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mental retardation facilities in Tennessee and Wisconsin, issued a findings letter covering all four secure juvenile facilities in Louisiana, and opened an investigation of 11 juvenile facilities in Georgia.

CRT also continued investigations of publicly operated nursing homes, investigating three of the country's largest and successfully completing a case involving a nursing home in Washington, D.C. A working group was established to coordinate and enhance this work.

The Civil Division filed suits to remedy sexual misconduct by prison guards in women's prisons in Arizona and Michigan, and began to address serious problems in mental health care in the Los Angeles County jails. It implemented the Prison Litigation Reform Act in all Department work involving correctional facilities.

BOP issued a new policy to ensure protection of religious rights of inmates in special housing units and to establish procedures for introducing new religious beliefs and practices. BOP also worked closely with leaders of the Jewish, Rastafarian, and Nation of Islam faiths to more effectively meet the religious needs of inmates. BOP issued program guidelines for important holy days of major religions to ensure programming consistency in the field.

Additionally in 1997, the Department renewed its commitment to protecting the rights of patients and health care providers against threats of force and physical obstruction of reproductive health facilities under the Freedom of Access to Clinic Entrances (FACE) Act. The Civil Division continued to work closely with the U.S. Attorneys and State Attorneys General in prosecuting FACE violations. The Department filed three new civil cases under FACE and was successful in obtaining relief in four ongoing FACE cases. In *Terry v. Reno*, the Supreme Court denied the plaintiff's petition challenging the constitutionality of the Act.

## ***Employment Rights***

In 1997, the Department continued to pursue pattern or practice employment discrimination cases. For example:

- In settlement agreements reached with the State of Arkansas and the sheriff of the Orleans Parish, Louisiana, CRT obtained \$7.2 million in combined monetary relief for several hundred victims of employment discrimination.
- In continuing to vigorously enforce the anti-discrimination provisions of the Immigration and Nationality Act, the Department obtained a \$60,000 civil penalty against a major retailer for unfair documentary practices during the employment verification process.

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- CRT worked closely with the INS to monitor electronic verification of employment eligibility. It worked with other Departmental components and government agencies on such immigration rights issues as immigration practitioner fraud, implementation of new welfare legislation, and monitoring of detention standards for aliens.

## ***Indian Rights***

The President's August 1997 Directive on Law Enforcement in Indian Country asked the Attorney General and the Secretary of the Interior to work with tribal leaders to analyze law enforcement problems on Indian lands and to provide the President with options for improving public safety and criminal justice. (In sharp contrast to national trends, serious and violent crime is rising significantly in Indian Country [see sidebar, Chapter I, "Addressing Violent Indian Crime."] ) To help fulfill this mandate, an executive committee composed of tribal leaders and representatives from the Departments of Interior and Justice was formed. A series of tribal consultations on Indian Country law enforcement conducted by U.S. Attorneys, with participation by 205 tribes across the country, found current law enforcement resources to be inadequate and services in need of consolidating and improving.

Under the Attorney General, the Department worked hard to improve law enforcement in Indian Country: Assistant U.S. Attorneys have been designated as tribal liaisons; the Office of Tribal Justice served as liaison with tribal governments; the FBI established an Office of Indian Country Investigations and has dedicated increased manpower to fight violent crime; the COPS Office and OJP have substantially increased grant assistance to Indian Country; and the Criminal Division has developed a pilot program to improve coordination of Indian Country law enforcement matters. To serve Indian Country and other underserved populations, additional domestic violence counselors were placed there. They will ensure that victims of crime receive proper attention.

The Criminal Division's pilot program, also called the Indian Country Justice Initiative—now in its 2nd year—is improving coordination among Federal and tribal justice systems, identifying programs that work best to improve public safety and the quality of life for Laguna Pueblo and Northern Cheyenne citizens.

## ***Judicial Selection***

During 1997, the Department, in coordination with the White House Counsel's Office, continued to oversee the judicial appointment process. Thirty-six (36) nominees were confirmed as judges during the year. The Senate recessed with an additional 44 nominations pending. The 1997 confirmations increase the number of

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judges appointed by President Clinton since he first took office to 240.

Nearly 61 percent of President Clinton's second-term nominees received the American Bar Association's highest rating of "well-qualified"—the highest percentage achieved by any President. In keeping with the President's commitment to making appointments that reflect our Nation's diversity, over 44 percent of the second-term nominees were women and minorities, another historic high.

### ***Defensive Civil Litigation***

The U.S. Attorneys represented and defended the interests of the Government in 1997 when lawsuits were filed against the United States. All lawsuits filed against the Government must be defended, and the number of defensive civil cases handled by the U.S. Attorneys has increased significantly in recent years.

During 1997, the U.S. Attorneys handled 55,301 cases in which they defended the interests of the United States—a 16-percent increase over last year. This defensive civil litigation included tort suits brought by those alleging suffering as a result of Government action; adjudication of Social Security disability claims; alleged contract violations; habeas corpus cases; and race, sex, and age discrimination actions. In these cases, the U.S. Attorneys represented the Government in its many roles as employer, regulator, law enforcer, medical care provider, revenue collector, contractor, procurer, property owner, judicial and correction systems manager, administrator of Federal benefits, and others.

## **Civil Justice Reform**

Implementation of proposals developed by the Department's Civil Justice Reform Task Force in 1995 continued during 1997. The U.S. Attorneys and the Executive Office for U.S. Attorneys continued to coordinate with the Department's Senior Counsel for Alternative Dispute Resolution (ADR) to promote the use of ADR by Department attorneys through education and support. The Department also expanded its active pro bono program in FY 1997, as increasing numbers of Department lawyers and other staff volunteered to provide pro bono legal services. The Department took the initiative this year to encourage other Federal agencies to follow its lead in promoting pro bono activities, having established an informal interagency working group that has produced pro bono policies in several other agencies.

The Department improved lines of communication with both the State and Federal judiciaries through an ongoing series of meetings between the Attorney General and judicial groups. These top-level meetings provided an effective way of exchanging views, supplemented by staff-level cooperation.

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## V. Enforcing the Nation's Environmental and Antitrust Laws

**Goal: To protect the environment while respecting the needs of economic development, and to protect competition.**

The Department continued to play a vital role in safeguarding the Nation's environment through environmental enforcement, international cooperation, natural resources protection, and the promotion of partnerships and environmental justice. Similarly, the Department was committed to enforcing laws that preserve a competitive business environment by targeting international price-fixing cartels, criminal antitrust activities by corporations, and anti-competitive industry practices.

### Safeguarding America's Environment

Through tough and fair environmental enforcement, the Department seeks to ensure that all Americans breathe clean air, drink pure water, and live in healthy communities (see sidebar, "Seeking Environmental Justice"). As a result of the Department's 1997 civil enforcement efforts, polluters were required to spend more than \$180 million to prevent future pollution and to come into compliance with environmental laws. They spent nearly \$57 million on supplemental enforcement projects to improve environmental quality. Civil enforcement efforts in 1997 produced more than \$55 million in penalties.

Under the "Superfund" statute, responsible parties were ordered to spend nearly \$430 million to clean up toxic waste sites in 1997. They also agreed to reimburse more than \$350 million in Federal cleanup costs, the second highest annual recovery ever. The Department obtained a significant appellate court ruling that the Superfund statute applies retroactively to conduct occurring before its 1980 enactment. The Department also worked with the U.S. Environmental Protection Agency (EPA) to streamline and expedite cleanups across the country.

On the international front, the Department participated in the negotiation of environmental agreements concerning global climate change, and worked with Canada and Mexico to promote environmental enforcement and to develop an agreement on transboundary environmental impact assessments. The Department worked with client agencies on international issues regarding biodiversity, trans-

#### Seeking Environmental Justice

**T**he Department strives to ensure that all Americans enjoy the benefits of environmental protection, and that the adverse impacts of environmental harm do not fall disproportionately on minority and low-income communities. For example, in response to violations by Sherwin Williams Company at a Chicago paint manufacturing plant in a minority area, the Department obtained a consent decree requiring the company to spend up to \$70 million to clean up hazardous waste releases, conduct a \$1 million restoration of contaminated areas near the plant, undertake extensive measures to prevent future violations, and pay a \$4.7 million civil

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boundary movement of hazardous waste, protection of the world's oceans, and environmental protection in Antarctica.

Other successful international efforts included providing training in Mexico, Guatemala, Panama, Colombia, and South Africa on developing and enforcing environmental laws, and participating in discussions of environmental law with officials from South Korea, China, France, India and Russia. To globally communicate data regarding hazardous waste, wildlife, and nuclear substances, INTERPOL recently adopted the Eco Message, designed to improve the sharing of information on environmental crime with INTERPOL member countries. The USNCB assisted in sending one of the first Eco Messages concerning the illegal transborder movement of hazardous waste.

### ***Investigating Environmental Crimes and Recovering Damages***

The partnership between the U.S. Attorneys and the Department's Environment and Natural Resources Division has been strengthened through the investigation and prosecution of environmental crimes in this country. The U.S. Attorneys, in conjunction with ENRD, continued to enforce the Nation's environmental laws during 1997, bringing criminal charges against 349 defendants during the year. Eighty-one (81) percent of the defendants whose cases were terminated during the year were convicted. Additionally, the U.S. Attorneys filed or responded to 461 civil actions to assert or defend the interests of the United States in environmental matters. The United States prevailed in 86 percent of the judgments rendered in civil environmental cases. Specific examples of 1997 environmental successes follow:

- An appeals court upheld the felony convictions of two employees of a meat packing plant for illegal waste discharges into the Big Sioux River in North Dakota. The ruling clarified that under the criminal provisions of the Clean Water Act, the Government must show that defendants knowingly committed the acts, but not necessarily that they knew they were violating the law.
- The Department obtained a consent decree resolving claims against Jefferson County, Alabama, for discharges of untreated sewage into the Cahaba River, which supplies drinking water to 25 percent of the State. The County is required to rehabilitate its sewer system and treatment plants, spend another \$30 million to reduce water pollution and protect ecologically significant areas, and pay a \$750,000 civil penalty.
- To address air emission violations by Georgia Pacific Corporation at 18 wood product plants across the Nation, the Depart-

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ment reached a settlement requiring Georgia Pacific to install advanced pollution control equipment, conduct comprehensive environmental audits at all 26 of its wood product plants, and pay a \$6 million penalty.

- After treasure hunters destroyed valuable seagrass beds in the Florida Keys Marine Sanctuary, the Department obtained a court order requiring the defendants to reimburse \$589,000 in Federal restoration costs, implement a seagrass restoration project, and return all recovered artifacts to the United States.
- The Department entered a consent decree requiring Fina Oil and Chemical Company and four of its contractors to spend more than \$6 million to restore a unique seagrass habitat in the Laguna Madre near Corpus Christi, Texas, that was damaged during the movement of an oil rig.
- Positive results of the “rivers” enforcement program developed in 1997 include a guilty plea in the District of Minnesota by a Texas-based company ordered to pay a \$4 million fine for illegally discharging pollutants into the Blue Earth River. One million dollars of this fine was presented to local officials for use in reducing river pollution.
- The Department obtained the largest-ever court-imposed civil penalty for environmental violations—\$12.6 million—for thousands of Clean Water Act violations by Smithfield Foods at two pork slaughtering and processing plants in Virginia. Smithfield illegally discharged phosphorous and other pollutants into the Pagan River, which feeds into the Chesapeake Bay, thereby slowing recovery of both the River and the Bay.
- The Civil Division effectively defended the Government’s right to recover more than \$2 million for cleanup costs associated with an oil spill from a tanker in Alaskan waters. Contribution claims by the negligent shipowner exceeding \$52 million were also defeated.
- The Court of Appeals for Ontario affirmed a \$4.6 million Superfund judgment obtained in the United States, representing the first time a foreign appellate court has recognized a U.S. environmental judgment entered under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The FBI, which participates in 31 environmental crimes task forces nationwide, had more than 400 environmentally related investigations underway at the end of the year. A major problem is the illegal importation of chlorofluorocarbons (CFCs), which the FBI investigates with other agencies. Working closely with the FBI, EPA, USCS, and others, the Department continued to crack down

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on the smuggling of CFCs, which destroy the ozone layer that shields us from harmful ultraviolet radiation. To date, 39 defendants have been indicted for crimes relating to CFC smuggling. These prosecutions have resulted in significant jail time and fines, and the seizure of approximately 1.5 million pounds of illegally imported CFCs worth \$18 million.

### ***Protecting Natural Resources and Defending Environmental Programs***

The Department continued its campaign against international wildlife smuggling, which decimates the natural treasures of countries across the globe, and achieved several victories in protecting natural resources and defending environmental programs. Highlights follow:

- The Department prosecuted reptile smugglers whose illegal activities were detected through Operation “Chameleon,” a long-term undercover investigation by the U.S. Fish and Wildlife Service. One smuggler who pleaded guilty was sentenced to 46 months in prison.
- In Operation “Renegade,” which focuses on the smuggling of endangered exotic birds, an appeals court upheld a lower court’s prison sentence of 82 months for a well-known avicultural expert who pleaded guilty to smuggling conspiracy and tax fraud.
- The U.S. Supreme Court ruled that certain Alaskan coastal lagoons—critical to the protection of caribou, polar bears, and migratory birds—are part of the Arctic National Wildlife Refuge and subject to Federal protection. This ruling will also give the United States more than \$1.5 billion in revenue from offshore oil and gas leases.
- In Montana, the Department resolved an important water rights dispute that will ensure preservation of the Upper Missouri Wild and Scenic River for the enjoyment of future generations.
- The Department successfully defended the constitutionality of the Endangered Species Act against a challenge that the Act’s protections exceed Congressional authority to regulate interstate commerce where the species is found in only one State.
- The Department obtained a significant appellate court victory that will assist it in protecting Federal officials from frivolous allegations of wrongdoing for simply performing their duties and protecting the public good.

- The Department successfully defended a challenge to the Army Corps of Engineers' denial of an application to fill nearly 10 acres of Big Bear Lake in California, a key wintering habitat for bald eagles and home to other threatened species. It also filed to acquire ecologically sensitive land, including 12,000 acres of land for the Lower Rio Grande Valley National Wildlife Refuge in Texas.
- The Department defeated a challenge to EPA's Water Quality Guidance for the Great Lakes, which protects human health, fish, and wildlife from toxic pollutants. It also continued its defense of the public's right to know about toxic releases by successfully defending a challenge to rules requiring public disclosure of nitrate compound releases, which can impair the blood's ability to carry oxygen.
- In the first challenge to EPA's approval of tribal water quality standards under its authority to treat tribes in the same manner as States, an appeals court upheld EPA's approval of standards developed by the Pueblo of Isleta, New Mexico, that were stricter than State standards.

## Enforcing Antitrust Laws

The Department is responsible for the vital task of enforcing the antitrust laws of the United States, the primary goal of which—under the Sherman and Clayton Acts—is to open up markets and ensure their competitiveness for the benefit of American businesses and consumers. The Department enforces criminal antitrust statutes against price-fixing and bid-rigging offenses, enforces laws against anticompetitive mergers, and brings civil actions against anticompetitive conduct.

Criminal enforcement against the most serious antitrust offenses is a core responsibility of the Antitrust Division. In FY 1997, the Antitrust Division obtained a record-breaking \$205 million in criminal fines—five times the previous record set in FY 1995. The Antitrust Division filed 38 criminal cases against 24 corporations and 29 individuals.

### *Uncovering Price-Fixing Schemes*

With the globalization of the economy, the Antitrust Division's top priority in criminal enforcement is to investigate and prosecute international price-fixing cartels that harm American consumers. It worked with the FBI on major investigations, national and international in scope. Several examples of 1997 successes follow:

### Defending Tribal Environmental Concerns

**The Department intervened on behalf of tribes in two tribal land claims in the State of New York and is participating in settlement discussions for five other New York land claims. The Department reached an historic agreement in settling water rights issues arising out of the Metolius and Deschutes Rivers on the Warm Springs Indian Reservation in central Oregon. The agreement recognizes significant tribal water rights and the tribe's sovereign right to govern water distribution within the Reservation. The Department also successfully defended an appeal of a lower court decision upholding the rights of Chippewa Bands to engage in off-Reservation hunting, fishing, and gathering in Wisconsin.**