

# AT&T Tries to Put Antitrust Suit on Hold

*Bell says breakup of empire would be "lethal" to national security, but courtroom inquiry casts doubt on credibility of arguments*

An attempt by American Telephone & Telegraph to derail a 7-year-old federal antitrust suit has turned into something of a fiasco in which a federal judge has questioned the "weight" that should be given to the testimony of an unusual witness brought forward by AT&T in hopes of ending the massive case. The witness is none other than the Department of Defense.

In the past, AT&T, the world's largest company, has relied on conventional courtroom tactics to fight off the Justice Department, which is trying to break up the telecommunications giant. However, AT&T of late has raised the specter of "national security." AT&T says breakup of the Bell System would jeopardize the military's lines of communication, some of which are built or maintained by the Bell System. The tactic is unusual for a courtroom, since much of the information is classified and the arguments often boil down to vague generalizations.

The most recent injection of national security arguments into the case occurred on 4 August, when a 34-page report prepared by the Pentagon was presented to U.S. District Court Judge Harold H. Greene by Bell System lawyers. "DOD can unequivocally state," it read, "that divestiture as currently proposed by Justice would cause substantial harm to national defense and security and emergency preparedness telecommunications capability." In another place, the proposed breakup was described as being "lethal" to defense communications. After initially accepting the report, Judge Greene had second thoughts and scheduled a hearing to look into the impartiality of DOD and the role of AT&T in preparation of the report.

The unusual evidentiary hearing opened on 13 August to a packed courtroom. Testifying for the Pentagon were two lawyers from the Defense Communications Agency (DCA) who were the principal authors of the report. Under questioning, they recounted how three meetings with AT&T officials took place in May and June prior to the drafting of the report. The briefings by AT&T included talks and slides, and DCA lawyers were given—for background information on the Bell System—seven thick binders and a book. Judge Greene asked the DCA lawyers if it was "odd" to "ask

the one who is supposedly the victim of this divestiture plan to give his views and then incorporate them." Top DCA lawyer John T. Whealen said he went to AT&T because he "figured they knew more about what the divestiture would do to them than we did. We needed information that we did not have internally in the government." Whealen is an 11-year veteran of his post. He and the other DCA lawyer testified that they have no technical training in engineering, electronics, or telecommunications.

After drafting the report, the DCA lawyers sent it to 43 government officials for comment. They also sent it to AT&T officials—the only ones outside the government to see a draft. The DCA lawyers testified that only minor changes were made in response to comments by AT&T

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officials. Also testifying at the evidentiary hearing was William H. Taft IV, chief counsel for the Pentagon. Under questioning by Judge Greene, Taft admitted that it was improper for the DCA lawyers to send a copy to AT&T. "I did not know it was done," he said, "and I didn't think it should have been done." The report had been prepared at Taft's request and approved by Secretary of Defense Caspar Weinberger.

Judge Greene has not yet ruled on whether he will accept the report as evidence in the case. But at the hearing he vehemently rejected an idea put forward by AT&T attorneys—that the DOD study should be accepted as the position of the entire U.S. government in the case. Such a ruling would have ended the prospects for divestiture.

The AT&T attorneys based their request on the fact that the DOD study had been reviewed and the facts in it allegedly adopted at the highest levels within

the Administration—including a Cabinet-level task force and the President. In a memo to the court, AT&T lawyers outlined a complex series of events outside the courtroom that shed light on divisions within the Administration and point to possible slight impact that the DOD study may have had on the evolution of telecommunications policy. Noting White House involvement in the preparation of the DOD study, AT&T said "it is impossible to imagine an admission entitled to greater weight."

The DOD study was originally prepared as a broad position paper that could be introduced into any number of forums. On 2 July, long before it was introduced by AT&T into the antitrust case and long before the input of AT&T officials was revealed, the study was presented to a task force of the Cabinet Council on Commerce and Trade that had been organized by presidential adviser Edwin Meese, who was trying to hammer out a consistent telecommunications policy. The Cabinet task force eventually recommended some changes in pending telecommunications legislation, and on 15 July, after reviewing the DOD study and a plethora of other materials, recommended that the Department of Justice suit should be continued, and only dropped if suitable telecommunications legislation were passed. However, in something of a non sequitur, the AT&T memo describing these events to the court concludes: "The record reveals that the facts set forth in the DOD study have been recognized and adopted at the highest levels of the Executive Branch and by the Department of Justice itself."

This interpretation of the events did not sit well with Judge Green. Interrupting an AT&T lawyer at the evidentiary hearing, Greene said, "The position of the United States in this suit is being stated by the lawyers for the United States, and not by people making statements in other forums. . . . Whatever somebody else may have said in another forum, no matter how exalted or how knowledgeable, is immaterial for purposes of this lawsuit."

The AT&T national security tactic is a new twist in the current antitrust case and, though at best a weak argument, is indicative of the considerable discomfort

that continuation of the case causes Bell officials. A heightened desire to end the case is no doubt encouraged by the soft antitrust positions taken by top officials of the Reagan Administration and the recent wave of corporate mergers across the nation. The entry of the Pentagon into the massive antitrust case also highlights divisions within the Reagan Ad-

ministration over telecommunications policy. However, the national security tactic itself is not surprising. For decades the Bell System and the Pentagon have worked together on a variety of top secret projects. In addition, Bell has provided the Pentagon with many telecommunication services (*Science*, 5 June, p. 1118). The strength of that rela-

tionship has been fading in recent years, however, and the irony of the current court action is that DOD's defense of Ma Bell is based more on loyalty than need. Although the Bell System has no communication satellites, the Pentagon now relies on satellites for 70 percent of its long-haul communications needs.

—WILLIAM J. BROAD

## The Summer of the Gypsy Moth

*Entomologists who made bets on its destructive power never guessed it would strip 10 million acres this year*

What the Mediterranean fruit fly tried and failed to do this summer near San Francisco, the gypsy moth did more than 100 years ago in Boston's harsher climate. It made its way across the ocean from Europe, established a colony, and spread through the New World. Unlike the Medfly, the gypsy moth has overcome every obstacle thrown in its path. It is well on its way to colonizing the entire eastern United States. This summer, in fact, has been a banner season for the moth. Every entomologist who spoke with *Science* said the insect (*Lymantria dispar*) has covered far more ground in 1981 than anyone could have predicted.

Some see in this a graphic warning of what can happen with insect pests if they are not dispatched quickly and thoroughly, as California is now trying to dispatch the Medfly. The difference between the gypsy moth and the Medfly, however, is that the moth does not attack cultivated crops. It prefers forests, and has never posed a direct threat to farming. But for people who live near infested woods, it is an overpowering nuisance, and it does kill trees. As one U.S. Department of Agriculture (USDA) official put it, living in territory overrun by the moth can be like "living in an Alfred Hitchcock movie."

According to Gary Moorehead, director of the gypsy moth quarantine program for the USDA's Animal and Plant Health Inspection Service (APHIS), scientists at an APHIS laboratory on Cape Cod organized a betting pool last year to see who could come closest to guessing the number of acres the moth would strip bare in 1981. The number in the previous season, a record breaker, was 5 million acres. The results for 1981 are now coming in, and, according to Moorehead,

even the highest guesses are short of the mark. It looks as though the total will be 9 to 10 million acres, maybe more. Next year is expected to be worse.

The number of defoliated acres rises and falls periodically, but the area held by the moth grows steadily larger. The USDA and state agricultural officials have had several massive confrontations with the insect, most notably in 1957, when 3 million acres were sprayed with DDT. The public reaction against this tactic was loud and effective. Shortly afterwards, following the publication in 1962 of *Silent Spring*, Rachel Carson's book on the dangers of pesticides, DDT spraying was stopped. USDA officials speak nostalgically of the weapon they have lost, but concede that DDT appeared to be doing long-term damage as it accumulated in the food chain. Chemical residues were found in birds and fish.

Since the 1960's, aerial spraying with less potent pesticides has been continued on a smaller scale. The pest fighters' ambitions are now reduced. All they really hope to do is slow the rate of spread and keep the moth out of backyards, parks, and campgrounds. The front line of the advancing colony is now said to be in Maryland and Virginia, moving west and south.

The federal government's forces are divided into two groups: APHIS, which enforces the quarantine on products and camping vehicles moving out of the Northeast, and the Forest Service, which runs a "cooperative suppression" program with state governments in the worst-hit areas. Moorehead essentially agrees that the insect has won the war. Holding the latest environmental impact statement for the gypsy moth program in his lap, Moorehead put his left thumb over one corner of the document. "This

is what APHIS covers," he said. Then he put his right thumb over another corner: "And this is what the Forest Service covers." All the rest of the space belongs to the moth.

John Kegg, New Jersey's commander in the battle against the moth, says he has been on the losing side for 18 years. "We can keep a green island here and there, but by the end of May with the caterpillars hatching and blowing into new areas, we cannot prevent their spreading."

The moth's tactics are eccentric. After hatching in April or May, the tiny caterpillars weighing less than a milligram climb the nearest tree. Before feeding, or later in the season if food is scarce, they spin down and hang from the upper branches on silken threads. Winds carry them aloft quite easily and drop them up to half a mile from the hatching point. Strong winds carry them farther, and in the Appalachian Mountains, the insect can hop from ridge to ridge in this fashion. Since the female moth cannot fly, this is the way the population migrates. The moths also travel by laying eggs on logs, cars, trucks, and campers that move through an infested area at laying time. Their favorite food is oak leaves, although when desperate they devour almost any foliage. In recent tests, they have shown a keen interest in salads of manzanita leaves from the West Coast.

Containment has been abandoned as a credible policy. The gypsy moths, Kegg says, are "having a ball out there; it's like introducing houseflies into a house full of honey." He does not expect the exploding population to stabilize until all the eastern U.S. oak forests have been infested.

Some state officials like Kegg expect the level of defoliation to reach a plateau