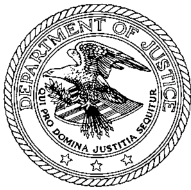

DEPARTMENT OF JUSTICE

THE CLINTON ADMINISTRATION:

TRENDS IN CRIMINAL ANTITRUST ENFORCEMENT

Address by

ANNE K. BINGAMAN
Assistant Attorney General
Antitrust Division
U.S. Department of Justice

Before the
Corporate Counsel Institute

Sheraton Palace Hotel
San Francisco, California

November 30, 1995

I appreciate the opportunity to join you today. It goes without saying that this Institute is one of the premier forums in the corporate world and counts among its participants the nation's finest lawyers.

The topic of my speech deals with the Antitrust Division's criminal enforcement program. In choosing this topic I wish to underscore the Antitrust Division's and this Administration's steadfast and continuing commitment to prosecuting the most serious criminal antitrust offenses.

My message today is that we are on the beat -- people are going to jail for antitrust offenses and corporations are paying record criminal fines. I will describe our record in the Clinton Administration, discuss recent trends in criminal enforcement, and highlight our Generating Quality Criminal Cases Initiative.

THREE COMMON THEMES UNDERLYING ANTITRUST ENFORCEMENT

But before I discuss our criminal enforcement program, I would like to outline three common themes that underlie all three of the Antitrust Division's basic enforcement areas -- mergers, civil non-merger, and criminal.

First, the antitrust cases we bring are bigger and more complex than ever. This reflects the fact that our economy is much larger -- two and a half times -- than it was just twenty years ago, and it is much more global. Consequently, many antitrust matters now span multiple jurisdictions, involving multinational corporations and much greater coordination among both foreign and domestic law enforcement agencies.

We have reallocated the Antitrust Division's resources since 1993 to enable us to concentrate on these national and international cases where we know we can have a noticeable impact -- cases that involve large amounts of commerce and affect great numbers of businesses and customers. As just one example, we estimate that the complex airline fares case, which was filed in the Bush Administration and I settled early in this Administration with eight major airlines and the Airline Tariff Publishing Company, saved businesses and customers from paying over $1 billion in higher airline ticket prices.

Our ability to bring these types of cases has been greatly assisted by our unprecedented cooperative efforts with State Attorneys General. In fact, since mid-1994, the Antitrust Division has undertaken a record 27 joint investigations, and 10 joint settlements with State Attorneys General, and the Division has referred more and more cases involving strictly regional impact to the states. These efforts have enabled us to use our own resources to bring the kind of cases that only the Division -- as a national law enforcement agency with experienced litigators and a large staff of in-house economists -- can prosecute.

Second, the cases we bring often involve looking at a broader range of conduct than that strictly covered by the Sherman and Clayton Acts and often in tandem with other enforcement agencies. For example, in a civil non-merger matter, the Antitrust Division and the U.S. Securities and Exchange Commission announced that Steinhart Management Company and Caxton Corporation, two of the country's leading investment fund managers, agreed to pay $76 million (of which $25 million represented antitrust fines) to settle antitrust and securities charges connected with the auction of Treasury securities. Again, this investigation was begun in the Bush Administration and successfully concluded in the Clinton Administration. I see these kinds of cases as a harbinger of the future. Later I will discuss several criminal cases that we brought with the assistance of other agencies such as the Internal Revenue Service, the SEC, and the FBI.

Third, our enforcement actions have an increasingly international focus. This is inevitable: we live in a global economy where nearly one quarter of the United States Gross Domestic Product is accounted for by export and import trade -- a figure roughly double what it was at the end of World War II. While this increased trade has brought many benefits, the simple fact is that increased openness in trade has not always meant increased competition. Many American businesses and customers continue to be victims of international cartel activity that is criminal under United States law. Many markets around the world are sheltered by formal or informal import barriers -- as well as the restraints imposed by foreign firms -- that frustrate and impede American companies' ability to sell their products.

The Antitrust Division has long had a clear mandate from the United States Congress to enforce the U.S. antitrust laws to the fullest extent, regardless of whether the antitrust violation occurs in the United States or elsewhere. This jurisdictional reach of our antitrust laws was made clear not only by the original Sherman Act of 1890, but also by the passage of the Foreign Trade Antitrust Improvements Act of 1982. And, in the Hartford Fire Insurance decision two years ago, the Supreme Court reaffirmed the long-established principle that the Sherman Act applies to foreign conduct that is meant to produce, and does produce, some substantial effect in the United States. In the previous Administration, the Division, under then-Assistant Attorney General Jim Rill, reaffirmed these principles and made international enforcement a priority.

In response to this statutory mandate, the Clinton Administration has made it a top priority to continue to increase the Division's international focus and to improve its ability to prosecute international cases successfully. The Division has greatly increased the number of investigations involving international aspects, and it has brought a number of significant international enforcement actions. This is particularly true in the criminal area, where one-quarter of our current grand juries involve international cartel activity, and where we have filed significant criminal cases, which I will discuss shortly, involving conspiracies conducted in other countries and against foreign defendants. In addition, the Division has filed several civil non-merger cases, including the first export access case in many years. In May 1994, the Division obtained from a British company, Pilkington Glass, a consent decree that will allow U.S. firms to compete for over 50 float glass plants expected to be built around the world. We estimate that this case alone could result in an increase in U.S. export revenue of up to $1.25 billion over the next five years.

Moreover, the internationalization of antitrust is also reflected in the mergers and joint ventures analyzed by the Division. A good recent example of this is provided by our consent decree in 1994 in the British Telecommunications Plc. and MCI Communications transaction. Similarly in July 1995, we filed a recent consent decree in the proposed $4.3 billion purchase by France Telecom and Deutsche Telekom of a 20 percent interest in Sprint, which also involved a proposed joint venture to provide international telecommunications

services. The terms of these two consent decrees are designed to promote competition and to prevent discriminatory treatment of other American telecommunications companies that are not parties to the respective transactions in the British, French, and German markets.

This greater focus on international enforcement has required much more cooperation and coordination with the Division's counterparts abroad, and I will discuss this later as I now turn to describe our criminal enforcement program.

THE ANTITRUST DIVISION'S CORE MISSION

Criminal enforcement against the most serious antitrust offenses has been, and remains, our core mission. That is because price fixing, market allocation, and bid rigging steal from, and commit fraud upon, American businesses and customers -- by artificially raising prices, lowering the quality of goods and services, and reducing choices. They go against the American imperative of open competition on the merits and fair play.

It is important that everyone understand that these are not "victimless" crimes. Let me give you an example from the Division's international thermal fax paper investigation, in which the first pleas were obtained in July 1994, and which is ongoing. The conspiracy by a number of Japanese companies and their U.S. subsidiaries to charge higher prices of thermal fax paper to their customers in the United States -- primarily small businesses and home fax machine owners -- raised prices by 10%. That meant less money for other essentials and an illicit windfall for the perpetrators of the crime.

Effective antitrust enforcement is vital to America's economic well-being. Freedom of economic opportunity and the vigor of our economic life and our industrial achievements all derive from a free enterprise system that favors open competition. To be indifferent to the great harm of criminal anticompetitive activity is to threaten our very economic system that is the envy of the world. In the global context, to ignore criminal violations by international cartels deprives American companies of the ability to sell their products in markets around the world, causing lower profits and loss of American jobs.

Thus, the serious consequences of criminally violating the antitrust laws reflect the serious nature of the offense. Indeed, in our history, it has been a bipartisan objective of the United States Congress first to enact, and then to strengthen over time, the criminal provisions of the Sherman Act. The Sherman Act was enacted in 1890 with both criminal and civil remedies for violations. In 1975, Congress upgraded antitrust crimes from misdemeanors to felonies. It also substantially increased the penalties for these crimes, providing for fines up to $1 million for corporations and up to $100,000 for individuals, and jail sentences of up to three years for individuals. In 1990 -- the centenary of the Sherman Act -- Congress again emphasized the severity of antitrust crimes with a further increase in maximum punishments, raising maximum fines to $10 million for corporations and $350,000 for individuals. Alternatively, as with other federal felonies, courts have the power of imposing fines in an amount equal to twice the harm suffered by the crime's victims or twice the gain enjoyed by the perpetrators.

These penalties are severe, and the Division will continue to seek tough remedies against criminals who we believe have violated our antitrust laws. It is a solemn responsibility to bring cases that may result in an individual losing his liberty or a corporation paying substantial fines or being barred from bidding on public contracts. The Antitrust Division has always exercised the responsibility vested in us as wisely and judiciously as possible.

For that reason, the Division's criminal enforcement program is fundamentally nonpartisan and bipartisan: there is great continuity from one Administration to another. And it is also for that reason that the position of Deputy for Criminal Enforcement is filled by an outstanding lawyer who has made a career of the Antitrust Division. The Division is extremely fortunate that Gary Spratling serves today as the Deputy Assistant Attorney General for Criminal Enforcement. Gary, who became DAAG this year, previously served as the chief of the Division's San Francisco Field Office for 11 years. Gary's professional achievements as a litigator have been recognized by his receipt of two of the Justice Department's most prestigious awards -- the John Marshall Award and the Presidential Rank Award. Gary's leadership skills are also reflected in his extensive bar activities: he has

served as the past chair of the California Bar's Antitrust Section and currently serves as vice chair of the ABA Antitrust Section's Criminal Practice and Procedure Committee. Already, under his leadership, the Division has made great strides in criminal enforcement.

THE DIVISION'S CRIMINAL ENFORCEMENT RECORD

I am proud of the job the Division has done in the past two years of maintaining its commitment to the prosecution of hard-core antitrust violations. I will highlight some of our accomplishments in Fiscal Year 1995 that we just concluded on September 30th of this year.

In Fiscal Year 1995, we filed 60 criminal cases against 40 corporations and 32 individuals. Corporations and individuals paid a total of $41.5 million in criminal fines -- the highest total ever in criminal corporate fines, and an increase over Fiscal Year 1994 ($40.2 million). In addition, in Fiscal Year 1995, two corporations paid record-breaking fines of $10 million and $15 million, respectively. Later I will discuss the implications of these large fines.

I want to underscore the high price people pay when they engage in price fixing or big rigging or when they obstruct our investigations into such activities. People go to jail for these offenses. In Fiscal Year 1995, we obtained 3,902 jail days -- an average jail sentence of 8.1 months for the individuals involved.

The Antitrust Division will not hesitate to seek significant jail sentences against individual defendants in the cases that it prosecutes. By way of example, in February and March of this year, all seven individual defendants in a major criminal case involving price fixing in the disposable plastic dinnerware industry were sentenced to jail. The two ringleaders of the conspiracy were sentenced to 21 months and 15 months incarceration and fined $90,000 and $75,000, respectively. In November 1994, a defendant in a case involving school milk supplies was sentenced to serve 30 months in jail following conviction after a trial on charges of big rigging. I firmly believe that jail sentences are among the strongest deterrents against criminal activity.

In addition, we are constantly on the outlook and we continue to prosecute vigorously obstruction of our investigations. For example, in January 1995, a defendant was sentenced to 14 months incarceration after pleading guilty to obstructing justice by falsifying an affidavit submitted to a federal grand jury. I continue to be concerned about companies and individuals attempting to obstruct our investigations. I urge you to make clients and others aware, in the event of an investigation by the Division, that the penalties for obstruction are severe, and the Division will seek the maximum penalty for obstruction of justice and perjury.

Currently, the Division's criminal enforcement program remains vigorous. We have pending over 170 criminal investigations, with over 100 attorneys and appropriate support staff devoted to our criminal work. Significantly, approximately 50% of the Division's current grand jury investigations are focused on international or national cartel activity. Thus, although the total number of criminal cases that the Division has brought in recent years has declined, the matters that we have brought and are now investigating involve larger matters. It is a much better use of our resources -- and it is more in line with our mission and history -- to direct our attention towards bigger and more complex conspiracies, involving larger companies and industries and more overall dollars of commerce. Moreover, as I describe later, our Generating Quality Criminal Cases Initiative is beginning to bring us additional leads, resulting in more investigations. I fully expect this upward momentum to continue.

On a broader level -- looking to the present and to the future -- there are six distinct trends that are emerging in our criminal enforcement program. These trends, I believe, will continue and will greatly increase the Division's capacity to prosecute its criminal cases successfully.

TREND TOWARDS LARGER CORPORATE FINES

One trend that has been rather striking is the much larger fines that we are obtaining in criminal cases. In 1992, the average corporate fine imposed was slightly under $500,000. Average fines imposed on corporations have risen 140% since then, to over $1.2 million during Fiscal Year 1995, with fines in the millions of dollars commonplace.

The Division's biggest fines in its history were obtained in our recent explosives investigation, still ongoing. In September of this year, Dyno Nobel, the world's largest manufacturer of commercial explosives, agreed to plead guilty for conspiring to fix the prices of commercial explosives and pay the biggest fine ever imposed in a criminal antitrust matter -- $15 million. Also, Mine Equipment & Mill Supply Inc., a 50% joint venture by Dyno, also pleaded guilty as a co-conspirator, and agreed to pay a $1.9 million fine. This was preceded by a case filed in August against ICI Explosives USA, Inc., another explosives company, which pled guilty for conspiring to fix prices and was sentenced to pay a $10 million fine -- the first time the statutory maximum had been levied and, at that point in time, the largest criminal fine ever levied in an antitrust case. To date, the explosives investigation has already resulted in $26,950,000 in criminal fines.

The Division's thermal fax paper investigation has brought total fines to date in the amount of $10 million. In September 1995, two Japanese Companies -- New Oji Paper Company and Mitsubishi Paper Mills, Ltd. -- agreed to plead guilty to criminal charges for participating in a price-fixing scheme to raise prices of fax paper and agreed to pay fines of $1.7 million and $1.8 million, respectively. This case follows up on an earlier case filed last year in which Kanzaki Specialty Papers and Mitsubishi Corporation paid criminal fines of $4.5 million and $1.26 million, respectively, for conspiring to fix prices of thermal fax paper. The plea by Mitsubishi Corporation, headquartered in Tokyo, was the first guilty plea by a Japanese corporation to a Department of Justice price-fixing charge, and made front page news in Tokyo.

In addition, the Division's major criminal investigation of the price-fixing conspiracy in the disposable plastic dinnerware industry has brought over $9 million in criminal fines since July 1994, including $4.2 million from Comet Products, Inc., and $4.16 million from Plastics, Inc. Other major fines that have been levied in the past two years include: $6 million fine against Premdor Corporation for conspiring to fix prices of residential doors; $5 million fine against The Stanley Works for conspiring to fix the prices of architectural hinges; and $4.5 million against Miles, Inc., for conspiring to fix prices of steel wool scouring pads.

The trend towards increasingly larger fines is likely to continue. As I mentioned, the Division is focusing its efforts on cartel activity involving higher volumes of commerce. Nonetheless, it is noteworthy that the volumes of commerce affected by the various defendants' misconduct in some of the cases which I have cited was not extraordinary, and the Division expects to see greater fines in future cases regardless of whether the volume of commerce is large or not as large. In addition, as the Division continues to employ other criminal statutes besides the Sherman Act, the Sherman Act
$10 million statutory maximum fine may no longer constitute a cap for collusive activity. I will talk later about this trend of employing other criminal statutes besides the Sherman Act in criminal prosecutions.

At the same time, while corporate fines may be larger, I want to emphasize that cooperation with, and early self-reporting to, the Division, in appropriate circumstances and especially where a corporation does not qualify for the Division's amnesty program, could help a corporation obtain a lesser sentence under the Sentencing Guidelines. Indeed, some corporate defendants who agreed to pay large fines in the past year could have received even larger fines if they had not been cooperating. A good example is the explosives case where the corporate defendants, which as I have mentioned were fined $10 million and $15 million, likely would have received even larger fines had they not agreed to cooperate with the Division's investigation. The bottom line, whether a corporation qualifies for our amnesty program or whether a corporation must instead attempt to obtain lesser sentencing under the

Sentencing Guidelines, is that it is in the corporation's interest to cooperate and to report any criminal activity as early in the process as possible.

CONTINUED HIGH LEVEL OF CORPORATE AMNESTY APPLICATIONS

In August 1993, I announced an expansion of the Division's amnesty program for corporate participants in antitrust conspiracies who come forward with information about criminal antitrust violations. The new policy allows corporations to avoid criminal prosecution even if their cooperation begins after an investigation is already underway.

Under the prior policy, the timing of a corporation's cooperation was dispositive to the availability of amnesty. The Division concluded that the timing of disclosure is not always critical to the public interest, yet the "pre-existing investigation" limitation sharply reduced the incentive for companies to come forward, because they often would not know if the Division had started an investigation.

The new policy has been a resounding success. Under the former policy, only one corporation per year applied for amnesty. Under the new policy, we have received applications for corporate amnesty at the rate of approximately one a month -- a dramatic increase. This high level of amnesty applications is continuing. The result has been the successful prosecution of numerous cases that might have escaped detection altogether. Moreover -- and this is extremely important in an era where taxpayers expect the government to accomplish better results -- the cooperation has allowed us to complete cases much more swiftly and with less effort than if we had to prosecute without the active cooperation of one of the conspirators.

Let me add, too, a benefit that is difficult to measure but that I believe is very real. The expanded amnesty program increases the incentive for conspirators to cheat on each other, an incentive that must inevitably sow doubt in the minds of potential conspirators and reduce their willingness to conspire in the first place. In this way, the expanded amnesty program has an important deterrent effect.

The success of the expanded program is illustrated by our 1994 case against Miles, maker of SOS steel wool pads. Miles and its primary competitor, Dial, which makes Brillo pads, discussed prices and discount levels at meetings and in telephone conversations. Dial came forward with information about the discussions and obtained amnesty from the Division. Miles, on the other hand, pleaded guilty to a felony for conspiring to fix prices and was fined $4.5 million. There is no question in my mind that we wrapped up that case in a matter of months, and with maximum results, precisely because of the amnesty program. Dial's early and complete cooperation -- encouraged by the amnesty program -- led directly to a just and swift conclusion of the case. The ultimate beneficiaries of this case, and others like it are American consumers.

If you want to inquire, or if you know anyone who desires information, about our amnesty program and the specific criteria that governs the availability of amnesty, I urge you to call Gary Spratling or the field chief in one of our field offices, which are located in Atlanta, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco. These field offices handle the vast majority of our criminal investigations.

TREND TOWARDS INCREASED USE OF STATUTES BESIDES THE SHERMAN ACT

This past year also saw an increased number of cases where statutes besides the Sherman Act were employed, sometimes as the primary offense, to prosecute anticompetitive schemes. The use of other criminal statutes gives the Division additional capacity not only to stop a wider range of criminal activity, but also to undertake joint investigations, or to make cooperative arrangements, with other law enforcement agencies.

For example, in September 1995, the Division's New York Office, with the assistance of the Federal Bureau of Investigation and the Internal Revenue Service, filed a case charging a New York executive and his company, Consumer Displays, Inc., with tax fraud and with rigging bids. The defendants pleaded guilty for involvement in a bid-rigging conspiracy involving contracts with Heublein, Inc., a Connecticut liquor company, to supply retail stores with displays and product advertising. The tax fraud count, which was the

primary offense, was brought against the defendants for scheming to raise approximately $118,500 in cash to pay kickbacks to Heublein purchasing agents, and for engaging in a series of sham transactions designed to overstate company expenses, take fraudulent tax deductions and conceal cash income not reported to tax authorities.

Other cases have involved an expanded use of statutes dealing with wire fraud, mail fraud, and securities fraud. For instance, in September of this year, the Division's San Francisco Office charged a California securities brokerage firm, Municipal Government Investment Associates, Inc., with wire fraud and with securities fraud for arranging false and noncompetitive bids during the restructuring of a Tampa, Florida, municipal bond escrow account. In a two-count criminal information, the firm was charged with fraudulently deriving more than $1.2 million by colluding with co-conspirators to rig bids on specialized securities known as forward supply contracts. There was no Sherman Act charge because the Division determined that securities and mail fraud charges were the most effective way to prosecute this case. The charges resulted from a federal grand jury investigation into collusive bidding and fraud in the municipal bond escrow restructuring business. This ongoing investigation is being conducted with assistance from the U.S. Securities and Exchange Commission and the FBI.

In addition, earlier this year, the Division charged a New Jersey food company with mail fraud and aiding and abetting in connection with the submission of false bids to the Defense Logistics Agency for the award of contracts for canned food for the U.S. armed forces. The Division obtained a guilty plea. These kinds of cases will likely become more common, and the Division currently has a number of grand juries investigating wire, mail, and other types of fraud in connection with anticompetitive conduct.

Finally, while no longer a novel approach, the Division has charged wire or mail fraud and conspiracy to commit wire or mail fraud for efforts to use the phones or the mails in an attempt to rig bids or fix prices, even when those efforts do not result in an agreement that violates the Sherman Act. The Sixth Circuit in 1990 (in U.S. v. Ames Sintering Co.) upheld the Division's indictment of two defendants for two counts of wire fraud and one

count of conspiracy to commit wire fraud for attempted price fixing. A recent example can be found in the plastic dinnerware case where defendants were charged with engaging in a conspiracy to commit wire fraud for attempting to induce a competitor into fixing the price of dinnerware sold to an airline. This approach has proven effective for prosecuting attempts to collude -- and provides the Division an additional tool to deter big rigging and price fixing. The Division will not hesitate to use this tool in appropriate cases; in fact, we currently have a number of grand jury investigations into attempts to collude. The message here is: Don't even think about it. If we have credible evidence indicating such attempts, we will empanel a grand jury without delay.

TREND TOWARDS GREATER USE OF SEARCH WARRANTS

Another trend towards more effective criminal antitrust enforcement in the last few years involves a greater use of search warrants against corporations and a greater willingness on the Division's part to seek search warrants. As some media reports indicate, it is no longer unusual for the Division, as well as other components of the Justice Department, to apply to federal magistrates for a search warrant to search corporate offices.

In order to obtain a search warrant from a federal magistrate, the Division has to demonstrate probable cause that a crime has been committed and that evidence will be found at the site of the search. The Division will follow the law and apply this standard in a responsible manner when it requests search warrants. In appropriate circumstances where evidence may be hidden or destroyed, search warrants are an important tool, and it would be negligent for the Division to fail to use all of its legally authorized tools to investigate the crime and bring criminals to justice.

In fact, the execution of search warrants was essential in obtaining evidence of, and successfully prosecuting, the price-fixing conspiracy in the disposable plastic dinnerware industry that we prosecuted jointly with the Canadians. Fifty Canadian Mounties and U.S. FBI agents simultaneously executed search warrants at target offices in Montreal, Boston, Los Angeles, and Minneapolis. As a result of the important evidence we seized, three

corporations and seven executives, including both Americans and Canadians, have pled guilty. As I mentioned earlier, the three corporations have been fined in excess of $9 million, and the seven executives are serving time in prison. This investigation, and the trend towards the greater use of search warrants in general, demonstrates the Division's ability to enlist the cooperation and assistance of the FBI and other law enforcement agencies to investigate and to prosecute antitrust offenses.

GREATER COOPERATION WITH FOREIGN ANTITRUST AUTHORITIES

The Division today is cooperating with foreign antitrust authorities on an unprecedented scale, and negotiating agreements with other countries, to overcome the difficult hurdles -- especially in obtaining foreign-located evidence -- that national boundaries present to the detection and prosecution of international cartels.

Ever-increasing cooperation and coordination with foreign law enforcement agencies have been, and are now being, successfully utilized to prosecute international cartels. Our recent joint criminal investigations with the Canadians in the fax paper and plastic dinnerware cases are shining examples of how cross-border cooperation can work.

In the fax paper case, we and the Canadian Bureau of Competition Policy worked closely together to uncover and break up an international price-fixing conspiracy, much of which was conducted in Japan, in the $120-million thermal fax paper industry. Our coordination and cooperation in this matter, using the tools provided in our Mutual Legal Assistance Treaty, allowed each country to bring criminal antitrust charges. In addition, U.S.-Canadian coordination was also instrumental to our success in successfully prosecuting a price-fixing conspiracy in the $100-million plastic dinnerware industry.

These two cases vividly demonstrate the benefits and the need, especially in criminal cases, of obtaining a broad range of assistance from foreign law enforcement agencies, including taking of statements from witnesses, obtaining documents and other physical evidence in a form that would be admissible at trial, and executing searches and seizures.

Our invaluable cooperation with the Canadians was possible, as I mentioned, because of the mutual assistance treaty between our two countries. While the United States has mutual legal assistance treaties, or "MLATS," with sixteen other countries, our MLAT with Canada is the only MLAT to date that has been used by the United States to obtain assistance in antitrust investigations. We are currently exploring ways to increase our use of MLATS with other countries for antitrust cases.

Another category of agreements with foreign countries involve specific antitrust cooperation agreements. The United States has entered into these type of agreements with Australia, Canada, Germany, and the European Union. These agreements, while binding international obligations, do not override any provision of domestic law, including laws relating to confidentiality. While it is not always possible to use these agreements to facilitate assistance in our criminal investigations, the Division has been successful at times in using the assistance obtained through several of these agreements, as well as the use of traditional discovery tools such as letters rogatory, to prosecute foreign firms and individuals. For instance, an investigation into price fixing of aluminum phosphide, a fumigant used in grain storage, resulted in guilty pleas from American, German, and Brazilian corporations.

The General Electric/DeBeers case, about which much has been written in the media, is emblematic of the problems with international discovery in criminal price-fixing cases. That case, which was brought by the Division in 1994, involved a major and highly concentrated industry in synthetic diamonds, and presented evidence that we at the Justice Department believe demonstrated a criminal price-fixing conspiracy among the major foreign and U.S. producers. It was a difficult case because much of the documentary evidence and many of the witnesses were located abroad, out of the reach of United States subpoenas. We did not succeed in clearing the evidentiary hurdles before Judge Smith and we lost the case at trial.

I was convinced at the time that we brought the GE/DeBeers case that the indictment should be sought; I remain convinced today. The case demonstrates, better than words ever could, the determination of the Justice Department to prosecute the most difficult-to-prove

cartels -- where evidence is overseas because much of the conduct occurred overseas, but where we in good faith believe that, under the Principles of Federal Prosecution, we have a better than even chance of obtaining and sustaining a conviction. If we are not willing to bring complex, international cases, United States consumers and businesses will be victims of increasing numbers of foreign price-fixing cartels.

Fortunately, the problems of international discovery that we encountered in the GE/DeBeers case are surmountable and are solvable and we have taken an important step toward solving them. In order to provide the Division with additional tools to facilitate international cooperation, including assistance in criminal investigations, Congress last year passed important legislation -- the International Antitrust Enforcement Assistance Act (IAEAA) of 1994. That Act authorizes the Department of Justice and the Federal Trade Commission to negotiate reciprocal antitrust enforcement assistance agreements with other countries, agreements that will facilitate closer cooperation. It was passed with overwhelming bipartisan support in October of last year, just ten weeks after it was introduced. President Clinton signed it into law on November 2, 1994.

Under the provisions of the law, we will be able to negotiate written agreements with foreign antitrust enforcement agencies that will allow us to obtain evidence already in the files of those agencies or in the possession of persons in the territory of the other country in exchange for offering the same kind of assistance on a reciprocal basis to the foreign agencies. The basic model, by the way, is not new. It was used for legislation that helps the Securities and Exchange Commission and DOJ's Criminal Division obtain foreign-located evidence. One of the most important provisions of the Act is that reciprocal assistance depends upon the foreign agencies according information they receive the same level of confidentiality that such information is accorded in this country.

Once bilateral agreements under the Act are in place, our ability to obtain evidence abroad will be enhanced immeasurably. Cartels and price fixers will no longer enjoy de facto immunity from prosecution here just because they conduct their meetings outside the borders of the United States or take care to keep incriminating documents only in files located

abroad. The benefit to the American economy will be greater protection from the harmful effects of international cartels.

The challenge of antitrust enforcement in a global economy -- especially criminal enforcement -- is a major one. But with tools such as bilaterals negotiated under the IAEAA, we are working to ensure that the United States government will be up to the challenge.

GENERATING QUALITY CRIMINAL CASES INITIATIVE

The sixth major trend concerns the Antitrust Division's recent proactive efforts to uncover antitrust violations. One of the great problems in antitrust enforcement is to discover in the first place whether an antitrust violation has taken place. As a result, the Division, under Gary Spratling's leadership, undertook an examination of its ability to detect possible violations, and developed a comprehensive Generating Quality Criminal Cases Initiative to generate leads to suspicious conduct. The Initiative was created with the participation of all the criminal prosecutors in the Division. It resulted in a series of more than 20 concrete, prioritized recommendations for generating leads for more criminal cases.

Some of the highest priority recommendations were measures designed to increase the number of referrals of possible antitrust crimes from other investigative and prosecutorial agencies, such as U.S. Attorneys' Offices, the Fraud Section of the Criminal Division, the Federal Bureau of Investigation and the Inspector Generals' Offices of federal agencies. These various organizations, in the course of investigations in their particular areas of responsibility, very often obtain evidence of conduct that amounts to criminal antitrust violations. It is important that they be aware of the significance of that evidence and that they have an efficient mechanism for bringing it to our attention.

Pursuant to this Initiative, the Division's field office chiefs, who are primarily responsible for the Division's criminal enforcement program, contacted the United States Attorneys and the FBI Special Agents in Charge in their respective regions. The Division's

field chiefs set up a liaison procedure with the U.S. Attorneys and FBI offices, including a specific, regular referral mechanism between the various offices to refer leads or information concerning possible antitrust violations to the Antitrust Division. In addition, the Division's field offices have conducted many training sessions for U.S. Attorneys and FBI offices to increase their awareness of anticompetitive conduct.

The Antitrust Division also started a partnership with the Fraud Section of the Justice Department's Criminal Division for the purpose of increasing the likelihood that auditors and criminal investigators will detect anticompetitive practices and refer those leads to us. The Division created a similar relationship with the Justice Department's Civil Division to obtain referrals from the Civil Division's qui tam actions and to coordinate the investigation and prosecution of criminal antitrust violations uncovered by those qui tam actions. We have been advancing similar nationwide and regional measures with federal agencies' Inspector Generals' Offices.

Although these efforts have just recently been undertaken, they are already beginning to pay dividends in generating leads. For example, our enhanced referral mechanism with the Criminal Division's Fraud Section has generated new leads, one of which provided the basis for the initiation of a grand jury investigation.

Finally, as part of the Generating Quality Criminal Cases Initiative, the Division has devoted additional resources to detect and develop quality cases and to augment the field offices' ability to carry out their primary mission of prosecuting criminal antitrust violations. For example, the Division has assigned paralegals from our corps of Honors Program paralegals in Washington to criminal investigations in the field.

The Generating Quality Criminal Cases Initiative and the dedication of new resources to our criminal enforcement program reflect the continuing centrality of criminal enforcement to the Division's mission of protecting consumers and the economy from anticompetitive behavior. We are constantly and actively looking for ways to be more

efficient and more effective -- in other words, to get more out of every ounce of energy we put into the vital task of criminally enforcing the Sherman Act.

CONCLUSION

I hope that these comments make clear that criminal antitrust enforcement is a major and important part of what we do. We will continue to do everything to prosecute criminal activity fairly and vigorously. Moreover, as antitrust violations become increasingly globalized, we will increase our efforts to preserve and enhance the beneficial role of competition throughout the world. And finally, I want to express my gratitude and appreciation for the hard work and unstinting professionalism of the Division's prosecutors and professionals in enforcing our laws.