Case Western Reserve Law Review

Volume 4 | Issue 2

1953

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ALTHOUGH there have been articles treating the problems arising in connection with the trial of antitrust cases when tried civilly,[1] there appear to be none dealing with criminal antitrust trials under the Sherman Antitrust Act.[2] The reason for this lack of legal comment upon the subject may be that, although the Sherman Act is basically a federal criminal statute,[3] the Government, through the Antitrust Division of the Department of Justice, has preferred to carry on most of its litigation arising under the Act on the civil rather than the criminal side of the court;[4] only in cases where the Government deems the violations as most flagrant has it apparently sought relief on the criminal side of the court by way of indictment or information.

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This reluctance on the part of the Government to enforce the antitrust laws by means of criminal prosecution, rather than the more common method of merely requesting an injunction to restrain the alleged illegal acts, could well be attributed to the increased difficulty of proving the Government's case in a criminal proceeding with a jury as triers of fact. Not only is the admissibility of evidence in such a case more severely restricted than in a court of equity where the chancellor judges on

[1] McAllister, *The Big Case: Procedural Problems in Antitrust Litigation*, 64 HARV. L. REV. 27 (1950); Prettyman, *Needed: New Trial Technique*, 34 A.B.A.J. 766 (1948); Whitney, *The Trial of an Antitrust Case*, 5 NEW YORK BAR ASSOCIATION RECORD 449 (1950).

[2] Note, 13 GEO. WASH. L. REV. 434 (1945) deals with some threshold questions arising in criminal antitrust cases but does not discuss trial procedure.

[3] *See* Northern Securities Co. v. United States, 193 U.S. 197, 401, 24 Sup. Ct. 436, 468 (1904). (Holmes, J., dissenting).

[4] When the antitrust laws are violated, the Department of Justice has the choice of instituting either a civil or criminal proceeding. Sherman Act, 15 U.S.C. §§ 1, 4. United States v. Standard Oil Co., 23 F. Supp. 937 (W.D. Wis. 1938).

questions of fact as well as law, but in addition, as in other criminal cases, to obtain a conviction the Government must convince all twelve jurors of the defendant's guilt beyond a reasonable doubt.[5] An examination of the supplementary table of cases, which has been prepared from the "Blue Book" compiled by the Antitrust Division of the United States Department of Justice,[6] evidences that the Antitrust Division has apparently been successful in obtaining guilty verdicts in only a little more than one half of the criminal antitrust cases litigated.[7]

During the first 61 years in which the Sherman Antitrust Act has been in effect, less than 125 criminal antitrust cases arising under the Act have been prosecuted to a verdict or decision.[8] There have been, on an average, only two cases tried to a verdict or decision per year. This is understandable when one realizes what is involved by way of preparation, both for Government and defense counsel, in a typical antitrust case involving charges either of conspiracy or monopoly, or both, under the Act.

Antitrust cases arising under the Sherman Act have been labeled as "big cases,"[9] and with ample justification, for oftentimes the lawyers attempting to defend against the Government charges are compelled to devote months, and sometimes years, in preparation for trial. This task of preparation is of utmost importance for in most instances the type of evidence which will be introduced in support of the indictment or information is such as to involve the corporate history of the defendants over many years. Although the cutoff date beyond which the Government will offer no evidence relating to the charges of a continuing conspiracy necessarily varies with the case, there have been allegations in some litigated antitrust cases that relate to background events of over 60 years.[10] To counter and explain such background events upon which the Government attempts to establish "a conspiracy in restraint of trade" within the meaning of the Sherman Act demands prolonged investigation on the part of defense lawyers, who must

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[5] FED. R. CR. P. 31(a). *Cf.* United States v. Crescent-Kelvan Co., 164 F.2d 582 (3d Cir. 1948).

[6] THE FEDERAL ANTITRUST LAWS: 1890-1951 EDITION (CCH 1952).

[7] See Supplementary Table of Cases *infra.*

[8] Dismissals or disposition on motion, demurrer or plea — including pleas of guilty, *nolo contendere,* etc., have been omitted from the Supplementary Table of Cases.

[9] McAllister, *The Big Case: Procedural Problems in Antitrust Litigation,* 64 HARV. L. REV. 27 (1950) A civil antitrust case, United States v. Aluminum Co. of America, 44 F. Supp. 97 (S.D.N.Y. 1941) is the longest in Anglo-Saxon jurisprudence. There were 58,000 pages of testimony, 153 witnesses and over 1800 exhibits. However, United States v. Cement Institute, Civ. No. 1291 (D. Colo. 1945) which involved a multiple basing point system in the cement industry runs a close second, with some 49,000 pages of testimony and almost 50,000 pages of exhibits.

[10] *E.g.,* United States v. Western Electric Co., Civ. No. 17-49 (D. N.J. 1949) (background events going back as early as 1876); *Cf.* United States v. United Shoe Machine Corp., 89 F. Supp. 349 (Mass. 1950) (complaint covered 35 years of corpo-

acquaint themselves with all of the probable events transpiring during the time wherein the continuing conspiracy is alleged to have taken place. In short, as long as the courts will permit the Government to introduce evidence to reveal background events in an effort to establish a continuing conspiracy, such antitrust cases, whether tried civilly or criminally, will be viewed as "big cases."

It is not the purpose of this article to discuss all of the problems arising in the preparation and trial of a criminal antitrust case. Only some of the highlights will be dealt with.

PRE-TRIAL THRESHOLD QUESTIONS

The Rules of Criminal Procedure for the United States District Courts fail to provide the court with any right to compel counsel on either side to submit to a pre-trial conference. Unlike the procedure usually followed in civil nonjury antitrust cases,[11] the trial court presiding over a "big case" when tried criminally can only suggest a pre-trial conference to counsel, and if counsel refuses to consent, the trial of the case will begin without the benefit of such a conference.[12] Inasmuch as this type of case, whether tried criminally or civilly, is usually a documentary one involving literally thousands of exhibits,[13] a pre-trial conference wherein counsel for the parties have agreed to follow Rule 16 of the Federal Rules of Civil Procedure

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rate history); United States v. Sherwin-Williams Co., Cr. No. 12789, (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012.

In United States v. E. I. du Pont Co., General Motors Co. and United States Rubber Co., Civ. No. 49 C 1071 (N.D. Ill.), CCH TRADE REG. REP. ¶ 66,050, counsel for General Motors in their pre-trial brief stated that it is "unusual not only because it is basically an attack upon big business — but also because it was necessary for the Government to go back 150 years in order to weave its web of suspicion and surmise." Wall Street J., Nov. 15, 1952, p. 2, col. 5.

[11] FED. R. CIV. P. 16.

[12] As was observed by Judge Wallace S. Gourley on Oct. 8, 1951. "This [pre-trial] proceeding, gentlemen, is somewhat novel as far as criminal actions are concerned. When the Acting United States Attorney first presented the matter to me for the purpose of assignment, and I made reference to the indictments, the thought crossed my mind that possibly we might expedite the actual trial of this proceeding if it could be approached in the nature of a pre-trial hearing in the first instance.

"I personally have used pre-trial procedure in all civil actions, and I have found it to be very practical and expeditious in administering justice. I realized that there was no legislative authority or any rule of the Supreme Court which would authorize such procedure as a matter of law. I believe most of you are aware that I did communicate with counsel of record for the respective parties and suggested that a stipulation be entered into by counsel in which a request for a pre-trial conference would be made to the court or that a written request be made to the court requesting a pre-trial conference." United States v. Sherwin-Williams Co., Cr. No. 12789 (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012, p. 3 of transcript.

[13] *E.g.*, United States v. Imperial Chemical Industries, 100 F. Supp. 504 (S.D.N.Y. 1951) (3,700 exhibits); United States v. United Shoe Machinery Corp., 89 F. Supp. 349 (Mass. 1950) (4,166 exhibits); United States v. New York Great Atlantic &

should be seriously considered. In most criminal antitrust cases where such a pre-trial conference has been consented to, the trial proper has usually been a more orderly one. This is especially true when one realizes that a jury of twelve with alternates (usually four additional jurors) sit in judgment on such a case. If counsel consent and effectively use the pre-trial procedure offered by Rule 16 of the Federal Rules of Civil Procedure, the subsequent trial can be shortened by weeks, if not months, and can run much more smoothly, thereby benefiting not only the court and the jury but also counsel for both sides.

When an indictment is returned or an information is filed in a criminal antitrust case, defense counsel are confronted at the very outset with one of the same problems which generally arises in a civil antitrust suit filed by the Government. How certain is defense counsel of knowing that any or all of the documents obtained by the Department of Justice are available to him? If such documents were obtained from, or belonged to, the defendant, or were obtained from others, either by seizure or process, provision is made in Rule 16 of the Federal Rules of Criminal Procedure to enable defense counsel to file a motion to examine or obtain copies thereof at any time after the indictment was returned or information filed. The court may order the attorney for the Government to permit the defendant's counsel "to inspect and copy or photograph designated books, papers, documents or tangible objects obtained from or belonging to the defendant," provided there is a showing that the items sought may be material to the preparation of the defense and that the request is a reasonable one. Rule 16 further provides that the court's order shall specify the time, place and manner of making the inspection and of making the copies or photographs.

This power of inspection and copy by defense counsel extends to documents taken from others only if such were taken by seizure or by process.[14] The real trouble arises when defense counsel attempts to inspect and obtain copies of documents which have been obtained by the Government from

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Pacific Tea Co., 67 F. Supp. 626 (E.D. Ill. 1946) (7,000 exhibits); United States v. National Lead Co., 63 F. Supp. 513 (S.D.N.Y. 1945) (1,400 exhibits); United States v. Hartford-Empire Co., 46 F. Supp. 541 (N.D. Ohio 1942) (3,300 exhibits); United States v. Aluminum Co. of America, 44 F. Supp. 97 (S.D.N.Y. 1941) (1,803 exhibits). In the *"Paint"* case, United States v. Sherwin-Williams Co., Cr. No. 12789 (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012, before stipulations cut the number down, there were about 5,000 prospective exhibits numbering over 8,000 pages. In supposedly the biggest of all antitrust trials, United States v. E. I. du Pont Co., General Motors Co. and United States Rubber Co., Civ. No. 49 C 1071 (N.D. Ill.), CCH TRADE REG. REP. ¶ 66,050, out of some 100,000 documents collected, some 1,200 are reported for trial use. Time, Dec. 8, 1952, p. 87, col. 1.

[14] United States v. Rainey, 10 F.R.D. 431 (W.D. Mo. 1950). For the rule in civil cases see FED. R. CIV. P. 34. United States v. Cotton Valley Operators Committee, CCH TRADE CASES (1948-1949) ¶ 62,479 (W.D. La. 1949), *aff'd*, 339 U.S. 940, 70 Sup. Ct. 793 (1950)

the defendant he represents or from others neither by seizure nor by process. Conscientious defense lawyers are anxious at the outset to know whether they have copies of all of the documents taken not only from their own client but from others, whether named as parties defendant, co-conspirators or otherwise. But where the Government obtained the documents from a defendant or "from others" who *voluntarily* gave up their documents, there appears to be no relief afforded defense counsel whereby discovery and inspection of the documents can be made.[15] There have been, however, instances where the Government has been willing to furnish copies of documents taken neither by seizure nor by process. Whenever government counsel so consent, defense counsel do not have the anxiety of wondering whether copies of all of the documents taken are available to them for purposes of preparing for trial.

The next serious question confronting defense counsel in this type of case is whether the indictment or information is subject to dismissal. In order to ascertain whether the indictment or information sufficiently informs the accused so that it may proceed to trial knowing exactly what there is to meet factually,[16] it is necessary to analyze thoroughly the Government's pleading. It is the exception rather than the rule for the court to grant a motion to dismiss,[17] but assuming that the defendant has pleaded "not guilty" at the arraignment, it behooves defense counsel to exhaust every available motion before trial.[18]

Rule 12 of the Federal Rules of Criminal Procedure provides for motions to dismiss, as distinguished from demurrers and motions to quash which have been abolished. In a motion to dismiss, any defense or objection which is capable of determination without the trial of the general issue *may* be raised before trial, and all defenses and objections available to the defendant based on defects in the institution of the prosecution or in the indictment or information, other than that it fails to show jurisdiction in the court or to charge an offense, *must* be raised before trial. Otherwise, these latter defenses and objections will be considered to have been waived. However, pursuant to Rule 12(b) of the criminal rules, the court may grant relief from such waiver for cause shown. Lack of jurisdiction or

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[15] United States v. Rosenberg, 10 F.R.D. 521 (S.D.N.Y. 1950); United States v. Chandler, 7 F.R.D. 365 (Mass. 1947).

[16] "In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation " U. S. CONST. AMEND. VI. Rumely v. United States, 293 Fed. 532 (2d Cir. 1923).

[17] Universal Milk Bottle Service v. United States, 188 F.2d 959 (6th Cir. 1951); United States v. New York Great Atlantic & Pacific Tea Co., 137 F.2d 459 (5th Cir. 1943); United States v. Brumfield, 85 F. Supp. 696 (W.D. La. 1949).

[18] *Cf.* Harris v. United States, 104 F.2d 41 (8th Cir. 1939); *see* United States v. Krupnick, 51 F. Supp. 982, 988 (N.J. 1943).

failure of the indictment or information to charge an offense is, of course, never waived. Rule 12 makes it mandatory for the court to take judicial notice, *sua sponte* "at any time during the pendency of the proceeding," of such lack of jurisdiction or failure of the indictment or information to charge an offense.

Since offenses arising under the Sherman Act may be punished by imprisonment for a term not in excess of one year or payment of a fine not in excess of $5,000, or both,[19] at the discretion of the trial court, alleged offenses may be prosecuted either by indictment or by information.[20] Rule 7(a) of the Federal Rules of Criminal Procedure so provides, and section (c) of the rule provides that the Government's pleading must be "a plain, concise and definite written statement of the essential facts constituting the offense charged" signed by Government counsel. However, it need not contain either a formal commencement, a formal conclusion or any other matter not necessary to such statement. But the indictment or information must state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Yet omission or error in the citation is not ground for dismissal of the indictment or information if the error or omission does not mislead the defendant to his prejudice.

Although bills of particulars were abolished by the Federal Rules of Civil Procedure in the trial of civil cases and in lieu thereof a motion for more definite statement was substituted,[21] the trial court presiding over a "big case" tried criminally may direct the government to file a bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure. However, defense counsel must file their motion for a bill of particulars within ten days after arraignment or at such other time before or after arraignment as may be prescribed by court rule or order. Defense counsel engaged in trying criminal antitrust cases should not overlook this type of motion, especially when there is any doubt as to what is meant by any of the allegations of the indictment or information. Though courts have appeared reluctant to grant such motions *in toto*, they have at times caused the government to particularize in certain respects.[22] Usually when such a

[19] 15 U. S. C. §§ 1, 2.

[20] "With but a few exceptions all the criminal prosecutions instituted under the Sherman Antitrust Act have been commenced by grand jury indictments. This course has not been followed under constitutional compulsion; prosecutions under the act may be instituted by information." Lewin, *The Conduct of Grand Jury Proceedings in Antitrust Cases*, 7 LAW AND CONTEMPORARY PROBLEMS 112 (1940). The use of indictment rather than information has the advantage for the Government of the opportunity to use the grand jury power of subpoena. See Note, 13 GEO. WASH. L. REV. 434, 451 (1945)

[21] FED. R. CIV. P 12(e)

[22] United States v. Allegheny County Retail Druggists' Ass'n, 12 F.R.D. 249 (W.D.

motion is orally argued, it becomes necessary for counsel to specify in detail the various allegations which appear to them to be ambiguous. Some courts hearing a motion for a bill of particulars take the view that when the pleadings are sufficiently responsive as to enable defense counsel reasonably to prepare their defenses the motion should be denied.[23]

Another threshold question to be considered seriously by counsel defending in a "big case" tried criminally involves the taking of depositions. Rule 15 of the Federal Rules of Criminal Procedure covers this. At any time after the indictment or information has been filed, defense counsel may move the court for an order that a deposition be taken of a prospective witness if it appears that such witness may be unable to attend the trial, provided that defense counsel can also show that the prospective witness' testimony will be material, so that without which there would be a failure of justice. At the same time and place, any designated books, papers, documents and tangible objects, not of a privileged nature, can also be produced pursuant to court order. The manner provided in civil actions governs the taking of a deposition in a criminal antitrust case, and the trial court may order the deposition taken on written interrogatories if the defendant so requests. There is no provision in the Federal Rules of Criminal Procedure enabling Government counsel to take depositions, and this is properly so; otherwise, such a provision would be unconstitutional since the defendant has the right to be confronted with the witnesses against him.[24]

Depositions taken by defense counsel in a "big case" when tried criminally can be used under Rule 15(e) of the Federal Rules of Criminal Procedure at the trial or upon any hearing if it appears that the witness who gave the deposition is dead, out of the United States (except when the absence of the witness was procured by the party offering the deposition) or unable to attend or testify because of sickness or infirmity, or if the party offering the deposition has been unable to procure the attendance of the witness by subpoena.[25] As in the trial of a civil case, any deposition taken by the defendant may be used in a criminal antitrust case by any party for the purpose of either contradicting or impeaching the testimony of the

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Pa. 1952); United States v. Kelly, 10 F.R.D. 191 (W.D. Mo. 1950); *see* Glasser v. United States, 315 U.S. 60, 66, 62 Sup. Ct. 457, 463 (1942); United States v. Tarpon Springs Sponge Exchange, 142 F.2d 125, 127 (5th Cir. 1944).

[23] United States v. Mangiaracina, 10 F.R.D. 415 (W.D. Mo. 1950); United States v. Sherwin-Williams Co., 9 F.R.D. 69 (W.D. Pa. 1949).

[24] "In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him" U.S. CONST. AMEND. VI. Motes v. United States, 178 U.S. 458, 20 Sup. Ct. 993 (1900).

[25] "It was contemplated that in criminal cases depositions would be used only in exceptional situations, as has been the practice heretofore." Notes of Advisory Committee on Rules, FED. R. CR. P. 15(e), 18 U.S.C.A. p. 222.

deponent as a witness; and if only a part of the deposition is offered in evidence by a party, Rule 15(e) empowers an adverse party to require him to submit in evidence all of the deposition which is relevant to the part offered. Any party may offer other parts, and objection to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

A trial court must be "educated" during pretrial and trial so that the judge will be conversant with the exhibits in order to enable him to pass on the problem of proof. If the parties in a criminal antitrust case agree to a pre-trial conference,[26] the lawyers who have completely familiarized themselves with the case by reason of their many hours of thorough preparation can enable the judge prior to trial to obtain a better grasp of the tremendous mass of documents, the admission of which will possibly be in issue. It is during this pre-trial stage that a "big case" involving, in most cases, thousands of documents can be simplified to a very large extent for, where pretrial conferences are agreed upon, opposing counsel as well as the court literally think out loud in the absence of the jury as to how the tangled mass of documents can be reduced and molded into manageable form so as to be more easily handled during the trial. Ordinarily, Government counsel, even in criminal antitrust cases, are co-operative to the extent of at least apprising defense counsel of the main documents upon which they rely to make a *prima facie* case. Often times at a pre-trial conference, disputes as to authenticity, relevancy or identity of documents can be settled by stipulation between counsel, thereby solving not only certain procedural details but perceptibly cutting down the length of the trial.

The usual practice on the part of defense counsel who are entrusted with the defense of a criminal antitrust case is to have the documents taken by the Government investigators from the respective defendants copied in quadruplicate, then indexed and cross-indexed alphabetically, chronologically, and as to persons and places or events. Where the documentary data taken from defendants runs into thousands of pieces of paper, obviously the cost of indexing alone is enormous.[27] But that is only the start. Some one or

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[26] This procedure was followed in United States v. Sherwin-Williams Co., Cr. No. 12789 (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012.

[27] In the trial of United States v. United Shoe Mach. Corp., 85 F. Supp. 349 (Mass. 1950) the marking and description of over 4,500 Government documents consumed five days. Later, thirteen days were spent by defense counsel arguing over 15,000 objections to over 4,000 of the proffered exhibits. The Government's exhibits numbered about 4,600, and at least eighteen different types of objections were made by the defense.

A comment by trial Judge Wyzanski is worthy of note: "Counsel cannot dump into the lap of the court an undigested mass of documents comprising hundreds of thousands of pages and then expect the court to read all of them, even if they were all to some degree both relevant and persuasive. It will be enough for the court to emphasize the point that it is counsel's duty and not the court's to read all the

more of the defense battery of lawyers (and there are usually more than one in such a case) must become thoroughly acquainted with the documents. Likewise, some one must examine the documents with a view to identification, authentication, genuineness, relevancy and so forth.

Rule 36(a) of the Federal Rules of Civil Procedure tends to simplify the handling of such documents in a civil case. Under it there may be determined the genuineness of any relevant documents and the truth of any relevant matters of fact set forth in a request and served upon a party. However, the rule becomes ineffective when the various defendants are unwilling to reply to the request for authentication. They are not required under the rule to respond to such a request, and therefore, in that instance, the Government is obliged to produce witnesses in court to identify and authenticate the documents. If the direct testimony of such witnesses is limited in those respects, defense counsel have no right to examine them on any other subject. Under Rules 16, 26 and 27 of the Federal Rules of Criminal Procedure somewhat the same procedure is to be followed.

Although the criminal trial of a "big case" is much more limited than the civil trial of such a case, the present attitude of trial judges handling the preliminary matters in a criminal antitrust case brought under the Sherman Act seems to follow somewhat the same liberal treatment that is employed by trial judges hearing civil antitrust cases. Even in a criminal case, in handling the voluminous mass of documents presented in most pretrial conferences, the courts are deeply influenced by the liberality of practice which fairly breathes from the pores of the Sherman Act.

A "big case" when tried civilly or criminally is quite frequently the result of much investigation by the F.B.I. on behalf of the Antitrust Division of the Department of Justice, and Government counsel usually places considerable emphasis on documents discovered through such investigation. However, in criminal antitrust cases the Government, realizing that jurors are impressed by live witnesses, does not often limit the evidence in its case to documents. Astute Government prosecutors handling this type of case will supplement the documentary evidence with the testimony of individuals so as to make their case more impressive. Such was done in the *"Tobacco"* case[28] and in the *"Paint"* case.[29] Thus, it behooves opposing counsel to

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available exhibits and then to make a usable selection. One judge cannot read in a reasonable time exhibits which it has taken a multitude of counsel, dividing the work among themselves, years to collect, especially when it is transparent that not all of the lawyers taken together have read even a fraction of the thousands of patents and like exhibits." United States v. United Shoe Mach. Corp., ¶ 62,631 CCH TRADE REG. REP. (1948-1951).

[28] American Tobacco Co. v. United States, 147 F.2d 93 (6th Cir. 1944), *aff'd*, 328 U.S. 781, 66 Sup. Ct. 1125 (1946).

[29] United States v. Sherwin-Williams Co., Cr. No. 12789 (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012.

prepare their defense by using live-witness testimony. It stands to reason that, if the Government puts in a large mass of damaging evidence in the form of documentary proof and supplements it by having witnesses take the stand to confirm the position taken by the Government, unless defense counsel meet that evidence with live witnesses as well as documents, the jury will be inclined to favor the Government. Therefore, as a part of the preparation to be engaged in by defense lawyers, there must be included the job of locating, examining and briefing witnesses for trial.

TRIAL PROPER

Comparatively few criminal antitrust cases which have been filed seem to ever reach trial. Up to 1952, less than 125 cases were actually tried to a verdict or decision. Most of them appear to have been settled before the trial date by an entry of a plea of *nolo contendere* and the payment of fines. This is ordinarily done because most individuals and corporations who are indicted for having violated either Section 1 or 2 or both of the Sherman Act[30] do not regard it as prudent to spend considerable time and money in vindicating their position, even though they may be completely innocent. A defendant is required to weigh the practicalities of the situation, having in mind the tremendous expense of such litigation if the case is carried through to a conclusion. I venture to say that only infrequently does a defendant have the intestinal fortitude as well as financial means[31] to stand up and litigate the charges brought by the Government under the Sherman Act. No one knows how gargantuan and herculean the defense task is other than counsel who have actually defended their clients in such a cause. The easy way out on the part of one charged by the Government with having violated the Sherman Act is to make a settlement by way of signing a consent decree (if civil) or pleading *nolo contendere* (if criminal) and avoid the responsibilities which attach to the trial of such a case. Although settling of the case without trial in this manner seems more prevalent when the action is brought civilly than when a criminal charge is filed, it is like a breath of fresh air to counsel learned in this type of case to have a client who will stand up and fight to the bitter end.[32]

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[30] 15 U.S.C. §§ 1, 2.

[31] According to the Pre-trial Order No. 2 and Memorandum of Judge Medina in United States v. Henry S. Morgan, Civ. No. 43-757 (S.D.N.Y. May 25, 1950), the cost to the defendants for a comprehensive compilation of all relevant facts on security issues of any importance, from the 1935-1949 period alone, was stated to have been not less than $350,000. McAllister, *The Big Case: Procedural Problems in Antitrust Litigation*, 64 HARV. L. REV. 27, 50 (1950).

[32] A popular magazine commented editorially on this problem which was present in the *"Paint"* case: "The Glidden president, Dwight P. Joyce, said the case cost his firm more than $100,000 in fees and other expenses. We may assume that the bill

The empanelling of the jury is governed by Rule 24 of the Federal Rules of Criminal Procedure and by United States District Court rules adopted by the respective courts. In some jurisdictions, the clerk in the absence of the trial judge interrogates prospective jurors. In others, the judge does the questioning and when counsel wishes to supplement his questions, he must do so by addressing the judge. If the judge believes that counsel's questions are pertinent, he may put them to the prospective juror. In still other jurisdictions, the prospective jurors may be interrogated by counsel. The question of choosing a jury is of utmost importance and counsel should not underestimate this phase of the proceeding.

Under Rule 24(b) and(c) of the Federal Rules of Criminal Procedure, each *side* in a criminal antitrust case is entitled to three peremptory challenges for the regular panel and two for the alternate jurors, and, in the event there is more than one defendant, it is discretionary with the trial court as to how many additional peremptory challenges the defense will have. In the *"Paint"* case, the trial court allowed to the two defendants collectively six peremptory challenges for the regular jurors and two peremptory challenges for the alternate jurors. Thus the number of peremptory challenges will vary with the case depending upon the number of defendants and the discretion of the trial judge.

As for challenges for cause, which are limitless in number, the trial court has the duty under statute[33] to determine whether such challenges should or should not be granted. The principal grounds for challenge for cause as of right are: (1) that the prospective juror does not have the qualifications of a juror;[34] (2) that the prospective juror is exempt from jury service by statute;[35] and (3) that the prospective juror has served as a petit juror within one year previously.[36]

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presented to DuPont was no less. Mr. Joyce said, 'It was well worth the $95,000 difference (between Glidden's costs and the other defendants' fines) to take the stigma off the company s name.' Yet it seems a pity that there is such a high price attached to the disproving of what, according to a Pittsburgh jury, were unfounded charges. It also seems a pity that seven companies had to risk the stigma of inferred guilt simply because they couldn't afford to pick up the tab." Colliers, March 15, 1952, p. 98.

[33] 28 U.S.C. § 1870.

[34] "Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless: (1) He has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty. (2) He is unable to read, write, speak and understand the English language. (3) He is incapable by reason of mental or physical infirmities to render efficient jury service. (4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held." 28 U.S.C. § 1861.

[35] 28 U.S.C. § 1862.

[36] 28 U.S.C. § 1869.

There are also certain challenges for good cause addressed to the discretion of the trial court[37] (sometimes referred to as challenges for favor), such as where actual bias or prejudice is shown,[38] where there has been a prior admission of bias or prejudice[39] or where the prospective juror has formed a fixed opinion concerning the issues involved.[40] In addition, the court may excuse any person or group of persons called as jurors upon finding that their serving as such will entail undue hardship, extreme inconvenience or serious obstruction to, or delay in, the fair and impartial administration of justice.[41]

Once a panel of jurors is chosen, counsel on behalf of the Government must make their opening statements, which may be followed by opening statements of defense counsel for their respective clients or such may be made after the Government has rested its case.[42] The opening statements of defense are also not to be minimized. Defense counsel should decide then whether the placing of the jurors in a better position for evaluation of the Government's testimony by informing them at the commencement of the trial as to the contentions of the defendant or defendants will be more likely to lead to a successful defense than any possible surprise to the Government that may be produced by the evidence which the defendants intend to produce. This decision should be based upon a thorough knowledge, not only of the defendants' evidence, but, if possible, of the nature of the Government's evidence. If the jurors can understand the position which your client takes at the outset of the trial, even though the proceeding lasts many months, it is quite possible you have made headway.

In some cases filed in outside jurisdictions, the Government may bring from Washington, D. C. as many as five, sometimes ten, lawyers to help present its case. Defense counsel in turn may employ an equal number or more,[43] but it has always seemed unwise to the writer to have more than

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[37] 28 U.S.C. § 1863(a).

[38] Dennis v. United States, 339 U.S. 162, 70 Sup. Ct. 519 (1950).

[39] United States v. Fries, 3 Dall. 515 (U.S. 1799).

[40] Reynolds v. United States, 98 U.S. 145 (1879); Medley v. United States, 155 F.2d 857 (D.C. Cir. 1946), *cert. denied,* 328 U.S. 873, 66 Sup. Ct. 35, *rehearing denied,* 329 U.S. 822, 67 Sup. Ct. 35 (1946).

[41] 28 U.S. C. § 1863(b)

[42] "Opening to the jury by both sides before any testimony has been introduced, though a common practice in some state courts, is unusual in federal courts." Savitt v. United States, 59 F.2d 541, 542 (3d Cir. 1932).

[43] In *United States v. E. I. du Pont Co., General Motors Co. and United States Rubber Co.* when trial began before United States District Judge LaBuy (N.D. Ill.) on November 18, 1952, "three trial tables were occupied by the small army of 33 attorneys for the various defendants." Wall Street J., Nov. 19, 1952, p..3, col. 1. The number of counsel for the defendants eventually came "to a staggering 63." Life, Dec. 6, 1952, p. 41, col. 1.

two defense lawyers present at the trial table. If there is more than one defendant, counsel representing each of the defendants should insist upon occupying separate trial tables. The reason for this is fairly obvious. If the charge is one of conspiracy, members of the jury might easily misinterpret the fact that the defense lawyers are sitting together at the same trial table throughout the trial as indicative of a conspiracy on the part of their clients. However, where there is a battery of lawyers representing, for example, one corporation, it is best for that group to have one lawyer speak on its behalf and take charge of the proceedings for that particular client. These practical aspects are very important and should not be overlooked by trial counsel. Even to fraternize in or near the courtroom with counsel representing an alleged co-conspirator might be interpreted by some one sitting on the jury to mean that a conspiracy exists among defense counsel and, therefore, among the defendants they represent.

In the trial of a civil antitrust case there apparently is no real distinction between pre-trial and trial. Usually the judge conducts the pre-trial conferences, presides at the trial and acts both as the court and jury. However, when a "big case" is tried in a criminal court where the jury is not waived, there is a distinct difference between pre-trial and trial. The jury which is to try the facts must be made acquainted with the issues and evidence, for, even though the court has learned what the issues are at the pre-trial conference, the handling of such litigation to a conclusion before a jury requires counsel to bear in mind that the jury has had no prior knowledge of what is involved. One starts "from scratch" and though the pattern of presentation may have been simplified by reason of stipulations made prior to trial, the entire matter is absolutely new to the jurors and must be developed step by step for them. The usual method employed by Government counsel in such cases is to introduce such documents as have not been agreed upon as to identification and authenticity by putting on the stand witnesses who will give testimony so as to identify and authenticate the particular documents. With respect to these documents that have not been so stipulated, arguments as to their relevancy, etc., follow by counsel, usually in the absence of the jury, and thereafter the court rules,[44] sometimes reserving his ruling on the admissibility dependent upon the introduction by Government counsel of other testimony by way of connection. This phase of the Government's presentation is usually cut and dried. Defense counsel whose documents are involved are usually very much on the alert, and counsel whose clients'

[44] "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an Act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." FED. R. CR. P. 26.

documents are not involved generally "take a back seat." Following the identification and authentication of documents come the Government's live witnesses as to events and it is then that all defense counsel should be "on their toes." Cross-examination of such witnesses is governed by a rule laid down by the courts to the effect that counsel are limited in their cross-examination of witnesses as a matter of right to subject matters brought out by such witnesses only on direct examination.[45]

In the trial of a civil antitrust case based upon alleged Sherman Act violations, the Government has the right to introduce incriminating data taken from the files of the defendant corporations which evidences or tends to evidence a conspiracy, as for example, alleged price-fixing.[46] In such civil litigation, the defendant has no right to introduce, by way of defense, testimony which will negative this incriminating data. Defense testimony to that effect is considered incompetent as self-serving evidence.[47] However, when a "big case" is tried on the criminal side of the court and documents tending to show the state of mind of the defendant have been admitted in evidence, the trial court should permit the defendant to meet such damaging data taken from its files by introducing testimony which will negative the Government's contentions. By way of example, in the *"Paint"* case, tried in Pittsburgh, the court admitted a letter in evidence, over objection, as against the corporate defendant whose officer had written the letter to an officer of another corporate defendant.[48] The letter, which had

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[45] Alpin v. United States, 41 F.2d 495 (9th Cir. 1930); Foster v. United States, 178 Fed. 165 (6th Cir. 1910).

[46] *Cf.* Lewis v. United States, 38 F.2d 406 (9th Cir. 1930); Browne v. United States, 290 Fed. 870 (6th Cir. 1923); United States v. Greene, 146 Fed. 784 (E.D. Ga. 1906).

[47] United States v. New York Great Atlantic & Pacific Tea Co., 173 F.2d 79 (7th Cir. 1949); American Tobacco Co. v. United States, 147 F.2d 93 (6th Cir. 1944). WIGMORE, EVIDENCE § 1048 (3d ed. 1940).

[48] Government's Exhibit No. 1 in part read: "We fully realize that under today's conditions, and generally at all times, any change in wage rates, hours, working conditions or employee relations which this Company may adopt, may have a very material and perhaps serious effect on our competitors, both friendly and otherwise, and our industrial neighbors at our plant locations. We are convinced that any ill effect of our action upon neighbors is bound to react against ourselves; hence we wish to make every effort, and our plant managements have been so advised to, if possible, let our neighbors, competitive or otherwise, know in advance what we are doing in these respects, why we are doing it, and when. By adopting this policy, we do not undertake to adjust ourselves to the views of others, we do not ask or imply any intended agreement on the subject, and reserve the right to act absolutely independently. What we do intend to do is, see that our action does not injure someone else because of its timing or unexpected nature."

This letter was admissible as against the other defendants as co-conspirators only after the conspiracy and its membership had been established by other evidence. United States v. Sherwin-Williams Co., Cr. No. 12789 (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012, p. 416 of transcript.

been neither signed nor sent, was admitted as relevant in tending to show the requisite state of mind necessary to prove a criminal conspiracy in violation of the Sherman Act.[49] However, the defendant could have rebutted this evidence by having the officer who wrote the letter take the stand and testify as to his actual state of mind.

Conducting the defense of a criminal antitrust case, though involving a greater number of witnesses and a huge amount of documentary data, is similar in some respects to the way an ordinary criminal case is handled. Assuming that the court has refused to grant the defendant's motion for judgment of acquittal at the close of the Government's case,[50] defense counsel are then charged with the duty of presenting their respective cases and Rule 29(a) expressly empowers the defendant to "offer evidence without having reserved the right" so to do.[51] Usually counsel representing the defendant first named takes the lead unless there has been an agreement otherwise. The primary effort on the part of the defense is to refute what has been brought out by the prosecution. This is done by introducing whatever evidence is available to controvert the government's claims.

Usually, defense counsel will endeavor not only to negative the evidence introduced by the Government but also to establish affirmative defenses beneficial to their client's cause.

Affirmative evidence which explains certain business practices indulged in by the defendant during the period involved may also be offered. If this part of the case has been properly prepared, trial aids covering the precise points relative to affirmative defenses make handy references for use at time of trial.

It is customary for defense counsel to renew their motions for judgment of acquittal at the close of their defense and again after rebuttal when all of the evidence is in and all parties have rested. Pursuant to Rule 29(b) of the Federal Rules of Criminal Procedure, the trial court may reserve this decision on the motion for judgment of acquittal, submit the "big case" to the jury and decide the motion either before the jury returns a verdict, or after it returns a verdict of guilty or is discharged without having returned a verdict. As in the trial of civil cases, if the trial court denies the motion and submits the case to the jury, defense counsel may renew the motion within five days after the jury is discharged.

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[49] *Cf.* Lewis v. United States, 38 F.2d 406 (9th Cir. 1930); Browne v. United States, 290 Fed. 870 (6th Cir. 1923); Chadwick v. United States, 141 Fed. 225 (6th Cir. 1905).

[50] FED. R. CR. P. 29(a) abolished motions for directed verdict and substituted in lieu thereof motions for judgment of acquittal.

[51] FED. R. CR. P. 29(a).

Rebuttal and Surrebuttal Testimony

Government counsel sometimes deem it wise to establish when investigation by the F.B.I. first began, so as to be in a position later to argue to the jury that the documents introduced by the defendants' counsel, which were written or created after the investigation began, should be viewed with suspicion by the jury. To meet this, it is submitted that defense counsel should be permitted to put on the stand by way of surrebuttal the individuals who wrote those particular letters so as to establish that at the time they were written, their authors did not know of such an investigation.

This precise and novel question was before Judge Gourley who presided over the *"Paint"* case. He ruled that if the Government counsel had the right to introduce testimony concerning the date when the investigation first began, then, in turn, the corporate defendant whose rights were involved should be permitted to show by way of defense the circumstances under which such data was created. This seems to be the only fair rule to apply in order to show the true state of mind of the defendant, despite the fact that whatever evidence might be introduced on surrebuttal might appear to be self-serving.

Any party may file written requests, either at the close of the evidence or at such earlier time during trial as the trial court reasonably directs, that the court instruct the jury on the law as set forth in the requests. Adverse parties are entitled to be furnished with copies of such requests, and it is mandatory upon the court to inform counsel of its proposed action upon the requests before arguments are made to the jury.[52] In that way, the court's instructions on certain phases of the law, can be anticipated in advance of the charge by the court. This usually enables counsel to make an effective oral argument on the basis of being able to predict accurately what the judge will say when charging the jury. Of course, the court does not instruct the jury until after the arguments of counsel are completed.

Final Argument and Charge

If opposing counsel properly co-operate with the trial court during the trial of the case, they can prove of great assistance in the drafting of the charge to the jury. Very few trial lawyers realize what an enormous responsibility is placed upon a trial court charged with the proper handling of such a case. Obviously the lawyers who have participated are usually so conversant not only with the facts but with the law that they realize it is asking a great deal of the court to educate a jury of laymen to the point that they understand the various theories involved in and the many issues making up a "big case." The least that can be done by both Government and de-

[52] Fed. R. Cr. P. 30.

fense counsel is to co-operate to the fullest extent with the trial court so as to enable him to charge the jury fully and fairly on all questions involved.

The court's charge to the jury is often necessarily of very great length.[53] However, despite the length of the charge and the amount of time consumed by the trial, it is always unwise for counsel to bore the jury by arguing too long. The writer has known of some cases in which counsel have taken literally days in which to argue to the jury. The most effective argument, it seems to me, is one that can be made in a few hours. Of course, the time needed for final argument will generally depend on the number of issues involved. The more simple the argument is, however, the more understandable it becomes. Defense counsel should naturally stress in their final arguments the duty of the jurors to return a verdict of guilty only if they have an abiding faith to a moral certainty that the evidence adduced at trial clearly convinces them beyond all reasonable doubt that the charges made were true. This presents a great handicap for Government counsel in this type of case and, because of this reason alone, may cause the Department of Justice to institute more antitrust cases civilly than criminally.[54]

Recent charges given by United States District Courts in antitrust cases which appear to be most inclusive and representative are those given by Judge Ford in the *"Tobacco"* case,[55] Judge Goodman in the *"Dried Fruit Association"* case,[56] and Judge Gourley in the *"Paint"* case.[57] Unless counsel objects specifically to any portion of the charge or to omissions therefrom before the jury retires to consider its verdict, "stating distinctly the matter to which he objects and the grounds of his objection," he cannot assign it as error.[58]

CONCLUSION

The foregoing article is not intended to be exhaustive of the subject.[59] It has been written because, in the author's opinion, there appears to be a dearth of material concerning the criminal trial of what is known as a "big case." This appears to be so even though less than one hundred and twenty-five of such cases have actually been tried to conclusion during the first 61 years of the Sherman Act.

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[53] In the *"Paint"* case the charge covered over one hundred pages and consumed more than three hours of the court's time.

[54] See note 5 *supra.*

[55] American Tobacco Co. v. United States, Cr. No. 6670 (E.D. Ky.), *aff'd,* 147 F.2d 93 (6th Cir. 1944), 328 U.S. 781, 66 Sup. Ct. 1125 (1946).

[56] United States v. Dried Fruit Ass'n of California, 4 F.R.D. 1 (1944).

[57] United States v. Sherwin-Williams Co., Cr. No. 12789 (W.D. Pa. 1951), CCH TRADE REG. REP. ¶ 66,012.

[58] FED. R. CR. P. 30.

[59] For example, the problems of impounding of documents, proof of official records, venue and motions to transfer have been omitted from this article.

The Government is precluded from appealing such a case if it loses in the trial court. Therefore, it behooves defense counsel to win below, if possible. Usually, the "big case" when tried criminally is an uphill fight for Government counsel because a unanimous verdict of all twelve jurors is needed to convict a defendant.[60]

SUPPLEMENTARY TABLE OF CASES

The following are criminal antitrust cases instituted by the United States (1890-1951) arising under the Sherman Act which were prosecuted to a verdict or decision (dismissals either by the Government or by the court, or disposition on motion, demurrer or plea — including pleas of guilty, *nolo contendere*, etc., are excepted).

Date — Indictment Returned or Information Filed		*Jury Disagreement*	*Found Guilty*	*Found Not Guilty*	*Final Disposition*
1895	United States v. Moore		x		Reversed
1906	United States v. MacAndrews & Forbes		2x	x	
	United States v. DeMund Lumber Co.			Directed Verdict	
	United States v. Phoenix Wholesale Meat & Produce Co.		1	1	
	United States v. Santa Rita Store Co.		x		Reversed
1907	United States v. Corbett Stationery			x	
	United States v. Union Pacific Coal Co.		x		
1908	United States v. Ray		3	x	
	United States v. American Naval Stores			x	
1909	United States v. American Sugar Refining Co.	x			Dismissed
1910	United States v. Steers		8	4	
	United States v. Swift Co.			x	
	United States v. Standard Sanitary Mfg. Co.			x	
1911	United States v. Pearce			x	
	United States v. Hunter Milling Co.		x		
1912	United States v. Patterson		x		

[60] FED. R. CR. P. 31(a)

Date— Indictment Returned or Information Filed		*Jury Disagreement*	*Found Guilty*	*Found Not Guilty*	*Final Disposition*
1914	United States v. Knauer		x		
	United States v. Irving		x		
	United States v. Rockefeller	5		6	
1915	United States v. King		x		
	United States v. Boyle		x		
	United States v. Artery		x		
	United States v. Rintelen	x	3		
	United States v. Bopp		x		
	United States v. Cowell		x		
1917	United States v. Jensen Creamery Co.			x	
	United States v. Aileen Coal Co.			x	
	United States v. Webster			x	
	United States v. Barton			Directed Verdict	
	United States v. Belfi		x		
1920	United States v. Colgate & Co.			Directed Verdict	
1921	United States v. Atlas Portland Cement Co.	x			Dismissed
	United States v. Andrews Lumber & Mill Co.		x		Affirmed
1922	United States v. O'Brien		x		
	United States v. Trenton Potteries Co.		43	3	Affirmed
	United States v. Clements		x		
	United States v. Williams		5	1	
1924	United States v. Reilly		x		
1925	United States v. Fitzgerald			x	
	United States v. Berkey & Gay Furniture Co.	x			Dismissed
	United States v. Aulsbrook & Jones Furniture Co.	x			Dismissed
1927	United States v. Baumgartner		x		Rev. in Part
1928	United States v. Wallace	x			Dismissed
	United States v. Greater New York Live Poultry Chamber of Commerce		66	2	

Date — Indictment Returned or Information Filed		*Jury Disagreement*	*Found Guilty*	*Found Not Guilty*	*Final Disposition*
1931	United States v. Mercer		x		
1933	United States v. Fish Credit Ass'n, Inc.		x		
	United States v. Weiner		5	2	
	United States v. Protective Fur Dressers Corp.		x		
	United States v. Needle Trades Workers Industrial Union		11	7	Rev. Convictions
	United States v. Fur Dressers Factor Corp.		9	2	Affirmed
1934	United States v. McGlone (Feb. 28)			Directed Verdict	
1935	United States v. Warner Bros. Pictures, Inc.			x	
1936	United States v. Gramlich		x		
	United States v. Standard Oil Co.		x		
1937	United States v. McGlone			Directed Verdict	
1938	United States v. General Motors Co.		4	19	Affirmed
	United States v. Local 807, Int'l Brotherhood of Teamsters		x		Reversed
	United States v. American Medical Ass'n		2	x	Affirmed
1939	United States v. Local Union 639, Int'l Brotherhood of Teamsters			Directed Verdict	
1940	United States v. Chicago and Cook County Bldg. & Construction Trades Council			Directed Verdict	
	United States v. Central Supply Ass'n			Directed Verdict	
	United States v. Associated Plumbing and Heating Merchants		x		
	United States v. Kelly-Goodwin Hardware Coal, Inc.			x	
	United States v. Evans		x		Reversed

Date — Indictment Returned or Information Filed		*Jury Disagreement*	*Found Guilty*	*Found Not Guilty*	*Final Disposition*
	United States v. Nick		x	x	Affirmed
	United States v. Chattanooga News-Free Press Co.		x		
	United States v. Lumber Products Ass'n, Inc.		x		
	United States v. U. S. Gypsum Co.			x	
	United States v. American Tobacco Co.		x		
1941	United States v. Western Washington Wholesale Grocers Ass'n		2		Reversed
	United States v. Beatrice Creamery Co.		x		Rev. in Part
	United States v. New York Great A. & P. Tea Co.			x	
	United States v. Dried Fruit Ass'n of California			x	
	United States v. Canners League of California			x	
	United States v. Food and Grocery Bureau of Southern California, Inc.		13	2	Affirmed
	United States v. Atlantic Commission Co.			Directed Verdict	
	United States v. General Electric Co.		x		
1942	United States v. Virginia-Carolina Clays, Inc.		x		
	United States v. California Retail Grocers & Merchants Ass'n, Ltd.		x		
	United States v. Wisconsin Cheese Exchange			x	
	United States v. Dubuque Cooperative Dairy Marketing Ass'n			x	
	United States v. St. Joseph Stockyards Co.			x	
	United States v. Associated Serum Producers, Inc.			x	

Date — Indictment Returned or Information Filed		*Jury Disagreement*	*Found Guilty*	*Found Not Guilty*	*Final Disposition*
	United States v. Dairy Cooperative Ass'n			Directed Verdict	
	United States v. Columbia River Packers Ass'n, Inc.			Directed Verdict	
	United States v. E. I. du Pont de Nemours & Co. (Aug. 10)			x	
	United States v. Kingan & Co.			x	
1943	United States v. Ozark Canners Ass'n, Inc.			x	
	United States v. Halibut Liver Oil Producers		9	9	
	United States v. Tarpon Springs Sponge Exchange		10	20	
	United States v. Millers' Nat'l Federation		x		Judgment n.o.v.
	United States v. Middlewest Motor Freight Bureau			x	
	United States v. Spokane Fuel Dealers Credit Ass'n, Inc.			x	
1944	United States v. New York Great A. & P Tea Co.		27	3	Affirmed
	United States v. Eastern Gas & Fuel Ass'n			x	
1945	United States v. Ass'n of Limb Mfgrs. of America, Inc.		x		
1946	United States v. Local 36 of the Int'l Fishermen		15	1	Affirmed
1947	United States v. National City Lines, Inc.		x		Affirmed
	United States v. Armour & Co.			x	
	United States v. National Ass'n of Real Estate Boards			Directed Verdict	
1948	United States v. St. Louis Dairy Co.		2	6	Rev. Convictions

Date— Indictment Returned or Information Filed		*Jury Disagreement*	*Found Guilty*	*Not Guilty*	*Final Disposition*
	United States v. North East Texas Chapter, N.E.C.A.		9	8	
	United States v. Maryland and Virginia Milk Producers Ass'n		4	2	Reversed
	United States v. Happy Valley Farms, Inc.			x	
	United States v. Sherwin-Williams Co.			x	
	United States v. Denver Master Plumbers			x	
	United States v. Consumers Ice Co.		x		
1949	United States v. Walter Kidde & Co.	1	2	5	
	United States v. Church Grape Juice Co.		10	8	
	United States v. Stern			x	
	United States v. Philadelphia Gas Works			x	
1950	United States v. Atlantic Co.			x	
	United States v. Blake, Moffit and Towne			x	
	United States v. Healy River Coal Corp.		1	5	
	United States v. Anchorage Cab Owners Ass'n		3	10	
1951	United States v. California Rice Exporters			x	
	United States v. Las Vegas Merchant Plumbers Ass'n		12	1	

The above table of cases is intended to be all-inclusive. However, it may not be entirely so.