard of education, the Attorney General drafted and secured passage of legislation which closed loopholes in the law under which violators are prosecuted. The new law also removes obstacles to the use of undercover agents in the investigation of the crime.



Criminal convictions were returned against these sweatshop employers, arrested by Department investigators for depriving workers of basic rights and benefits.



Department actions have virtually closed down New York's illegal apartment referral industry.

Representing The Public

In addition to the Special Prosecutions Bureau, other bureaus undertook significant criminal enforcement efforts this year.

The Attorney General's Professional Responsibility and Enforcement Bureau conducts investigations and prosecutions of criminal violations of the state's professional licensing laws. In 1981, the bureau instituted criminal proceedings against 25 individuals practicing various professions without licenses and put them out of business. These individuals claimed to be doctors, nurses, dentists, optometrists, certified public accountants and other professionals. In one case, the Department convicted an individual who had obtained employment in a New York City hospital as a surgical resident on the basis of phony credentials. The hospital staff became suspicious when, during an operation, he turned his head at the sight of blood.

In another case, a guilty plea was obtained from an unlicensed individual practicing medicine out of a Manhattan hotel room and falsely representing himself as a neurosurgeon and psychiatrist. The defendant was ordered to make restitution for all fees collected from a woman whom he was illegally treating.

The Attorney General's Employment Security Bureau represents the Industrial Commissioner in criminal matters involving the Unemployment Insurance Law. Computer cross-checking of employers' quarterly wage reports and unemployment insurance payment records has improved fraud detection and resulted in a significant increase in criminal prosecution referrals from the New York State Labor Department. Most of these involve claimants who illegally obtained unemployment insurance benefits while they were working. During 1981, attorneys in the Employment Security Bureau obtained 235 convictions in these cases and recovered more than \$500,000.

Organized Crime Task Force

The Attorney General has joint responsibility with the Governor for overseeing the activities of the statewide Organized Crime Task Force, which was established in 1970 to work with local district attorneys in the fight against organized crime.

It is estimated that the illegal activities of organized crime cost the people and businesses of New York \$20 billion a year. To ensure that the financial resources of the OCTF are consistent with the enormity of this problem, the Attorney General obtained legislative approval for a 145% increase in the Task Force's budget - from \$1.12 million in 1980 to \$2.7 million for fiscal year 1981. The extra funds have enabled the OCTF to increase its staff from seven to 20 attorneys, significantly expand its investigatory and intelligence gathering capacity, and acquire needed electronic crime detection equipment. In addition, in June, after a lengthy search, the



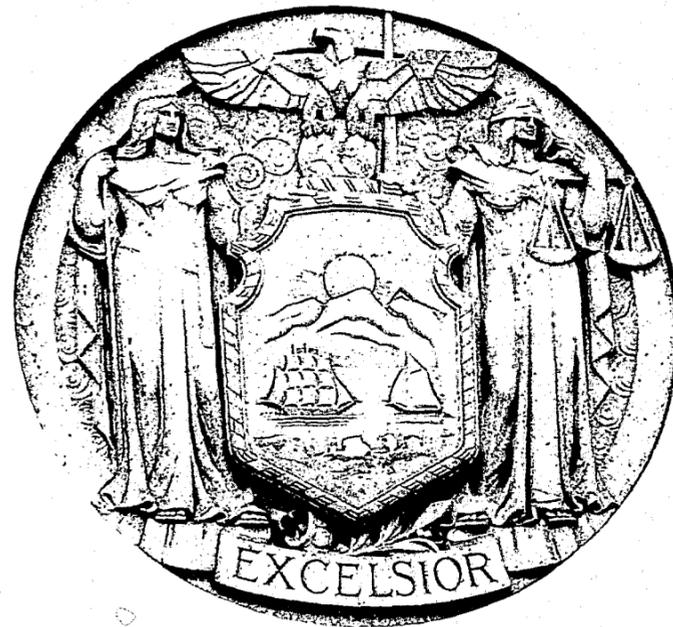
Ronald Goldstock, new head of the Organized Crime Task Force.

Attorney General and the Governor appointed a new director for the OCTF, Ronald Goldstock. Formerly the director of the Cornell Institute on Organized Crime, Mr. Goldstock has also served as Chief of the Rackets Bureau in the New York County District Attorney's office and Acting Inspector General of the U.S. Department of Labor, where he directed the department's activities in the investigation and prosecution of labor racketeering.

During 1981, the Organized Crime Task Force processed 52 indictments involving 59 defendants and five counties. There were 45 indictments pending at the beginning of 1981. Grand juries in four counties voted an additional seven indictments during the year. Of the 48 cases reaching disposition, guilty pleas were entered by 29 defendants, and 19 were convicted after trial. The Task Force's conviction rate was 100 percent. Additional cases investigated by the Task Force were prosecuted by District Attorneys in three counties.

The results of some OCTF major operations included the following:

- Three persons were indicted in Herkimer County on murder charges for an organized crime "hit" against a fourth person with whom they were engaged in a stolen insurance check scheme.
- Following a two-year investigation with the New York State Police and the State Racing and Wagering Board, three persons were convicted in Rochester on charges of sports bribery, grand larceny and related crime in connection with a race track bribery and embezzlement scheme.
- In a number of western New York counties, 13 town highway superintendents were indicted and convicted for receiving bribes from equipment suppliers. Another 11 were convicted on charges brought against them in 1980.
- Three persons were convicted in Brooklyn for their role in a conspiracy to extort a half-interest in a bar located in New York City.



Defense Of State Law And Public Policy

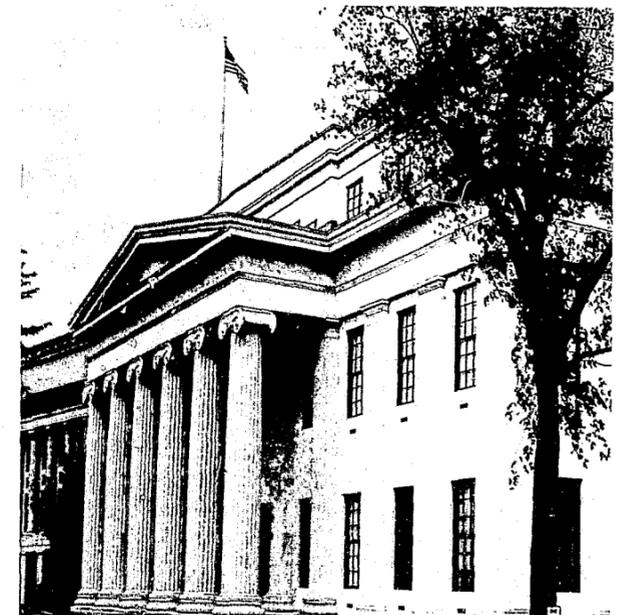
As the state's chief legal officer, the Attorney General is called upon to defend the constitutionality of acts of the Legislature. Challenges to legislative actions have important ramifications for state programs and public policy, and the stakes in these disputes often amount to hundreds of millions of dollars.

One of the most important cases being handled by the Department is *Levittown Union Free School District v. Nyquist*. Thirty school districts are challenging the constitutionality of the formula adopted by the Legislature to distribute state aid for primary and secondary education to school districts. The plaintiffs argue that New York's system for financing state education relies too heavily on property taxes with the result that poor districts are less able to provide high quality education than affluent ones. The contention has been sustained in two state court rulings, and the Legislature has been ordered to come up with a more equitable system. The matter was on appeal to the Court of Appeals at year's end.

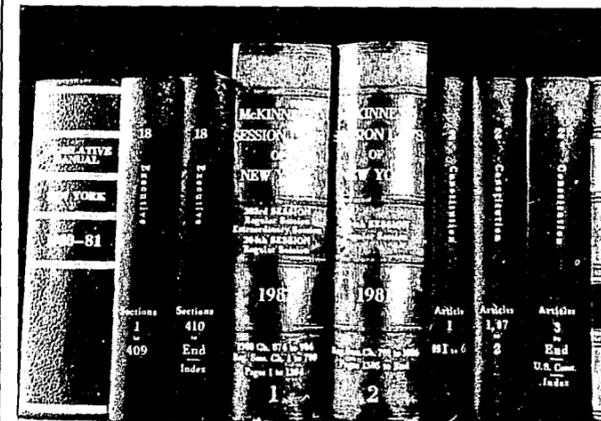
In 1980, a law was passed authorizing a 2% tax on oil company gross receipts in an effort to raise approximately \$235 million annually for mass transit. Under the law's "no-pass-through" provision, oil companies were prohibited from passing the tax on to consumers through higher prices. In July

of 1980, 10 major oil companies successfully challenged the constitutionality of the "no-pass-through" provision in federal court on the grounds that it constituted an illegal form of price control by the state. An appeal is still pending. However, in other litigation concerning this tax, the Attorney General won a major victory this year by obtaining favorable decisions in three separate actions filed in state court in which major oil companies challenged the constitutionality of the tax itself as opposed to the "no-pass-through" provision.

Another case of major significance stems from a 1975 court ruling requiring that all real property in the state must be assessed at full market value, thus precluding the common practice of assessing industrial properties at higher values than residential properties. Full value assessment would lead to dramatic shifts in property tax burdens, especially in New York City and Nassau County, where it is estimated that claims by commercial property owners could exceed \$3 billion. In 1980, the Legislature, in response to this problem, adopted a measure which makes it more difficult for claimants in these areas to prove overassessment. This law prevented claimants from citing the state equalization ratio as evidence



The Court of Appeals, New York's highest tribunal.



As the state's chief legal officer, the Attorney General defends state law and policy including the formula used for distributing state aid to public education which is being challenged by 30 school districts in the Levittown case.

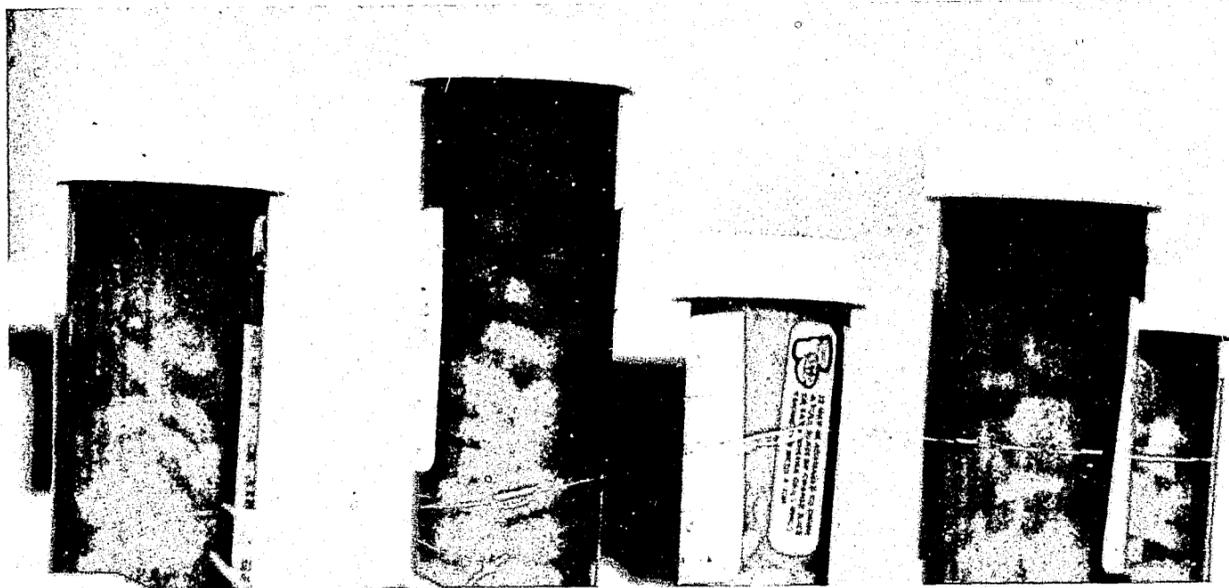
of their own overassessment. The Attorney General has intervened to defend the constitutionality of this 1980 law against the attacks of two major companies which argued that it unfairly limits their ability to press their claims and also violates their rights to equal treatment by setting up a separate system in New York City and Nassau County. At year's end, the Department was awaiting a decision by the Court of Appeals.

Representing The State

In *Benson v. Koch*, the Attorney General successfully defended the New York City rent control law in the Court of Appeals against an action by landlords charging that a housing shortage no longer existed in the city. During the year, an appeal of that decision in the United States Supreme Court was dismissed. In addition, in *Freeport Randall Company v. Herman*, the Attorney General, in conjunction with the State Division of Housing and Community Renewal, successfully defended in the Appellate Division a provision of the Emergency Tenants' Protection Act which authorizes rent controls in Nassau County.

A state policy in recent years to treat mentally ill, retarded and developmentally handicapped persons in the least restrictive setting which is appropriate to their needs has led to the creation of a growing number of group residences for these individuals in communities across the state. The 1978 "Padavan Law" established administrative procedures for considering objections by municipalities and homeowner groups to the location of these facilities in their neighborhoods.

In a typical case handled this year, attorneys in the Rochester office successfully defended a state decision to set up a community residence for 14 mentally retarded individuals in the Wayne County town of Newark. The Appellate Division, Fourth Department, rejected the town's claim that the establishment of the community residence would substantially alter the character of the neighborhood. In a Nassau County case, the Department is defending the Padavan Law against claims that its provisions are too restrictive and that it abridges the rights of the mentally retarded to live in a community setting.



Attorney General Abrams argued the defense of New York's Generic Drug Law — the first time in over 40 years that an Attorney General personally appeared in the Court of Appeals. Drug companies challenged the constitutionality of the law — which protects senior citizens and others against rising drug costs. The Court unanimously upheld the law.

The Attorney General won a favorable ruling in the case in State Supreme Court and is now in the process of defending that decision in the Appellate Division.

Also this year, in order to protect one of the state's most formidable weapons in the battle against rising health care costs, the Attorney General himself appeared in the state's highest court to defend the constitutionality of the generic drug law. It marked the first time in over 40 years that a state Attorney General had personally argued a case in the Court of Appeals.

Under the Generic Drug Law, when a physician approves the use of a generic equivalent for a brand-name drug, the pharmacist is required to provide a less expensive drug containing the same active ingredients, dosage, form and strength as the brand-name product. The law had been attacked by pharmaceutical manufacturers on the grounds that generic drugs allegedly do not necessarily have the same therapeutic value as their higher-priced counterparts. Because of the importance of the law, especially for the elderly who spend millions of dollars annually on prescription drugs, the Attorney General decided to personally handle the appeal. His argument stressed that the Legislature had held statewide hearings and had taken testimony from the federal Food and Drug Administration and numerous expert witnesses before passing the law. The Attorney General also pointed out that the law does not preclude the prescribing of brand-name drugs where appropriate. Subsequently, the court delivered a 7-0 ruling upholding the law.

Representing The State

Defense Of State Agencies And Officials

Each year, the Governor, the Comptroller and other officials throughout state government are named in thousands of lawsuits challenging their decisions and actions, or the laws and regulations on which their actions are based.

Defense Of State Agencies

Anderson v. Regan raised the issue of whether the Governor or the Legislature has authority over billions of dollars in federal grant money provided each year for such purposes as highway construction, aid to education and job training programs. The Senate Majority Leader brought a lawsuit challenging the expenditure of this money, which amounted to \$6.5 billion in fiscal year 1981, without formal appropriation by the Legislature. The court held that a legislative appropriation was necessary for the expenditure of these funds.

In *Selfridge v. Carey*, the Attorney General defended the Governor when he attempted to cancel an international rugby match at Albany's Bleeker Stadium based on his concern that the game might lead to civil disorders. One of the teams participating in the match was from South Africa, and there were reports that the game would spark violent demonstrations protesting South Africa's apartheid policies. In refusing to stop the game, the U.S. Court of Appeals (affirming the U.S. District Court for the Northern District) rejected the argument that the Governor's broad authority under the state's constitution to halt the games in order to preserve the peace took precedence over the South African team's right to play. Nevertheless, the court did affirm the Governor's authority to take steps, including the cancellation of a sporting event, when it appears that a dangerous situation is getting out of control. An application to the United States Supreme Court was not accepted.

In *NYPIRG v. Coughlin*, a citizens' action group had challenged the legality of the use of public funds by the Department of Correctional Services to publicize the Prison Bond Issue, a proposition on the 1981 ballot seeking approval for the expenditure of \$500 million to relieve overcrowding in the state's correctional facilities. The court held that the literature being distributed by the Department of Correctional Services was educational and that the state had a right to



The State Capitol in Albany. As the state's counsel, the Attorney General defends the government in thousands of cases.

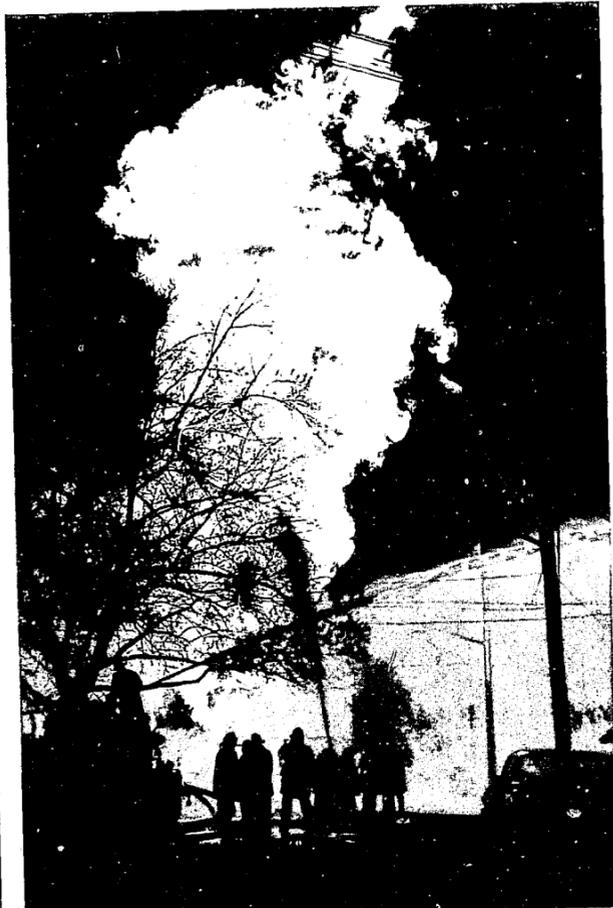
inform voters of the facts and questions surrounding the Prison Bond Issue.

In *Leichter v. Barber*, a state senator challenged the granting of tax credits to more than 1,000 corporations since 1977 by the State Job Incentive Board. The court dismissed the action, holding the plaintiff did not have standing to sue under the State Finance Law.

At issue in *Weinreich v. Statewide Insurance Company* was whether an administrative error in determining the level of benefits under the state's no fault insurance law necessitated retroactive payments to claimants. The Attorney General represented the Superintendent of Insurance who appeared *amicus curiae* in the case. The matter stemmed from a 1980 Court of Appeals ruling that the maximum monthly benefit for loss of earnings payable under the no fault law should have been \$200 more than had been stated in the Insurance Department's regulations. Both the State Supreme Court and the Appellate Division upheld the Superintendent's position that a regulated agency should not be penalized if a statute is misinterpreted, and that it would be administratively chaotic if a business could not rely on rules set by government regulators. The matter is scheduled to be argued in the Court of Appeals early in 1982.

In *Brady v. Paterson*, the Secretary of State and other members of the State Cemetery Board were sued by the Board's director, who charged that a decision to replace him was illegal, because it was allegedly motivated solely by political considerations. The plaintiff had been appointed by a former Secretary of State for a six-year term which had previously expired. In ruling against the plaintiff, the court found that the defendants had demonstrated that political affiliation was not the reason for the plaintiff's replacement.

Representing The State



One major case prevented the dissipation of the assets of a special fire insurance program for high risk urban areas.

The Attorney General also initiated a number of affirmative actions in 1981 in response to requests by state agencies. For example, in one significant action on behalf of the State Insurance Superintendent, the Attorney General prevented an effort by the insurance industry to "siphon off" the assets of a special program created to provide fire insurance to high-risk urban areas. Attorneys in the New York City Litigation Bureau went to court after learning of the industry's proposal to transfer \$52 million in assets from the program, commonly known as the F.A.I.R. Plan, to insurance companies which make up the insurance pool. F.A.I.R. Plan rates already range from 20% to 40% higher than voluntary market rates, and it was the state's position that investment income from the Plan's assets should be used to reduce rates, and not to increase the profits of insurance companies. The Attorney General was successful in obtaining a preliminary court order to halt disbursement of the Plan's assets pending a final decision of the matter in Manhattan State Supreme Court.

In another matter, acting to protect the rights of workers, the Attorney General joined 10 other plaintiffs, including the nation's top labor unions, in a suit to stop the federal government from lifting a 40 year-old ban on industrial homework. The government's repeal of the ban would affect some 15,000 New Yorkers employed in the manufacture of knitted outerwear, a major area of the apparel industry. In joining the suit, the Attorney General maintained that allowing workers to be paid for work in the home would severely impede the enforcement of state minimum wage and child labor laws, and could lead to a return to illegal sweatshops.

Social Services Cases

The defense of state agencies which provide public assistance and which regulate other social service programs make up a large part of the Department's litigation caseload.

During the year, the New York City Litigation Bureau was successful in an important case challenging the state's right to suspend Medicaid reimbursement to practitioners at so-called "Medicaid mills" which do not comply with the state's licensing laws. Disclosures of widespread fraud and abuse at these facilities, also known as shared health facilities, led to the passage of a state law requiring their registration with the Department of Health. In *Monasterio v. Blum*, the Attorney General successfully defended a lawsuit challenging the state's right to suspend Medicaid reimbursement to practitioners at shared health facilities which failed to register. In dismissing the action, the State Supreme Court adopted the Attorney General's assertion that the registration of shared health facilities is necessary to protect both taxpayers and Medicaid patients from fraud and abuse. As a result of the ruling, nearly all of the state's shared health facilities have registered with the Department of Health or are taking steps to do so.

The Attorney General also defended the State Department of Social Services in a number of actions brought by recipients of welfare and other public assistance programs challenging the level of benefits provided or decisions to deny benefits entirely. In *Weinhandler v. Blum*, for example, the Department stopped an effort to require the state to make annual adjustments in the shelter allowance payments to welfare recipients to reflect increases in the cost of rental housing. The petitioners argued that the Commissioner's failure to revise the shelter allowance schedule was a violation of her constitutional duty to provide for the aid, care and support of the needy. The Appellate Division disagreed, holding that there was no constitutional issue involved and that the matter was one of public policy to be left to the discretion of the Legislature. An adverse decision in the case would have required an additional expenditure by the state of \$100 million a year.

Representing The State



Cases affirmed the state's right to create community residences for the retarded, while other actions defended the level of care in state mental institutions.

In another matter, the Attorney General defended the Commissioner's interpretation of an important provision of the Social Services Law which states that an individual who voluntarily terminates his or her employment in order to obtain home relief is disqualified from receiving assistance for 75 days. The Attorney General argued that the Commissioner was right in applying the same penalty to an individual who wrongfully provoked his own discharge by falling asleep on the job, knowing that it would cause his dismissal. The Appellate Division upheld the position that a wrongfully provoked discharge is equivalent to a voluntary termination of employment.

The Attorney General also initiates affirmative actions on behalf of the Department of Social Services against group homes, day care centers and other communal facilities which fail to obtain licenses or which maintain substandard conditions. For example, an action taken by the Hauppauge office this year led to the closing of an unlicensed day care center in Deer Park which had been guilty of building code violations and inadequate supervision of children. And following an investigation by the Binghamton office, an unlicensed nursing home in Cortland, which was charged with fire code violations and improperly administering medication to patients, ceased operations as a nursing home.

Institutional Care Issues

The State Department of Mental Hygiene maintains a statewide system of institutional care for the mentally ill and the mentally retarded, encompassing 51 institutions and over 160 smaller community-based facilities. Cases relating to the physical conditions and delivery of services at these facilities constitute a substantial portion of the Department's litigation workload, both because of the number of actions brought and their increasing complexity. A growing number of these cases

are brought as class actions in federal courts. Moreover, the availability of attorneys' fees awards to prevailing parties in civil rights-related litigation has required the Department to participate in hearings on attorneys' fees applications, which frequently involve claims for hundreds of thousands or even millions of dollars.

A case which has had enormous fiscal and policy implications for the state was a 1975 class action suit brought on behalf of residents at the Staten Island Developmental Center for the mentally retarded, formerly known as Willowbrook. The suit resulted in a consent decree requiring large-scale reforms in the delivery of care as well as the de-institutionalization of large numbers of residents. The cost to the state of implementing the Willowbrook decree is approximately \$100 million annually. Attorneys' fees alone could amount to as much as \$2.4 million, if the recent request of the plaintiffs' attorneys is granted in full.

Moreover, the success of the plaintiffs in the Willowbrook case has spurred a number of other major lawsuits involving the care and treatment provided at other state facilities. For example, *Sundheimer v. Blum* raised the issue that mentally retarded children and adults who reside at home are not getting treatment equal to those affected by the Willowbrook consent decree. The Court of Appeals recently upheld the state's position that there is no denial of equal protection to these individuals.

The Department is also currently handling a class action suit charging that the residents of the Suffolk Developmental Center are receiving inadequate treatment and are subject to overcrowded conditions. Plaintiffs in this action seek to transfer all of the institution's present residents to community residences. The matter is scheduled to go to trial in 1982.

Another significant case is *Woe v. Carey* which challenges the care and treatment of patients who are civilly and involuntarily committed to over 20 state mental facilities. Plaintiffs contend that the care and treatment provided by the state in its mental health facilities should be equal to that provided to mental patients at private institutions. Department attorneys argued that the state facilities in question have been properly accredited and that there is no constitutional requirement that conditions in state institutions match those in the most expensive private institutions. The case was pending at year's end in U.S. District Court for the Eastern District.

In addition to far-reaching cases like these, the Attorney General also defends the State Department of Mental Hygiene in various other actions and proceedings, such as surrogate proceedings involving patients' estates. In 1981, more than 2,200 general litigation matters were handled by the New York City Mental Hygiene Bureau, whose responsibilities encompass the 12-county downstate region where the largest concentration of patients are treated. In addition, the bureau handled more than 500 requests seeking court authorization for elective surgery for committed patients.

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Mental hygiene matters were also a significant source of the caseloads of some of the Department's regional offices. The Rochester office, for example, handled an important case in which the director of a state facility sought court authorization to continue blood transfusions to a terminally-ill incompetent individual when the patient's mother wanted the treatment halted. Reversing lower court decisions which had ruled for the mother, the Court of Appeals held that no one, not even a parent, could deprive an incompetent person of life-sustaining treatment.

The Department of Law is also responsible for representation of the Departments of Mental Hygiene and Correctional Services in a variety of proceedings involving involuntary hospitalization under the state's criminal procedure, corrections, and mental hygiene laws. These include applications to commit criminal defendants to psychiatric facilities when they are deemed unfit to stand trial; applications by such defendants to convert their commitment to civil status; various applications concerning persons held in mental institutions who had been acquitted of criminal charges by reason of insanity; applications for transfer of persons from correctional facilities to psychiatric facilities on the grounds that they need treatment; various state *habeas corpus* proceedings brought by committed patients; and applications for retention of civilly committed patients in state psychiatric facilities.

The Mental Hygiene Bureau handled more than 7,000 of these retention matters and related jury trials in 1981, accounting for more than 400 full attorney days in court. In the regional offices, retention hearings and trials also continued to consume more attorney time in 1981. In Utica for example, 151 hearings and nine jury trials were held; and in

Syracuse, 178 such matters were handled, a 21% increase over 1980.

Consistent with its commitment to caring for the mentally ill, retarded and developmentally disabled in the least restrictive setting, the state continued its efforts to increase the number of community residential facilities for these individuals. In connection with this goal, the Department has had to defend the state against a growing number of legal actions by municipalities and groups of homeowners objecting to the establishment of these residences in their neighborhoods. The question in these disputes is generally whether the creation of the facility will substantially alter the nature and character of the area.

Employee Relations Issues

The Department represents the state in actions brought under the Taylor Law, which bars strikes by public employees. In the April 1980 New York City transit strike, for example, the unions involved were ordered not to strike by a Brooklyn Supreme Court Justice and, after a trial on contempt, were directed by the court to pay fines totaling over \$1 million for violating the order. This year, the Department's attorneys successfully defended the imposition of these fines in the Appellate Division.

Another matter handled by the Department, *Buffalo Teachers' Federation v. Helsby*, stemmed from the 1976 Buffalo teachers' strike. A lawsuit filed by the union challenged the loss of the privilege of having union membership dues automatically deducted from members' paychecks. During a

Representing The State

trial in federal court this year, the New York City Litigation Bureau, representing the Public Employee Relations Board, successfully argued that the penalty as provided for under the Taylor Law was not unconstitutional. The lawsuit was dismissed.

The Department also defends hundreds of cases each year challenging specific rulings or policies of the Civil Service Commission. Cases in this area fall into three main categories: grievances by state employees relating to their employment; actions challenging the preparation and grading of exams; and actions alleging violations of state laws against employment discrimination.

In addition, the Department defends actions relating to the management of the State Employees' Retirement System and the State Teachers' Retirement System which collectively manage billions of dollars of pension assets. State officials responsible for administering these systems have a duty to preserve the fiscal integrity of the system by preventing spurious payouts and by resisting claims by those who are ineligible.

Real Property Matters

The Department's Real Property Bureau, headquartered in Albany, provides legal assistance to state agencies in connection with the acquisition and disposition of land. Under the Eminent Domain Procedure Law, bureau attorneys certify title and payment, review title documents, and prepare closing papers for the acquisitions. In 1981, 10,763 cases were processed, including 2,679 certifications of title and 3,439 matters directed for payment. An indication of the extent of its operations is that the bureau processed payment agreements and court awards totaling more than \$43 million in 1981 for land acquired by the Departments of Transportation, Environmental Conservation, Office of Mental Retardation, Office of Parks and Recreation, State Power Authority and other state agencies.

A major acquisition overseen by the bureau this year was the purchase by the State Department of Environmental Conservation of 69 acres of wetland belonging to the Suffolk County Council Boy Scout Camp. The tract is the largest parcel of undisturbed wetlands on Long Island's North Shore and its purchase by the state for \$302,000 ensures that no construction that may be environmentally harmful to the wetlands can occur.

Also in 1981, the bureau prepared for a major exchange transaction under which the state will acquire 8,500 acres of forest preserve land in Hamilton County now owned by the International Paper Company. One of the largest land exchange transactions to ever take place in the state, it will consolidate the state's forest preserves to promote more efficient management, while also benefitting IPCO in the conduct of its

forestry operations. During the year, the Real Property Bureau completed certification and title examination of the land. Following approval by the Legislature, formal conveyances will be prepared.

A large part of the bureau's resources was also directed toward implementing a 1979 law aimed at preserving the financial stability of the City University of New York by transferring title to all of its senior colleges to the state. Throughout the year, the bureau's attorneys conferred extensively with representatives for the city to properly identify those facilities which come within the purview of the law and to otherwise assure that the transfer is efficiently handled.



To preserve 8,500 acres of forest in Hamilton County, the state will acquire the land from International Paper Co.



The state assumed title to the senior colleges of the City University of New York — including Brooklyn College — creating extensive legal work for the Real Property Bureau.

Prisoner-Related Litigation

Rising crime rates, tougher mandatory sentencing laws and increased restrictions on parole have contributed to a doubling of the prison population in New York State over the past 10 years. Along with the growth of publicly-funded legal services for inmates, this has led to a precipitous increase in litigation brought by prisoners, usually against officials of the Department of Correctional Services and the Board of Parole. Lawsuits and other challenges of this type jumped from 1,070 in 1976 to 5,282 in 1981, a five-fold increase.

Major Cases

The most complex type of prisoner cases are those which involve federal constitutional challenges, particularly actions under section 1983 of Title 42 of the United States Code, challenging the conditions of confinement. Many section 1983 actions are brought as class actions seeking remedies that would require fundamental changes in the entire correctional system at a huge expense to taxpayers.

Hurley v. Coughlin, for example, a section 1983 action brought in U.S. District Court, Southern District, would, if successful, dramatically affect the security precautions at all 33 of the state's correctional facilities. The class action suit, initiated by a prisoner at the Ossining Correctional Facility who was convicted of murder, seeks to strike down the Department of Correctional Services' practice of routinely strip-searching prisoners who have been temporarily outside the institution for a medical appointment or court appearance, or who have had contact with a visitor. At a 25-day trial in May and June, the Department's attorneys argued that the strip search is a rational precaution essential to controlling the flow of dangerous contraband, including weapons and drugs, into the prison system and therefore does not violate inmates' constitutional rights. A decision in the matter is pending.

In another major prisoner class action suit, *Anderson v. Coughlin*, inmates who are confined to the special housing units at five of the state's correctional facilities contend that their confinement violates the Eighth Amendment's ban on cruel and unusual punishment. Prisoners are sent to these more restrictive units as a disciplinary measure after they have committed a serious violation of prison rules. The suit was originally brought by an inmate at the Bedford Hills Correctional Facility who charged a violation of her constitutional



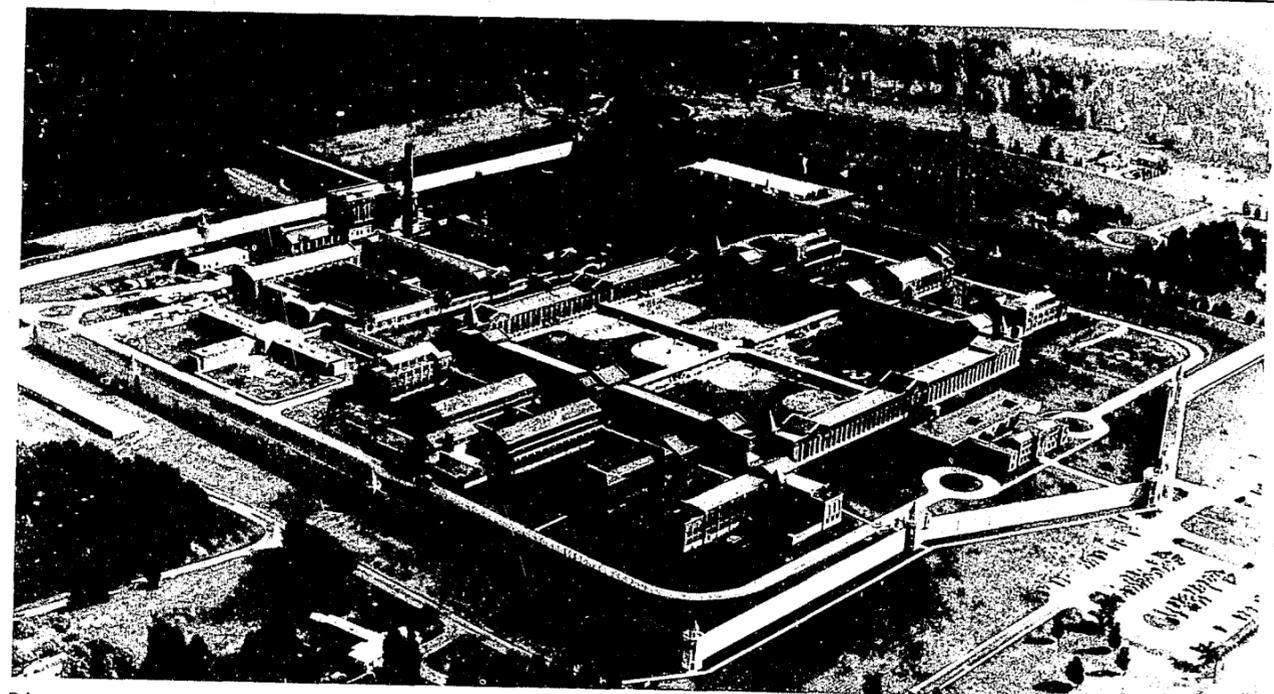
An Ossining inmate filed a class action suit challenging the use of strip searches; this suit has statewide implications.

rights on the grounds that confinement in these special housing units unlawfully restricted access to exercise, health services and law library facilities. An adverse decision in this case could affect the operation of special housing units in correctional institutions across the state. A similar but separate case being handled by the Buffalo office involves a challenge to conditions in the special housing unit at the Attica Correctional Facility.

Chase v. Henderson also concerns conditions in disciplinary special housing units. In 1980, the State Supreme Court held that the physical set-up of these units at the Auburn State Correctional Facility did not meet the Department of Correctional Services' regulation requiring one hour of outdoor exercise per day, weather permitting. The state has submitted a proposed plan to the court for remedying the problem, which involves removing the roof from the existing exercise rooms and installing drainage systems. During the year attorneys from the Auburn office were in court to demonstrate that the plan satisfies the requirements of the regulations.

Another pending case, *Honeycutt v. Coughlin*, is a class action brought by inmates at Greenhaven Correctional Facility who are isolated in protective custody for their own protection and the security of the prison. Inmates are charging that confinement to their cells is excessive and that they are deprived of adequate access to vocational, educational and counseling programs.

Also this year, the state was joined as a defendant in a suit brought in 1975 charging overcrowding at New York City's Rikers Island Prison. In bringing the state into the suit, the city contended that overcrowded conditions at the facility,



Prisoner-related litigation is a major part of regional offices' caseloads. Attica generated 1,510 cases in 1981 which were handled by Buffalo attorneys.

a detention center for men, would not exist if the state transferred inmates who had been sentenced in a timely manner. In a settlement negotiated in January, the state agreed that for a limited period of time it would pay the city a certain amount per day to house inmates awaiting transfer, thereby avoiding additional overcrowding in state facilities until additional space became available.

In another matter concerning prison overcrowding, the union that represents prison guards sought to stop the state from taking any more inmates into its 33 correctional facilities and to ensure that no facility exceeds 100% of its intended operational capacity. Alleging a breach of their collective bargaining agreement, the guards maintained that overcrowded conditions pose a hazard to their safety in violation of the federal Occupational Safety and Health Law. During the year, attorneys in the Albany Litigation Bureau succeeded in preventing the granting of a preliminary injunction in State Supreme Court. A motion to dismiss the action on the grounds that prison overcrowding is a problem that should be handled administratively rather than in the courts is pending.

Other Matters

Major cases, such as those just described, are the most complex and time-consuming for attorneys, but they make up

only a small percentage of the Department's overall prison litigation caseload. The largest category of prisoner litigation is state *habeas corpus* actions which charge non-compliance with statutory procedural requirements. When a prisoner is charged with violation of parole, for example, an administrative hearing is held to determine whether the violation exists, and if so, what course of action should be ordered. State *habeas corpus* proceedings are often brought to challenge the results of these hearings, typically charging failure to observe such procedural requirements as holding hearings within a certain number of days or not allowing the prisoner to have an attorney present and to call witnesses.

Sometimes the issues in these cases are more complex, as in *Williams v. Meloni & Enders*, a case handled by the Rochester office. The case involved the question of how much evidence is required at preliminary hearings to determine whether the conditions of parole have been violated. It was brought by an inmate at Attica Correctional Facility who was found to have violated the requirement that he meet regularly with his parole officer. The inmate charged that the state did not present sufficient evidence for the hearing officer to make a finding of probable cause. At issue was whether these hearings require a full adversary proceeding or if the current practice of conducting a "minimal inquiry" into whether the parolee violated a condition of his parole in an important respect is sufficient. The court upheld the state's position that a "minimal inquiry" is all that is required.

Representing The State

Prisoner Litigation Cases During 1981

Office	On Hand end-1980	Received during 1981	Disposed of during 1981	On Hand end-1981
New York City	2,428	2,171	2,432	2,167
Buffalo	1,353	1,664	1,510	1,507
Albany	523	625	317	831
Poughkeepsie	404	448	413	439
Auburn	29	298	303	24
Plattsburgh	9	76	76	9
Total	4,746	5,282	5,051	4,977

In addition to state *habeas corpus* actions, another large category of prisoner cases is Article 78 proceedings. These actions involve allegations that administrative decisions of the prison superintendent violate some aspect of prison regulations.

The Auburn office, for example, which is responsible for cases at the Auburn and Elmira Correctional Facilities, handled 152 Article 78 proceedings in 1981. One such case, *Leier v. Wilmot*, affirmed the superintendent's right to take certain security precautions against visitors who refuse to abide by prison rules. Specifically, prison rules require a visitor to submit to a search if there is reasonable cause to believe that he or she is attempting to smuggle contraband into the facility. An Article 78 proceeding challenged the superintendent's decision to restrict without a hearing the visiting privileges of a visitor who had violated this rule. The court

ruled that a hearing was not required because rules regarding hearings only apply when the privileges of an inmate are at issue, not those of a visitor.

Another case of this kind raised the question of the proper legal channels for resolving inmate grievances. Current regulations require that an inmate with a grievance must take the matter to the facility's inmate Grievance Committee before commencing an action in court. In this instance, an inmate at the Ossining Correctional Facility was transferred to another prison when it was learned that he was involved in an escape plan. After the superintendent denied the request to have this information stricken from his institutional record, the inmate commenced an Article 78 challenging this decision. The Court of Appeals ruled that the court did not have to consider the merits of the inmate's claim, because the inmate had not exhausted the administrative remedy of filing a grievance with the Grievance Committee.

A class action Article 78 proceeding was instituted by inmates housed at the reclassification unit at the Attica Correctional Facility challenging their placement in the unit and the procedures and conditions there. During the year, attorneys in the Buffalo office successfully argued in State Supreme Court that the establishment of the reclassification unit was within the administrative authority of the Commissioner of the Department of Correctional Services and that the unit was properly established pursuant to regulations governing special housing units. The court ordered that the unit may continue to operate, provided that it do so in conformity with the applicable regulations governing special housing units, including standards for hygiene, medical care, food and exercise.

Representing The State

Claims And Collections

The Attorney General is responsible for defending the state against actions in the Court of Claims. Most of the claims handled by the Claims Bureau fall into three categories: tort claims for personal injury or property damage alleged to have been caused by the state; litigation involving disputes in connection with state contracts; and court actions contesting the amount of money the state is to pay in the condemnation of private property for public use. The bureau also defends state employees being sued as individuals in other state or federal courts as a result of acts performed in the course of their employment.

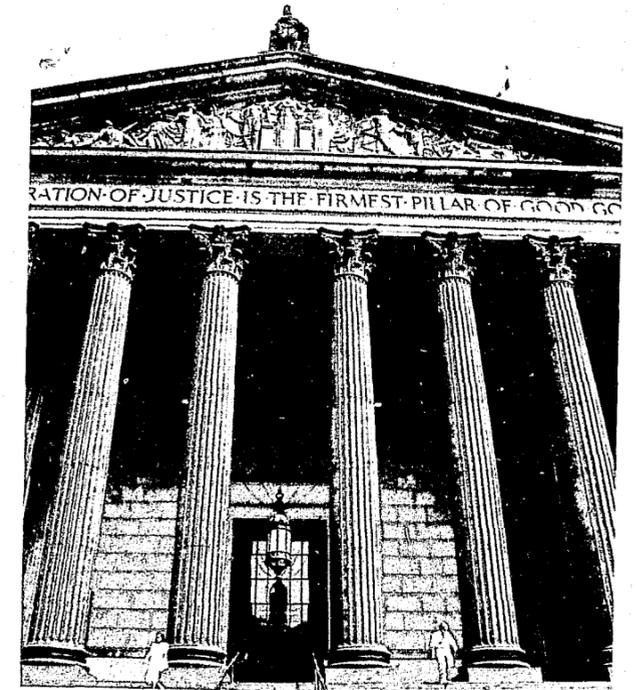
Claims against the state have been rising steadily during the last several years, both in number and in dollar amounts sought. In 1981, the Department disposed of 1,103 cases in the Court of Claims; 908 cases, representing \$1,060,678,625.99 in claims, were dismissed outright. In the other 195 cases, Department claims attorneys were able to limit the actual awards to less than \$17 million, or about 15 percent of the approximately \$113 million which had been originally sought.

Major Claims Cases

The largest of the outstanding claims against the state involve Indian claims. A major case of this type, *Oneida Nation of Wisconsin v. State*, was dismissed this year in federal court. This class action suit, which was commenced by the Oneida Indian Nation in 1978, alleged that treaties by which the Oneida Indians transferred title to the state of approximately six million acres of land in Central New York 200 years ago were void. The plaintiffs demanded a declaration of their ownership interest in certain of the contested lands, an accounting of rents and profits which they alleged belonged to them, and compensatory and punitive damages, all of which amounted to millions of dollars.

Specifically, the suit maintained that treaties signed in 1785 and 1788 with the Oneida Nation were illegal because such treaties were supposed to be negotiated by the federal government and not by individual states. The U.S. District Court for the Northern District disagreed, holding that under the Articles of Confederation, the states, and not the federal government, had authority for the acquisition of Indian land. An appeal is pending in the U.S. Court of Appeals, Second Circuit.

Another major case of this type was brought in 1980 by the Cayuga Indian Nation whose claims to lands in New York involve three million acres. The plaintiffs seek a declaration



The Department defended the state treasury from over \$1 billion in claims in 1981.

that they are the rightful owners of this land by virtue of a treaty; immediate restoration of the land; ejection of all present occupiers; substantial damages as rental value for the alleged period of the Indians' ouster from the land; an accounting for all valuable resources extracted from the land in the past two centuries; and various other relief, including attorneys' fees. The case is pending in U.S. District Court for the Northern District.

In excess of 20 claims totaling \$20 million have been filed on behalf of prison employees who were injured or killed during the 1971 Attica prison uprising. In a major development this year, the Court of Appeals unanimously affirmed the dismissal of *Werner v. State of New York*, which was brought by the widow of a former prison guard. The court held that the claimant forfeited her right to sue the state by accepting Workers' Compensation benefits. Contending that the ruling affected all of the cases where Workers' Compensation benefits were received, the Albany Claims Bureau moved for a dismissal of 19 of the remaining 20 lawsuits. The Court of Claims' denial of the motion is being appealed.

Another large outstanding claims case is *Abrams v. Community Services, Inc.*, an action brought by the residents and former residents of Co-op City, a state supported Mitchell-Lama housing complex in The Bronx, against the sponsor and general contractor of Co-op City, as well as the state and the

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State Housing Finance Agency. The claimants, who are seeking damages of more than \$233 million, allege that the state and the Housing Finance Agency conspired to mislead purchasers of co-op apartments by failing to disclose that their maintenance fees might go up substantially as a result of increased construction costs. After losing their case in the federal courts on jurisdictional grounds, plaintiffs brought another action in State Supreme Court. The latter action was pending at the end of 1981.

Also pending is a similar suit which was brought by the Riverbay Corporation, the parent corporation which owns Co-op City, on behalf of its cooperators against the state and the Housing Finance Agency.

In Niagara County, approximately 140 present and former residents of the area around Hooker Chemical's Love Canal toxic waste disposal site have filed notices of intention to bring claims against the state for damages incurred because of alleged failure by the state to properly warn residents of the dangers involved. One suit has already been filed for \$12 million. In addition, 97 of the notices of intention specify amounts being claimed, and the state's potential liability in these cases totals \$360 million. As detailed elsewhere in this report, the Attorney General has brought suit in state and federal court against the Hooker Chemical & Plastics Corp. and its corporate parents seeking damages on behalf of the state and the public and permanent remedial action by the companies to clean up Love Canal and other Niagara County toxic dump sites.

Twenty claims and 80 notices of intention to file claims have been served in connection with an explosion in February at the Binghamton State Office Building. The claims allege



Significant claims cases relating to an explosion and PCB cleanup at the Binghamton State Office Building allege negligence.

negligence in directing individuals to clean up the building's contamination by polychlorinated biphenyls (PCB's), false reassurance to workers that it was safe to reenter the building and failure to control the spread of the contamination. The suits already filed seek damages totaling \$922.5 million on behalf of individuals claiming mental distress, fear of cancer, injury to unborn children and other injuries.

Personal And Property Damage Claims

Tort claims for personal injury or property damage alleged to have been caused by the state account for about two-thirds of the claims defended by the Department, and their numbers are steadily rising.

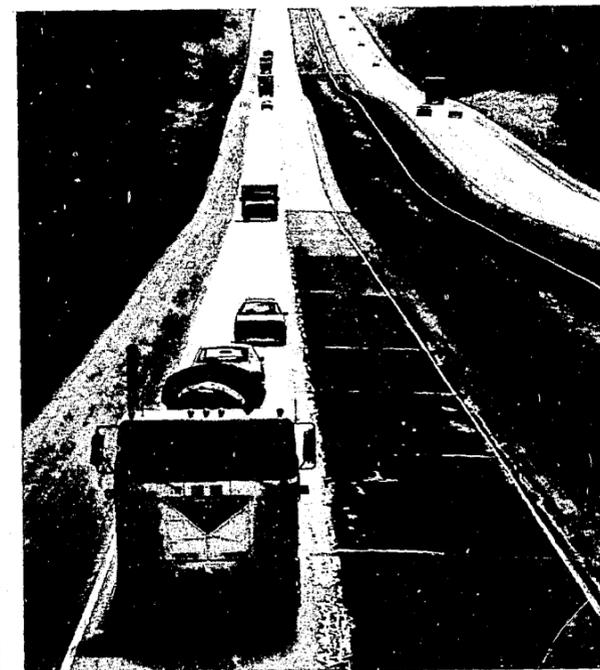
A main reason for the increase was a 1975 change in the law. Formerly, under the concept of contributory negligence, if the claimant had contributed in any way to the damage, the claim could be dismissed. Under the new concept of comparative negligence, the claimant can now deduct that portion of damages for which he is responsible and sue the state for the rest. The effect of this law has been a rising number of negligence cases. In addition, in 1976 the Court of Claims Act was amended to make it simpler to file a late claim, increasing the number of such claims.

Efficient resolution of tort claims has long been impeded by overly rigid restrictions on the state in its handling of these cases. Historically, state law has prohibited settlement of these cases, thus necessitating a trial in every instance. This has placed an unnecessary strain on the Department's legal resources, while also making it unduly difficult for persons with legitimate claims to obtain compensation. Moreover, it is likely that many cases which were forced to go to trial could have been settled for substantially less than what was ultimately awarded, thus reducing payments by the state. In 1981, the Attorney General addressed this problem by securing passage of a law which allows for the settlement of tort claims involving amounts up to \$50,000.

A substantial number of the tort claims handled by the Department involve accidents on state highways, where damages are sought as a result of alleged design failure or inadequate highway maintenance. These cases are often time-consuming and expensive to defend because of the necessity of obtaining expert engineering testimony on the nature of road design and other relevant issues.

One case handled by the Albany Claims Bureau this year involved an accident on Route 150 in Rensselaer County. The claimant's car went out of control in an area of the highway which was being resurfaced, allegedly resulting in injuries to her son, a passenger. In suing the state for \$100,000, the claimant contended that the accident resulted because of the

Representing The State



Negligence law changes increased tort claims involving state highway accidents.

state's negligence in not properly warning motorists of hazardous conditions in the area that was being resurfaced. The state contended that workmen had posted warning signs at the construction site and had sectioned-off the area with barrels, but the signs and barrels had been vandalized during the time the workers were off-duty, which was also when the accident occurred. In dismissing the case, the court held that the state had taken all reasonable steps necessary to minimize hazards at the site and that there was no negligence in the manner in which the road was left at the end of the work day.

Tort claims are also frequently brought against state police officers in connection with allegations of false arrest or assault and against the personnel of corrections or mental hygiene institutions. One notable case of this type was commenced five years ago by a 60-year-old man, Dr. Cecil Duverney, who allegedly sustained severe injuries following his arrest by Long Island State Police on charges of drunk driving. In 1978, a federal court found that the injuries were caused by a beating inflicted by one of the arresting officers and awarded Dr. Duverney \$1.2 million in damages against the officer. However, when Duverney was unable to collect more than a small fraction of this money, he sought to force the state to pay the judgment by bringing a suit in the Court of Claims. Following a 45-day trial this year, the \$1.2 million federal judgment was reduced to \$500,000. Payment was made in full satisfaction of all of Dr. Duverney's claims arising from the incident.

The Buffalo office is handling a number of cases where the state is being sued for the actions of prisoners after their release from penal institutions. In *Kriese v. State*, for example, an individual sought to hold the state liable for personal injuries sustained as a result of an assault by an inmate who had been conditionally released from prison and who was under parole supervision at the time of the assault. The decision in the case, which was dismissed after trial, could affect many similar cases handled by the Department. Specifically, in dismissing the case, the court upheld the arguments of the Department that the inmate's release was mandatory and non-discretionary under the Penal Law and the Correction Law, that the assault was not foreseeable, and that the assailant's parole supervision was proper and adequate.

Another category of tort claims involves alleged defamation of character, including libel and slander. Sometimes these cases are brought by individuals who have been terminated from state employment and who initiate an action against a supervisor who wrote a critical report.

One libel case, brought against the State University at Binghamton, was important for raising the question of the extent to which the State University could be held liable for articles and other items published in a campus newspaper. In this case, two students sought to hold the state liable for the University newspaper's publication of an allegedly defamatory letter relating to an aspect of their personal life. In dismissing the claim, the court adopted the arguments of the Department that the university did not exercise sufficient control over the student newspaper to be held liable for its content. The court also held that the State University does not have a duty to exercise the control necessary to prevent false or libelous statement in a campus newspaper.

Contract Claims

The Albany Claims Bureau represents state agencies and various public authorities in litigation arising from the award and management of construction contracts. In 1981, attorneys assigned to these matters disposed of 25 cases in which \$38 million had been claimed, but the awards were limited to \$6 million after trial or court-approved settlement.

Many contract claims arise out of building construction projects undertaken on behalf of the Office of General Services. For example, there are more than a dozen cases involving approximately \$48 million worth of claims pending against the state involving the construction of the Empire State Plaza, also known as the Albany Mall. In one of these cases *Walch-Corbetta v. State*, which arose out of the construction of the Meeting Center, settlement was successfully negotiated by the Albany Claims Bureau this year. The contractor's claim for more than \$12 million for increased costs due to alleged delay and extra work in completion of the contract was settled for \$2.8 million.

Representing The State



More than a dozen claims cases arose out of the construction of the Governor Nelson A. Rockefeller Empire State Plaza — the Albany Mall.

A substantial volume of contract claims also stem from highway construction projects undertaken on behalf of the State Department of Transportation. The largest claim pending in this area was brought by Slattery Associates, a highway construction company which is seeking more than \$17 million plus interest. The damages are sought for the extra expenses allegedly incurred as a result of breaches of contract by the state.

In addition to its defensive posture in these cases, the Claims Bureau also initiates legal action against contractors, architects or other design professionals to recover damages for defects in the design or the construction of public facilities. For example, an action against an architect who designed the Utica State Office Building resulted this year in a \$150,000 settlement on behalf of the Office of General Services to compensate for repairs made necessary because of faulty roof construction. And a \$500,000 settlement was obtained in an action against the architect, contractor and various subcontractors who designed and constructed the Suffolk State Office Building in Hauppauge following the collapse of the window wall of the building.

The Contract Unit also handles litigation involving breach of contract in fields other than public construction. An example is a recent breach of contract action commenced on behalf of the Department of Social Services to recover \$2.5

million in damages from a contractor who was supposed to provide computer services in connection with the disbursement of recipient benefits.

The Department has a statutory responsibility of approving the legality of state contracts and certain bonds to be posted by prospective licensees. In 1981, the Department's Contract Approval Unit in Albany processed and approved 18,207 contracts and 6,900 bonds.

Real Property Actions

Of particular note during 1981 was the bureau's defense of condemnation actions from land acquisitions in Schoharie and Schenectady Counties for Interstate Route 88 which runs from Schenectady to Binghamton. In cases in which the claimants sought \$2,958,160, and in which the state had valued the land at \$325,500, dispositions by way of trial and settlement totaled \$429,601.

The Department is also defending the State Board of Equalization and Assessment in approximately 300 cases brought by special franchise holders and public utilities alleging inequality and over-valuation in the assessment of property. Adverse decisions in these suits could result in the loss of hundreds of millions of dollars in tax revenue to localities across the state.

Representing The State

Collections

Through the establishment of a specialized Civil Prosecutions Bureau in the Albany office which centralizes collections functions, the Department has been able to substantially increase collection of money owed the state from delinquent accounts, unpaid student loans, damages to state property, and fines and other penalties.

Bureau collections for 1981 totaled \$121,994,786. This figure includes \$118 million in recoveries obtained on behalf of the New York State Employment Retirement System against municipalities which did not voluntarily pay into the system on behalf of their employees. The high volume of these cases this year is partly attributable to the Legislature's delay in passing the 1981 state budget. As a result many municipalities, especially those which were hard-pressed financially, also delayed their contributions to the Retirement System.

Another growing category of collections stems from the establishment several years ago of a special fund to compensate victims of oil spills so that the victims themselves do not bear the burden of instituting costly litigation. Instead, the victims of spills may get their claims satisfied through the State Comptroller's office which then collects from the spiller. Frequently, the Civil Prosecutions Bureau must proceed legally against the spiller to recover money for the state. In 1981, recoveries in 11 such cases approached \$1 million.

Even further increases in collections are expected in 1982 because of the Department's recent commitment to assist in the collection of millions of dollars in unpaid hospital bills at three state facilities, Downstate Medical Center in Brooklyn, Upstate Medical Center in Syracuse and Helen Hayes Hospital in Rockland County. The project may be expanded at the request of other state-run medical facilities.

Other Department bureaus and offices are responsible for various kinds of collections. For example, the Department represents the Department of Mental Hygiene and its facilities in matters relating to reimbursement of the state for the costs of services for civilly committed patients.

Acting for the Department of Mental Hygiene, Department of Law attorneys bring proceedings for court appointments of a conservator or committee to administer such a patient's assets on behalf of the patient. In prosecuting claims on behalf of the Department of Mental Hygiene for reimbursement for the benefit of patients, Department attorneys collected a total of nearly \$2.8 million in 1981.

In addition, the Employment Security Bureau collected \$1.2 million in unemployment insurance taxes from employers on behalf of the State Industrial Commissioner; the Labor Bureau obtained more than \$345,000 in fines and penalties for Labor Law and Workers' Compensation Law violations; the Special Prosecutions Bureau collected \$94,000 in taxes owed

the state, primarily in unpaid sales taxes, and obtained another \$64,000 in fines and penalties; and the Charities, Trusts and Estates Bureau was responsible for the collection of more than \$10 million worth of abandoned property.

Further, the regional offices also handled certain collections matters for the state. The Buffalo office, for example, collected more than \$817,000 for the state in 1981 in fines, penalties and monies owed to state agencies.



A special Civil Prosecutions Bureau centralized collections cases; the Department will now collect unpaid bills at many state facilities, including Syracuse's Upstate Medical Center.

Also, the Department generates substantial fee revenues for the state, all of which go to the general fund. In 1981, the Real Estate Financing Bureau received \$5.7 million in filing fees for real estate syndications, which include cooperative and condominium offerings; the Investor Protection and Securities Bureau obtained in excess of \$1.3 million in filing fees from broker dealers, investment advisors and securities salesmen; and the Charities, Trusts and Estates Bureau collected \$460,000 in fees paid by charitable organizations when filing required documents.

The total collected by the Attorney General's office for the state treasury in 1981 was \$153,450,159. In addition, restitutions and collections effected for the public totaled \$92,122,270. (A complete financial report begins on page 58.)

Taxation And Revenue Issues

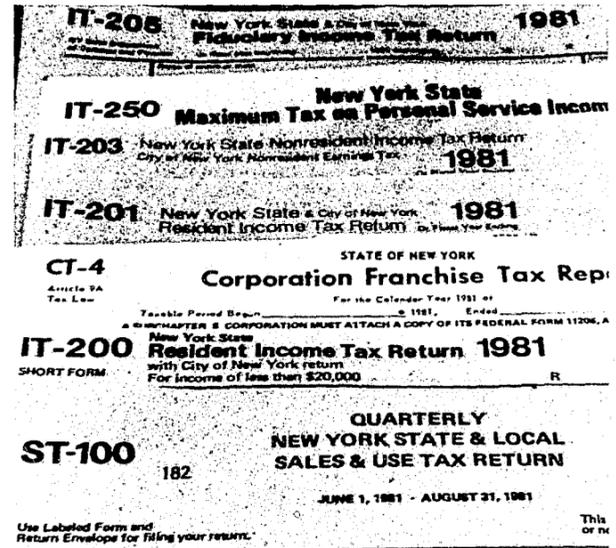
At the request of the State Tax Commission, the Department of Taxation and Finance, and other state agencies, the Attorney General defends challenges by businesses and individuals relating to the constitutionality and application of tax statutes. Tens of thousands of dollars in tax revenue are frequently at dispute in these cases.

Major Cases

In *Bank of New York v. Tully* (and ten related appeals), the Appellate Division, First Department, unanimously dismissed the complaints of seven major banks seeking tax refunds of nearly \$1 million. The banks had paid the taxes under the provisions of a 1973 state law, which had made the tax retroactive for the 1972 tax year. When the courts held in 1978 that the retroactive clause of the law was unconstitutional, the banks sought refunds. The State Supreme Court in New York County ruled, however, that the banks could not seek refunds on these tax payments because they had been made without protest seven years before. The Appellate Division affirmed the dismissal of the complaint on jurisdictional grounds, holding that claims seeking recovery of the taxes could only be brought, if at all, in the Court of Claims.

In *Sheils v. State Tax Commission*, the Court of Appeals upheld the Commission's determination that a New York taxpayer may not carry back or carry forward a net operating loss on his state income tax which exceeds the deduction taken for federal income tax purposes. New York has no specific statutory provision on this matter. However, it allows such deductions insofar as they are permitted under federal law. The Court of Appeals agreed with the Tax Commission's rationale that a net operating loss deduction in any particular year has to conform to the amount listed on the federal tax return as positive federal taxable income for that year. The decision is expected to have an impact on many other similar cases where taxpayers are seeking sizeable state income tax refunds.

Zinn v. Tully involved the question of whether the owners of a New York business who had moved their residence and a branch of their business to Florida were required to pay personal income taxes to New York State. The Court of Appeals upheld the Tax Commission in its determination that because the petitioners retained control of the New York business, continued to maintain substantial business investments in New York, and retained their home on Long Island, they were "domiciled" in New York for purposes of income taxation.



Significant personal and business tax evasion cases have been prosecuted by the Attorney General.

In *American Theatre Press v. New York State Tax Commission*, plaintiff *Playbill Magazine* claimed that it was exempt from paying state sales tax because it met the requirements of a periodical, which under the state's tax laws, would qualify it for this exemption. The exemption, if granted, would have amounted to \$70,000 a year. The Appellate Division upheld the Tax Commission's determination that *Playbill Magazine* is a theatre program and is therefore not entitled to the sales tax exemption accorded to periodicals.

In another matter involving state sales tax, *Brighton Beach Baths v. Department of Taxation and Finance*, the owners of a beach club in Brooklyn commenced an action to declare an exemption for revenue they received from bath house rentals. Attorneys from the New York City Litigation Bureau prevailed when the Appellate Division, Second Department, unanimously dismissed the complaint on the grounds that the plaintiffs had not exhausted their administrative remedies before the State Tax Commission before bringing the matter to court. ●

1981 Financial Report

Category	Direct		Indirect	
	1980	1981	1980	1981
I. Collections and Restitutions Effected for the State				
A. Collections:				
1. Abandoned Property	115,146.29	40,794.89	4,005,764.00	10,737,753.99
2. Costs in Action and Proceedings	428,969.24	301,389.60		
3. Damage to State Property			437,259.19	523,165.85
4. Excessive Costs on Contract			447,175.57	178,126.18
5. Fines and Penalties:				
a. Agriculture and Markets	125,680.49	179,327.98	16,826.49	
b. Antitrust	23,100.00			30,000.00
c. Environmental Quality			49,800.00	31,189.57
d. Labor Law Violations			160,405.00	307,850.21
e. Unlicensed Practice			2,000.00	5,780.00
f. Worker's Compensation Law Violations			66,375.61	37,880.28
g. Miscellaneous	2,119.20	120.00	113,336.02	49,876.65
h. Other State Agencies			101,492.73	1,292,479.57
6. Institutions and Hospitals			945,811.70	500,915.02
7. Patient Maintenance			3,140,904.09	2,793,824.11
8. Refund of Expenses	48,584.40	31,369.26		
9. Rental Arrears			66,489.77	25,528.65
10. Taxes				
a. Bankruptcies			90,290.98	4,565,814.67
b. Corporation			40,029.99	17,160.61
c. Decedents Estates			202,796.10	460,775.62
d. Mortgage Foreclosure			468,919.22	468,919.22
e. Income				18,610.63
f. Unemployment Insurance			1,316,746.93	1,192,257.72
g. Sales			326,581.32	168,454.27
h. Miscellaneous			149,187.24	25,279.82
11. Student Loans and Tuitions	35,236.26	27,525.13	1,282,684.85	1,536,456.19
12. Lottery				68,289.26
13. Oil Spills				149,413.31
14. Miscellaneous			327,322.25	248,235.04
B. Restitutions:				
1. Antitrust Litigation			16,318.00	
2. Employees Retirement System			3,382,186.09	118,195,809.47
3. Unemployment Insurance			725,344.68	365,663.47
Total Collections and Restitutions Effected for the State	778,835.88	580,526.86	17,413,128.60	143,995,509.38
II. Collections and Restitutions Effected for the Public				
A. Collections:				
1. Injured Workers			488,574.83	455,016.55
2. Wage Claimants			224,420.42	436,455.67
3. Worker's Compensation Appeals			836,223.14	366,852.60

This report represents monies received by the state or the public as a result of efforts by the Department of Law. The distinction between direct and indirect collections is that of payments made directly to the Department of Law (direct collections) and payments made to other state departments and agencies or to the public (indirect collections).

1981 Financial Report

Category	Direct		Indirect	
	1980	1981	1980	1981
B. Restitutions:				
1. Charity Frauds and Recoveries for Charitable Institutions and Estates			31,542,300.00	22,753,292.37
2. Consumer Frauds	343,848.07	420,958.42	6,848,878.58	60,591,161.39
3. Cooperatives, Condominiums, and Real Estate Syndications			2,951,375.00	8,199,709.00
4. Stock Frauds			301,058.00	15,950.00
5. Patient Benefits				141,200.02
Total Collections and Restitutions Effected for the Public:	343,848.07	420,958.42	43,192,829.97	92,959,637.60
III. Reimbursement for Services Rendered by Law Department				
A. East Hudson Parkway Authority	19,413.46			
B. Federal Government Capital Construction Projects			509,065.92	634,500.32
C. Insurance Law Section 32A			4,826.00	
D. Power Authority	96,067.47	\$89,534.65		
E. Metropolitan Transportation Authority		42,124.17		
F. Thruway Authority	25,395.75	26,045.98		
G. Volunteer Firemen's Benefit Law			647.00	1,561.00
H. Worker's Compensation Law Section 151			343,050.00	356,604.00
I. Worker's Compensation Law Article 9			2,881.00	5,164.00
J. Higher Education Services Corporation	111,301.55	113,153.30		
K. National Direct Student Loans	169,336.80	80,663.20		
Total Reimbursements:	421,524.03	351,521.30	860,469.92	997,829.32
IV. Filing Fees:				
A. Broker Dealer Exemptions	90,000.00	170,360.00		
B. Broker Dealer Statements	143,830.00	347,818.00		
C. Charitable Foundations	428,661.88	460,390.40		
D. Fingerprint Processing	9,890.00	12,375.00		
E. Investment Advisory Fees	33,900.00	41,975.00		
F. Principal Statements	39,412.00	86,462.00		
G. Real Estate Syndications	1,738,920.00	5,770,523.59		
H. Salesmen Statements	147,280.00	266,951.25		
I. Supplemental Statements	122,570.00	125,095.00		
J. Security Takeover Disclosure	17,500.00	58,931.08		
K. Franchise Registrations		212,800.00		
Total Filing Fees:	\$2,771,963.88	7,553,681.32		
V. Miscellaneous Receipts:				
A. Sales of Publications	1,180.00	510.00		
B. Subpoena Fees	42.00	113.00		
Total Miscellaneous Receipts:	1,222.00	623.00		
GRAND TOTAL OF RECEIPTS:	\$4,317,393.86	\$8,907,310.90	\$61,466,428.49	\$237,952,976.30

Acknowledgements

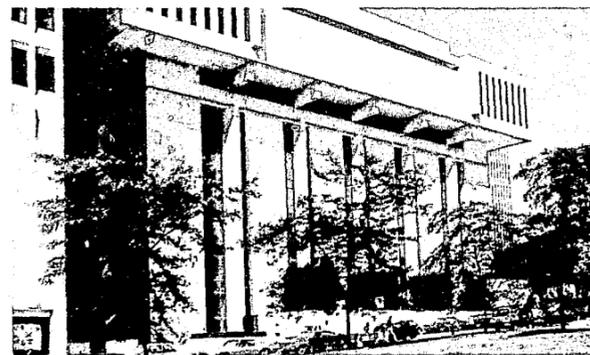
1981 Annual Report

Produced for the Attorney General by Peter A. Rabinowitz.
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On The Cover:

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END