

The Honorable Herb Kohl	
September 5, 2007	

establishing liability under Section 1. It is in effect a simple directive to the courts of the United States advising that consumers deserve the benefit of the doubt whenever a commercial arrangement precludes merchants from competing with respect to the prices being offered to consumers.

The second question posed by members of the Subcommitte is in reality a series of questions which collectively inquire into whether the Congress rather than the Court was in a better position to decide what legal standards should now apply to resale price maintenance. The

exemption for resale price maintenance in 1975, and subsequent occasions when the Congress imposed limitations on the appropriations for the Antitrust Division of the Department of Justice and the Federal Trade Commission which precluded their advocacy of abandoning the rule of per se illegality for minimum vertical price fixing. It also observed that the Congress in 1986 had expressly disapproved of the Department of Justice Vertical Restraint Guidelines. I note that

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	Constitution vests legislative discretion in the Congress, not the Court.
	Devising rules of law based on a broad-based inquiry, as opposed to one
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non-judicial. I recognize that Congress has allowed the Sherman Act to grow over time through the accretion of experiential rules crafted by the