

A CENTURY OF GOVERNMENT ANTITRUST ENFORCEMENT UNDER THE CARTWRIGHT ACT

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Prologue

Competition law has a unique place in American jurisprudence. Sir Edward Coke famously wrote in 1599 that the English common law forbade monopolies and price-fixing.¹ This tradition was explicitly adopted in the charters of a number of American colonies.² And Thomas Jefferson argued that these provisions should be included in what became the Bill of Rights.³

But it was in state courts and state legislatures where this common law tradition was first explicitly brought into U.S. law.⁴ In California, appellate courts addressed both price-fixing and monopolization as common law problems. In the 1888 decision of *Santa Clara Valley Mill and Lumber Co. v. Hayes*, the California Supreme Court stated that, “among the contracts illegal under the common law, because opposed to public policy, were contracts in general restraint of trade; contracts between individuals, to prevent competition and keep up the price of articles of utility.”⁵ On this basis, the Court struck down a price-fixing agreement among suppliers to increase the price of lumber. In *Burdell v. Grandi*, the Court in 1907 struck down a scheme to create a monopoly in the sale of liquor in Point Reyes Station, a small community north of San Francisco, stating that “when the intent and purpose of [trade restraints] is to effect a monopoly of any lawful business or occupation in the person imposing them, they are void.”⁶

States also used new tools to address rampant cartel behavior in the 1880s and 1890s.⁷ One such strategy was to use state corporation law to attack price-fixing. In 1888, for example, California Attorney General George A. Johnson successfully sued a sugar company in San Francisco Superior Court for giving up its independence as a California corporation to the sugar cartel, securing the surrender of its charter and forfeit of its corporate franchise.⁸

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1 William B. Letwin, *English Common Law Concerning Monopolies*, 21 UNIV. CHI. L.R. 355, 356 (1954).

2 HANS B. THORELLI, *THE FEDERAL ANTITRUST POLICY* (1955).

3 William B. Letwin, *Congress and the Sherman Antitrust Law: 1887-1890*, 23 UNIV. CHI. L.R. 221, 226 (1956).

4 *Id.*

5 76 Cal. 387, 390 (1888).

6 152 Cal. 376, 380 (1907).

7 Rush H. Limbaugh, *Historic Origins of Anti-Trust Legislation*, 18 MO. L. REV. 215, 246 (1953).

8 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT (1889-1890); *California v. American Sugar Refining Co.*, in 7 RY. & CORP. L.J. (1890).

By the time the Sherman Act was enacted in 1890, 21 states had their own “anti-trust” laws. Both these statutes and state common law were key premises of Senator Sherman’s legislation. As he noted during floor debate in the U.S. Senate, his new law was designed to “supplement the enforcement of established rules of common law and statute law by the courts of the several States.”⁹

Despite state statutes, state common law, and the new federal Sherman Act, national and local cartel activity continued to flourish in the 1890s and early 20th century. This set the stage for another generation of state antitrust laws, and ultimately the enactment of the Clayton and Federal Trade Commission Acts in 1914. Neatly fitting into this next generation of state competition laws, California State Senator George W. Cartwright’s “trust-buster” legislation became law in 1907,¹⁰ touching off a wave of state and local enforcement activity.

I. Nascent Enforcement Efforts: 1907-1959

A. The California Attorney General

The Cartwright Act was an immediate success. With the Attorney General and district attorneys threatening enforcement actions, price-fixing arrangements among sellers of ice, bread, leather and meat folded.¹¹ But the new law was not without its flaws. In a case filed in 1908 by Attorney General Ulysses S. Webb and Sacramento District Attorney Eugene S. Wachhorst against a meat price-fixing arrangement in Sacramento, the Third District Court of Appeal wrestled with fundamental questions about this new statute.¹² These included whether prosecutors had to prove that defendants controlled the market; whether violation of the law was a felony or a misdemeanor; what courts should such cases be filed before; and whether prosecutors could use a grand jury. Likewise, in a price-fixing case brought by Attorney General Webb and Los Angeles District Attorney J. D. Fredericks against ice suppliers, the Second District Court of Appeal concluded that violations of the Act were intended to be treated as misdemeanors.¹³

But the new law, for all of its success, was quickly eviscerated by lobbyists in Sacramento. In 1909, two crucial provisos were engrafted onto the Act. One allowed price-fixing agreements if they were directed at securing “reasonable profits;” the other allowed for inter-corporate agreements.¹⁴

A deeply frustrated Attorney General Webb wrote in his biennial report for 1911-1912 that: “With much reason it is contended that these amendments to the anti-trust act have resulted in legalizing monopolies as effectively legislation could accomplish such result, and

9 21 Cong. Rec. 2547 (1890) (statement of Senator Sherman).

10 Cal. Stats. 1907, c. 530, p. 984, §§ 1-12.

11 *Trusts Go “Bust” in Just One Week*, L.A. TIMES II/1 (May 16, 1907); *Cartwright Antitrust Law Goes into Effect*, S. F. CALL, May 24, 1907, at 4/4.

12 *People v. Sacramento Butchers’ Assn.*, 12 Cal. App. 471 (1910).

13 *Union Ice Co. v. Rose*, 11 Cal. App. 357, 363 (1909).

14 Cal. Stats. 1909, p. 593.

nullified the entire purpose of the statute...Irrespective of the question of constitutionality of the statute because of the amendments noted, the operation of the law is practically suspended as a result of the effect that must be accorded these 'provisos.'"¹⁵

One of the few cases brought during this period was a challenge to a price-fixing agreement among wholesale bakers to set the downstream price of retailers. Since the profit being set was that of purchasers, and not the profit of the conspirators, the appellate court found the "reasonable profit" defense inapplicable.¹⁶

But even this limited use of the Act was soon interdicted. In 1927 the United States Supreme Court in *Cline v. Frink Dairy* concluded that identical language in a Colorado statute was void for vagueness.¹⁷ According to Chief Justice Taft, "Such an exception in the statute leaves the whole statute without a fixed standard of guilt in an adjudication affecting the liberty of the one accused." A decade later, the Central District of California in *Blake v. Paramount Pictures* concluded on the basis of *Cline* that, "when the [California] Legislature introduced these elements, the entire act became void for uncertainty."¹⁸

In 1940, Attorney General Earl Warren issued a little known opinion that distinguished the Colorado act at issue in *Cline* from the Cartwright Act, concluding that, "In the absence of any further decision on the question . . . we are of the view that the Cartwright Act, as originally enacted, is valid and in full force and effect."¹⁹ Six years later, these points were included in a crucial *amicus* brief from Attorney General Robert W. Kenny on behalf of plaintiffs in *Speegle v. Board of Fire Underwriters*.²⁰ The California Supreme Court adopted the reasoning of the earlier *Warren* opinion and held the Cartwright Act constitutional.²¹ And in a preview of battles to come, the Court also concluded that the Sherman Act did not preempt the Cartwright Act.

This decision was jubilantly greeted by Attorney General Kenny who wrote, "This decision puts teeth into the anti-trust law of this State, enabling its law enforcement officers to protect 'little business' from trusts and combinations in restraint of trade."²² In describing what became a special role of the California Attorney General, he also wrote, "I have regarded myself as the 'people's lawyer' and have been ever zealous in this role. Examples of work that I have accomplished in this field [include] litigation which resulted in establishing the validity of the State anti-trust laws and . . . in the litigation to . . . terminate the Ku Klux Klan in California."²³

15 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT 13 (1911-1912).

16 *People v. Jevne*, 179 Cal. 621 (1919).

17 *Cline v. Frink Dairy Co.*, 274 U.S. 445 (1927).

18 *Blake v. Paramount Pictures, Inc.*, 22 F. Supp. 249, 255 (C.D. Cal. 1938).

19 Cal. Atty. Gen., Indexed Letter, No. NS2806 (July 29, 1940).

20 29 Cal. 2d 34 (1946).

21 *Id.* at 47.

22 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT 31 (1944-1946).

23 *Id.* at 8.

The potential importance of the win in *Speegle* only slowly became apparent. An article in the Stanford Law Review in 1946, entitled *The Cartwright Act – California’s Sleeping Beauty*, was the first indication of the implications of this decision and a potentially robust state antitrust law.²⁴

Based on the victory in *Speegle*, Attorney General Kenny sought funding of “a unit consisting of attorneys and investigators, charged with the duty of enforcing the anti-trust laws of the State . . . [so that] . . . [t]hrough their use, the industrial growth of California can be kept free from artificial hindrance.”²⁵ Unfortunately, the Legislature decided not to fund the proposed unit.

Not until the administration of Edmund G. (Pat) Brown did antitrust again take center stage in the Attorney General’s office. In 1953, a case against building maintenance companies was filed and resolved.²⁶ In 1955, Attorney General Brown announced plans for an “intensified antitrust drive,” focusing on use of the Cartwright Act.²⁷ In 1957, Brown announced the filing of a price-fixing action against school book publishers.²⁸

B. District Attorneys

Although local prosecutors during the first half of the 20th century were preoccupied with enforcing criminal laws that promoted public safety, they also managed to play a significant role in addressing white collar crime through enforcement of the Cartwright Act.

When the Cartwright Act became effective on March 23, 1907,²⁹ Los Angeles County District Attorney John D. Fredericks – or “Capt. Fredericks,” as the newspapers referred to him because he had served as an adjutant during the Spanish–American War³⁰ – declared: “This law is designed to put an end to all combinations and so-called ‘trusts’ acting in restraint of trade and trying to smother competition.”³¹ Alameda County District Attorney Everett J. Brown announced his intention “of vigorously enforcing” the provisions of the law in his county.³²

Newspaper headlines not only reported that businesses intended to comply with the new law, but revealed how widespread were price-fixing trusts and combinations. As a result of the Act, businesses changed their practices.³³ The *Los Angeles Times* heralded that “the greatest triumph for the new law . . . is the wiping out of the lumber trust.”³⁴ The local

24 Note, *The Cartwright Act – California’s Sleeping Beauty*, 2 STAN. L. REV. 200 (1949)

25 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT 9 (1944-1946).

26 *People v. Building Maintenance Contractors*, 1953 Cal. App. LEXIS 2053 (March 3, 1953).

27 *Intensified Antitrust Drive Planned in State*, L.A. TIMES, May 11, 1955, at 10.

28 *California Acts to Bar Schoolbook Publishers*, L.A. TIMES, Jan. 4, 1957, 24.

29 *Trusts Go “Bust” in Just One Week*, L.A. TIMES, May 16, 1907, at II/1.

30 *The County Ticket*, L.A. TIMES, Aug. 23, 1902, at 6.

31 *Cartwright Antitrust Law Goes Into Effect*, THE S.F. CALL, May 24, 1907, at 4/5.

32 *Id.*

33 *Id.*

34 *Trusts Go “Bust” in Just One Week*, L.A. TIMES, May 16, 1907, at II/1.

association of bakers ceased fixing their prices.³⁵ Power companies terminated their rate conspiracies.³⁶ Lighting companies ended their longtime market division and price-fixing.³⁷ The association of local flour millers, with all the earmarks of a trust, ceased colluding.³⁸ Los Angeles ice producers conceded they worked under a uniform price and vowed to change.³⁹ Associations of wholesale grocers terminated all price agreements and “permitted competition to have full sway.”⁴⁰ A combination of furniture dealers said it will “cease operation along the tabooed lines.”⁴¹ Early on, labor, too, was thought to be within the Act’s reach and the Truck and Teamsters’ Union No. 208 confessed that they had illegally agreed to sell their labor at a set price.⁴²

It was widely suspected that Los Angeles was plagued by two binding trusts:⁴³ the meat packers, and the combination of the fire insurance companies who raised the cost of insurance to an “utterly unreasonable level.” The fire insurers were accused of displaying “plundering proclivities.”⁴⁴

The local press noted that Frank W. Blair was District Attorney Frederick’s “trust-busting assistant,” and that “dozens of other combinations have been found without much trouble by the District Attorney and his assistants.”⁴⁵

Fredericks’ tenure was distinguished by anti-saloon league case filings, the prosecution of Colonel Griffith J. Griffith for shooting his wife – which Fredericks personally handled⁴⁶ – and by the Los Angeles Times bombing trial in which 20 people died; there were no antitrust prosecutions during this period.⁴⁷ This may have been because it appeared that businesses were complying with the new law, but it is doubtless also the case that staffing may have been an issue. When Fredericks’ tenure began in 1902, the Los Angeles office had five deputies and one stenographer serving 100,000 county inhabitants.⁴⁸ Murders and

35 *Id.*

36 *id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Trusts Go “Bust” in Just One Week*, L.A. Times, May 16, 1907, at II/1.

41 *Id.*

42 *Id.*

43 L.A. TIMES, Mar. 6, 1907, at II/4

44 *Id.*

45 *Trusts Go “Bust” in Just One Week*, L.A. TIMES, May 16, 1907, at II/1.

46 L.A. TIMES, at Sep. 7, 1903, 4.

47 The office looked into price fixing by the “ice trust” in August of 1907, even presenting the charges before the grand jury, but apparently an indictment was not returned. See L.A. TIMES, Aug. 10, 1907.

48 L.A. TIMES, Jan. 3, at 1915, II/7.

49 *District Attorney’s Report, Biennial Filed*, L.A. TIMES, Aug. 13, 1904, at A/2.

other felonies, not economic crimes, were clearly the priority.⁴⁹ When Fredericks left office in 1914, the staff had grown to fifty men and women⁵⁰ serving 800,000 inhabitants.⁵¹

Thomas L. Woolwine followed his old adversary Fredericks as Los Angeles District Attorney,⁵² a post he held for eight and a half years, during which he initiated several significant antitrust cases. In 1917, when the country was at war and food reserves were low, Woolwine called for a grand jury investigation into the manipulation of food prices. His initial target was the bread trust. The prosecution charged eleven wholesale bakers and sixteen officers with conspiring to fix the retail price of a loaf of bread – raising it to 15 cents – in violation of the Cartwright law.⁵³ It was alleged that the defendants reached a uniform price agreement at a meeting that took place six months prior to trial.⁵⁴ Evidence showed that the trust sought to enforce its price hike at the retail level by threatening to cut off supply to the grocers.⁵⁵

The bread trust trial was a “hot legal battle” which began on September 25, 1917 before Judge Frederick W. Houser (later a California Supreme Court Justice).⁵⁶ Woolwine personally conducted the trial, assisted by Chief Deputy George E. Cryer (later Mayor of Los Angeles) and deputies W. C. Doran and Shelly. Fifty prosecution witnesses testified.⁵⁷ The bakers’ first line of defense was that they were not guilty; their fallback was reliance on a 1909 amendment to the Cartwright Act to the effect that any combination to raise prices which does not provide unreasonable profits is permissible.⁵⁸ The defense introduced evidence of the increased cost of flour and other ingredients. The court ruled for the prosecution, declaring that evidence of increased costs could be considered only for the purpose of throwing light on whether the bakers had entered into a conspiracy.⁵⁹

The bread trust trial took about two and a half weeks. In Woolwine’s closing argument, lasting three hours,⁶⁰ he castigated the bakers: “The practice of cornering food stuffs and combining so as to deprive the people of their right to legitimate competition in business, thereby making the necessaries of life so costly as to be beyond the reach of the poor, is to my mind, one of the most serious offenses of which a combination of men may be guilty.”⁶¹

50 The first woman prosecutor in Los Angeles County, Clara Shortridge Foltz, was hired by Fredericks in 1910. See L.A. TIMES, Apr. 24, 1910, at II/1.

51 L.A. TIMES, Jan. 3, 1915, at II/7.

52 Jane Apostal, *District Attorney Thomas Lee Woolwine: Stormy Petrel of Politics*, 87 S. CAL. Q. 4, 389 (2005–2006).

53 L.A. TIMES, Oct. 10, 1917, at II/5; L.A. TIMES, Sep. 25, 1917, at II/8.

54 L.A. TIMES, Sep. 26, 1917, at II/1.

55 *Id.*

56 L.A. TIMES, Sep. 25, 1917, at II/8.

57 L.A. TIMES, May 8, 1917, at 17.

58 L.A. TIMES, Sep. 27, 1917, at II/1. For the amendment’s language see *People v. H. Jevne Co.* 179 Cal. 621, 624 (1919). The 1909 amendment (since held invalid and repealed) exempted restraints designed to secure reasonable profits.

59 *State Scores in Case Against Bread-Makers*, L.A. TIMES, Oct. 5, 1917, at II/5.

60 L.A. TIMES, Oct. 10, 1917, at II/5.

61 *Bakers, Convicted, Plan Fight to Last Court*, L.A. TIMES, Oct. 12, 1917, at II/1; see also APOSTAL, *supra* note 52, at 387.

Woolwine's keen cross-examination and closing argument were said to have been among the best efforts of his career.⁶² The jury found nine individuals and eleven corporations guilty of restraint of trade, and the case was affirmed on appeal.⁶³

Undoubtedly bolstered by the bakers' conviction, Woolwine released a statement urging county residents to "promptly inform the District Attorney of any and all acts that may appear to be in violation of the antitrust laws. Men, who, at such a time [during World War I] stoop to the practice of extorting from the people illegal and wholly unwarranted profits are nothing less than traitors to their country and profiteers of the worst sort."⁶⁴

On the heels of the bread trust trial, Woolwine reportedly made a careful study of the Cartwright Act to ascertain whether, under its provisions, he could prosecute the sugar refineries.⁶⁵ The refiners were receiving a higher price for sugar, but had banded together and refused to pay the growers more for the beets. The growers were in revolt against what came to be called the "sugar trust."⁶⁶ Woolwine remarked: "I consider the actions of the refineries unlawful [S]everal of those . . . made in excess of 100 per cent on their investments. The profits of one were almost 175 per cent."⁶⁷ He traveled to Washington to present the facts to Food Administrator Herbert Hoover and a Senate committee; threatened to prosecute the refiners;⁶⁸ and, in the end, got Hoover to appoint a commission that forged a compromise giving the growers⁶⁹ an increase in the price of beets from 7 dollars a ton to twelve dollars.⁷⁰

The milk trust was a further antitrust investigation that Woolwine led.⁷¹ The suspicion of a milk trust had pervaded Los Angeles County since at least 1902.⁷² Los Angeles Mayor Arthur C. Harper had been after the milk trust.⁷³ In San Francisco, the milk trust and the Milk Wagon Drivers' Union were thought to have joined forces to increase the price of milk.⁷⁴ Across the country the American Farm Products Co., a trust organized to control the country's supply of butter, milk, eggs and chickens,⁷⁵ raised the hackles of many. In late 1918 Woolwine told the grand jury that a number of small milk dealers in Los Angeles had been forced out of business through the alleged machinations of a "milk combine."⁷⁶

62 *Bakers, Convicted, Plan Fight to Last Court*, L.A. TIMES, Oct. 12, 1917, at II/1.

63 *Id.*; *People v. H. Jevne Co.* 179 Cal. 621 (1919).

64 *Tell Authorities If You're Gouged*, L.A. TIMES, Nov. 3, 1917, at II/5.

65 L.A. TIMES, Dec. 2, 1917, at I/8.

66 *Charge Sugar Trust is Blocking Work Here*, L.A. TIMES, Dec. 9, 1917, at II/2.

67 *May Prosecute the Refiners*, L.A. TIMES, Dec. 2, 1917, at I/8.

68 *Id.*

69 *Substantial Victory is Won by Beet Growers*, L.A. TIMES, Mar. 21, 1918, at II/1.

70 APOSTAL, *supra* note 52, at .

71 L.A. TIMES, July 9, 1925, at A/1.

72 L.A. TIMES, Feb. 28, 1902, at 10.

73 L.A. TIMES, Feb. 7, 1907, at II/1.

74 L.A. TIMES, Mar. 12, 1905, at VI/10.

75 L.A. TIMES, July 2, 1906, at 12.

76 *Milk Dealers Frozen Out By Alleged 'Combine'*, L.A. TIMES, Aug. 16, 1918, at II/3.

In Woolwine's work with the grand jury on its general inquiry into the "high cost of living," price-fixing among poultry dealers (i.e., eggs) was also probed for antitrust violations.⁷⁷ During Woolwine's ill-fated run for governor in 1922 he received important endorsements on the strength of his antitrust enforcement work.⁷⁸ He stepped down as district attorney in 1923 because of a two-year illness and died shortly thereafter at the age of 50. Woolwine was a relentless crusader against crime. He ran for district attorney four times, for governor twice; personally conducted many high-profile prosecutions for murder and corruption; and contributed to the downfall of two mayors. Woolwine might have been utterly spent. He was remembered as a forceful, fearless, and indefatigable public servant.⁷⁹

By the second decade of the 20th century, collusive business practices among milk producers had become an issue throughout California. In 1919, San Francisco's Acting District Attorney, Fred L. Berry, took the milk trust to the grand jury alleging price-fixing.⁸⁰ "Throughout five district associations covering all milk producing in the state, a central organization of products contracted to fix the price of milk to dealers at 32 cents a gallon and the price of distributors to consumers at 14 cents a quart," said Berry.⁸¹ He claimed this was a clear violation of the Cartwright Act, as interpreted in *People v. H. Jevne Co.*⁸²

In 1938, Fresno County District Attorney Daniel Francis Conway took to the grand jury charges that the Master Plumbers' Association was "fixing prices and throttling competition."⁸³ Conway said that his investigation has revealed that the plumbers' were charging rates higher than necessary, and that indictments would be sought for all plumbers involved.⁸⁴

In 1955, Los Angeles District Attorney S. Ernest Roll and then-Los Angeles Mayor C. Norris Poulson got into a verbal war over whether Roll was "taking refuge in a technicality" in declining to press the grand jury to investigate alleged racketeering by rubbish collection interests in violation of the Cartwright Act.⁸⁵ Roll maintained that the Supreme Court had held that a conspiracy to violate the Cartwright Act was a misdemeanor, not a felony.⁸⁶ Since the grand jury had no authority to investigate misdemeanors, he believed it was precluded from pursuing an alleged conspiracy among garbage collectors under Cartwright.

In October, 1962, California Attorney General Stanley Mosk and Los Angeles District Attorney William B. McKesson filed a lawsuit in superior court against the California Real

77 *Jury Inquires Into Food Cost*, L.A. TIMES, Nov. 8, 1917, at II/5.

78 SACRAMENTO UNION, Aug. 18, 1922.

79 APOSTAL, *supra* note 52, at 394 (2005-2006); WILLIAM A. SPALDING, 3 HISTORY OF LOS ANGELES 391 (1931).

80 L.A. TIMES, May 20, 1919, at I/4.

81 *Id.*

82 179 Cal. 621 (1919); L.A. TIMES, May 20, 1919, at I/4.

83 L.A. TIMES, Jan. 29, 1938, at A/8.

84 *Id.*

85 L.A. TIMES, June 11, 1955, at 2.

86 *Id.*

Estate Association (CREA) and 17 southern California realty boards, accusing them of violating price-fixing provisions of the Cartwright Act.⁸⁷ The CREA denied fixing compulsory commission rates, claiming that they varied according to the community and amount of service.⁸⁸ However, a consent decree signed by Superior Court Judge McIntyre Faries ordered the CREA and local boards to abolish fee schedules within three months and enjoined them from setting commission rates “in any form whatsoever.”⁸⁹ Mosk observed: “This means that now the broker is free to let individual circumstances and general market conditions determine his fee and the seller, at long last, has the opportunity to seek a better brokerage deal.”⁹⁰

II. The Attorney General’s Office Comes Into Its Own: The 1960s

In 1959, Attorney General Edmund G. (Pat) Brown became Governor Brown and allocated \$90,000 for a new antitrust unit in the Attorney General’s office. Then-Attorney General Stanley Mosk used this appropriation to appoint William C. Dixon, a former federal antitrust prosecutor, to head up a new antitrust strike force. According to one of the deputies on the task force, Dixon’s initial focus was on highly visible, “quick hits.”

This “four-man trust and trade practices unit in the Los Angeles office” filed four major cases in its first year of operation. These included actions against Wear-Ever Aluminum Company, Inc. for a conspiracy to set the price of food service equipment sold to governmental agencies and consumers; five marble and tile-setting firms for maintaining a bid clearinghouse on commercial and public construction bids; American Optical Company for charging reduced prices to privileged firms and opticians; the Riverside County Bid Depository for restricting bids on public construction jobs. In addition, the unit prepared a major case against “six national manufacturers of folding gymnasium bleachers for price fixing,” seeking damages of \$1 million.⁹¹ The Attorney General, describing the new unit in his Biennial Report, argued that, “the state Antitrust Act is a potent weapon in the constant struggle to maintain our traditional American free enterprise system.”⁹²

A series of highly publicized prosecutions followed.⁹³ In 1961, Mosk filed a criminal action against fifteen companies and three individuals for conspiring to fix the price of concrete blocks.⁹⁴ During the investigation, one of the individual defendants challenged an AG investigative subpoena, and gave his name to a seminal decision on the investigative powers of state and local prosecutors, in *Brovelli v. Superior Court*.⁹⁵ In 1962, Mosk and Los

87 L.A. TIMES, Aug. 26, 1962, at J/5.

88 *Id.*

89 *Id.*

90 *Id.*

91 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT 10-11 (1958-1960).

92 *Id.*

93 *How Price Fixing Raises Your Taxes*, L.A. DAILY EXAMINER, Feb. 5, 1961 and Feb. 12, 1961.

94 *Concrete Block Price Fixing Alleged by State*, L.A. TIMES, Sept. 29, 1961, at B/3.

95 56 Cal. 2d 524 (1961).

Angeles District Attorney McKesson filed a lawsuit against the California Real Estate Association (referenced earlier), which precluded CREA from barring realtors from multiple listing services because of price cutting.⁹⁶ In 1963, a criminal action against hardware suppliers for submitting “collusive bids” in private and public construction projects led to guilty pleas under the Cartwright Act.⁹⁷

Mosk also sought to strengthen the Cartwright Act. He sponsored, and Governor Brown signed, a series of bills to update the Cartwright Act. AB 2593 (Allen and Williamson) replaced the double damages provision of the original Act with treble damages.⁹⁸ AB 2595 (Allen) added a provision allowing the Attorney General to seek “corporate dissolution” for violations of the Act.⁹⁹ AB 891 (Z’Berg) added a provision copying section 3 of the Clayton Act.¹⁰⁰ AB 892 (Z’Berg) repealed the reasonable profit provision that had raised constitutional questions.¹⁰¹ And AB 893 (Z’Berg) authorized the Attorney General to bring damage actions on behalf of the State, its agencies and political subdivisions.¹⁰²

Mosk was a strong national advocate of state antitrust enforcement, arguing in a 1962 article for the American Bar Association that state-federal coordination of antitrust enforcement was crucial but that preemption of state antitrust law would be improper, relying on *Speegle*.¹⁰³ A similar note was sounded by Wallace Holland, a Harvard Law School graduate and former member of the Roosevelt “brain trust,” who took over from Dixon. In his own 1966 article for the ABA, Holland argued that states had a central role in any national system of antitrust enforcement.¹⁰⁴

Under Holland, price-fixing actions were brought against suppliers of library shelving, concrete pipe, liquid asphalt, broad spectrum antibiotics, plumbing fixtures and acoustical ceiling tile. Attorney General Evelle Younger reported in his Biennial Report for 1973–1975, that two of these cases settled for tens of millions of dollars. After rejecting an offer in the *Antibiotics* case in 1969 that would have generated \$10 million for California, Attorney General Younger and his staff settled the case in October 1973 for \$28,140,000.¹⁰⁵ *Liquid Asphalt* settled in 1975 for a total of \$11,600,000.¹⁰⁶

96 *Realtors: Court Orders an End to Fee Scales*, L.A. TIMES, August 6, 1962, at J/5.

97 *Hardware Firms Plead in Anti-Trust Action*, L.A. TIMES, Dec. 13, 1963, at A/2.

98 Cal. Stats. 1959, ch. 2078.

99 Cal. Stats. 1959, ch. 2079.

100 Cal. Stats. 1961, ch. 738.

101 Cal. Stats. 1961, ch. 796. This was a technical amendment to the Act because the reasonable profit proviso had already been held unconstitutional in *People v. Building Maintenance Contractors Ass’n.*, 41 Cal. 2d 719 (1953).

102 Cal. Stats. 1961, ch. 1023.

103 Stanley Mosk, *State Antitrust Enforcement and Coordination with Federal Enforcement*, 21 SECTION OF ANTITRUST LAW, AMERICAN BAR ASSOCIATION, ANTITRUST L.J. 358 (1962).

104 Wallace Holland, *Enforcement of State Antitrust Laws*, 29 SECTION OF ANTITRUST LAW, AMERICAN BAR ASSOCIATION, ANTITRUST L.J. 258 (1966).

105 *California v. Chas. Pfizer & Co., Inc.*, N.D. Cal. Civ. No. 49044, *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 701 (D.Minn. 1975).

106 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT (1973–1975) 22–23.

Energy took center stage for the nation and Attorney General Younger's office in the 1970's. A massive investigation of petroleum and natural gas prices ultimately led to the California Supreme court's decision in *Younger v. Jensen*,¹⁰⁷ affirming broad powers of investigation for state antitrust prosecutors. These investigative efforts also led to the filing of price-fixing actions against oil companies for depressing payments to the State for tidelands oil and increasing the price of gasoline and other petroleum products to consumers.¹⁰⁸ Both cases were led by Supervising Deputy Attorney General Michael Spiegel, with able assistance from Peter Shack, Wayne Liao and Charlie Kagay. Both cases were resolved in favor of the Attorney General's office after significant wins in the Ninth Circuit.¹⁰⁹

While these cases garnered headlines, the Attorney General filed cases against the automobile industry for elimination of fleet discounts and for restraining development of less polluting vehicles; master key companies for bid-rigging and market division; and price-fixing in the armored car, acoustical ceiling tile, plumbing fixture, cast iron pipe, refined sugar, snack food and gypsum wall board industries.

A case filed in San Francisco Superior Court against Levi Straus & Company¹¹⁰ under the Cartwright Act led to a multi-million dollar settlement of vertical price-fixing claims by the Attorney General. Without admitting liability, the company agreed to pay \$12.5 million. Distribution of this settlement was facilitated by a significant advertising program under Attorney General Deukmejian that led to claims being filed by 4.6 million California consumers.¹¹¹ In 1980, Deukmejian also filed an action against steel reinforcing contractors on behalf of state and local purchasers of roads and building in Los Angeles Superior Court; this case was settled for \$1.4 million in 1984 during the administration of John Van De Kamp.¹¹²

III. The Return Of Local Antitrust Prosecutions: 1974-1995

A. The San Diego District Attorney's Office: Re-Awakening the Local "Sleeping Beauties" in the 1970s

The renaissance of state antitrust law, beginning in the 1960s after the groundbreaking national antibiotics and interstate highway cases, resulted not only in a revival of enforcement by state Attorneys General but also contributed to the return of local antitrust

107 26 Cal. 3d 397 (1980).

108 *California v. Chevron Corp., et al.*, C.D. Cal. Civ. No. 76-2893, *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, MDL 150 AWT (products); *City of Long Beach and State of California v. Standard Oil Co. of California, et al.*, C.D. Cal. No. CV 75-2232 (crude oil).

109 *City of Long Beach, et al. v. Standard Oil of California*, 872 F.2d 1401 (9th Cir. 1989); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, MDL No. 150, 906 F.2d 432 (9th Cir. 1990).

110 *People v. Levi Strauss & Co.*, S.F. Superior Court No. 739024.

111 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT 47 (1979-1980); *see also State v. Levi Strauss & Co.*, 41 Cal. 3d 460 (1986).

112 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, BIENNIAL REPORT 117 (1985-1986).

enforcement in California, starting in San Diego County and moving rapidly to Los Angeles County and elsewhere.¹¹³

There had been a considerable hiatus. In the first fifteen years after the Cartwright Act's passage, Los Angeles District Attorney Thomas L. Woolwine and other active local prosecutors, such as San Francisco District Attorney Fred L. Berry, and Fresno District Attorney Daniel Francis Conway, were among the principal pioneers of public enforcement under the new state law. But after this initial wave of trust busting and the collapse of numerous local cartels,¹¹⁴ other local law enforcement priorities took precedence, and a half-century period of inactivity followed.

The title of the 1949 Stanford Law Review article describing the Cartwright Act as "California's Sleeping Beauty"¹¹⁵ also captures the somnolent state of public enforcement activity between the early 1920s and the 1950s, and this was true of local prosecutors for a longer period than their counterparts in the California Department of Justice.

During the early 1970s the local "sleeping beauties," led by the San Diego District Attorney's Office, awakened and rapidly moved to join the renewal of Cartwright Act law enforcement begun by Attorney Generals Edmund G. (Pat) Brown and Stanley Mosk, and continued later by Attorney Generals John Van de Kamp and George Deukmejian.¹¹⁶

Local prosecutors in California took up the antitrust cudgel once again and a new period of pioneering in local antitrust enforcement – this time with regional and even national implications – was ushered in.¹¹⁷ Significant new applications of both civil and criminal antitrust authority followed, including innovations in the use of investigative tactics such as undercover recordings and search warrants and renewed emphasis on criminal enforcement powers to supplement civil enforcement.

The return of local Cartwright Act enforcement began first in San Diego County. Newly elected San Diego District Attorney Edwin L. Miller, Jr., brought to office a special interest in the prosecution of white collar crime, including consumer fraud and antitrust matters. Shortly after his election in 1970, District Attorney Miller assembled a group of

113 For discussion of the multiple causes of the renewed interest in state antitrust law, see generally SECTION OF ANTITRUST LAW, AMERICAN BAR ASSOCIATION, MONOGRAPH 15: THE ROLE OF STATE LAW 4-5 (1988).

114 See generally part I.B. of this article.

115 See Note, *The Cartwright Act – California's Sleeping Beauty*, 2 STAN. L. REV. 200 (1949).

116 See generally, parts I and II, *supra*. During this period a succession of antitrust prosecutors in the California Department of Justice advanced the cause of public enforcement and encouraged and joined with their local colleagues in the continuing upsurge of enforcement. The assistant and deputy attorneys general who accelerated and expanded the Attorney General's antitrust program included Andrea Sheridan Ordin, Sanford Gruskin, Chester Horne, William Clark, Michael Strumwasser, and Frederick Woocher. Later their work was continued and expanded by other prosecutors and supervisors including Thomas Greene, Kathleen Foote, Barbara Motz, and many others.

117 While the large majority of local prosecutions under the Cartwright Act during this period occurred in San Diego and Los Angeles counties, prosecutors in a number of other counties – including the District Attorney's Offices in Alameda, San Francisco, Santa Clara, San Mateo, Orange, and Ventura Counties – also pursued antitrust and related unfair competition matters and helped expand this work throughout the state.

experienced economic crime prosecutors to staff his new Fraud Division.¹¹⁸ Former Nader's Raider¹¹⁹ Robert C. Fellmeth joined the District Attorney's Office in 1973 and promptly proposed the creation of a formal antitrust unit within the Fraud Division. District Attorney Miller enthusiastically agreed, assigning Fellmeth as the chief of the new unit. The San Diego District Attorney's Antitrust Section thus became the first dedicated antitrust enforcement unit in a local prosecutor's office in California.

The rationale for a separate unit for such prosecutions derives from the unusual nature of antitrust cases as contrasted with more typical fraud cases prosecuted by district attorneys. Many consumer fraud and investor fraud cases involve articulate victims willing and anxious to come forth and help support prosecution and restitution. Other such cases involve aggrieved businesses that retain counsel to file suits or bring evidence to the attention of local prosecutors. By contrast, most local or regional antitrust cases – and particularly those involving industry-wide collusion – do not produce outside sources to bring competitive problems and assistance to the attention of prosecutors. In many antitrust cases the real victims may be completely unaware that they have been victimized.

In the experience of the county prosecutors in San Diego and Los Angeles, most such antitrust matters require that the investigators and prosecutors act on their own initiative and proceed without relying on evidence or help from victims or competitors. In the early 1970s the management of the San Diego District Attorney's Office recognized that a prosecutor with a caseload of street crimes with pressing court dates, or of consumer fraud cases with their unique exigencies and pressures, finds it difficult to devote the time and resources to complex antitrust matters requiring initiative and uninterrupted focus. The San Diego and Los Angeles offices perceived that a separate unit, with resources dedicated on a fulltime basis to such work, is important to success in local antitrust enforcement. These Southern California prosecutors also concluded that such a unit required the assignment of investigators to work under the antitrust prosecutor directly and on a fulltime and dedicated basis as part of a vertical prosecution system.

In its first eight years of fulltime operations (1974 to 1982), the San Diego District Attorney's Antitrust Section filed 22 antitrust cases, successfully obtaining judgments in 21 of them. The unit's first cases, *People v. Revlon*¹²⁰ and *People v TFI (Central Diagnostic Laboratory)*,¹²¹ involved group boycotts, kickbacks and related violations by medical laboratories. The unit's undercover operations and its analysis of voluminous evidence resulted in a series of judgments and significant direct consumer restitution for laboratory overcharges to a number of elderly victims and others.

118 Under the leadership of division chief James Lorenz (and later Robert O'Neill), the San Diego DA's Fraud Division was staffed by veteran fraud prosecutors such as Anthony Samson, Charles Hayes, John Heisner, and later Clifford Dobrin, Patricia Pummill and many others. In particular DDA Tony Samson played a leadership role in antitrust and consumer fraud matters for the Fraud Division from 1973 to the 2008 publication date of this article, and he continues there today.

119 "Nader's Raiders" refers to the original small team of talented young lawyers who Ralph Nader tapped to work with him as consumer advocates.

120 *People v. Revlon*, S.D. Superior Ct. (October 1975).

121 *People v TFI (Central Diagnostic Laboratory)*, S.D. Superior Ct. (October 1975).

The major reported case in the first few years of the Antitrust Section was *People v. Mobile Magic Sales Inc.*¹²² Defendant Mobile Magic Sales operated mobile home parks and sold mobile homes for use in its parks. Mobile Magic was found to be engaging in unfair competition and unlawfully tying the purchase of mobile homes to scarce lease spaces in its parks. The appellate opinion vindicated the Antitrust Section's civil Cartwright Act and Unfair Competition Law lawsuit, contributing to the development of tying law under sections 16727 and 16720 and clarifying the principles governing preliminary injunctions as a means of preserving the competitive *status quo ante* pending trial. The Court of Appeal's affirmance of the Antitrust Section's successful preliminary injunction motion helped demonstrate the value of quick action to preserve a competitive market and mitigate competitive harms.¹²³

The San Diego District Attorney's antitrust unit collaborated actively with its local, state and federal prosecutorial colleagues on a number of successful projects. At the time the San Diego antitrust unit was being formed, Los Angeles Deputy District Attorney James Knapp and Head Deputy Richard P. Kalustian were advancing a similar proposal for a dedicated antitrust unit in the Los Angeles District Attorney's Office within that Office's Consumer and Environmental Protection Division.¹²⁴ During these efforts, the San Diego antitrust unit worked with DDA Knapp on a grand jury investigation into retail oil price-fixing that, while not concluding with an indictment, uncovered nascent price signaling practices and appears to have deterred industry collusion in its gestation.

San Diego Antitrust Section chief Bob Fellmeth also worked to bring the newly formed California District Attorneys Association (CDAA) into the Cartwright Act developmental process. The San Diego unit filed *amicus curiae* briefs and DDA Fellmeth argued before the Supreme Court on behalf of the CDAA in such cases as *People v. Pacific Land Research*,¹²⁵ which addressed principles for consolidation of private and public antitrust actions and confirmed the law enforcement nature of public Cartwright Act and UCL cases, and in *Corsetti v. Rice*,¹²⁶ concerning vertical price fixing in wine sales.

During this period the San Diego District Attorney's Office and Antitrust Section chief Bob Fellmeth played a principal role in proposing, drafting, and securing passage of bills, authored by Assembly Member Alan Sieroty, reorganizing and amending the Cartwright Act and the Unfair Competition Law.¹²⁷

Cooperation with federal enforcement authorities became important as the U.S. Department of Justice Antitrust Division contracted in size and activity throughout the

122 96 Cal. App. 3d 1 (1979).

123 This kind of preliminary injunction action by public officials is often the only source of such prophylactic remedies. Private litigants will not always opt to spend the resources and effort to seek such relief. In part this is product of treble damage interests, which sometimes create a disincentive to prompt action because of the importance of accruing compensable antitrust injury.

124 See part III.C, *infra*.

125 20 Cal. 3d 10 (1977).

126 21 Cal. 3d 431 (1978).

127 Cal. Stats. 1977, ch. 299, § 1.

1970s and early 1980s. In this era the federal Antitrust Division never maintained a fulltime presence in San Diego, and its Los Angeles field office was reduced in size and ultimately closed. To meet the growing need and address multi-jurisdictional matters, the San Diego District Attorney established a “joint commission” program in the late 1970s, allowing deputy DA’s to receive coextensive appointments as Assistant U.S. Attorneys, and these joint powers led to several multi-agency investigations in this period.

B. Local Prosecution Comes of Age: *People v. National Association of Realtors*

In many respects the signal case for Cartwright Act local prosecution during this period of renewal was the real estate brokers case, ultimately vindicated in appellate decisions in *People v. National Association of Realtors, et al.*,¹²⁸ and *People v. National Association of Realtors, et al. (NAR II)*.¹²⁹ Known as the “NAR case,” this enforcement action by the San Diego District Attorney and the California Attorney General challenged a series of anticompetitive real estate brokerage practices, including local activities by the San Diego Board of Realtors (SDBR) and several practices of national significance undertaken by the massive National Association of Realtors (NAR), headquartered in Chicago, Illinois, and its California affiliate.

The nationally significant violations primarily involved anticompetitive practices surrounding the “multiple listing service” (MLS) used both by licensed real estate brokers who represented sellers and by those who found buyers. In the days before digital databases and Internet property listings, a broker’s access to the published MLS book was essential to doing business. The MLS book effectively constituted the marketplace, with listings and information about virtually every property for sale. These MLS markets were largely dominated throughout the United States by the National Association of Realtors, a private trade association controlling the trade name “Realtor” and maintaining that dominance through state and local chapters. Contrary to the impression of much of the public, this trade association was not part of any governmental body, although such misunderstanding was exacerbated by nomenclature such as “San Diego Board of Realtors,” which confusingly mimicked the names of state and local regulatory agencies (such as the Contractors State License Board).

The various chapters of the National Association of Realtors, including the SDBR, charged MLS participants fees to cover the cost of MLS production and management, but also required that all brokers seeking to use the MLS join the private Realtors trade association and pay the dues of the local, state, and national Realtors organizations – dues which were directed to political campaigns and lobbying efforts for the private political benefit of the Realtor system, among other uses. As the Realtor organization, and its vital MLS, constituted the only viable marketplace for San Diego brokers, these requirements were effective unlawful tying arrangements backed by the substantial threat of a group boycott, which could be effectuated by denying access to the essential facility of the MLS.

128 120 Cal.App. 3d 459 (1981).

129 155 Cal.App. 3d 578 (1984).

The San Diego Antitrust Section viewed this system of trade restraints not only as unlawful tying and a group boycott, but also as an important transgression of the line between public and private authority. Under policies dating back to the 15th century *Schoolmaster's Case*,¹³⁰ Anglo-American law has held it a violation of competitive freedom for a private individual or group of competitors to arrogate to itself the authority to decide who does business and who does not, or the right to compel participation in or contributions to the activities of a cartel.¹³¹

In addition, SDBR and other Realtor organizations, sanctioned by the National Association of Realtors, enforced an MLS access requirement permitting only exclusive listings on the MLS, effectively eliminating competition as to the types of brokerage services offered to the public. The complaining victim here, emerging brokerage firm Twin Palm Realty, offered alternative forms of brokerage service to the public, including discount brokerage services, where smaller flat fees (of as little as \$1200) replaced the almost universal fixed commissions of 6% for residential property and 10% for commercial property.

The San Diego Board of Realtors responded to Twin Palm's program of price competition by applying a series of escalating sanctions, beginning with a number of "ethics" complaints to be "adjudicated" by the Board of Realtors itself (as if the private Board were an unbiased state agency or court). The Realtors' anticompetitive animus became clear when SDBR instituted a number of rulings and sanctions to punish Twin Palm for its effort at price competition and its deviation from the established commission rates and broker fee splits.

The San Diego District Attorney's antitrust unit was joined in the NAR case by the California Attorney General's Antitrust Law Section, which assigned Deputy Attorney General William Clark to work with Fellmeth as co-counsel. The case went through lengthy discovery proceedings and into trial. Shortly before the conclusion of the trial, the California Supreme Court decided the *Palsson* case,¹³² which substantially affirmed the prosecution's group boycott contentions with regard to the MLS/Realtor association relationship. The trial court granted the prosecution judgment on that cause of action but dismissed as to other causes of action. The court of appeal reversed those dismissals and instead gave the prosecutors judgment on the boycott, exclusive listing and price fixing theories. Further, the court's opinion confirmed that Cartwright violations are also unfair competition offenses under the Unfair Competition Law (Business and Professions Code section 17200 *et seq.*).¹³³

130 *The Schoolmaster's Case*, 1410 Y.B., 11 Henry IV, f. 47, p. 21 (Court of Common Pleas).

131 This case preceded the protests over the use of required State Bar dues for lobbying (where such objections also may have been well founded), and the Realtors did not have even the arguably more substantial defense of Supreme Court supervening authority, or that of any other regulatory body, over the entity deciding how the money would be spent.

132 *Marin County Board of Realtors v. Palsson*, 16 Cal. 3d 920 (1976).

133 *People v. National Association of Realtors*, 20 Cal. 3d 10 (1977).

Thus the NAR case resulted in three substantial antitrust conclusions favoring California prosecutors and consumers, and that helped precipitate change in MLS practices nationwide.¹³⁴ The San Diego District Attorney's Antitrust Section had established a paradigm of local antitrust enforcement with broad significance, and had provided a model for a generation of local prosecutors.

C. The Los Angeles District Attorney's Office: Awakening the "Sleeping Giant" County

Despite the early leadership of Los Angeles County District Attorneys John Fredericks and Thomas Woolwine, California's largest county was – like the Cartwright Act and its companion the Unfair Competition Law – at best a sleeping giant during the period extending from the 1920s to the early 1970s.¹³⁵ But shortly after San Diego District Attorney Ed Miller established his Office's new antitrust unit, the senior management of the Los Angeles District Attorney's Office made a similar commitment.

In 1975 Los Angeles District Attorney Joseph Busch created within his Consumer Protection Division a dedicated fulltime Antitrust Section, naming Deputy District Attorney James Knapp as its first Deputy in Charge. A series of joint ventures with the San Diego District Attorney's Office brought Los Angeles and its unit into the mainstream of Cartwright Act work. Succeeding District Attorney Busch, District Attorney John Van de Kamp determined to increase and broaden the efforts of his Antitrust Section through a series of staffing expansions.

The Los Angeles antitrust unit's initial efforts in the middle and late 1970s were taken primarily in tandem with its counterpart in San Diego. San Diego and Los Angeles prosecutors served as co-counsel in the group boycott and unfair competition prosecutions in *People v. TFI (Central Diagnostic Laboratory)* concluded successfully with stipulated final judgments in October of 1975, and in the *People v. ARCO* distributional practices case settled in October of 1977.

But the pace of this early antitrust work slowed in Los Angeles, and in the summer of 1980, newly re-elected District Attorney Van de Kamp determined to expand his Antitrust Section and direct it toward a larger and more independent role, beginning with the hiring of a new unit chief with federal antitrust prosecution experience. Van de Kamp selected Federal Trade Commission attorney Thomas A. Papageorge as Deputy in Charge of the Antitrust Section in October of 1980, and provided increased resources and a mandate to

134 For the current status of MLS practices and competition in the real estate brokerage business in the digital age, see www.usdoj.gov/atr/public/real_estate.

135 In an homage to the seminal "Sleeping Beauty" Stanford Law Review article, (see footnote 23, *supra*), author Thomas A. Papageorge titled his discussion of Unfair Competition Law developments *The Unfair Competition Statute: California's Sleeping Giant Awakens*, 4 WHITTIER L. REV. 561 (1982), a reference which also accurately describes the minimal role in trade regulation matters played by Los Angeles County, and most counties, during this period. Occasional cases (generally joining with the California Attorney General) were few in this period.

expand the unit's scope. (Kathleen J. Tuttle, who handled antitrust issues in Washington for a United States Senator, heads the Antitrust Section today.)¹³⁶

The District Attorney's plan for a larger antitrust role came to fruition. In the ensuing fifteen years the Los Angeles Antitrust Section undertook a wide-ranging civil and criminal enforcement program. Now in its 33rd year, the Los Angeles District Attorney's Antitrust Section has conducted a total of 178 antitrust and unfair competition investigations, of which 145 were completed during between 1975 and 1995. These antitrust investigations have resulted in more than forty civil and criminal antitrust judgments and convictions to date, including 34 such results obtained by 1995.

The Los Angeles Antitrust Section has focused its enforcement efforts on those types of trade restraints that most clearly harm California competition and consumers. Its case priorities have been directed at cartel conduct constituting *per se* violations and at those distributional restraints where enforcement efforts have a sound economic basis. The unit has also addressed directed a portion of its efforts to trade regulation legislation and to contributing to regulatory policy for the state. Examples of the Section's activities during this period illustrate these priorities:

Horizontal price fixing. The Los Angeles Antitrust Section has emphasized enforcement against horizontal price fixing agreements, as those practices interfere with the pricing mechanism of the marketplace and thus damage "the central nervous system" of our economy.¹³⁷ Antitrust Section civil judgments and/or criminal convictions were obtained in cases involving price fixing in such industries and lines of business as the downtown Los Angeles Produce Mart (detailed under "Bid rigging," below),¹³⁸ the meat distribution business,¹³⁹ roofing and construction services,¹⁴⁰ automotive parts and services,¹⁴¹ uniforms for peace officers,¹⁴² and even pricing collusion, conducted in Cantonese, among firms renting Chinese-language videocassettes to recent Los Angeles immigrants.¹⁴³

136 The prosecutors who have served as Deputy in Charge of Los Angeles District Attorney's Antitrust Law Section include: James Knapp (1975-1978); Jay Bloom-Becker (1979-1980); Thomas A. Papageorge (1981-1986); Michael J. Delaney (1986-1988); Martin J. Herscovitz (1989-1993); Louis K. Ito (1994-1995); Stuart C. Lytton (1995-1998); and Kathleen J. Tuttle (1999-present). The Head Deputy District Attorneys in charge of the Consumer Protection Division and supervising the Antitrust Section during this period were: Richard P. Kalustian (1974-1983); Philip K. Wynn (1983-1984); Michael J. Delaney (1988-1992); and Thomas A. Papageorge (1984-1988; 1992-present).

137 Quoting Justice Douglas' majority opinion in *Socony-Vacuum v. United States*, 310 U.S. 150 (1940).

138 *People v. Potato Sales, et al.*, L.A. Superior Ct. No. BC490240 (July 1987); *People v. J. Hellman*, L.A. Superior Ct. No. BC490240 (August 1986).

139 *People v. Meat Distributors*, L.A. Superior Ct. No. BC732704 (August 1989) (permanent injunction and \$110,000 in civil penalties).

140 *People v. The Garland Co., Inc.*, L.A. Superior Ct. No. BC168132 (April 1997) (permanent injunction and \$100,600 in civil penalties and costs).

141 *People v. B & B Barretta Auto*, L.A. Superior Ct. No. BC043504 (April 1992).

142 *People v. Leventhal Brothers*, L.A. Superior Ct. No. BC672304 (February 1988).

143 *People v. Chinese Video Rentals, Inc., et al.*, (October 1984).

Territorial and customer market division. Some of the Antitrust Section’s largest cases have involved *per se* unlawful horizontal market division, where competitors have used either territorial or customer allocation as the basis for eliminating competition among themselves.

- **Magazine distributors.** The first major industrywide prosecution by the Antitrust Section in the 1980s involved a challenge to a generation-old allocation of territories among the four largest magazine distributors in Southern California. In the early 1960s, as the suburbs of Los Angeles were growing at a record pace, magazine distributors whose businesses would become ARA Services (Sunset News), Drown News, Valley News, and Kolb News met and agreed to divide the Greater Los Angeles marketplace along precise geographic boundaries – with Sunset News obtaining the exclusive right to serve businesses in downtown and the Westside region; Valley News garnering the San Fernando Valley; Kolb News obtaining East Los Angeles; and Drown News gaining exclusive rights to the South Bay and the area southward into Orange County.

A newsstand operator complained to the Antitrust Section that a Sunset News manager has told the stand owner that if he didn’t like the poor service he was receiving, then “you should try to get service from someone else – you can’t!” Veteran Antitrust Section investigator Dale Walker, posing as a potential operator of newsstands near the South Bay “border” between Sunset News and Drown News, recorded key statements from a Sunset News sales manager. The manager graciously explained that Sunset News could serve one of the potential locations, but that Drown News would have to serve the other location a few blocks away because the distributors had “agreed on territories.” Quizzed by Walker about this, the manager then provided a map with each competitor’s territory outlined in pen. The Section obtained and served a search warrant on the four distributors (the first use of a search warrant in a Los Angeles District Attorney antitrust case, and one of the first in the state), where investigators found a 6-foot map with the several territories marked with yarn to aid dispatchers, and a file at the Sunset News headquarters entitled “Boundary Agreements With Competitors.” The resulting stipulated final judgment was the first six-figure penalties case in unit history.¹⁴⁴

- **Commercial trash haulers.** The largest single prosecution in the Los Angeles Antitrust Section’s history involved similar territorial and customer allocation in the commercial trash hauling industry.

Commercial trash hauling in Southern California in the 1980s was dominated by a diminishing number of large corporations, including Waste Management Co., Western Waste, GSX/Systems Disposal, and a handful of smaller concerns. These large national firms had built market share in the Greater Los Angeles area primarily by the acquisition of smaller, family-owned trash haulers that had started in business as part of the area’s vigorous postwar growth.

What was to become a series of large-scale market division antitrust cases came to the Los Angeles Antitrust Section with the humblest of beginnings: In early 1987 Blue Barrel,

144 *People v. ARA Services (Sunset News Co.), et al.*, L.A. Superior Ct. No. C412210 (May 1982).

a smaller trash hauler in northern Los Angeles County, contacted the Section with a complaint that a large competitor was offering free trash hauling services to Blue Barrel's customers, after Blue Barrel had convinced those customers to switch services by offering lower trash hauling rates. Undercover investigative work and extensive interviews soon indicated that much of the Southern California commercial trash hauling marketplace was subject to a secret agreement allocating customers among the several major trash hauling firms.

The system, which had its origins among the smaller firms acquired by the majors, was known among the conspirators as the "property rights" system. Each competitor was allocated a certain number of retail stores, gas stations, restaurants, and other businesses as its "property" to service as the competitor saw fit, and at any rates the conspirator could obtain. The participating conspirators agreed that if an allocated customer objected to paying high trash hauling rates and called another firm for a price quotation, the fellow conspirators would quote extremely high prices in order to discourage the customer from switching service. Any failure to cooperate in this fashion resulted in economic sanctions, such as the predatory pricing strategy directed at Blue Barrel by an aggrieved conspirator. Deep pockets ensured that the larger firms could engage in such sanctions to discourage outbreaks of price competition among smaller rivals.

Search warrants and grand jury testimony revealed the widespread and longstanding nature of this cartel conduct. Both Cartwright Act felony charges and civil allegations were employed by the Antitrust Section, resulting in felony convictions under section 16755 (yielding California's first known jail sentence for the new Cartwright Act felony), permanent injunctions, and monetary sanctions including \$2.3 million in fines, penalties, and costs.¹⁴⁵

The *Waste Management Co., et al.*, prosecution began the Los Angeles District Attorney's five-year enforcement project addressing cartel practices in the Southern California commercial trash hauling marketplace. The Section ultimately brought cases involving three separate cartels, against a total of nine corporate entities, all of which were engaged in the market division practices. Felony convictions against both corporations and individuals, and criminal fines and civil penalties in excess of \$3 million, appear to have ended this local industry's decades-old tradition of anticompetitive business practices.¹⁴⁶

145 *People v. Waste Management, Inc.*, L.A. Superior Ct. No. A952588 (March 1989); *Western Waste, Inc.*, L.A. Superior Ct. No. A952588 (March 1989); *GSX/Systems Disposal, Inc.*, L.A. Superior Ct. No. BC652874 (July 1987); *Angelus-Hudson* A952588 (March 1989).

146 *People v. Waste Management, Inc.*, L.A. Superior Ct. No. A952588 (March 1989); *Western Waste, Inc.*, L.A. Superior Ct. No. A952588 (March 1989); *GSX/Systems Disposal, Inc.*, L.A. Superior Ct. No. BC652874 (July 1987); *Angelus-Hudson* A952588 (March 1989) (first jail sentence under Cartwright Act criminal provisions as Western Waste sales manager Ara Gordian received 45 days in county jail; felony convictions and \$2.3 million in fines, civil penalties, and costs); *People v. Athens Disposal, Inc., et al.*, L.A. Superior Ct. No. BC717208, A972331 (August 1988 – March 1989) (felony pleas and \$552,000 in fines for Athens, \$45,000 for Metropolitan); *People v. Sarkissian/Klistoff/NASA Disposal*, L.A. Superior Ct. No. BA034410 (July 1991) (criminal conviction, three years felony probation, and \$45,000 in fines).

Market division cases prosecuted in civil enforcement actions have also been significant in other Los Angeles industries, such as the catering trucks service industry¹⁴⁷ and the weekly newspaper industry (detailed in part V, below).

Bid rigging. The classic cartel conduct of bid rigging, combining elements of horizontal price fixing and market division by customer, has been the subject of several of the larger prosecutions by the Los Angeles Antitrust Section.

• ***The Los Angeles Produce Mart.*** A long-standing bid rigging arrangement in the Los Angeles Produce Mart became one of the Section's first applications of the then-new Cartwright Act felony prohibition of "conspiracy against trade."

Like many major cities, Los Angeles has a downtown product market that supplies the needs of restaurants and supermarkets throughout much of the region. In early 1983 an Antitrust Section staff member had just concluded a training session for Los Angeles County purchasing officials when purchasing agent Jimmie Lou Thies came forward with the startling observation that, based on recent bids for the County's large-scale purchase of potatoes and onions, she could predict which of the three major produce suppliers, Potato Sales Co., Progressive Produce, and J. Hellman Produce, would win the next bid, and the next bid after that, and so forth. Review of recent patterns in the monthly sealed bids for these products demonstrated a classic – and extremely clear – A/B/C bid rotation pattern. Firm A won the bid for March of 1980; Firm B won the bid for April of 1980; firm C won in May 1980; Firm A won again in June 1980; and this three-way rotational pattern continued, essentially without variation, for 33 straight months – a pattern that a statistics consultant later estimated at a 1 in 110 million chance of occurring strictly at random.

Careful cultivation of inside informants revealed that the suspect firms were owned and operated by a closely-knit circle of friends who enjoyed a long history of social and trading relationships and family intermarriage. These competing firms no longer thought of themselves as functioning in a competitive relationship, and the owners later admitted they had convinced themselves that they were just "sharing the [County] contracts fairly." However, their collusive practices resulted in the County paying 30% more than market price for contracts averaging \$40,000 per month.

In textbook fashion, this bid rigging conspiracy also featured complementary bidding, where each conspirator agreed to submit artificially high bid in months when it was not the designated bid winner in order to simulate a competitive bidding process. The cartel also employed bid suppression tactics, threatening two smaller competitors with harsh economic sanctions when the outsiders submitted bids on the County contracts.

Successful search warrants and a grand jury proceeding led to indictments and a civil *parens patriae* action under the Cartwright Act. The resulting criminal sanctions and \$900,000 in penalties and damages for public purchasers established new standards for the unit at the time.¹⁴⁸

147 *People v. A La Carte Catering/Cater Craft*, L.A. Superior Ct. No. BC618174 (August 1989).

148 *People v. Potato Sales, et al.*, L.A. Superior Ct. No. BC490240 (July 1987); *People v. J. Hellman*, L.A. Superior Ct. No. BC490240 (August 1986).

Bid rigging among roofing contractors,¹⁴⁹ towing companies,¹⁵⁰ and even Internet firms selling star-naming rights¹⁵¹ have also been subjects of other enforcement actions, brought by the Antitrust Section alone or in cooperation with sister agencies.

Group boycotts and concerted refusals to deal. The Antitrust Section has challenged group boycott conduct in a number of different contexts, including those where the threatened or actual refusals to deal were ancillary to price fixing conduct, and those where the exclusionary conduct was aimed at explicit elimination of actual or potential competitors or competitive products and services. The Section followed the lead of the San Diego District Attorney's Office in challenging local Realtor Board MLS practices amounting to both group boycotts and unlawful tying. Judgments reflecting the open-access principles of the *Palsson* and *National Association of Realtors* cases (detailed part III.B., above) were obtained in civil Cartwright Act actions against the Glendale Board of Realtors and the Hawthorne-Lawndale Board of Realtors.¹⁵² Group boycotts in other industries, including the uniform industry, have also been the subject of civil antitrust and unfair competition judgments in Los Angeles.¹⁵³

Unlawful tying arrangements. Where tying arrangements have featured the consumer coercion or "forcing" which the U.S. Supreme Court has consistently condemned,¹⁵⁴ the Los Angeles Antitrust Section has acted to challenge those practices under the Cartwright Act. The *Hawthorne-Lawndale* and *Glendale Board of Realtors* judgments described above implemented remedies for both the boycott and tying aspects of the Realtors' MLS policies of the day. Mobile home tying practices equivalent to the *Mobile Magic Sales* case were successfully challenged in several actions.¹⁵⁵ And, as described further below, the Antitrust Section has recently joined with the Attorney General's antitrust unit in successful tying litigation involving public purchasing of traffic signal controllers and ancillary equipment.¹⁵⁶

Resale price maintenance/vertical price fixing. The California Supreme Court's decision in *Mailand v. Burckle*¹⁵⁷ and its rule of *per se* illegality have governed vertical price fixing enforcement in California throughout the three decades of the Antitrust Section's activities. The Antitrust Section has enforced the Cartwright Act against resale price

149 *People v. The Garland Co., Inc.*, L.A. Superior Ct. No. BC168132 (April 1997) (permanent injunction and \$100,600 in civil penalties and costs).

150 *People v. California State Towing*, L.A. Superior Ct. No. BC005354 (July 1999).

151 *People v. Glen Conti., et al. (Star Deeds)*, *People v. The Garland Co., Inc.*, L.A. Superior Ct. No. BC168132 (April 1997) (permanent injunction and \$100,600 in civil penalties and costs). L.A. Superior Ct. No. BC 348077 (October 2007).

152 *People v. Glendale Bd. of Realtors*, L.A. Superior Ct. No. 138761 (December 1981); *People v. Hawthorne-Lawndale Bd. of Realtors*, L.A. Superior Court No. 148828 (January 1982).

153 *People v. Long Beach Uniform*, L.A. Superior Ct. No. 672304 (April 1989).

154 See generally *Jefferson Parish Hospital No. 2 v. Hyde*, 466 U.S. 2 (1984).

155 See, e.g., *People v. Alan Alevy/Butterfield Estates (d/b/a The Good Guys)*, L.A. Superior Ct. No. 371392 (September 1983) (permanent injunction and \$14,000 in civil penalties and costs, plus a restitution program).

156 See discussion of *People v. Econolite Control Products, Inc.*, L.A. Superior Ct. No. (April 2008) in part V, *infra*.

157 20 Cal. 3d 367, 376 (1978).

maintenance through civil actions brought under section 16720 as well as the Unfair Competition Law. Section policy has directed enforcement toward those cases involving either explicit contractual pricing requirements or overt dealer coercion where the manufacturer has significant market power. Civil judgments barring vertical price fixing, and imposing civil penalties for violations, have been obtained in cases involving such brands as *Ogden Food Products Corp.* (Progresso-branded soups),¹⁵⁸ office furniture market leader *Steelcase*,¹⁵⁹ major car stereo manufacturers *Sanyo Electric Co.*, *Robert Bosch*, and *Concord*, and upholstery manufacturer *Formoco Products*.¹⁶⁰ The *Steelcase* civil prosecution yielded its final judgment and also a U.S. Court of Appeal opinion confirming the People's right to remand to state court for Cartwright Act law enforcement civil actions.¹⁶¹

Invitations to collude and other forms of unfair competition. California's "Little FTC Act," the Unfair Competition Law (Business and Professions Code § 17200, *et seq.*, known as the UCL), has both antitrust and consumer protection prohibitions much like Section 5 of the Federal Trade Commission Act itself.¹⁶² When invitations to collude, such as suggestions to engage in bid rigging or price fixing, are *not* accepted by those solicited, the invitations may not rise to the level of Cartwright Act violations as no combination of skill, acts, or capital is actually achieved. However, such solicitations are without question an offense to our nation's competition principles and such solicitations have been regularly challenged by the Federal Trade Commission as "unfair methods of competition." In a similar vein, the Los Angeles Antitrust Section and its counterparts in San Diego and elsewhere have successfully used the UCL to challenge these incipient restraints of trade in cases such as *People v. California State Towing*.¹⁶³

Criminal antitrust enforcement. For many years after the early Cartwright Act enforcement of Thomas Woolwine and others, state and local prosecutors in California seldom used the then-misdemeanor sanctions of the Cartwright Act section 16755 and its prohibition on "conspiracy against trade." Legislation in the mid-1970s brought felony sanctions to both the Sherman Act and the Cartwright Act,¹⁶⁴ and the next decade saw resurgence in local prosecutor use of the criminal antitrust enforcement tool. The San Diego antitrust unit pioneered the use of the new felony sanctions in the *People v. Steven Francis Pickard* prosecution in 1977, which combined antitrust and non-antitrust issues and resulted in a no-contest plea to one count of felony price fixing. And a joint San Diego and Los Angeles grand jury investigation during this period appears to have achieved a beneficial deterrent effect in the regional petroleum industry.

158 *People v. Ogden Food Products Corp.* (Progresso-branded soups), L.A. Superior Ct. No. C437557 (January 1983) (injunction and \$38,250 in penalties and costs).

159 *People v. Steelcase Co., Inc.*, L.A. Superior Ct. No. 048830 (April 1993) (permanent injunction and \$290,365 in penalties and costs).

160 *People v. Formoco Products, Inc.*, L.A. Superior Ct. No. C471511 (October 1983).

161 *People v. Steelcase*, 792 F. Supp. 84 (C.D. Cal. 1992).

162 See generally Thomas A Papageorge, *The Unfair Competition Statute: California's Sleeping Giant Awakens*, 4 WHITTIER L. REV. 561 (1982); STATE BAR OF CALIFORNIA ANTITRUST SECTION, CALIFORNIA ANTITRUST & UNFAIR COMPETITION LAW (3d ed. 2003), ch. 13.

163 *People v. California State Towing*, L.A. Superior Ct. No. BC005354 (July 1999).

164 15 U.S.C. § 1; Cal. Bus. & Prof. Code § 16755(a), Cal. Stats. 1990, c. 486.

The Los Angeles Antitrust Section soon made criminal investigative procedures and felony charges the centerpieces of large-scale cases against industry wide collusion in the Southern California marketplace. In 1984 the Los Angeles Produce Mart case was investigated using search warrants and grand jury proceedings that yielded what is believed to be the first county grand jury indictment of a group of antitrust conspirators in the modern era of Cartwright enforcement.¹⁶⁵ In the prosecution of three trash hauler cartels in *People v. Waste Management Co., et al.*, and its successor cases, the Antitrust Section obtained felony convictions of both large corporations and their individual sales managers, including the first jail sentence for Cartwright Act crimes in the modern era.¹⁶⁶

Legislation and competition policy. Taking a cue from the active role in Cartwright Act legislation played by San Diego antitrust unit chief Bob Fellmeth, the Los Angeles Antitrust Section has also contributed to the development of the Cartwright Act and Unfair Competition Law statutes. In 1990 and 1991 the Los Angeles District Attorney's Office sponsored two bills authored by Senator Quentin Kopp to improve Cartwright Act sanctions and enforcement. In 1990 Senate Bill 2576 (Kopp) increased Cartwright Act criminal fines to new maximums of \$1 million for corporations and \$250,000 for individuals, or twice the pecuniary gain or loss attributable to the conspiracy against trade.¹⁶⁷ And a 1991 amendment drafted by Section staff clarified the language of section 16759 to ensure that use of this authority does not confer automatic immunity on the respondents to these trade regulation subpoenas.¹⁶⁸ The staff of the Los Angeles District Attorney's Office have also appeared frequently in a wide range of antitrust and unfair competition policy hearings in the California State Senate and Assembly during this period.

By the end of the 1980s the Antitrust Section of the Los Angeles Office was, with the Attorney General's dynamic unit, one of only two dedicated antitrust units in the California law enforcement community,¹⁶⁹ and it had forged for itself a significant role in state civil and criminal antitrust enforcement.¹⁷⁰

D. Tactical Lessons and Investigative Developments in Local Prosecution

Undercover operations/recording. Under Penal Code section 633, California prosecutors and their investigators are authorized to engage in the surreptitious recording of confidential conversations under specified conditions. (This conduct is otherwise unlawful under California's privacy laws.¹⁷¹)

165 See the discussion of the *Los Angeles Produce Mart* case in part III.C, *supra*.

166 See the discussion of the commercial trash haulers cases in part III.C, *supra*.

167 Cal. Stats. 1990, ch. 486 (S.B. 2576).

168 Cal. Stats. 1991, ch. 230, § 1 (S.B. 109).

169 The antitrust staff of the San Diego unit having been rejoined, as an administrative matter, with the remainder of the staff of San Diego District Attorney's Fraud Division.

170 The work of the Los Angeles District Attorney's Antitrust Section, and its very existence, would have been impossible without the sustained leadership, direction, and support of District Attorneys Joseph Busch, John Van de Kamp, Robert Philobosian, Ira Reiner, Gil Garcetti, and Steve Cooley.

171 See Cal. Penal Code §§ 630-632.

Beginning soon after the renewal of local antitrust enforcement, California district attorneys and other local prosecutors have made extensive use of this investigative tool as a crucial means of establishing the often-*evanescent* communications, representations, and agreements in antitrust cases. To prove the requisite “trust” under section 16720, it is necessary to introduce in evidence sufficient proof of the existence of the anticompetitive agreement among two or more relevant conspirators. Local prosecutors have found invaluable the ability to obtain and introduce taped conversations in Cartwright Act cases in order to demonstrate this requisite agreement and to defeat the usual defense claims of independent decision-making, common economic response to market circumstances, or coincidence.

The tape-recorded comments of the Sunset News sales manager that the magazine distributors had “agreed on territories” illustrate the potency of this tactic in the right circumstances and with a measure of investigative good fortune.¹⁷² The San Diego antitrust unit’s cross-designation prosecution of collusion in the re-chromed bumpers industry provides another example: When asked by an undercover investigator (posing as a potential entrant) about the local business practices, the defendant manager’s tape-recorded response was: “I’m not sure exactly what you mean by that, but we all use the same price list here in San Diego.”

The grand jury. The use of the grand jury process in antitrust matters, so central to federal antitrust enforcement, was largely unknown in state and local enforcement during the half-century between the early Cartwright Act cases and the 1970s. But as local enforcement returned to California, the San Diego and Los Angeles offices soon recognized the special value of the county grand juries in addressing local antitrust cartels. Many of these cases involve highly localized conspiracies among tightly-knit communities or groups. The Los Angeles Produce Mart case represents a paradigm of this situation.¹⁷³ Most of the participants were related by birth or marriage, or were lifelong friends and trading partners. The rationalization for bid-rigging expressed by one key participant in that conspiracy was: “You wouldn’t take business away from your son-in-law, would you? We wouldn’t either.”

In addition, as with all antitrust and corporate conspiracies, local collusion cases often involve multiple layers of corporate organization that can, in some cases, effectively insulate control group individuals from the daily activities of the conspiracy. The use of the county grand jury, with its compulsory subpoena process and secrecy of testimony, offers a means for local prosecutors to work up through the target firm’s organizational chain (with appropriate grants of immunity or leniency) to identify the senior managers truly responsible for the anticompetitive conduct. Grand jury testimony and document production of this kind was central to the results in the Los Angeles Produce Mart case, the multiple commercial trash hauler prosecutions, and many others during this period.¹⁷⁴

172 See part III.C, *supra*.

173 See part III.C, *supra*.

174 See the discussion of the *Los Angeles Product Mart* and trash haulers cases in part III.C, *supra*.

Search warrants. Prior to the early 1980s, search warrants were seldom if ever used in contemporary state or local antitrust enforcement. This changed dramatically in the early 1980s when San Diego and Los Angeles prosecutors developed sufficient probable cause to support the service of antitrust search warrants in large-scale cartel cases. Beginning with the magazine distributors conspiracy in 1984, the Los Angeles Antitrust Section selectively identified cases where criminal Cartwright Act charges were substantially probable and served magistrate-approved search warrants to seize documents and other evidence of collusive conduct. The successful seizure of market-division maps and files in *People v. ARA Services* and the recovery of telephone message slips detailing allocation of bid prices in *People v. Potato Sales Co.*, are only two of the many examples of the efficacy of this investigative tool.¹⁷⁵

Administrative subpoenas. The federal civil investigative demand (CID) has a powerful California counterpart in the administrative subpoena authority granted to California department heads and the Attorney General by Civil Code sections 11180-11191 *et seq.* California district attorneys share a portion of that unique pre-complaint subpoena authority as the result of legislation, sponsored by the San Diego District Attorney's Office, which added section 16759 to the Cartwright Act.¹⁷⁶

This amendment extended to public prosecutors the right to engage in “prefiling discovery” even in the absence of the probable cause necessary to support a search warrant under the requirements of Penal Code sections 1523-1525. Under section 16759 California district attorneys are granted all the head-of-department prefiling investigative powers of the Attorney General where there is a “reasonable belief” that the Cartwright Act or related statutes have been violated. The California Supreme Court has broadly defined the scope of these prefiling administrative discovery powers¹⁷⁷ and California district attorneys have actively employed both the testimonial and documentary subpoena authority in antitrust enforcement matters, and more so after a 1991 amendment, sponsored by the Los Angeles District Attorney's Office, clarified in section 16759 that use of this authority does not confer automatic immunity on the respondents to these trade regulation subpoenas.¹⁷⁸

Examples of cases where this authority proved decisive include the *Steelcase* vertical price fixing prosecution, the San Diego District Attorney's investigation of Duke Energy as a part of the energy deregulation debacle, and the *MetLife/Prudential/Unum* civil unfair competition actions concluded in 2008 by a joint venture of the antitrust personnel in the San Diego, Los Angeles and Alameda District Attorney's Office.¹⁷⁹

175 See the discussion of *People v. ARA Services, et al.*, and the *Los Angeles Product Mart* cases in part III.C, *supra*.

176 Cal. Stats. 1977, ch. 542, § 1.

177 See *Younger v. Jensen* 26 Cal. 3d 397 (1980); *Brovelli v. Superior Court of Los Angeles County* 56 Cal. 2d 524 (1961).

178 See Bus. & Prof. Code § 16759, as amended by Cal. Stats. 1991, ch. 230, § 1 (S.B. 109).

179 *People v. Metropolitan Life Insurance Co.*, S.D. Superior Ct. No. 37-2008-00082814 (April 2008); *People v. Prudential Insurance Co. of America*, S.D. Superior Ct. No. 37-2008-00082813 (April 2008); *People v. Unum Life Insurance Corp.*, S.D. Superior Ct. No. 37-2008-00082815 (April 2008).

E. The Evolving Confluence of the Cartwright Act and the Unfair Competition Law: Significance for Local Enforcement Efforts

At the federal level, antitrust and unfair competition law are linked through the interplay of two federal agencies, with the Federal Trade Commission sharing responsibility for addressing restraints of trade with the U.S. Department of Justice. Unlike state jurisdictions such as California, the FTC's unfair competition authority confers no private cause of action and thus the Commission has exclusive jurisdiction over its enforcement of section 5 in antitrust matters.¹⁸⁰

However, in California antitrust enforcement enjoys easier and broader access to court resolution. The California Unfair Competition Law (or UCL), Business and Professions Code section 17200 *et seq.*, confers standing on state and local prosecutors, and, following the adoption of Proposition 64, more limited standing on private litigants. From the perspective of public prosecutors, the existence of both Cartwright and Unfair Competition Law liability for virtually every antitrust offense affords important advantages. While the Cartwright Act confers a powerful mix of remedies, it does not provide for civil penalties. However, the companion Unfair Competition Law includes authority for potent civil penalties recoveries by the Attorney General, district attorneys, and other designated public agencies.

From the 1970s to the early 1990s, the San Diego District Attorney, the Los Angeles District Attorney, and others worked with CDAA to fashion substantial changes to the Unfair Competition Law. In the early 1970s the UCL consisted of brief sections, primarily regarding injunctive relief, found in section 3369 *et seq.* of the Civil Code. With the support of the San Diego District Attorney's Office, Assembly Member Alan Sieroty in 1976 and 1977 authored a series of bills to modernize the Unfair Competition Law as a tool for public prosecutors, and moved the revised statute to its present location as section 17200 *et seq.* of the Business and Professions Code, adjacent to the Cartwright Act (located at section 16700 *et seq.*) and the Unfair Business Practices Act (California's rough equivalent of the federal Clayton/Robinson-Patman Act, found at section 17000 *et seq.*).¹⁸¹ The revised statute greatly increased the interrelationship between the Cartwright Act and the Unfair Competition Law, which became closely related tools for prosecutors to use in challenging anticompetitive conduct.

It is now standard public enforcement practice in California to add an unfair competition cause of action to any public Cartwright Act civil complaint. The rationale extends beyond pre-filing discovery and the meaningful civil penalties. The breadth of the Unfair Competition Law allows for a judgment if any unlawful act in competition has occurred, even if it is not squarely within the rubric of a prohibited Cartwright Act "trust," significantly enhancing the scope of anticompetitive conduct that prosecutors may seek to prohibit.

180 See *Holloway v. Bristol-Myers Corp.*, 485 F.2d 986 (D.C. Cir. 1973); *Carlson v. Coca Cola Co.*, 483 F.2d 279 (9th Cir. 1973).

181 Cal. Stats. 1977, ch. 299, § 1.

IV. The Renaissance Of State Antitrust Enforcement: 1980-1999

In 1984, the newly elected John K. Van De Kamp created a new Division of Public Rights to house affirmative litigation in the Office of the Attorney General. The Antitrust Law Section, led by Sanford Gruskin, was immediately placed in the new division, which was headed up by Chief Assistant Attorney General Andrea Ordin. Together with Special Assistant Attorney General Michael Strumwasser, she underscored the Attorney General's commitment to antitrust enforcement.

This newly invigorated commitment to antitrust enforcement in California contrasted sharply with the increasing disenchantment of the Reagan Administration in Washington, D.C. with traditional competition litigation. Federal retreat from the field led to a national renaissance of state antitrust across the nation, often led by Attorney General Van De Kamp.

After a disappointing effort to use the Cartwright Act to challenge the Texaco/Getty merger,¹⁸² Van De Kamp made new federal law under the Clayton Act in a challenge to a major grocery store merger in Southern California. The Attorney General prevailed in the trial court, securing an injunction against the transaction,¹⁸³ but was reversed on the scope of the remedy by the Ninth Circuit.¹⁸⁴ But in *California v. American Stores*, then Deputy Attorney General H. Chester Horn, now a Superior Court judge, successfully argued before the United States Supreme Court that divestiture relief was an appropriate remedy in such cases.¹⁸⁵ This success in the United States Supreme Court led to a series of merger challenges by attorneys general across the nation, and the issuance of Horizontal Merger Guidelines by the National Association of Attorneys General.¹⁸⁶

Whether California's statutory repudiation of the federal *Illinois Brick* rule was preempted by federal law was also resolved in favor of California consumers under John Van De Kamp. In *California v. ARC America Corp.*,¹⁸⁷ the U.S. Supreme Court ruled that California law authorizing a remedy for indirect purchasers was not preempted by federal law. This led to the filing of numerous public and private Cartwright Act damage actions in state courts.

Attorney General Van De Kamp joined other states in settling price-fixing charges against Minolta for restraints on the sale of its auto-focus cameras.¹⁸⁸ California also successfully challenged the tying of the sale of Clozaril, a new drug for the treatment of

182 *State of California ex rel. Van de Kamp v. Texaco, Inc.*, 40 Cal. 3d 903 (1988).

183 *State of California ex rel Van De Kamp v. American Stores Co.*, 697 F. Supp. 1125 (C.D. Cal. 1988).

184 *State of California ex rel Van De Kamp v. American Stores Co.*, 872 F.2d 837 (9th Cir. 1989).

185 *California v. American Stores, Inc.*, 495 U.S. 271 (1990).

186 National Association of Attorneys General, *Horizontal Merger Guidelines* (1993), reprinted in, ANTITRUST LAWS AND TRADE REGULATION: PRIMARY SOURCE PAMPHLET 343 (2008).

187 490 U.S. 93 (1989).

188 *In re Minolta Camera Products Antitrust Litigation*, 668 F. Supp. 456 (C.D. Md., 1987); *Maryland v. Mitsubishi Electronics America, Inc.*, Civ. Action No. S-91-815 (D. Md.); *In re Nintendo of America, Inc.* No. 91 Civ. 3911 RWF (S.D.N.Y.).

schizophrenia, with an expensive blood testing system.¹⁸⁹ The settlement of this action resulted in checks exceeding on average over \$2000 for each victim of the tie. These prosecutions led to the issuance by the National Association of Attorneys General of Vertical Restraint Guidelines in 1985.¹⁹⁰

Van De Kamp's team also worked on Cartwright Act cases in state court. For example, joining the district attorney of San Diego County, he won a second major appellate decision involving the National Association of Realtors.¹⁹¹ He also criminally prosecuted a state employee and a contractor for rigging bids on construction work for the California Highway Patrol.¹⁹²

An investigation by Van De Kamp – later joined by other states – into the withdrawal of insurance coverage from local governments, led to a multistate boycott action filed in the Northern District of California alleging violations of federal and state law. This case came to fruition in the administration of Daniel Lungren with a U.S. Supreme Court decision in *Hartford Fire Insurance Co. v. California*,¹⁹³ clarifying the scope of the McCarran-Ferguson Act and concluding that federal antitrust law applied to foreign companies if they targeted U.S. commerce. The case ultimately settled for over \$40 million, while the decision became a pillar of later U.S. international cartel enforcement. The cost-sharing and other administrative innovations in the case became the foundation for all subsequent multistate actions.

Under Attorney General Lungren, the *Crude Oil* case settled for over \$262 million in cash plus conversion of several pipelines to common carrier status. In 1992, Exxon, ARCO, Texaco and Unocal settled the *Petroleum Products* case, while the case continued against Chevron, Mobil and Shell.¹⁹⁴ He also joined other attorneys general in settling vertical price-fixing cases against Nintendo (game consoles) and Mitsubishi (televisions).¹⁹⁵

Relying on *American Stores*, Attorney General Lungren cooperated with federal authorities to secure divestiture of 52 branches and \$2 billion in assets in the Bank of America/Security Pacific Bank merger.¹⁹⁶ He also joined the U.S. Department of Justice in seeking divestiture of key California assets in the Thompson/West Publishing Company merger.¹⁹⁷

189 *California v. Sandoz Pharm., Inc.*, No. 90-CIV 8060, *In re Clozapine Antitrust Litig.*, MDL 874 (N.D. Ill.).

190 National Association of Attorneys General, *Vertical Restraints Guidelines* (Dec. 4, 1985), reprinted in, ANTITRUST LAWS AND TRADE REGULATION: PRIMARY SOURCE PAMPHLET 343 (2008); see also Note, *To Form a More Perfect Union: Federalism and Informal Interstate Cooperation*, 102 HARV. L. REV. 842 (1989).

191 *People v. National Association of Realtors*, 155 Cal. App. 3d 578 (1985).

192 OFFICE OF THE CALIFORNIA ATTORNEY, BIENNIAL REPORT 61 (1987-1988).

193 509 U.S. 764 (1993).

194 OFFICE OF THE ATTORNEY GENERAL, BIENNIAL REPORT 102 (1991-1992).

195 *Id.*

196 *Id.*

197 *United States and Plaintiff States v. The Thompson Corp. and West Publishing Co.*, Civ. No. 96-1415 (PLF) (D.D.C.).

Asserting violations of section 2 of the Sherman Act and violations of California's Cartwright Act and Unfair Competition Law, Lungren joined the U.S. Department of Justice and 18 other states in an action against Microsoft for monopolization and illegal tying, with Deputy Attorney General Richard Light taking the lead for California. The trial court ultimately found in favor of the prosecution, ordering a divestiture remedy.¹⁹⁸

Most notably, Attorney General Lungren filed a case in Sacramento Superior Court against major tobacco companies under California consumer and antitrust laws. The Cartwright Act count alleged that major tobacco firms had conspired to throttle competition on safety, thwarting development of relatively safer products. After transfer to San Diego Superior Court, this case was settled, along with other state cases, with California receiving over \$26 billion in the first 25 years of the settlement. The settlement included important public health protections, including a strict prohibition on advertising that might appeal to children. Two of Attorney General Lungren's special assistant attorneys general, Tracy Buck-Walsh and Sue Ellen Wooldridge, spent months negotiating the deal in New York, while deputies and paralegals from the Antitrust Law Section and other sections worked on the litigation.

V. The Era Of Joint Ventures: 1999 - Present

A. The California Attorney General Today

After his first months in office, Attorney General Bill Lockyer remarked that becoming Attorney General was, "like being dropped on the deck of an aircraft carrier during the middle of a battle." Certainly that analogy was apt for his work in antitrust. He was immediately thrust into the proposed Albertson's/American Stores (Lucky's) merger. After an extensive investigation and protracted negotiations, Lockyer announced in June 1999 an agreement requiring the merged firm to divest 117 stores and 3 supermarket sites in California.¹⁹⁹

This was soon followed by a litigated challenge to the purchase of Oakland's Summit Hospital by Sutter Health Systems. The proceeding raised important issues about health care competition in urban markets, but the court ultimately denied the Attorney General's request for a preliminary injunction against the transaction.²⁰⁰ This was followed by a joint action with the Federal Trade Commission and other states examining the Exxon/Mobil merger. The California Attorney General's office became a multistate repository for documents from the two companies, resulting in the creation of "box land" in the AG's Los Angeles library consisting of over 7000 boxes of records. This investigation resulted in the divestiture of Exxon's Benicia refinery, the largest motor gasoline refinery in the West.²⁰¹ This in turn was followed by a joint action with the FTC and other western states against the BP/ARCO merger that resulted in the divestiture of ARCO's oil leases in Alaska.²⁰²

198 *United States, et al. v. Microsoft*, 87 F. Supp. 2d 30 (D.D.C. 2000).

199 OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, DOJ BIENNIAL REPORT 27 (1999-2000).

200 *California v. Sutter Health Sys.*, 130 F. Supp. 2d 1109 (N.D. Cal. 2001).

201 *In the Matter of Exxon Corporation and Mobil Corporation*, FTC Docket No. C-3938.

202 *In the Matter of BP Amoco PLC and Atlantic Richfield Co.*, FTC Docket No. C-3938.

Lockyer also challenged a “revenue sharing agreement” among grocery store chains being struck by union workers. The companies asserted that their agreement was only a reaction to a labor action; the Attorney General alleged that the agreement was a form of price-fixing. The trial court concluded in a thoughtful decision that the so-called common law labor exemption did not shield the revenue sharing agreement from antitrust scrutiny.²⁰³

This case is now on appeal to the Ninth Circuit, and is being prosecuted by Supervising Deputy Attorney General Barbara Motz and Deputy Attorneys General Jonathan Eisenberg, Cheryl Johnson, and Penny Nagler.

But Lockyer made good use of the Cartwright Act as well. Continuing a tradition that went back to the beginning of the Act, he worked with Los Angeles District Attorney Steve Cooley and the Ohio Attorney General in the successful joint civil prosecution of weekly newspaper market division in *People v. Village Voice Media, LLC and NTMedia, LLC.*,²⁰⁴ And in *People v. Econolite Products, Inc.*,²⁰⁵ the Attorney General and the Los Angeles District Attorney successfully challenged the tying of signal and lighting equipment to the purchase of a unique controller computer.²⁰⁶

The indirect purchaser provision in the Cartwright Act²⁰⁷ figured in a number of major cases. For example, in the multistate *Mylan* and *Taxol* cases,²⁰⁸ state pendent law claims supported damage recoveries for alleged abuses of the patent system designed to forestall the entry of generic competitors into lucrative drug markets. In the *Vitamins* price-fixing case, over \$40 million in *cy pres* relief was generated for Californians through this provision.²⁰⁹ Indeed, the relative clarity of the California law on indirect purchaser damages resulted in a split among states, with California consumers and businesses settling their claims separately for more money than was possible under a competing multistate settlement.

The Cartwright Act and the Unfair Competition Law were invoked in a number of the actions brought by Attorney General Lockyer to seek recoveries from firms, including Enron, that sextupled energy prices during the California Energy Crisis of 2000–2001. Lockyer characterized these firms as “pirates,” that had “illegally run the rates up and gouged California businesses and consumers.” Actions brought by Lockyer’s Energy Task Force, directed by a former head of the Antitrust Law Section, resulted in recoveries of over \$5.3 billion for California.²¹⁰

203 *State of California ex rel. Bill Lockyer v. Safeway, Inc.*, 371 F. Supp. 2d 1179 (C.D. Cal. 2005).

204 L.A. Superior Court No. BC289225.

205 L.A. Superior Court No. BC314141.

206 See discussion of the *Village Voice* and *Econolite* prosecutions in part V.B., *infra*.

207 Cal. Bus. & Prof. Code § 16750(a).

208 *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369 (D.D.C. 2002) (*Mylan*; multi-state settlement for \$100 million); *State of Ohio, et al., v. Bristol-Myers Squibb Co.*, D.D.C., Case No. 1: 02-cv-01080 (EGS) (*Taxol*; \$55 million cash settlement called for significant injunctive relief and compensatory payments which included \$12.5 million for consumers. California’s allocation of the Direct Purchasers Settlement Portion was \$3,716,048, plus attorneys’ and costs of \$215,000 with an additional *cy pres* award of \$559,859).

209 *In re Vitamin Cases*, 107 Cal. App. 4th 820 (2003).

210 CHRISTOPHER J. CASTANEDA, KEEPING THE PROMISE: A HISTORY OF THE CALIFORNIA DEPARTMENT OF JUSTICE 135-136 (2006).

Never afraid to take on major antitrust challenges, Lockyer also took a leadership role in the *Microsoft* litigation, in which California had also sought relief under the Cartwright Act and the UCL. After the Bush Administration and a group of states led by New York settled with Microsoft for relief that he deemed inadequate, Lockyer led another group of states through 33 days of trial to seek a more effective remedy. This case was prosecuted through a partnership of the litigating states and the Washington-D.C.-based law firm of Williams and Connolly. Brendan Sullivan was the lead trial lawyer, with deputies Tom Greene, Kathleen Foote, Mark Breckler and Adam Miller taking depositions of Microsoft executives and Microsoft witnesses.

At the end of the process, the trial judge granted California's request for relief directed at assuring that Microsoft's desktop monopoly could not be extended to servers, and retained jurisdiction to adjust the relief in the event other problems arose. Recently the two groups of states united to secure an extension of the decree, while the U.S. Department of Justice declined to participate.

Attorney General Edmund G. Brown, Jr. took office in 2007, and was immediately the heir to price-fixing litigation in federal court on behalf of California consumers and government agencies injured by price-fixing of dynamic random access memory (DRAM) chips, used in computers, laptops and some cellular phones.²¹¹ There are parallel filings by other states as well as a number of putative class actions filed by private firms. Senior Assistant Attorney General Kathleen Foote is liaison counsel for the plaintiff-states, and chair of the state plaintiffs' steering committee.

The central issue in the cases is the extent to which state indirect purchaser statutes confer standing in a federal court to such purchasers, with the Cartwright Act provision playing a central role in the briefing. This crucial issue is now before the Ninth Circuit.

Brown is also litigating the *Safeway* revenue-sharing case in the Ninth Circuit. In order to avoid an expensive trial, all parties creatively agreed to a stipulated set of facts as the factual predicate for their arguments over whether the agreement should be approached as a per se violation of the antitrust laws.

Brown through Deputy Attorney General Cheryl Johnson has taken a national leadership role in cases in which patents may be used as a weapon to stave off generic competition. It is expected that this work will pay off in filings under federal and state antitrust law on behalf of public and private purchasers of prescription medications.

B. Joint State/Local Efforts – A Model For The 21st Century

Joint venture antitrust prosecutions by the Attorney General and district attorneys offices have occurred throughout the one hundred year history of government enforcement under the Cartwright Act. However, the earliest efforts, such as the 1909 prosecution by the CAG and the LADA, were infrequent and could be characterized as coincidental. In contrast, in the first decade of the 21st century, joint prosecutions were the frequent first-choice strategy for successful California antitrust law enforcement. This trend to closer

211 *State of California, et al., v. Infineon Tech. AG*, , Primary Court Case # C-06-04333 PJH (N.D. Cal.), Secondary Court Case # MDL 02-01486 PJH (N.D. Cal.).

cooperation was a result of several factors: maximizing government efficiencies respecting resources and staffing allocation; the intrastate nature of modern businesses; and the tight-knit nature of the antitrust bar in California, in which federal, state, and local prosecutors (along with private sector attorneys) routinely work together and thus can readily identify mutual prosecution interests.

The successful multi-agency prosecution in *People v. Village Voice Media, LLC and NT Media, LLC* illustrates this important new trend. Prior to 2002, the nation's two largest publishers of alternative newsweeklies were Village Voice Media ("Village Voice") headquartered in New York, and NT Media ("New Times"), headquartered in Phoenix, Arizona. In the prior decade, alternative newsweeklies had grown dramatically in importance as a means of reaching the young urban audience of consumers. Together, the two businesses came to control about one-third of the total circulation of alternative newsweeklies in the United States. The only two areas in which these newsweeklies competed head-to-head were Cleveland, Ohio and Los Angeles, California. The competition between the two papers in these cities resulted in, among other benefits, lower advertising rates and improved coverage of local events. But the competition also resulted in lower profit margins in these two cities, as compared to cities in which the newspaper chains did not have strong competitors.

In the late summer of 2002, these two companies agreed to swap markets, and on October 1, 2002, they executed written agreements, memorializing and effectuating the scheme. Through this agreement, Village Voice, the owner of *LA Weekly*, paid New Times, the owner of *New Times Los Angeles*, \$11,000,000, in return for which New Times shut down the *New Times Los Angeles*. In return, New Times paid Village Voice \$2,000,000, in exchange for Village Voice closing its Cleveland newsweekly, the *Cleveland Free Times*. As a result, each newspaper chain had a monopoly in one city and, within a short period of time, advertising rates began to increase.

The California Attorney General and the Los Angeles District Attorney's Office, along with the Ohio Attorney General and the Antitrust Division of the U.S. Department of Justice, jointly prosecuted these defendant corporations for horizontal market division on a *per se* restraint of trade theory under the Cartwright Act, the Ohio Valentine Act, and the Sherman Act, respectively. Settlement was reached with parallel stipulated judgments filed simultaneously in federal court and in the two relevant state courts (signed February 18, 2003), requiring divestment and other injunctive measures to restore competition, and the payment of \$880,000 in monetary relief to state plaintiffs. Los Angeles District Attorney Steve Cooley played an active role in the case and upon its settlement remarked: "Such an unlawful agreement harms business because it invites inflated advertising rates and diminishes editor voice in the marketplace of ideas – both of which do a tremendous disservice to consumers." The media and trade journals closely followed this case.²¹²

All the participating agencies clearly benefited from this joint enforcement approach. The government enforcers' interest in swiftly restoring competition in the respective

212 See N.Y. TIMES, Jan. 27, 2003; L.A. TIMES, Nov. 20, 2002 and Dec. 21, 2002; L.A. DAILY J., Jan. 28, 2003; 84 ANTITRUST AND TRADE REGULATION REPORT (BNA), at 85 (Jan. 31, 2003) and TR.REG.REP. (CCH) No. 771, Jan. 29, 2003.

markets was well-served through cooperative efforts: when U.S. Antitrust Division attorneys came to Los Angeles to conduct back-to-back depositions of dozens of business advertisers, state and local prosecutors assisted. The local and state prosecutors were aided in discovery by serving their subpoenas in a form tracking the federal Division's civil investigative demands, which had been served immediately after the defendants' market division agreements became public.²¹³

A similar demonstration of the benefits of multi-agency cooperation was the successful litigated enforcement action in *People v. Econolite Control Products, Inc.*²¹⁴ The California Attorney General and the Los Angeles District Attorney's Antitrust Section joined in prosecuting this hotly contested Cartwright Act tying case. The defendant corporation, Econolite Control Products, Inc., headquartered in Orange County, manufactured traffic controllers. The People alleged that Econolite had engaged in illegal tie-in sales: it refused to sell its one-of-a-kind controller (the computer "brains" of an intersection) unless purchasers also bought its signals and other related equipment which could be obtained elsewhere at lower prices. The prosecutors alleged this conduct violated both the Cartwright Act and the Unfair Competition Law.

The three-week court trial took place in Los Angeles Superior Court during July-August 2005. The statement of decision was handed down on July 24, 2006; judgment was entered on November 1, 2006. The court ruled in favor of the People on all three causes of action, granting injunctive relief, civil penalties, and attorneys' fees. The defense appealed; the prosecution cross-appealed. The matter was resolved through appellate mediation with the People prevailing on all grounds, retaining strong injunction terms, \$52,500 in civil penalties, and \$401,758.25 in attorneys' fees.²¹⁵

The successful *Village Voice* and *Econolite* joint prosecutions together represent a paradigm of state and local law enforcement cooperation that is likely to be the hallmark of public enforcement in the Cartwright Act's second century.

Conclusion

Senator Cartwright's vision of a free and fair marketplace has been the goal of public antitrust enforcement in California throughout the Cartwright Act's first century. The renewal of vigorous public enforcement of the Cartwright Act since the 1960s now points to a bright future featuring cooperative state and local Cartwright Act enforcement. This bodes well for California's consumers and honest competitors.

213 California Attorney General attorneys handling this joint venture included Barbara M. Motz and Winston H. Chen; Los Angeles Antitrust Section prosecutors here included Thomas A. Papageorge, Kathleen J. Tuttle, and Dana Aratani.

214 L.A. Superior Ct. No. BC314141 (November 2006).

215 California Attorney General staff handling this joint action included Barbara M. Motz, Natalie S. Manzo, and Olivia Karlin; Los Angeles Antitrust Section attorneys here included Thomas A. Papageorge, Kathleen J. Tuttle, and Dana Aratani.