As the story goes, in 1902, President Teddy Roosevelt, wanting to make his mark on the presidency as a real deal “trust buster,” took aim at Wall Street by going after financial titan J.P. Morgan. Working with his then-attorney general, Pennsylvanian Philander Knox, Roosevelt decided to file an antitrust suit against the Northern Securities Co., a Morgan-controlled trust. The lawsuit under the new Sherman Act accused the holding company of gaining monopoly power through controlling stock acquisitions over two competing railroad companies for the purpose of illegally restraining trade. Wall Street was appalled. Morgan was shocked, claiming that his lawyers had carefully organized the holding company with the new antitrust laws in mind. Moreover, Morgan was dismayed that the president had not even tried to work things out with him before firing off the lawsuit and accusing Morgan of being an illegal monopolist. Morgan reacted by jumping on a train to Washington with a phalanx of politicos to meet with the president and Knox to straighten things out. Or so he thought he could, as he usually always did with other rivals. However, the White House meeting went from bad to worse.

Roosevelt’s account of the meeting describes how Morgan started by questioning why the president of the United States had not warned Wall Street or, at least him, about the lawsuit in advance. Roosevelt retorted that warning Wall Street was “just what we did not want to do.” Morgan then countered, forgetting that he was in the Oval Office, “If we have done anything wrong, send your man [Knox] to my man [former Vanderbilt lawyer Francis Stetson] and they can fix it up.” The president tersely responded, “That can’t be done.” Knox further fine-tuned the point, “We don’t want to fix it up, we want to stop it.” Morgan then upped the ante by demanding to know how far the president intended to go with his avowed trust-busting, “Are you going to attack my other interests,” including “the Steel Trust and the others?” Roosevelt, acting very presidential, simply responded, “Certainly not, unless we find out ... they have done something that we regard as wrong.” As Morgan and his entourage left the White House, the president confided in Knox, “That is a most illuminating illustration of the Wall Street point of view. Mr. Morgan could not help regarding me as a big rival operator, who either intended to ruin all his interests or could be induced to come to an agreement to ruin none.” The antitrust gauntlet had been thrown down and in the end Morgan lost, even after enlisting the quintessential Philadelphia lawyer John G. Johnson to argue the case before the U.S. Supreme Court, which ruled for the president.

This is the first article in a series of articles that will explore the history of select American monopolists through the looking glass by posing two fundamental questions. Why have some monopolists succeeded in gaining, maintaining and increasing monopoly power where others have failed? Why does history keep repeating itself and the basic lessons taught have not been learned by subsequent monopolists? The analysis will not be so much legal but one also intertwined with social, political, marketing and public relations factors that are part and parcel of the monopoly conundrum.

Foremost, the possession of monopoly power is not alone illegal under the Sherman Act. Section 2, enacted in 1890, provides: “Every person who shall...
monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony.” The U.S. Supreme Court in the 2004 Verizon Communications v. Law Offices of Curtis V. Trinko, 540 U.S. ____ (2004), case made clear that, “The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices—at least for a short period—is what attracts ‘business acumen’ in the first place; it induces risk taking that provides innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anti-competitive conduct.” That judicial pronouncement is consistent with the legislative history of the Sherman Act that played out more than a hundred years ago.

During the floor debates in 1890, the general sentiment was that trusts had gotten out of control and they needed to be reined in by law. As Senator Henry Teller of Colorado put it, “There is not a civilized country anywhere in the world that is not more or less cursed with trusts. A trust may not always be an evil. A trust for certain purposes, which may simply mean a combination of capital, may be a valuable thing to the community and to the country. There have been trusts in this country that have not been injurious. But the general complaint against trusts is that they prevent competition.” Senator George Edmunds of Vermont later tried to explain the meaning of “monopolize” in Section 2. He was asked by Senator John Kenna of West Virginia if the word would cover someone who might secure the entire demand for some commodity by virtue of that person’s superior skill or facilities in producing that product without attempting to interfere with anybody else trying to produce a similar product. Edmunds responded no, explaining that there must be an attempt by the monopolist to impede competitors and prevent them from having an equal opportunity in that business. Senator George Hoar of Massachusetts similarly described illegal monopoly conduct as “the sole engrossing to a man’s self, by means which prevent other men engaging in fair competition with him.” As complex as the law under Section 2 has evolved, over the past century, the fundamental underlining notions of fairness, a desired level playing field, a monopoly obtained through mainly business acumen, skill and innovation remain true today and are consistent with the American Dream. As later articles will flesh out, monopolists running afoul of those tenets will usually encounter the same trouble that Morgan faced in 1902.

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Navigating treacherous antitrust waters in a monopoly-powered speedboat, whether gained or thrust upon, is best done with forward-thinking, common sense and a third eye so as to not forget one’s non-monopoly roots. If you think like a monopolist and believe that market conditions can be changed through the exercise of your monopoly power, and that the market is all about you, others will perceive you as an undeserving monopolist and treat you as such. If you think superior monopoly power allows you to simply dominate the market and obtain a competitive advantage that would not be otherwise obtainable without that market power, antitrust trouble will usually follow, because you are now acting more like a monopolist providing no societal gain but only a self-centered advantage. Moreover, once market power is achieved through superior business acumen, innovation and risk-taking, maintaining or increasing that power is not a given. Indeed, if once stellar product quality erodes and superior service diminishes and becomes laissez-faire while employee wages and working conditions decrease and prices to consumers nevertheless increase, the antitrust demons rise up. The defining moment is usually when monopoly power is perceived by others to no longer be fairly obtained, or at least deservedly maintained or rightfully increased, but rather viewed as purely driven by a sense of self-entitlement resting on fading laurels. As future articles will explore, such falling from grace leads some monopolists to seek societal redemption, sometimes through transparent but often laudable acts of giving back to the community. Ironically, such attempts to create a good corporate citizen legacy, albeit using tainted gains, is often too little too late. Stay tuned.