Handout #4

ANTITRUST PRIMER

Antitrust in the U.S.: simple laws, infinite uses

By Kathryn Rubenstein, Court TV

In 1890, the 51st Congress passed the Sherman Antitrust Act, named for Senator John Sherman of Ohio. The law, intended to thwart trusts and monopolies that operated in "restraint of trade or commerce," was a response to a growing concern over the expanding power of big business. Sherman said at the time that the statute "does not announce a new principle of law, but applies old and well recognized principles of common law."

While the Sherman Act made it illegal to monopolize or to restrain trade through unfair collaborations or conspiracies, the statute didn't specify exactly what conduct would be prohibited. That task was left to federal judges who would continually shape and change the law.

Early Applications
Shortly after 1890, antitrust sentiment waned, and the Sherman Act was not widely applied. Where it was employed, its effects were often minor.
In the early days of antitrust legislation, the Supreme Court maintained a strict interpretation of the Sherman Act. The first came in 1895 with U.S. v. E.C. Knight Co., when the court ruled that the Sherman Act did not apply to a trust composed of major sugar producers which controlled 98% of the country's sugar refining capacity. The court held that the law did not extend to manufacturing, stating that "commerce succeeds to manufacture, and is not a part of it."

The Act's Rebirth

During the first decade of the 20th century, concern grew around the country over major corporations' growing monopolistic practices. Theodore Roosevelt's "square deal" philosophy -- which struck a balance between the rights of companies and those of the average citizen -- bolstered the effectiveness of antitrust legislation.

In 1902 Roosevelt began his war on trusts. He persuaded Congress to form a Bureau of Corporations to regulate big business and on Feb. 19, he brought his first antitrust suit under the Sherman Act against J.P. Morgan's Northern Securities Corp.

During his time in office, Roosevelt would file suit against more than 40 large corporations.

In Northern Securities Co. v. United States, the Supreme court ruled that the Sherman Act could be applied to holding companies. The court stated that an arrangement putting two competing railroads under one larger company illegally restrained trade.

In 1909, William Howard Taft succeeded Roosevelt both as President and trust-buster. Under Taft, two historic antitrust cases would further shape the Sherman Act. In 1911, American Tobacco was declared an illegal monopoly and was broken up into separate companies. That same year, the court ruled that John D. Rockefeller's Standard Oil should be broken up into 33 companies.

But the court also qualified their ruling on Standard Oil, stressing that the Sherman Act outlawed only unreasonably anticompetitive restraints.

New Laws Arrive
While the Sherman Act helped the government break up many large trusts, it soon proved to be too open to interpretation. Furthermore, the act was often used to prosecute labor unions rather than trusts, an eventuality that flew in the face of the statute's protect-the-common-man spirit. It would take further legislation to ensure the protection of a competitive business climate in the 20th century.

During Woodrow Wilson's "New Freedom," Congress passed the Clayton Antitrust Act of 1914. Wilson wanted to create a law that would clearly prohibit certain specific business practices: price discrimination; tying together multiple products; corporate mergers; and interlocking directorates, trusts formed by companies with common members on their respective boards of directors. After passing the Clayton Act, Congress created the Federal Trade Commission to enforce antitrust law.
Sherman and Clayton, coupled with the Federal Trade Commission, make up the backbone of antitrust law in the U.S.