

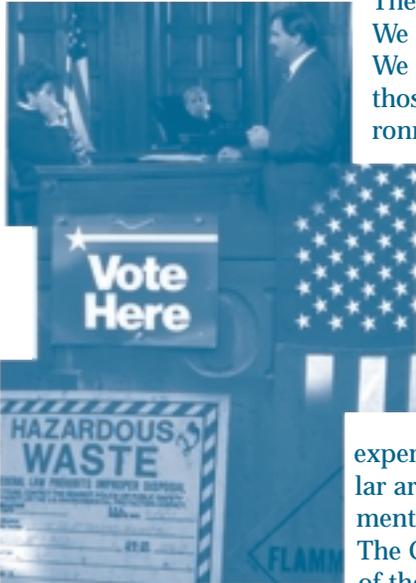
GOAL THREE

Protect the Rights
and Interests of the
American People by
Legal Representation,
Enforcement of Federal
Laws and Defense of
U.S. Interests

III

GOAL THREE:

Protect the Rights and Interests of the American People by Legal Representation, Enforcement of Federal Laws and Defense of U.S. Interests



The Department of Justice is the nation's chief litigator. We represent the United States Government in court. We enforce federal civil and criminal statutes, including those protecting our civil rights, safeguarding our environment, preserving a competitive market structure, and defending the public fisc against unwarranted claims. Carrying out these responsibilities is the primary task of the U.S. Attorneys (USAs), the Department's litigating divisions, and the Office of the Solicitor General. The USAs serve as the Attorney General's chief law enforcement officer in each of the 94 federal judicial districts, representing the United States in both civil and criminal matters. The litigating divisions are centralized staffs with expert attorney skill and specialized expertise in particular areas of federal law, including civil rights, environmental law, antitrust, tax, civil justice and criminal law. The Office of the Solicitor General represents the interests of the United States before the U.S. Supreme Court and

authorizes and monitors the government's activities in the nation's appellate courts. Together, these Justice components ensure that the Federal Government speaks with one voice with respect to the law.

STRATEGIC OBJECTIVE 3.1

CIVIL RIGHTS

Uphold the civil rights of all Americans through enforcement of, and education about, federal civil rights laws and protections.

The Department of Justice promotes compliance with basic federal civil rights protections through a multifaceted program of criminal enforcement, civil enforcement, public education and outreach. The nation's civil rights laws influence a broad spectrum of conduct by both individuals and public and private institutions. They prohibit discriminatory conduct in such areas as the administration of justice, housing, employment, education, voting, lending, public accommodations, access to services and facilities, activities that receive federal financial assistance, and the treatment of juvenile and adult detainees and residents of public institutions. They also provide safeguards against criminal actions such as hate crimes, involuntary servitude and slavery and official misconduct.

Recent years have seen growth in the criminal civil rights enforcement area. In 1998, the Department concluded criminal civil rights prosecutions against 2,153 suspects, up 12 percent from 1,916 suspects in 1994. At the same time, the role of the Department has expanded during this period to issues that capture national attention, such as church arsons, clinic bombings, and hate crimes. The Department continues to investigate and prosecute cases involving the violent interference with liberties and rights defined in the Constitution or federal law.

The Department enforces several civil justice statutes designed to protect civil rights, including the Voting Rights Act of 1965 and the National Voter Registration Act. With the new population data available from the 2000 Census, states, counties, cities and school districts across the country will be adjusting their jurisdictional boundaries, i.e., redistricting. In our review of the redistricting plans of specially covered jurisdictions, we ensure that minorities will have a fair opportunity to elect candidates of their choice.

The Department works closely and effectively with the Equal Employment Opportunity Commission (EEOC) to enforce Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA), as amended. While the EEOC's enforcement efforts are generally focused on addressing discriminatory conduct by private actors, the Department is responsible for litigating charges of employment discrimination lodged against state and local governments where the EEOC, following an investigation, has determined that reasonable cause exists to believe that the charge has merit.

The Fair Housing Act of 1968, the Equal Credit Opportunity Act, and the Civil Rights Act (Title II) prohibit discrimination in housing, consumer credit and public accommodations (restaurants, hotels and motels, places of entertainment, etc.) regardless of race, sex, religion and national origin. Both the Department of Housing and Urban Development (HUD) and the Department of Justice have enforcement responsibilities under the Fair Housing Act. The Department focuses on a variety of pattern and practice situations to stop and/or deter the continuance of any discriminatory conduct or practice.

The ADA extends to people with disabilities the promise of equal access to everyday life. The Department enforces the ADA to make this promise a reality. Enforcement responsibilities cover a broad spectrum of potential actions to encourage individuals and entities to comply with ADA requirements, including removal of physical barriers, provision of auxiliary aids, and elimination of discriminatory policies. The Department also focuses on pattern or practice cases that involve issues of general public importance involving public accommodations and commercial facilities.

The Department enforces in federal court a number of statutes administered by the Department of Education prohibiting discrimination by recipients of federal funds. Additionally, the Department coordinates with the Department of Education with regard to enforcement in federal court of referrals under Title II of the ADA which prohibits discrimination against persons with disabilities by public school officials.

On the civil side, the Department is meeting a growing demand for pattern or practice investigations of major police departments for the presence of police misconduct in the discharge of operational responsibilities. The Department carries out these investigations pursuant to the pattern or practice authority of the Violent Crime Control and Law Enforcement Act of 1994.

Strategies to Achieve the Objective

| *Investigate and prosecute civil rights crimes.*

The Department's most effective strategy to combat violations of individual civil rights is through aggressive investigation and timely criminal prosecutions remedying proven discrimination and punishing guilty actors. The publicity generated by the media resulting from successful prosecutions demonstrates the Department's commitment and ability to prosecute civil rights crimes, thus creating a deterrent for those who might otherwise commit these crimes.

Target key areas or forms of discrimination through pattern or practice litigation to uproot and remedy discriminatory public and private institutional conduct.

Pattern or practice litigation is used to address a wide variety of discrimination problems. For example, in the area of employment and workplace discrimination, such litigation often results in systematic changes to defendants' employment practices and serves as a signal to other employers to review voluntarily their practices to determine compliance. In the "official misconduct" area, pattern or practice investigations have been the catalyst for numerous state and local law enforcement agencies to conduct training and reviews of their own practices and procedures to curtail or prevent police misconduct.

Investigate and prosecute individuals for civil violations of federal laws.

The enforcement of civil violations against individuals is another critical aspect of the Department's civil rights enforcement strategy. The importance and significance of such prosecutions are to remedy discriminatory conduct and make whole persons who have been victimized.

Educate the American business community and state and local governments regarding federal civil rights laws and requirements.

Non-adversarial interaction to achieve voluntary change through education, outreach, and mediation has been an important strategy toward reducing and deterring civil rights violations. For example, the Civil Rights Division's Technical Assistance Program, mandated under Section 506 of the ADA, provides answers to questions and free publications to businesses, state and local governments, people with disabilities, and the general public.

Key Crosscutting Programs

Generally, the Department's civil rights enforcement and outreach are coordinated with all federal agencies which provide financial assistance, including grant funding to state, local and nonprofit agencies, and with the other federal agencies with civil rights enforcement responsibilities (e.g., the Departments of HUD, Education, Labor, Health and Human Services, and Transportation.) Our coordination includes both longstanding working relationships, such as jointly developing policy guidelines and jointly handling enforcement cases, and more short-term task forces created to address specific problems. Current task forces and agreements include:

Interagency Fair Lending Task Force. The bank regulatory agencies (Federal Reserve Board, Office of Thrift Supervision, Office of Comptroller of the Currency and Federal Deposit Insurance Corporation), HUD, and the Department are members of an interagency fair lending task force which meets regularly to consult on fair lending policy and periodically issues joint policy statements.

Worker Exploitation Task Force (WETF). The WETF brings together the Departments of Labor, State, and Agriculture; the EEOC; and several Justice components to address involuntary servitude and slavery and other violations involving undocumented workers. This comprehensive approach on both civil and criminal bases has enhanced the viability of prosecutions by prompt identification of potential violations as well as by ensuring that the victims are available and prepared as witnesses despite their frequent status as undocumented workers.

National Task Force on Violence Against Health Care Providers. The National Task Force on Violence Against Health Care Providers coordinates the investigation and prosecution of violations of the FACE Act (Freedom of Access to Clinic Entrances Act). The Treasury Department's Bureau of Alcohol, Tobacco and Firearms (ATF) and the FBI

provide investigators and the Treasury Department helps to oversee this prosecutorial effort, which is staffed primarily by prosecutors from the Department's Civil Rights Division.

Memorandum of Understanding on Housing Rights. The Department's Civil Rights Division and HUD have a Memorandum of Understanding to ensure that criminal interference with housing rights is addressed through the most effective means. HUD refers all forcible interference reports to the Civil Rights Division which reviews and either pursues or defers back to HUD for further action. This allows those instances of provable criminal violations to be addressed through prosecution and then processed for civil remedies through HUD.

STRATEGIC OBJECTIVE 3.2

ENVIRONMENT

Enforce and defend federal environmental laws and programs across our land, including Indian Country, by investigating and litigating environmental and natural resources violations and issues.

The Department enforces government pollution abatement laws and programs; defends against suits challenging environmental statutes, regulatory and permit actions, and decisions by federal agencies; preserves natural resources; and litigates on behalf of Indian tribes and individual Indians. We strive to obtain compliance with environmental statutes, obtain redress of past violations that harm the environment, establish credible deterrents against violations of those statutes, obtain monetary civil penalties for past violations, recoup federal funds spent to abate environmental contamination, and obtain money to restore or replace natural resources damaged through oil spills or the release of hazardous substances into the environment.²⁶

Thirty-five years ago, Americans began to realize that we were losing an important part of the United States' heritage—its natural beauty and resources. Smog blanketed our cities, rivers caught fire, and toxic wastes were being found everywhere, even in playgrounds. Since that time, we have made substantial progress in cleaning up and protecting our environment, but there is much left to do. High concentrations of toxic air pollutants linked with cancer, birth defects and other health problems such as asthma still affect millions in urban areas. Approximately 40 percent of the nation's waters are still not fit for swimming or fishing, and groundwater contamination is threatening our supply of drinking water. Suburban sprawl is gobbling up wetlands and other habitat for wildlife, including endangered species, and exacerbating air quality problems and water shortages. And, there continue to be hundreds of hazardous wastes sites around the country that need to be cleaned up.

A different aspect of the ongoing challenge to protect our environment involves the defense of rules that regulate polluters and place appropriate restrictions on the use of natural resources, such as our forests and other public lands, and ensuring that decisions that will have significant environmental effects receive appropriate review. Such rules and decisions are often attacked in ways that—were the attacks successful—would undermine important environmental protections, and, hence, require vigorous defense. Environmentally sensitive lands sometimes also require protection through purchase or condemnation of those lands.

The Department faces a growing caseload in such natural resource areas as: defending U.S. interests in "general stream adjudication" involving thousands of

²⁶ See Strategic Objective 1.5 for information on the Department's enforcement of criminal violations of federal environmental laws.

parties and tens of thousands of claims in the Western states; restoring and maintaining federally-managed lands, waters, and renewable resources; bringing suits to reclaim abandoned mine sites; managing endangered species on federal lands (wolves, bison); coordinating land exchanges between the government and private developers to protect environmentally sensitive lands, including habitats for endangered species; ensuring that the government receives appropriate royalties and income due from leasing and mining activities on federally-managed lands and waters; battling the environmental consequences of sprawl around urban areas, particularly habitat degradation; and defending ecosystem management programs.

A related concern is the trust relationship that the United States has with Indians and Indian tribes through numerous treaties, statutes, and Executive Orders. Under these authorities, the government is obligated to perform a number of functions on behalf of these tribes, including litigation by the Department to establish and defend their rights. Among other things, this means developing, investigating and litigating environmental issues that arise on Indian reservations and securing tribal resources, including water rights, land, and treaty-based hunting and fishing rights.

Strategies to Achieve the Objective

Pursue cases against those who violate laws that protect public health, the environment and natural resources.

The Department will work closely with client agencies to develop enforcement strategies specifically targeted to achieve widespread deterrence and encourage effective compliance across whole industry sectors. This approach was particularly effective this past year when the Department achieved a landmark settlement with heavy-duty diesel manufacturers who violated the Clean Air Act by installing software that allowed engines to meet EPA standards during testing but disabled emission control standards during normal highway driving. In the coming years, the Department will focus enforcement on industrial and economic sectors that are major sources of pollution.

The Department will pursue affirmative civil litigation concerning enforcement of EPA statutes and rules which regulate discharges into our Nation's air and water and the storage and disposal of hazardous wastes. We will litigate natural resource damage actions on behalf of federal trustees, including the Departments of Commerce, the Interior and Agriculture, and claims for contribution against private parties for contamination of public lands and recoupment of monies spent to clean up oil spills on behalf of the Coast Guard.

The Department faces a growing workload in a wide variety of natural resource areas including water and watersheds, federally-managed lands and renewable resources, endangered species and sensitive habitats, land acquisition and exchanges, mineral activities, and urban sprawl and habitat degradation. Top departmental priorities include implementing the President's Forest Plan for the Pacific Northwest, restoring salmon runs in the Snake and Columbia River systems, and protecting and restoring the Everglades "river of grass." In addition, the Department will continue to focus on illegal occupancy of federal lands.

We will continue to emphasize the use of Alternative Dispute Resolution (ADR) and other litigation streamlining techniques to achieve faster and more comprehensive resolution of these complex cases in a cost-effective manner.

Defend U.S. interests against suits challenging statutes and agency actions that protect public health, the environment and natural resources.

The Department will focus on defending the largest and most complex Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA)

matters involving hundreds of millions of dollars of claims against the public fisc; defending the Army's \$15 billion Chemical Demilitarization Program for destroying the nation's stockpile of chemical weapons in eight domestic sites as mandated by Congress and an International Chemical Weapons Convention; protecting multibillion dollar Army and Department of Energy programs designed to store, transport and destroy hazardous materials, both chemical and nuclear, from complicated legal challenges in multiple emergency proceedings; defending standards for ozone (smog) and particulate matter (soot) which will provide hundreds of millions of Americans (including children and the elderly) with urgently needed health protection; and defending a wide range of programs, including those related to ecosystem management, national monument designations, and protection of roadless areas in national forests.

Develop constructive partnerships with other federal agencies (including especially EPA), state and local governments, community representatives, and international enforcement agencies to maximize environmental compliance.

The Department will work in close coordination with communities and other federal agencies such as HUD to enforce the Residential Lead-Based Paint Hazard Reduction Act, a new law designed to protect children from the hazards of lead paint, which causes IQ deficiencies, reading and learning disabilities, impaired hearing, hyperactivity and behavior problems. The Department will participate in interagency task forces and high visibility international agreements to ensure that trade and investment rules promote environmental protection and do not undermine our domestic regulatory authority. The Department will promote multi-agency enforcement of Clean Water Action Plans, including regulating against polluted runoff from livestock and poultry feeding operations which foul rivers and coasts, harm marine life, and pollute the air. The Department will monitor cases for environmental justice concerns and work to ensure that affected communities are consulted as appropriate during settlement negotiations.

Act in accordance with U.S. trust responsibilities to individual Indians and Indian tribes in litigation involving Indian interests.

The United States has established trust relationships with Indians and Indian tribes through numerous treaties, statutes, and Executive Orders. Under these authorities, the government is obligated to perform a number of functions on behalf of these tribes, including litigation by the Department to establish and defend their rights. The work includes development, investigation and litigation of environmental issues that arise on Indian reservations (e.g., recognizing tribal government authority to set standards for air and water quality on Indian reservations much as states currently do under the Clean Air and Clean Water Acts) and pursuing land and water claims on behalf of tribes to resolve centuries old disputes. This approach is critical since many reservations lie in arid portions of the country where competition for water is fierce, and tribal rights to water must be established before reservation lands can be developed. More than 50 million acres of reservation lands and the rights to major water systems in dry western states are at stake. The Department is also charged with protecting tribal regulatory, adjudicatory, and tax jurisdiction, including tribal sovereignty to exercise jurisdiction in domestic relations cases involving tribal members and enforcement of gaming laws and state compacts and establishing and protecting treaty-based hunting and fishing rights, including rights of Indians to hunt and fish free of state regulation on off-reservation lands. In defending litigation against Indian tribes, the Department gives careful consideration to negotiation and the use of dispute resolution techniques to resolve the controversy.

Key Crosscutting Programs

Coordination and Enforcement on Environmental Health Hazards. The Department enforces the federal lead-based paint disclosure rule with HUD and EPA, provides assistance to local and state governments in enforcement of their own hazard control regulations, and supports the President's Task Force on Environmental Health Risks and Safety Risks to Children.

Mississippi River Environmental Quality Coordination and Enforcement. The Department works with other agencies in efforts to improve the environmental quality of the Mississippi River. Multiagency planning sessions and enforcement actions aim at keeping illegal pollution ranging from raw sewage to industrial waste out of the Mississippi River and restoring the river and its surrounding communities.

Enforcing National Ambient Air Quality Standards. The Department partners with the EPA, the Army Corps of Engineers, and the Departments of the Interior and Transportation to defend EPA's National Ambient Air Quality Standards and the CERCLA statute.

Policy Coordination on Ecosystem Management. The Department works closely with client agencies such as EPA and the Departments of the Interior and Agriculture on ecosystem management in an effort to enhance protection of wetlands, forests, public lands, and waterways by considering ecological systems on a broad scale.

STRATEGIC OBJECTIVE 3.3

ANTITRUST

Promote competition in the United States economy through enforcement of, improvements to, and education about antitrust laws and principles.

The Department maintains and promotes competitive markets largely by enforcing federal civil and criminal antitrust laws. These laws affect virtually all industries and apply to every phase of business, including manufacturing, transportation, distribution, and marketing. They prohibit a variety of practices that restrain trade, such as mergers likely to reduce the competitive vigor of particular markets, predatory acts designed to maintain or achieve monopoly power, and per se illegal bid rigging. Successful enforcement of these laws—which both decreases and deters anticompetitive behavior—saves U.S. consumers billions of dollars, allows them to receive goods and services of the highest quality at the lowest price, and enables U.S. businesses to compete on a level playing field nationally and internationally.

Several key trends are impacting the Department's antitrust efforts. The first of these is the globalization of trade. The second of these is rapid technological change. The third is deregulation. All three trends have ramifications for the Department's antitrust work and workload.

The value of mergers occurring globally is on the increase, and large, cross-border mergers are no longer an anomaly. In addition, as markets become increasingly global, so do cartels. More of the Department's criminal investigations involve foreign companies than ever before. Whether taking more time to coordinate with foreign antitrust counterparts or more money to translate foreign documents, the Department's increasingly common investigations with international dimensions are significantly more complex than in previous years.

A number of our most important industries have been characterized recently by unprecedented levels of technological change. The accelerated flow of information means the collection and review of evidence has become more laborious. The greater technological sophistication of the marketplace means the methods to

constrain competition have become more sophisticated, as well. New industries are created virtually overnight. The Department must stay on top of all these developments to effectively enforce the antitrust laws.

In recent decades, legislative and regulatory changes in the United States have reversed a generation of pervasive government regulation and deregulated such basic industries as telecommunications, energy, financial services, and transportation. Competition, with appropriate reliance upon antitrust laws, has again become the norm. This transition has meant an increased role for antitrust—both working with various agencies to find ways to replace regulatory constraints with competitive incentives and effectively following up with necessary enforcement of the broader antitrust laws as it may become necessary. Again, the Department is faced with more work that is more complex.

The Department has focused on three strategies to achieve our objective in the antitrust arena. These three strategies are complementary and provide the flexibility (among them all and within each of them) needed to respond to the key trends described above, effectively meet the challenges of today and tomorrow, and safeguard the competition that is the cornerstone of this country's economic foundation.

Strategies to Achieve the Objective

■ *Investigate and litigate business arrangements and practices that encourage anticompetitive behavior and lessen competition.*

The Department employs three distinct strategies to decrease and deter anticompetitive business behavior and practices. First, is our merger enforcement strategy. This strategy focuses on the investigation and litigation of instances in which monopoly power is sought, attained, or maintained through anticompetitive conduct and by seeking injunctive relief against mergers and acquisitions that may tend substantially to lessen competition.

Second, is our criminal enforcement strategy.²⁷ When businesses are found to be actively engaged in price fixing, bid rigging, and other market allocation schemes, the Department conducts criminal investigations and prosecutions. If the Department detects market collusion and successfully prosecutes, the Department may obtain criminal fines and/or injunctive relief.

Finally, our civil non-merger enforcement strategy investigates and prosecutes civil matters to suspend or deter anticompetitive behavior. It picks up, to some degree, where our criminal enforcement strategy leaves off, pursuing matters under Section 1 of the Sherman Act in instances in which the allegedly illegal behavior falls outside bid rigging, price fixing, and market allocation schemes. Other behavior, such as group boycotts or exclusive dealing arrangements, that constitutes "...contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce..." is also illegal under Section 1 of the Sherman Act. The civil non-merger enforcement strategy relies on a civil compulsory process to investigate alleged violations, obtaining civil damages or injunctive relief, as appropriate.

■ *Advance procompetitive national and international laws, regulations and policies.*

With a number of activities distinct in form and audience, the Department endeavors to promote competition through further improvement of the competitive landscape at all levels: inter- or intra-governmentally; nationally; and internationally. Departmental resources are devoted to participation in interagency regulatory processes, for example, to ensure that business practices conform with regulatory

²⁷ See Strategic Objective 1.5 for information on the Department's enforcement of criminal violations of federal antitrust laws.

rules. In addition, Department officials routinely participate in interagency task forces related to competition issues. At the international level, Department membership in bodies such as the World Trade Organization (WTO) provides an opportunity for the promotion of “competition-friendly” policies and practices. In all cases, our goal remains the deterrence of anticompetitive behavior.

Educate businesses, consumers and counterpart agencies about antitrust law to increase their awareness and understanding.

Whether through direct contact and targeted communication with specific audiences, or via the development, publication and distribution of policy guidance, the Department seeks to increase the breadth and depth of awareness of antitrust law. One example of Departmental activity in this area is our Business Review Program, which provides timely information on antitrust law and how it applies under different situations, along with the likely reaction of the Department to a proposed business action or arrangement. Another example is tailored training provided to state antitrust attorneys and investigators. In all instances, by reaching as many individuals, companies, agencies, and other groups as possible, and by providing them with detailed and specific guidance on the law, the Department seeks to promote competitive behavior and deter anticompetitive behavior.

Key Crosscutting Programs

Antitrust Division and FTC Merger Clearance Process. Section 7 of the Clayton Act, as amended, requires certain enterprises that plan to merge or to enter into acquisition transactions to notify the Department’s Antitrust Division and the FTC of their intention, and to submit certain information to those authorities. Once pre-merger notification has been made, the Department and the FTC employ a clearance process, based largely on complementary areas of expertise, in order to quickly determine which body will review and/or investigate a particular merger transaction. Following clearance, the transaction is reviewed to determine whether there are any competitive issues at stake. Throughout the clearance process the agencies maintain close communication in order to ensure that competitive concerns are addressed efficiently and effectively and that the process is undertaken without unduly burdening legitimate business interests.

STRATEGIC OBJECTIVE 3.4

TAX LAWS

Promote the fair, correct and uniform enforcement of the federal tax laws and the collection of tax debts to protect the federal fisc from unjustified claims.

The Department strives to enforce the federal tax laws consistently and impartially and ensures that taxpayers are treated fairly. Enforcement plays an important role toward ensuring voluntary compliance and in realizing the maximum legal collection of tax revenues. The Internal Revenue Code is the major authorizing statute governing this area of activity. The Department assists the IRS with one of its key strategic objectives, “Increasing Voluntary Compliance.” Referred from the IRS, the Department’s work of enforcing federal tax laws includes: litigating all federal civil tax cases appealed to the United States courts of appeal and state appellate courts; investigating and prosecuting individuals and corporations for tax evasion; and litigating all civil tax lawsuits filed in federal district courts, bankruptcy courts, the Court of Federal Claims, and state courts.²⁸

²⁸ See Strategic Objective 1.5 for information on the Department’s enforcement of criminal violations of federal tax laws.

The Department assists with resolving a wide variety of federal tax issues and civil violations of the Internal Revenue Code through litigation and expert counsel. The federal tax laws and regulations are complicated and, as a nation, we depend upon individuals and corporations to voluntarily comply with the tax code. Given the complexity of the tax code, many disputes arise on the application of the Internal Revenue Code to a specific individual or business. When the disputes are not resolved through IRS administrative processes, they often become lawsuits in federal and state courts. The taxpayer may appeal an unfavorable lower court decision to a higher federal court of appeals or state appellate court. Department trial attorneys litigate these cases both in the lower courts and the appellate courts.

A significant portion of these suits are tax refund claims challenging the IRS's determination of a taxpayer's federal income, employment, excise, and/or estate tax liabilities. Defending federal tax claims and/or the feasibility of reorganization plans in bankruptcy proceedings represents another major portion of civil litigation. The Department's tax litigation docket also includes: enforcement of IRS administrative summonses that seek information essential to determine and collect taxpayers' liabilities; suits to collect taxes and other monies often hidden by fraudulent conveyances, sham entities, and alter egos; suits against IRS and other government officials for torts and constitutional violations allegedly committed in connection with tax collection activities; suits against the IRS brought pursuant to the Freedom of Information and Privacy Acts; and state and local intergovernmental tax immunity suits. The Department also defends the constitutionality of tax statutes and the validity of Treasury Department regulations. Civil enforcement of the tax laws can also arise from the Department's criminal enforcement initiatives. For example, the Department will be required to enforce an increasing number of administrative summonses as the IRS goes forward with its efforts to curb the problem of abusive trusts.

Strategies to Achieve the Objective

Litigate, both defensively and affirmatively, federal civil tax cases filed by and against taxpayers in federal courts.

Defensive litigation by the Department's civil trial attorneys often involves thousands of tax cases pending administratively at the IRS and generates significant revenue for the federal treasury. Defensive litigation also includes Department trial attorneys representing IRS officers against complaints made by taxpayers who allege misconduct by government officials for activities related to tax collection. These lawsuits can cripple morale if employees who have done nothing improper believe that they can be held personally liable for simply doing their jobs. The IRS work-force relies upon the Department for a vigorous defense against spurious lawsuits.

Approximately 10 percent of the Department's civil tax litigation docket involves responses to frivolous tax protest arguments. These resource-intensive cases are essential to keep illegal tax protest activities from further increasing. Honest taxpayers who perceive that individuals engaging in illegal tax protest activities have "gotten away with it" will themselves be discouraged from voluntarily paying their taxes. This litigation saves the Treasury millions of dollars annually.

Also important to the Department's strategy is its affirmative civil litigation program. Litigation activities include seeking judgments to enforce IRS assessments against taxpayers in cases involving fraudulent transfers made by delinquent taxpayers attempting to place their assets out of the reach of the IRS and the enforcement and foreclosure of federal tax liens. The Department is beginning to initiate more affirmative litigation against persons who employ increasingly sophisticated means to unlawfully shield their assets from collection. Affirmative litigation recovers or generates substantial revenues for the Treasury.

As part of their representation of the IRS in the courts, Department civil trial attorneys conduct, in each case, an independent review of the Service's administrative determinations. This review process often results in the Tax Division declining to bring certain affirmative litigation, and in defensive cases may result in some complete concessions, where Department attorneys determine that the IRS's administrative position cannot be legally and/or factually supported. This vital review function promotes the integrity of the federal tax system by ensuring that taxpayers and others involved in trial-level litigation are treated fairly and consistently nationwide. Additionally, Department trial attorneys monitor and review cases that are handled by the IRS and the U.S. Attorneys offices to ensure that the interests of the United States are appropriately represented and that the federal tax laws are enforced uniformly and correctly.

Provide expert counsel and litigation support to defend U.S. interests in federal civil tax cases appealed to federal appeals and state appellate courts.

Department trial attorneys provide expert counsel and litigation support on all federal civil tax cases that are appealed to the United States courts of appeal and state appellate courts. Defending the IRS against a wide variety of taxpayer appeals is critical for ensuring taxpayers are treated fairly as well as ensuring that the federal tax code is applied in a fair and impartial manner. The Department's work also ensures that the federal fisc is protected against unjustified claims. Many of the tax cases appealed involve millions, and in some cases, billions of dollars of potential tax revenue.

Key Crosscutting Programs

Joint Trust Task Force Working Group. Coordinated efforts between the IRS and the Department are necessary to combat abusive trusts, which pose a significant problem for our tax system. In that regard, the Tax Division and the IRS have established a Joint Trust Task Force Working Group to identify in advance, and to propose solutions for, issues which affect criminal and civil actions in this area.

STRATEGIC OBJECTIVE 3.5

CIVIL LAWS

Effectively represent the United States in all civil matters for which the Department of Justice has jurisdiction.

The Department, through its Civil Division and the U.S. Attorneys, each year represents some 200 federal agencies in litigation arising from federal contracts or alleged government misconduct. We also defend challenges to the laws, policies, and programs of the United States.

Civil lawsuits involving large monetary claims are a fact of life. Plaintiffs advancing contract claims, allegations of negligence, claims of patent infringement, and the like seek to assign liability to the government in lawsuits where huge sums of money are at risk. The majority of civil suits handled by the Department are defensive. Over the last decade the number of cases involving multibillion dollar stakes has virtually doubled. Moreover, changes in the law have radically expanded the exposure of the United States as an employer and as an insurer of extra-governmental entities to potential liability. That expansion is reflected in case numbers, complexity and dollar amounts. It is the Department's job to ensure that only those claims with merit under the law are paid.

New laws, typically enacted only after a painstaking legislative process, are often attacked in court. Recent litigation challenging the laws and policies of the United

States involves some of the most probing issues of our time. Examples include: gun control, pornography on cable television and the Internet, welfare reform, gays in the military, and tobacco regulation. Unlike the majority of civil suits handled by the Department which involve monetary claims, these lawsuits seek remedies that potentially affect vital aspects of our society—how we respond to violence, poverty, and the emergence of the Information Age.

Other lawsuits take aim at various provisions of our entitlement programs and can profoundly affect federal expenditures. Reforms embodied in the Welfare Reform Act of 1996 and subsequent legislation will continue to generate broad class actions seeking millions of dollars in increased federal aid. It is likely that housing and health care reform legislation in the next few years will also be fertile areas for litigation. It is a near certainty that as the multiyear effort to reform the Social Security Administration's \$58 billion disability benefits program reaches the implementation stage during the next few years, numerous and substantial broad-based challenges will be launched.

In a number of situations, through the implementation of specialized tort compensation systems, the Department has improved access to justice for the nation's citizens, leading to more efficient and effective resolution of disputes in the areas of occupational disease and vaccine injury. The National Vaccine Injury Compensation Program (NVICP) created an alternative to traditional product liability and medical malpractice litigation for persons alleging injury from vaccinations. Under the NVICP, individuals meeting the statutory criteria are compensated fairly and quickly, and non-meritorious cases are successfully defended, thereby preserving Program funds for those who are truly entitled to them. Under the Radiation Exposure Compensation Act (RECA), individuals who contracted certain diseases as a result of their exposure to radiation released during nuclear weapons tests or in underground uranium mines have received over \$244 million in compensation since the Department's RECA Program began receiving claims in 1992. Through the RECA Program, individuals whose health was put at risk to serve the national security interests of the United States are provided an effective, efficient, non-adversarial forum in which to seek redress.

The Department must respond to a variety of immigration-related suits, mostly dealing with challenges targeting orders of exclusion, detention, and expulsion. Over the course of the past decade, this workload has tripled, coinciding with intensified enforcement efforts and the emergence of new laws. The lion's share of immigration litigation involves individual challenges and class action suits directed against the actions and determinations of INS, immigration judges, and the Board of Immigration Appeals.

While only a minority of immigration cases and matters involves suspected alien terrorists, antiterrorism efforts comprise a growing emphasis of the Department. The Antiterrorism and Effective Death Penalty Act and the Immigration Reform and Immigrant Responsibility Act have significantly expanded the Department's role in the fight against international terrorism. The Civil Division figures prominently in interagency efforts to designate foreign terrorist organizations for purposes of criminal and civil terrorism fund-raising laws, the defense of such designations, and the defense of the fund-raising provisions themselves against constitutional and other attacks. The Civil Division also heads the Alien Terrorist Removal Court litigation unit.

Hundreds of millions of dollars are lost to the U.S. Treasury each year as a result of procurement fraud, health care fraud, loan defaults, and bankruptcies. These losses reduce resources vital to a host of federally-funded programs, including Medicare. Efforts to recoup money owed to the United States have yielded huge collections in the past decade—over \$11 billion. Further, criminal prosecutions

have resulted in court-ordered criminal restitution and fines collection of which is the responsibility of the Department of Justice. Today's docket includes a number of matters that are massive with respect to potential recoveries, the size of evidentiary collections, and the complexity of issues that underscore the government's case. As our adversaries enlist the help of top law firms and consultants, substantial government resources are required to achieve favorable settlements and judgments on behalf of the United States and victims of crime.

Finally, violations of the Food, Drug and Cosmetic Act, the Consumer Product Safety Act, and the Federal Trade Commission Act pose threats to the health and safety of millions of Americans. When such violations involve major patterns of fraud, illegal conduct, unfair credit and marketing practices, the Department pursues civil and criminal actions to stop and deter such activity. The emergence of the Internet has provided a new and extraordinarily powerful medium for marketing products and services. Contributors to the Internet have enjoyed a virtually free rein on marketing approaches. While this "open" approach has provided the public with an explosion of information, it has also created the means for large-scale fraud, deception, and criminal practices.

Strategies to Achieve the Objective

Assert the interests of the U.S. Treasury, prevailing against unwarranted monetary claims while resolving fairly those claims with merit.

Hundreds of millions of dollars are saved annually as a result of the Department's successes in defending national interests in major defensive lawsuits against unwarranted monetary claims on the public fisc. Such defensive litigation requires the diligence of Department staff who fight for and guard the financial interests of the United States at trial, at the settlement table, and at the highest levels of judicial review, asserting the government's interest in major disputes as they proceed through appellate stages.

Defend the laws, programs, and policies of the United States when challenged in court, including those which affect how sizeable portions of the federal budget are spent.

Defending the national interests of the many and varied laws, programs and policies of the United States is a critical role of the Department for maintaining civil law and order. Many of these civil lawsuits threaten or affect our national security, public safety or social and moral codes.

Implement civil justice reform initiatives to resolve classes of claims for which traditional litigation has proven ineffective.

The Department must defend against thousands of plaintiff claims alleging government neglect or wrongful conduct. Such suits usually involve massive discovery requirements, protracted trial schedules, arcane subject matter and substantial damages at stake. When such traditional litigation has proven ineffective, Congress has created specialized programs (e.g., National Childhood Vaccine Injury Act and the Radiation Exposure Compensation Act). When appropriate, the Department must continue to evaluate cases to determine whether they will benefit from use of ADR and, if necessary, engage in such processes to expedite case resolution and/or reduce costs.

Ensure the intent of Congress and the collective efforts of the immigration agencies by defending immigration laws and policies, as well as class action suits or immigration judgments involving individuals.

The Department's heightened emphasis on immigration enforcement portends a rise in related immigration caseload. This litigation is handled from individual

challenges to federal enforcement actions and class action suits directed against federal immigration agencies (e.g., denial of visas and passports, political asylum, administrative judgements on alien removal).

Recover monies owed to the United States and victims as a result of fraud, loan default, and bankruptcy.

The Department protects the public fisc through a variety of affirmative litigation to fight fraud, loan default and bankruptcy, focusing on matters involving widespread fraud and the potential for substantial recoveries. We investigate allegations brought forth by “whistle-blowers” and, where appropriate, pursue recoveries and civil penalties available under the False Claims Act, as amended. The Department emphasizes health care fraud enforcement, through collaborative efforts with other federal and state agencies to recover the billions of dollars lost from Medicare and other federally-funded programs. The Department actively pursues collection of federal and non-federal restitution and criminal fines.

Enforce consumer protection laws by seeking civil and criminal penalties available under existing statutes.

The existence of the Internet has placed new demands on law enforcement regarding the identification, investigation, and pursuit of consumer fraud. In particular, the relatively new phenomenon of Internet pharmacies—which often dispense powerful prescription drugs without a valid prescription from a doctor—pose a significant danger to consumers. To fight such trends, the Department will concentrate its activity on matters involving consumer law violations which pose the greatest potential threat to the public.

Key Crosscutting Programs

Civil Cases Involving National Childhood Vaccine Injury Act. The Civil Division will continue to work closely with HHS and the U.S. Court of Federal Claims in handling cases filed under the National Childhood Vaccine Injury Act. Managers at the respective agencies coordinate matters of policy, budget, case processing, and strategy. At the trial level, medical staff at HHS assist the Department in developing medical evidence and providing expert witness support. In conjunction with the Office of Special Masters at the U.S. Court of Federal Claims, HHS and the Department have strived to ensure just decisions in the thousands of cases filed since the inception of the program in 1988.

Coordination with the Department of State in Removing Aliens Posing National Security Risks. In resolving sensitive litigation involving aliens who pose a risk to national security (e.g., terrorists), the Department works closely with the State Department in efforts to remove such aliens to countries other than the alien’s country of origin when that country is likely to torture or persecute the alien. Several Department components and the State Department have engaged in ongoing discussions regarding the application of the U.N. Convention on Torture, a treaty which can be expected to surface in many alien terrorist and criminal alien removal cases. The Department also reviews and assists in the production of sensitive documents in coordination with the Central Intelligence Agency, the State Department, and other members of the Intelligence Community.

MANAGEMENT CHALLENGES

The Department does not face any mission-critical management problems or challenges which would significantly hinder the Department from achieving this strategic goal.