

THE ANTITRUST IMPULSE

Volume II

**An Economic,
Historical,
and Legal Analysis**

**Theodore P. Kovaleff
Editor**

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Contributors

VOLUME I

WALTER ADAMS / JAMES BROCK

A member of the economics faculty of Michigan State University since 1947, Walter Adams also served as its President (1969–1970). A prodigious writer, he quickly became known for his work on the theory of competition and monopoly; as a result, he was appointed to the Attorney General's National Committee to Study the Antitrust Laws (1953–1955). He is the author of *Monopoly in America* and an editor and contributor to *The Structure of American Industry*. Recently, with James W. Brock (see below), he has written *The Bigness Complex: Industry, Labor, and Government in the American Economy*; *Dangerous Pursuits: Mergers and Acquisitions in the Age of Wall Street*, and a devastatingly satirical play, *Antitrust Economics on Trial: A Dialogue on the New Laissez-Faire*.

James Brock has been a member of the economics faculty of Miami University (Ohio) since 1979. Promoted to full professor in 1989, the following year, he was named to the prestigious Moeckel professorship. In addition to the aforementioned coauthored books with Walter Adams, he has written *Antitrust, the Market and the State: The Contributions of Walter Adams*.

DONALD DEWEY

Donald Dewey has been a member of the Economics faculty at Columbia University since 1960. He is the author of many scholarly works, including *The Theory of Imperfect Competition*; *Monopoly in Economics and Law*; *Modern Capital Theory*; and *The Antitrust Experiment in America*.

ELEANOR M. FOX / LAWRENCE A. SULLIVAN

Since 1976 Eleanor M. Fox has been a Professor at the School of Law, New York University, where she has taught courses in all aspects of antitrust law. The author of several widely used texts, many articles, and a number of books, including *Industrial Concentration and the Market System: Legal, Economic, Social and Political Perspectives*, she served as a member of President Jimmy Carter's National Committee for the Review of Antitrust Laws and Procedures and is a member of the Advisory Board of *The Antitrust Bulletin*.

Lawrence A. Sullivan has taught courses on antitrust, international transactions, and patents at the University of California Law School, Boalt Hall since 1967. He coauthored *Cases and Materials on Antitrust* with Eleanor Fox. He, too was a member of the Carter committee to review the antitrust laws.

ERNEST GELLHORN / CHARLES A. JAMES / RICHARD POGUE / JOE SIMS

Before becoming a partner in the Cleveland law firm of Jones Day Reavis & Pogue, Ernest Albert Eugene Gellhorn had been a Professor of Law at Duke University and the University of Virginia. Subsequently, he was Dean at the law schools of Arizona State University, Case Western University, and the University of Washington. An expert in the administrative and regulatory fields, he is the author, with Glen O. Robinson, of a casebook on the topic. He is a member of the Advisory Board of *The Antitrust Bulletin*.

Charles A. James received his law degree in 1979 from the National Law Center of George Washington University. He spent six years at the Federal Trade Commission in the Bureau of Competition. He then entered private practice in the Washington office of Jones, Day, Reavis & Pogue where he remained until joining the Antitrust Division as Deputy Assistant Attorney General. In early 1992, he was appointed Acting Assistant Attorney General in Charge of the Antitrust Division. With the change of administrations, he rejoined his

former law firm where he chaired the Antitrust and Trade Regulation Section of the Government Regulation Group.

Richard Pogue has been a partner specializing in antitrust enforcement in Jones, Day, Reavis & Pogue since 1961. He chaired the American Bar Association's Antitrust Section. (1983–1984) and is a member of the Advisory Board of *The Antitrust Bulletin*.

Joe Sims began his legal career with the Antitrust Division of the Department of Justice in 1970, starting as a trial attorney but quickly being advanced to Special Assistant and then Deputy Attorney General for Policy Planning and Legislation. In 1979 he left his last governmental position, Deputy Attorney General for Regulated Industries and Foreign Commerce, to become a partner at the law firm of Jones, Day, Reavis, & Pogue. He has remained professionally active, having chaired the Sherman Act Section 1 (1988–90) and the Civil Practice and Procedure committees (1990 to the present) of the Antitrust Section of the American Bar Association. With William Kovacic, he is the author of *The Antitrust Government Contracts Handbook*.

MILTON HANDLER

Immediately after being graduated from the School of Law at Columbia University in 1926, Milton Handler was invited to join its faculty; he remained there until his retirement in 1972. Starting with his stint as General Counsel to the National Labor Board (1933–1934), he was active in government service. He served as Special Assistant to the General Counsel of the Treasury Department (1938–1940), as Assistant to the General Counsel, Lend Lease (1942–1943), as a member of the Attorney General's National Committee to Study the Antitrust Laws (1953–1956) and as Chair of the Special Committee to Study the New York State Antitrust Laws (1953–1956). Intricately involved with the Temporary National Economic Committee and its investigation of the concentration of economic power, he wrote *A Study of the Construction and Enforcement of the Federal Antitrust Laws*. In addition to having

written a number of case books, he is the author of *Reforming the Antitrust Laws*; *Antitrust in Perspective*; and *Antitrust in Transition*, a three-volume collection of his most important articles.

THOMAS EUGENE KAUPER

Thomas Eugene Kauper interrupted a teaching career that had begun in 1964 at the University of Michigan Law School to join the Department of Justice in 1969. His first assignment was in the Office of Legal Council, where he held the rank of Deputy Assistant Attorney General. From 1972 until 1976, he was Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice. Since that time he has been a member of the University of Michigan Law School faculty specializing in antitrust and trade regulation.

THEODORE P. KOVALEFF

After having taught economic and legal history at St. John's University, New York University, and Barnard College, Theodore P. Kovaleff was Assistant Dean at the Columbia University School of Law from 1977 to 1992. He is the author of *Business and Government During the Eisenhower Administration: A Study of the Antitrust Policy of the Antitrust Division of the Justice Department*. He is a member of the Advisory Board of *The Antitrust Bulletin* and was Guest Editor of its volume marking the centennial of the Sherman Act.

ROBERT H. MCGUCKIN, III

Robert H. McGuckin, III, served with the Antitrust Division of the Department of Justice from 1974 to 1986, rising to Director of Research, Economic Analysis Group before leaving to become the Chief of the Center for Economic Studies of the Bureau of the Census. Editor of a special issue of *The Antitrust Bulletin* celebrating the tenth anniversary of the Economic Policy Office of the Antitrust Division and author of *Empirical Methods in Economic Analysis: An Innovative Approach to Statistical Techniques*, he has also been recognized by the Justice Department with its "Award of Distinction" and

with the "Unusually Outstanding Award" given by the Bureau of the Census.

STEPHEN A. RHOADES / JIM BURKE

While working on his doctorate in economics at the University of Maryland, Stephen A. Rhoades served as a staff economist at the Federal Trade Commission. Upon receipt of the degree, he joined the Federal Reserve Board. He is currently Chief of the Financial Structure Section of the Division of Research and Statistics. His research is primarily directed in the fields of industrial organization, banking, and antitrust. He is the author of *Power, Empire Building, and Mergers*.

Jim Burke received a Ph. D. in economics from the University of Maryland in 1973. Since that time, he has been primarily involved with regulatory policy matters in the Division of Research and Statistics at the Federal Reserve Board. His research has been related to the structure and performance effects of consolidation in banking.

JAMES FRANKLIN RILL

James Franklin Rill spent the first thirty years of his legal career in private practice with the firm of Collier, Shannon, Rill & Scott. During this period he was instrumental in founding the Antitrust Law Section of the American Bar Association, which he subsequently chaired. In 1989 President George Bush appointed him as the Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice. He served in that position until early 1992, when he returned to his law firm. He is a member of the Advisory Board of *The Antitrust Bulletin*.

CHARLES F. RULE / DAVID L. MEYER

After graduating from the University of Chicago Law School and serving as law clerk to Daniel M. Friedman, chief judge of the United States Court of Claims (now the Court of Appeals), Charles F. Rule joined the Antitrust Division of the Department of Justice in 1982. Starting as a Special Assistant to Assistant Attorney General William F. Baxter, he was soon

appointed Deputy Assistant Attorney General, first being responsible for Policy Planning and Legislation and then Regulatory Affairs. After a stint as Acting Assistant Attorney General in charge of the Antitrust Division, he was confirmed to the post in September 1987; he remained until the end of the Reagan administration. He is now a partner in the law firm of Covington & Burling in Washington, D.C.

David L. Meyer is also an attorney with Covington & Burling, where he has practiced since 1989. Between 1987 and 1989 he was Special Assistant to the Assistant Attorney General in Charge of the Antitrust Division. After graduating from the Yale Law School, he clerked for the Honorable Ralph K. Winter, on the United States Court of Appeals for the Second Circuit.

LOUIS B. SCHWARTZ

Louis B. Schwartz began his career serving on the staffs of the Securities and Exchange Commission and the Criminal and Antitrust Divisions of the Department of Justice. He joined the faculty of the University of Pennsylvania Law School in 1946, remaining there until he became a member of the 65 Club at the University of California, Hastings College of Law in 1984. A member of the Attorney General's National Committee to Study the Antitrust Laws (1953–1955), and Director of the National Committee on Reform of Federal Criminal Laws (1967–1971), he is the author of *Antitrust and Regulatory Alternatives* (with John J. Flynn and Harry First).

JOHN J. SIEGFRIED / MICHELLE MAHONY

John J. Siegfried has been Professor of Economics at Vanderbilt University since 1972. An economist with the Federal Trade Commission, a Senior Staff Economist for the Council of Economic Advisors, and member of the Board of Editors of *Review of Industrial Organization*, *The Quarterly Review of Economics and Business*, and *Journal of Economic Education*, he is also the author of *Empirical Studies in Industrial Organization* (with David Audretech), *Economic Analysis and Antitrust Law* (with Terry Calvani), and of nearly 100 articles.

Michelle Mahony is working on her doctoral dissertation in economics at Northwestern University.

JERROLD G. VAN CISE

An internationally respected authority on the administration and enforcement of the antitrust corpus, Jerrold G. Van Cise was a member of the Attorney General's National Committee to Study the Antitrust Laws (1953–1955). With fellow Cahill, Gordon & Reindel partners, William T. Lifland and Laurence T. Sorkin, he is author of *Understanding the Antitrust Laws; The Antitrust Laws from the Point of View of a Private Practitioner*, (with Sigmund Timberg); *The Federal Antitrust Laws*, and *Understanding the Antitrust Laws*.

JAMES R. WITHROW, Jr.

A member of the law firm of Donovan Leisure Newton & Irvine for a career which lasted from 1935 to 1987, James R. Withrow, Jr., specialized in the areas of antitrust and management.

EDWIN MORTON ZIMMERMAN

After graduating from law school in 1959, Edwin Morton Zimmerman was appointed to the faculty of the Stanford Law School. In 1965 he took a leave of absence to join the Department of Justice. Subsequently, President Lyndon B. Johnson appointed him Assistant Attorney General in Charge of the Antitrust Division in 1968, where he remained until the end of the administration. He has been a partner in the Washington law firm of Covington & Burling since 1969.

VOLUME II

DOMINICK T. ARMENTANO

Dominick T. Armentano is Professor of Economics at the University of Hartford, where he specializes in antitrust, industrial organization, and the relationship between business and society. He is the author of *Antitrust and Monopoly: Anatomy of a Policy Failure*; *Antitrust Policy: The Case for Repeal*; and *Myths of Antitrust: Economic Theory and Legal Cases*.

TERRY CALVANI / MICHAEL L. SIBARIUM

Terry Calvani has been a member of the faculties of Law at Stanford University, Vanderbilt University, and the University of Virginia. The Chair of the American Bar Association's Special Committee to Study Antitrust Penalties and Damages from 1979 to 1982, he then worked as a Commissioner on the Federal Trade Commission until 1990, serving as Acting Chairman from 1985 to 1986. Thereafter, he joined the Washington D. C. office of the law firm of Pillsbury, Madison, & Sutro. With John Siegfried, he is the author of *Economic Analysis and Antitrust Law*. He is a member of the Advisory Board of *The Antitrust Bulletin*.

Michael L. Sibarium served as an Attorney Advisor to Terry Calvani from the time Calvani became acting chairman until 1990. He is presently a member of the Washington law firm of Winston and Straun, specializing in business litigation, antitrust, and trade regulation; he is also a faculty member of the National Law Center, George Washington University.

WILLIAM J. CURRAN III

William J. Curran III was an attorney in the Antitrust Division of the Department of Justice from 1969 to 1975 and has continued to specialize in the field since then. He has served as Editor of *The Antitrust Bulletin* since 1983.

JOEL DAVIDOW

Joel Davidow is a partner in the Washington D.C. law firm Ablondi, Foster, & Sobin where he specializes in the fields of antitrust, international trade, technology transfer, and unfair competition law. He has held various positions at the Federal Trade Commission and is a former Director of Policy Planning and Chief of the Foreign Commerce Section of the Antitrust Division of the Department of Justice. He is Foreign Antitrust Editor of *The Antitrust Bulletin* and a Member of the Advisory Board of the *BNA Antitrust and Trade Regulation Reporter*.

HAMILTON FISH, Jr.

Hamilton Fish, Jr., has been a member of the U.S. House of Representatives since 1969. He is Vice Chairman of the House Judiciary Committee and member of the House-Senate Joint Economic Committee.

JOHN J. FLYNN

John J. Flynn has been a faculty member of the University of Utah College of Law since 1963, specializing in antitrust and business organization. He has served as a consultant to the U.S. Senate Antitrust and Monopoly Subcommittee of the Judiciary Committee and the Bureau of Competition of the Federal Trade Commission and as President of the Section on Antitrust and Economic Regulation of the Association of American Law Schools. He is the author of *Federalism and State Antitrust Regulation*; *Antitrust and Regulatory Alternatives* (with Louis B. Schwartz); *Free Enterprise and Economic Organization: Antitrust* (with Louis B. Schwartz and Harry First); and *Free Enterprise and Economic Organization: Government Regulation* (with Louis B. Schwartz and Harry First). He is a member of the Advisory Board of *The Antitrust Bulletin*.

RALPH H. FOLSOM

With the exception of a stint at the Federal Trade Commission in the late 1970s, Ralph H. Folsom has been a faculty member of the University of San Diego School of Law since 1975, where he specializes in antitrust and law in the People's Republic of China. He is author of *State Antitrust Law and Practice*; *Antitrust Laws and Trade Regulation*, *Corporate Competition Law in the European Communities*; and *International Business Transactions* (with Michael Wallace Gordon and John A. Spanogle).

DOUGLAS GINSBURG

In 1983 Douglas Ginsburg left Harvard Law School to become Deputy Assistant Attorney General for Regulatory Affairs. Before being appointed Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice in 1985, he served in the Office of Management and Budget. In 1986

President Ronald Reagan appointed him to the Court of Appeals, District of Columbia Circuit. He is the author of a number of books, including *Antitrust, Uncertainty, and Technological Innovation* and *Regulation of the Electronic Mass Media: Law and Policy for Radio, Television, Cable and the New Video Technologies*.

VALENTINE KORAH

Valentine Korah is Professor of Competition Law at University College, London; she has visited at the Fordham University School of Law on several occasions. She is a member of the Advisory Board of *The Antitrust Bulletin* and the author of *Competition Law of Britain and the Common Market*; *Franchising and the EEC Competition Rules: An Introductory Guide to EEC Competition Law And Practice*; and *Know-how Licensing Agreements and the EEC Competition Rules: Monopolies and Restrictive Practices*.

WILLIAM E. KOVACIC

William E. Kovacic has experience in government, private practice, and teaching. He served as a Legislative Assistant to the Antitrust Subcommittee of the Senate Judiciary Committee, in the Federal Trade Commission in the Planning Office of the Bureau of Competition, and as Attorney-Advisor to Commissioner George W. Douglas, and then joined the law firm of Bryan, Cave, McPheeters & McRoberts in Washington, D.C. In 1986 he was appointed to the faculty of the George Mason University School of Law, where he specializes in antitrust and government contracts. He has been Chair of the Antitrust and Trade Regulation Section of the Federal Bar Association since 1990. With Joe Sims, he is the author of *The Antitrust Government Contracts Handbook*.

WILLIAM H. PAGE

William H. Page joined the Antitrust Division of the Department of Justice under the Attorney General's Honors Program after graduating from the University of New Mexico School of Law. After three years in the Chicago office he was appointed to the faculty of Boston University School of Law. Since 1981

he has been a member of the faculty of Mississippi College School of Law, where he was named J. Will Young Professor of Law in 1991.

ALMARIN PHILLIPS

Almarin Phillips has taught Economics at the University of Pennsylvania since 1948, specializing in the regulatory process. Codirector of the President's Commission on Financial Structure and Regulation (1970–1971), he also has been a member of the Board of Governors of the Federal Reserve System (1962–1973). He is the author of *Market Structure, Organization and Performance: An Essay on Price Fixing and Combinations in Restraint of Trade* and *Promoting Competition in Regulated Markets*; and, with Oliver Williamson, he edited *Perspectives on Antitrust Policy*. He is a member of the Advisory Board of *The Antitrust Bulletin*.

PETER WALLACE RODINO, JR.

A member of the U.S. House of Representatives from 1949 to 1989, Peter Wallace Rodino, Jr., was Chairman of the influential House Committee on the Judiciary. After leaving government service he entered private practice, joining the New Jersey law firm of Rodino and Rodino. He served as a member of President Jimmy Carter's National Committee for the Review of Antitrust Laws and Procedures.

WILLIAM G. SHEPHERD

William G. Shepherd is Chair of the Department of Economics at the University of Massachusetts in Amherst. In 1967–1968, he was Economic Advisor to Assistant Attorney General Donald F. Turner. He has served as President of the Transportation and Public Utilities Group of the American Economic Association (1976) and the Industrial Organization Society (1990) and is a member of the Advisory Board of *The Antitrust Bulletin*. He is the author of *The Treatment of Market Power*; *Public Enterprise: Economic Analysis of Theory and Practice*; *Public Policies Toward Business*; and *Market Power and Economic Welfare*.

RICHARD M. STEUER

Richard M. Steuer has been a partner in the New York City law firm of Kaye, Scholer, Fierman, Hayes & Handler since 1973. He is the author of *A Guide to Marketing Law*.

HANS B. THORELLI / JAMES M. PATTERSON

The publication of his doctoral dissertation, *The Federal Anti-trust Policy—Origination of an American Tradition*, in 1955 established Hans B. Thorelli as an authority in the field. Since then, however, most of his work has been in the fields of business planning, marketing, and consumer rights in the North Atlantic Community of nations. His current research efforts are concentrated in the area of strategic planning and structure-strategy-performance relationships in international as well as domestic business. Since 1964 he has been Professor of Business Administration at Indiana University. He served as a member of the President's Advisory Council (1975–1977) and has represented the United States in a number of international negotiations.

James M. Patterson has been Professor of Marketing at the School of Business, Indiana University since 1960. An expert on the structure and performance of the petroleum industry, he is the author of *Marketing: The Firm's Viewpoint* (with S. F. Otteson and W. G. Panschar); *Competition, Ltd.: The Marketing of Gasoline* (with Fred C. Allvine); and *Highway Robbery: An Analysis of the Gasoline Crisis* (with Fred C. Allvine).

DONALD F. TURNER

After a stint in private practice, Donald F. Turner joined the faculty of Harvard Law School in 1954. With the exception of his tenure as Assistant Attorney General in Charge of the Antitrust Division of the Department of Justice (1965–1968), he remained there until his retirement in 1987. Subsequently, he taught at the Georgetown University Law Center (1987–1988) and was a Senior Fellow at the Brookings Institution (1988–1989). With Carl Kaysen, he is the author of *Antitrust Policy*.

Introduction

BY MILTON HANDLER*

In 1982 in an article in the *Columbia Law Review*¹ I urged that, in anticipation of the Sherman Act's centennial, our antitrust jurisprudence be intensively examined in an effort to develop a consensus "on such clarifications and revisions as might be necessary for antitrust to cope with the changing conditions of the remaining years of this and the ensuing ones of next century."² In 1987, under the aegis of my lectureship at the Association of the Bar of the City of New York, I arranged a symposium consisting of two sessions, each of which ran an entire day. The addresses delivered at the first session by a galaxy of antitrust luminaries were published in the May 1987 issue of the *California Law Review*.³ The second session took place in November 1987.

* Senior Partner, Kaye, Scholer, Fierman, Hays & Handler.

¹ Handler, *Reforming the Antitrust Laws*, 82 COLUM. L. REV. 1287 (1982); N.Y.L.J., April 5-13, 1982, at 1, col. 2.

² Handler, *Foreword to Symposium: Anticipating Antitrust's Centennial*, 75 CAL. L. REV. 787 (1987).

³ *Symposium: Anticipating Antitrust's Centennial*, 75 CAL. L. REV. 787 (1987). The participants and the titles of their addresses are set

This time the papers were published in the March 1988 issue of the *Cardozo Law Review*.⁴

forth in the Table of Contents of the CALIFORNIA LAW REVIEW as follows: *Foreword*, Milton Handler; *The Durability, Relevance, and Future of American Antitrust Policy*, Donald F. Turner; *Comment: Antitrust in the Next 100 Years*, Robert Pitofsky; *The Viability of the Current Law on Horizontal Restraints*, Lawrence A. Sullivan; *Comment: The Sullivan Approach to Horizontal Restraints*, Thomas E. Kauper; *Comment: The Battle for the Soul of Antitrust*, Eleanor M. Fox; *Comment: Horizontal Restraints in Antitrust: Current Treatment and Future Needs*, Harvey J. Goldschmid; *The Viability of Vertical Restraints Doctrine*, William F. Baxter; *Comment: Vertical Restraints and the Secularization of Antitrust*, Earl E. Pollock; *Comment: The Future Viability of the Current Antitrust Treatment of Vertical Restraints*, Sanford M. Litvack; *Monopolization, Mergers, and Markets: A Century Past and the Future*, Phillip Areeda; *Comment: Comparative Advantage and Antitrust Law*, Frank H. Easterbrook; *Comment: Market as Mirage*, Frederick M. Rowe; *Comment: Some Thoughts on Monopoly, Markets, and Mergers*, Michael Malina; *Antitrust, Deregulation, and the Newly Liberated Marketplace*, Stephen G. Breyer; *Comment: Some Additional Safeguards for the Newly Liberated Marketplace*, Louis B. Schwartz; *Comment: Deregulatory Schizophrenia*, Alfred E. Kahn.

⁴ *Symposium: Anticipating Antitrust's Centennial*, part II, 9 CARDOZO L. REV. 1135 (1988). The participants and the titles of their addresses are set forth in the Table of Contents of the CARDOZO LAW REVIEW as follows: *The Proper Role for Antitrust in a Not-Yet-Global Economy*, Donald I. Baker; *Antitrust in Today's World Economy*, Barry E. Hawk; *The Coexistence of Antitrust Law and Trade Law With Antitrust Policy*, Harvey M. Applebaum; *The Role of Antitrust in an Age of Technology*, Ira M. Millstein; *The Insignificance of Macroeconomics in Patent Antitrust Law: A Comment on Millstein*, Richard A. Posner; *Complex Tradeoffs in Patent Antitrust Law: A Comment on Millstein*, F. M. Scherer; *Balancing the Benefits and Detriments of Private Antitrust Enforcement: Detrebling, Antitrust Injury, Standing, and Other Proposed Solutions*, David Klingsberg; *Federal and State Antitrust Enforcement: Constitutional Principles and Policy Considerations*, Daniel Oliver; *The Appropriate Role of the Antitrust Enforcement Agencies*, Douglas H. Ginsburg; *The Appropriate Enforcement Role of the Government Antitrust Agency*, Sanford M. Litvack; *Open Letter to the New President of the United States*, John H. Shenefield; *Where Do We Go From Here—An Overview*, Milton Handler.

In my overview, which was entitled "Where Do We Go From Here," I stated:

Our aim in the symposium was a modest one. The last word has not and cannot be said about any subject which is as pliable and responsive to changing conditions as is our specialty. A law which has been on the books for almost a century—particularly one regarded as part of our unwritten Constitution—is entitled to celebratory proceedings. But it is more important for us to appraise its pluses and minuses—its accomplishments and its shortcomings—its virtues and its deficiencies. Ours is just a beginning. As we approach the centennial, it is to be hoped that the bar associations and universities will place antitrust under the microscope and help in the restatement of its purposes and doctrines so as better to advance the public interest.

I am thus delighted that Dean Kovaleff, my Columbia colleague, has organized the present volume in which a constellation of outstanding specialists and scholars have placed antitrust under the microscope and have endeavored to restate its purposes, its doctrines, and its future. From these and other studies that have been undertaken in the past several years, there should emerge the consensus that I hoped would develop on what antitrust goals should be preserved and what role antitrust should be expected to play in the years ahead.

As well as peering into the future, it is desirable and illuminating to turn to the past to take account of the vicissitudes encountered by antitrust as well as to note its singular accomplishments. The contrast of where antitrust stood five or six decades ago and its situation today helps to put our present inquiry into proper perspective.

The first case book on trade regulation did not appear until 1923.⁵ While my own teaching materials were initially circulated in mimeograph form in the late twenties, it was not until 1937 that my *Cases and Materials on Trade Regulation* was published. For years my and Oppenheim's case books were the only two on

⁵ Handler, *Where Do We Go From Here—An Overview*, 9 CARDOZO L. REV. 1305 (1988).

⁶ H. OLIPHANT, *CASES ON TRADE REGULATION* (1923).