What Does It Mean to Work as an Antitrust Lawyer?

With their potential for multimillion dollar damage awards as well as their potential for restructuring entire industries (such as the telecommunications or petro-chemical industries), antitrust cases are complex high-stakes cases that often make front page news. Antitrust law was responsible for the breakup of the Standard Oil Company into numerous competitors as well as the split of AT&T from the Bell Operating Companies (e.g., Ameritech and Pacific Bell). Similarly, antitrust law was behind the U.S. government’s actions against IBM in the 1970s and against Microsoft in the 1990s. Each of these complex cases had the potential, and often the result, of causing fundamental change in basic industries in the United States.

What is Antitrust Law?

In many of the leading antitrust cases, the courts will state that the purpose of the antitrust laws is to protect competition, not competitors. Price reductions caused by competition in the marketplace, even if they result in economic loss to one or more competitors, are not necessarily a bad or illegal result. However, the antitrust laws prohibit price reductions that are designed to drive competitors out of business. In 1999, the Justice Department filed a suit against American Airlines, alleging that the airline engaged in predatory pricing—slashing prices and increasing the number of flights offered in order to drive out low-cost competitors from a common hub in Dallas-Ft. Worth. At a news conference following the filing of the suit, Attorney General Janet Reno asserted that the government was acting to protect consumers. “It’s the public who loses out when major airlines succeed in driving out low-cost competitors,” she said. The airline responded that it was simply engaging in healthy competition and doing nothing illegal or improper.

The antitrust laws are intended to prevent the development of business monopolies and to preserve and encourage competition. Two provisions—the Sherman Antitrust Act and the Clayton Act—form the basis of our antitrust laws. The Sherman Act prevents any unreasonable anticompetitive conduct, such as interference with competitive pricing and distribution or attempts to monopolize a market. The Clayton Act prohibits price discrimination, exclusive contracts, mergers, and interlocking directorates which substantially lessen competition or tend to create a monopoly.

Anticompetitive Conduct

Actions for anticompetitive conduct can be brought by a private party or by a government agency, such as the U.S. Department of Justice (DOJ) or the Federal Trade Commission (FTC). Some types of anticompetitive conduct, such as a conspiracy to fix prices in a market, can result in criminal action against a company or an individual.

A wide range of acts can constitute anticompetitive conduct. For example, an agreement by two companies to refuse to sell certain products to a third company can be actionable. As another example, a group of small toy manufacturers accused large toy retailers of requiring that they be given priority access to items in hot demand; otherwise the small manufacturers would be excluded from prime shelf space in the stores. Similar allegations have been made in the food and beverage industry against large food product manufacturers who have allegedly tried to preserve prime shelf space for all of their products by threatening to limit the supply of their most popular products.

Another type of anticompetitive conduct that results in litigation is selling products below cost in order to obtain market share and drive a competitor out of business. For example, domestic companies will accuse off-shore manufacturers of “dumping,” or selling products in the U.S. market at prices lower than in their home market in order to gain market share. Such allegations have been made with regard to consumer electronics products, such as televisions, that are manufactured outside the country, as well as commodity items such as steel.

Other types of anticompetitive conduct include “tie-ins,” in which a manufacturer requires purchase of additional items in order to receive needed quantities of highly desired items. For example, a medical device...
maker may restrict purchases of a special catheter or a popular surgical device unless a hospital also agrees to purchase numerous commodity disposable items, such as surgical masks and latex gloves, from the same source. Manufacturers of semiconductors have been accused of withholding access to the latest and fastest version of a microprocessor chip for a computer unless the computer manufacturer also buys other related items such as printed circuit boards from the same source.

The Sherman Act also applies to efforts to monopolize a market or illegally use monopoly power in a market. The outcome of such litigation often hinges upon the definition of the market. The Department of Justice brought its antitrust action against Microsoft Corporation not on the premise that Microsoft had allegedly attained monopoly power with its Windows operating system, but rather that the company had illegally abused that monopoly power by requiring computer makers to use Microsoft’s Internet Explorer browser instead of the rival Netscape Communicator browser. Software developers were allegedly denied access to the most current version of Windows unless they agreed not to write software programs for products of Microsoft’s rivals.

Mergers and Acquisitions

The antitrust laws also govern mergers and acquisitions of companies through the Clayton Act, which restricts combinations that may lessen competition in a market. Some restrictions are placed on vertical integrations that involve mergers between suppliers and customers in a particular industry. For example, a vertical merger would be a combination of an oil drilling company, an oil refining company, and a retail distributor of gasoline. Horizontal mergers involve combinations at the same distribution level, such as a merger between competing brands of soft drinks or cigarettes. Anticompetitive concerns in mergers are often overcome by divesting (selling off) portions of the acquired company in either the vertical or horizontal chain of acquisition. In each case the court must evaluate the effect of the merger on competition in the relevant market.

Mergers and acquisitions are also subject to review and actions by government agencies. At the federal level, the Department of Justice and the Federal Trade Commission both review merger activity. The sheer size of the merger doesn’t necessarily determine whether the government will object to the merger. For example, the merger between Daimler-Benz and Chrysler was approved despite the fact that they make up a significant segment of the automotive industry. In contrast, the government objected to a proposed merger between Office Depot and Staples as resulting in too much concentration in the office supply products industry. Other mergers, such as those between Exxon and Mobil, obtain government approval by the divestiture of certain portions of the operations of one company.

Life as an Antitrust Lawyer

Where do antitrust lawyers work?

Antitrust lawyers work in both law firms and in government. Those who work in law firms generally work in mid-size to large law firms that have departments specializing in antitrust issues. Those lawyers who work for the government may work for either state offices (such as the state’s attorney general’s office) or federal agencies such as the Department of Justice or the Federal Trade Commission.

Many antitrust lawyers start their careers at one of the government agencies such as the DOJ or the FTC. By learning the systems of operation of those agencies and the standards applied to review of merger activity, those lawyers are well-equipped to later advise companies that need to pass their activities through review by the agencies.

Regardless of whether they start in government service or in private practice, most antitrust lawyers have a keen interest in economics and the interplay between economic theory and law. Antitrust litigation requires detailed analysis of the relevant market, including factors such as whether substitutes are available for the product or services of the alleged monopolist. Economic experts also review data to determine the effects of actions on prices and market share and the influence of other factors, such as scarcity, advertising, and technological superiority.

Who are their clients and what types of cases do they work on?

In an antitrust practice, attorneys generally represent businesses. Explains Ralph Lipshitz, of Carlton Fields in Tampa, Florida, “My clients are, for the most part, businesses of all sizes, and they operate in all segments of the economy. Especially on the counseling side of the practice, they range from local mom-and-pop enterprises to multinational conglomerates. They may be headquartered anywhere in the country. What they have in common is the need for antitrust representation in Florida.” Ralph’s focus is antitrust litigation
and counseling. "Common threads to most of my cases are that they are in federal court, involve litigating with and against sophisticated counsel and business personnel, and entail a great deal of time devoted to legal strategy and factual development. They usually involve lengthy discovery, expert testimony, and a myriad of pre-trial issues and skirmishes. Especially in federal court, the litigation of antitrust cases lasts several years."

Bill Hilgard also specializes in antitrust law at Carlton Fields in Tampa. Most of Bill's clients are large institutions who are involved in antitrust litigation or who come to Bill for advice on how to avoid litigation in the first place. "Many of my clients are manufacturers, utilities, financial entities, and similar organizations that have regional or national operations. They want compliance counseling (to ensure that they're complying with federal antitrust laws) to keep them out of trouble and litigation services when they face a claim."

Stacy Gottsford specializes in antitrust health care issues at Jones, Day, Reavis & Pogue in Washington, D.C. "My clients are hospitals, health care providers, and, more recently, HMOs and health insurance companies that provide health insurance financing services. They are located nationwide, from San Francisco to Atlanta, in both large and small cities." Stacy reports that most of her work involves transactions. "My work involves complex transactions between competing hospitals which merge, and this is why they need antitrust lawyers." Stacy describes a typical merger as a situation in which two non-profit hospitals [Stacy notes that 80% of hospitals are nonprofit] merge. "If they desire to merge and they are in the same market, there will be an antitrust investigation by the U.S. government and sometimes by state government." Stacy handles matters related to the filing of the merger intention with the government and the government's investigation of the merger.

Maxine Waters is an antitrust attorney at Sidley & Austin in Chicago. Her clients are corporations involved in antitrust litigation or mergers and acquisitions. "I represent corporations that are sued in an antitrust case or want to sue in an antitrust case. I also work with corporations that want to get clearance from the government on the antitrust aspects of a merger or acquisition." Maxine explains that she works on a wide range of antitrust issues. "In a merger, the issue may be whether the merger or acquisition has an anticompetitive effect. Issues in other types of antitrust cases include whether a party is acting in a monopolistic way or whether two competitors have agreed to fix prices or something to dampen competition."

Alex Morrissey, an associate at Akin, Gump, Strauss, Hauer & Feld in Washington, D.C., works on antitrust issues related to mergers and acquisitions. "Our firm's antitrust practice is part of the D.C. office's litigation section. The litigation section of the firm is large, with over 70 attorneys in D.C. alone. About seven of us specialize in antitrust issues. About 75% of our antitrust lawyers focus on mergers, while the other 25% concentrate on antitrust litigation, of which there are essentially two varieties," says Anthony. "The first type of litigation is instigated by the FTC or the antitrust division of the Department of Justice. The second type of antitrust litigation is instigated by a private party, such as a company or a group of consumers alleging anticompetitive practices or monopolization." The firm's antitrust clients, Alex says, range from "large Fortune 500 companies to small businesses, sole proprietors, and everything in between."

Alex explains, "My practice is unusual within the overall litigation section in that about 95% of my work is merger-related. I work with clients when they are involved in some type of transaction. The transaction is generally some type of merger or acquisition—the client may be selling off a piece of the company or acquiring a company or a piece of a company, or the client may be merging with another company. My role is to guide the company through the complex range of government antitrust regulations involved in putting together the deal. We get involved early in the transaction. The government agencies look carefully at the proposed transaction. The agencies' overarching question is, 'Is this transaction likely to have an adverse effect on competition?'

What daily activities are involved in antitrust practice?

Ralph and Bill report that their antitrust litigation and client counseling activities vary from day to day. Explains Ralph, "Every day I am working with complex issues of law and fact." Adds Bill, "There's no typical day in this practice area. Activity varies with the ebb and flow of litigation." Ralph says that most of his time is spent at his desk "developing analyses and strategy and dealing by telephone and via correspondence with clients, co-counsel and opposing counsel, witnesses, and experts, along with consulting with other firm attorneys and paralegals involved in the matter." Ralph notes that days spent behind his desk are only half the story. "This seemingly sedentary life is dramatically punctuated by aggressive deposition schedules, which often involve travel. In addition, although they do not do so often, when antitrust cases go to trial the rest of your life gets put on hold—the trials are intricate, lengthy, and multifarious."
Bill is more specific. "There are periods when I am almost never at my desk because I am taking or defending depositions, meeting with the client to develop strategy, interviewing witnesses, or meeting with experts. At other periods I am involved intensely in writing and research, for example, preparing motions to dismiss or for summary judgment or appellate papers. And, of course, there are days that involve some of each. In addition, the practice often includes a fair amount of business counseling, advising clients about the antitrust risks associated with the various business practices and trying to develop ways of minimizing the risk while still helping the business people accomplish their objectives."

Bill says that he works closely with his litigation clients, and that the amount of contact he has with them depends on the stage of the litigation. "Early on in any antitrust litigation case, there is a great deal of contact with clients—often the general counsel and senior business personnel—in order to learn the history of the dispute and the nature of the business market within which the dispute arises. You learn how products are made, how they are marketed, who the competitors are, who the customers are, and how businesses compete to get those customers. This is through witness interviews, site visits, discussions with industry experts, and review of key documents. In short, the challenge is often to become a 'mini-expert' on an industry through a short and intensive crash education."

The lawyers work to develop legal strategies for the case. Bill notes that legal research provides a foundation for legal theories. "There is likely to be a fair amount of legal research in the beginning of a case, as we see what courts have said about business practices that are similar, or identical, to the practices that are being subject to challenge. These activities then produce an overall strategy, again often as the result of extensive meetings with the counsel and business personnel of the client, in which decisions are made on what themes we will want to push in the litigation, what evidence we will need to support those themes, and how and where we will get the evidence."

Bill explains that the cases then move into the discovery phase. "At this point we are involved in frequent depositions of the key witnesses. We take depositions and defend them. We review documents and testimony in order to 'know the case.' The discovery will usually include working with numerous experts—economists, industry and trade group experts, and others—who can give testimony about how the challenged practices will affect competition." Finally, says Bill, if the case doesn’t settle, "there is the intensive preparation for trial. This work is more 'office-focused,' as you spend time learning the record even more fully, drafting and replying to summary judgment motions, preparing exhibits, and trying the case."

Stacy Gottsford reports that her activities vary depending on whether she’s in the office or on the road. "I have two kinds of days—in the office days and on the road days. When in the office I am at my desk, on the phone with clients and government lawyers. I’m also reviewing documents and putting together written advice to clients. When I’m on the road, I am meeting with clients and advising them." Toby's work also depends upon which stage the merger or acquisition is in. "When two hospitals plan to merge, I meet with the clients (hospital administrators and hospital board members) in the city where the hospitals are located." These mergers require that the parties file a merger intention document with the government, which Stacy helps her clients prepare. "Within 30 days of filing the merger intention, the government must let my client and me know if they are going to investigate the merger." If the government decides not to investigate, Stacy says that the corporate lawyers in her firm complete the merger transaction with the client.

"If the government investigates the merger," explains Toby, "it sends a document request asking for certain information relevant to the merger that will assist the government in deciding whether an antitrust violation will result from the merger. I pull a team of lawyers together to meet with the client and obtain and produce documents relevant to the government’s request. I prepare a defense of the merger by interviewing witnesses, preparing briefing papers, etc., to try to persuade the government lawyers to let the deal go through." Stacy says that the investigation is an ongoing process. "I am on the phone and am corresponding with the government lawyers on a regular basis, even daily, to provide this information and to attempt to persuade them that there is no antitrust impediment to the deal. Once all the documents and evidence are submitted to the government, the government has 20 days to let Stacy know whether the client can go ahead with the deal. "If the government chooses to challenge the deal, a lawsuit is filed in federal court and the case becomes a litigation matter." At this stage Stacy brings in a team of litigation attorneys from her firm.

Though Maxine does some litigation, she says that her current practice primarily involves mergers and acquisitions. "My practice includes litigation, but it is primarily deal-making," she says. "Due to the economy, there are numerous mergers and acquisitions going on, and that side of my practice has simply swallowed me up as of late," she says. "I constantly use my litigation skills and experience, however. For example, when I present arguments to the government, I offer a lot of well organized facts. I use my
persuasive skills to explain why the merger should go through. I let the government know that if the merger doesn’t go through, we’re ready and able to litigate.”

Maxine says that a good part of her time is spent in conference calls in which she is talking to her clients, other lawyers, other parties to the deal, or to government officials (usually those with the antitrust division of the DOJ or the FTC). “Many of the meetings with the government are informal,” she explains. “In such a meeting I might bring in an economist or an executive from my client company to explain some aspect of the proposed deal to the government.” Maxine notes that she frequently works with economists.

"Economics and antitrust law have come closer and closer together over the years. When you’re developing an argument that a merger or acquisition isn’t anticompetitive, it has to make sense under economic theory. I consult regularly with economists who write papers supporting my client’s position. I also work with economists to determine what data we need to collect to persuade the government that the merger isn’t anticompetitive."

Alex Morrisey says that his mergers and acquisitions work requires that he work closely with his client’s chief financial officer or general counsel. "The first step in moving forward in a merger or acquisition involves putting together what is called a 'Hart-Scott-Rodino filing,' which is named after the three legislators who drafted the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The filing requires detailed information about the proposed transaction. Federal agencies review the filing to determine whether there are anticompetitive aspects to the transaction. The agencies have 30 days to review the filing and can come back to me with questions or concerns about the transaction. Any questions the agencies raise are handled on an informal basis. We sometimes talk on the phone or in person, and sometimes go in and make a presentation to the agencies."

"At the end of the 30-day waiting period, the agencies do one of two things. In the large majority of cases, the agencies approve the transaction and allow it to go ahead and close. In some situations, however, the agencies issue what is called a 'second request' in which they initiate a full-blown investigation concerning the proposed transaction. In this case, the agencies send out a lengthy document (frequently 20 pages or more) involving numerous document requests, interrogatories, and deposition requests. It often takes several months to put together all the documents and other information required for a second request. Through this arduous process, the agencies are trying to determine whether there are any anticompetitive aspects involved in the transaction, and my role is to explain why the transaction doesn’t pose anticompetitive problems. After we comply with the second request, the agencies determine whether to seek an injunction preventing the transaction from closing or determine that the client can go ahead and close the transaction.”

Anthony’s antitrust work requires a great deal of client counseling. "I’m frequently on the phone with clients. There are days that I’m on the phone from the moment I arrive at the office to the moment I leave. I field numerous client questions. Clients may be thinking about getting involved in a transaction and want to talk about the antitrust implications of the deal. If we’re in the process of preparing a Hart-Scott filing, or in the process of complying with a second request, I’m often on the phone with the client gathering the information that we need and learning as much as I can about the industry.”

Alex occasionally travels to his client’s company headquarters to gather information for an investigation or to pull together documents for a second request. "Sometimes it’s helpful to visit the client and interview them on-site in order to gather the information we need to provide to the agencies," he explains. Alex also spends a fair amount of time reviewing documents and researching the regulations and statutes related to a particular transaction.

A significant amount of writing is involved in Anthony’s practice. “I do less writing than I would do in a traditional litigation practice. Most of the writing I do involves drafting memos to clients. I also write what are called 'white papers,' which are lengthy legal arguments similar to a legal brief that are submitted to agencies such as the Federal Trade Commission and the Department of Justice. A white paper is essentially an advocacy piece setting forth the facts involved in a proposed transaction and explaining why the transaction doesn’t pose anticompetitive problems. White papers are always tailored to the issues an agency has raised in their dialogue after they’ve reviewed the Hart-Scott filing. Most transactions Ralph’ require the submission of a white paper, but some do.’

What do antitrust lawyers find rewarding about their practice?

The antitrust lawyers we talked to enjoy the role they play in helping their clients solve difficult problems. Explains Ralph, "I like having the opportunity to think through competing strategies and potential solutions to problems. These are tough issues and a lot is at stake. Meeting this kind of challenge head-on is what puts the spark in this practice." Stacy Gottsford likes the challenge of helping her clients work through tough
issues. "This work is rewarding when there are difficult issues with regard to a merger and I am able to work them out to the benefit of my client. Antitrust lawyers can generally make a deal go through more easily," explains Toby. "I also like helping the client out of a hole they may have dug for themselves, getting them out of the predicament with a minimum of damage."

Adds Alex Morrisey, "There's nothing like feeling you've gotten an excellent result for your client. Clients come to you with make or break deals, and they are relying on you to shepherd them through the antitrust review process. It's a good feeling to know that you've had a part in making the deal close."

"I like putting together arguments, and I like winning them," says Maxine. "In litigation it takes a long time to get to the point where you go to trial and win. But the deals I'm involved in typically have a fairly short time frame from start to finish. It may take two to three months to put the facts together, put the arguments together, and then argue before the government. It's a fantastic feeling when a government official calls you up to tell you that the government is going to clear your deal."

Alex Morrisey, too, enjoys the fact that the deals on which he works generally have short time lines. "Litigation matters can go on for years, but the antitrust issues I work on generally last only a few months, or, if a second request is involved, may last up to a year. This shorter time line means that there's a lot of variety in the cases that I work on, which makes the practice especially interesting."

Antitrust lawyers also enjoy the relationships they develop with clients and other professionals. "Client counseling is particularly rewarding. I help the client set up structures and contracts that reduce the risk of litigation," says Maxine. Maxine particularly likes working with the new attorneys at the firm. "When you staff a deal, you staff it pretty leanly. There may be one partner and one associate assigned to a case. This gives me the opportunity to work closely with associates who have recently graduated from law school. I enjoy training these young lawyers," she says.

"One of the things I enjoy most about working as an antitrust attorney is working with bright and talented business people and counsel," confides Ralph. "I've had the benefit of working with first-rate people. The camaraderie in the antitrust department—and in my firm—has been an important factor in my choosing and remaining in this practice."

Alex Morrisey says that he works with a remarkable group of partners at Akin Gump. "The people I work with are tremendous," he reports. "As an associate, I do over 85% of my work with two partners for whom I have nothing but the highest regard. Working with great people makes all the difference in the world in the level of satisfaction you have in law practice."

Antitrust work offers an especially interesting challenge to those interested in business issues. "The best part of my job," says Bill, "is that each case gives you the chance to become a 'mini-expert' in a new field so that you are always learning. With one case you may be finding out how electric power plants work, in the next how pesticides are made, and in the next how insurance is priced and marketed. It makes for interesting work for anybody who is just generally curious about the way the world works, especially if they are curious about the way the world of commerce works."

Alex Morrisey agrees. "I really enjoy learning about the different industries in which my clients work. The diversity is truly amazing. I've worked on deals involving oil and gas, automobile retailing, trash hauling, grocery stores, telecommunications, and health care," he explains with enthusiasm.

In addition, Alex says he enjoys the intellectual challenges offered by antitrust practice. "In law school, I found that constitutional law and antitrust law were the most intellectually stimulating courses I took. The practice of antitrust law is, in many ways, similar to the practice of constitutional law, in that the practice is based on a bare bones statute and has been developed by case law. It's simply a fascinating area of practice."

The Training and Skills Important to Antitrust Law

How do people enter the field of antitrust law?

Some attorneys enter antitrust practice directly out of law school. Those attorneys generally work as summer associates at law firms with antitrust departments. Others work for the government—often for the DOJ or the FTC or a state attorney general’s office—after graduating from law school or after leaving judicial clerkships.

Antitrust lawyers may first develop an interest in the area in law school, either through their class work or
Through a summer associate or law clerking experience. "My summer clerkships convinced me that I wanted a ‘big firm’ type practice. My antitrust course in law school showed me that I enjoyed working with the substantive field of law and had some facility for doing so," says Ralph. As a litigator, it’s not surprising that Ralph says that he has "no trouble getting fired up for the heat of the contest."

Bill says that he became an antitrust litigator because he was generally interested in litigation and then joined a firm that does a great deal of antitrust litigation. "My interest in litigation emerged due to three years of clerking—for a federal district court, the U.S. Supreme Court, and an international arbitration court located in The Hague. I combine my antitrust work with more general litigation practice that ranges from state court trial work to federal appellate work. I find the range satisfying and challenging."

Alex Morrisey fell under the spell of antitrust law as an undergraduate. "I was an economics major. I had a professor who taught a tremendously popular undergraduate class in antitrust law. I thoroughly enjoyed the class. The professor, a Ph.D. economist, was dynamic, and I emerged from the class hooked on antitrust law." When Alex worked at Akin Gump as a summer associate while in law school, the head of the litigation practice group knew that he was interested in antitrust. "He was great about funneling antitrust work my way," Alex recalls. It didn’t take Alex long to begin to develop a practice in the antitrust mergers and acquisitions area. "When I had been an associate at the firm for less than one month, a client called one of our antitrust partners with a question. I was asked to research the answer, and the partner sent me a copy of the letter he sent to the client. 'I have asked one of our antitrust people to take a look at the issue,' the letter said. It was pretty exciting to be regarded as an ‘antitrust person’ just one month into my legal career," says Anthony. "Over time, more and more work has come my way. I’ve gradually developed a niche in the antitrust area."

Alex says that he’s thankful he trusted his instincts when he chose a law firm as a summer associate and eventually as an associate. "I had a total gut feeling that this firm was the place for me. Now when I interview law students seeking summer associate positions, I tell them, 'Trust your gut.' Sometimes on paper, other firms may look like their antitrust practices are larger or better known. But when you meet the people who work in a department, that tells you so much more than a brochure. When I interviewed at this firm, I was very comfortable. I’m so thankful I trusted my instincts."

Stacy Gottsford worked for the FTC before joining a law firm where she specializes in health care antitrust law. "When I was a second year student in law school, I worked as a part-time law clerk for a law firm. The partner I was assigned to was formerly with the FTC; he specialized in antitrust work. I enjoyed working with him and I liked the antitrust practice. The partner suggested that I apply for a summer internship position with the FTC. I applied, worked for the summer, and was hired upon graduation from law school. I remained at the FTC for 11 years. After five years of work at the FTC, I became part of the FTC’s Health Care Antitrust Section, where I developed an expertise in health care antitrust work." Stacy joined her current law firm in 1989.

Maxine had a long-standing interest in business and economics. She earned her law degree at Northwestern University School of Law the same year that she completed a Master of Management at Northwestern’s Kellogg School of Management. Maxine clerked for a district court judge for a year after graduating from law school. Following the path of many antitrust attorneys, she then worked for the Department of Justice during some of her early years in practice.

What skills are most important to antitrust lawyers?

- Antitrust lawyers need exceptional writing skills. "In this area of law, it’s important to write well," says Maxine. "You have to communicate clearly. You have to express your legal analysis in words that are clear to both your client and to the government. My practice requires submitting ‘white papers’ to the government. A white paper is like a brief in which you argue your side of the case. It must be both well written and persuasive." Ralph is equally emphatic about the importance of good writing skills to the antitrust lawyer. "There is no substitute for down-in-the-trenches legal research and writing to hone your analytical skills," he says.

- Antitrust lawyers must be skilled at legal analysis. "The ability to undertake detailed legal analysis and to convey that analysis persuasively both on paper and orally is a must," says Ralph. Adds Maxine, "You have to be able to develop your arguments effectively. You must be able to think through the ramifications of one argument versus another. And you have to make sure that your analysis takes into account both law and economics." Says Alex Morrisey, "Antitrust practice requires good analytical skills. You’re looking at some complex regulations and a large body of case law and analyzing the facts in relation to those authorities."

- Good judgment is important for all lawyers, but particularly important for antitrust lawyers, because of the high-stakes nature of the practice and the economic consequences of the decisions made in this area. Explains Stacy Singer, "Good judgment is the most important skill in this work, and I place that first over
legal skills. Good judgment is acquired by experience, and by observing other people's mistakes. It is essential to work with more experienced lawyers—they essentially teach you how to use good judgment."

- Antitrust lawyers must have excellent interpersonal skills. "You do a lot of client counseling in this area," says Maxine. "Your clients must feel comfortable working with you." Maxine adds that antitrust lawyers need to work effectively in a team. "Teamwork—working closely with your clients and with other lawyers—is essential." Says Alex Morrisey. "Having good people skills is imperative. My practice requires that I spend a great deal of time gathering information from controllers, in-house attorneys, chief financial officers, and others who work for my clients. You have to be at making these people feel at ease so that you can gather the information you need." Bill says that as an antitrust litigator, his interpersonal skills allow him to work effectively with witnesses. "You have to have a knack for making witnesses feel comfortable in giving you the truth."

- Antitrust lawyers must be attentive to detail. "Attention to detail is imperative," says Alex Morrisey. "Any detail you miss comes back to haunt you. You only gather facts from a client, you must get the details. You must understand the nuances of the information you gather and know which details may have an impact on the issue at hand. If you miss information or gloss over it, the ramifications can be severe," he explains. "One of our partners has a great line. He says, 'You represent facts to the government in haste, repent at leisure.' It's a great line because it's absolutely true!"

- The antitrust lawyers we talked to mentioned the importance of creativity. "Antitrust practice requires the creative application of the simply-worded statutes to complex fact patterns," says Ralph. "You have to be creative in gathering facts," says Maxine. "You can usually get the facts you need from your client. But getting facts from third-party witnesses can be hard. When you first accept a subpoena power, you have to exercise creativity in order to get the facts you need."

What classes and law school experiences do antitrust lawyers recommend?

- Take an antitrust class in law school. "An antitrust class is key," says Alex Morrisey. "Antitrust is an area of law that is case driven. My law school antitrust professor required us to memorize the facts and holdings of 50 leading antitrust cases. At the time I didn't understand why he made us do this. But in my first week of practice, the professor's reasoning was abundantly clear. At every meeting of our firm's antitrust lawyers, the attorneys threw around terms such as, 'We have a Pueblo issue here.' Because I memorized those case holdings, I knew what the attorneys were talking about." Classes that provide insight into business, such as corporations, are also helpful.

- A well rounded legal education emphasizing critical thinking is important. "The most valuable classes are those that are taught by good, demanding teachers who focus on the policies behind various legal rules and therefore teach you to develop careful analytical skills in thinking through why various arguments do, or do not, make sense. This overall ability to engage in 'critical thinking' is much more important than any particular substantive expertise," advises Bill.

- Undergraduate or graduate courses in business and economics can be helpful. "You need some background in economics," says Maxine, who earned a joint law and business degree. Explains Bill Ten-pas, "Antitrust lawyers are benefited by some exposure to microeconomic theory, whether through an antitrust course, a law and economics course, substantial undergraduate work or graduate work, or the like."

- Working as a federal judicial law clerk can be helpful in preparing for a career in antitrust law. "A clerkship allows you to see things from the perspective of the bench," says Maxine, who clerked for a district court judge following graduation from law school. "You learn what impresses judges and what bothers them. You also add to your knowledge of civil procedure. You actually work with the judge to decide procedural questions and write opinions for the judge on procedural issues. A judicial clerkship is like a post-graduate course on federal procedure."

- Gain practical experience as a summer associate or law clerk at a law firm that has an antitrust practice. "A high-quality summer clerkship is an excellent foundation for practice," says Ralph. Summer associate positions are generally available to second year students who interview during the fall of the second year of law school for positions available between their second and third year of law school. Smaller law firms often hire students to work part-time during the school year.

- Work experience in the business world can help you prepare to be an antitrust lawyer. "Some real-world business experience is invaluable," says Ralph. Bill agrees, noting, "Business experience, especially in corporate strategic planning, marketing, or finance can be very useful."

- Sharpen your writing skills through participating in your school's law review or law journal or participating in a writing competition. "Participating in law review is a way that you can demonstrate to prospective employers that you have excellent writing experience," says Maxine. "Law review hones writing and editing abilities," adds Alex Morrisey.

- Experiences such as moot court that develop oral advocacy skills are helpful. "The oral presentations I make to government agencies are similar to appellate advocacy," says Alex Morrisey. "In appellate advocacy, your goal is to answer the judges' questions and go where the judges want you to go. Presentations to the FTC or the Department of Justice are similar. The goal is to prepare to address the agency's concerns and answer the agency's questions. You have to anticipate where the agency 'wants to go.' To prepare for such
presentations, you need to know facts about your client’s industry as well as the facts surrounding the proposed transaction. You need to make the agency representatives feel that you are responding to their questions and concerns, and, at the same time, you need to be persuasive in your answers.

- Participation in bar association activities allows you to meet antitrust lawyers and learn about their practice. Student bar association memberships are reasonably priced, and student members are welcome to attend most bar association activities. "I recommend getting involved in the state or national bar associations. They often have sections or committees that focus on antitrust," says Bill. Advises Ralph, "Bar association activities are an excellent way to develop contacts in this field." Those contacts can be invaluable in the job search.

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