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Simon Says, Juries Listen

Antitrust attorney Bruce Simon has gotten 'in the heads' of Archer Daniels Midland, Anheuser-Busch and international cartels—but he says there's no need to be nasty

BY STAN SINBERG
PHOTOGRAPHY BY GREGORY COWLEY

BRUCE L. SIMON

- CO-FOUNDER, PEARSON, SIMON & WARSHAW, SAN FRANCISCO
- ANTITRUST LITIGATION
- NORTHERN CALIFORNIA SUPER LAWYERS: 2004–2014; TOP 100 NORTHERN CALIFORNIA 2007–2009, 2013

BRUCE SIMON WAS FACED WITH THE UNENVIABLE task of asking a jury to sympathize with a large bank, which was claiming it had been duped into making a bad loan. Worse, not only did Union Bank have a department to review prospective loans, but the defense's key expert had just testified to the uprightness of accounting company Arthur Young, which was accused of accounting negligence.

But Simon had a rather large ace up his sleeve.

On cross-examination, he prodded the witness into asserting that experts who receive money from defendants put their integrity in doubt. With that, he signaled for a draped poster board, sitting in the back of the courtroom, to be uncovered. It revealed a blown-up photo of the expert witness receiving a giant-size check, the kind lottery winners pose with in publicity shots, from Arthur Young.



If Bruce says you have a deal, you can rely on what he has said. On the other hand, if your client chooses to fight, Bruce is prepared to and will wage a forceful and persistent battle all the way to the end, prevailing more often than not."

**—GARY SPRATLING,
GIBSON, DUNN &
CRUTCHER**

"No more questions!" Simon said and walked off, leaving the key expert's credibility in tatters and a \$5 million jury verdict in the bank's favor.

Perry Mason moments like these are rare in the stratified world of financial-services, price-fixing and antitrust cases; but for more than 30 years Simon, an antitrust lawyer at Pearson, Simon & Warshaw, has made it his M.O. to throw the opposition off balance, "get in their heads," and surprise them with the unforeseen.

Frank Pitre, who worked with Simon at what is now Cotchett, Pitre & McCarthy, remembers that the court adjourned for the day right before Simon was to cross-examine the Arthur Young witness. "Bruce searched through dozens of stories that night about the expert witness until he happened upon the one of him receiving the check," Pitre says. "By the next morning, he had the photo blown up, and after that, the case was over."

After the reveal, he says, the jury howled with laughter: "Bruce is expert at employing humor to make his points."

Simon has successfully represented parties in a diverse range of industries, including: favorable settlements in an antitrust case involving microbreweries against Anheuser-Busch and in a multidistrict class-action suit alleging price-fixing against manufacturers of the computer memory DRAM; the California State Teachers' Retirement System against a financial services firm; direct purchasers of TFT-LCD (flat-panel) screens against an international cartel of manufacturers in an alleged price-fixing scheme; and buyers against the manufacturers of fertilizer-helper.

"In antitrust, you almost have to become an expert in different industries," says Simon.

Gary Spratling has opposed Bruce on many occasions. "If Bruce says you have a deal, you can rely on what he has said," says Spratling, an antitrust lawyer with Gibson, Dunn & Crutcher. "On the other hand, if your client chooses to fight, Bruce is prepared to and will wage a forceful and persistent battle all the way to the end, prevailing far more often than not."

Simon, trim and gray-haired at 60, is a fourth-generation San Franciscan, with roots stretching back to the late 19th century. His maternal great-great-grandfather (his mother's maiden name was also Simon) founded the Simon Mattress Company, which stayed in the

family for generations until it was sold about 15 years ago, becoming part of Serta. Notes Simon, "We have always slept on the best mattresses, and got them for free."

His father, Sid, played drums professionally for a time, including occasionally with legendary trumpeter Louis Prima, before settling down and becoming a mattress salesman (he moonlighted as a drummer into his sunset years.) With Simons running on both sides of the family, the attorney says with a laugh, "If you run into a Simon here, there's a pretty good chance they're related to me."

Simon's was a San Francisco childhood. He recalls riding his bicycle to Kezar Stadium and watching the 49ers play for the discounted price of about 50 cents, in exchange for collecting seat cushions after the game. When he was 12, Simon and a friend sometimes hopped a Muni bus from the Jordan Park neighborhood where he lived and headed downtown.

In what might seem like a lawsuit waiting to happen today, young Simon and friend on a few occasions entered the unguarded construction site of what would for a time become Wells Fargo world headquarters, and rode the construction elevators to the highest floor, some of whose landings weren't even built out yet. The kicker: This Montgomery Street structure, now an office building, is the very same that Pearson, Simon & Warshaw occupies today.

Back in 1971, Simon started at UC Berkeley; but with the exception of once inadvertently being tear-gassed, the political science major steered clear of anti-Vietnam War demonstrations, opting instead to be "head yell leader" (male counterpart to a cheerleader) at sporting events. He also joined the boxing program.

Encouraged by his father to strike out on his own, Simon attended Hastings College of the Law. To this day, he credits working as a weekend bartender during law school with much of his people-reading skills, and boxing with learning how to "set up" opponents and leave them vulnerable to a cross-exam K.O.

Upon graduation, Simon landed with a small San Jose personal injury firm that regularly tried cases. Two years later, he briefly joined a San Francisco firm, primarily engaged in defense work. Deciding he preferred representing plaintiffs, he "interviewed on Saturday

and started on Monday” at the firm now called Cotchett, Pitre & McCarthy—a “long weekend” that lasted 23 years.

It was at Cotchett that Simon tried the Union Bank case, and it’s also where he learned that verdicts and settlements worth tens or even hundreds of millions of dollars can result from malfeasance involving products as mundane as citric acid.

An alleged international price-fixing conspiracy in the mid-1990s involving Archer Daniels Midland Co.—over corn-derivative products lysine, high fructose corn syrup and citric acid—became the basis for the 2009 movie *The Informant!* starring Matt Damon. Simon handled the citric-acid portion, and the overall case settled for over \$100 million in fines, at the time the largest antitrust settlement in U.S. history. Despite being lead counsel in the citric-acid portion, Simon was not portrayed in the film. “People don’t want to see movies about a bunch of civil attorneys,” he mock-sulks. “I’m very disappointed.”

A desire to return to San Francisco and venture out on his own prompted Simon to open his own firm in its current location in 2007. After a short time, he merged with Cliff Pearson’s firm in Los Angeles. With six lawyers in each of the two locations, the San Francisco branch retains a small feel, allowing it, Simon says, to be nimble, efficient, and “run and shoot.” Simon’s office is modest with the usual décor: degrees, awards and family photos, along with a flat-screen TV. Since taking up residence on Montgomery Street in 2007, the firm has moved up from the 10th to the 12th to the 24th floor, mirroring Simon’s continued rise in the legal world—and his ride toward the top of the 43-story building in the construction elevators a half-century earlier.

In Simon’s work, cases appear on the radar in many ways. One ongoing high-profile case involves allegations that Carrier IQ and phone manufacturers Samsung Electronics, LG Electronics and others installed software that illegally tracks consumer use of smartphones through text messages. The case, which may become a class action, began after a blogger posted a YouTube video demonstrating how Carrier IQ was allegedly tracking his cellphone use.

In 2009, *In re Potash Antitrust Litigation (III)*, the price of potash, an essential

fertilizer ingredient, suddenly shot up so drastically as to affect the ability of countries to buy it, raising concerns about the cost of food for low-income people. Simon, acting as plaintiff’s co-lead counsel, sought to prove a price-fixing conspiracy between Russian and Canadian cartels with U.S. subsidiaries. The trial judge denied a defense motion to dismiss the case but was reversed by a panel of Chicago’s 7th Circuit Court of Appeals. Simon took the unusual step of asking for an *en banc* review, which resulted in a unanimous decision in his client’s favor. With the case back in trial court, a \$90 million settlement was eventually reached.

“Everybody goes through life and, once a day at least, experiences something where they say, ‘That’s not fair,’” Simon says. “As an attorney, you learn to follow your instincts as to whether that unfairness rises to the level of a case.”

In 2012, Simon handled the biggest case of his career, *In re TFT-LCD (Flat Panel) Antitrust Litigation*, involving a consortium of Korean and Japanese companies that developed flat-panel technology, allegedly colluding with upstart Taiwanese manufacturers who had entered the market with considerably lower-priced screens. In so-called “crystal meetings,” the Taiwanese companies allegedly agreed to keep prices at the level set by their competitors. With Simon as co-lead class counsel, the companies—with the exception of Toshiba—agreed to a settlement. Toshiba subsequently lost a jury trial, then settled. The cumulative payout was \$473 million.

Jim McGinnis, an antitrust attorney at Sheppard Mullin, Richter & Hampton, attributes Simon’s success to three qualities: “outstanding analytical ability, top-notch courtroom skill and sound practical judgment. Many lawyers have one or two of those qualities—very few have all three.” Another factor that gives Simon a leg up, McGinnis says, is his credibility with judges and opposing counsel, stemming from “hundreds of hearings over decades in which he made straightforward, ethical and honest presentations.”

Simon says recent court cases—including a 2013 U.S. Supreme Court ruling favoring Comcast in a suit over how much it charges subscribers—have made class action lawsuits more difficult. He says ubiquitous “unfair and one-sided”

arbitration clauses—which consumers often “agree” to by simply purchasing a product online or clicking the “I agree” button on a website without wading through the small print—are a prime reason, as they often contain provisions pre-empting the filing of class action suits.

Another problem Simon sees in the legal realm is a decline in civility. He delivered an address at a 2010 seminar in Hawaii titled “Strategies for Contending with the Continued Decline in Civility in the Legal Profession.”

“If a jury sees lawyers acting like children, it’s going to impact their view of the legal system,” he says. “People equate being ‘tough’ with being nasty, but that’s wrong. No matter what anybody says to you, don’t respond in kind.” He blames the rudeness in part to the stresses of being on call 24/7, which sometimes lead to the sending of incendiary emails, tweets and other ill-conceived communications.

Simon lives in Hillsborough with his wife, Carolyn, whom he met while in law school. Simon had gone skiing with a couple of buddies at Sugar Bowl ski slopes in blizzard conditions. The group retired to the lodge to warm up over soup, but Simon, an avid skier, wanted to hit the slopes again. Not so his friends. He asked a woman, similarly eating soup with companions who wanted to stay indoors, to join him. They spent the afternoon downhill skiing, and Carolyn and Simon have spent the past 30 years married. For many years, Carolyn was a critical-care nurse, which Simon describes as “clearly the most important job in our family.”

Not that he takes the law lightly. “When I was starting law,” he says, “I would think of Abraham Lincoln. I have a book *What Would Lincoln Do?* Lincoln was a lawyer who was constantly trying to protect people. He went all over his state helping people with property, money, family disputes. That’s why I wanted to be a lawyer. People don’t feel that way about it now. Once it changed from being a profession to being a business, ‘business’ takes precedence over doing justice. We have got to be a profession that helps people. If we don’t help people, we’re nowhere.” [SI](#)