

### **III. Core Function: Legal Representation, Enforcement of Federal Laws, and Defense of U.S. Interests**

As the Nation's litigator, the Department is the largest "law office" in the world. Working together, Department components ensure that the Federal Government "speaks with one voice" with respect to the law. In 1998, the Department worked to address several of the Attorney General's top priorities, including enforcing the Nation's environmental, tax, civil rights, and antitrust laws; putting a stop to the proliferation of hate crimes; protecting the public fisc; defending challenges to the Federal Government's regulations and initiatives; and focusing on litigation with international implications.

#### **Goal 3.1: Protect the Civil Rights of All Americans.**

The civil rights laws of the United States prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, age, familial status, and citizenship status in employment, education, public accommodations, housing, lending, programs receiving Federal financial assistance, and in other areas. The Civil Rights Division (CRT) serves as the Federal Government's chief guardian of these rights.

Worker exploitation is another area where the Department has increased its involvement, having observed an increase in these cases. The Attorney General in April 1998 approved the creation of an interagency Worker Exploitation Task Force. This task force is co-chaired by the Acting Assistant Attorney General for Civil Rights and the Solicitor of Labor. The task force is investigating a number of potential worker exploitation cases, has a number of cases under indictment, and has coordinated a wide-ranging training program on worker exploitation for investigators from a number of agencies.

#### **New Office to Focus on ADR**

The success of ADR at the Federal, state, and local levels led the Attorney General in January 1998 to establish the Office of Dispute Resolution (ODR) as an independent component within the Department. During the past year, ODR has provided services to civil litigators throughout the Department on all matters involving dispute resolution, including identifying ADR providers and appropriate cases and providing training and funding for ADR activities. ODR oversees a presidentially established task force to promote ADR throughout the Executive Branch. In 1998, a new position created within ODR—the Director of Community Dispute Resolution—will unify and focus the Department's many efforts to bring ADR techniques into schools, police departments, and communities. The Office of the Associate Attorney General has actively promoted the enhanced use of ADR, both within the Department and throughout the Federal Government, and is working with law school deans and officials to integrate ADR and problem-solving into law school curricula.

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## Hate Crimes

On May 15, 1998, the Attorney General announced the Department's Hate Crimes Initiative, a key component of which was the formation of community-based hate crimes working groups in U.S. Attorney's offices across the country. CRS helped to ensure that all major segments of the minority community would be included in the working groups with Federal, state, and local law enforcement representatives. More U.S. Attorneys are seeking CRS expertise in their community outreach programs, and CRS partnered with U.S. Attorneys in hate crimes training across the country.

Church fires and the desecration of houses of worship resulting from racial and ethnic biases have not ceased. Department components continued their participation with the National Church Arson Task Force, serving as a resource to human relations commissions in the South.

Other 1998 hate crimes investigations and activities included the following:

- The Department, with a consortium of Federal, state, and local law enforcement trainers and educators, developed a four-tier training curriculum on hate crimes for state and local law enforcement. It was disseminated in three regional training seminars.
- The Department investigated the murder of James Byrd, Jr., an African American, in Jasper County, Texas, as a possible Federal civil rights violation. Evidence developed by FBI Special Agents and the FBI laboratory is expected to be introduced at the state trial of three white men who have been charged with murder.

## Pattern or Practice Civil Rights Violations

### Rights for Persons with Disabilities.

The Department continued its comprehensive program under the Americans with Disabilities Act (ADA) to open up the mainstream of American life to people with disabilities. Through mediation, negotiation, and litigation, the Department achieved important results. In particular, the Department obtained Supreme Court rulings in favor of ADA protection for people with asymptomatic HIV. For example, In *Bragdon v. Abbott*, the Supreme Court held that the ADA protects HIV positive persons against discrimination in services offered by a place of public accommodation—in that case, the services of a dentist. The Court reasoned that having even asymptomatic HIV infection can significantly restrict major life activities

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and thus qualifies as a “disability” under the ADA. The Court further held that application of the ADA’s exception for situations in which the individual “poses a direct threat to the health or safety of others” must be based on medical or other objective evidence.

### **Fair Housing and Voting Rights.**

In 1998, fair housing and fair lending enforcement continued to be a high priority in the Department. Sixty-four cases were filed seeking to enforce the provisions of the Fair Housing Act, including 25 pattern or practice cases and 31 cases referred to the Department by the Department of Housing and Urban Development (HUD) following investigation of individual complaints by that agency. The Fair Housing Testing Program continues to be a powerful investigative tool for detecting housing discrimination. During 1998 alone, 10 such cases were filed. Settlements in testing cases in 1998 topped \$750,000, bringing the total monetary relief obtained in cases resulting from this program to more than \$7 million.

- In a race discrimination case against a large landlord in Mobile, Alabama, the Department obtained almost \$800,000 in monetary relief.
- In a case alleging that an Illinois municipality discriminated against Hispanics in tearing down housing in connection with its urban renewal efforts, the Department’s suit and a related case brought by private plaintiffs were settled, resulting in a restructured renewal process and monetary relief of close to \$1.4 million.
- The Department gained agreement from Bleckley County, Georgia, to fairly include African Americans in its recruitment of poll officers, and from Worth County, Georgia, to discontinue the use of a whites-only service club to staff the polling place for a majority black precinct.
- A settlement order was entered that prevents the repetition of an incident in a New York City community school board election in which poll workers improperly influenced voters to vote for a white write-in candidate in opposition to minority candidates listed on the ballot.

### **Institutions-Related Rights.**

In 1998, the Department continued efforts to secure basic constitutional rights for persons in institutions. An FBI investigation at the Corcoran State Prison in California led to Federal charges against eight correctional guards for violating the civil rights of inmates. The investigation was coordinated with the Civil Rights Division.

### **Executive Clemency Petitions Reviewed**

**T**he Office of the Pardon Attorney continued its mission of assisting the President in the exercise of his power under Article II, Section 2, clause 1 of the Constitution (the pardon clause) by receiving and reviewing all petitions for executive clemency (including commutation of sentence, remission of fine, and pardon after completion of sentence), directing the appropriate investigations, and preparing a report to the President in every case. During 1998, the office received 608 new cases and reduced the number of pending cases from 748 on October 1, 1997, to 535 on October 1, 1998.

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Additionally, the Department hosted the U.N. Special Rapporteur on a Violence Against Women's mission to the United States to study violence against incarcerated and detained women, with a focus on sexual misconduct. The rapporteur visited Federal prisons and INS detention centers, along with state facilities.

### **Police Misconduct.**

During 1998, the Civil Rights Division used the Department's authority to protect citizens from pattern or practice police misconduct that violates Federal rights. For instance—

- The Department monitored compliance with its first two consent decrees to remedy systemic misconduct in municipal police departments in Pittsburgh, Pennsylvania, and Steubenville, Ohio.
- The Department notified the City of Columbus, Ohio, that it intends to file suit to remedy systemic police misconduct there, and entered in discussions to resolve the matter.
- The FBI and the New York City Police Department investigated allegations that police officers had brutalized a Haitian immigrant during an arrest. As a result, five officers were indicted in 1998 on felony charges of deprivation of rights under the color of law. The investigation was coordinated with the Civil Rights Division.

### **Clinic Access.**

Pursuant to its authority under the Freedom of Access to Clinic Entrances Act (FACE), the Department continued to protect the rights of patients and health care providers against threats of force and physical obstruction of reproductive health facilities. Department components continued to work closely at the state and Federal levels to prosecute FACE violations. The Department filed three new civil cases under FACE and was successful in obtaining relief in five ongoing FACE cases. Relief included the following:

- A permanent injunction against 35 defendants for blockading a clinic in a suburb of Philadelphia, Pennsylvania.
- A preliminary injunction entered against 30 defendants for a series of blockades at a reproductive health facility in Englewood, New Jersey.
- In a case involving the blockade of a New York reproductive health clinic, the first assessment of civil penalties following a jury verdict in favor of the United States in a civil FACE case.

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- A temporary restraining order to prohibit a defendant from approaching the home of a reproductive health doctor whom the defendant had threatened.
  - Two civil contempt rulings based on violations of an injunction establishing buffer zones outside a Connecticut reproductive health care clinic.

### **Employment Discrimination.**

In 1998, the Department continued to investigate and pursue cases alleging individual and patterns or practices of employment discrimination. For example—

- In *Oncala v. Sundowner Offshore Services, Inc.*, the Court held that sexual harassment by a person of the same sex is actionable under Title VII, agreeing with the Department's argument that Title VII prohibits harassment based on the victim's sex and that the sex of the alleged harasser is irrelevant.
- In *Burlington Industries, Inc. v. Ellerth and Faragher v. City of Boca Raton*, the Court ruled that an employer may be liable for sexual harassment by a supervisor who creates a hostile working environment, even when no tangible adverse employment action (such as firing or failing to promote) is taken against the employee.
- The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) enforces the antidiscrimination provisions of the Immigration and Nationality Act by protecting authorized workers from discrimination because they "look or sound foreign." During 1998, OSC investigated 447 charges of employment discrimination and opened 23 independent investigations, obtaining \$31,000 in back pay for discrimination victims and assessing \$40,000 in civil penalties.

### **Goal 3.2: Safeguard America's Environment and Natural Resources.**

In 1998, Department attorneys and investigators continued efforts to vigorously pursue environmental law violators and thereby enhance the health of all Americans. It safeguarded the Nation's environment through environmental enforcement, international cooperation, natural resources protection, and the promotion of partnerships and environmental justice. The Department also worked cooperatively to protect tribal sovereignty, lands, and natural resources.

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## Expansion of Partnerships with Federal, State, and Tribal Governments

### Civil Enforcement.

The partnership between the Department's Environment and Natural Resources Division (ENRD) and the U.S. Attorneys strengthened the investigation and prosecution of environmental crimes during 1998. Another example of partnership includes the U.S. Environmental Protection Agency (EPA) in the Mississippi River Basin Initiative, a comprehensive Federal effort to keep illegal pollution out of the river and restore it and surrounding communities to their historic grandeur. These efforts effected a recent settlement with Shell Oil Company to resolve alleged violations of the Clean Air Act, the Federal hazardous waste laws, and other Federal statutes at Shell's Wood River Refinery in Roxana, Illinois. The settlement requires Shell and its affiliates to pay a \$1.5 million civil penalty and to spend another \$10 million on projects to protect the Mississippi and surrounding communities.

Other civil enforcement successes include the following:

- The Department recently reached an historic \$1 billion settlement with manufacturers of heavy diesel engines. The agreement requires seven manufacturers—which constitute 95 percent of the industry—to spend at least \$850 million to prevent future pollution. This injunctive relief will prevent an estimated 75 million tons of nitrogen oxide pollution.
- In June 1998, the Department settled charges against American Honda Motor Company for \$267 million and Ford Motor Company for \$7.8 million for selling vehicles with illegal devices that defeat emission controls.
- In *United States v. Bestfoods*, the Supreme Court ruled that a parent corporation may be held derivatively liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the polluting activities of its subsidiary, if the corporate veil is misused to accomplish fraud or other wrongful purposes on the shareholder's behalf. The Department obtained orders requiring responsible parties to spend nearly \$230 million to clean up contaminated sites and to reimburse the "Superfund" more than \$300 million for Federal cleanup costs.

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### **Criminal Enforcement.**

During 1998, the U.S. Attorneys brought criminal environmental charges against nearly 500 defendants, most of whom were convicted.

- The Department obtained the largest criminal fine ever for a Clean Air Act violation when Louisiana-Pacific Corporation pled guilty to 18 felonies at its Montrose, Colorado, paper mill. Penalties in the case totaled \$37 million, of which \$5.5 million represents the largest single criminal fine obtained under the Clean Air Act.
- The Department obtained the largest criminal fines ever in a vessel pollution case when Royal Caribbean Cruise, Ltd., was sentenced to \$9 million in fines for a fleetwide conspiracy to dump oil into the ocean and lie to the Coast Guard to cover up the crimes.

### **Natural Resource Protection.**

The Department continued its crackdown on international wildlife smuggling by spearheading Operation Chameleon. In September 1998, the Department announced the arrest of three individuals who allegedly smuggled more than 300 animals worth nearly \$.5 million between Asia and North America, including plowshare tortoises, Komodo dragons, and other extremely rare species. The Department also successfully defended the President's American Heritage Rivers Initiative, a voluntary program that allows river communities across the Nation to implement community-driven plans to protect the rivers and their resources.

### **Promoting Partnership with Tribes and States.**

The Department secured a favorable appeals court ruling upholding tribal rights to harvest shellfish on public and private tidelands in Washington. Also, the Department worked with the states of Alabama, Florida, and Georgia to negotiate two historic water compacts that forge a new partnership in managing the water resources of the Apalachicola Chattahoochee-Flint and Alabama-Coosa-Tallapoosa River Basins. This achievement underscored the Department's approach of using ADR where possible in negotiations.

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## **Goal 3.3: Promote Competition in the U.S. Economy through Enforcement of, Improvements to, and Education about Antitrust Laws and Principles.**

The Department is responsible for enforcing the antitrust laws of the United States in order to ensure the competitiveness of markets for the benefit of American businesses and consumers. Under the Sherman and Clayton Acts, the Department enforces criminal antitrust statutes against price-fixing and bid-rigging, enforces laws against anticompetitive mergers, and brings civil actions against anticompetitive conduct.

### **Prosecution of Antitrust Conspiracies, Review of Merger Transactions, Expansion of International Cooperation**

#### **Uncovering International Price-Fixing Cartels: Record Criminal Fines.**

In 1998, the Antitrust Division obtained \$267 million in fines, exceeding the previous year's record of \$205 million. More than 90 percent of the fines resulted from criminal cases involving international cartels. These criminal fines, paid directly to the U.S. Treasury for the Crime Victims Fund, included the following:

- A fine of \$110 million, the largest antitrust fine in history, paid by UCAR International, Inc., for participating in an international cartel to fix the price and allocate market shares worldwide for graphite electrodes (used in electric arc furnaces to melt scrap steel).
- A fine of \$29 million, paid by Showa Denko Carbon, a U.S. subsidiary of a Japanese firm, for participating in the graphite electrodes price-fixing cartel. The conspiracy had cost steel makers higher prices for graphite electrodes used in the manufacturing process.
- A total of \$65 million, paid collectively by companies from the Netherlands, Belgium, and the United States, for rigging bids, forcing oil and gas companies and the U.S. Navy to pay inflated prices.



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## **Record Level of Merger Enforcement to Protect Competition.**

Under the Clayton Act and the Hart-Scott-Rodino Act, the Department challenges proposed mergers that are likely to substantially lessen competition, frequently negotiating tailored remedies that allow the procompetitive aspects of the transactions to proceed. Mergers that bring economies of scale and efficiencies that benefit customers are approved by the Antitrust Division.

In the midst of a record-breaking merger wave, the Department in 1998 challenged 51 mergers either formally or informally, including the largest merger to have been successfully challenged in American history. It also obtained the largest divestiture in any merger case. This number of merger challenges exceeded the previous record of 31 merger challenges in 1997. Highlights include the following:

- To preserve competition in the defense industry, the Department filed suit to block Lockheed-Martin's proposed \$11.6 billion acquisition of Northrop Grumman after the Department concluded that the proposed merger would have caused the U.S. military to suffer a substantial loss of competition and innovation for a number of critical systems and components. This action, brought by the Department with DOD cooperation and support, represented the largest acquisition ever to be successfully challenged.
- To protect competition in direct broadcast satellite services, the Department filed suit to block Primestar's acquisition of the direct broadcast satellite assets of News Corporation and MCI. The parties abandoned the transaction.
- In the largest divestiture of a company in merger history, the Department allowed WorldCom, Inc.'s, \$44 billion purchase of MCI Communications Corporation to proceed only after MCI agreed to sell its Internet business for an estimated \$1.75 billion. Without the divestiture, the combined WorldCom/MCI company would have controlled a substantial portion of the Nation's Internet backbone.

## **Civil Nonmerger Enforcement: Protecting American Consumers.**

The Department's civil nonmerger enforcement program, which combats anticompetitive but noncriminal conduct, protects consumers against private arrangements and unilateral conduct that unreasonably restrain the competitive process and markets. In particular, the Antitrust Division investigates private agreements designed to thwart innovation in important industries. During 1998, the Department filed several significant civil antitrust cases:

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- The Department filed a lawsuit charging Microsoft with engaging in anticompetitive and exclusionary practices designed to maintain its monopoly in personal computer operating systems and to extend that monopoly to Internet browsing software.
  - In a major case that helped shape doctrine in the use of intellectual property, the Department filed a lawsuit against the General Electric Company, alleging that restrictions in the licensing contracts GE negotiated for use of certain maintenance software restricted competition in medical equipment services markets. GE settled the case, agreeing to remove the restrictions.

### **Advancing Antitrust Doctrine and Efforts to Promote Antitrust Enforcement.**

Clarifying and articulating antitrust doctrine to reflect contemporary understanding of the globalization of the U.S. economy as well as deal with new competitive scenarios is an important aspect of the Department's work. To the extent permitted by confidentiality requirements, the Department has expanded its cooperation and coordination with international, Federal, and state agencies to develop antitrust policies and to obtain information essential to its enforcement actions. Below are examples of these efforts.

- The Attorney General and the Assistant Attorney General for Antitrust established the International Competition Policy Advisory Committee. The committee, composed of a distinguished panel of business, academic, economic, and legal experts, will advise the Department on international antitrust issues, including anticartel enforcement, managing merger reviews that cover many jurisdictions and dealing with anti-competitive practices that restrict international trade.
- The United States and the European Commission (EC) signed a positive comity agreement, or a referral agreement, by which the Department and the EC will refer certain nonmerger antitrust matters to each other, while preserving their respective sovereign rights.

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## **Goal 3.4: Promote the Fair, Correct, and Uniform Enforcement of the Federal Tax Laws and the Collection of Tax Debts.**

In 1998, Department attorneys placed special emphasis on promoting compliance with U.S. and foreign tax laws through appropriate litigation in the Nation's trial and appellate courts. In carrying out their roles, Tax Division attorneys are guided by the principles of fair and uniform treatment for all categories of taxpayers throughout all stages of case review, litigation, and appeal. This applies to the collection of tax debts.

### **Prosecution of Federal Tax Violators**

The Tax Division's 1998 accomplishments include the successful prosecution of criminal tax cases that range from large corporations to individuals who attempt to defraud the United States.

For example—

- Seven defendants operating a rubbish hauling monopoly in southern Nevada generated fictitious business expenses of approximately \$2 million, which were taken as deductions on corporate tax returns. The phony expenses also were reported in financial statements given to the local governmental authorities who regulated the business. The defendants pled guilty to a dual object conspiracy to defraud the United States and to commit mail fraud.
- A college instructor was convicted on a 57-count indictment of conspiring to defraud the United States, including a count of failing to file a tax return related to his sale of college course credits to foreign students. These course credits enabled students to illegally remain in the United States and gain academic credit toward degrees they did not earn.
- In *United States v. Brodin, et al.*, six Idaho "constitutionalists" were convicted of conspiracy to defraud the IRS and of extortion for filing false liens against Federal and state judges and IRS employees.
- A guilty plea was obtained from Gene K. H. Lum, a prominent political fundraiser. Mr. Lum violated Federal tax laws by falsely claiming more than \$7.1 million in tax deductions on income tax returns he prepared for himself and his wife.

## Claims Settled in Holocaust Survivors Program

The function of the Foreign Claims Settlement Commission is to determine the validity and amount of claims of U.S. nationals (that is, American citizens) against foreign governments for uncompensated wrongs. In March 1998, the Commission settled claims filed in its Holocaust Survivors Claims Program by U.S. nationals who suffered "loss of liberty or damage to body or health" from being in concentration camps. The Commission's program has brought recognition to the suffering endured by these Americans, and has vindicated their rights under international law to receive reparations. Proceeds from the settlement of certified claims will be placed in the U.S. Treasury, to be disbursed to the claimants.

- In *United States v. Daniel Enright, et al.*, the largest motor fuel excise tax evasion scheme ever prosecuted, Enright and three codefendants were convicted of conspiring to defraud the United States and the State of New Jersey of motor fuel excise taxes totaling approximately \$140 million. The IRS estimates revenue losses from motor fuel excise tax evasion at over \$1 billion annually.

## Fair and Uniform Enforcement of Tax Laws

Tax Division attorneys are guided by the principles of fair and uniform treatment for all categories of taxpayers throughout all stages of case review, litigation, and appeals. This applies to the collection of tax debts. During 1998, the Tax Division successfully defended against more than \$274 million in tax refund claims and obtained, by settlement or collection, more than \$72 million in recoveries.

## Goal 3.5: Represent the United States in All Civil Matters for Which the Department Has Jurisdiction.

The Department's Civil Division attorneys represented the United States in more than 19,000 cases in 1998. This caseload included challenges to new statutes and policies of the U.S. Government, as well as monetary cases with billions of dollars in dispute. The U.S. Attorneys also represent and defend government interests in lawsuits filed against the United States, or in defensive civil litigation. This litigation includes tort suits brought by those who allege suffering as a result of government action; the adjudication of social security disability claims; alleged contract violations; habeas corpus cases; and race, sex, and age discrimination actions. In 1998, the U.S. Attorneys responded to 52,517 cases filed against the United States.

## Protecting the Public Fisc

The Department was successful in protecting the public fisc, defeating more than \$4 billion in unworthy claims and securing \$791 million in judgments and settlements stemming from the government's claims involving fraud, bankruptcy, and loan defaults.

The Department's litigation resulted in large indirect savings to the U.S. Treasury: In *Unum v. United States*, an insurance case affirmed by the court of appeals in 1998, Tax Division litigators pro-

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tected the U.S. Treasury from a claimed refund of approximately \$80 million. Based on the claimed deduction of \$652 million, however, the total effect of the case on other tax years is estimated to be between \$350 and \$400 million, including interest.

## Civil Enforcement

In 1998, the Department obtained four favorable settlements in massive litigation in which plaintiff financial institutions alleged that the Federal Government caused the breach of certain contracts with them when Congress enacted the Financial Institutions Reform and Recovery Act (FIRREA), the Federal law designed to address the savings and loan crisis. In *Winstar*, *Statesman*, *Dollar Bank*, and *Union Federal* cases, the Department successfully used ADR to hold Federal Government payouts to \$103 million, a mere fraction of the \$1.2 billion in damages asserted by the plaintiffs.

In 1998, the Civil Division settled with Southeast Banking Corporation, securing \$221 million in interest payments for the Federal Deposit Insurance Corporation. Other noteworthy successes included Mobil Oil's payment of \$45 million to resolve claims that it underpaid oil royalties due to the Federal Government and to Indian tribes, and a \$28 million payment from CSX Commercial Services to resolve allegations of false claims to the Department of Education for payment on defaulted student loans.

An important tool used by the U.S. Attorneys' in recovering funds wrongfully paid by the United States is the Affirmative Civil Enforcement (ACE) Program. ACE cases cover fraud of all types, including health care fraud, defense or other procurement fraud, financial institution fraud, and government program or grant fraud. ACE attorneys work with investigative agencies and criminal prosecutors to ensure the fullest recoveries for the Federal Government. During 1998, U.S. Attorneys filed 2,620 ACE cases, which resulted in recovery of more than \$748 million.

