

ANTITRUST LAW: CASE DEVELOPMENT AND LITIGATION STRATEGY

LAW 1396
Georgetown University Law Center
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Tuesdays, 3:30 pm - 5:30 pm
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Week 2: Criminal Price-Fixing Prosecutions (Unit 2)

Now that we have introduced the Indianapolis ready-mix concrete conspiracy, we will examine criminal price-fixing investigations, prosecutions, plea agreements, and criminal sentencing for the next four weeks.

We will start with a brief review of the elements of a criminal Sherman Act § 1 violation and the associated penalties for its violation. Read the Sherman Act (p. 6 in the [reading materials](#)) with some care. The elements of a criminal Section 1 violation are unpacked in the class notes (slides 3-16 of the [class notes](#)). The Sherman Act does not have its own statute of limitations, so the general five-year federal criminal statute of limitations applies (p. 6 and slides 17-19).

Take a look at the chart on the history of the Sherman Act maximum penalties (slide 21) as well as the “alternative fines provision” of the Comprehensive Crime Control Act (p. 7 and slides 22-24). While the Sherman Act provides for maximum fines for criminal violations of \$1 million for individuals and \$100 million for corporations, the alternative fines provision—which imposes criminal penalties of twice the gain to the perpetrator or twice the loss to the victims—is uncapped. In large conspiracies, the alternative fines penalty can be much higher than the Sherman Act maximums. The Antitrust Division frequently uses the alternative fines provision in prosecuting international cartel members. The class notes also cover criminal sanctions for antitrust violations (slides 26-35). Slide 26 lists the highest criminal fines collected by the DOJ for criminal Sherman Act violations. Slides 31-35 summarize recent trends in individual sanctions, including incarceration rates and individual fines, and include a useful factoid on where criminal antitrust fines go (a significant portion funds the Crime Victim’s Fund).

As we discussed in the last class, Chris Beaver was also convicted of violating 18 U.S.C. § 1001, one of several obstruction of justice statutes that come up frequently in federal criminal cases. I have included in the reading materials a number of obstruction of justice-type provisions from the criminal code with which you should have some basic familiarity (and therefore need only skim) (pp. 9-13). You have already seen the *Flynn* information from last week’s reading. The *Groen* information (pp. 14-18) and the excerpt from the *Martha Stewart* case (pp. 19-21) show what can happen to someone who tampers with evidence during a federal antitrust investigation and are quick and interesting reads. Finally, the *Higashida* indictment (pp. 22-30) applies various obstruction of justice statutes to the efforts of two individuals to allegedly cover up their own and their company’s participation in one of the automotive auto parts price-fixing conspiracies.¹

If you have any questions, please send me an email. Have a great week, and I will see you in class.

¹ Higashida ultimately entered a guilty plea under a plea agreement to conspiring to obstruct justice and attempting to obstruct justice. As agreed, he was sentenced to 14 months in prison and a \$7500 criminal fine. You can find the docket sheet and various filings in the case (including the plea agreement and the transcript of the plea agreement/sentencing hearing in [Unit 3](#) on AppliedAntitrust.com).