

11-1-1980

## Clash Between Due Process and the Right to Trial by Jury in Complex Litigation

Steven W. Davis

Follow this and additional works at: <https://repository.law.miami.edu/umlr>

---

### Recommended Citation

Steven W. Davis, *Clash Between Due Process and the Right to Trial by Jury in Complex Litigation*, 35 U. Miami L. Rev. 164 (1980)  
Available at: <https://repository.law.miami.edu/umlr/vol35/iss1/8>

This Casenote is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

the speech activity.<sup>36</sup> If courts would recognize that the monopolization of public discussion through saturation of the "marketplace" can predetermine how the voter will cast his ballot, they might acknowledge that such monopolization can jeopardize the political process just as surely as does an elected official's "debt" to his financial supporters that predetermines the outcome of the official acts and decisions.<sup>37</sup>

In the progression of first amendment decisions, *Let's Help Florida* rests solidly on the precedent of *Buckley* and *Bellotti*. Without a showing that the voice of large moneyed interests has "drown[ed] out other points of view,"<sup>38</sup> the first amendment will continue to protect the indirect influence of large campaign contributions on voter decisionmakers. The fear that a political committee with a large amount of contributed funds will "buy up" the mass market of ideas, and thus buy the vote on a mass level through issue saturation, still seems too attenuated, and the value of first amendment freedom is too precious, for one to expect the court to validate state-imposed restrictions on contributions in the referendum context.

LONNIE LIPTON COLAN

## Clash Between Due Process and the Right to Trial by Jury in Complex Litigation

*In Matsushita Electric Industrial Co. v. Zenith Radio Corp.*<sup>1</sup>

---

36. The Supreme Court decision in *Consolidated Edison Co. v. Public Serv. Comm'n*, 100 S. Ct. 2326 (1980), adds a new dimension to the threat posed by corporate expenditures in furtherance of political causes to the ideal conception of a free marketplace of ideas. See note 24 *supra*. Although the decision did not involve the electoral process, it demonstrates that the Court apparently extends first amendment protection for the political messages of monopolies as far as it does for the speech of any individual wishing to express political views to an audience.

37. See generally *Lee, California*, in *REFERENDUMS*, *supra* note 32. In discussing referendum campaigns and campaign expenditures, the author conceded that the success or failure of an initiative does not necessarily correspond to the amount of money expended, but noted that disparities in funds can be decisive in a closely contested campaign. In particular, a lengthy and complicated issue on which technical experts disagree, such as the safety of nuclear power, puts a heavy burden on campaign publicity to educate the voter. *Id.* at 101-07.

38. *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 789 (1980).

---

1. 631 F.2d 1069 (3d Cir. 1980) (*In re Japanese Elec. Prods. Antitrust Litigation*).

the United States Court of Appeals for the Third Circuit recently became the first circuit to rule explicitly that due process can preclude the right to trial by jury in certain large, extraordinarily complex civil cases. The issue arose after a domestic manufacturer of television receivers, National Union Electric Company (National), sued several Japanese television manufacturers in December 1970, seeking treble damages and injunctive relief for alleged violations of antitrust and international trade laws.<sup>2</sup> In 1974, Zenith Radio Corporation (Zenith) brought a second lawsuit against the same defendants and certain domestic manufacturers.<sup>3</sup> Zenith repeated the allegations of National and also charged the defendants with price discrimination. The defendants counter-claimed, charging Zenith with price-fixing and maintaining sham litigation.<sup>4</sup>

After the district court consolidated the two cases for trial,<sup>5</sup> the plaintiffs made timely demands for a jury trial, which fourteen of the defendants then moved to strike. Although the defendants conceded that a right to jury trial normally exists in suits for treble damages under the antitrust and antidumping laws, they contended that proof of the claims would be too burdensome and complicated for a jury.<sup>6</sup> The defendants claimed, for example, that to make a proper evaluation of the allegations that the defendants sold articles in the United States at a price substantially lower than the price of such articles in Japan, the jurors would have to understand currency fluctuations and diverse marketing techniques, and to review thousands of technically distinct models of products.<sup>7</sup> Resolution of the conspiracy issues would require an understanding of business practices and marketing conditions in Japan and would involve review of thousands of separate transactions.<sup>8</sup> Compounding the complexity of the case were certain

---

2. National alleged that the defendants sought to drive American television producers out of the American market by selling televisions at artificially depressed prices in violation of the 1916 Antidumping Act, 15 U.S.C. § 72 (1976). The plaintiffs also claimed that the defendants participated in an international conspiracy in violation of §§ 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2 (1976), and § 73 of the Wilson Tariff Act, 15 U.S.C. § 8 (1976).

3. Specifically, Zenith charged the defendants with violations of the Robinson-Patman Act, 15 U.S.C. § 13(a) (1976), and it charged defendants Matsushita and Sanyo with violations of § 7 of the Clayton Act, 15 U.S.C. § 18 (1976).

4. 631 F.2d at 1071-73.

5. *In re Japanese Elec. Prods. Antitrust Litigation*, 388 F. Supp. 565 (J.P.M.D.L. 1975).

6. 631 F.2d at 1073.

7. *Id.* at 1074.

8. *Id.*

conceptually difficult issues requiring proof of predatory intent and proof of relevant product and geographic markets.<sup>9</sup> The district court anticipated that the trial would last a full year and noted that nine years of discovery had produced millions of documents and over 100,000 pages of depositions.<sup>10</sup>

Nevertheless, the district court denied the defendants' motion, concluding that the seventh amendment<sup>11</sup> does not recognize the complexity of a lawsuit as a valid reason for denying a jury trial.<sup>12</sup> On interlocutory appeal, the Third Circuit vacated the district court's order, holding that the seventh amendment does not guarantee the right to a jury trial when a case is so complex that a jury cannot satisfy the due process requirement that it rationally resolve each issue with a reasonable understanding of the evidence and the legal rules,<sup>13</sup> and remanded to the district court for a ruling on the complexity of the case.<sup>14</sup> The Third Circuit concluded that

the most reasonable accommodation between the requirements of the fifth and seventh amendments [is] a denial of jury trial when a jury will not be able to perform its task of rational decisionmaking with a reasonable understanding of the evidence and the relevant legal standards. In lawsuits of this complexity, the interests protected by this procedural rule of due process carry greater weight than the interests served by the constitutional guarantee of jury trial. Consequently, we shall not read the seventh amendment to guarantee the right to jury trial in these suits.<sup>15</sup>

Although other courts have stricken demands for trial by jury in complex civil cases,<sup>16</sup> no court has ever set forth a constitutional balancing test. Rather, courts have found within the seventh amendment itself an exception to the right to trial by jury, for excessive complexity. In interpreting the limits on the seventh

---

9. *Id.* at 1075.

10. *Id.* at 1073.

11. The seventh amendment provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . ." U.S. CONST. amend. VII.

12. *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 478 F. Supp. 889, 942 (E.D. Pa. 1979).

13. 631 F.2d at 1069, 1086.

14. *Id.* at 1090.

15. *Id.* at 1086.

16. *See, e.g., Bernstein v. Universal Pictures, Inc.*, 79 F.R.D. 59 (S.D.N.Y. 1978); *In re Boise Cascade Sec. Litigation*, 420 F. Supp. 99 (W.D. Wash. 1976). *See also ILC Peripherals Leasing Corp. v. International Bus. Machs. Corp.*, 458 F. Supp. 423 (N.D. Cal. 1978).

amendment's preservation of the right to a jury trial on all legal issues in a case,<sup>17</sup> courts have relied on the factors set forth in a footnote to the United States Supreme Court's opinion in *Ross v. Bernhard*:<sup>18</sup> "[T]he 'legal' nature of an issue is determined by considering, first, the pre-merger custom with reference to such questions; second, the remedy sought; and, third, the practical abilities and limitations of juries."<sup>19</sup>

The first two prongs of the *Ross* test reflect the traditional historical method of determining whether a suit is one at common law or one in equity within the meaning of the seventh amendment. If a case is of a kind that was triable to a jury when the states adopted the seventh amendment in 1791, or if the relief sought is traditionally associated with courts of law, then the case falls within the court's legal jurisdiction, for which the seventh amendment preserves the right to trial by jury.<sup>20</sup> The third prong of the *Ross* test has also provided a standard for distinguishing legal and equitable issues. If, because of its "practical abilities and limitations," a jury cannot capably perform its function of finding the facts and reaching a verdict by rational means, then there is arguably no adequate remedy at law, and equitable relief is appropriate.<sup>21</sup> In *In re United States Financial Securities Litigation*,<sup>22</sup> for example, the district court found that the complexity of the ac-

---

17. See *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 472-73 (1962).

18. 396 U.S. 531, 538 n.10 (1970).

19. *Id.*

20. 631 F.2d at 1078-79.

21. See Note, *The Right to a Jury Trial in Complex Litigation*, 92 HARV. L. REV. 898, 900-04 (1979). The author claimed that *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959), heralded the beginning of a more dynamic interpretation of the seventh amendment. Although inadequacy of the legal remedy remains the standard for distinguishing legal and equitable claims, the court must classify a lawsuit as legal or equitable not only with reference to the adequacy of legal remedies in 1791, "but in light of the remedies now made available by the Declaratory Judgment Act and the Federal Rules." 359 U.S. at 506-07. See also Comment, *The Right to Strike the Jury Trial Demand in Complex Litigation*, 34 U. MIAMI L. REV. 243, 271-78 (1980).

In *Matsushita*, the district court suggested that the third prong of the *Ross* test might refer to two limited circumstances in which the United States Supreme Court considered functional aspects of jury trials in the context of the seventh amendment. The first situation was "the traditional availability of equity jurisdiction in complex accounting cases." 478 F. Supp. at 929; see *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477-78 (1962). The second situation involved "actions committed by Congress to special adjudicatory bodies as part of a statutory scheme." *Id.* at 929-30; see *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442 (1976); *Katchen v. Landy*, 382 U.S. 323 (1966).

22. 75 F.R.D. 702, 711 (S.D. Cal. 1977), *rev'd*, 609 F.2d 411 (9th Cir. 1979), *cert. denied*, 100 S. Ct. 1866 (1980); see *Bernstein v. Universal Pictures, Inc.*, 79 F.R.D. 59, 68 (1978) (the court's traditional equity power is the source of the third prong of the *Ross* test). See also Note, *supra* note 21.

counting and commercial issues in the case rendered the jury incapable of providing an adequate remedy for the litigants, and that the case therefore fell within the court's equitable jurisdiction. The Ninth Circuit reversed the district court's order striking the jury demand, however, and refused to find a complexity exception to the seventh amendment.<sup>23</sup>

At least one court has attached constitutional significance to the "practical abilities and limitations of juries." In *In re Boise Cascade Securities Litigation*,<sup>24</sup> the district court noted that "an impartial and capable factfinder" is "central to the fairness which must attend the resolution of a civil action," and that "at some point, . . . the complexity of a case may exceed the ability of a jury to decide the facts in an informed and capable manner."<sup>25</sup> Claiming that the Supreme Court directly recognized these considerations in *Ross*, the *Boise Cascade* court concluded that the third prong of the *Ross* footnote is of "constitutional dimensions . . . and must be seen as a limitation to or interpretation of the Seventh Amendment."<sup>26</sup>

In *Matsushita*, the defendants sought to strike the plaintiffs' demand for a jury trial on the basis of the arguments advanced in *United States Financial* and *Boise Cascade*. The Third Circuit, concluded that the complexity of a case can preclude a jury trial on legal issues, but relied solely on a due process analysis.<sup>27</sup> The court rejected the defendants' historical analysis and argument that extraordinary complexity renders a suit equitable in nature,<sup>28</sup> and al-

---

23. 609 F.2d at 431. The court also questioned whether a good test to separate complex from noncomplex cases could ever be developed. *Id.*

24. 420 F. Supp. 99 (W.D. Wash. 1976).

25. *Id.* at 104.

26. *Id.* at 105.

27. 631 F.2d at 1084-86.

28. The court first found that although there was not a statutory right to jury trial under the Clayton and Sherman Acts, *id.* at 1075-78, the case involved rights and remedies traditionally associated with courts of law. *Id.* at 1079. The court then addressed the argument that the complexity of the issues brought the case within the court's equitable jurisdiction.

First, emphasizing the exclusively legal nature of the relief sought, the court rejected the proposition that complex antitrust and antidumping suits are analogous to equitable accounting actions, 631 F.2d at 1080-81. Secondly, the court found that the defendants did not adequately support their claim that complexity alone was ever an established basis of equitable jurisdiction in non-accounting cases. *Id.* at 1081-83. Finally, the court rejected the argument developed in historical research commissioned by IBM, see Devlin, *Jury Trial of Complex Cases: English Practice at the Time of the Seventh Amendment*, 80 COLUM. L. REV. 43 (1980), that "the chancellor controlled the boundary between law and equity" so that "[i]f, in 1791, a suit was too complex for a jury, the chancellor would have exercised his control over his jurisdiction to decide the case in chancery." 631 F.2d at 1083. Commenta-

though the complexity of the case seemed to fall within the limits on the right to jury trial contemplated by the United States Supreme Court in the third prong of the *Ross* footnote, the court found it "unlikely that the Supreme Court would have announced an important new application of the seventh amendment in so cursory a fashion."<sup>29</sup> Instead, the Third Circuit found constitutional support for the authority to strike a jury demand in actions at law within the due process clause of the fifth amendment.

The court approached the issue by analyzing the jury's role in the administration of justice in light of the values promoted by due process requirements. The court found that "[t]he primary value promoted by due process in factfinding procedures is 'to minimize the risk of erroneous decisions.'"<sup>30</sup> Noting that "the law presumes that a jury will decide rationally,"<sup>31</sup> the court stated further that "in the context of a completely adversary proceeding, like a civil trial, due process requires that 'the decisionmaker's conclusion . . . rest solely on the legal rules and evidence adduced at the hearing.'"<sup>32</sup> If a case is so complex that a jury cannot understand the evidence and apply the relevant legal rules, these values and requirements of due process are violated. Thus, in an action at law

tors disagree on whether there is historical support for striking jury trials in complex cases. Compare Devlin, *supra*, with Arnold, *A Historical Inquiry into the Right to Trial by Jury in Complex Civil Litigation*, 128 U. PA. L. REV. 829 (1980).

29. 631 F.2d at 1080. The district court noted that "[t]he expanded boundaries for the right to jury trial established in *Beacon Theatres* and *Dairy Queen* seem to have been regarded . . . as constitutionally required," 478 F. Supp. at 913 n.38, and that consequently, "some commentators have viewed *Beacon Theatres*, *Dairy Queen*, and *Ross v. Bernhard* . . . as representing an abandonment of the historical test in favor of a 'dynamic' or 'flexible' or 'rational' approach to the seventh amendment." *Id.* (citations omitted). Noting that the historical test defines only the minimum scope of the right to jury trial, the district court insisted that "the [Supreme] Court's more recent decisions have eliminated any doubt about the continuing validity of the historical test." *Id.*

30. *Id.* at 1084 (quoting *Greenholtz v. Inmates of the Neb. Penal & Correctional Complex*, 442 U.S. 1, 13 (1979), and citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

31. 631 F.2d at 1084. The jury's function in a civil suit is to "find facts and reach a verdict by rational means." *Id.* at 1079. The law "does not contemplate scientific precision but does contemplate a resolution of each issue on the basis of a fair and reasonable application of the relevant legal rules." *Id.* See Broeder, *The Functions of the Jury: Facts or Fictions?* 21 U. CHI. L. REV. 386 (1954). See also Higginbotham, *Continuing the Dialogue: Civil Juries and the Allocation of Judicial Power*, 56 TEX. L. REV. 47 (1977). The jury also performs several functions besides factfinding. See text accompanying notes 39-44 *infra*.

32. 631 F.2d at 1084 (quoting *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970)). The cases cited by the court to define the values promoted by due process did not use the fifth amendment to justify taking away another express constitutional right. *Goldberg v. Kelly* and *Mathews v. Eldridge* considered whether certain administrative procedures comported with due process requirements. *Greenholtz* examined the "quantum and quality [of process] due" in parole hearings. 442 U.S. at 13.

on complex issues, the requirements of the fifth and seventh amendments come into direct conflict.<sup>33</sup> In this situation, the court concluded, it must balance the constitutionally protected interests and "reach the most reasonable accomodation between the two."<sup>34</sup>

After examining and weighing the interests protected by the fifth and seventh amendments, the Third Circuit found that "the loss of the right to jury trial does not implicate the same fundamental concerns" as do due process objections.<sup>35</sup> If a jury is not capable of rational factfinding, there is a danger that its verdict will be erratic and unpredictable, thereby threatening the fairness of the trial and undermining the ability of the court to render basic justice.<sup>36</sup> Noting that the prospect of a prolonged trial can limit the pool of potential jurors, eliminating many with experience that would enable them to understand a complex case, the court found that both the complexity of the issues and evidence and the disrupting effect of a long trial on the personal life of jurors can constrain a jury's ability to render a rational verdict.<sup>37</sup> On the other hand, the court accepted as reasonable the "general presumption that a judge is capable of deciding an extraordinarily complex case," and opined that "[a] long trial would not disrupt the professional and personal life of a judge . . . ."<sup>38</sup>

In assessing the values protected by the seventh amendment, the Third Circuit stated that courts can "provide fair trials and can grant relief in accordance with the principles of basic justice without the aid of a jury"<sup>39</sup> and noted that the Supreme Court has refused to incorporate the seventh amendment into the due process clause of the fourteenth amendment.<sup>40</sup> The court also rejected

---

33. 631 F.2d at 1084.

34. *Id.*

35. *Id.*

36. *Id.*

37. 631 F.2d at 1086. The district court challenged the assumption that a jury may not be a competent finder of fact in extraordinarily complex cases, asserting that the "collective wisdom, judgment and common sense" of a jury is at least as astute and perceptive as that of a judge. 478 F. Supp. at 889. Indeed, one can argue that "the presence of a jury actually disciplines and improves the factfinding process by imposing on both the court and counsel the obligation to streamline, clarify and teach." *Id.* at 935. The district court further remarked that "thoughtful organization of evidentiary presentation by counsel" together with "proper and frequent judicial guidance" through, for example, periodic charges on the law, would enable a jury "to understand and deal intelligently with all the facts and issues." *Id.* at 936. Finally, the court stated that its power to direct a verdict or grant judgment notwithstanding the verdict would operate as a check against irrational verdicts. *Id.* at 937-38.

38. 631 F.2d at 1086-87.

39. *Id.* at 1085.

40. *Id.*; see *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

the argument that other non-factfinding benefits that juries bring to civil trials must increase the weight attached to the seventh amendment interests. The plaintiffs had argued and the district court had noted that there are two unique virtues of juries that go to "the very nature or character of justice provided by our judicial system."<sup>41</sup> The first is "blackbox" decisionmaking, which permits a jury to issue a verdict without explanation or justification. Unlike a judge, who must explain his findings of fact and apply the law rigidly, a jury can perform a type of "jury equity" and disregard legal rules contrary to community standards and values without setting precedent.<sup>42</sup> Juries also perform a "line-drawing" function, "accord[ing] a greater measure of legitimacy to decisions that depend upon determinations of degree rather than of absolutes."<sup>43</sup> The Third Circuit concluded, however, that if a jury cannot determine the normal application of law to the facts of a case and "cannot understand the evidence or legal rules relevant to the issue of where to draw the line," then it cannot perform these functions and its decision will still be arbitrary and unprincipled.<sup>44</sup>

Having thus assigned weights to the constitutionally protected interests of the seventh and fifth amendments, the Third Circuit concluded that "due process precludes trial by jury when a jury [cannot rationally resolve disputed issues] with a reasonable understanding of the evidence and legal rules."<sup>45</sup> The court then remanded the case to the district court for consideration of the complexity of this particular lawsuit.<sup>46</sup> The Third Circuit attempted to articulate an objective standard to guide the district court in determining at what point a case becomes so complex that a jury trial violates a litigant's due process rights. Thus, the court of appeals enumerated several factors that contribute to a jury's inability to understand the evidence and legal rules. The court suggested that the district court consider: (1) the overall size of the litigation, as exemplified by the estimated length of trial, the quantity of evidence, and the number of separate issues; (2) the conceptual difficulties of the legal issues and the factual predicates to those issues; and (3) the difficulty of segregating distinct aspects of the case.<sup>47</sup>

---

41. 478 F. Supp. at 938.

42. 631 F.2d at 1085; 478 F. Supp. at 938-40.

43. 631 F.2d at 1085; *see* 478 F. Supp. at 941-52.

44. 631 F.2d at 1085.

45. *Id.* at 1084.

46. 631 F.2d at 1089-90.

47. *Id.* at 1088-89.

Acknowledging the concern that authority to strike jury trial demands on case-by-case findings of complexity might lead to a long-run dilution of the seventh amendment, the Third Circuit emphasized that there is a strong presumption in favor of the right to jury trial and that due process should allow denials of jury trials only in the most exceptional circumstances.<sup>48</sup> Moreover, the court stressed the duty of the trial judge first to examine other available methods and techniques, such as severance of multiple claims or procedures as suggested in the Manual for Complex Litigation,<sup>49</sup> for bringing the case within a jury's ability to decide.<sup>50</sup> Further, to ensure a good faith application of its suggested standard, the court demanded that the trial court "make explicit findings on the dimension of complexity when it denies a jury trial in an action at law on grounds of complexity."<sup>51</sup> Finally, the court noted that mandamus would lie to remedy an erroneous denial of a jury trial.<sup>52</sup>

The Third Circuit's decision in *Matsushita* reflects the widespread concern that the extraordinary complexity of much modern business litigation involves issues that are beyond the ability of juries to comprehend, resulting in irrational and unprincipled verdicts. But, in its effort to accommodate the due process concern for accurate factfinding by ensuring a rational and comprehending factfinder,<sup>53</sup> the court curtailed the express constitutional right to a jury trial in certain cases at law. The fifth amendment should temper the right to jury trial, not undermine it. By devising procedures to enhance a jury's capabilities in complex cases, courts can accommodate the requirements of due process without taking away

---

48. *Id.* at 1088.

49. MANUAL FOR COMPLEX LITIGATION (4th ed. 1977).

50. 631 F.2d at 1088. See *SCM Corp. v. Xerox Corp.*, 463 F. Supp. 983 (D. Conn. 1978) (usual procedures modified to enable jurors to remember facts and comprehend issues in complex case). The dissent in *Matsushita* contended that the manifestations of complexity in the case resulted from the liberal joinder rules of the Federal Rules of Civil Procedure. 631 F.2d at 1091 (Gibbons, J., dissenting). Noting that "[t]he seventh amendment guarantees a jury trial of any *separate* claim for relief which would have been tried to a jury at common law," *id.* (emphasis added), the dissent concluded that the issue was not ripe for review. The issue "would only be properly presented to this court if a single claim for relief against a separate defendant would be too complex for jury consideration." *Id.* at 1092.

51. 631 F.2d at 1089.

52. *Id.*; see, e.g., *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 472-73 (1962).

53. The dissent criticized the majority's perception of the judicial process, stating: "We have no real assurance . . . of objective truth whether the trial is to the court or to a jury. The judicial process can do no more than legitimize the imposition of sanctions by requiring that some minimum standards of fair play, which we call due process, are adhered to." *Id.* at 1093.

the right to jury trial. There are many innovative techniques already available to make jury trials of complex cases more manageable. For example, the use of special interrogatories, periodic instructions on the legal issues, permitting the jury to take notes during trial, and making exhibits and trial transcripts available during the jury's deliberations, can aid juries in understanding the issues.<sup>54</sup> If these techniques are insufficient to reduce the complexity of certain lawsuits, perhaps the solution lies in congressional action. One commentator, for example, suggests that Congress amend the Federal Jury Selection and Service Act of 1968<sup>55</sup> to permit the use of special juries in certain complex cases.<sup>56</sup> Alternatively, if the courts prove to be an inadequate forum for enforcing the antitrust and antidumping laws, Congress could entrust their enforcement to an administrative agency with special competence in the field.<sup>57</sup> As long as statutory rights are enforceable in a civil action in a district court, however, the court should uphold the right to a jury trial under the seventh amendment "if the action involves rights and remedies of the sort typically enforced in an action at law."<sup>58</sup>

STEVEN W. DAVIS

---

54. See 478 F. Supp. at 936 n.82.

55. 28 U.S.C. §§ 1861-1875 (1976).

56. Note, *The Case for Special Juries in Complex Litigation*, 89 YALE L.J. 1155 (1980). The author asserts that special juries are a constitutional alternative to ordinary juries in the trial of complex cases. *Id.* at 1160-72. The author also speculates that it may be difficult to impanel an impartial special jury. Noting that American economic education receives criticism for its free-market bias, the author suggests that anyone qualified for special jury service in certain complex cases (for example, cases involving government regulation of the economy) "may have acquired free-market presumptions that render fair and impartial decisions impossible." *Id.* at 1173 n.115.

57. In *Curtis v. Loether*, 415 U.S. 189 (1974), the United States Supreme Court noted that *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), and *Katchen v. Landy*, 382 U.S. 323 (1966), "uphold congressional power to entrust enforcement of statutory rights to an administrative process or specialized court of equity free from the strictures of the Seventh Amendment." See also *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 455 (1976) ("[w]hen Congress creates new statutory 'public rights,' it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment's injunction that jury trial is to be 'preserved' in 'suits at common law'").

58. *Curtis v. Loether*, 415 U.S. 189, 195 (1974), quoted in 478 F. Supp. at 930.