

ANTITRUST LAW: CASE DEVELOPMENT AND LITIGATION STRATEGY

LW.11043.001
NYU School of Law
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Mondays, 4:10-6:00 pm
FH 318
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Week 3: Criminal Price-Fixing Investigations and Prosecutions ([Unit 3](#) continued)

This week we will continue our discussion of criminal price-fixing investigations and prosecutions.

Indictments and informations. Next, we will turn to indictments and informations. An *indictment* in a criminal case is analogous to a complaint in a civil case. The Fifth Amendment (p. 52) provides persons charged with a felony the right to be indicted by a grand jury. I have included a model grand jury charge (pp. 53-59) because you probably have never seen one, but feel free to only skim it or skip it altogether. An *information* is the charging document when the defendant waives its right to an indictment by a grand jury. Rule 7 of the Federal Rules of Criminal Procedure (p. 60) spells out the requirements for indictments and informations and you should read it with some care. Also read the Irving Materials information (pp. 61-67) and see how it tracks the requirements of Rule 7. Please bring a copy of the Irving Materials indictment to class. We will go through it with some care.

Criminal complaints and arrest warrants. In some situations—for example, when a suspect is about to flee the country—it is necessary to take the suspect into custody before a grand jury can indict them. The way to do this is through a *criminal complaint*. Rules 3 and 4 of the Federal Rules of Criminal Procedure (pp. 68-69) govern criminal complaints and arrest warrants. The remaining materials in this section (pp. 70-74) give an example of a criminal complaint in an antitrust case, a supporting affidavit, and an arrest warrant.

Pleas and plea agreements. We will then turn to pleas and plea agreements. You should have a very general sense of what Criminal Rule 11 (pp. 76-78) requires. Look closely at Rule 11(c). Make sure you understand the difference between a Type B and a Type C plea agreement. Read the IMI plea agreement (pp. 79-96). Check to see how the requirements of Rule 11 are reflected in the agreement and whether the IMI plea agreement is a Type B or Type C agreement. Please bring the IMI plea agreement to class, since we are going to walk through it. You can just skim the Pete Irving plea agreement (pp. 97-110), but see if you can find any differences between the form of the IMI plea agreement (regarding a corporation) and the Pete Irving plea agreement (regarding an individual).

Next week we will finish the unit on criminal price-fixing investigations and prosecutions with criminal sentencing and appeals. We will begin Unit 4 on private antitrust actions in Week 5.

Dale