Wildlife and Marine Protection. ENRD launched a criminal enforcement program targeting the $6 billion illegal wildlife smuggling industry, which resulted in prosecutions to break up several such smuggling rings. The Division also defended a wide variety of agency decisions regarding protected species, including bald eagles, salmonid species, and many others.

Indian Tribes. In one of its major accomplishments, ENRD resolved almost all of the many Indian Commission Claims cases that have been pending for years, and, in some cases, decades. In addition, the Division successfully vindicated the rights of Indian tribes to water, fishing and hunting in key areas of significance to the tribes.

Condemnation. ENRD saved United States taxpayers tens of millions of dollars in recent years by achieving settlements and judgments based on fair market values. It played a vital role in acquiring lands that help preserve such national treasures as Yellowstone National Park and the Everglades.

C. Protecting American Consumers from Unfair Market Practices

Competition is the cornerstone of this country's economic foundation. We rely on the free market, rather than government directives, to provide businesses with the opportunity and incentives to innovate, produce, and distribute goods and services to the ultimate benefit of consumers and the economy.

The antitrust laws help promote and protect this free-market economy, by ensuring that the benefits of the competitive process are not thwarted by private anticompetitive conduct. The Supreme Court has described the Sherman Act as the "magna carta" of the free enterprise system. Sound antitrust enforcement enables consumers to obtain more innovative, high-quality goods and services at lower prices. It also enhances the worldwide competitiveness of American

businesses by promoting healthy rivalry, encouraging efficiency, and ensuring a full measure of opportunity for all competitors.

Over the past eight years, the Administration has sought to strengthen our economy and protect consumers in a period of historic economic change marked by technological revolution, the emergence of new industries, and the rise of a truly global economy. The Department's antitrust enforcement policies played a critical role in advancing these twin goals.

In enforcing the antitrust laws, the Antitrust Division has taken care to ensure that they are used only to prevent private conduct from impairing the vigor of the competitive process, and not to protect competitors from that vigor, or to pick the winners and losers. Distinguishing the few business alliances that can result in market power and decrease competition from the many that are procompetitive responses to economic change has required a commitment to a principled and pragmatic antitrust enforcement policy, characterized by careful attention to facts, informed by economic analysis.

The past eight years have been an active period for the Antitrust Division across the full range of its enforcement responsibilities: criminal prosecutions, merger review, and civil non-merger activities. The Division has responded to economic globalization by devoting more resources to uncovering and prosecuting international cartels, to cooperating with foreign governments in reviewing mergers with international dimensions, and to promoting competition principles in international forums and in bilateral antitrust agreements. The Division has responded to rapid technological change by taking extra care in its analyses, so that current and future innovators can be confident that there will be no anticompetitive barriers to bringing new products and services to market. And the Division has supported deregulation before Congress

and within the Executive Branch, while working to keep markets competitive through antitrust enforcement.

Protecting Consumers from Abuses of Market Power. Since 1993, the Antitrust Division has filed 61 civil non-merger cases to protect consumers from anticompetitive conduct. The most prominent of these cases is the Division's Sherman Act suit charging Microsoft with using exclusionary practices to protect its monopoly in personal computer operating systems and to extend its monopoly power into the Internet browser market. After a thorough trial, the federal district court entered judgment against Microsoft and ordered its separation into two companies, an operating systems company and an applications company. The court's order has been stayed pending appeal. In two other important pending actions, the Division has sued Visa and MasterCard for restraining competition in the credit card industry and has sued American Airlines for using predatory practices to monopolize airline passenger service on routes emanating from its hub at Dallas/Fort Worth International Airport.

Among other important civil non-merger cases the Division has brought during the Clinton Administration are cases involving monopolizing the sale of artificial teeth, anticompetitive joint negotiation of television program retransmission rights, monopolistic licensing restrictions on personal computer operating system software, using tying arrangements to monopolize ATM processing, using "teaming arrangements" to restrain competition in defense procurement, and inflating the cost to investors of two-year U.S. Treasury notes.

Criminal Enforcement. The Antitrust Division criminally enforces section one of the Sherman Act against hard-core cartel activity such as price-fixing, bid-rigging, and market-allocation agreements. Over the last eight years, the Division filed 457 criminal cases, charging

277 individuals and 335 corporations with criminal violations and recovering over $2.1 billion in criminal fines, dwarfing the total amount previously collected in the history of the Division. These cases involved a broad range of industries – including, to name only a few, the livestock feed additive lysine, commercial explosives, fine arts auctions, milk and dairy products, and marine construction and transportation services.

In the last several years, a top Division priority has been prosecution of international cartels, which, due to their size and sophistication, pose a particularly great threat to American businesses and consumers. The Division has had unprecedented success in cracking these cartels, securing the conviction of major conspirators and obtaining record-breaking fines. The Division's successful prosecution of the international vitamin cartel, which affects over $5 billion in U.S. commerce, has resulted thus far in fines of over $910 million for companies and in significant fines and jail time for individuals.

Merger Enforcement. The Antitrust Division enforces section 7 of the Clayton Act to challenge mergers that are likely to harm consumers by substantially lessening competition. During the past eight years, our economy has been experiencing a continuing merger wave. A record $1.4 trillion in United States merger transactions took place in 1999, with $1.35 trillion in 2000 through December 13. In fiscal years 1998 and 1999, approximately 4,500 transactions were filed each year under the Hart-Scott-Rodino Act's premerger review provisions, and in fiscal year 2000, the number increased further to over 4900. These are by far the most filings in the Division's history – more than twice the annual filings just a few years ago. In addition, as the products and services of our economy become more complex and the pace of their

development increases, merger enforcement has required an increasingly complex fact-based analysis in order to preserve competition and innovation now and into the future.

Although the vast majority of these many mergers did not raise significant competitive concerns, the Antitrust Division challenged 263 as anticompetitive, leading to their abandonment or restructuring. These challenges have involved many products and services, including telecommunications, the Internet, health insurance, health care, airlines, banking, local radio, newspapers, movie theaters, broadcast media, cable programming and distribution, aluminum cans, crop biotechnology, energy, and our military's most sophisticated weapons. While most merger challenges have involved concerns about the anticompetitive potential of the merging parties as sellers, the Division has also demonstrated that its concerns about market power extend to "monopsony power" on the part of merging parties as buyers.

Most of the Division's merger cases have been resolved by consent decrees requiring divestitures designed to protect competition. But in the few instances when the anticompetitive effects of a merger could not be cured by consent decree, the Division has sued to block the merger in its entirety.

While staying abreast of the merger wave, the Division has also made a number of improvements to its merger review process to make it more efficient and eliminate unnecessary burden on the parties.

Providing Guidance to the Business Community. The Antitrust Division has also worked to assist businesses, the vast majority of whom seek to compete fairly and legally, in organizing their activities consistently with the antitrust laws, through guidelines and policy statements issued jointly with the Federal Trade Commission, business review letters in response

to questions about specific proposed activities, speeches before business groups and congressional testimony.

D. Representing the United States in Civil Proceedings

The Civil Division handles a broad array of cases, including all major commercial and torts cases, the defense of legislative and executive branch decisions when they are challenged in court, the enforcement of federal consumer protection laws, administration of the National Childhood Vaccine Injury Act program and the Radiation Exposure Compensation Act program and the defense of numerous claims against the federal government and government officials who are sued while acting in their official capacity.

Over the past eight years, the Civil Division experienced unprecedented success, securing record awards in affirmative litigation and saving taxpayers billions of dollars in defensive litigation, while managing some of the most demanding and complex cases in its history. The Division recovered approximately $7 billion in judgments and settlements – a record $1.5 billion in fiscal year 2000 alone.

Fraud. Since 1993, the Civil Division has redoubled its efforts to fight fraud and safeguard taxpayers dollars, recovering billions of dollars under the False Claims Act in areas including health care and defense procurement fraud. The Division also obtained huge recoveries for the U.S. Treasury from companies that defrauded the government in defense procurements, including the largest recovery in history against a defense contractor – $150 million – from United Technologies for over-billing and misrepresenting facts to the government. In addition, the Division recovered more than $230 million from oil companies that underpaid royalties on federal and Indian lands.

Tobacco Litigation. Beginning in 1993, the Civil Division placed a top priority on protecting the public – especially children – from the dangers associated with tobacco products. The Division brought the government's first action to enforce a 1971 statute banning cigarette advertising on television. As a result, Phillip Morris agreed to remove cigarette advertisements at all professional football, basketball, soccer, hockey and baseball stadiums, where such signs were likely to be broadcast during televised coverage of the events. The Division vigorously defended the Food and Drug Administration's (FDA) assertion that it had jurisdiction to regulate tobacco products as a drug – a position ultimately rejected by the Supreme Court. Finally, in September 1999, the Civil Division filed suit against the major cigarette companies, seeking equitable relief under the Racketeer Influenced and Corrupt Organizations Act (RICO) and seeking recovery under the Medical Care Recovery Act (MCRA) of the medical expenditures that the federal government has incurred in connection with smoking-related illnesses. On September 28, 2000, the district court denied defendants' motion to dismiss the government's RICO claims, concluding that there is an adequate basis for permitting the United States to pursue its claim for equitable relief. Although the court dismissed the government's claims for health care costs under the MCRA, its ruling nonetheless constitutes an important victory for the United States by allowing the case to move forward. Trial is scheduled to begin in July 2003.

Consumer Protection. The Civil Division enforces numerous federal consumer protection laws and defends the policies and programs of agencies with consumer protection responsibilities. Since 1993, the Division has obtained nearly $271 million in criminal fines and civil penalties under such laws. For example, in a criminal investigation of generic drug manufacturers that intentionally failed to follow approved pharmaceutical formulas and submitted

fraudulent documents to the FDA, the Civil Division obtained convictions of 17 companies and 47 individuals and collected over $37 million in fines. The Division also successfully prosecuted 137 persons who rolled back the odometers on used cars, which cost the public an estimated $4 billion annually.

Contract Cases. In the last eight years, the Civil Division has handled the two largest and most complex contract cases ever litigated, Winstar and A-12. The Winstar litigation consists of approximately 130 cases that arose from banking reforms implemented in accordance with the Financial Institutions Recovery, Reform and Enforcement Act of 1989 (FIRREA). These cases are unprecedented in terms of their size, complexity and potential stakes: they involve more than 400 financial institutions, over one billion pages of government documents, and claims for approximately $30 billion. The Civil Division has settled some of these cases, often on the basis of a fraction of the damages claimed by the plaintiffs, and favorable judgments on damages have been obtained in all but one of the cases that have been tried thus far. The government's appeal in the latter case is pending. The A-12 litigation involves claims by McDonnell Douglas and General Dynamics for damages incurred when the Navy terminated the A-12 stealth fighter contract in early 1991. Approximately $4 billion is at issue for an airplane that was never built. A trial is scheduled to begin in 2001.

Tort Cases. Over the past eight years, the Division has saved the taxpayers many billions of dollars by defeating excessive and unwarranted demands in cases where damages are sought for alleged government neglect or other wrongful conduct. Such cases include the Division's successful defense of the federal law enforcement operations at the Branch Davidian compound near Waco, Texas, in 1993. The Civil Division also has successfully defeated attempts by the

asbestos-products industry, the manufacturers of Agent Orange and numerous industrial polluters of groundwater to shift to the taxpayers tort liability totaling billions of dollars.

Defense of Federal Legislation and Executive Branch Policies. The Civil Division plays a vital role in litigation where the laws, programs and policies of the United States are challenged. Over the past eight years, the Division successfully defended such important legislation as the Freedom of Access to Clinic Entrances Act, the Prison Litigation Reform Act of 1996, the North American Free Trade Agreement, and the Personal Responsibility and Work Opportunity Reconciliation Act (welfare reform), and presented arguments that were instrumental in securing decisions upholding a number of state "Megan's Laws" regarding registration and community notification of released sex offenders.

Immigration. Since 1993, the Civil Division obtained favorable rulings in the vast majority of its immigration cases, including the highly publicized and sensitive asylum case involving Elian Gonzalez.

Compensation Programs. The Civil Division plays a major role in the administration of two federal compensation programs. The National Childhood Vaccine Injury Act of 1986 provides compensation to individuals injured by specified vaccines. Since the filing of the first claims in 1988, 5,236 cases have been adjudicated, resulting in the award of $1.2 billion to qualified claimants and the defeat of approximately $3.5 billion in unsupported claims. The Radiation Exposure Compensation Act of 1990 provides compensation to individuals who developed specified diseases presumptively due to radiation released during above-ground nuclear weapons tests and uranium production from 1942 to 1971. Since 1993, over $270

million has been approved for compensation to eligible beneficiaries, including affected individuals and their spouses and children.

E. Fighting Health Care Fraud

Health care fraud in the United States is a serious problem that has an impact on every person in this country. Health care fraud cheats taxpayers out of billions of dollars every year, increases the cost of co-payments and contributions, and may obscure inadequate or improper treatment for patients.

The Department has taken a balanced approach to combating health care fraud. The Department's strategy consists of two components: (1) a strong civil and criminal enforcement program and (2) prevention efforts, which encourage providers to adopt compliance programs and accept responsibility for policing their own activities. Our enforcement and prevention strategies have complemented the work of the Civil Rights Division in protecting the rights of individuals in health care facilities and improving their conditions of confinement.

In late 1993, the Attorney General identified health care fraud as one of the Department's highest priorities and appointed a Special Counsel for Health Care Fraud to coordinate the Department's activities in this area. To further coordinate and encourage effective health care enforcement, in November 1993, the Department of Justice created an Executive Level Health Care Fraud Policy Group. And, over the course of 1994 and 1995, each United States Attorney appointed a health care fraud coordinator.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provided the Department with powerful new criminal and civil enforcement tools and financial resources to expand and intensify the fight against health care fraud. HIPAA established a national Health

Care Fraud and Abuse Control Program, under the joint direction of the Attorney General and the Secretary of the Department of Health and Human Services (HHS). In addition, HIPAA provided a stable source of funding for the health care fraud efforts of HHS's Office of the Inspector General and the Department.

These efforts yielded extraordinary results. Between fiscal years 1992 and 1999, the Department successfully prosecuted and settled an increased number of health care fraud cases, working closely with our partners in the fight against health care fraud. In particular, the Department increased its criminal health care fraud matters (i.e., pre-indictment and -information investigations) by 481 percent, its criminal health care fraud prosecutions filed by 347 percent, and its criminal health care fraud convictions by 346 percent. Likewise, over this same period, the Department increased civil health care fraud matters (i.e., investigations or other matters in which the government has not yet filed or joined a court case) by 743 percent and civil health care fraud cases filed by 225 percent.

From fiscal year 1997, the first full year of the HIPAA program, to fiscal year 2000, the Department won or negotiated more than $3.2 billion in judgments and settlements in health care fraud cases. This total exceeds $4 billion when the recent Columbia/HCA settlement is included. (The Department's record $840 million settlement in that case is currently subject to court review.)[4]

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[4] A description of just a few of our landmark health care fraud cases illustrates the Department's record achievements in combating fraud against Medicare, Medicaid and other federal health care programs:

In 1994, National Medical Enterprises, Inc. (NME), which operates psychiatric and substance abuse hospitals in 30 states, entered a criminal plea and civil and administrative settlement agreements, including a then-record $379 million in criminal fines, civil damages and penalties for kickbacks and fraud. NME pled guilty to bribing doctors and other referral sources to refer patients to NME facilities. Operation LABSAM, a joint federal and state project launched in 1993 to address fraudulent billing schemes in the independent clinical laboratory

As a companion to enforcement efforts, the Department undertook to reach out to medical service providers and to the public to encourage compliance and educate the public about health care fraud. Together with the Department of Health and Human Services, the Department of Justice encouraged medical service providers to act responsibly. The two federal agencies provided model compliance guidance and interpretations of the law to guide providers in assessing their activities. The Departments of Justice and Health and Human Services also joined with the American Association for Retired Persons to launch an initiative against Medicare fraud, waste and abuse. The educational campaign – entitled "Who Pays? You Pay. Report Medicare Fraud" – traveled to 31 cities throughout the country and was attended by approximately 10,000 Medicare beneficiaries.

F. Protecting Older Americans

Since 1993, the Department of Justice has played a growing role in protecting older Americans from fraud, abuse and neglect.

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industry, resulted in a number of major settlements. In one, SmithKline Beecham Clinical Laboratories paid $325 million to resolve federal and state fraud claims alleging overcharges to Medicare, Medicaid, and other health care programs. In 1997, First American Health Care of Georgia, Inc., agreed to reimburse the federal government approximately $252 million for overbilled and/or fraudulent Medicare claims submitted by the company. First America, which operated 425 facilities in more than 30 states, billed Medicare for personal expenses of First America's senior management, and marketing and lobbying expenses. In 1999, Genentech, Inc., paid $50 million in criminal fines and civil damages and pled guilty to a violation of the Food, Drug & Cosmetic Act. The charges resulted from Genentech's illegal off-label marketing of its human growth hormone drug Protropin.

In 2000, National Medical Care, Inc., the world's largest provider of kidney dialysis products and services, agreed to pay the United States $486 million – including a $101 million criminal fine – to resolve a wide range of health care fraud claims. The criminal fine is the largest ever recovered by the United States in a health care fraud investigation. In December, 2000, the Department entered the largest government fraud settlement in history. The largest for-profit hospital chain in the United States, HCA-The Healthcare Company (formerly known as Columbia-HCA), agreed to plead guilty to criminal conduct and pay more than $840 million in criminal fines, civil penalties and damages for unlawful billing practices.

Criminal Fraud. During the past decade, older Americans increasingly have become the targets of a wide range of fraudulent schemes, particularly telemarketing "boiler room" operations that target seniors with offerings ranging from prize promotions to fraudulent charities. The harm caused by these schemes is magnified because fraudulent telemarketing operations often repeatedly target the same victims. To combat the criminals who conduct these schemes, the FBI and other law enforcement agencies launched three highly successful, nationwide undercover operations, which were the first of their kind: Operation Disconnect (announced 1993), Operation Senior Sentinel (adopted 1995), and Operation Double Barrel (announced 1998). These operations had a crippling effect on fraudulent telemarketing operations. They virtually eliminated telemarketing fraud in some cities where "boiler rooms" had been widespread, and dramatically reduced the problem in other areas.[5]

The Department and United States Attorneys' offices worked extensively to develop outreach and prevention efforts to combat fraud directed at seniors. In 1998, the Department began a pilot project, in partnership with the American Association of Retired Persons and federal, state, and local law enforcement officials, to establish Elder Fraud Prevention Teams in

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[5] In Operation Disconnect, FBI undercover agents pretended to sell a machine that would enable fraudulent telemarketers to dial as many as 12,000 calls per hour and were thus able to obtain many damaging and revealing admissions from the telemarketers. The Department of Justice successfully prosecuted several hundred fraudulent telemarketers as a result of Operation Disconnect. In Operation Senior Sentinel, federal agents and investigators took over the telephone numbers of people who had been repeatedly victimized and tape-recorded thousands of calls from fraudulent telemarketers. To date, through Operation Senior Sentinel, the Department has charged approximately 1,000 fraudulent telemarketers with a variety of federal crimes; in some cases, sentences imposed on Operation Senior Sentinel defendants have ranged as high as 14 years or more. Finally, in Operation Double Barrel, federal law enforcement agencies expanded on Operation Senior Sentinel by joining forces with state Attorneys General and other local law enforcement. From the conclusion of Senior Sentinel in mid-1996 to December 1998, federal authorities charged 795 individuals in 218 federal criminal cases, and 14 state Attorneys General charged 194 individuals in 100 state criminal investigations. During that same period, 255 state civil complaints were lodged against 394 individuals.

five cities to educate older Americans about consumer fraud scams that target them. The Department is now exploring expansion of these teams to other sites. The Department also has worked closely with Canadian officials to combat the growing problem of cross-border telemarketing fraud, where telemarketers place their calls to the United States from Canada.

In addition, through its grant programs, the Department funded a range of state and local efforts and activities related to reducing and preventing crimes against older people, including street crime, health care fraud, telemarketing and home improvement fraud, elder abuse and neglect, and domestic violence against older women. For example, the Department developed an elder-fraud training curriculum for prosecutors, investigators, bank tellers and advocates.

Elder Justice and Nursing Homes Initiative. Historically, elder abuse and neglect have been the province of federal regulators, and state and local law enforcement. Over the past eight years, however, the Department of Justice has recognized the need for increased federal law enforcement in this area.

In mid-1998, President Clinton announced the Administration's nursing home initiative to address reports that severe quality deficiencies persisted in too many nursing homes. In October 1998, the Department launched a new nursing home enforcement effort to crack down on abuse, neglect and fraud in nursing homes and other residential care facilities; it expanded the effort in 2000 to address elder justice issues generally. The goal of this initiative was to prevent abuse and neglect of older people and nursing home residents in home, community, and institutional settings by promoting enforcement, training, research and coordination. The Department stepped up investigations and prosecutions at the federal, state and local levels and provided training in elder abuse and neglect prevention to federal, state, and local law

enforcement and healthcare, social service and advocacy professionals. In October 2000, the Department co-sponsored with the Department of Health and Human Services a national symposium that showcased coordinated, multi-disciplinary approaches for responding to elder abuse and neglect in institutional settings and at home, and to financial exploitation and consumer fraud against older people.

The Department also hosted a roundtable discussion on medical forensic issues in elder abuse and neglect cases in October 2000. Such abuse and neglect often go undetected because the medical community is rarely trained to diagnose or report it; similarly, even when it is detected, there are very few experts who can provide medical forensic testimony in any ensuing case. The Department will publish a report of the discussion, recommendations and the transcript in the near future.

G. Enforcing Internal Revenue Laws

The Tax Division occupies a central position in the national taxation system, with the responsibility for tax liability enforcement, for securing correct, uniform and fair interpretations of the internal revenue laws, and for ensuring that uniform standards are applied to criminal tax prosecutions. The Tax Division supervises the nation's federal tax criminal enforcement program and, through civil litigation, seeks to maximize tax revenues for the United States Treasury and to ensure public compliance with our internal revenue laws.

Joint Civil and Criminal Activities. In the last several years, the Tax Division's civil and criminal sections jointly addressed several issues of broad importance, including abusive trusts, international tax compliance and illegal tax protest litigation.

First, the Tax Division, in conjunction with the Internal Revenue Service (IRS), prosecuted promoters of abusive trusts and enjoined significant abusive shelter promotions. In 1997, the IRS identified abusive trusts as an emerging area of illegal tax avoidance. A growing number of unscrupulous promoters are marketing abusive trusts, using strained and even false interpretations of the tax laws as a means by which taxpayers can avoid paying proper income tax liabilities. The Department created a task force to coordinate the investigation and prosecution of large promoters whose operations span several jurisdictions.[6] In addition, the Tax Division appointed an "Abusive Trust Coordinator" to coordinate litigation of civil trust cases that target promoters and to train IRS Agents to deal with promotions for such abusive vehicles or arrangements.

Second, the Tax Division has strengthened its efforts to combat the use of "tax haven" countries by United States citizens to evade their tax obligations – a problem complicated by the Internet and recent technological advances in the banking industry. The Tax Division almost doubled the attorney time spent on cases involving international compliance from fiscal year 1997 to fiscal year 1998, and then almost doubled time spent on international cases again in fiscal year 1999. The Tax Division has also participated in meetings with foreign counterparts, training programs, treaty negotiations and other efforts to build cooperation with foreign governments.

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[6] In one of the first successful prosecutions, United States v. Chappell, et al. (E.D. Cal.), the Department successfully convicted a former accountant, an attorney and two others on charges that arose out of their sale of abusive trust packages to wealthy clients. All of the defendants were sentenced to prison terms ranging from 37 months to over seven years.

Third, the Tax Division has moved to meet the growing threat posed by the illegal tax protesters – those individuals who commit tax crimes and declare themselves to be outside the revenue system. The Department appointed Special Counsels in the Tax Division to coordinate with the IRS and other law enforcement agencies concerned with the illegal tax protest movement, assist United States Attorneys offices in illegal tax protester cases and vigorously defend a wide variety of frivolous civil actions brought by such protesters against the government and its employees.

Civil Litigation. In the years 1993 through 2000, the Tax Division's civil trial and appellate sections consistently won more than 90 percent of their cases. In a recent three year period, these sections returned over $37 for each dollar spent in enforcement by collecting substantial amounts of revenue through successful litigation. Moreover, because Tax Division cases establish legal precedents that govern the conduct of millions of taxpayers, these cases often had profound nationwide tax revenue impact. For example, the Division estimates that its success in American Mutual Life Insurance Co. v. United States, 43 F. 3d 1172 (8th Cir. 1994), will save the Treasury $ 4 billion throughout the insurance industry.[7]

The Tax Division also has assisted the IRS in cracking down on the growing problem of corporate tax shelters, which are estimated to cost the government at least $10 billion in annual revenue.

Criminal Enforcement. During the past eight years, the Tax Division has addressed many new and difficult challenges in criminal enforcement. The Division reinvigorated its

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7 In that case, the Eighth Circuit held that the insurance company's deduction for policyholder dividends for any taxable year was limited to an amount equal to the policyholder dividends paid or accrued during the taxable year.

enforcement of cases where individuals and businesses fail to file any tax returns and cases where there is a "gap" between the amount of taxes owed on income and the amount voluntarily paid. Prosecutions arising from grand jury investigations in these cases increased from 209 in fiscal year 1995 to 546 in fiscal year 1998.

The Tax Division also helped to develop the expertise and procedures to fight the rise in fraudulent filing schemes that occurred when the IRS instituted its new electronic filing program. The Division played a central role in developing an immediate response to these schemes, including creating expedited procedures for referrals and authorizations for investigations, arrests, and prosecutions and creating form pleadings for United States Attorneys' offices.

The Division also cracked down on motor fuel excise tax evasion. In the 1990s, the illegal, untaxed sale of millions of gallons of gasoline a month caused tax revenue losses of approximately $1 billion per year and posed an unfair competitive threat to legitimate companies. The Tax Division worked with other state and federal agencies to investigate and prosecute large numbers of these cases, including, in 1998, the successful prosecution of the largest motor fuel case ever pursued.[8]

H. Representing the United States and Its Interests in Supreme Court Litigation and Providing Legal Advice to the Executive Branch

1. Office of the Solicitor General

The Solicitor General, with the assistance of a small staff of attorneys, is responsible for representing the United States and its interests in litigation before the Supreme Court. In

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[8] In United States v. Enright, et al. (D. N.J.), four defendants were convicted of conspiring to defraud the United States and the State of New Jersey of motor fuel excise taxes totaling approximately $140 million. Twenty-three other defendants pled guilty to various tax-related charges.

addition, the Office of the Solicitor General determines whether the United States will appeal from adverse decisions in the lower courts, whether to petition appellate courts for rehearing en banc, whether the United States should file as amicus curiae in any appellate court and whether the United States should intervene in any court in which the constitutionality of an Act of Congress has been brought into question. The interests of the United States are multitudinous and varied, and it is ultimately the responsibility of the Solicitor General to unify those interests so that the United States may speak with one voice – a voice that speaks on behalf of the rule of law.

The past eight years have seen significant developments in a number of areas of constitutional law. The Solicitor General has been at the forefront of these advances, sometimes breaking new ground (as in the telecommunications cases) and sometimes advancing traditional federal interests (as in the criminal law and environmental protection cases). An overview of significant cases follows.

Civil Rights. The Supreme Court adopted the position of the United States in several important cases that ensured protections for employees under Title VII of the Civil Rights Act of 1964 and students under Title IX of that Act. In Harris v. Forklift Systems,[9] the Court found, consistent with the arguments of the Solicitor General, that conduct giving rise to a hostile work environment action under Title VII need not seriously affect an employee's psychological well-being or lead the employee to suffer injury. Several terms later, in Oncale v. Sundowner Offshore Services, Inc.,[10] the Court again agreed with the Solicitor General, holding that sexual

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9 510 U.S. 17 (1993).

10 523 U.S. 75 (1998).

harassment by a person of the same sex is actionable under Title VII. Finally, in Burlington Industries, Inc. v. Ellerth[11] and Faragher v. City of Boca Raton,[12] the Court adopted the position of the Solicitor General when it held 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 is taken against the employee. The Supreme Court also adopted the position of the Solicitor General in Davis v. Monroe County Board of Education,[13] in which the Court held that an individual victimized by student-on-student sexual harassment could institute a private action against a school board.

The Solicitor General won a landmark victory against gender discrimination in United States v. Virginia.[14] In that case, the Supreme Court invalidated the male-only admissions policy of the Virginia Military Institute and held that the exclusion of women from the school had not been remedied by the creation of a separate women-only institute.

Several significant decisions involved women's access to reproductive health services. In Madsen v. Women's Health Center,[15] and again in Schenck v. Pro-Choice Network of Western New York,[16] the Court, agreeing with the position of the Solicitor General as amicus curiae in both cases, held that narrowly tailored injunctions creating buffer zones around reproductive

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11 524 U.S. 742 (1998).

12 524 U.S. 775 (1998).

13 526 U.S. 629 (1999).

14 518 U.S. 515 (1996).

15 512 U.S. 753 (1994).

16 519 U.S. 357 (1997).

health centers did not violate the First Amendment. In Hill v. Colorado, the Court adopted the Solicitor General's position as amicus curiae, upholding a Colorado statute making it unlawful to knowingly approach within eight feet of a person entering a health care facility to engage in "oral protest, education, or counseling" without that person's consent.[17] This decision has been instrumental in allowing States to protect freedom of access to health care facilities. Finally, in Stenberg v. Carhart,[18] the Court struck down a Nebraska statute that made criminal the performance of an abortion, both pre- and post-viability, by a procedure that the statute called "partial birth abortion."

The Solicitor General also successfully protected the rights of individuals with disabilities. In a series of cases, the Supreme Court agreed with the Solicitor General's interpretation of the Americans with Disabilities Act of 1990 (ADA). In Bragdon v. Abbott,[19] agreeing with the Solicitor General's position as amicus curiae, the Court held that the ADA protects persons who test positive for the human immunodeficiency virus against discrimination in services offered by places of public accommodation. In Olmstead v. Zimring,[20] the Supreme Court was persuaded by the Solicitor General's argument that the ADA prohibits States from confining disabled individuals in an institution when community-based treatment is recommended by the treating professionals and is not financially burdensome. Finally, in

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17 120 S. Ct. 2480 (2000).

18 120 S. Ct. 2597 (2000).

19 524 U.S. 624 (1998).

20 527 U.S. 581 (1999).

Pennsylvania Department of Corrections v. Yeskey,[21] the Court sided with the government in holding that Title II of the ADA protects inmates in state prisons.

Environmental Protection. The Solicitor General on several occasions successfully defended state and federal authority to protect our nation's air, water and wildlife. For example, in Public Utility District No. 1 of Jefferson v. Washington Department of Ecology,[22] the Solicitor General, as amicus curiae, successfully supported the State of Washington, arguing that it had authority under Section 303 of the Clean Water Act to establish a minimum stream flow requirement for certification (needed to protect salmon habitat) of any activity that results in a discharge into intrastate waters. In Babbitt v. Sweet Home Chapter of Communities for a Great Oregon,[23] the Solicitor General successfully defended the Department of the Interior's interpretation of the Endangered Species Act's prohibition against "harming" an endangered species.

First Amendment. In numerous cases, on topics ranging from education to funding for the arts, the Solicitor General successfully defended federal laws, regulations and policies aimed at balancing freedom of expression with government and community interests. The Solicitor General successfully defended several federal laws facing First Amendment challenge. In United States v. X-Citement Video,[24] the Court reversed an appeals court decision striking down the Protection of Children Against Sexual Exploitation Act, which makes it a crime to knowingly

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21 524 U.S. 206 (1998).

22 511 U.S. 700 (1994).

23 515 U.S. 687 (1995).

24 513 U.S. 64 (1994).

transport, receive, distribute or reproduce child pornography. By successfully defending this statute, the Solicitor General fortified the ability of the federal government to address the exploitation of children. In National Endowment for the Arts v. Finley,[25] several performance artists claimed that the grant application review process of the National Endowment for the Arts (NEA) violated their constitutional rights. The Court agreed that a statute requiring the NEA to take into account "general standards of decency and respect" in its evaluation of grants applications did not interfere with the performance artists' freedom of speech.

The Solicitor General has also prevailed in several significant freedom of religion cases. Perhaps most important was Agostini v. Felton.[26] In that case, the Court reversed its position in Aguilar v. Felton,[27] holding that government programs that used public school teachers to provide remedial education to disadvantaged children in parochial schools did not violate the Establishment Clause. This decision freed the government more comprehensively to assist needy parochial school students under Title I of the Elementary and Secondary Education Act.

Government Regulation. Several cases argued by the Solicitor General had a significant impact on the regulation of the telecommunications industry. In two landmark cases, Turner Broadcasting System v. Federal Communications Commission[28] and AT&T Corp. v. Iowa Utilities Board,[29] the Solicitor General scored major victories for the authority of the FCC to

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25 524 U.S. 569 (1998).

26 521 U.S. 203 (1997).

27 473 U.S. 402 (1995).

28 520 U.S. 180 (1997), 512 U.S. 622 (1994).

29 525 U.S. 366 (1999).

oversee and promote competition and ensure quality of service within the broadcast and telecommunications industries. In Turner, the Court upheld regulations that require the carriage of local broadcast television stations on cable television systems. In AT&T Corp. and its companion cases, the Court rejected a challenge by several incumbent telephone local exchange carriers to local competition rules issued by the FCC pursuant to the Telecommunications Act of 1996.

The Political Process. The Solicitor General has also successfully advocated positions protecting the political rights of America's citizens. In United States Term Limits v. Thornton[30] the Supreme Court struck down as unconstitutional an amendment to the Arkansas Constitution precluding persons who had served a certain number of terms in the United States Congress from having their names placed on the ballot for election to Congress. A similar barrier to political participation was removed in Morse v. Republican Party of Virginia,[31] where the Court held unconstitutional a political party's regulations charging a fee to delegates to the party's nominating convention. In Nixon v. Shrink Missouri Government PAC,[32] the Supreme Court agreed with the position of the Solicitor General as amicus curiae that a Missouri statute limiting campaign contributions did not violate the First Amendment.

Criminal Law. The Solicitor General prevailed in several important cases involving the authority of federal and state law enforcement officials to convict and sentence criminal

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30 514 U.S. 779 (1995).

31 517 U.S. 186 (1996).

32 120 S. Ct. 897 (2000).

offenders. In Wisconsin v. Mitchell,[33] the Solicitor General, as amicus curiae supporting the State of Wisconsin, successfully argued that the First Amendment does not prohibit enhancement of a criminal sentence when the defendant selects his victim based on the victim's race, religion, color or other protected status.

The Supreme Court also adopted the view of the United States in two cases defining the scope of the Double Jeopardy Clause of the Fifth Amendment. In United States v. Ursery,[34] the Supreme Court confirmed the ability of the government to seize assets used to facilitate illegal drug transactions, agreeing with the Solicitor General's position that civil forfeitures after a prior criminal case do not constitute punishment for purposes of the Double Jeopardy Clause. The following term, in Hudson v. United States,[35] the Court again adopted the position of the Solicitor General with respect to the Fifth Amendment, ruling that monetary penalties imposed by federal regulators in addition to criminal penalties do not amount to double jeopardy.

The United States won a major victory against securities fraud in United States v. O'Hagan.[36] In O'Hagan, the Court agreed with the Solicitor General's argument that Section 10(b) of the Securities Exchange Act of 1934 prohibits securities trading based on misappropriated information.

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33 508 U.S. 476 (1993).

34 518 U.S. 267 (1996).

35 522 U.S. 93 (1997).

36 521 U.S. 642 (1997).

Finally, in Dickerson v. United States[37] the Supreme Court was asked to rule on the constitutionality of a 1968 statute purporting to overrule Miranda v. Arizona,[38] which held that a statement made by an accused during custodial interrogation could not be admitted into evidence on the government's direct case if the suspect had not received certain warnings before being interrogated. The Department of Justice as a whole spent a great deal of time carefully weighing the competing considerations and determining the appropriate course. Ultimately, the Solicitor General, representing the United States, argued that the Miranda rule was constitutionally based and therefore could not be overruled by Congress, and that under settled principles of stare decisis it should not be overruled by the Court. That position prevailed in a 7-2 decision authored by the Chief Justice.

2. Office of Legal Counsel

Since the Judiciary Act of 1789, the Attorney General has had the duty of giving legal opinions to the other officers of the Executive Branch. Today, this duty is largely the responsibility of the Office of Legal Counsel (OLC).

Over the past eight years, OLC's opinions have determined the legal basis for many of the most important actions by the Executive Branch. OLC has weighed questions of war and peace – for example, the President's authority to use force in Haiti and deploy troops in Bosnia, and the lawfulness under the War Powers Resolution of the air campaign in Kosovo. It has explored issues of racial justice – for example, the meaning of the Supreme Court's cases on affirmative action and the analytical approaches by which agencies could review the lawfulness of their

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[37] 120 S. Ct. 2326 (2000).

[38] 384 U.S. 436 (1966).

programs under those cases. It has identified the limits of the President's power not to enforce laws he considers unconstitutional and the significance of statements the President makes upon signing laws. It has laid out, more comprehensively than ever before, the Executive Branch's interpretation of the constitutional separation of powers between the President and Congress. Every executive order and proclamation has passed through OLC for a legal approval. It has considered elements of the Administration's economic program – for example, the Secretary of the Treasury's suspension of investments in the Civil Service Retirement and Disability Fund, which was essential to avoid exceeding the debt limit. Its opinions have also dealt with the Department's operations – its enforcement of the criminal laws, its authority to enter into civil settlements that will remain binding in future years, and its administrative authorities in such areas as implementation of the Brady Act and enforcement of the immigration laws.

I. Controlling Illegal Immigration and Revitalizing the Immigration and Naturalization Service

Over the past eight years, the Immigration and Naturalization Service (INS), which manages our borders and administers our nation's immigration laws, has transformed itself by putting in place a comprehensive strategy to control illegal immigration and emphasizing customer-friendly service. It made remarkable progress in the face of unprecedented growth and ever-increasing workload responsibilities. The agency's budget has increased by more than 220 percent, growing from $1.5 billion in fiscal year 1993 to $4.8 billion in fiscal year 2001. The overall workforce expanded from approximately 17,000 to 30,000 in that same period. Much of this record growth was needed to keep pace with an array of new immigration laws that dramatically expanded the scope and complexity of the agency's workload.

Border Control and Facilitation. The first priority of the Clinton Administration for the Immigration and Naturalization Service was to reverse years of neglect along the Southwest Border. In 1994, INS implemented a new border strategy to improve border management and to stem the tide of illegal immigration through deterrence. With an infusion of new resources and technology to support this border strategy, INS has been able to make great strides in regaining control of areas along the border that historically have been the major corridors for illegal immigration and movement of contraband.

A $1.9 billion increase in enforcement spending, which accounted for nearly 65 percent of INS's overall fiscal year 2000 budget, has allowed the agency to increase personnel, equipment and advanced technology for various enforcement disciplines, including the Border Patrol, Inspections, and Detention and Removals. For example, the agency has hired over 6,700 new Border Patrol agents and immigration inspectors since fiscal year 1993, increasing the Border Patrol's strength to 9,212 agents by the end of fiscal year 2000. Meanwhile, the agency deployed new state-of-the-art technologies to speed up the process of legal entry and control illegal immigration across the Southwest Border.

The success of strategic operations such as Hold the Line (El Paso), Gatekeeper (San Diego), Rio Grande (Rio Grande Valley), and Safeguard (southern Arizona) – which rely on strategic redeployment of personnel, equipment and technology – has restored integrity and improved safety along the Southwest Border.

Operation Gatekeeper, for example, shows that INS's deterrence strategy works. Initially, the operation, which was launched in 1994, focused on five miles of Imperial Beach, California, which was the busiest illegal border-crossing corridor in the nation. Once the Border Patrol

regained control of this heavily trafficked stretch, Gatekeeper was expanded to include the entire 66 miles of border under the San Diego Sector's jurisdiction. As a result, apprehensions in fiscal year 1998 reached an 18-year low in the sector, which accounted for nearly 45 percent of all apprehensions nationwide before Gatekeeper, but only 16 percent in fiscal year 1998, four years after Gatekeeper was put in place. Spurred by these dramatic results, INS extended Gatekeeper into California's Imperial Valley in fiscal year 1998. The expanded operation targets alien smuggling rings that had moved to the El Centro area in response to the increased Border Patrol presence in San Diego. Today, more than 2,000 agents are assigned to the San Diego Border Patrol Sector, nearly triple the number on duty prior to Gatekeeper. Since the operation was launched, the Sector also has vastly improved its infrastructure, adding miles of new border lighting, fencing and roads. Operation Gatekeeper has reduced illegal entries along the San Diego border to their lowest level in 25 years.

While working to prevent illegal entry, INS also recognizes its humanitarian obligation to protect the lives of those who attempt to cross the border illegally. In June 1998, INS launched a comprehensive border-wide public safety initiative to educate migrants about the dangers of illegal crossings and to assist those who do not heed these warnings. Since fiscal year 1999, more than 3,500 migrants have been rescued from life-threatening situations.

INS also has improved enforcement by implementing an international deterrence strategy. In 1997, INS implemented its "Global Reach" initiative, which placed criminal investigators and intelligence analysts overseas to work on deterring migrant trafficking in source and transit countries. In addition, INS recently exchanged delegations with the Peoples Republic of China to address the growing problem of alien smuggling.

At the same time that INS has worked to effectively control the flow of illegal immigration, the agency has taken unparalleled steps to facilitate the flow of legal immigration and goods across our borders. Together, INS and the United States Customs Service have established dedicated commuter lanes to improve traffic flow at land ports of entry. The two agencies also developed and are implementing the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) system, which enables pre-screened participants to complete the inspection process for entry within three minutes.

Removing Aliens from the United States. INS has dramatically improved its performance in removing criminal and other illegal aliens. Every year since fiscal year 1993, INS has set a new record for removals. Preliminary figures show that removals for fiscal year 2000 will exceed 181,000, more than quadruple the fiscal year 1993 number. The increase in removals has been driven by a variety of factors, including increased cooperation with other law enforcement agencies and correctional facilities in removing criminal aliens and implementation of expedited removal procedures that were authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA allows INS inspectors to remove aliens who arrive at ports of entry with fraudulent, improper or no entry documents in a matter of days or weeks.

Due to the agency's expanding enforcement capability and changes initiated by IIRIRA, INS's detention population has exploded. Since fiscal year 1993, the average daily population of INS detainees has soared from 5,877 to approximately 19,000. The number of aliens taken into detention and processed, as represented by the number of initial admissions to a detention facility, grew from 74,479 in fiscal year 1994 to 167,342 in fiscal year 2000.

INS has taken a number of steps to accommodate this fast-growing detention population. First, INS has greatly expanded its detention capacity. Second, INS has worked to ensure that all aliens in its custody are detained under safe, secure and humane conditions. In November 2000, after consulting with the American Bar Association and other non-governmental organizations, the agency issued detailed standards aimed at ensuring consistent treatment and care for all detainees in INS and contract facilities. Third, to meet the special needs of juvenile detainees, INS established a new Juvenile Detention and Shelter Care Program, tripled its juvenile care detention space since 1997, created a database to track the status of juveniles in INS custody, and trained the 15,000 employees who work with minors in properly handling their needs. The first Family Shelter Care facility, designed to help keep immediate family members together, is scheduled to open in spring 2001.

Asylum. In January 1995, INS implemented a major reform of the system for asylum processing. Before this reform, fraud was a serious problem: applicants filed non-meritorious applications for asylum simply to obtain employment authorization and remain in the country for years while their claims were being finally adjudicated. By eliminating the availability of employment authorization upon filing an asylum application and by drastically reducing the adjudication period, INS has reduced non-meritorious applications and can better respond to those asylum seekers who are fleeing persecution.

Today, the majority of asylum applicants receive decisions from INS within 60 days of filing, and, where appropriate, from Immigration Judges within 180 days of filing. New case filings in fiscal year 2000 were just over 40,000, a significant decrease from the pre-reform total of 143,118 in fiscal year 1993. As the number of non-meritorious filings has significantly

decreased, the asylum approval rate has increased from 22 percent in 1993 to 44 percent in 2000. The agency has also substantially reduced the backlog of old cases that existed in 1995.

Naturalization. INS has faced and overcome extraordinary challenges in processing record numbers of applicants for citizenship. From fiscal year 1993 through fiscal year 2000, nearly 6.9 million immigrants applied for citizenship, more than the total in the previous 40 years combined. To deal with a rapidly increasing workload and deficiencies in its procedures, INS launched a complete overhaul of the naturalization process. First, INS introduced changes to ensure the integrity of the process: it implemented quality assurance procedures, increased the efficiency of the criminal background checks conducted on all applicants and added an in-house fingerprinting requirement for all applicants, opening more than 120 Application Support Centers to perform that fingerprinting.

Second, INS launched a two-year initiative in August 1998 to clear the backlog of applications, which had grown to more than 1.8 million, with an average processing time of 28 months. INS received more than 1.2 million new applications over the next two fiscal years, and pending applications soared to a high of two million. As a result of the intensive two-year initiative, INS reduced pending applications to approximately 800,000 and processing time to the historical average of six to nine months by the end of fiscal year 2000. To achieve this, INS processed 1.25 million applications in fiscal year 1999 and 1.3 million in fiscal year 2000.

IV. Improving Our System of Justice

The Department of Justice, under the leadership of Attorney General Janet Reno, worked to ensure that all three components of the criminal justice system – judiciary, prosecution and

defense – function effectively to ensure fairness and efficiency in the system. Under the guardianship of this Administration, the strength, quality and diversity of the judicial system improved. We tackled intractable problems, such as indigent defense, that jeopardized the fair administration of justice. Through the advancements supported by National Institute of Justice, we worked to ensure that our crime fighting policies were grounded in data and research, using state-of-the-art technology to better understand how to respond to the needs of communities. And we worked to form alliances with our state, local and tribal counterparts in the legal system to improve the administration of justice at all levels. Our efforts resulted in substantial improvements to the American justice system.

A. Judicial Appointments

One of the most profound responsibilities that our Constitution entrusts in the President is the power to appoint federal judges. President Clinton's understanding of the critical role that an independent judiciary plays in our society guided his judicial appointments. During the eight years of his Administration, he appointed, and the Senate confirmed, an extraordinarily qualified and diverse group of judges. Attorney General Reno, through the work of Department of Justice's Office of Policy Development (OPD), assisted the Administration in identifying the men and women best qualified to serve on the federal bench.

In the past eight years, OPD worked with the Office of the Counsel to the President ("Counsel's Office") to select, nominate and appoint 378 federal district and circuit court judges and 2 United States Supreme Court justices. These 380 appointments represent approximately 45 percent of the 852-member federal judiciary established under Article III of the Constitution. In addition, this Administration appointed 7 of the judges to the 16-member United States Court

of Federal Claims established by the Congress under Article I of the Constitution. In total, President Clinton appointed 387 judges to the federal bench (not including the judges appointed to specialized courts, such as the United States Tax Court).

Early in his first term, President Clinton made clear that excellence and diversity were to be the hallmarks of his judicial appointments. He committed to appointing men and women with outstanding professional qualifications and abilities, appropriate temperament, fairness and compassion, respect for the rule of law and complete and total integrity. These were the standards by which OPD evaluated every judicial candidate recommended to the Administration. Moreover, the President directed that no so-called "litmus test" relating to a candidate's personal views of the law (or anything else) be used. Our decisions have been made only on the merit-based standards described above.

The Clinton Administration innovated the judicial appointment process in three other important, efficient and productive ways. First, we did not attempt to dictate a district court candidate selection method to Senators and other officials to whom the President looked for recommendations; we did, however, make clear that we would decline to nominate an individual who did not meet our merit-based standards. Second, we moved the judicial appointment process work from the Department's leadership offices – where the experience of prior administrations taught that assistants were simply too susceptible to the pull of other priorities, particularly emergencies, to be able to manage that work apace with the ever-growing judicial vacancy level – to a leadership support office, OPD, making that work one of the two missions of OPD and providing sufficient staffing to do the work thoroughly, efficiently and productively.

Third, OPD and the Counsel's Office worked as one team, and coordinated on virtually every aspect of judicial appointment work.

To identify candidates for judicial vacancies, the Clinton Administration worked as closely as possible with Senators and also considered recommendations by Representatives, Governors, state judicial selection panels, bar associations, Administration officials and citizens. OPD and the Counsel's Office developed and implemented a rigorous screening and review process for recommended judicial candidates. After our own review, we decided whether to send a candidate forward to the FBI for a background investigation and to the American Bar Association for a professional qualifications evaluation and rating. Once this full "vetting" process was completed, OPD and the Counsel's Office again decided whether to recommend the candidate to the President for nomination. After candidates were nominated, we worked with the Senate Judiciary Committee to schedule hearings, prepared the candidates for hearings and, thereafter, worked to get them voted out of the Committee and confirmed.

The Clinton Administration's record of appointing diverse lawyers and judges to the federal bench is unmatched in history. Almost half of President Clinton's judicial appointees are women or minorities. President Clinton appointed 64 African Americans to federal judgeships – more than three times the number appointed by Presidents Bush and Reagan combined. Likewise, President Clinton appointed 26 Hispanic Americans to the federal judiciary – the combined total of Hispanic Americans appointed by Presidents Bush and Reagan. President Clinton appointed 8 Hispanic Americans to the federal appeals courts – more than Presidents Bush, Reagan and Carter combined. And, President Clinton appointed 115 women to the federal judiciary.

There have been several landmark appointments to the federal judiciary during this Administration that have increased the diversity of the federal bench. Examples include: Roger Gregory, the first African American to serve on the Court of Appeals for the Fourth Circuit, which has the highest ratio of African Americans living within its jurisdiction; Jose Cabranes and Sonia Sotomayor, the first Puerto Rican judges to serve on the Second Circuit; David Tatel, the first blind judge to be appointed to a circuit court; Judith Rogers, Ann Williams and Johnnie Rawlinson, the first African American women to serve on the District of Columbia, Seventh and Ninth Circuits, respectively; Diana Murphy and Sandra Lynch, the first women to serve on the Eighth and First Circuits, respectively; Richard Paez, the first Mexican American to be appointed to the Ninth Circuit; Carlos Lucero, the first Hispanic judge to serve on the Tenth Circuit; and Susan Mollway, the first Asian American woman appointed to be a federal district judge. These and other appointments have increased the representation of women and minorities in the federal judiciary.

The Administration's emphasis on diversity was accompanied by an insistence on quality. Over the course of his two terms, President Clinton's appointees garnered the highest ever overall percentage of "well-qualified" ratings from the American Bar Association, underscoring the fitness of the men and women confirmed to the federal bench in the last eight years.

Although the Administration worked closely with individual Senators, with the Senate Judiciary Committee and with the full Senate to confirm judicial nominees, beginning in 1996 the confirmation process became bogged down by Republican charges that the President's nominees would be "activist" judges. The Administration effectively rejected these baseless charges – primarily by pointing to its record of judicial appointments to that time – and continued

to urge expeditious action on appointments. But the Senate majority continued to slow the confirmation process at the beginning of the 105th Congress by exploring changes in traditional bipartisan protocols and practices and continuing to unfairly and unreasonably attack President Clinton's nominees.

Among the deleterious results of these efforts was the increase in the number of "judicial emergency" vacancies on the federal court.[39] Over the course of the past eight years, these complaints were echoed by members of the judiciary. Several chief judges wrote to protest of the difficulties in administering their courts without anything close to a full complement of judges. And Chief Justice Rehnquist stated in his 1997 year-end report, when the vacancy rate on the federal bench reached about nine percent, that such a high level of vacancies could not continue, "without eroding the quality of justice that traditionally has been associated with the federal judiciary."

Despite these entreaties from highly interested, non-partisan quarters, some in the Senate majority continued to slow the process generally and oppose individual nominees. This group targeted, for example, Margaret Morrow, a corporate litigator and former California Bar president, who was nominated to the federal district court in Los Angeles; Sonia Sotomayor, a Manhattan federal district judge of Puerto Rican descent originally appointed by President George H.W. Bush, who was nominated by President Clinton to the Second Circuit; and Richard

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[39] "Judicial emergencies" are defined by the Administrative Office of the U.S. Courts to be:

> Any vacancy in a district court where weighted filings are in excess of 600 per judgeship; or any vacancy in existence more than 18 months where weighted filings are between 430 to 600 per judgeship, and any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; or any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel.

Paez, an Hispanic federal district court judge in Los Angeles who was nominated to the Ninth Circuit and who waited more than 50 months and endured two Judiciary Committee hearings and much debate in the Senate floor before finally getting a vote. Each of these nominees, and many others whose nominations were stalled by the majority, were fortunate in that they ultimately were confirmed. Not so fortunate was Missouri Supreme Court Justice Ronnie White, an African American nominated by President Clinton to the federal district court in Missouri. Despite Justice White's very responsible record in death penalty cases and on other matters, his record was misrepresented by his home state Senator who persuaded the entire Republican caucus to vote against White's confirmation on the floor of the Senate.

Some in the Senate also blocked the President's effort to appoint an African American judge to the Court of Appeals for the Fourth Circuit. The Fourth Circuit – comprised of Virginia, West Virginia, Maryland, North Carolina and South Carolina – includes the largest African American population of any judicial circuit, but no African American had ever served on that court. Because in 1990 the Fourth Circuit asked and received from Congress four additional judgeships and because a number of sitting Fourth Circuit judges had taken senior status during this Administration, President Clinton would have ample opportunity to appoint at least one African American judge, if not more, to that court, and the President was committed to doing so. In December 1995, he first nominated James Beaty, an African American federal district court judge from North Carolina. When Judge Beaty's nomination was not acted upon by the 104th Congress, the President nominated him again in the 105th Congress. Thereafter, the President also nominated for Fourth Circuit vacancies three more African Americans: James Wynn, a distinguished judge on the North Carolina Court of Appeals; Roger Gregory, a distinguished

lawyer from Richmond, Virginia; and Andre Davis, a distinguished federal district court judge in Maryland. After the President's initial nomination of Judge Beaty in 1995, the Chief Judge of the Fourth Circuit declared that the court needed no additional judges (despite having requested the seats only a few years earlier), and not one of the Administration's nominees received a hearing before the Senate Judiciary Committee, much less a vote. After the adjournment of the 106th Congress and pursuant to the recess clause of the Constitution, President Clinton recess-appointed Roger Gregory to the court on December 27, 2000, thus for the first time integrating the Court of Appeals for the Fourth Circuit.

Despite the very hard work of the Administration over the last eight years, the Senate did not act on 41 of our nominees in the last Congress of President Clinton's term, leaving 67 judicial seats unfilled. With retirements and additional seats added by Congress, the number of vacancies has grown to 84, nearly ten percent of the federal judiciary, by the end of this Administration.

B. Indigent Defense

For the more than 35 years since Gideon v. Wainwright became the law of the land, a fundamental commitment of our justice system has been to provide all criminal defendants with effective legal representation. However, we have not always provided sufficient support for our systems of indigent defense. Indigent defense in the United States has been in a chronic state of crisis. Many systems of indigent defense are poorly funded and poorly organized. Indigent defense counsel are often overworked and face huge difficulties in providing effective assistance of counsel to their clients. As Dade County State's Attorney, Janet Reno worked with the public defender to ensure a strong and effective indigent representation for South Florida; as Attorney

General, she determined that the Department of Justice – as the leading federal law enforcement agency – must play a key role in strengthening the indigent defense component of our criminal justice system in all jurisdictions across the nation.

Under the Attorney General's leadership, the Department of Justice developed a comprehensive plan to enhance our system of indigent defense at the federal, state, and local levels. The Attorney General met regularly with the leaders of national defense counsel organizations to understand better the problems of indigent defense, and the Department undertook an effort to research the state of indigent defense systems. The first step to building strong indigent defense systems is building public support, and the Attorney General and other Department of Justice officials worked to make the case to the legal community, state and local law enforcement, Congress, counterparts in state and local government and to the public that we need to improve and adequately fund our systems of indigent defense. The Department supported increased funding for federal, state, and local indigent defense providers. The Attorney General specifically called on Congress to fund an increase in the hourly rate for federal Criminal Justice Act attorneys to $75 per hour across the board – a rate already authorized by law.

Finally, the Department provided funding for training and technical assistance to improve the delivery of indigent defense services and for the development of standards for indigent defense programs. The Office of Justice Programs funded two important symposia on indigent defense. These symposia, held in 1999 and 2000, brought together representatives from all parts of the criminal justice system to work together to address problems in their indigent defense systems.

The effects of a poor system of indigent defense are severe. Ineffective legal representation leads to delays, appeals and wrongful convictions. These problems hurt everyone, including the victim, the police officer, the judge and the defendant. They also undermine the legitimacy of criminal convictions and the integrity of the criminal justice system as a whole. Our work over the past eight years was only the beginning of an effort strengthen indigent defense.

C. Improving Our Understanding of Crime and Justice

In its efforts to address crime, the Clinton Administration was determined to use innovative new criminal justice policies based on actual problems and tested solutions that would serve our communities for years to come. The crime problems that the Administration inherited seemed to be intransigent. Old crime-fighting strategies were not working. The Administration needed to put new programs in place – and it did, with community policing and community-based initiatives, including drug courts and the forging of strategic alliances. But the Administration was committed to something more fundamental: an approach to crime-fighting that integrated research into practice and used practical experience to guide research. This approach aimed at closing a historic divide that existed between the practitioner and research communities. It sought, quite simply, to understand our crime problems better, learn what and why programs work and to put this information into action.

The National Institute of Justice (NIJ) was created in 1969 at a time when criminal justice policy was based on conventional wisdom – not empirical data. Since then, NIJ's research has helped drive innovation in nearly every major policy advance in the criminal justice field. Understanding the nature of criminal patterns and careers, the effects of various sanctions, and

how police, courts, and corrections operate has been the heart of NIJ's research. NIJ's findings over the last generation have helped changed the way our nation's police, courts and corrections systems operate. The research sponsored by NIJ has played a central role in the development and acceptance of community policing, community responses to crime and community justice.

While for over 30 years NIJ has been working as the Department of Justice's research and evaluation arm, the passage of the Crime Control Act of 1994 marked a turning point where research has become an integral part of program development and implementation. The Administration requested, and Congress supported, a decision to take funds "off the top" of grant programs to support research and evaluation. Since then, in succeeding years, Congress has repeatedly endorsed set-asides for research and evaluation and is including these set-asides when creating new programs. Thus, in the last half-dozen years, there has been a four-fold increase in the NIJ budget and research portfolio.

When tasked by the Congress to report on "what works," NIJ commissioned the landmark 1997 "Preventing Crime: What Works, What Doesn't, What's Promising" by the University of Maryland Department of Criminology and Criminal Justice. This important work laid the groundwork for demonstrating how research and evaluation can help us allocate our funds wisely.

An examination of several initiatives of this ambitious research agenda demonstrates how NIJ has supported the evolution of new researcher-practitioner models, sometimes called the "strategic feedback model" of research. In 1994, NIJ began funding Professor David Kennedy of the Kennedy School of Government to work with the Boston Police Department to reduce juvenile violence. The goal was to develop an empirical understanding of the then-significant

juvenile homicide problem in Boston, to develop testable hypotheses about possible interventions, to collect data while those interventions were being implemented, and to provide ongoing feedback to the strategic team. This project underwent several transformations. Initially, it resembled a study of gun markets, then a study of youth gangs, and then a study of targeted deterrence strategies. The changes occurred because the real-time research and evaluation results shaped the City of Boston's responses to its juvenile violence problem. While one cannot attribute the sharp decline in youth gun-related homicides in Boston directly to this collaboration, clearly, the sharing of information among newly formed partners facilitated this success. Researchers helped the practitioners understand their crime problem and respond appropriately.

From the Boston experience, the Administration developed the Strategic Approaches to Community Safety Initiative, best known as SACSI, which began in five sites in 1999 (Memphis, Tennessee; New Haven, Connecticut; Winston-Salem, North Carolina; Indianapolis, Indiana; and Portland, Oregon). Each of the United States Attorneys at these sites has taken a leadership role in working with local decision-makers and research partners to formulate strategic approaches to identified crime problems. SACSI builds on the Boston experience and other efforts to improve crime prevention and control at the community level, such as in Weed and Seed sites.

In 1996, NIJ recognized the largely untapped potential of computerized crime mapping and the need to expand its use. This effort led to the creation of the Crime Mapping Research Center, which promotes research, evaluation, development and dissemination of electronic approaches that monitor the location of crime and analyze identifiable trends and relationships. For the past four years, the Center has made significant progress in expanding the use and

understanding of crime mapping. A 1997 survey showed that 33 percent of large law enforcement agencies used crime mapping. By 1999, that figure had nearly doubled to 60 percent. The Center's accomplishments include the development of a website for immediate access to information on crime mapping research, best practices, software tools and training opportunities; crime mapping software that is free of charge to law enforcement agencies; implementation of an Internet-based listserv that allows criminal justice officials worldwide to share information about crime mapping; and the development of prediction models that can enhance law enforcement officials' understanding of crime and their ability to more effectively prevent crime.

NIJ is now pioneering an effort to develop a model set of data systems to help the strategic, data-driven planning process move forward. This program, Comprehensive Planning and Analysis for Safety Strategies, also known as COMPASS, is in Seattle, Washington and will soon be implemented in another site. In addition to crime data, analysts will look at employment statistics, land use data and hospital records, as well as victimization data, all applied against a Geographic Information System (GIS). This GIS mapping capability will help communities assess their overall well-being and sets a new standard for using technology to shape effective crime fighting policies.

As part of its core mission, NIJ will continue to ensure ongoing research and program evaluation in the major program areas affecting our criminal and juvenile justice policies. It will continue to foster enduring research-practitioner partnerships.

The predominant responsibility for preventing and controlling crime "on the streets" has been and remains with state and local government. The federal role in crime control across the

nation must be in those areas that can only be mounted at a higher level – such as research and evaluation, program development and testing and information dissemination. Our role must be to nurture and support state and local efforts and to evaluate them to see what works, and then to do an aggressive job of sharing this information with others around the country.

D. Using DNA Technology to Improve Our System of Justice

The past eight years have witnessed the advent of a revolutionary tool in the field of criminal law: DNA technology. The Department of Justice has acted to bring the benefits of this technology to our system of justice to solve crimes, identify potential criminals, establish guilt, and exonerate the innocent.

The National Commission on the Future of DNA Evidence was created in 1998 at the request of the Attorney General. The Commission, composed of prosecutors, defense attorneys, judges, and DNA experts, met regularly and generated a number of reports and recommendations on DNA in the justice system, including *Forensic DNA Testing: Predictions of the Research and Development Working Group*, and *Postconviction DNA Testing: Recommendations for Handling Requests*.

DNA has the potential to serve as a effective investigative tool, particularly if there is a large database with DNA samples from convicted offenders. The Department took the initiative in creating the Combined DNA Index System (CODIS). It has also worked to secure legislation to reduce the backlog of hundreds of thousands of biological samples, taken from convicted offenders and crime scenes, which are awaiting testing and analysis in laboratories.

DNA can also establish a person's innocence. The Department worked closely with Congress to develop legislation to ensure appropriate avenues of redress to prisoners who may be

able to establish their innocence through DNA testing. The Department's goal has been to minimize the potential for frivolous litigation, while striving to ensure that a person who has a reasonable claim that he or she is innocent of the crime for which they were convicted and imprisoned will have access to DNA testing. In addition, in January 2001, the Attorney General convened a conference to discuss prosecutors' efforts to proactively review convictions of prisoners who might be able to establish their innocence with the use of DNA evidence. The Department used the lessons learned from local prosecutors to assess the Department's own conviction review practice. Today, DNA technology has become a central tool in improving the administration of criminal justice, and the Department is well positioned to use that tool.

V. Managing a Growing Department and Preparing for the Future

The Department of Justice has experienced tremendous growth during the past eight years. Its budget has increased from $11.2 billion for 1993 to $24.1 billion for 2001, an increase of 115 percent. Our on-board staffing has risen from 95,000 employees in January 1993, to over 125,000 in December 2000. This Administration has made a significant investment in the administration of justice. But increasing budgets alone does not make America safer. Our employees at the Department have worked hard to make good use of these resources to confront the problems and challenges we face.

A. Budget and Workload Increases

Grant Programs. Law enforcement is a team effort that involves numerous agencies at all levels of government. Since 1993, the annual appropriation for the Department's grant programs have grown from approximately $800 million to over $4 billion. We have helped

communities form partnerships between and among the criminal justice system, schools, health care and area businesses to address drug problems, promote information-sharing, and develop strategic state and local programs such as community policing, community prosecutors and task forces. The Department also provides operational assistance on Safe Trails Task Forces, Safe Streets Task Forces, Mobile Enforcement Teams and other joint law enforcement efforts.

Border Control. In 1994, we were ill-equipped to secure our borders against illegal entries. We started to thoughtfully and strategically address this problem – and, to do so, we needed to hire new personnel and improve our infrastructure. We more than doubled the number of Border Patrol agents. We introduced new technology, such as the Immigration and Naturalization Services' Integrated Surveillance Intelligence System and IDENT system, we added physical barriers to make passage more difficult, and we improved lights and roads to help our agents work more effectively. This has resulted in dramatic improvements in border security in areas such as San Diego and El Paso.

Federal Detention Capacity. Our aggressive and successful efforts to target, solve and prosecute crime have resulted in a large increase in the prison population. The federal prison population has grown dramatically during the past eight years – the Bureau of Prisons (BOP) has successfully accommodated a growth of 66,857 inmates, in part by opening over 25 new correctional facilities. BOP has had to accommodate annual population increases of over 10,000 inmates – the largest increases in its history. To manage this unprecedented growth, the number of BOP personnel has increased by 8,700 over the past eight years – an increase of 37 percent. As inmate population growth outstripped increases in bed space, BOP's crowding rate has increased to 32 percent. More critically, the crowding levels at medium and high security

institutions have increased to 50 percent and 54 percent above capacity respectively, and are rising. To address this situation, the Department continues to implement an aggressive long-term prison expansion program, which will add capacity and help alleviate crowding levels.

Likewise, the United States Marshals Service and the Immigration and Naturalization Service have seen their detention populations greatly increase. INS's detention population has nearly quadrupled in the past eight years, while the Marshals's population has almost doubled. To help with the management of this huge increase, the Department proposed, and is now establishing, an Office of the Federal Detention Trustee.

Technological Improvements. Successfully managing such growth brings great challenges. Much planning and foresight is required. We have updated our computer systems and technological capabilities to take advantage of new technology. We have innovated the ways we do business. Through our important investment in human and information resources, the Department has become better equipped to fulfill its criminal and civil law enforcement responsibilities.

B. Management Improvements

Over the past eight years, the Department of Justice has taken a number of significant steps to improve its operations organizationally and administratively. We reorganized a number of existing Justice components, formed new offices and established administrative processes to improve the Department's range and level of services.

INS Reorganization. In a process that is still on-going, the Immigration and Naturalization Service was reorganized early in the Clinton Administration to de-politicize the regional INS offices which, under prior administrations, had become independent fiefdoms that

did not always manage their operations in a manner consistent with national policy and procedural direction. INS consolidated and centralized certain administrative activities, including file maintenance, personnel functions, and other alien paperwork processing at various, centralized locations and at Service Centers. In addition, the INS's Border Patrol faced the daunting task of hiring and deploying unprecedented numbers of new agents, primarily at the Southwest Border, which required the creation of streamlined, centralized hiring and training mechanisms to help meet this goal. Finally, the increasing dependence on information systems and the need to ensure that INS's information management infrastructure was functioning in a manner supportive of INS missions led to the development of an oversight group chaired by the Department's Assistant Attorney General for Administration that worked diligently to bring information management at INS under better control. At the same time, sweeping changes in our immigration laws during this Administration presented immense organizational and administrative difficulties, and there was continual pressure to split INS into two separate entities, one focused on enforcement and the other on services. The Department fought successfully throughout the Clinton Administration to keep INS intact.

New Department Offices. Several new Department of Justice entities were established during the Clinton Administration. To emphasize a core Administration initiative of promoting, establishing and managing a grants program to put 100,000 new cops on the beat across our country, the Attorney General established a separate Community-Oriented Policing Services office. To manage our new grant programs under the Violence Against Women Act and to coordinate our efforts to combat domestic violence, stalking and sexual assault, the Attorney General created the Violence Against Women Office. To emphasize the rights of every citizen

with regard to privacy and information access and the importance of those values to the administration of justice, in 1993, the Attorney General made the Office of Information and Privacy a free-standing component. She established the Office of Dispute Resolution to promote the broader use of alternative dispute resolution in appropriate cases, to improve access to justice for all citizens, and to help effectively resolve disputes involving the government. The Office of Intergovernmental Affairs was also made a stand-alone office to manage and coordinate the Attorney General's and other leadership's relationships with state and local interest groups. Finally, the Attorney General established for the first time an Office of Tribal Justice to address unique enforcement needs and issues identified as pertinent to the those living on Indian tribal lands.

Other Management Improvements. In addition to these organizational changes at the Department of Justice, the Clinton Administration and Attorney General Reno established a number of laboratories to improve government management as part of Vice President Al Gore's initiative to reinvent the U.S. Government. The key goals of this initiative were to put customers first, eliminate needless red tape, empower employees and cut government functions back to basics. Examples of administrative processes that were improved include expedited border crossing capabilities at United States ports of entry and the reform and re-invention, including the automation, of the grant application and consideration processes.

Finally, a longstanding administrative concern of Attorney General Reno has been the need to develop a rational basis for deploying Department of Justice staff resources across the United States. The Justice Management Division (JMD) developed a geographic analysis of current law enforcement staffing by Federal judicial district, recent enhancements, and longer

term allocation trends. The Attorney General has used this type of information in trying to assess where to seek and to deploy new resources. Increasingly, JMD is moving toward placing information of this type in a central data warehouse format, available not only for internal Department use, but also for broader public availability via the Internet.

C. Managing our Human Resources

Overall, the Department has grown by more than 30,000 employees over the past eight years – an increase of almost one-third. In addition to adding these new employees, we have had to hire replacements for the many employees who have retired or otherwise left the Department. This has present a huge challenge, especially in a competitive economy. Our growth includes a 13 percent increase in the size of the FBI, a 21 percent increase in DEA, and a 72 percent increase in the INS workforce. The Department has faced a tremendous management challenge recruiting, screening, hiring, training and integrating these new employees into our operations.

As we have grown, the Department has worked to assure that we maintain high standards of excellence. The Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, has experienced phenomenal growth in both the number of students – more than 25,000 students per year – and the range of instruction. The Department has opened and expanded other training facilities, including the National Advocacy Institute in Columbia, South Carolina.

Two human resource challenges faced by the Department have been the competition for information technology professionals and the need to improve the safety of our employees. Many Department employees do very dangerous work, involving very dangerous criminals. Workers' Compensation costs for injured Department of Justice employees have risen an average of ten percent per year, to a current cost of $84 million in 2000.

D. Improving Our Information Resources

Over the past eight years, the Department has been able to invest in new technology to improve efficiency, aid law enforcement and keep pace with rapid changes in crime. Our development and deployment of crime-solving technology tools have created an information superhighway accessible by federal, state and local law enforcement. The Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System, the National Crime Information Center 2000, the National Instant Criminal Background Check System (NICS) and the Combined DNA Index System have become operational and are accessible to law enforcement for apprehending and identifying criminals. As a result of these new tools, crimes can be solved through fingerprint and DNA technology that was not widely available eight years ago.

The Department is also continuing its efforts to improve the security of our computer and technology systems against external threats and internal weaknesses. We recognize that electronic communications and information systems, including the Internet, are now essential tools in our day-to-day activities. We are vigilant in our efforts to respond to the security risks that the Internet and other new technologies may present.

VI. Conclusion

After eight years, the Clinton Administration and, in particular, the Department of Justice, leaves behind a strong record of accomplishment. We have seen the Department's budget double, crime rates plummet to the lowest rate in 26 years, and our prosecutions increase. We have seen more funding for prevention programs and drug treatment, more interest in early

intervention and comprehensive approaches to crime, and more research into technology so that we stay ahead of the criminals in the 21st century.

We have helped to improve access for millions of Americans with disabilities and prosecuted record numbers of hate crimes. We have successfully challenged discrimination in the housing and lending industries and vigorously addressed issues of police integrity. We have sought to protect the environment by prosecuting some of the nation's biggest polluters. And we have promoted competition and protected the rights of consumers through the enforcement of our antitrust laws.

We have helped to appoint the most qualified and diverse group of judges to the federal bench. We have opened better lines of communication with our law enforcement counterparts, not just state, local and tribal law enforcement, but foreign law enforcement as well. And we have promoted the use of alternative dispute resolution, proving that lawyers can be effective problem solvers and not just courtroom adversaries.

As important as these achievements are, what may be an even longer lasting legacy is the strategy that the Justice Department developed during these eight years. The Department worked more closely than ever before with the communities and the people that federal laws and policies are designed to help. The Department used the lessons and concerns of local communities as a guide for federal policies. By working in partnership with state, local and tribal law enforcement, the Department of Justice dramatically enhanced the work and success of federal law enforcement and restored the faith of our communities in our government. There is still much work to do, but this successful strategy can continue to serve our nation and ensure justice for all.