

**A STUDY OF THE ILLINOIS ATTORNEY
GENERAL'S OFFICE**

RESEARCH, ANALYSIS AND RECOMMENDATIONS

Executive Summary



**Chicago Council of Lawyers
and
The Fund For Justice**

March, 1995

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**1995 CHICAGO COUNCIL OF LAWYERS/
FUND FOR JUSTICE REPORT ON THE
ILLINOIS ATTORNEY GENERAL'S OFFICE**

EXECUTIVE SUMMARY

As part of our Government Effectiveness Program, the Chicago Council of Lawyers and the Fund For Justice undertook an analysis of the Illinois Attorney General's Office ("AGO"). Our review of the Illinois AGO began in November, 1992. The purpose of this study is to identify and highlight administrative decisionmaking that determines the extent to which the AGO is efficient and effective. We also focus on the impact that administrative decisionmaking has had on the quality of lawyering being provided to the people of Illinois.

In reaching our conclusions, we interviewed lawyers and community leaders who have had professional dealings with the AGO over the past decade. We spoke with and/or received information from representatives of attorneys general offices in New York, California and Massachusetts. We surveyed by mail judges sitting in the Circuit Court of Cook County and in downstate circuits, Appellate Court justices in districts throughout Illinois and federal district court judges in districts throughout Illinois. In total, we contacted 350 people and received in-depth information from nearly 100 lawyers, judges, and representatives of community-based organizations.

Unfortunately, former Attorney General Roland Burris refused to cooperate with this study. At his direction, we were denied authorization to interview AGO attorneys and staff.

Finally, we compared the results of our 1984 and 1994 studies of the Chicago Department of Law with our findings about the AGO. The Chicago Department of Law in 1982 was suffering many of the same problems that the AGO is experiencing today. However, the

Department of Law has improved dramatically over the past decade by, among other things, implementing our 1984 recommendations. We believe that the AGO can and must experience the same sort of improvement.

We have found both strengths and weaknesses in the AGO. There are many fine attorneys and support staff within the AGO, but there are also many attorneys and other employees who received their jobs through political patronage and who are poorly serving the people of Illinois. Our research shows that the AGO lacks the respect of the government sector as well as the private bar.

Based upon our judicial surveys and interviews with present and former attorneys within the Attorney General's Office, it appears that personnel policies are nonexistent, the quality of lawyering is inconsistent, communication and cooperation are lacking, morale is low, and too much legal work is being given to outside counsel. Some employees of state agencies told us that they did not trust the AGO for reasons of both (1) politics (they felt the AGO put politics ahead of quality representation) and (2) incompetence (they did not believe the AGO provides quality representation).

To reform, the AGO must eliminate its weaknesses without undermining its strengths.

RECOMMENDATIONS AND CONCLUSIONS

The Illinois Attorney General's Office has a broad constitutional, common law and statutory mandate to protect the interests of the people of Illinois. Unfortunately, the AGO has been plagued by inadequate funding, patronage hiring and an ineffective organizational structure. Yet an exemplary AGO can provide the people of Illinois with a vehicle for reform and

protection. The AGO must not be used primarily as a stepping-stone for higher political office. The Illinois Attorney General must establish the goal of creating an exemplary public agency. The AGO must provide high quality representation to the agencies of Illinois, and it must seek out ways to protect the people of Illinois through vigorous litigation, counseling and legislative work.

To do so, the AGO must change its basic structure and thrust. It must aim to be competent, vigorous and exemplary and must be perceived as such by the bar, the public and the judiciary. But the State of Illinois can have an exemplary AGO only if the General Assembly and the Governor provide the requisite financial resources. We believe the investment is necessary in light of increasing problems facing the state in an era of shrinking resources.

To create a statewide public interest law firm upon which the people of Illinois can depend, we recommend the following:

A. THE AGO MUST SEEK ASSISTANCE FROM THE PRIVATE BAR AND THE PUBLIC INTEREST BAR

The Attorney General should reach out to the private bar and lawyers in public interest organizations and in other government offices to enhance the quality of lawyering, training and supervision.

B. RECRUITING AND HIRING PROCEDURES MUST BE CHANGED

The AGO must implement recruiting and hiring procedures based on merit, not political considerations. The office must market itself as a powerful and dynamic law office that offers unique training, experience and career opportunities to new attorneys.

Hiring Committee Structure

To minimize political influence in the hiring process, the office should form two separate hiring committees: A lower-level committee comprised of assistant attorneys general, and a senior-level committee, comprised of directors, division chiefs and executive assistants.

C. TRAINING AND PROFESSIONAL DEVELOPMENT MUST BECOME HIGH PRIORITIES

The AGO's recruiting and hiring strategies must be implemented hand-in-hand with other reforms. To attract the most capable attorneys, the office must offer an opportunity for public practice that is high quality and sophisticated, as well as a practice that provides on-the-job training.

D. THE AGO MUST IMPLEMENT PERFORMANCE STANDARDS AND EVALUATIONS

To ensure quality work and provide a merit-based method of promotion, the AGO must utilize periodic, thorough performance evaluations.

The AGO should create a Senior Assistant Attorney General position.

The AGO must work to retain Assistant Attorneys General who show themselves to be superior attorneys. One approach is to create a Senior Assistant Attorney General position which would pay less than a division head position but more than an Assistant Attorney General slot.

E. TEAMWORK AND COMMUNICATION MUST BE IMPROVED

F. PARALEGALS SHOULD BE USED EXTENSIVELY

We recommend that the AGO utilize paralegals, particularly in complex litigation. The use of paralegals will allow attorneys to function more effectively.

G. OFFICE MANAGERS ARE NECESSARY

H. IN DECIDING TYPES OF CASES TO BRING OR DEFEND, COMMUNITY GROUP INPUT SHOULD BE SOUGHT

During the past decade, the AGO has utilized citizen advisory groups. We believe the AGO should continue to use such groups but that representatives of these groups should meet with and be invited to submit written comments to the AGO's top managers. We also recommend that the AGO's top managers attend community meetings periodically.

I. A MORE EFFECTIVE ORGANIZATIONAL STRUCTURE SHOULD BE EMPLOYED

To Improve Communications, A Three-Tiered System of Management Should be Utilized

The Attorney General should be responsible for the AGO's policy decisions just as a board of directors is responsible for policy decisions of a corporation. But just as a corporate board does not get involved in day-to-day corporate operations, neither should the Attorney General micro-manage the AGO. Rather, the Attorney General should serve as the first tier of the AGO's management.

The second tier should consist of the Deputy Attorneys General, who serve as middle level managers. Each Deputy should be responsible for a particular area and particular divisions of the office. These individuals should make policy-related decisions that will affect the operations of the AGO on a day-to-day basis. They should supervise a designated number of division heads. The third tier should be the division chiefs, who provide supervision and all relevant communication to Senior Assistant Attorneys General and Assistant Attorneys General.

J. THE ATTORNEY GENERAL SHOULD CREATE A LEGAL COUNSELING WHICH SHOULD BE ASSIGNED TO COMMUNICATE WITH PARTICULAR AGENCIES

A Legal Counseling Division should be created to establish and maintain the lawyer/client relationship with state agencies. State agencies currently use the AGO only as a "hired gun" for litigation. However, the AGO must develop a lawyer/client relationship with state agencies. These agencies need legal counseling for advice on responding to problems and on how to prevent problems from occurring. Particular attorneys within a Legal Counseling Division should be assigned to each agency and to the governor's office.

An additional duty of this division should be to monitor legislation pending in Springfield and Washington, D.C. The AGO should take a leadership role in supporting or opposing legislation affecting Illinois and the people of Illinois.

K. THE AGO SHOULD ULTIMATELY ACQUIRE RESPONSIBILITY FOR ALL STATE LEGAL SERVICES

This was a recommendation of a 1983 Arthur Andersen report on the Illinois AGO, and we agree with it. State agencies will have fewer in-house lawyers, but they will have a closer

working relationship with the AGO -- including more legal counseling as well as litigation services. However, before such a change is made, the AGO must improve the quality of its representation, including the counseling function discussed earlier. The AGO must also develop a more cooperative and trusting relationship with other state agencies -- principally by assuring that decisions will be made based on the agencies' legal needs, not on the Attorney General's political agenda.

L. THE ATTORNEY GENERAL'S OFFICE SHOULD REDUCE THE USE OF OUTSIDE COUNSEL

The AGO will be able to attract the finest attorneys only if it can offer challenging legal work. It should, therefore, seek to utilize its own attorneys whenever possible.

M. PRO BONO RELATIONSHIPS SHOULD BE DEVELOPED

We discussed earlier the need to recruit experienced lawyers from the private bar and the public interest sector. We also recommend that the AGO seek agreements with law firms allowing associates to provide time-limited clerkships to the AGO. We also recommend that the AGO seek arrangements with local law school clinics that will allow law students to work with the AGO in exchange for academic credit.

identify areas of concern, develop strategies for solving problems and establish working relationships with public interest organizations.

CONCLUSIONS

The Illinois AGO has a broad constitutional, common law and statutory jurisdiction to both represent Illinois agencies and the people of Illinois. To this end, there is great potential for interesting, challenging and worthwhile legal actions -- work that could attract high quality attorneys. Unfortunately, the AGO has been plagued by patronage hiring and decisionmaking based too often on political aspirations and not on the best interests of Illinois.

The Illinois Attorney General needs to make large scale changes. Hiring and promotion decisions need to be based on merit. The Attorney General needs to approach the private sector bar (including public interest organizations) for help in finding high quality lawyers who are willing to commit time to improving the AGO. The AGO needs better supervision and training and an organizational structure which will allow decisionmaking to be based on the best interests of the state. Moreover, the AGO needs to develop a professional lawyer/client relationship with state agencies and provide legal counseling services as well as litigation attorneys.

The AGO must become an exemplary statewide public interest law firm. The people of Illinois deserve no less. The Chicago Department of Law became a high quality municipal law office after many years of committed effort from Mayor Harold Washington, Mayor Richard M. Daley and the Corporation Counsels they selected. There are many similarities between the Chicago Department of Law in the early 1980s and the AGO in the mid-1990s.

In 1982 the Chicago Council of Lawyers and the Fund for Justice embarked on a study

of the Chicago Department of Law ("Department"). Our study, released to the public in April, 1984, showed that James Montgomery, who became the corporation counsel with the election of Mayor Harold Washington, had inherited an office in disarray. While there were high quality lawyers present in the office, their work was eclipsed by patronage hiring, and a lack of an effective organizational structure. There was no objective system of evaluating personnel and no systematic analysis of the types of legal matters in which the Department should be involved. Our study noted a lack of effective supervision and inadequate support staff.

We said in 1984 that the Department must change its basic structure and thrust so that it would move toward becoming an efficient and effective public law firm that protects Chicago's interests in both the short and long terms. And, in so doing, it should aim toward being perceived as competent, vigorous, and exemplary by the judiciary, the bar, and the public. To this end, we offered 33 recommendations.

Beginning with Mr. Montgomery's term, the Department of Law started to implement major changes for the better. In 1994 we issued a follow-up report to our 1984 study of the Department. We found that the Chicago Department of Law utilized many of our recommendations, with a strong focus on improving supervision and training by tapping private sector attorneys for assistance. The Department is now a respected municipal law office.

The Illinois Attorney General's Office can become an exemplary office within four years -- provided it receives the support of the Governor and the Illinois General Assembly. The time and monetary investment will be worthwhile for all the people of Illinois.

N. A TASK FORCE SHOULD STUDY THE USE OF
ALTERNATIVE DISPUTE RESOLUTION MECHANISMS -- PARTICULARLY IN THE AREA OF
CONSUMER PROTECTION

O. AN INTERNAL REVIEW BOARD SHOULD BE CREATED

A Review Board should be established to receive and review complaints made by Assistant Attorneys General, other staff of the AGO and the public about AGO procedures and policies.

P. THE AGO SHOULD CONTINUE TO PUBLISH AN IN-HOUSE NEWSLETTER AND AN ANNUAL
REPORT DISCUSSING THE AGO'S ACCOMPLISHMENTS AND PROVIDING ACCURATE STATISTICS

Q. DECISIONS REGARDING THE STAFFING OF DIVISIONS OF THE AGO
MUST BE BASED ON SUBSTANTIVE NEEDS AND NOT ON POLITICAL EXPEDIENCE

R. IN REVENUE LITIGATION, THE AGO SHOULD FOCUS ITS ATTENTION ON PURSUING
SUBSTANTIVE TAX ISSUES IN COURT.

We heard complaints that the AGO focuses on the largely administrative function of revenue collection in uncomplicated matters rather than on pursuing more difficult tax collections through litigation. This approach has been used for political reasons because the AGO gets to claim that it collects large amounts of funds for the state. However, this effort may be a waste of resources because the in-house staff at the Illinois Department of Revenue may be able to conduct this routine collection function. We recommend that this issue be examined and a new strategy be developed.

S. THERE MUST BE MORE ACCOUNTABILITY IN THE CHARITABLE
TRUSTS AND SOLICITATIONS DIVISION

The AGO should charge filing fees and late fees. The AGO should also publish reports listing what percentage of the funds received by each charitable organization is actually delivered to the charitable purpose. Furthermore, the AGO should publish a standard-form contract to be distributed to charitable organizations to aid them in their dealings with commercial fundraisers.

T. AN ADVISORY GROUP SHOULD BE FORMED

It is our opinion that the offices of Attorneys General in New York, California and Massachusetts are among the most active and effective offices in the country. We recommend that an Advisory Group comprised of former attorneys general, private attorneys, legal scholars and representatives of bar associations should monitor AGO activities in other states -- both directly and through the National Association of Attorneys General. This Advisory Group should periodically report its findings and recommendations for new initiatives, litigation, legislation, etc. to the Attorney General.

U. THE AGO SHOULD ESTABLISH A PUBLIC INTEREST DIVISION AND
SEEK A WORKING RELATIONSHIP WITH PUBLIC INTEREST
ORGANIZATIONS

There are numerous public interest organizations in such areas as environmental law, civil rights and consumer affairs. Many of these organizations have missions similar to the public interest mission of the AGO. The AGO should seek to work with these groups on both litigation and legislative strategies. To this end, the AGO should establish a Public Interest Division to

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PREFACE

In 1983, then Attorney General Neil Hartigan commissioned Arthur Andersen and Co. to conduct a management study of the Illinois Attorney General's Office ("AGO"). The study found an office marked by low salaries, poor organizational structure and poor communications.

Specifically, the Arthur Andersen report stated:

- The AGO needs a clear definition of job responsibilities.
- Boundaries of authority are unclear.
- Inter-office communication between the Chicago and Springfield offices is ineffective.
- Attorney salaries are too low.
- There is a lack of aggregate management information, including financial data and personnel data. There is also insufficient information for proper case management.
- There is inadequate planning.
- There is an imbalance of resources among divisions.
- Computers need to be modernized.
- The AGO should have responsibility for all state legal services. The AGO should have control over all attorneys and related resources providing services to state agencies.

In 1991, an internal transition team delivered a report on the AGO to newly elected

Attorney General Roland Burris. The report stated:

- The informal planning process must be improved. There is a lack of measurable objectives and goals.

- There needs to be a prioritization of resources. The AGO must work to attract and retain qualified legal professionals, provide library and research capabilities necessary for attorneys, and develop information systems.
- Salaries are too low.
- The budget is too low.
- Management techniques must be improved.
- Communication between the Springfield and Chicago offices must be improved.
- Departmental and divisional objectives, results and staffing should be reviewed.
- Administrative functions should be assessed to determine how they may be best structured.

There has been no recent analysis by a group outside the AGO studying whether the problems identified in these reports have been remedied. As part of our Government Effectiveness Program, the Chicago Council of Lawyers and the Fund For Justice undertook that analysis. Our review of the Illinois AGO began in November, 1992.

This report presents our findings and recommendations. And what we have found, based on in-depth interviews with nearly 100 lawyers, judges, community leaders and representatives of community-based organizations, is that the problems identified in 1983 by Arthur Andersen and in 1991 by the Burris Transition Team still exist. To be sure, we have found both strengths and weaknesses in the AGO. There are many fine attorneys and support staff within the AGO, but there are also many attorneys and other employees who received their jobs through political patronage and who are poorly serving the people of Illinois. Our research shows that the AGO lacks the respect of the government sector as well as the private bar.

Based upon our judicial surveys and interviews with present and former attorneys within the Attorney General's Office, it appears that personnel policies are nonexistent, the quality of lawyering is inconsistent, communication and cooperation are lacking, morale is low, and too much legal work is being given to outside counsel. Some employees of state agencies told us that they did not trust the AGO for reasons of both (1) politics (they felt the AGO put politics ahead of quality representation) and (2) incompetence (they did not believe the AGO provides quality representation).

To reform, the AGO must eliminate its weaknesses without undermining its strengths.

This report presents our analysis and recommendations for improving the AGO.

In Chapter I, we outline the purpose of the study and describe our research methods.

In Chapter II, we describe the AGO's constitutional, statutory and common-law powers. In Chapter III, we provide profiles of a model office of a state attorney general. We summarize in Chapter IV a descriptive profile of the AGO as presented by current and former assistant attorneys general, other practicing attorneys, judges, employees of state agencies and community group representatives. Chapter V presents recommendations and conclusions derived from our research.

We offer our recommendations in the spirit of constructive criticism in the hope that they can serve to improve the operation of the AGO. To this end, we provided in December, 1994 a preliminary report, together with our recommendations, to the Transition Team assembled by Attorney General James Ryan after his election in November, 1994.

We wish to thank Peter C. Miller, Lisa L. Moorehead, Mi Young Pae, Joseph P. Russell and Chad Taylor for their research assistance. We take full responsibility, however, for all information and recommendations contained in this report.

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CHAPTER I

OBJECTIVES AND METHODS

The Attorney General serves as the chief legal representative of the State of Illinois. This responsibility includes representing the Governor, the General Assembly, all state agencies, and the citizens of Illinois in all legal matters. The Illinois Attorney General's Office should, therefore, be the most important legal office in the State.

In Illinois, the Attorney General is an elected official politically independent within the executive branch. Indeed, throughout most of the recent past, the Attorney General and the Governor have come from different political parties. But even where the two constitutional officers share a party affiliation, each is responsible directly to the electorate. The Governor cannot control or fire the Attorney General and may well view him or her as a political rival.

Those circumstances create enormous challenges for the AGO in its role as advisor, counselor, and lawyer to the Governor, the cabinet, and the State's administrative agencies. It is difficult -- perhaps impossible -- to counsel a client who does not completely trust his or her legal advisor. Conversely, it is difficult -- and probably unwise -- for the Attorney General to formulate State legal policy wholly independent of other executive branch initiatives and programs.

The people of Illinois have chosen an elective Attorney General, and it is not our role here to question that choice. But one thing is clear: the more the AGO emphasizes politics and patronage in its operations, the less effective it can be in functioning as the State's law office. Because of the AGO's unique role as lawyer and legal counselor to the State, the AGO must, more than any other State agency, earn the respect and trust of all State officers, no matter what

their party affiliation or political ambitions. One of our goals in this report is to point out where that effort has failed in the past and how it can better be achieved in the future.

Because the Attorney General's Office bears vital responsibilities to the entire State of Illinois, the office must be efficient at a high level of excellence. The Office must employ highly-qualified, motivated attorneys and paralegals; provide comprehensive supervision, training, and promotion to attorneys and support staff; clearly define and communicate its goals and priorities to every attorney and staff member; and utilize a structured, efficient form of organization and administration.

Further, to fulfill its obligation as the State's chief legal authority, the Attorney General's Office must provide a full range of legal services to the State of Illinois. The Office should serve as the primary legal resource for every state agency, and, must simultaneously ensure that those agencies perform their functions in compliance with the law. Decisionmaking and priorities must be objective and based upon legal precedent, not political bias or interest.

Any organization is only as effective as its internal procedures and policies. Even the best intentions can be circumvented by a structure that does not allow these intentions to be put into practice or even communicated to the necessary parties. Administrative procedures and policies dictate how lawyers and staff are hired, evaluated, paid and promoted. They govern how cases are accepted and assigned to attorneys, how cases are researched and monitored, and how and to what extent support services such as paralegal time, word processing and secretarial services are allotted.

The purpose of this study is to identify and highlight administrative decisionmaking that determines the extent to which the AGO is efficient and effective. We also focus on the impact

that administrative decisionmaking has had on the quality of lawyering being provided to the people of Illinois.

In reaching our conclusions, we interviewed lawyers and community leaders who have had professional dealings with the AGO over the past decade. We spoke with and/or received information from representatives of attorneys general offices in New York, California and Massachusetts. We surveyed by mail judges sitting in the Circuit Court of Cook County and in downstate circuits, Appellate Court justices in districts throughout Illinois and federal district court judges in districts throughout Illinois. In total, we contacted 350 people and received in-depth information from nearly 100 lawyers, judges, and representatives of community-based organizations.

Unfortunately, former Attorney General Roland Burris refused to cooperate with this study. At his direction, we were denied authorization to interview AGO attorneys and staff.

Finally, we compared the results of our 1984 and 1994 studies of the Chicago Department of Law with our findings about the AGO. The Chicago Department of Law in 1982 was suffering many of the same problems that the AGO is experiencing today. However, the Department of Law has improved dramatically over the past decade by, among other things, implementing our 1984 recommendations. We believe that the AGO can and must experience the same sort of improvement.

CHAPTER II

CONSTITUTIONAL, STATUTORY AND COMMON LAW POWERS OF THE STATE OF ILLINOIS ATTORNEY GENERAL'S OFFICE

The 1970 Illinois Constitution provides that the Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.¹ The Illinois Supreme Court has held that an identical provision in Illinois' 1870 Constitution grants the Attorney General all the historic common-law powers of the English Attorney General.² The high court has further held that, although the General Assembly could add to these powers, it was powerless to detract from the Attorney General's common-law authority.³

The Illinois General Assembly has enumerated most of the AGO's common-law powers by statute. Accordingly, the Attorney General's role includes:⁴

- Representing the State before the Supreme Court in all matters in which the State or its people are interested.
- Initiating all legal actions for the State that may be necessary in the execution of the duties of

¹ Ill. Const. art. V, sec. 15 (1970).

² *Fergus v. Russell*, 270 Ill. 304, 110 N.E. 130 (1915). The English attorney general had the exclusive power of initiating litigation on behalf of the King by the middle of the seventeenth century. By this time, the English attorney general and solicitor general were the only sources of official advisory opinion, as well. The colonial attorney general's office in the United States began as an extension of the English attorney general. After the United States became independent, the attorney general's office was continued in each state and the federal government appointed an attorney general for each new territory, including Illinois. The 1818 Illinois Constitution allowed the general assembly to appoint the attorney general. The 1848 Illinois Constitution abolished the appointive office but the 1870 Constitution restored the office of attorney general as an elected position. See, Leland W. Hutchinson, Jr. and Robert H. Little, "The Illinois Attorney General: Exclusive Legal Counsel for the State," 3 UNIVERSITY OF ILLINOIS LAW FORUM 470 (1975).

³ *Fergus v. Russell*, 270 Ill. 304, at 339, 110 N.E. 130, at 144 (1915).

⁴ 15 ILCS 205/4.

any state officer.

- Defending all legal actions against a state officer acting in his or her official capacity.
- Consulting with and advising the State's Attorneys in matters relating to the duties of their offices.
- Investigating violations of the statutes that the Attorney General has a duty to enforce, and conducting other investigations to assist in the prosecution of a criminal offense at the request of State's Attorneys.
- Consulting with and advising the Governor, other constitutional officers, the General Assembly and any committees thereof; and giving opinions upon legal and constitutional questions relating to their duties.

The National Association of Attorneys General has summarized the common law roles of attorneys general as follows:

- The Attorney General has the duty to appear for and to defend the state and its agencies.
- The Attorney General has the right to control litigation and appeals.
- The Attorney General has the right to intervene in legal proceedings on behalf of the public interest.⁵

⁵ The Illinois Supreme Court said in 1980 that "In the case of *People v. Massarella* (1978), 72 Ill. 2d 531, we examined the common law powers and duties of the Attorney General and found them to include the initiation and prosecution of litigation on behalf of the People. This power may be exercised concurrently with the power of the State's Attorney to initiate and prosecute all actions, suits, indictments and prosecutions in his county as conferred by statute (Ill. Rev. Stat. 1973, ch. 14, par. 5)." *People v. Buffalo Confectionery Co.*, 36 Ill. Dec 705, 401 N.E. 2d 546, 78 Ill. 2d 447, 454 (1980).

In 1973, the Illinois Supreme Court ruled that the Illinois AGO has standing to seek administrative review of action taken by the Illinois Racing Board granting certain parties racing dates. The Court relied on *Fergus v. Russell* and the common-law powers of the attorney general to represent the public interest as the source of power to initiate judicial review of the Racing Board's orders.

(continued...)

- The Attorney General has the power to determine the state's legal policy.
- The Attorney General has the authority to prosecute criminal activity, in the absence of express legislative restriction.⁶

The combination of these powers and responsibilities define the Illinois Attorney General's role as the chief legal officer of the State. The Attorney General must collaborate with the state agencies regarding all legal problems of those agencies. The AGO must effectively coordinate state litigation, settlement negotiations and appeals. In addition, on behalf of the public interest the AGO must ensure that the state and federal governments adequately serve the citizens of Illinois.

CHAPTER III

PROFILES OF AN ATTORNEY GENERAL'S OFFICE: A MODEL VIEW

Introduction

The Attorney General can influence almost every aspect of the lives of the state's citizens, either directly or indirectly through his or her influence on private corporations and public agencies. A model AGO of superior talent, experience and organization improves the quality of the state's legal representation, thereby enhancing the quality of life of all residents.

Furthermore, a proficient model AGO saves taxpayers money. The model AGO is a unique state agency. On the one hand, it customarily has a large budget and provides expensive services for the state. On the other hand, however, it is in a position to collect revenue for the state and prevent wasteful spending. The better the office performs, the more money the state can save.

The following sections discuss selected duties and responsibilities that a high quality model AGO should be performing. Without a view of what a model AGO should do, it is impossible to determine whether the Illinois AGO is performing adequately in the public interest.

The Attorney General's Relationship to Other Branches of Government

The Attorney General is the legal representative of the state, including state agencies. The model AGO's powers extend to all litigation involving the state: "[I]n the absence of explicit legislative expression to the contrary, the Attorney General possesses entire dominion over every civil suit instituted by him in his official capacity . . . and his authority extends as well to

{...continued}

In 1974, the Kentucky Court of Appeals held that the Attorney General lawfully could question the constitutionality of a state law, and rejected the contention that the Attorney General only represented the "Commonwealth." The court said:

It is true that at common law the duty of the Attorney General was to represent the King, he being the embodiment of the state [citation omitted]. But under the democratic form of government now prevailing the people are the King, so the Attorney General's duties are to that sovereign rather than to the machinery of government. *Commonwealth ex rel. Hancock v. Paxton*, 516 S.W. 2d 865 (Ky., 1974)

⁶ NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, STATE ATTORNEYS GENERAL, POWERS AND RESPONSIBILITIES 37-38 (Lynne M. Ross, ed., 1990) [hereinafter NAAAG, STATE ATTORNEYS GENERAL].

control of defense of civil suits against the state, its agencies, and officers."⁷

The model AGO should provide all the legal services that state government needs. Such an approach would most efficiently utilize state resources and would harmonize state legal policy. State funds used by state agencies to hire their own outside counsel and in-house counsel are better spent on improving the AGO.

The National Association of Attorneys General adopted two resolutions in 1971 that clearly express the desirability of consolidating all legal services through the AGO. First, [the Attorney General should have the sole authority to employ counsel and represent the state in litigation." Second, "[a]ll state legal staff should be under the Attorney General's supervision; he should determine their salaries and increments, classifications, and otherwise control personnel."⁸

The NAAG gave several reasons for those recommendations. Consolidation of legal services increases efficiency by minimizing the duplication of legal and technical expertise. Fiscal planning for legal services and opportunities for promotion, compensation and benefits are more consistent under this approach. Statutory and case law are applied more consistently.⁹

Except in rare cases of legal (as opposed to political) conflicts of interest, the model

⁷ 7A C.J.S. "Attorneys General" 12 (1980).

⁸ See NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, POWERS, DUTIES AND OPERATION OF STATE ATTORNEYS GENERAL 161 (1977).

⁹ NAAG, STATE ATTORNEYS GENERAL at 51-52.

AGO should perform all of the state's legal work.¹⁰ That approach is more efficient and effective than employing agency counsel or private counsel. The next section reviews the methods by which the model AGO should perform that work.

Services to the State Government & State Residents

The Attorney General's duties as chief counsel for the state mirror the duties that a private attorney has to his or her client. If the client needs advice on how to proceed, the attorney researches the issue and renders advice. If the client desires relief from a particular party, the attorney investigates and, when warranted, attempts to obtain relief. If relief is demanded from the client, the attorney defends the client. As a private attorney would provide these services to his or her client, so must the model AGO provide such services to the State and its residents.

¹⁰ The controversy in Illinois concerning the conflict of lawyers performing Illinois' legal services first surfaced in 1975 as a political fight between then Governor Daniel Walker and then Illinois Attorney General William Scott. Scott charged Walker with wasting taxpayers' money by hiring lawyers for the state agencies when the legal services for these agencies were, in Scott's view, already available through the Illinois AGO. For a further discussion of this conflict, see Hutchinson & Little, *supra*, n.2.

Proponents of Scott's view cited *Feryus v. Russell* for the proposition that the Attorney General is the chief legal officer representing the state. Proponents claimed that the AGO would provide legal services more objectively and at less cost.

Opponents of Scott's view claimed that any cost savings "may be negated by increased governmental inefficiency resulting from assistant attorney generals' lack of specialized knowledge." Hutchinson & Little, *supra*, n.2 at 481.

However, the Illinois controversy concerning control of lawyers has to do with non-litigation matters only. Litigation on behalf of state agencies is the job of the AGO. In 1977, the Illinois Supreme Court ruled that a state agency may not employ private counsel to represent it in an appellate court action and have his or her fees paid by the AGO (in the absence of appointment of such counsel by the court or by the Attorney General.) *E.P.A. v. Pollution Control Board*, 69 Ill. 2d 394, 14 Ill. Dec. 245, 372 N.E. 2d 50 (1977).

The model AGO has at least three roles in providing legal services to the state and its residents. First, when requested, the Attorney General should prepare opinion letters for state officers and agencies. Second, the model AGO should control all state litigation. Finally, the model AGO should play an integral role in revenue collection and the dissemination of information to the public.

Opinions

The Attorney General advises the state primarily through opinion letters. When the state legislature or a state agency requires legal advice on how to proceed on a particular matter, it should solicit the model AGO's assistance. The model AGO should then analyze the problem and issue an opinion letter, objectively reporting the Attorney General's belief as to the legality or constitutionality of a proposed action.

Although opinion letters are not legally binding, they should serve as a sound indication of how a court would rule if the matter were to be litigated. Opinion letters have significant potential for preventing litigation because they counsel the client prior to any action. Opinion letters also on occasion correctly encourage litigation. A state agency, for example, may be uncertain about a possible violation of one of its regulations and seek advice from the Attorney General as to whether certain conduct is prohibited. The Attorney General may believe the conduct violates the agency's regulations, convey that belief to the agency, and encourage action against the offender. The model AGO should publish its opinion letters regularly for the guidance of the public generally and the bar in particular.

Litigation Responsibilities

The Attorney General has the responsibility to litigate cases brought by and against the state. This includes filing suits as well as defending against suits. The Attorney General has full discretion regarding all litigation matters, including initiating and appealing suits. In Illinois, while the State's Attorneys have authority to initiate criminal prosecutions, the Attorney General has discretion to appear and assist in any prosecution. The Illinois Attorney General has sole power to represent the State before the Illinois Supreme Court.

Alternative Dispute Resolution

Due to the increase in litigation over the past decade, the model AGO should utilize Alternative Dispute Resolution ("ADR") whenever practicable. ADR can include arbitration, conciliation, mediation, mini-trials or summary jury trials. ADR can be a speedy, less expensive way to resolve problems. Consequently, use of ADR is a responsive way to deal with many citizens' complaints.

In establishing the ADR program, the model AGO should gather input from those citizens, businesses and professional groups most likely to be affected. ADR has played an integral role in the fields of agriculture, consumer protection, senior citizens protection, transportation, child abuse, regulatory issues, nursing homes and environmental law.¹¹

¹¹ A survey conducted by the American Bar Association showed that more than half of the state Attorneys General utilize some form of ADR for consumer protection. Michael G. Cochran, ATTORNEYS GENERAL AND NEW METHODS OF DISPUTE RESOLUTION, A cooperative project of the National Association of Attorneys General and the American Bar Association Standing Committee on Dispute Resolution (1990). One example of the use of ADR is in California where in 1989 the AGO negotiated agreements in 300 claims against the state under the Earthquake Disaster Relief Program using an ADR process. BIENNIAL REPORT OF THE CALIFORNIA DEPARTMENT OF JUSTICE, a report of the major

(continued...)

Revenue Collection

The model AGO must assist in administering and controlling public resources. It should regulate public contracting, including construction contracts, and revenue bonds. Moreover, it should collect monies owed to the state and defend the state against monetary claims.

First, in the area of public contracting, the model AGO should review every contractual transaction to ensure compliance with the law. In addition, the model AGO should publish rules for public contracts detailing requirements for performance bonds, awards of contracts and bidding procedures. The model AGO should apply special procedures for the complicated area of state construction contracts and monitor construction projects throughout all phases so that the office can resolve issues such as increased funding as they arise. A special construction claim unit should be formed to deal with complex construction contract litigation.

Second, the model AGO should, through litigation, collect monies owed to the state, but the model AGO should only be involved in collection when substantive legal issues arise; the state revenue department is the government agency that can efficiently handle routine tax collection functions. Collection litigation appropriate to the model AGO includes delinquent student loans, bankruptcy, unpaid hospital bills, tax collection or overpaid welfare benefits.

Finally, the model AGO should defend state agencies against attorney's fees claims. Attorney's fees can cost the state a tremendous amount of money. The office should designate a single unit to assist in attorney fee matters to ensure an expert and uniform approach.

The Attorney General's Role in Particular Fields of Law

The Attorney General must ensure compliance with state regulatory laws. State agencies, such as departments of labor, public health or nuclear safety may discover violations of their regulations and request the Attorney General to bring an action against the offenders. The model AGO itself may directly police other areas. For example, the model AGO's consumer protection division or agricultural rights division may take independent action.

Common areas of regulatory attention by the offices of many Attorneys General include antitrust, environmental control, public utilities, consumer protection, natural resources, investor protection, charities regulation and employee health and safety. It is for the enforcement of such regulatory laws that many offices of Attorneys General are most noted, and it will be in these areas where the average citizen will most likely encounter the protection of the model AGO.

Various states' attorneys general have, for example, provided key legal resources for hazardous waste cleanup programs; avoided millions of dollars in grain elevator losses for farmers through litigation against failed grain elevator operators and their lending institutions; recouped losses by senior citizen groups which participated in fraudulently represented airline vacations; and investigated and prosecuted real estate developers who collected money from buyers through unfair trade practices.

Environmental Law

The model AGO must work diligently toward the preservation and remediation of the environment. The office has authority for such endeavors under federal statutes. It is important for the office to work with police, state agencies and the federal government in investigating and

¹¹(...continued)
activities of the California Attorney General's Office for the period of 1991 and the first half of 1992.

prosecuting environmental law violators. The model AGO should seek both civil and criminal penalties against violators, and should require violators to establish detailed programs designed to prevent illegal pollution.

Six major federal statutes authorize state Attorney General action in the field of environmental law: the National Environmental Policy Act ("NEPA"); the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"); the Clean Air Act; the Clean Water Act; the Resource Conservation and Recovery Act ("RCRA"); and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

NEPA requires the filing of an environmental impact statement for any government activity or government-funded activity that may adversely affect the environment. FIFRA requires all pesticides to be registered with the federal Environmental Protection Agency (EPA). The Clean Air Act requires states to enforce EPA air quality standards for specific pollutants. RCRA enables states to enforce regulation of hazardous waste, nonhazardous solid waste disposal facilities, and underground tanks storing hazardous materials. Finally, CERCLA establishes the Superfund for hazardous waste site clean up. Under CERCLA, states have the authority to bring suits to recover clean up costs. The Superfund Amendments and Reauthorization Act of 1986 makes states partners with the EPA in the clean up process.

The model AGO should cooperate with the federal government in the difficult job of cleaning up and protecting the environment. A team approach combines the resources of the state and federal governments, and prevents duplication of clean up efforts. To facilitate collaboration, the model AGO should meet periodically with state regulatory agencies and the U.S. EPA. The model AGO and the federal government should conduct joint investigations into environmental

violations. For example, in Rhode Island in 1986, the Attorney General, the state regulatory agency, the U.S. Attorney, and the EPA cooperated in investigating and prosecuting a major shipbuilding company for federal environmental violations. This team approach led to the company's conviction.

The model AGO should find innovative ways to prosecute environmental law offenders and should recommend legislation that enables the office to more easily do so. Mere civil enforcement of environmental violations may be inadequate. Enforcement problems occur when companies fold or are insolvent. Criminal sentences, however, transcend these problems. Along with the trauma of incarceration, criminal convictions stigmatize businesses such that they may have serious trouble remaining profitable in the future.

In New York, the Attorney General's office has a special "Environmental Crimes Unit," staffed by prosecutors and police investigators who uncover and prosecute environmental violations. The unit works closely with the State Department of Environmental Conservation's investigative arm, state and local police, regulatory agencies, and the federal government. The unit receives tips through a toll-free telephone number. This approach has been successful. In one case, the unit's efforts resulted in the assessment of \$3.5 million in criminal penalties against the Bristol-Myers Squibb Company for illegally discharging pollutants into a sewer system.

In Massachusetts, an Environmental Strike Force involves the cooperation of the Massachusetts AGO and a variety of Massachusetts state agencies in the investigation and prosecution of environmental violations. The Massachusetts AGO has also sponsored legislation which will permit law enforcement officials to seize assets and proceeds of environmental crimes and place them into a special fund used to increase environmental enforcement at both the state

and local levels.¹²

The model AGO not only must prosecute and sue companies that violate environmental laws, it should act to prevent such violations. The office should require violators to establish plans to prevent future pollution. In New York, the Attorney General's Office developed a system for identifying, through toxic release data, chemical or manufacturing facilities which are violating state environmental laws. Once violators are found liable, they must commit to a long-term pollution prevention or emission reduction program.

Civil Rights Enforcement

The model AGO must ensure enforcement of civil rights legislation. In its effort to protect the civil rights of state citizens, the office should conduct investigations, initiate litigation on behalf of those whose rights are violated, render opinions, provide public education, monitor and represent civil rights agencies, and submit *amicus curiae* briefs. The office should be active in the areas of affirmative action, employment discrimination, housing discrimination, educational discrimination, other public accommodation discrimination and disability discrimination.

The model AGO must establish a systematic, efficient approach for processing civil rights complaints which it receives. When the office receives a complaint, it should briefly investigate its merits and, if appropriate, send a letter to the alleged offender explaining that the Attorney General will pursue litigation unless immediate corrective action is taken.

In New York, the Attorney General's Civil Rights Bureau actively investigates civil rights

violations. In a 1992 employment discrimination case, the Bureau performed an extensive, 18-month undercover operation that led to a landmark settlement with an employment agency. Investigators became employees of the agency to discover the discriminatory practices.¹³

The New York AGO used the federal Fair Housing Act to sue the Village of Waterford, New York for using local zoning powers to exclude housing for persons infected with HIV.¹⁴

The Civil Rights Division of the Massachusetts AGO enforces the Massachusetts Civil Rights Act which authorizes the AGO to seek injunctive relief "when the exercise of legal rights is interfered with by threats, intimidation, or coercion."¹⁵ In fiscal year 1991, the AGO obtained 17 injunctions against 30 defendants involving racial, ethnic and anti-gay violence.¹⁶

During 1991 and the first half of 1992 in California, special teams of AGO attorneys filed actions resulting in more than \$1 million in fines against nursing homes under a state law designed to discipline nursing home owners providing substandard care for residents.¹⁷

The model AGO should strive to enforce civil rights laws against real estate brokers who discriminatorily steer residents to or away from certain neighborhoods and homes. In another New York case, the Attorney General's Office sent African-American and Caucasian undercover investigators to real estate agencies. The undercover agents each presented themselves with

¹³ The employment agency agreed to pay \$100,000 in damages and to comply with strict, court-ordered rules of non-discriminatory conduct in the future. 1992 ANNUAL REPORT OF THE NEW YORK STATE DEPARTMENT OF LAW, ATTORNEY GENERAL ROBERT ABRAMS.

¹⁴ *Id.*

¹⁵ THE COMMONWEALTH OF MASSACHUSETTS REPORT OF THE ATTORNEY GENERAL FOR 1992.

¹⁶ *Id.*

¹⁷ BIENNIAL REPORT OF THE CALIFORNIA DEPARTMENT OF JUSTICE, a report of the major activities of the California Attorney General's Office for the period of 1991 and the first half of 1992.

identical profiles except race. The investigation revealed that the agencies consistently showed more expensive houses in white neighborhoods to the Caucasian agents. The office reached monetary settlements with the agencies and imposed extensive long-term requirements to ensure compliance with civil rights laws.¹⁸

Charitable Organizations

State Attorneys General, including the Illinois Attorney General, have the authority to monitor and investigate the activities of charitable organizations. The model AGO should strive to eliminate deceptive charity practices, preserve charitable assets, and hold the charities' executives accountable. In addition, charities and solicitors must register and report to the model AGO. The office is responsible for registering and monitoring annual filings from various trusts and foundations.

The model AGO should require charities to comply with strict financial disclosure requirements. The model AGO should publish reports listing what percentage of the funds received by each charitable organization is actually delivered to the charitable purpose. Such reports would serve an important accountability function and are essential to inform the donating public of the operating practices of the various organizations. Many charities use a large portion of their revenues for expenses and fees, with little aid actually being directed to their charitable purposes. Publishing a report would be particularly important in cases where the charity employs a commercial fundraiser.

Furthermore, the model AGO should draft and publish a standard form contract to be

¹⁸ *Id.*

distributed to charitable organizations to aid them in their dealings with commercial fundraisers. The office should also publish information regarding safety tips in making charitable donations.

The model AGO should initiate litigation against deceptive charity practices. Additionally, the office should ensure, through litigation and regulatory action, that the assets of charitable trusts are preserved for their intended purposes and that directors and trustees are loyal to the trust beneficiaries. The model AGO can monitor the activities of charities by systematically reviewing the files of each registered charity. A more concerted effort must be undertaken to monitor interstate solicitation through cooperation among the offices of state AGOs and state and federal revenue departments for monitoring interstate transactions.

Consumer Protection

The model AGO is responsible for enforcing consumer protection laws (as is the Illinois AGO). While not every consumer complaint is appropriate for AGO intervention, the model AGO should develop specific criteria in deciding when to litigate, and when to use alternative dispute resolution.

The decision to litigate particular cases should depend on a number of factors, including: whether the questioned activities have a broad public impact; how vulnerable a typical consumer is to the activity; and whether there are essential interests involved, such as health and safety.

Although many consumer complaints will not meet the litigation criteria, the model AGO, in an ombudsman's capacity, should develop an Alternative Dispute Resolution program to handle consumer complaints not appropriate for litigation. With the availability of such programs, the office should involve volunteers as mediators and arbitrators. The office should

place each complaint onto a computer data base to enable the Attorney General to identify patterns of illegal activity that may warrant litigation.

Though one recurring consumer protection violation involves illegal odometer rollbacks in used cars sales, the consumer protection area is much broader. The office should pursue deceptive advertising, home improvement con artists, health clubs that breach contracts with members, mail solicitations and telemarketing frauds—which account for many consumer complaints -- and fraudulent health-care providers.

Because a significant amount of consumer fraud is perpetrated on a multistate basis, the model AGO should initiate cooperative efforts with other jurisdictions in enforcing consumer fraud laws. Furthermore, computer data bases should be utilized in organizing consumer complaints so that each regional office can process and track information efficiently.

Legislative Activities

Attorneys General have become increasingly active in proposing legislation in areas such as consumer fraud, criminal justice, environmental protection, child abuse, and nursing home resident abuse. A number of AGOs have specialized legislative divisions.

Management & Organization

Effective management and organization are the most crucial factors in the success of any corporation, agency or law office. The model AGO constitutes one of the largest law firms in a state, though it is the most fragmented. The office's large but typically underpaid staff, numerous scattered offices and political nature make proficient management systems more

essential to have, yet more challenging to achieve.

Attorneys General around the country range widely in the number of attorneys employed. Maryland, Ohio, Texas and Virginia each employ over three hundred attorneys, while New York employs almost 500 and California over 600. The Illinois AGO employs almost 250 attorneys. The immense size of these public sector law firms strains office management in ways that most large private firms do not experience. In addition, the Attorney General is personally accountable to the state for each and every act of the office. Hence, offices of Attorneys General tend to be very hierarchical, limiting the assistant AGs' independence in serving the client. Necessary tight control over such a large number of attorneys adds great complexity to organization and management of the office.

Unfortunately, morale problems among these many attorneys enhance this complexity. Because of budgetary constraints, attorneys are typically underpaid and overworked. Consequently, it is important that managers find committed, motivated applicants and utilize creative methods of rewarding attorneys and making them feel appreciated.

Further, because the typical AGO is responsible for representing the entire jurisdiction, it frequently is not centralized in one office. For example, the Illinois AGO has two main offices, which are almost 200 miles apart, and 18 regional offices. That fragmentation makes interoffice coordination difficult and makes efficient organization and communication vital.

Finally, in 43 states, the public elects the Attorney General. Such an approach adds political and publicity elements to the office from which private firms are generally free. These elements often detrimentally affect the proficiency of the Attorney General's office because legal organizations must act objectively and systematically to be successful. Though political

orientation may legitimately influence broad office priorities, media and politics must not influence office management promotion, and hiring decisions. Unfortunately, exclusion of politics from these areas is rare, since Attorneys General are often tempted to utilize the office as a political stepping-stone. Nevertheless, exclusion of political and publicity considerations is essential to providing high quality services to the state and all its people.

CHAPTER IV

DESCRIPTIVE PROFILE: THE ILLINOIS ATTORNEY GENERAL'S OFFICE

Introduction

The Illinois AGO operates with a budget of approximately \$30 million. It employs almost 250 lawyers. However, entry level salaries for attorneys are far below those of lawyers in other government offices, such as the Chicago Department of Law, the Cook County State's Attorney's Office or the United States Attorney's Office. In fact, when compared to offices of Attorneys General nationwide, starting salary in the Illinois AGO is among the lowest.

Our look at the Illinois AGO began with an examination of the Arthur Andersen & Co. report commissioned by then Attorney General Neil Hartigan and issued in 1983. As we discussed in the *Preface* of this report, Arthur Andersen detailed the problems of the AGO as they then existed. Our study found that many of the problems facing the AGO in 1983 still exist today.¹⁹

To investigate the strengths and weaknesses of the Illinois AGO, we interviewed lawyers and representatives of agencies and organizations which have had dealings with the AGO. We

¹⁹ The Arthur Andersen report stated:

The AGO needs a clear definition of job responsibilities; boundaries of authority are unclear; inter-office communication between the Chicago and Springfield offices is ineffective; attorney salaries are too low; there is a lack of management information; the AGO maintains insufficient financial data and has no ready access to personnel data; there is also not enough information to assist in case management; there is inadequate planning; there is an imbalance of resources among divisions; computers need to be modernized; the AGO should have responsibility for all state legal services; the AGO should have control over all attorneys and related resources providing services to state agencies.

also interviewed judges and former AGO employees.²⁸ We additionally surveyed state and federal judges by mail.

Interviews with Lawyers and Judges

We interviewed by telephone and in person dozens of lawyers with professional experience with the AGO. The general view of the AGO held by the legal community is one of low expectations. One private attorney who is a former AGO employee told us, "We knew that you stayed at the AG's office only until you could get out." Many attorneys reported that in cases they had against the AGO, they "assumed" that the quality of lawyering among Assistant Attorneys General would be low. These attorneys further reported that sometimes their assumption was correct, but in other cases it proved wrong. Attorneys and judges we interviewed, while sometimes complimentary of particular Assistant Attorneys General, were often harsh in their criticism of the AGO as a whole. There were several themes that recurred throughout our interviews. They are:

■ *The quality of lawyering is inconsistent.* Our interviews revealed that many attorneys and judges have experienced inconsistency in the quality of lawyering provided by the AGO. Many attorneys with multiple cases against the AGO noted that they had experienced a wide range of attorney quality -- from excellent to abysmal. We interviewed a number of private sector lawyers who, in cases where the opposing party was represented by the AGO, stated that

the Assistant AGs missed court dates, failed to return phone calls and, in general, provided low quality legal representation. In one instance, boilerplate language copied from one brief into another contained the name of the parties in the original brief.

The importance of the cases did not seem to correlate with the quality of representation. There have been missed court dates in multi-million dollar suits brought against the state as well as in cases much smaller in scope. One federal magistrate told us that he has entered several default orders after assistant AGs missed important court dates.

Yet some attorneys told us that in the very next case following the incident of poor lawyering, the AGO provided high quality representation. The inconsistency often occurred within the same division of the AGO.

Some attorneys and judges, in commenting on the inconsistent quality of lawyering, noted their belief that at least some of the problem can be explained by the large caseloads handled by individual Assistant Attorneys General. But many of these lawyers and judges are quick to point out that an apparent lack of supervision and training of Assistant Attorneys General exacerbates the problem of heavy caseloads. The Illinois AGO does not seem to be willing or able to address the issue of how to manage cases better. It was reported to us, however, that one of the causes for the crushing caseloads for certain attorneys is that the AGO has chosen to use its resources to hire non-lawyers for political purposes, thereby reducing the number of attorneys who can be hired.

■ *Morale is Low.* The AGO is plagued by low morale among its attorneys stemming from (1) patronage practices; (2) lack of training; (3) lack of appropriate supervision in many

²⁸ As we stated earlier, former Attorney General Roland Burris refused to cooperate with our study and did not allow us official access to the AGO staff.

divisions; and (4) low pay.

1. *Patronage:* We were told that it was common for non-lawyers to be hired by the AGO for political purposes -- to help manage and conduct political campaigns of the Attorney General then in office.

Another form of patronage is the extensive use of outside counsel by the AGO. While necessary in cases where there are conflicts or where particular expertise is needed, many lawyers and judges told us that the AGO relies on outside counsel for cases which could be handled in-house. This practice drains the AGO of resources which could be used to hire more high quality supervising attorneys. It also hurts morale because the Assistant Attorneys General are not being given the "interesting" cases -- the type of work which could help attract high quality lawyers to the AGO and help persuade these lawyers to stay with the AGO.

2. *Training:* *The amount and quality of training depends upon who a lawyer's supervisor happens to be.* Some supervisors provide good on-the-job training; many provide neither formal nor informal training. There is little formal training for lawyers that is not on-the-job training. This situation fuels the inconsistent quality of the AGO's legal work. Many private attorneys told us that a lack of training presents a recruiting problem for the AGO. Young lawyers interested in public interest work will not go to an office that does not provide good training, especially where other public offices provide better training.

3. *Supervision:* *The quality of supervision varies widely throughout the office.* There appears to be no attempt to monitor or evaluate the quality of supervision. As with training, many private attorneys told us that a lack of high quality supervision presents a recruiting problem for the AGO. Young lawyers interested in public interest work will not go to an office that does not provide good supervision.

4. *Low Pay.* The starting salary for Assistant Attorneys General in Illinois, as we stated earlier, is among the lowest of all public interest or government sector agencies. Further, there are no established higher paid positions under the division head level toward which Assistant Attorneys General can strive. Finally, we were told that decisions regarding salary increases are perceived by staff to be arbitrary and often based on politics rather than on merit.

Interviews with Representatives of Community Organizations and State Agencies

We interviewed representatives of community organizations whose operations require them to work with the AGO. We also interviewed employees of agencies who are sometimes represented by the AGO. The following themes recurred throughout our interviewing process:

- *Decisions about staffing particular divisions appear to be politically motivated.* Representatives of some community groups complained that decisions concerning the number of attorneys staffing certain divisions are too often based on political needs and not on legal needs. For example, the Disabled Citizens' Rights Division under Attorney General Neil Hartigan was staffed with approximately 15 lawyers and was extremely active in legislative

activities, handling complaints under the Environmental Barriers Act and other activities relating to disability rights. Under Attorney General Roland Burris, the Division had approximately four employees, only one of whom was an attorney. According to members of more than one community group, the legal demands for the division had not changed at all. What had changed was the political priorities of the Attorney General then in office.

Another example is the in the area of civil rights. The Civil Rights Division of the Illinois AGO has only one attorney while the New York AGO, for example, has a large civil rights bureau heavily involved in litigation activities. One representative of a community group told us, "The priorities of the office are dictated by what can get the AG elected governor. The office is press-release driven."

■ *Decisions about priorities are made without adequate input from community organizations.* While the AGO does utilize citizens advisory groups, many of those who sit on these groups do not believe that the Illinois AGO values their input. One representative stated, "they [the AGO] brings us together but our ideas don't get played out -- we're window dressing."

■ *There is not enough communication and collaboration efforts between the AGO and public interest organizations.* There is overlap in the interests of certain public interest organizations and the AGO -- such as in the areas of environmental law, utilities regulation and civil rights. Yet there is little collaborative effort. Many public interest lawyers told us that

they would welcome the AGO's resources in their public interest work but that "it just doesn't happen."

■ *The AGO is too often unresponsive to the needs of its clients and does not provide high quality representation.* Representatives of state agencies to whom we spoke complained that it was difficult to communicate with Assistant Attorneys General and that certain agencies do not trust the AGO to provide high quality representation. Some of these representatives admitted that the fact that the Attorney General and the Governor were members of different political parties played a role in creating the lack of communication. But a number of individuals we interviewed said the communication problems can be resolved with better organization and technology.

Survey of Judges

On June 17, 1994, we sent 200 surveys to state and federal judges. These judges are located throughout the state of Illinois and sit in both trial and appellate courts. Thirty percent of the judges returned the questionnaire. The questionnaire asked each respondent to rate the abilities of Assistant Attorneys General under the following categories: writings, pre-trial activity, trial activity, appellate activity, and overall evaluation.

In the overall evaluation category, about one-third of the judges rated Assistant Attorneys General as fair or poor. The same was true in the majority of the other categories.²¹ Even

²¹ Too few appellate judges responded to our survey to allow any conclusions about the quality of appellate work.

more telling, however, are the narrative responses provided by more than 30 of the judges who responded. The following are some examples:

Assistant AGs appear to be politically hired and poorly paid. The combination is deadly. The presentations are slap dash. Obviously the lawyers also are overworked. We end up doing the work ourselves and often releasing Real Bad Actors because of waivers when the state fails to make the right argument.

The AG's Office attempts to be all things to all people...As a consequence of their current philosophy they do few things well. The recommendation that I would make is to prioritize the activities of the Office starting with Constitutional mandates, then statutory mandates and only engaging in discretionary activities once the other mandates are professionally fulfilled....

Attorneys need more courtroom experience....

Those AGs who appear before me are well prepared, argued well.

General morale of office seems to be going down....

They always appear promptly and are prepared....

With respect to consumer fraud, I find AGs "press release" driven; have a poor understanding of due process and are mediocre...This division needs more competent people.

These representative statements highlight the view that the AGO is marked by widely inconsistent quality.

CHAPTER V RECOMMENDATIONS AND CONCLUSIONS

The Illinois Attorney General's Office has a broad constitutional, common law and statutory mandate to protect the interests of the people of Illinois. Unfortunately, the AGO has been plagued by inadequate funding, patronage hiring and an ineffective organizational structure. Yet an exemplary AGO can provide the people of Illinois with a vehicle for reform and protection. The AGO must not be used primarily as a stepping-stone for higher political office. The Illinois Attorney General must establish the goal of creating an exemplary public agency. The AGO must provide high quality representation to the agencies of Illinois, and it must seek out ways to protect the people of Illinois through vigorous litigation, counseling and legislative work.

To do so, the AGO must change its basic structure and thrust. It must aim to be competent, vigorous and exemplary and must be perceived as such by the bar, the public and the judiciary. But the State of Illinois can have an exemplary AGO only if the General Assembly and the Governor provide the requisite financial resources. We believe the investment is necessary in light of increasing problems facing the state in an era of shrinking resources.

To create a statewide public interest law firm upon which the people of Illinois can depend, we recommend the following:

A. THE AGO MUST SEEK ASSISTANCE FROM THE PRIVATE BAR AND THE PUBLIC INTEREST BAR

The Attorney General should reach out to the private bar and lawyers in public interest

organizations and in other government offices to enhance the quality of lawyering, training and supervision. We believe the AGO is in a position similar to that of the Chicago Department of Law in 1982. That office provided little training or supervision, and hiring was based on patronage. One of the first things that then Corporation Counsel James Montgomery did was to recruit high quality partners from respected Chicago law firms. Their charge was to modify operating procedures and policies as well as to provide needed supervision and training to young lawyers. In turn, talented but inexperienced lawyers became eager to work for the Chicago Department of Law because they knew they would get good quality supervision and training. Since 1982, Chicago's Corporation Counsels have recruited experienced attorneys from the private bar and public interest organizations. We recommend that the Attorney General assemble a group of respected lawyers and declare a goal of creating an exemplary AGO within four years with help from the private bar and the public interest bar.

B. RECRUITING AND HIRING PROCEDURES MUST BE CHANGED

The AGO must implement recruiting and hiring procedures based on merit, not political considerations. The office must market itself as a powerful and dynamic law office that offers unique training, experience and career opportunities to new attorneys.

The AGO should interview on campus at midwestern law schools and recruit from law schools in other portions of the country. The AGO should aggressively seek summer associates. The summer associate program should provide opportunities to students who have completed one or two years of law school to work in several areas of their choice. Duties should include researching legal issues, preparing briefs and memoranda, and attending strategy meetings,

depositions and court proceedings. The summer associate program would be part of the attorney recruitment program. Emphasis on recruiting students after their first year of law school would help the Illinois AGO's recruiting efforts by attracting quality students at a point where recruiting competition is less intense than for second-year students. A summer associate program would give the AGO the opportunity to motivate students to join the AGO on graduation and to evaluate an attorney's work prior to making an offer of employment.

An effort should be made to seek candidates from diverse backgrounds. Though the office should seek summer associates and attorneys who have superior grades and are involved in law review, trial advocacy or appellate advocacy, the office should make a special effort to hire attorneys who have public interest backgrounds, leadership experience, and who are highly motivated. Applicants with unique backgrounds, whether professional, academic or socioeconomic, will strengthen the office by incorporating fresh ideas and perspectives on legal strategy and office policy. Further, the office should always strive to seek minority and women applicants. But the office should refrain from hiring based on political influence or sponsorship.

Hiring Committee Structure

To minimize political influence in the hiring process, the office should form two separate hiring committees: A lower-level committee comprised of assistant attorneys general, and a senior-level committee, comprised of directors, division chiefs and executive assistants. This bi-level approach would reduce political influence by relying on an initial review by lower-level attorneys who should have little involvement with state and local politics.

The lower-level hiring committee should select candidates to be interviewed and should participate in interviewing those candidates. A standardized evaluation sheet should be utilized. The committee should review writing samples, investigate references, and then recommend candidates in writing to the senior-level hiring committee.

The senior-level committee should review the lower-level committee's recommendations and vote on each candidate based entirely on the resume, the interview evaluation form, the writing sample, references, and the written recommendation. The Attorney General should be a member of the senior-level committee.

C. TRAINING AND PROFESSIONAL DEVELOPMENT MUST BECOME HIGH PRIORITIES

The AGO's recruiting and hiring strategies must be implemented hand-in-hand with other reforms. To attract the most capable attorneys, the office must offer an opportunity for public practice that is high quality and sophisticated, as well as a practice that provides on-the-job training. A public law office cannot offer salaries competitive with those offered by large private firms, but it can compete with these firms by providing superior training and by giving new attorneys substantial and worthwhile responsibilities.

The office should facilitate training on both a macro and micro level. On a macro level, the office should provide continuing education programs on timely topics. The office should ask experts to present short workshops, which can often be held during lunch. The Attorney General should choose programs of interest to the entire staff, and division heads should organize programs of interest to their divisions. The organizers should survey the staff on their interests before choosing topics. The AGO should tap private law firms for training materials and

training programs.

The AGO must also provide superior on-the-job training. Such training must necessarily be rendered on a micro level. Much as in private firms, supervising attorneys must work with inexperienced attorneys more intimately than with senior attorneys. In most large public law offices, a substantial number of lawyers are hired with minimal experience. Close supervision by experienced attorneys is the best means to offset this lack of experience.

In each unit, the attorneys should establish clear goals that are tailored to the overall office goals. Then, the supervising attorneys must assess which skills need improvement or advancement in order to achieve those goals. The subordinate attorneys should be involved in this goal-setting and skill-assessing process. These skills may include, for example, research and writing, time management, problem solving, communication, planning, and implementing change. The supervising attorney and the participating attorneys must continually evaluate the methodology chosen for advancing these skills. Not only should the office provide staff training for skill-advancement purposes, but it should also utilize training to enhance promotional opportunities by linking training with performance evaluations.

D. THE AGO MUST IMPLEMENT PERFORMANCE STANDARDS AND EVALUATIONS

To ensure quality work and provide a merit-based method of promotion, the AGO must utilize periodic, thorough performance evaluations.

The first step in a performance evaluation system is to set performance standards that are directly related to office goals. Supervisors must clearly communicate these standards to the attorneys and ensure that the standards are met. Each attorney must be formally evaluated at

least once a year. The evaluation process is useful to the office and is accepted by the attorneys only if the process is systematic and objective. Hence, the evaluation should consist of criteria specifically related to legal abilities, be administered at approximately the same time each year, and include both written and interview components.

The division chief should coordinate the evaluation of each attorney in his or her division. The process should require that the attorney complete a self-evaluation form identical to the form to be completed by the division chief. All other attorneys who work with the attorney being evaluated should complete and return an evaluation form to the division chief. The division chief should then meet with each attorney. The meeting should be used not only to discuss evaluation, but also to discuss training and professional development goals for the coming year.

A crucial part of the evaluation process involves linking the evaluation with rewards, especially salary increases, intra-office transfers and promotions. A merit reward system provides incentives for good attorneys to maintain high quality levels of work and to seriously consider long-term careers in the AGO. A merit system also warns inadequate attorneys that their work quality must improve. Salary increases beyond cost of living adjustments should be directly linked to the yearly evaluation.

Similar to salary increases, promotion opportunities should be linked to the yearly evaluation. Promotion opportunities must be maximized to attract and retain highly qualified attorneys and to ensure that the best attorneys are utilized effectively. The AGO should not exclusively hire its senior staff and division heads from outside the office. It must seek experienced, highly qualified attorneys within the office first. Attorneys in the office must have

a realistic expectation that high quality work over a period of time can lead to a division chief or senior staff position.

Promotion decisions must be made using a systematic, objective approach. All promotional opportunities should be posted within the office. The senior-level hiring committee should make promotional recommendations to the Attorney General, based upon interviews, the evaluation process, and detailed job descriptions and criteria for the position.

The AGO should create a Senior Assistant Attorney General position.

The AGO must work to retain Assistant Attorneys General who show themselves to be superior attorneys. One approach is to create a Senior Assistant Attorney General position which would pay less than a division head position but more than an Assistant Attorney General slot. This position would provide the AGO with an additional opportunity for promoting high quality lawyers and, therefore, improve the chances that the AGO can keep high quality lawyers.

E. TEAMWORK AND COMMUNICATION MUST BE IMPROVED

To be effective, divisions must work cohesively as teams. Instilling group efficiency and cooperation into the Attorney General's Office is not easy. Attorneys may communicate inadequately with team members and supervisors such that efforts are duplicated or work is not finished on time. On the other hand, supervisors may not give adequate feedback to attorneys. A number of factors can upset the functioning of a group of attorneys.

Communication, planning and evaluation are the keys to ensuring adequate teamwork.

Each group, no matter on which level, must meet periodically for planning. These meetings should include discussion of group goals, priorities, and methodologies. The group's goals should complement broader office goals. Consequently, the group will have a more personal interest in accomplishing office priorities.

Supervisors must then frequently provide feedback on the group's progress. The Attorney General can fulfill this function to the entire office through a monthly newsletter or electronic mail. Division chiefs should hold formal monthly meetings and circulate reports. Supervising case attorneys should hold meetings at least once a week to give feedback. In each case, feedback should be honest, straightforward and complete, mentioning progress and areas for improvement alike. In addition, because groups frequently forget to apply the larger set of office priorities, supervisors must continually stress how the group's activities fit into the overall activities and goals of the office. Finally, attorneys who make up a group must be given opportunities to voice their concerns and opinions on the group's progress.

In addition, post-case memoranda, prepared by each first-chair attorney after a case is completed, should be discussed at meetings among Assistant Attorneys General and their supervisors. Such memoranda would include pertinent facts and issues involved in the case, as well as the attorney's comments and evaluation of the case. That approach combines evaluation with case management and strategy.

F. PARALEGALS SHOULD BE USED EXTENSIVELY

We recommend that the AGO utilize paralegals, particularly in complex litigation. The use of paralegals will allow attorneys to function more effectively.

G. OFFICE MANAGERS ARE NECESSARY

The AGO, as a major business organization, has enough personnel to warrant an office manager. This manager should have experience administering a large law firm and should be given enough autonomy to establish a system through which a high quality clerical staff can be maintained. It is not necessary that the office manager be a lawyer. An office manager will provide a centralized control over administrative matters. There should be an office manager located in each branch office with one person having overall responsibility for office management. This office manager should report to the First Assistant Attorney General.

H. IN DECIDING TYPES OF CASES TO BRING OR DEFEND, COMMUNITY GROUP INPUT SHOULD BE SOUGHT

During the past decade, the AGO has utilized citizen advisory groups. We believe the AGO should continue to use such groups but that representatives of these groups should meet with and be invited to submit written comments to the AGO's top managers. We also recommend that the AGO's top managers attend community meetings periodically.

I. A MORE EFFECTIVE ORGANIZATIONAL STRUCTURE SHOULD BE EMPLOYED

While a top priority must be to attract, hire and maintain talented lawyers and support staff, it is just as important to use that talent effectively. We believe that the AGO needs to survey its operating environment and decide on its goals -- free of political influences. Identifying goals based on what is best for state agencies and the people of Illinois requires a carefully designed organizational structure.

To Improve Communications, A Three-Tiered System of Management
Should be Utilized

The Attorney General should be responsible for the AGO's policy decisions just as a board of directors is responsible for policy decisions of a corporation. But just as a corporate board does not get involved in day-to-day corporate operations, neither should the Attorney General micro-manage the AGO. Rather, the Attorney General should serve as the first tier of the AGO's management.

The second tier should consist of the Deputy Attorneys General, who serve as middle level managers. Each Deputy should be responsible for a particular area and particular divisions of the office. These individuals should make policy-related decisions that will affect the operations of the AGO on a day-to-day basis. They should supervise a designated number of division heads. The third tier should be the division chiefs, who provide supervision and all relevant communication to Senior Assistant Attorneys General and Assistant Attorneys General.

The goal of this system is to allow the Deputy Attorneys General to inform the Attorney General as to what types and numbers of cases are being pursued by the various divisions. It will also give the division heads the opportunity to get feedback on positions taken on various matters. The division heads should perceive the cases most clearly and, accordingly, should make recommendations on day-to-day decisions. On extraordinary matters involving large risks and consequences for the state, the division chief should make recommendations to the Deputies who should, in turn, make their recommendations to the Attorney General.

I. THE ATTORNEY GENERAL SHOULD CREATE A LEGAL COUNSELING WHICH SHOULD BE
ASSIGNED TO COMMUNICATE WITH PARTICULAR AGENCIES

A Legal Counseling Division should be created to establish and maintain the lawyer/client relationship with state agencies. State agencies currently use the AGO only as a "hired gun" for litigation. However, the AGO must develop a lawyer/client relationship with state agencies. These agencies need legal counseling for advice on responding to problems and on how to prevent problems from occurring. Particular attorneys within a Legal Counseling Division should be assigned to each agency and to the governor's office.

Inquiries from state agencies should initially go to the Legal Counseling Division. Its attorneys should either research the issues themselves or refer them to a more appropriate division of the AGO.

An additional duty of this division should be to monitor legislation pending in Springfield and Washington, D.C. The AGO should take a leadership role in supporting or opposing legislation affecting Illinois and the people of Illinois.

K. THE AGO SHOULD ULTIMATELY ACQUIRE RESPONSIBILITY FOR ALL
STATE LEGAL SERVICES

This was a recommendation of the 1983 Arthur Andersen report, and we agree with it. State agencies will have fewer in-house lawyers, but they will have a closer working relationship with the AGO -- including more legal counseling as well as litigation services. However, before such a change is made, the AGO must improve the quality of its representation, including the counseling function discussed earlier. The AGO must also develop a more cooperative and trusting relationship with other state agencies -- principally by assuring that decisions will be

made based on the agencies' legal needs, not on the Attorney General's political agenda.

L. THE ATTORNEY GENERAL'S OFFICE SHOULD REDUCE THE USE OF OUTSIDE COUNSEL.

The AGO will be able to attract the finest attorneys only if it can offer challenging legal work. It should, therefore, seek to utilize its own attorneys whenever possible. To this end, the additional training and supervision discussed earlier in this report will be important parts of the effort to minimize the use of outside counsel.

When outside counsel is used, an Assistant Attorney General should be assigned to work with the outside counsel as part of the arrangement. This serves two purposes. First, the Assistant Attorney General can use the opportunity to build his or her expertise. Second, the cost of outside counsel can be reduced if tasks that can be done in-house are in fact done in-house.

All arrangements with outside counsel should include provisions for monthly billing with detailed timesheets and other documentation of the legal work done. We also recommend that strict procedures be used to account for the payment of funds to outside counsel and that resulting records be considered public documents. Further, a Deputy Attorney General should be placed in charge of overseeing the work and billing of outside counsel. Outside counsel, when necessary, should be chosen based on demonstrated expertise, not political considerations.

M. PRO BONO RELATIONSHIPS SHOULD BE DEVELOPED

We discussed earlier the need to recruit experienced lawyers from the private bar and the public interest sector. We also recommend that the AGO seek agreements with law firms

allowing associates to provide time-limited clerkships to the AGO. We also recommend that the AGO seek arrangements with local law school clinics that will allow law students to work with the AGO in exchange for academic credit.

N. A TASK FORCE SHOULD STUDY THE USE OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS -- PARTICULARLY IN THE AREA OF CONSUMER PROTECTION

We recommend that a task force be formed to study approaches using alternative dispute resolution to reduce the caseloads of Assistant Attorneys General. We suggest that one area amenable to the use of alternative dispute resolution methods is consumer fraud. Trained AGO volunteers could be used as mediators to consider consumer complaints made to the AGO. This task force should issue its recommendations to the Attorney General.

O. AN INTERNAL REVIEW BOARD SHOULD BE CREATED

A Review Board should be established to receive and review complaints made by Assistant Attorneys General, other staff of the AGO and the public about AGO procedures and policies. Staffed by representatives of Deputy Attorneys General, Division Heads, Assistant Attorneys General and administrative staff, this Board should review written complaints, conduct hearings if necessary and, in general, attempt to resolve disputes. A representative of this Board should report to the Attorney General.

P. THE AGO SHOULD CONTINUE TO PUBLISH AN IN-HOUSE NEWSLETTER AND AN ANNUAL REPORT DISCUSSING THE AGO'S ACCOMPLISHMENTS AND PROVIDING ACCURATE STATISTICS

It is important that employees of the AGO view the AGO as a law firm operating in a competent and coordinated fashion. Communication can help facilitate this process, and we therefore recommend that a newsletter be produced that will discuss accomplishments, defeats and general events -- as well as updates on caselaw and statutory developments.

It is also important that legislators and members of the public have knowledge of the AGO's activities. An Annual Report should be detailed and should chronicle the transition of the AGO to an exemplary public interest law firm free of political patronage and other political influence.

Q. DECISIONS REGARDING THE STAFFING OF DIVISIONS OF THE AGO MUST BE BASED ON SUBSTANTIVE NEEDS AND NOT ON POLITICAL EXPEDIENCE

As we discussed earlier in this report, the staffing levels of various divisions of the AGO often change dramatically depending on who the Attorney General happens to be. We recommend that an Executive Committee comprised of the Attorney General, Deputy Attorneys General and Division Heads make staffing decisions based on legal needs and available resources.

R. IN REVENUE LITIGATION, THE AGO SHOULD FOCUS ITS ATTENTION ON PURSUING SUBSTANTIVE TAX ISSUES IN COURT.

We heard complaints that the AGO focuses on the largely administrative function of revenue collection in uncomplicated matters rather than on pursuing more difficult tax collections

through litigation. This approach has been used for political reasons because the AGO gets to claim that it collects large amounts of funds for the state. However, this effort may be a waste of resources because the in-house staff at the Illinois Department of Revenue may be able to conduct this routine collection function. We recommend that this issue be examined and a new strategy be developed.

S. THERE MUST BE MORE ACCOUNTABILITY IN THE CHARITABLE TRUSTS AND SOLICITATIONS DIVISION

The AGO should charge filing fees and late fees. The AGO should also publish reports listing what percentage of the funds received by each charitable organization is actually delivered to the charitable purpose. Furthermore, the AGO should publish a standard-form contract to be distributed to charitable organizations to aid them in their dealings with commercial fundraisers.

T. AN ADVISORY GROUP SHOULD BE FORMED

It is our opinion that the offices of Attorneys General in New York, California and Massachusetts are among the most active and effective offices in the country. We recommend that an Advisory Group comprised of former attorneys general, private attorneys, legal scholars and representatives of bar associations should monitor AGO activities in other states -- both directly and through the National Association of Attorneys General. This Advisory Group should periodically report its findings and recommendations for new initiatives, litigation, legislation, etc. to the Attorney General.

U. THE AGO SHOULD ESTABLISH A PUBLIC INTEREST DIVISION AND
SEEK A WORKING RELATIONSHIP WITH PUBLIC INTEREST
ORGANIZATIONS

There are numerous public interest organizations in such areas as environmental law, civil rights and consumer affairs. Many of these organizations have missions similar to the public interest mission of the AGO. The AGO should seek to work with these groups on both litigation and legislative strategies. To this end, the AGO should establish a Public Interest Division to identify areas of concern, develop strategies for solving problems and establish working relationships with public interest organizations.

CONCLUSIONS

The Illinois AGO has a broad constitutional, common law and statutory jurisdiction to both represent Illinois agencies and the people of Illinois. To this end, there is great potential for interesting, challenging and worthwhile legal actions -- work that could attract high quality attorneys. Unfortunately, the AGO has been plagued by patronage hiring and decisionmaking based too often on political aspirations and not on the best interests of Illinois.

The Illinois Attorney General needs to make large scale changes. Hiring and promotion decisions need to be based on merit. The Attorney General needs to approach the private sector bar (including public interest organizations) for help in finding high quality lawyers who are willing to commit time to improving the AGO. The AGO needs better supervision and training and an organizational structure which will allow decisionmaking to be based on the best interests of the state. Moreover, the AGO needs to develop a professional lawyer/client relationship with state agencies and provide legal counseling services as well as litigation attorneys.

The AGO must become an exemplary statewide public interest law firm. The people of Illinois deserve no less. The Chicago Department of Law became a high quality municipal law office after many years of committed effort from Mayor Harold Washington, Mayor Richard M. Daley and the Corporation Counsels they selected. There are many similarities between the Chicago Department of Law in the early 1980s and the AGO in the mid-1990s.

In 1982 the Chicago Council of Lawyers and the Fund for Justice embarked on a study of the Chicago Department of Law ("Department"). Our study, released to the public in April, 1984, showed that James Montgomery, who became the corporation counsel with the election of Mayor Harold Washington, had inherited an office in disarray. While there were high quality lawyers present in the office, their work was eclipsed by patronage hiring, and a lack of an effective organizational structure. There was no objective system of evaluating personnel and no systematic analysis of the types of legal matters in which the Department should be involved. Our study noted a lack of effective supervision and inadequate support staff.

We said in 1984 that the Department must change its basic structure and thrust so that it would move toward becoming an efficient and effective public law firm that protects Chicago's interests in both the short and long terms. And, in so doing, it should aim toward being perceived as competent, vigorous, and exemplary by the judiciary, the bar, and the public. To this end, we offered 33 recommendations.

Beginning with Mr. Montgomery's term, the Department of Law started to implement major changes for the better. In 1994 we issued a follow-up report to our 1984 study of the Department. We found that the Chicago Department of Law utilized many of our recommendations, with a strong focus on improving supervision and training by tapping private

sector attorneys for assistance. The Department is now a respected municipal law office.

The Illinois Attorney General's Office can become an exemplary office within four years

-- provided it receives the support of the Governor and the Illinois General Assembly. The time and monetary investment will be worthwhile for all the people of Illinois.