

Standard Oil Co. of New Jersey vs. United States
The Case and the Controversy

Craig “Alex” Thorn
craig at alexthorn.com

In *Standard Oil Co. of New Jersey vs. United States*, 221 U.S. 1 (1911) (hereinafter referred to as “*Standard Oil*”), the Supreme Court of the United States held that because Standard Oil was operating an unreasonable restraint of trade, it was an illegal trust under the Sherman Anti-Trust Act of 1890. The most important consequence of *Standard Oil*, however, was not the actual breakup of the company and its subsidiaries. Where the real importance of the case lies is in the controversy over the wording and validity of White’s majority opinion. While it is widely acknowledged that Standard Oil and its subsidiaries were in blatant violation of the statute of 1890, many, including Justice Harlan who wrote the dissenting opinion in the case^[1], dispute the court’s usurpation of legislative power^[2] by interpreting the language of the Sherman Anti-Trust Act in a way which it was not intended. The ruling by Chief Justice White set the precedent for the use of the “rule-of-reason”^[3] in anti-trust cases, establishing that despite the literal wording of the Sherman Anti-Trust Act, Congress *really* meant that only those “combinations” which operated in “*unreasonable*”^[4] restraint of trade were “hereby declared illegal.”^[5]

According to the Georgetown Law Review’s first issue in 1912, Justice White had, between 1890 and 1911, been waiting for an occasion to argue his position that restraints of trade should only be illegal when they were “unreasonable.” Until his majority opinion as Chief Justice in *Standard Oil*, White had only expressed his views in the dissenting minority opinions, such as his dissenting opinion in *United States vs.*

Trans-Missouri Freight Assn., 166 US 291 (1896) (hereinafter this case will be referred to as “*Freight Assn.*”). In his dissenting opinion in that case, Justice White said “it is not for that reason void, or even voidable, unless the restraint which it produces be unreasonable.”^[6] It is not surprising, therefore, that, when given the opportunity, White was determined to include of his position on “unreasonable” restraints of trade when he wrote the majority opinion of *Standard Oil* one year after becoming Chief Justice in 1910.

Generally, when courts make decisions in cases, they rely on prior cases as precedent upon which to base those decisions. Therefore, it is especially remarkable that Justice White ignored the prior Supreme Court interpretations of the Sherman Anti-Trust Act in *Freight Assn.* and *United States vs. Joint Traffic Assn.*, 171 US 505 (1898) (hereinafter this case will be referred to as “*Joint Traffic Assn.*”). In both of those cases the court rejected White’s argument, stating that all restraints of trade are illegal, not just those which are unreasonable. In writing the majority opinion in both cases, Justice Peckham cited the clarity of the wording in the first section of the Sherman Anti-Trust Act:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.^[7](Emphasis added.)

He emphasized that the Act was clear in its stating that all restraints of trade are illegal, and therefore that it did not leave any room for judicial interpretation. Because of Peckham's literal interpretation of the Sherman Anti-Trust Act in those two cases, both of which occurred before *Standard Oil*, White's subsequent action of ignoring the precedent set forth in the prior cases was "mischievous."^[8] Not only did Peckham read the language of the Sherman Anti-Trust Act literally, he specifically addressed and rejected White's argument by saying that in interpreting the Sherman Anti-Trust Act by allowing those trusts which operate reasonably to remain, the court would be overstepping the judicial branch's boundaries by way of judicial legislation. He said, "This we cannot and ought not to do."^[9]

In *Standard Oil*, the Government argued that, based on the precedents of *Freight Assn.*, *Joint Traffic Assn.* and on the accepted fact that Standard Oil was operating under a trust, the Sherman Anti-Trust Act prohibited *all* restraints of trade and therefore Standard Oil should be broken up under the said act. As summarized by Justice White in his opinion, the Government argued that Standard Oil was "an open and enduring menace to all freedom of trade, and is a byword and reproach to modern economic methods."^[10] The case should have been cut and dry because *Standard Oil* was not really any different than the two recent (at the time) cases that the Government based its argument upon. In fact, in *United States vs. Northern Securities Co.*, 193 U.S. 197 (1904) (hereinafter referred to as "*Northern Securities*"), Justice Harlan, writing for the majority,

explicitly endorsed the court's decisions in *Freight Assn.* and *Joint Traffic Assn.* and went on to say that it is 'impossible to ignore' those prior cases' decisions in reference to the case at

hand.^[11]

In response to the Government's arguments, Standard Oil's attorneys argued that the Sherman Anti-Trust Act did not apply to "long-established combinations resulting from the normal course of business."^[12] They argued before the Supreme Court that if the Government's argument be accepted, *all* companies would be in violation of the Sherman Anti-Trust Act, for restraint of trade comes hand in hand with healthy competition. They continued to plead that the Sherman Anti-Trust Act, as interpreted, was unconstitutional, for it prohibited free trade. As stated by White, the defendants' "control was but the result of lawful competitive methods, guided by economic genius of the highest order, sustained by courage... thus proving to be a benefaction to the general public..."^[13]

Chief Justice White begins his "investigation"^[14] by discussing the meaning of the text in the Sherman Anti-Trust Act and by recognizing the discrepancy between the two parties' points of view. He concluded that the terms "restraint of trade" and "attempts to monopolize" "took their origin in the common law, and were also familiar in the law of this country prior to and at the time of the adoption of the [Sherman Anti-Trust Act]."^[15] After reviewing the common law, White found that "restraint of trade" only

applied to those restraints of trade which produced “baneful effects.”^[16] It was on this finding that he based his idea of “rule of reason,” in which, when applied to anti-trust cases, only those combinations that “unduly restrain” should be determined illegal. White said that rule of reason “was intended to be the measure used for the purpose of determining whether... a particular act had or had not brought about the wrong against which the statute provided.”^[17]

In deciding that his rule of reason idea should be used to determine whether or not certain behavior constituted a restraint of trade that was in contempt of the Sherman Anti-Trust Act, Chief Justice White explicitly took up the position the Supreme Court had explicitly rejected in *Freight Assn.* and *Joint Traffic Assn.* However, in doing so, he was careful not to go so far as to say that the decisions made or the precedents set in those prior cases were faulty or incorrect, although he refused to admit that he was in fact openly contradicting the set precedents. Instead, he tried, rather unsuccessfully, to argue that his opinion was, in fact, compatible with the Court’s prior decisions; he argued that the Court *had* used reason in those prior cases and that, therefore, there had been a precedent set that allowed him to use reason in *Standard Oil*.

A careful reading of Chief Justice White’s analysis suggests, however, that his purported justification does not contain much validity. As Justice Harlan points out in his dissent in *Standard Oil*, no reasonable reading of the precedents would permit the Court in 1911 to exercise any reason since the Sherman Anti-Trust Act literally prohibits any

and all restraints of trade, whether or not reasonable. ^[18] Harlan's primary objection to White's opinion was that, in interpreting and creating new precedent by which to use the Sherman Anti-Trust Act, the Supreme Court would be usurping legislative power and overstepping the boundaries set forth in the checks-and-balances system. Harlan continues to point out that not only is judicial legislation a usurpation of power, but that only Congress has the right to amend statutes. And, in fact, a bill was proposed to amend the Sherman Anti-Trust Act in Congress. In April of 1908, Congressman William Warner of Mississippi introduced a bill to the Senate that would amend the Sherman Anti-Trust Act as to only apply to those combinations that operate in unreasonable restraint of trade, the very position that White argued in *Standard Oil and Freight Assn.* ^[19] That bill was shot down. Not only did the Senate hearings go poorly for proponents of the bill, but both President Roosevelt in 1908 and President Taft in 1910 openly declared their opposition to any amendment of the Sherman Anti-Trust Act to insert the word "reason" or "reasonable."^[20] Justice Harlan even refers to Chief Justice White's opinion as "mischievous," declaring that, as Peckham had stated, any sort of judicial legislation was unconstitutional.

Another thing that worked against the validity of White's argument was his utter confusion and illegibility of, not in handwriting but in the complexity of his prose, his opinion. About half way through his opinion, White struggles with his justification of his use of reason despite prior precedent, spending line after line of qualification and writing

un-concisely. Furthermore, in his dissenting opinion in *Northern Securities*, White admitted that the Sherman Anti-Trust Act declared **all** restraints of trade illegal. However, once the Chief Justice, White took the position that only those “undue” restraints of trade were illegal, refusing to declare that his opinion in *Freight Assn.* and his decision in *Standard Oil* contradicted his viewpoint in his dissenting opinion in *Northern Securities*.^[21] Even more alarming is that White, essentially, couldn’t make up his mind between the two sides of the argument, going from stating that only those undue restraints of trade are illegal to admitting that all restraints are illegal under the Sherman Anti-Trust Act to, once again, affirming that only those undue restraints of trade are illegal.

While the actual breakup of the Standard Oil Company and its subsidiaries dealt a major blow to the aforementioned and substantially affected the entire country and economy, the more interesting and, in historical retrospect, ultimately more important consequence of *Standard Oil Co. of New Jersey vs. United States* was the Court’s acceptance of the rule-of-reason as a proper measure by which to distinguish combinations that are and are not in violation of the Sherman Anti-Trust Act. Moreover, the controversy which surrounded the decision, mostly centered on the alleged usurpation of judicial power and the disregard for prior precedent, showed up in future cases. Inherently, by using the word “unreasonable,” Chief Justice White left room for those companies and combinations which operate in “reasonable” restraint of trade to continue

to do so under the precedent set in the *Standard Oil*. In fact, it is a wonder that, in a 5-votes-to-4 decision by the Supreme Court, the verdict ended up as it did, especially given all the opposition to the majority's opinion: both Presidents of the time, Congress, and, evidently, nearly half of the Supreme Court Justices disagreed with it.

^[1] Despite his adamant disagreement with White's decision, Justice Harlan ultimately agreed with the court's affirmation that Standard Oil was in violation of the Sherman Anti-Trust Act.

^[2] As Justice Harlan stated in his dissent. (see attached)

^[3] Rule-of-reason is the process by which Judges may interpret, through reasoning, statutes and the common law to better apply to the subject/case at hand. In these cases, applying the Rule-of-reason means to distinguish reasonable and unreasonable restraints of trade.

^[4] White used the word "unreasonable" repeatedly throughout his majority decision. (see attached)

^[5] Section 1, Sherman Anti-Trust Act.

^[6] 166 US @ p?, 17 S. Ct. @ 560 (Line 1, White's Dissenting Opinion in *United States vs. Freight Assn.*) (1896)

^[7] Sherman Anti-Trust Act of 1890, §1, line 1.

^[8] Harlan described White's actions of ignoring the precedent set forth in *Freight Assn.* and *Joint Traffic Assn.* as "mischievous," insinuating that White's argument and use of the "reasonableness" as a basis for his decision was "unsound." (see Harlan's dissent to *United States vs. Standard Oil Co.*, 1911) (221 US @ 82) (or page 30 in the attached: Justice Harlan's dissent to *Standard Oil vs. United States*)

^[9] 166 US @ 340 (quoted in Harlan's dissent in *Standard Oil*, see attached @ page 34)

^[10] 221 US @ 48 (or page 11 in the attached: Majority Opinion of Chief Justice White)

^[11] In the majority opinion of the *Northern Securities* case, Harlan wrote: "No one, we assume, will deny that these propositions were distinctly announced in the former decisions of this court. They cannot be ignored or their effect avoided by the intimation that the court indulged in *obiter dicta*." Here he states that, in working on a current case, it is impossible to overlook decisions from prior cases.

^[12] *Antitrust and the Oil Monopoly*, page 155.

^[13] 221 US @ 48 (page 11 in the attached, Chief Justice White's majority opinion)

^[14] 221 US @ 49 (page 12 in the attached, Chief Justice White's majority opinion) White refers to his analysis of the arguments presented as an "investigation."

^[15] 221 US @ 51 (page 13 in the attached, Chief Justice White's majority opinion)

^[16] However, according to Bruce Bringham, author of *Antitrust and the Oil Monopoly*, White's argument "rested on a gross distortion of the common law... which had generally failed to incorporate the rule of reason..." In other words, analysis of the common law did not prove that **only unreasonable** restraints of trade were prohibited.

^[17] 221 US @ 60 (page 18-19 in attached majority opinion of Chief Justice White)

^[18] Justice Harlan cites the first line of the Sherman Anti-Trust Act (see page two of this document) to make this point.

^[19] *Antitrust and the Oil Monopoly*, page 166.

^[20] *Georgetown Law Review*, Issue 1, page 213.

^[21] *Antitrust and the Oil Monopoly*, page 169.