

## Agriculture by Susan B. Cohen

### Continental Grain Company on trial

*The Supreme Court dismissed one case but another, winning one is working its way through the courts.*

No sighs of relief were heard in the corporate boardroom of one of the world's largest grain companies on Feb. 23 when the U.S. Supreme Court refused to hear a case charging that the grain giants had conspired with a government official to fix grain prices at an artificially low level in the huge 1972 grain sale to the Soviet Union.

The Continental Grain Company, named with five other grain merchants in the failed suit, is the principal defendant—along with Continental's Vice-President and former Assistant Secretary of Agriculture, Clarence Palmby—in another suit now in discovery.

William Witherspoon, the Hereford, Texas-based attorney for the plaintiffs in both cases, a group of farmers in the Southwest, maintains that the Supreme Court decision in "Wheat I"—referring to the producers' first round—is wrong, but he is confident that "Wheat II" has an excellent prospect of coming to a jury trial.

The multinational grain companies control the grain business in what might be called an "open conspiracy," dominating the production and trading of grain from seed to storage and transport, marketing, and processing. Their control is facilitated by unlimited access to credit through their own private banks in Switzerland and elsewhere, control of the commodity exchanges through their own brokerage firms, and vast high-speed

telecommunications rivaled only by the CIA and U.S. Air Force.

Only if the government comes in on the producers' side, to maintain orderly marketing at "parity" price levels ensuring the producer a sufficient return to cover cost and profit for new investment, does the American farmer stand a chance against the grain companies' determination to "buy cheap."

The producers' first action, "Wheat I," was a class-action suit on behalf of more than 10,000 producers in Texas, New Mexico, and Oklahoma. These farmers sold their wheat at \$150 or less in May and June of 1972 when news of the largest grain sale in American history was being kept secret, only to see the price shoot up to \$2.30 or more per bushel when the deal between the Soviet Union and the grain companies was completed and made public in July.

In the suit, producers charged the existence of "a conspiracy between Continental and Mr. Palmby, removed from the distribution chain, interfering with the normal market forces by suppressing and withholding all information of the then-pending Soviet wheat sale." Mr. Palmby, it was charged, held a series of clandestine meetings with Continental officials in 1972—all documented, incidentally, in several congressional probes of the grain deal—during which the grain giant offered him an executive position in exchange for inside informa-

tion on the Soviet deal.

The information allowed Continental et al. to "buy at inordinately low prices from farmers and sell high to the Soviet Union," the suit charged.

Mr. Palmby was the government's man in charge of the Soviet deal from the outset in January of 1972 when then-Secretary of State Henry Kissinger asked him to provide a scenario on how grain sales to the Soviet Union should be handled.

Palmby directed the negotiations to ensure, among other things, that the sales would be made through private channels—i.e., by the grain companies and not on a government-to-government basis. On May 12, after the substance of the negotiations with the Soviets had been completed, Palmby tendered his resignation from USDA. On June 7 Palmby left the USDA, and on June 8 he joined Continental.

In 1979, a Federal District Judge ruled against the farmers in "Wheat I" on a technicality. The ruling, upheld this month by the preme Court, cited a 1977 Supreme Court decision that antitrust claims were only valid when filed by persons dealing directly with the alleged antitrust violator. Many of the farmers in the class-action suit had sold their grain to local elevators or cooperatives, and not to the grain companies directly.

While appealing the 1979 decision, Witherspoon and his clients launched "Wheat II"—a second suit on behalf of several hundred producers who *had* sold their grain directly to Continental. There is every indication that the courts will have to confront the substance of the case this time around.