

# IV

## STRATEGIC GOAL FOUR:

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

### STRATEGIC OBJECTIVE & ANNUAL GOAL 4.1: CIVIL RIGHTS

Uphold the civil rights of all Americans, reduce racial discrimination, and promote reconciliation through vigorous enforcement of civil right laws

#### 4.1A Prosecute Criminal Civil Rights Violations

##### Background/Program Objectives:

The Civil Rights Division (CRT) works with the FBI and the U.S. Attorneys to prosecute cases of national significance involving the deprivations of Constitutional liberties that cannot be, or are not, sufficiently addressed by state or local authorities. These include acts of bias-motivated violence; misconduct by local and federal law enforcement officials; violations of the peonage and involuntary servitude statutes that protect migrant workers and others held in bondage; criminal provisions which prohibit conduct intended to injure, intimidate, or interfere with persons seeking to obtain or to provide reproductive health services; as well as a law that proscribes interference with persons in the exercise of their religious beliefs and the destruction of religious property. The federal criminal civil rights statutes provide for prosecutions of conspiracies to interfere with federally protected rights, deprivation of rights under color of the law, and the use of threat or force to injure or intimidate persons in their enjoyment of specific rights.

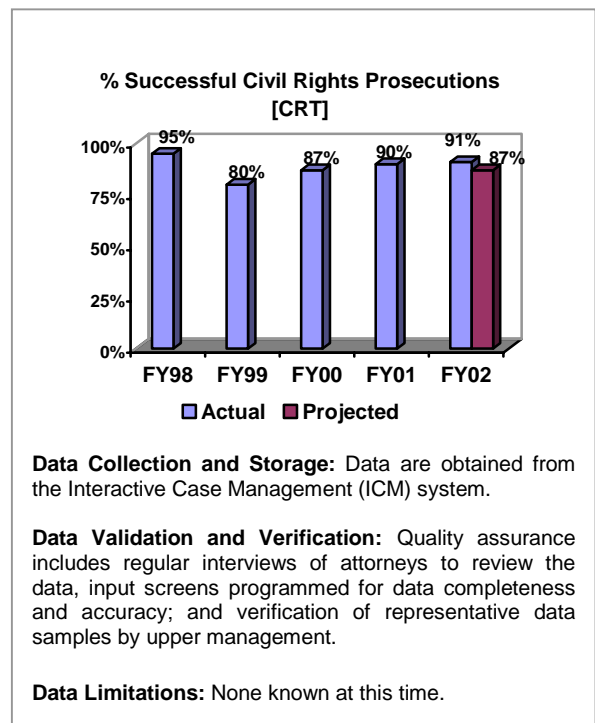
##### Performance:

**Performance Measure:** % Successful Civil Rights Prosecutions [CRT]

**FY 2002 Target:** 87%

**FY 2002 Actual:** 91%

**Discussion:** In FY 2002, CRT exceeded its target for successful prosecutions by 4%. A total of 136 defendants were prosecuted, which resulted in 124 convictions, including 88 guilty pleas. Out of the 124 convictions, 68 were law enforcement officers.



## 4.1B Prosecute Pattern or Practice Civil Rights Violations

### Background/Program Objectives:

Civil “pattern or practice” litigation is divided into five main areas: Housing and Civil Enforcement, Employment Litigation, Disability Rights, Special Litigation, and Office of Special Counsel (OSC). Housing and Civil Enforcement focuses on discriminatory activities by lending and insurance institutions, illegal discrimination in all types of housing transactions including the sale and rental of housing and the failure to design and build multifamily living to be accessible, discriminatory land use by municipalities, discrimination in places of public accommodations, and discrimination against religious institutions by local zoning authorities.

Employment Litigation focuses on employment discrimination on the grounds of race, color, sex, religion, and national origin. This includes pattern or practice cases against agencies such as: state, county, and local law enforcement organizations; fire departments; state departments of correction; public school districts; and state departments of transportation. These are complex cases that seek to eliminate employment practices that have the effect of denying employment opportunities or otherwise discriminating against one or more protected classes of individuals. Relief reforming discriminatory practice and policies is a primary objective. Employment Litigation also obtains jobs, back pay, and other forms of relief for individual victims.

Disability Rights enforces the Americans with Disabilities Act (ADA) on behalf of people with disabilities. Enforcement responsibilities cover a broad spectrum of potential actions to encourage individuals and entities to comply with ADA requirements, including new construction, removal of physical barriers, provision of auxiliary aids, access to employment, and the elimination of discriminatory policies. These enforcements, combined with mediation and technical assistance programs, provide cost-effective and dynamic approaches for carrying out the ADA’s mandates in conformance with the current administration’s New Freedom Initiatives.

Special Litigation focuses on pattern or practice of misconduct or discrimination by law enforcement officers including the denial of constitutional and statutory rights and discrimination based on race, color, national origin, gender, or religion. National media attention and outreach led to an increased volume of complaints in this area. An additional area of concern focuses on the deprivation of constitutional and federal statutory rights of persons in publicly operated residential facilities that are subjected to patterns of egregious and flagrant conditions of confinement. These facilities include: institutions for the mentally ill and developmentally disabled, nursing homes, juvenile detention facilities, local jails, and prisons; however, DOJ does not have authority to pursue an individual claim.

Office of Special Counsel for Immigration-Related Unfair Employment Practices enforces the anti-discrimination provision of the Immigration and Nationality Act on behalf of all U.S. legal workers, including U.S. citizens, lawful permanent residents, asylees and refugees. These cases focus upon employment discrimination cases based upon citizenship or immigration status, and national origin, and include both individual and pattern or practice litigation that seeks to ensure that all legal workers, whether U.S. citizens or legal immigrants, are treated fairly during the hiring and employment verification process. The OSC obtains cease and desist orders, relief for victims, including back pay and jobs, and civil penalties.

### Performance:

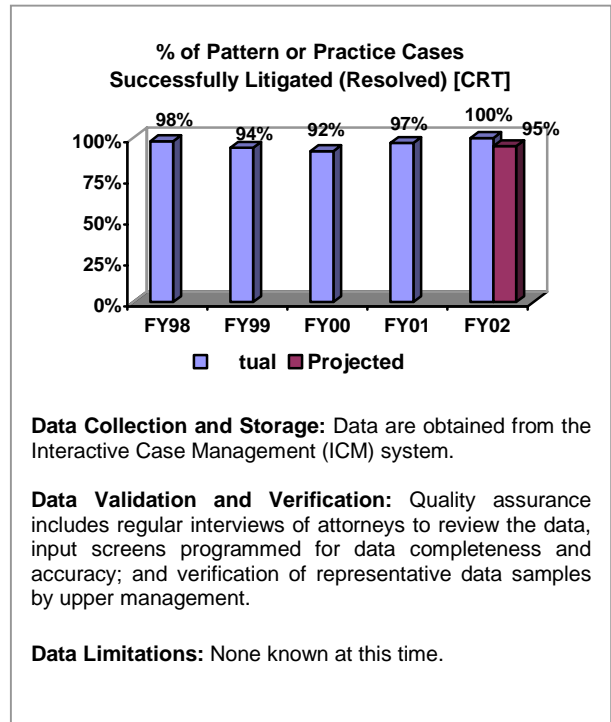
**Performance Measure:** % of Pattern or Practice Cases Successfully Litigated (Resolved) [CRT]

**FY 2002 Target:** 95%

**FY 2002 Actual:** 100%

**Discussion:** CRT ended the year 5% above target for the percentage of Pattern or Practice Cases Successfully Litigated. The Housing and Civil Enforcement Section resolved 23 pattern or practice complaints with judgments, consent orders or settlement agreements providing significant relief to aggrieved persons. The Special Litigation Section successfully resolved a total of 13 cases.

In addition to these thirteen resolutions, the Section was able to resolve three investigations through out-of-court settlements with the Cincinnati Police Department, the Buffalo, New York Police Department, and the Bergen Regional Medical Center in Paramus, New Jersey. OSC successfully resolved 2 pattern or practice cases. The Disability Rights Section successfully resolved 2 pattern or practice cases. Litigation continues against a national theater chain to correct access violations in stadium style movie theaters.



**STRATEGIC OBJECTIVE & ANNUAL GOAL 4.2: ENVIRONMENT**

Promote the stewardship of America’s environment and natural resources through the enforcement and defense of environmental laws and programs.

**4.2A Enforce and Defend Environmental and Natural Resource Laws**

**Background/Program Objectives:**

The Department of Justice enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the Nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property.

**Performance:**

**Performance Measure:** % of Civil Environmental Cases Successfully Resolved [ENRD, EOUSA]

**FY 2002 Target:**

80% Affirmative; 70% Defensive

**FY 2002 Actual:**

88% Affirmative; 87% Defensive

**Discussion:** The Department

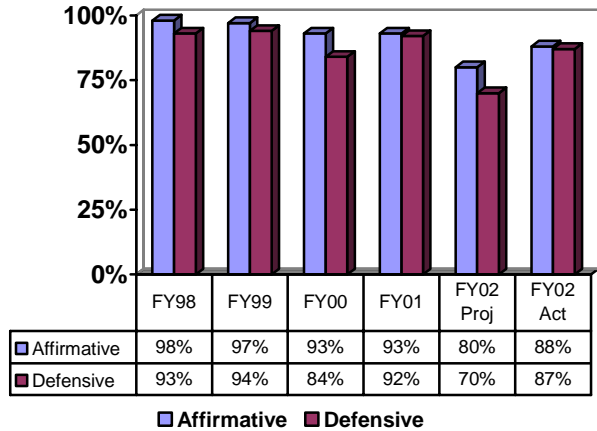
experienced numerous successes in affirmative and defensive cases during FY 2002. Included in those successes is the defense of federal regulatory programs and initiatives and federal agencies against claims alleging noncompliance with federal, state and local pollution control statutes. The Department defended federal programs such as military preparedness regarding sonar technology testing, and training exercises on the Island of Vieques. Our enforcement efforts resulted in cleanup of toxic waste sites, installation of new pollution control equipment at power companies and oil refineries, and restructured and updated municipal sewage treatment systems.

**Performance Measure:** Costs Avoided and \$ Awarded in Civil Environmental Cases [ENRD]

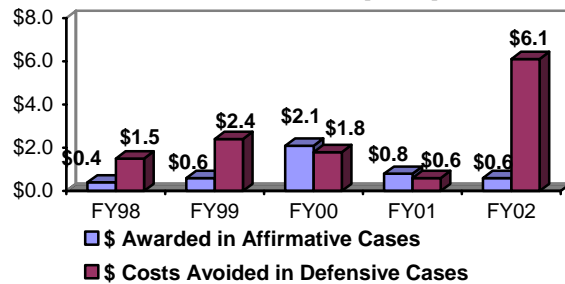
**FY 2002 Target:** In accordance with

Department guidance, targeted levels of performance are not projected for this indicator.

**% of Civil Environmental Cases Successfully Resolved [ENRD, EOUSA]**



**Cost Avoided and \$ Awarded (\$bil) in Civil Environmental Cases [ENRD]**



**Data Collection and Storage:** A majority of the performance data submitted by ENRD is generated from the division’s Case Management System (CMS).

**Data Validation and Verification:** The Division has instituted a formal data quality assurance program to ensure a quarterly review of the Division’s docket. The systems data is constantly being monitored by the Division to maintain accuracy.

**Data Limitations:** Timeliness of notification by the courts

**FY 2002 Actual:** \$6.1 billion Avoided; \$0.6 billion Awarded

**Discussion:** The Department successfully represented a wide range of government agencies in suits that challenged environmental and public

land policies and environmental programs and in cases seeking money from the government. We were also successful in defending the United States in the Court of Federal Claims saving the government civil monetary liability in the hundreds of millions of dollars. The Department aggressively enforced the environmental statutes of the United States. One case included a cost avoidance victory of \$4.7 billion where the plaintiff was seeking damages claiming that the federal government was unlawfully preventing mining in the Chugach National Forest resulting from the National Forest Service's requirement to file and gain subsequent approval of a plan of operation. In another case, the second highest Clean Water Act judgment of \$8.2 million was awarded after trial against a steel company for its unlawful discharges of oil and pollutants from five steel mills it operates in Pennsylvania. In addition, a case addressing the cleanup of sites contaminated with hazardous substances resulted in a cost recovery of \$115.5 million from a petroleum manufacturer for the clean up of a site in Texas. The Department also defended Indian Tribes securing an award of \$248 million in damages from a state where a Tribe's land was acquired illegally.

## STRATEGIC OBJECTIVE & ANNUAL GOAL 4.3: ANTITRUST

Promote economic competition through enforcement of and guidance on antitrust laws and principles.

### 4.3A Maintain and Promote Competition

#### Background/Program Objectives:

The Antitrust Division (ATR) maintains and promotes competitive markets largely by enforcing federal civil and criminal antitrust laws. The statutory authority for the ATR's mission includes Sections 1 and 2 of the Sherman Act; Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976; and a variety of other competition laws and regulations. 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 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.

#### Performance:

**Performance Measure:** Success Rates for Civil Antitrust Cases

##### *FY 2002 Target:*

Civil Non-Merger Matters Challenged: 90%

Merger Transactions Challenged: 90%

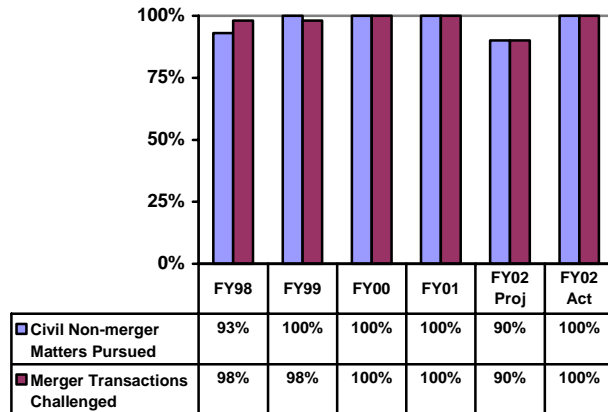
##### *FY 2002 Actual:*

Civil Non-Merger Matters Challenged: 100%

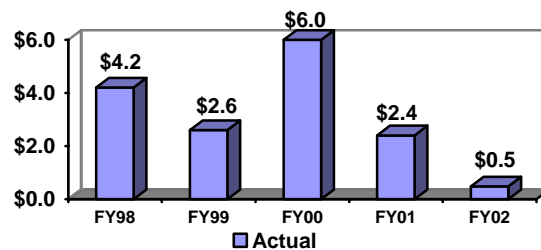
Merger Transactions Challenged: 100%

**Discussion:** The success rate for civil non-merger matters includes investigations in which business practices were changed after the investigation was initiated, a case was filed with consent decree, or a case was filed and litigated successfully. ATR's success in preventing anticompetitive behavior in the civil non-merger arena has been notable. ATR won every case it challenged in FY 2001 and FY 2002 and has exceeded the FY 2002 target of 90%.

Success Rates for Civil Antitrust Cases [ATR]



Savings to U.S. Consumers (\$Bil) [ATR]



**Data Collection and Storage:** Data are collected and stored in ATR management information systems, primarily in the Matter Tracking System and its companion user interfaces.

**Data Validation and Verification:** User training and software guides encourage accurate data entry. Instantaneous online data validations include inter-element cross-checks, numeric range checks, single element list-of-values checks and mandatory data element checks. In addition, batch data analysis and ad hoc reviews are conducted periodically. Finally, programmatic review of data helps assure quality.

**Data Limitations:** In calculating consumer savings across our enforcement areas, key input measures, if not actually estimated in the investigation or case, were estimated based on anecdotal information and observations. These values are both conservative and consistently estimated over time.

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Although the merger workload has declined, many of the matters involve complex anticompetitive behavior and large, multinational corporations and require significant resources to review. ATR achieved considerable success in preventing anticompetitive mergers, and exceeded the FY 2002 target success rate for merger transactions challenged.

**Performance Measure:** Savings to U.S. Consumers (as the result of ATR's Civil enforcement efforts)

**FY 2002 Target:** In accordance with Department guidance, targeted levels of performance are not projected for this indicator.

**FY 2002 Actual:** \$.5 billion (\$481 million)

**Discussion:** The estimated value of consumer savings generated by ATR's civil enforcement efforts in any given year depends upon the size and scope of the matters encountered and thus, varies considerably.

## STRATEGIC OBJECTIVE & ANNUAL GOAL 4.4: TAX LAWS

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

### 4.4A Enforce Tax Laws Fairly and Uniformly

#### Background/Program Objectives:

TAX promotes tax compliance and protects the public fisc by ensuring that the tax laws are enforced uniformly, vigorously, efficiently, and fairly in the federal appellate courts, the federal district and bankruptcy courts, the Court of Federal Claims, and the state courts. Voluntary compliance with the tax laws is enhanced when these objectives are achieved. This ensures an adequate flow of revenue to the Government to fund its operations. TAX provides high-quality legal services and exercises good judgment in defending the interests of the United States in litigation initiated against the government with respect to taxes. TAX also litigates actions related to taxes referred by the IRS and other agencies (where TAX deems litigation to be appropriate). It provides expert litigation and substantive tax advice to U.S. Attorneys Offices throughout the country on tax-related matters, and advises the Department of the Treasury and Congress with respect to tax-related legislative matters.

#### Performance:

**Performance Measure:** Civil Settlements and Concessions (all Courts) [TAX]

##### **FY 2002 Target:**

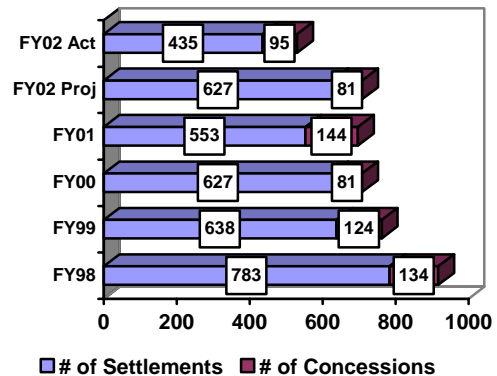
Civil Settlements: 627; Concessions: 81

##### **FY 2002 Actual:**

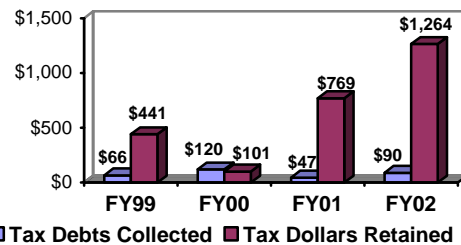
Civil Settlements: 435; Concessions: 95; (and Agreed Dispositions: 766)

**Discussion:** TAX applies a high level of scrutiny to determine if a case should be litigated. In order to ensure that the tax laws are enforced equitably and consistently throughout the nation, TAX may determine that some cases should not go to trial and instead become dispositions through settlement, concessions, agreed orders, etc. The number of these cases is dependent on the actual number of cases referred, the complexity of the matter(s), number of years involved, and dollar amount at issue. As such, there are differences in the projected number of cases versus the actual amounts of cases settled or conceded. During FY 2002, there were less civil cases closed; therefore,

**Civil Settlements and Concessions (all Courts) [TAX]**



**Tax Dollars Collected & Retained by Court Action & Settlement (\$Mil) [TAX]**



**Data Definition:** A settlement is an agreed disposition of a case that the client agency has asked us to defend or prosecute and which is based on both parties taking less than they could ultimately obtain if they were completely successful in the litigation and in collecting any judgment.

A concession is a voluntary disposition, without a quid pro quo, of a case or an issue that the client agency did not agree to at the administrative level or initially asked us to defend, or of a case in which suit has been authorized on behalf of the Attorney General, on the basis that the case should not be defended or prosecuted.

An other agreed disposition is any other agreed disposition that does not require a determination on the merits by the court and results in some litigation benefit to the non-government party. Other dispositions usually occur where the matter reaches litigation without prior administrative consideration so that the client agency does not have an opportunity to take a per-litigation position and does not take a position in the litigation.

**Data Collection and Storage:** TAX utilizes a case management system known as TaxDoc. The Division recently revised the complement of indicators that are tracked.

**Data Validation and Verification:** There are new procedures to collect and record pertinent data on activities related to specific issues enabling Section Chiefs to make projections and set goals based on complete, accurate, and relevant statistics. On a quarterly basis, the Performance Management Committee reviews all the statistics.

**Data Limitations:** The Division lacks historical data on some activities that are now tracked in the new case management system. The new information system may cause variations in the way some statistics are presented.



less settlement, concessions and other dispositions were realized. The primary reason for this shift of workload is attributed to the sophisticated, resource-intensive issues and enormous dollar amounts involved (as marked in TAX's increased collections and retentions of dollars below).

**Performance Measure:** Tax Dollars Collected and Retained by Court Action and Settlements [TAX]

**FY 2002 Target:** In accordance with Department guidance, targeted levels of performance are not projected for this indicator.

**FY 2002 Actual:** \$90 million collected; \$1.246 billion retained

**Discussion:** TAX secured substantial increases to the federal fisc, marked by the exceedingly complex, resource-intensive cases and billions of dollars at issue. Five major cases represented approximately 77% of the \$1.246 billion retained by tax attorneys in FY 2002. TAX was able to prevent substantial losses to the federal treasury, thereby increasing funds available for other government programs or to reduce the deficit. Of the \$90 million collected in FY 2002, \$34 million resulted from three resource-intensive tax cases ranging from personal income to corporate fraud.

## STRATEGIC OBJECTIVE & ANNUAL GOAL 4.5: CIVIL LAWS

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

### 4.5A Protect the Public Fisc

#### Background/Program Objectives:

Billions of dollars are saved annually through DOJ's successful defense of the public fisc in lawsuits alleging unwarranted monetary claims. Plaintiffs advancing contract claims, allegations of government misconduct, claims of patent infringement and the like, expose the government to potentially staggering losses. DOJ consistently mounts a strong defense against unwarranted and exaggerated claims to ensure that only those claims with merit under the law are paid.

#### Performance:

**Performance Measure:** % of Defensive Civil Monetary Cases Where 85% or More of the Claim is Defeated [CIV]

**FY 2002 Target:** 80%

**FY 2002 Actual:** 86%

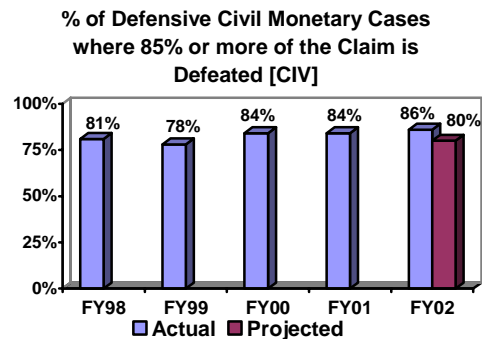
**Discussion:** For the third straight year, the Civil Division exceeded its 80% goal. This accomplishment understates CIV's success because, by definition, the measure excludes cases that do not specify monetary amounts, such as challenges to provisions in entitlement programs, including Medicare. CIV's effective defense of these provisions that limit federal expenditures affect billions of dollars of public funds annually.

**Performance Measure:** \$ Collected From Affirmative Civil Cases [JMD]

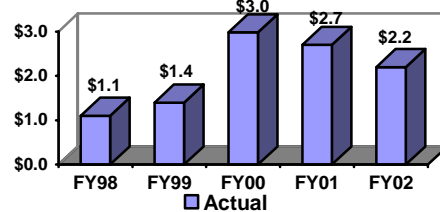
**FY 2002 Target:** In accordance with Department guidance, targeted levels of performance are not projected for this indicator.

**FY 2002 Actual:** \$2.2 billion

**Discussion:** See above.



**\$ Collected From Affirmative Civil Cases (\$Bil) [JMD]**



**Data Collection and Storage:** The primary source of data collection for measurement within the Civil Division is the automated case management system (CASES).

**Data Validation and Verification:** Contractor staff regularly review case listings and interview attorneys concerning the status of each case. Exception reports are generated and reviewed. Attorney managers review numerous monthly reports for data completeness and accuracy. The contractor executes a comprehensive quality control plan in which representative samples of data are verified. Another independent contractor verifies aspects of the work of the case management contractor.

**Data Limitations:** Incomplete data can cause the system to under-report case closures and attorney time. Missing data are most often retrieved as a result of the contractor interviews and the review of monthly reports. To minimize the extent of missing data, CIV makes adherence to administrative reporting requirements, including CASES, a performance element in all attorney work plans.

## 4.5B Continue Vigorous Civil Enforcement

### Background/Program Objectives:

To safeguard Medicare and other federally funded health programs, combating health care fraud remains a key focus. Recoveries in health care fraud actions have already topped \$5.2 billion and are expected to increase, since the current docket includes a number of matters with the potential of significant recoveries. DOJ serves an equally vital role when the laws, programs and policies of the United States are attacked in court. These actions run the full gamut, such as challenges to Presidential determinations under the War Powers Act, to suits disputing the administration of the Medicare program.

By securing favorable resolutions in civil cases, DOJ ensures the intent of Congress, as well as represents the government's response to some of the most probing issues of our time. Examples include litigation concerning the freezing of terrorist financial assets, inclusion of the words "under God" in the Pledge of Allegiance, campaign finance reform, airline passenger identification requirements and luggage searches, intercepted cell-phone communications, and the military's press policy.

DOJ attorneys must respond to a variety of immigration-related suits, including a heightened level of counterterrorism litigation and constitutional challenges to new immigration laws or reformed procedures. Landmark cases concern the detainees at Guantanamo Bay and New York, the media's access to immigration hearings, and constitutional challenges to the USA PATRIOT Act. The majority of immigration cases involve individual or class actions opposing actions by the INS and immigration judges.

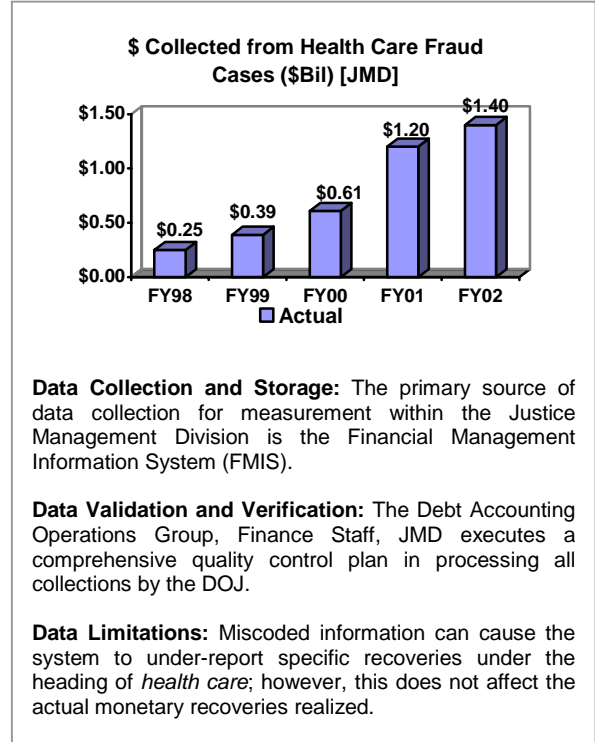
### Performance:

**Performance Measure:** \$ Collected from Civil Health Care Fraud [JMD]

**FY 2002 Target:** In accordance with Department guidance, targeted levels of performance are not projected for this indicator.

**FY 2002 Actual:** \$1.4 billion

**Discussion:** Department attorneys reached a \$585 million civil settlement with TAP Pharmaceuticals, the manufacturer of Lupron, a



drug used for the treatment of advanced prostate cancer. Allegations included paying kickbacks to providers and conspiring with providers to obtain federal reimbursements for product samples. In addition, TAP agreed to pay a criminal fine of \$290 million, the largest fine ever in a health care fraud prosecution, bringing the total recovery to \$875 million.

Schering-Plough Corporation agreed to pay \$500 million to resolve allegations that the company did not manufacture drugs in compliance with Food and Drug Administration (FDA) regulations. For example, it was found that the company manufactured asthma inhalers without the correct amount of medicine inside.

**Performance Measure:** % of Favorable Resolutions in Civil Cases [CIV, EOUSA] NOTE: Prior year actuals have been update to reflect the most current and accurate data available.

**FY 2002 Target:** 80%

**FY 2002 Actual:** 85%

**Discussion:** As in prior years, the performance target was surpassed, protecting the interests of the American people by effective legal representation in more than 51,000 cases.

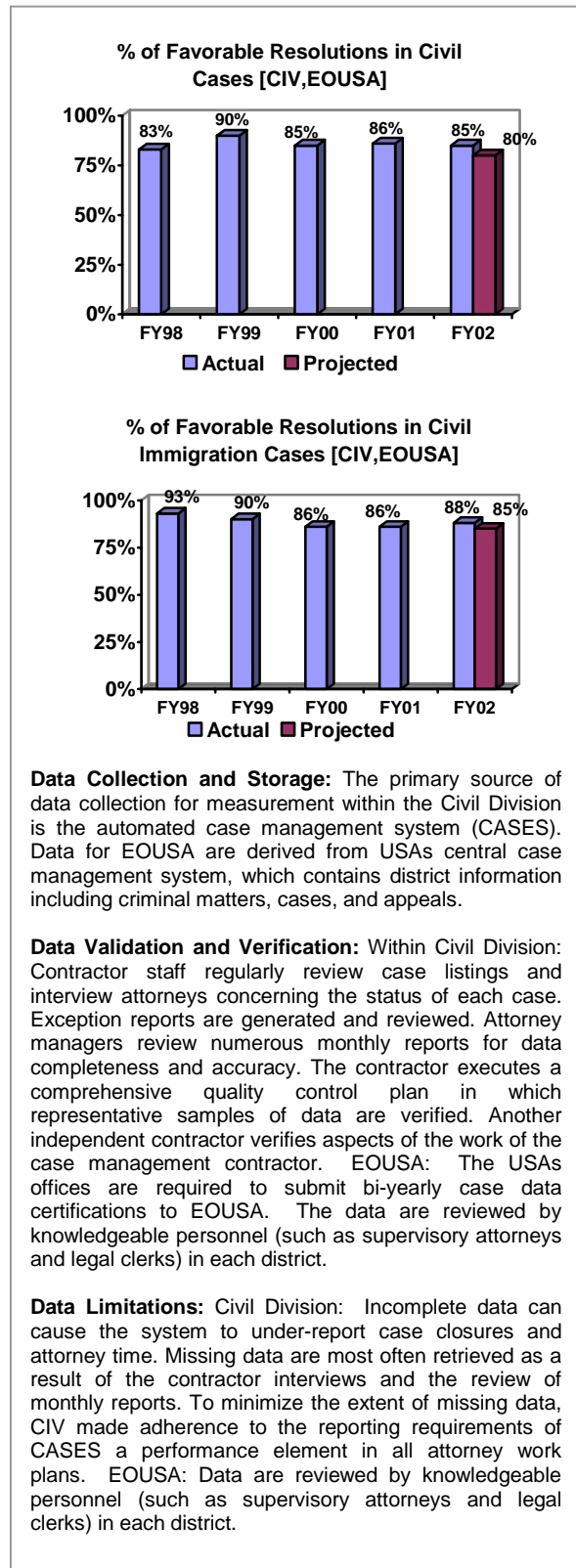
**Performance Measure:** % of Favorable Resolutions in Civil Immigration Cases [CIV, EOUSA]

**FY 2002 Target:** 85%

**FY 2002 Actual:** 88%

**Discussion:** As in prior years, the performance target was surpassed, ensuring that immigration enforcement actions are upheld in federal trial and appellate courts.

The Department received a record 7,500 new immigration cases in 2002, a 40 % increase over 2001. This growth resulted from intensified INS enforcement and from the Attorney General’s mandate to reduce the backlog of cases pending before immigration judges.



#### 4.5C Increase the Number of Cases Using Alternative Dispute Resolution (ADR)

##### Background/Program Objectives:

Executive Order Executive Order 12988 directs:

*[L]itigation counsel shall make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial. . . Where the benefits of Alternative Dispute Resolution (“ADR”) may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the parties. . . . To facilitate broader and effective use of informal and formal ADR methods, litigation counsel should be trained in ADR techniques.*

It is our job to implement the President’s directive consistently with our mission to defend the interest of the United States in civil litigation proceedings. In FY 2003, DOJ attorneys will increase efforts to employ ADR including mediation, negotiation, and other litigation streamlining techniques in appropriate civil cases.

##### Performance:

**Performance Measure:** Percentage of Cases Resolved using ADR [CIV, CRT, ENRD, TAX, EOUSA]

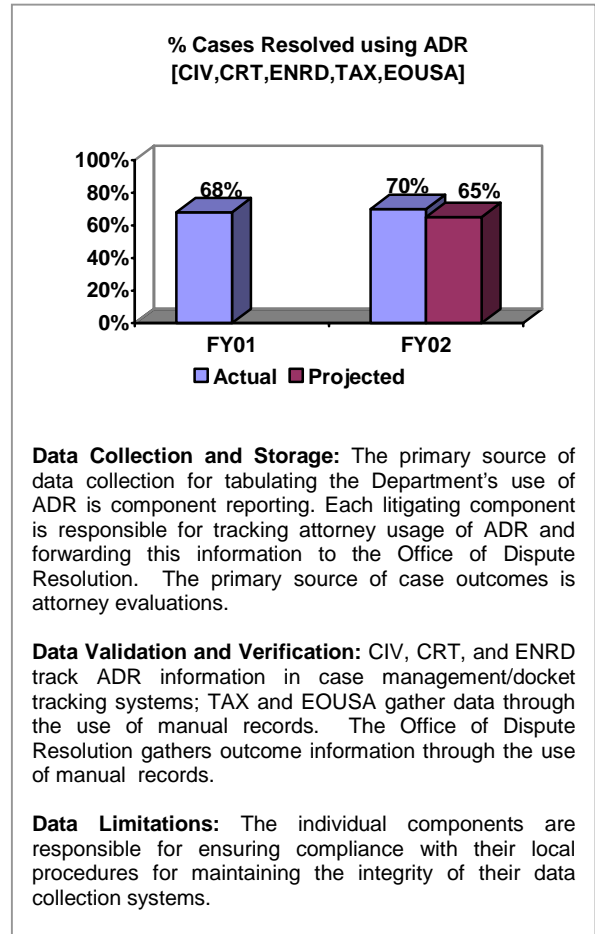
**FY 2002 Target:** 65%

**FY 2002 Actual:** 70%

**Discussion:** We exceeded our target, with 70% of dispute resolution proceedings producing favorable resolutions.

ADR saved the Department attorney’s time in resolving litigation. For example, attorneys estimated that early resolution of one case through mediation saved an estimated 250 hours of depositions, another avoided 60 hours of discovery as well as trial, another avoided at least 30 depositions, and another saved the time and expense of full briefing of an issue.

Even where the case did not settle, ADR was still valuable in narrowing the issues for trial or improving the relations between the parties. Attorneys reported that ADR allowed the parties to negotiate a disposition that best served their interests, and which may have been beyond the jurisdiction of a court to order. For example, in



several workplace cases, the parties agreed upon the voluntary separation of a government employee, a result that could not have been accomplished through trial.

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