

## JON M. JOYCE

PRINCIPAL

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## CURRICULUM VITÆ

(July 2001)

### EDUCATION

- 1967 Ph.D., Economics, Northwestern University
- 1965 M.A., Economics, Northwestern University
- 1962 B.B.A., Economics, *magna cum laude*, Wichita State University

### AREAS OF EXPERTISE

Antitrust Policy  
Industrial Organization Economics  
Economics of Health Care  
Human Capital Economics

### PROFESSIONAL EXPERIENCE

**September 1993 to Present: Private Practice Consulting. Currently, Principal, Microeconomic Consulting and Research Associates, Inc. (MiCRA).** (Formerly with Competition Economics, Inc. and Econsult of DC, Inc.). Since entering private practice, I have provided economic consultation to the Antitrust Division of the U.S. Department of Justice, the Federal Trade Commission, and to Attorney Generals' offices in several states. I also have consulted with several law firms representing major corporate clients in health and manufacturing industries. I have also provided economic analyses of antitrust issues for clients representing firms in the automotive, metals, trucking and telecommunications markets. My analyses included statistical searches for price-fixing agreements, market delineation, and the measurement of competitive impact. Both simulation modeling and more traditional techniques were used in these analyses. These analyses formed the basis for white papers and client representation before the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission. More specific information on my role in these cases is included in Vitae Section Research and Professional Activity.

## **Jon M. Joyce**

I brought my long-term economic interest in the health care sector from the Division to my consulting practice. Of course, many analytical issues addressed in health, such as market delineation and the competitive effects of collusion and mergers apply to other industries and markets such as retailing and regional distribution. I also maintain my strong research and analytical interest in price-fixing and bid-rigging antitrust issues. I have a particularly strong interest in identifying the economic settings that foster these conspiracies and in empirically detecting data traces generated by conspiracies.

**1982-September 1993: Chief, Economic Litigation Section, Antitrust Division, U.S. Department of Justice.** From 1982 through 1993, I held leadership positions in the Antitrust Division. I headed the Economic Litigation Section from its formation in 1986 until I left the Division in September 1993. I supervised the work product of forty Ph.D. economists, statisticians, corporate finance analysts, and support staff in the Section. I was responsible for providing economic and statistical analyses for enforcement matters facing the Antitrust Division. In addition, I prepared expert economic testimony in antitrust trials and trained and prepared members of my staff for expert testimony.

My tenure at the Division spanned the period of the emergence of the important role that economic analysis currently holds in antitrust enforcement. I was fortunate to have played an important role in that evolution. I was on the forefront of antitrust microeconomic policy beginning in the early 1970s when the Division decided to ensure that its antitrust policies were supported by sensible economic arguments up to the 1992 *Merger Guidelines* publication. I contributed to the Division's *Statements of Antitrust Enforcement Policy in the Health Care Area*, published in September 1993. I provided microeconomic analyses on a broad range of national policy issues for other Justice Department Divisions and for executive and legislative agencies outside the Department.

I made presentations on antitrust and competition issues before many professional groups, including the American Economic Association, the American Bar Association and health care administrators. I participated in the Division's program to advise officials of the Eastern European emerging economies and representatives of other nations on setting up competitive policy statutes and enforcement programs.

**1973 - 1982: Senior Economist, Antitrust Division, U. S. Department of Justice.** I did analyses of economic issues in antitrust cases, investigations, legislative testimony, and filings. I provided expert testimony in cases brought by the Division and gave comprehensive and comprehensible economic assistance to the Department's legal staff. My economic analysis required extensive study of a wide range of manufacturing and consumer products industries, including product distribution, and the energy and health care sectors. I also initiated my study of price-fixing and bid-rigging issues during this time.

**1967 - 1973: Assistant Professor of Economics, Wesleyan University, Middletown, Connecticut.** I taught Macroeconomic Theory, Microeconomic Theory, Industrial Organization, Statistics and Econometrics, Human Capital Formation, and Health Economics. I chaired the University's Educational Policy Committee.

**Jon M. Joyce**

**1969 - 1970: Brookings Institution Economic Policy Fellow, Brookings Institution, Washington, D.C..** I served as advisor and conducted research on various health policy options at the Health Planning Section, Office of Planning and Evaluation, U.S. Department of Health, Education, and Welfare (now Health and Human Services).

**1963 - 1967:** I held several teaching positions while a graduate student at Northwestern University. I was a Research Assistant to Northwestern Professor Robert Eisner.

## **RESEARCH AND PROFESSIONAL ACTIVITY**

### **September 1993 to Present**

#### **Litigation Testimony and Affidavits since entering private practice:**

Expert Witness Report and Deposition Testimony in Bethlehem Steel Corporation v. SKW Metals and Alloys, Inc and SKW Trostberg AG and Charles Zak in the United States District Court for the Eastern District of Pennsylvania. (Spring 2001, Client: Bethlehem Steel Corporation)

Expert Witness Report, Deposition and Trial Testimony in Re/Max International, Inc. et al. v. Realty One, Inc., United States District Court Northern District of Ohio Eastern Division (June 2000). (Client: Porter, Wright, Morris & Arthur for Realty One, Inc.; Sherman Act Section 1 and 2 Market Definition and market power, conspiracy; Daubert motion)

Expert Witness Report and Deposition Testimony in Bethlehem Steel Corporation v. Elkem Metals Company L.P. and Elkem ASA in the United States District Court for the Eastern District of Pennsylvania. (Client: Bethlehem Steel Corporation)

Expert Witness Report and Deposition Testimony in Wichita Clinic, P.A. v. Columbia/HCA Healthcare Corporation, in ongoing litigation before United States District Court at Wichita, Kansas. (Client: Wichita Clinic)

Expert Witness Affidavit in Radiofone, Inc., Complainant v. BellSouth Mobility, Inc., Defendant, before the Federal Communications Commission (July 10, 1996). (Client: BellSouth Mobility, Inc., response to Complainant's damage claim)

Expert Witness Report in DRJ Refuse, Inc., Bankruptcy Case No. 95-52055-SD Chapter 11, District of Maryland, Baltimore Division (November 1995). (Client: State of Maryland, anti-competitive acquisition)

Expert Affidavit in A. Mitchell Gross v. Chrysler Corporation, Circuit Court of Montgomery County, Maryland (June 5, 1995). (Client: Crowell & Moring for Chrysler Corporation; Damages issues from violation of Consumer Protection Act)

## Jon M. Joyce

Expert Witness Affidavit and Expert Testimony (Preliminary Injunction Hearing and at Trial) in Orlando Regional Healthcare System, Inc. and Orlando Regional South Seminole, Inc. v. Columbia/HCA Healthcare Corporation, United States District Court, Middle District of Florida, Orlando Division (March 30, 1995). (Client: Gardner, Carton & Douglas for Orlando Regional Healthcare System; Clayton Act Section 7 Market definition and competitive effect)

Expert Witness Affidavit in Siegal Transfer v. Carrier Express, United States District Court for the Eastern District of Pennsylvania (May 1994). (Client: Conrad, O'Brien, Gellman & Rohm for Carrier Express and Bethlehem Steel Corp.; Sherman Act Section 1 Market Definition and market power)

In recent years, I have been retained as a potential expert witness by the FTC in investigations of mergers in gas storage cylinders, rock crushing and grinding machinery, and respiratory ventilators.

### **Consulting projects since September 1993:**

Sherman Act issues: Bid-rigging on milk to schools  
Bid-rigging on utility products to municipalities  
Bid-rigging on ferrosilicon products  
Over inclusive PHO affiliation  
Monopolization of home health care services  
Monopolization excluding a physician from hospital privileges  
Monopolization of real estate brokers  
Monopolization of truck transport of steel products  
Monopolization of shopping center grocery locations  
Monopolization of residential telephone wiring  
Monopolization by Group Purchasing Organizations

Clayton Act issues: Hospital acquisitions of physician practices  
Hospital mergers  
Solid Waste Hauling  
Heavy Trucks  
Aluminum Can Stock  
Residential building products  
Aircraft and weapons systems  
Diatomaceous earth

### **PUBLICATIONS**

**1997** *The Activities Approach to Physician Market Delineation*, presentation to the Health Care Antitrust Forum, Chicago, May 17.

- 1996** *Applying Unilateral Effects analysis to Hospital Consolidations*, presentation to the Health Care Antitrust Forum, Chicago, May 14.
- 1993** *Detection of Bid-Rigging and Criminal Trial Economic Testimony*, presentation to the American Bar Association, Antitrust Law Program Section on Bid-Rigging: New Law, Economic Theories, and Qui Tam Litigation, Annual Meeting, New York, NY, August 10.
- Panel Chairman, Competition Policy Seminar sponsored by OECD for Members of the Federation of Soviet Republics, Moscow, Russia, December 14-19.
- 1992** Panel Member, Seminar Series on Eastern European Economic Competition Policy, Vienna, Austria, April.
- Antitrust Policy and the Learned Professions*, presentation to the Practicing Law Institute Seminar, Washington, D.C., Fall.
- Panel Member, Seminar Series on Eastern European Economic and Enforcement Issues in Competition Policy, Baltic countries of Lithuania, Latvia and Estonia, September.
- 1991** *Antitrust in the Health Care Sector*, presentation to the Health Finance Management Association, Lake Tahoe, CA, April.
- Consultation with the Staff of the Competition Policy Office, Warsaw, Poland, May.
- 1989** *Effects of Firm Organizational Structure on Incentives to Engage in Price Fixing*, CONTEMPORARY POLICY ISSUES, VOL. VII, NO. 4, October.
- Firm Financial Strength, Defendant Fines, and Antitrust Deterrence: A Preliminary Empirical Exploration*, ECONOMIC ANALYSIS GROUP DISCUSSION PAPER, EAG 89-9, July 17.
- The Design and Evaluation of Competitive Rules Joint Ventures for Mergers and Natural Monopolies* (with Frederick Warren-Boulton, John R. Woodbury and Charles Untiet), presentation to the American Economic Association, Annual Meeting, Atlanta, GA, December 28.
- 1988** *Crime and Economics: The Effect of Firm Organizational Structure on Price Fixing Deterrence*, CRIMINAL PRACTICE, NO. 17, Summer.
- 1987** *The Effect of Firm Organizational Structure on Price Fixing Deterrence*, ECONOMIC ANALYSIS GROUP DISCUSSION PAPER, EAG 87-9, November.

- 1986** *Assignment of Rights to Sue Under Illinois Brick: An Empirical Assessment* (with Robert H. McGuckin), THE ANTITRUST BULLETIN, Spring.
- 1985** *Assignment of Rights to Sue Under Illinois Brick: An Empirical Assessment* (with Robert H. McGuckin), ECONOMIC POLICY OFFICE DISCUSSION PAPER, EPO 85-6, April 9.
- 1984** *Some Empirical Developments of Illinois Brick: Installment 1* (with Robert H. McGuckin), presentation to the Atlantic Economic Association, New York, NY, April.
- 1982** *Why Do Firms Rely on Barter?*, ECONOMIC POLICY OFFICE DISCUSSION PAPER, EPO 83-3, January 6.
- 1980** *Market Share Stability, Collusion and Antitrust Investigation*, Working Paper.
- Expert Testimony, U.S. v. Gould, Inc. and SAFT America, Inc. Civil 4-80-467.
- 1979** *Horizontal Reciprocity: Trade Among Rivals Through Exchange Agreements*, Discussion Paper.
- Joint and Partial Ownership and the Merger Guidelines*, Working Paper.
- Fixed Reoffering Prices in the Marketing of New Securities* (with Bob McGuckin), Working Paper.
- Expert Testimony, U.S. v. Household Finance Corp., HFC American, Inc., Civil 79-6-80.
- 1977** *The Economic Viability of Failing Firms*, Discussion Paper.
- On an Equipollent Policy in Clayton 7 Matters*, Working Paper.
- 1976** *Market Structure and Pricing Patterns in Space*, Discussion Paper.
- 1975** *A Reply to Defendants' Pretrial Response to the Pretrial Damage Brief for the United States, U.S. v. Charles Pfizer, et al.*
- 1974** *Structural and Compositional Determinants of Race-Sex Earnings Differentials* (with Jon Rasmussen), Working Paper.
- Pretrial Economic Damage Brief for the United States, U.S. v. Charles Pfizer, et al.*, September.

**1973** *Impact of Genetic Composition on Cross Section Health Production Estimates*, Working Paper.

*Cost of Capital and Inventory Investment*, SOUTHERN ECONOMIC JOURNAL, October.

**1972** *Theoretical and Empirical Studies of Demand for Medical Care*, mimeo Working Paper.

*Health Benefits from Increased Numbers of Physicians: Some Historical Evidence*, POLICY SCIENCES, VOLUME 3, pp. 107-115.

**1971** *An Integer Programming Algorithm* (with T.M. Whitin), Working Paper.

**1970** *The Uncertainty in Risk: Is Variance Unambiguous?* (with Robert C. Vogel), JOURNAL OF FINANCE XXV, 1, March.

*Private and Public Medical Practice and the Consumer's View of Health*, Brookings Institution Research Project.

**1968** *Finance Variables in Investment: Further Evidence*, presentation to the Econometric Society, Annual Meeting, Evanston, IL, December.

**1967** *Anticipated Sales Changes and Inventory Investment: The Importance of the Transitory Component of Demand*, Ph.D. Dissertation, Northwestern University.

ADDENDUM TO RESUME

HOSPITAL MERGER AND HEALTH CARE EXPERIENCE

Over the past decade, I supervised the economic analysis applied to all of the Department of Justice, Antitrust Division's hospital merger investigations, including the two mergers challenged by the Division in Rockford, Illinois, and Roanoke, Virginia, Courts. Dramatic change has taken place in the health care industry's competitive environment as managed care providers have captured market share from the fee-for-service providers. Competitive pressures on hospitals and other providers have therefore increased. Inefficiently managed and sized facilities often cannot survive, and as a result, extensive consolidation has characterized the hospital industry.

Nevertheless, nearly all observers of the industry agree that anti-competitive incentives play a role in some hospital mergers, and sorting out the anti-competitive mergers has employed increasingly sophisticated analytical tools. Elzinga-Hogarty type tests for geographic market delineation remain useful, particularly in rural settings, but more insightful models involving physician staff privileges and hospital networks are increasingly employed to enhance understanding of the competitive realities underlying hospital mergers. A similar evolution in thinking has taken place in the delineation of product markets and in the evaluation of merger efficiencies. I actively participated in the evolution of these ideas, and I wrote many internal Division memoranda explaining these developments to my attorney colleagues and upper management. I also presented these ideas at health industry gatherings.

I gathered evidence in Department investigations and structured the presentation of the Division's position on these issues for litigation. I served as expert witness, prepared others to present expert economic witness testimony and trained newly hired Ph.D. economists in effective information gathering techniques. I also played an active role in crafting the Division's policy on hospital mergers and preferred provider organizations.

Since leaving the Division, I have provided expert reports and testimony in two hospital mergers and have consulted on hospital matters concerning physicians.