



REQUEST FOR PUBLIC COMMENT

Criminal Remedies

(Comments requested by June 30, 2006)

1. Some observers have opined that application of 18 U.S.C. § 3571(d) consistent with the Constitution may be difficult in all but the most unusual circumstances after *United States v. Booker*, 543 U.S. 220 (2005), given *Booker*'s requirement that the gain or loss be proven to a jury beyond a reasonable doubt. Should 18 U.S.C. § 3571(d) be amended so that it is not applicable in Sherman Act prosecutions? If Section 3571(d) were made inapplicable to Sherman Act prosecutions, should the maximum fine under the Sherman Act be increased? If so, what should be the revised fine amount?
2. In responding to the first question, please also comment on the following:
 - A. What is the practical difficulty of proving gain or loss from an antitrust violation beyond a reasonable doubt?
 - B. If evaluation of the amount of gain or loss requires or warrants expert testimony, can it be said as a matter of law that gain or loss cannot, in such a case, be proven beyond a reasonable doubt?
 - C. Why do businesses agree, post-*Booker*, to pay fine amounts in excess of the \$10 million (now \$100 million) statutory maximum?
 - D. Is the threat of criminal prosecution of a greater number of individuals employed by a business, or of more serious sentences for the business's individuals, a factor that leads some businesses to agree to pay fine amounts in excess of the \$10 million or \$100 million maxima?

Source: 71 Fed. Reg. 30,863-30,864 (May 31, 2006).