INTRODUCTION

I would like to talk today about the good work that is being done by the governments of our country: by local officials here in Omaha, by your state officials in Lincoln, and by federal officials throughout our country and in Washington. It is all too easy to become skeptical about the ability of governments to accomplish anything. Large majorities of Americans hold negative attitudes about elected officials, believing that politicians care more about special interests or their own interests than about the public good. Our political campaigns are sullied by negative or misleading advertising. Our news media all too often stress the failures of government instead of the successes. As the November elections approach, some pundits predict that increasing numbers of our fellow citizens will stay home on election day and fail to exercise the most basic duty of citizenship — the right that protects all other rights: voting. Cynicism and apathy can lead to a vicious cycle: if more Americans fail to become involved in their communities, they will increase the influence of those very special interests they rail against.

I come here today in the hope of warding off such cynicism by reminding you of a simple truth: government works. Good government — government done right, government energized by your involvement — can solve problems, secure justice, promote the public good, and at times even lift our spirits.

I would like to reflect on this simple truth by addressing three topics. First, I will describe the cases we work on at the Environment and Natural Resources Division at the Department of Justice, so you can have a sense of the work we do day-to-day. Second, I will talk about our successes at the federal level in protecting the environment. Third, I will talk about some environmental success stories from right
here in your own backyard, successes that depend on local, state, and federal partnerships to protect the public and our natural resources. I hope by the end of my talk to have persuaded those of you who do not vote to go to the polls in two weeks.

THE ENVIRONMENT DIVISION

Let me start by telling you about the Environment and Natural Resources Division at the Department of Justice. We represent client agencies in cases arising under more than 100 federal statutes. While our client agencies take the lead in administering and implementing federal environmental protections, the Justice Department steps in whenever these efforts lead to federal court litigation. The Justice Department is often called "Our Nation's Litigator," and the Environment Division is responsible for all litigation involving federal environmental and public land laws. I think it is the best environmental law firm, and maybe the best law firm of any kind, in America.

A. Typical Domestic Cases

As you can imagine, our docket is quite large. To simplify things, it helps to break down our docket into five categories.

First, we litigate pollution cases. Our primary mission in this litigation is to ensure that we have clean air, safe water, and healthy neighborhoods for all Americans. We bring civil enforcement cases against violators for injunctive relief and penalties, as well as criminal cases referred by the Environmental Protection Agency ("EPA"), the Federal Bureau of Investigation ("FBI"), the Coast Guard, and other agencies for the most serious violations. We defend cases under the pollution statutes when federal environmental protections are challenged in court by industry groups, environmental groups, and in many cases by both sides. We also represent federal agencies — such as the Department of Defense and the Department of Energy — when they are alleged to have violated pollution-protection standards that apply equally to federal facilities.

Second, we handle land and natural resources cases. Our major clients in these cases are the Interior Department and the Forest Service in the Agriculture Department. In most of these cases, we defend challenges to agency decisions concerning oil and gas, mining, grazing, water, the National Parks, and other land-related issues.

Third, we bring and defend cases under the federal fish and wildlife laws. In these cases, we primarily represent the Interior Department and the National Oceanic and Atmospheric Administration. We bring enforcement actions to protect endangered species and to stop the illegal smuggling of birds, reptiles, and other wildlife. Addition-
ally, we defend the Forest Service and other agencies in challenges brought under the Endangered Species Act, and on issues involving fisheries management and the coastal zone.

Fourth, we litigate Indian cases. We represent the Interior Department and other agencies acting in fulfillment of the United States' trust responsibility to tribes by protecting land and waters, as well as tribal treaty rights involving hunting and fishing. At the same time, we defend challenges to agency actions that affect Native Americans.

Fifth, the Environment Division litigates condemnation cases. These cases include affirmative condemnations to acquire land; for example, to build a federal courthouse or federal prison. We also defend against so-called "inverse condemnation" cases, including "regulatory taking" cases, where the claimant argues that federal action has impaired a property right so as to constitute a taking of property that requires Just Compensation under the Fifth Amendment.

B. RECENT INTERNATIONAL CASES

In the last several years, our docket has developed an increasingly international dimension. I would like to focus on two specific criminal initiatives that exemplify this trend.

First, we are targeting the illegal importation of chlorofluorocarbons, also known as CFCs or more commonly as Freon. CFCs are used primarily as refrigerants, solvents, and propellants. Unfortunately, once in the stratosphere, CFCs become voracious consumers of the thin ozone layer that protects us from ultra-violet "B" radiation. CFCs become a kind of "Pac-man" in the sky, eating up the good upper atmosphere ozone. One CFC molecule can eventually destroy over one-hundred-thousand ozone molecules. Increased exposure to ultra-violet radiation can increase skin cancer, retard growth in plants and animals, and even disrupt the human immune system.

In the Montreal Protocol of 1988, the United States joined with more than 160 other countries to phase out the use of certain CFCs. In January 1996, the United States imposed a ban on most CFC importation, though existing stockpiles can be legally used up. Less developed countries have until 2010 to stop manufacture. After the United States phase-out began, a black market in illegally imported CFCs developed in the United States. CFC smuggling has a ready market of about eighty million American cars built prior to 1994 that use Freon as the refrigerant for their air conditioning system. Estimates are that ten million pounds of CFCs already have been smuggled into the United States.

The Environment Division became aware of the black market for CFCs following a series of high profile cases brought by the United
States Attorney's Office in the Southern District of Florida. In 1995, the Environment Division invited EPA, Customs and IRS investigators from key geographic areas to take part in a National CFC Enforcement Meeting in Washington. The meeting was very successful, and it led to seizures of CFCs in California, Florida, Georgia, New Jersey, Puerto Rico and Texas.

Our CFC workgroup now meets quarterly and has expanded to include Assistant United States Attorneys and criminal investigators from most major United States ports, as well as representatives from Canada. We have obtained a total of sixty-two convictions, thirty-six years of imprisonment, and more than $58 million in fines and restitution for CFC smuggling. In February of 1998, the work group announced a string of new smuggling charges, including the first charges related to the illegal importation of an ozone depleting substance known as Halon 1301, which is used primarily as a fire suppressant. This approach, by the way, is a good lesson in the successes of cooperative government.

Despite these successes, the potential for continued CFC smuggling remains high. Recent intelligence information indicates that over the last year, a number of companies in China are producing CFCs and attempting to export them to the United States under the guise of "recycled product." This smuggling scheme, along with others, will require United States law enforcement to remain vigilant about CFC smuggling well into the next century.

A second international enforcement initiative involves our efforts to curb wildlife smuggling. International wildlife smuggling constitutes a six-billion-dollar-a-year black market in live animals and animal products. This trade contributes directly to the plundering of natural resources, often from developing countries, and threatens the extinction of protected species. For example, in a project we refer to as Operation Chameleon, attorneys from the Environment Division have spearheaded prosecution of several international live reptile smuggling rings. Reptiles, including tortoises, turtles, snakes, and lizards from Africa, Asia, and South America, are prized by underground dealers and collectors alike, and the scarcity of a particular species often is reflected by the price it commands.

One ring specialized in exotic wildlife found in Madagascar, including Madagascan tree boas and rare radiated and spider tortoises, protected by the Endangered Species Act and international treaties. Allegedly collected by local residents and smuggled by boat from Madagascar, this cargo was then secreted in airline baggage for the final journey to the United States. Unscrupulous reptile dealers here can sell the animals at a 10,000% mark-up on the price paid to the collec-
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Various members of this ring were indicted in Orlando, Florida, in August 1996 on conspiracy, smuggling, wildlife, and money laundering charges. Three smugglers have been convicted and sentenced.

Another Operation Chameleon case targeted a company called Strictly Reptiles, Inc., of Hollywood, Florida, one of the nation's largest reptile import companies, and its President, Michael Van Nostrand. They pled guilty to conspiring to violate smuggling laws by bringing more than 1500 rare reptiles from Indonesia into the United States. Van Nostrand was sentenced to eight months in prison, followed by eight months of home confinement. Under his plea agreement, he also agreed to pay nearly $250,000 to the World Wildlife Fund to implement a government program to protect habitat in Indonesia.

This past May, another smuggler was apprehended trying to smuggle fifty-seven live New Caledonia geckoes — worth about $85,000 — into the United States from New Zealand. He was indicted on June 16, 1998, and in August he pled guilty to a felony smuggling charge.

Additionally, in September 1998, we announced the arrest of three individuals who allegedly participated in a live, endangered reptile smuggling ring between Asia and North America. The indictment alleges that the defendants smuggled more than 300 animals, worth nearly $500,000, into the United States. They allegedly used human couriers, made Federal Express shipments with false invoices, and concealed illegal animals within larger shipments of legal animals. The reptiles were smuggled from Malaysia, Hong Kong, Indonesia, and the Philippines. The smuggling ring was infiltrated by agents of the Special Operations Branch of the United States Fish and Wildlife Service, which established an undercover wildlife business in San Francisco. Of the 300 animals allegedly smuggled, about thirty-nine of them are threatened with extinction, including the plowshare tortoise and the Komodo dragon. The plowshare tortoise is of particular concern, because about seventy animals recently were stolen from a breeding project in their native country of Madagascar, and they have been the subject of an intensive search by international wildlife preservation groups.

C. Today’s News

And now, for late-breaking news: today Attorney General Janet Reno and EPA Administrator Carol Browner announced one of the most important federal environmental enforcement actions in American history. It is a landmark Clean Air Act settlement — the largest in the history of the Clean Air Act — with the seven largest manufac-
turers of heavy duty diesel engines, representing 95% of the United States' heavy diesel market, resolving charges that the companies installed in their diesel engines computer software that causes the engines to run within legal limits during emissions tests, but to emit illegal levels of Nitrogen Oxides when on the road. In 1998 alone, diesel engines emitted more than 1.3 million tons of excess Nitrogen Oxides. Under the settlement, the companies will: (1) spend at least $850 million to introduce cleaner new engines, rebuild older engines to cleaner levels, recall pickup trucks that have “defeat devices” installed, and conduct new emissions testing; (2) spend $109.5 million on other projects to cut Nitrogen Oxide emissions, including research and development on low emission engines that use new technologies and cleaner fuels; and (3) pay a penalty of $83.4 million. The injunctive relief required by the settlement will prevent an estimated seventy-five million tons of nitrogen oxide pollution, which causes smog, premature death, asthma attacks, other breathing problems, and acid rain. This agreement with the diesel engine industry comes on the heels of similar settlements with American Honda Motor Company for $267 million and Ford Motor Company for $7.8 million for selling vehicles with illegal devices that defeat emission controls. Together, these historic settlements will mean much cleaner air for the American people.

THE SUCCESS OF FEDERAL ENVIRONMENTAL LAWS

Our extensive docket gives us daily contact with cutting-edge issues in environmental policy, and I am very pleased to report that our environmental laws are working. Our progress in protecting the environment over the past twenty-five years is largely an American success story. Unfortunately, this success story is very much an untold story. The commentator Mark Shields has pointed out that, oddly enough, many politicians do not want to take credit for this success. The Democrats are reluctant to acknowledge that many of the landmark environmental laws were signed by Republican Presidents. And many Republicans do not want to admit that government — good government, government done right — can produce tremendous benefits for the American people. Let's look at the facts.

Our air today is much cleaner than it was twenty-five years ago, due primarily to the federal Clean Air Act. Since 1970, lead emissions have dropped by 98%; emissions of fine soot, which cause respiratory disease, have fallen nearly 80%; and emissions of carbon monoxide, a killer poison, have declined nearly 25%. The number of people who live in areas with unhealthy air has been cut in half and continues to fall.
Our lakes and rivers are much cleaner, thanks in large measure to the federal Clean Water Act. In 1972, only one-third of our nation's water bodies were safe for fishing and swimming. Today, almost two-thirds are safe. Lake Erie, once declared dead, is now teeming with fish. The Hudson River in New York, the Potomac in our nation's capital, and so many other rivers and bays across the country are on the mend, and getting cleaner every year. Here in Nebraska, key portions of the Niobrara River have been designated as part of the national wild and scenic river system. The Justice Department is currently litigating a challenge to the decision of the United States Fish and Wildlife Service to adopt a comprehensive management plan that emphasizes local control of the Niobrara River through the Niobrara Council. We are confident that this strong federal-local partnership will provide the environmental safeguards needed to protect this valuable watershed.

Our drinking water is also much cleaner. More than 85% of Americans are now served by community drinking water systems that are in full and continuing compliance with health standards. The 1996 amendments to the Safe Drinking Water Act will lead to further improvements by providing billions of dollars in federal funding to a State Revolving Fund to help local communities protect the quality of their water.

Toxic emissions from United States industry have fallen dramatically, and our exposure to toxic wastes continues to fall as hundreds of Superfund sites across the country are being cleaned up.

Our environmental laws have not only been effective, they have been cost effective. To cite but one example, the Clean Air Act has yielded monetary benefits that far outweigh the costs. Total estimated benefits of the Clean Air Act from 1970 to 1990 fall within a range of $2.7 trillion to $14.6 trillion, with a central estimate of $6.8 trillion in benefits. This compares to total costs of compliance during these years of roughly $500 million. Not a bad return on investment.

A note of caution: a recent U.S. News & World Report article states that in the past ten years we have begun to go backward, largely because of so-called non-point source pollution. Agriculture and construction are the major contributors to this problem. President Clinton's Clean Water Action Plan is designed to address some of the problem. In Nebraska, you will want to pay special attention to this development, especially because of the role of agriculture in the state. Also, the State of Nebraska has recently sued to challenge federal drinking water standards for lead and copper, and to assert that application of these standards to state-owned public water systems violates the Tenth Amendment to the United States Constitution. We
are defending the case, and think it has little merit, but you should be aware of this additional step backward in Nebraska.

NEBRASKA SUCCESS STORIES

If anyone doubts that our environmental laws have been successful, let them come to Nebraska. Right here, in your own backyard, you have compelling evidence that all levels of government are improving the quality of our lives by protecting human health and natural resources. I'd like to share seven examples.

First, let's look at the success of whooping cranes. Their size, their snowy white beauty, and their dramatic comeback from the edge of extinction have made whoopers one of the best known endangered species in North America. In 1942, development and habitat loss had reduced the migratory population to only fifteen birds. No other species is known to have recovered from such low numbers. But a tremendous conservation effort has slowly increased the migratory population, up to 182 last winter. Many more whoopers are breeding in captivity, including some at the Patuxent Wildlife Research Center in Laurel, Maryland.

The governments of Canada, Mexico, and the United States have worked together to protect the whoopers and promote their recovery. Nebraskans can be proud to be part of the international governmental effort to rescue this bird, which uses Nebraska as part of its 2400-mile migration route from the Canadian tundra to the gulf coast of Texas. And it is the backdrop of government protection that allows for extraordinary individual efforts, like those of biologist Kent Clegg, who used an ultra-light plane painted like a crane to guide a small flock of whoopers on a nine-day, 800-mile trip from Idaho to New Mexico last year. Mr. Clegg's birds were hatched in the federal wildlife research center at Patuxent, and the United States Fish and Wildlife Service assisted with funding of the project. The whooping crane population has a long way to go, but its prospects are much better than they were just a few years ago.

The second Nebraska government success story — preserving the majesty of the Sandhill cranes — shows that environmental protection and economic growth go hand-in-hand. Every year, these magnificent creatures generate tens of millions of tourism dollars in Nebraska. Each Spring a half-million Sandhill cranes — 80% of the worldwide population — descend upon the Platte River Valley. Using Nebraska as a gas station of sorts, they feed on waste corn and add 20% to their body weight in fat reserves so they can survive the nesting season further north. The shallow sandbars of the Platte River protect them from coyotes, bobcats and other predators. State officials
in the Nebraska Division of Travel and Tourism and the Nebraska Game and Parks Commission are to be congratulated for developing eco-tourism and protecting the State's natural resources. The Platte River is one of the best bird-watching sites in the country, and the cranes truly represent a success for both nature and business. They teach us to reject the false choice between the environment and the economy.

A third government success story — a program called *Partners in Pollution Prevention* — exemplifies federal-state government cooperation at its finest. This partnership between the federal Environmental Protection Agency, the Nebraska Department of Environmental Quality, the Nebraska Energy Office and the University of Nebraska assists small businesses in Nebraska by using engineering student interns to provide pollution prevention outreach. The three-year project not only provides a valuable educational experience to the students, but also an estimated savings to small businesses of more than $100,000 in the program's first year. Best of all, by promoting pollution prevention, the partnership helps eliminate pollution before it is created in the first place.

A fourth government success story — the *Toxic Release Inventory* — shows how federal programs can empower local communities. Each year, federal law requires industrial facilities to disclose how much chemical pollution they release into the environment. This information is then compiled into the federal Toxic Release Inventory. Under President Clinton's leadership, the EPA has doubled the number of chemicals subject to reporting, and last year the President announced a 30% increase in the number of facilities required to disclose data.

The federal inventory provides the public and State and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals. Not surprisingly, sharing this information with the public has provided industry a strong incentive for reduction of toxic chemicals. No one wants to be the top polluter in the community. Here in Nebraska, reported releases fell more than 47% from 1988 to 1996. In one year alone, from 1995 to 1996, releases of toluene in Nebraska dropped more than 56% and releases of methyl ethyl ketone dropped more than 62%, simply because public reporting caused industry to reexamine production processes and find ways to prevent pollution. The Inventory has been one of the most cost-effective pollution prevention programs ever, and Nebraskans — along with other Americans across the country — are reaping the benefits.

The fifth government success story is the Nebraska Environmental Trust. This one-of-a-kind trust is funded through profits from the Nebraska Lottery. Indeed, nearly 50% of the lottery profits go toward
environmental stewardship. Governor Nelson proposed the Trust in 1992, and he has appointed its fifteen-member board, whose mission is to protect critical habitat areas, promote surface water quality, enhance groundwater quality, and develop recycling markets. As of April of this year, the Trust had awarded about $24 million in grants to protect Nebraskans and their environment. More than 100 years ago, Nebraska demonstrated that it was on the cutting edge of conservation when J. Sterling Morton proposed the very first Arbor Day, a coordinated effort to plant trees to prevent erosion of farmland in Nebraska and elsewhere. Nebraska's unique Environmental Trust shows that it is still at the forefront of creative thinking designed to protect human health and the environment.

A sixth government success story demonstrates partnership between government and industry. In 1996, the Environment Division settled an enforcement action against Asarco, Inc.'s lead refinery here in Omaha. Our complaint arose out of a citizen suit against Asarco for alleged violations of the Clean Water Act based on unauthorized discharges into the Missouri River. The Consent Decree imposes injunctive relief to prevent future violations and obtains a civil penalty of $3.25 million, one of the highest in the country. In addition, Asarco agreed to pay $1 million toward two supplemental environmental projects, one to acquire and maintain wetlands along the Missouri River, and the other to perform human health studies in the area affected by the violations. The settlement demonstrates that even after lawsuits are filed, cooperation between government and industry can resolve the litigation and address the continuing needs of the environment.

Finally, the seventh government success story is the Kingsley Dam relicensing. Several weeks ago, collaborative efforts among Nebraska, Wyoming, Colorado and the federal government proved successful as the Federal Energy Regulatory Commission voted to issue new 40-year licenses for the operation of the Kingsley Dam and the 170-mile complex of canals, lakes and power plants. The key to resolving this fourteen year, $36 million battle was an agreement by the affected states to achieve a basin-wide resolution of conflicting uses, and to share responsibility for meeting wildlife needs.

Under the leadership of Governor Nelson, the parties developed the idea of an "environmental account" of water, stored in Lake McConaughy for release downstream in accordance with wildlife needs. Secretary of the Interior Bruce Babbitt came to Nebraska to provide support and encouragement for a basin-wide approach among Nebraska, Wyoming and Colorado. In 1997, the Secretary and the gover-
nors signed a $75 million deal to provide for water and habitat for the next fifteen years, with half to be paid by the federal government.

The agreement will allow the Platte River to continue to provide more than $15 million worth of irrigation, more than $55 million in power, hundreds of millions of dollars in fishing, boating, and other recreational uses, and critical support for the cranes, eagles and other wildlife. The agreement also provides for the development of thousands of acres of new habitat to reverse some of the damage caused by past activities.

Nebraska, Wyoming and Colorado each realized that their combined efforts, joined in cooperation and compromise, were far more valuable than the sum of their parts divided in conflict. If cynicism or apathy had prevailed, this seemingly hopeless situation easily could have fallen victim to stalemate. To be sure, the new licensing is only one more step in the process, but the agreement provides much hope for the future of the Platte River, and it stands as a model of interstate cooperation in resolving contentious water use disputes.

This success story stands in sharp contrast to the litigation before the United States Supreme Court involving the same three states and the United States concerning the Court's 1945 decree that rations the North Platt River. This case has been pending before the Supreme Court for twelve years, and there has yet to be a trial. Because this litigation is pending, I am somewhat constrained in my ability to comment on it, but I think everyone can agree that litigation has proven to be a very expensive and time-consuming vehicle for resolving this contentious dispute. Attorney General Reno has made the use of Alternative Dispute Resolution ("ADR") a top priority at the Justice Department, and we are looking for every opportunity to avoid costly litigation where disputes can be better resolved through ADR. Only time will tell whether cooperation and compromise will drive the resolution of the pending litigation.

CONCLUSION

The many success stories in environmental protection here in Nebraska and across the country show that we have every reason to remain optimistic about the future, and to look to our local, state and federal officials as partners in the search for solutions. We owe it to ourselves and our children to become involved in this search. I urge the students of Creighton University to consider a career in public service so that you can create your own environmental success stories through government work. We need your talent, your energy, and your new ideas. However, if you choose a different career path, treat
your elected officials as partners and insist that they treat you the same way.

Finally, to everyone here today, I say this: "Get involved!" Democracy is work — find out about the issues, look at information, ask questions. Do not be satisfied with sound bites. If you set the standard for what information you want, candidates and your government employees and public officials will have to meet it. Eternal vigilance is the price of liberty. Vote in the upcoming election. Find out about the pressing environmental issues in your community and help find solutions. In your daily lives, leave a small footprint by making environmentally sound lifestyle choices. Educate yourselves, and then educate others. Help those of us in the government protect our planet for future generations. Remember the words attributed to Chief Seattle: "We don’t inherit the earth from our parents; we borrow it from our children.” Together, we can return to our children a clean and healthy planet Earth. Together — government officials and citizens alike — we can make a difference.

Thank you.