The Benefits of History

• Better Understanding of the Past on its Own Terms
• Better Understanding of Modern Economic and Legal Issues
  – Point of comparison, contrast
  – Source of useful additional questions, perspectives to consider
• Help to Inform Modern Decision Making
Perspectives and Insight

• Business Historians
• Legal Historians
• Intellectual Historians
• Economists
• Legal Scholars
• Other Scholars and Commentators
Earlier Antitrust Episodes in General; Standard Oil Story in Particular

- Great deal to tell us
- “Freedom from a falsely imagined past”
- Insight into how many of our current mainstream ideas first came to be established in antitrust law
Simultaneously, insight into how

1. Early antitrust thinking was not simply a less sophisticated early form of neoclassical economic thought;
2. Variations from modern economic analysis found in earlier antitrust analysis do not simply reflect the power of “non-economic” concerns uninformed by any systematic theoretical outlook
3. Much of early antitrust debate, legislation, lawyering, and judicial decision making was influenced by a different kind of theoretical outlook

That embraced as a part of, and not simply alongside of, its economic analysis,

Simultaneous concerns for
– Individual Opportunity
– Freedom of Contract
– Efficiency
– Economic Progress and Prosperity
– Fair Distribution of Wealth and
– Political freedom;

All to be promoted through a process of largely “non-discretionary” judicial decision making
• Obviously, a more encompassing antitrust vision
  – Contra more thorough-going modern belief in the “inevitability of tradeoffs”
Ascent and Challenge
• The Rise of Standard Oil
  –Origins
Standard Oil Refinery
–Cleveland, Ohio  1870
– Products
– Cartel Activity and Relations with Railroads
– The Cleveland Acquisitions
– Later Acquisitions
• The 1879 Trust  • The 1882 Trust
– Movement into Crude Oil Production
– Dominance in Pipe Line Transportation
– Expansion of Retail Marketing
– Expansion of Product Offerings
– Dissolution of the 1882 Trust Under Ohio State Challenge
– Establishment of the Standard Oil Company of New Jersey as a New Jersey Holding Company
• Standard Oil’s Position – Export Trade
• Standard Oil’s Position – Domestic Trade
• The Federal Antitrust Challenge
Filed 1906
Position of the United States

• Conspiracy to Monopolize First Formed in 1870

• Continued to the Time of Suit through Three Periods
  – 1870-1882
  – 1882-1899
  – 1899-Time of Suit
Position of the United States

• Evidence Stressed
  – Acquisitions and Combination
  – Market Shares
  – Profits
  – Increases in the Prices of the Principal Products
Position of the United States

–Other Means Used to Monopolize Commerce

• Railroad Rate Discrimination
• Control of pipe lines and pipe line discrimination
• Contracts with independent refiners
• Unfair competition . . .
Position of the United States

- Unfair competition
  - Local Price Discrimination/Predatory Pricing
  - Secret market intelligence gathering and espionage
  - Operation of secret bogus independent companies
Position of the United States

- The Trust Agreements of 1879 and 1882 were in unreasonable restraint of trade, tended to monopoly, and were void at common law.
- The corporate combination achieved through the establishment of Standard Oil of New Jersey as a holding company was void under
  - Sherman Act § 1
  - Sherman Act § 2
Position of the United States

- Remedy
The Case in Hindsight
General Questions

• What was wrong and what was right about the government’s position?
• How might the case be approached differently today?
Scholarly Perspectives

• Remedy
• Was Standard Oil a monopolist?
  – If so, what was monopolized?
• What were the Bases of Standard Oil’s Preeminence?
• Economies of Scale or Other Efficiencies
• Mergers and Acquisitions
  – Uncoerced
  – Coerced
• Bad Acts
  – Predatory Pricing
  – Other
• Enforcement of a Railroad Cartel
• Pipe Line Dominance
Questions and Implications