



	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	THEODORE B. OLSON, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	THOMAS G. HUNGAR, ESQ.	
7	As amicus curiae, supporting Petitioner.	17
8	ORAL ARGUMENT OF	
9	ROBERT W. COYKENDALL, ESQ.	
10	On behalf of Respondent.	27
11	BARBARA D. UNDERWOOD, ESQ.	
12	As amicus curiae, supporting Respondent.	43
13	REBUTTAL ARGUMENT OF	
14	THEODORE B. OLSON, ESQ.	
15	On behalf of Petitioner	53
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(10:03 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in case 06-480, Leegin Creative Leather Products versus PSKS Incorporated. Mr. Olson.

ORAL ARGUMENT OF THEODORE B. OLSON

ON BEHALF OF THE PETITIONER

MR. OLSON: Mr. Chief Justice, and may it please the Court:

The per se illegality rule for resale price maintenance is widely recognized to be outdated, misguided and anticompetitive. It should be replaced with the same rule of reason standard that applies to other forms of vertically imposed marketing restrictions.

The Sherman Act bars only unreasonable restraints of trade and the court presumptively applies a rule of reason analysis to determine whether a restraint is unreasonable.

Per se rules should be rare and imposed only where the court is virtually certain, based upon considerable economic experience, that a practice is nearly invariably anticompetitive. Vertical minimum retail -- resale price maintenance are plainly not invariably anticompetitive. In fact, a broad consensus

1 of economists and decisions of this Court recognize that  
2 vertical restraints promote interbrand competition,  
3 which is the goal of the antitrust laws and are rarely,  
4 if ever, anticompetitive.

5 JUSTICE GINSBURG: There was an argument  
6 made, Mr. Olson, that it is somewhat difficult to  
7 distinguish vertical from horizontal in this context,  
8 that in fact, the agreement that the manufacturer made  
9 with the dealers was more successful in getting a  
10 horizontal accord among the dealers than if the dealers  
11 had attempted it themselves, in which case some might  
12 have held back.

13 MR. OLSON: Well, the economists who have  
14 looked at the use of resale price maintenance have said  
15 that that would very rarely, if ever, be the case. It  
16 certainly could not be the case in this industry in  
17 connection with this participant in the marketplace.  
18 There are something like 5,000 dealers that the Brighton  
19 products are sold through. There are thousands and  
20 thousands of other competing dealers, hundreds of  
21 products.

22 What the Court has said repeatedly is that  
23 programs such as this may promote interbrand  
24 competition, perhaps --

25 JUSTICE STEVENS: Mr. Olson, suppose just

1 the dealers in New York, the retail dealers agreed among  
2 themselves on the price. Would that be lawful?

3 MR. OLSON: No. I think that that would be  
4 covered by a horizontal prohibition, Justice Stevens.

5 JUSTICE STEVENS: Would you say that it's  
6 per se unlawful?

7 MR. OLSON: I think it would be, as  
8 horizontal restraint among competing dealers, it could  
9 be a per se violation under horizontal rules if it was  
10 -- if it was -- involved the manufacturer in some way,  
11 it could be dealt with by the rule of reason.

12 JUSTICE STEVENS: Why should that be any  
13 different from the arrangement where those dealers all  
14 got together in a convention and recommended to the  
15 manufacturer that he impose a vertical restraint of  
16 precisely the same dimensions? Why should you  
17 distinguish --

18 MR. OLSON: What this Court said in  
19 Sylvania, and said again in the State Oil versus Khan,  
20 is that the manufacturer has very, very little incentive  
21 to increase --

22 JUSTICE STEVENS: No, but I'm asking what if  
23 he did, why should you draw a distinction?

24 MR. OLSON: Because the motivation for the  
25 arrangement, if it comes from a manufacturer -- you're

1 suggesting a hypothetical in which all of the dealers in  
2 a particular area would get together to impose this on a  
3 manufacturer. I think it's very unrealistic that that  
4 would happen.

5 JUSTICE STEVENS: No. They just passed a  
6 resolution asking the manufacturer to impose this  
7 vertical restraint and he agrees to do it. Should that  
8 be different from one in which the manufacturer does it  
9 independently?

10 MR. OLSON: I think that if the manufacturer  
11 makes a decision, whether it's because dealers would  
12 like to see that happen or not, as this Court said in  
13 Business Electronic versus Sharp Electronics, there's of  
14 course relationships between the dealers and the  
15 manufacturers, that the dealers may have an interest in  
16 doing this, because they may find for the same reason  
17 that the manufacturer does that it promotes the sales of  
18 products. The record is clear in this case that this  
19 was an effective strategy for the Brighton company, the  
20 Brighton Leegin company that's manufacturing the  
21 Brighton products, to enter a very difficult and highly  
22 competitive marketplace, and it was successful.

23 CHIEF JUSTICE ROBERTS: Maybe, Mr. Olson,  
24 you could give us an example where the rule of reason  
25 would find a violation in this situation?

1           MR. OLSON: Well, it might be a situation --  
2 the economists have written about this, say that it  
3 would be very rare, and would require retailers with a  
4 strong powerful market power to impose a -- situation  
5 where the manufacturer would do that to help facilitate  
6 a horizontal cartel. That certainly was not involved in  
7 this case, and that would probably be found to violate  
8 the rule of reason. In addition, it would probably be  
9 unlawful under the horizontal rules established by this  
10 Court. That was not an issue in this case. The  
11 economists say that that would very seldom happen.

12           JUSTICE BREYER: I'm interested -- you say  
13 "very." Which economists? I know the Chicago school  
14 tends to want rule of reason and so forth. Professor  
15 Sherer is an economist, isn't he? Worked at the FTC for  
16 quite a long time. Pretty good expert in his field.  
17 He points out that the drug industry after you got rid  
18 of -- after you got rid of resale price maintenance, the  
19 margins fell 40 percent. The drug stores it went down 20  
20 percent. He says with blue jeans, alone, it saved  
21 American consumers \$200 million to get rid of it. And  
22 his conclusion is, as in the uniform enforcement of  
23 resale price maintenance, the restraints can impose  
24 massive anti-consumer benefits. Massive.

25           MR. OLSON: Well --

1 JUSTICE BREYER: What that sounds like is  
2 that if at least he, who is an economist, thinks if you  
3 get rid of Dr. Miles, every American will pay far more  
4 for the goods that they buy at retail. Now that's one  
5 economist, of course. There are others who think  
6 differently. So how should we decide this?

7 MR. OLSON: Well --

8 JUSTICE BREYER: Should we overturn  
9 Dr. Miles and run that risk?

10 MR. OLSON: In, in the vast majority of the  
11 economists who have looked at this have come out to the  
12 opposite conclusion, Justice Breyer. Secondly --

13 JUSTICE BREYER: We're supposed to count  
14 economists?

15 MR. OLSON: No. No. I think that --

16 JUSTICE BREYER: Is that how we decide it?

17 (Laughter.)

18 MR. OLSON: But what this Court -- what this  
19 Court has repeatedly said, that under circumstances such  
20 as this where there is a consensus among leading  
21 respected economists, that is one factor. There's  
22 another factor --

23 JUSTICE BREYER: Well, I haven't seen a  
24 consensus. A consensus? Isn't, doesn't Sherer and all  
25 these people, doesn't that point of view count, too?



1           MR. OLSON: This is one factor that the  
2 Court should consider and the Court has considered in  
3 the past when dealing with something that the Court  
4 itself has said, is an anachronistic and chronologically  
5 schizoid rule, to have a rule of reason for certain  
6 vertical restraints and a fixed, rigid, per se rule with  
7 respect to other vertical restraints. The Court -- the  
8 Court itself has made those pronouncements.

9           The enforcing agencies have changed their  
10 view with respect -- and they are here today, the  
11 Antitrust Division and the Federal Trade Commission, all  
12 of whom have announced that they believe that it is very  
13 rare for a rule such as this, for an arrangement such as  
14 this to be anticompetitive.

15           JUSTICE GINSBURG: But it was not so long  
16 ago that the Department of Justice took a different  
17 view. And of all of the vertical restraints, this is  
18 the only one where Congress has been a player. I mean,  
19 Congress allowed the fair trade laws to operate. And  
20 then it withdrew that. There's no other restraint where  
21 there has been congressional action, where the  
22 argument could be made, well, Congress is well aware of  
23 this, the Court should allow them to make a change, if  
24 they so will.

25           MR. OLSON: Essentially, the same argument

1 was made in the Sylvania -- at the time of the Sylvania  
2 case. The same argument was made just a term or two ago  
3 in connection with the Illinois Tool case that dealt  
4 with tying arrangements. The same argument was made in  
5 State Oil versus Khan. This Court has construed the  
6 antitrust laws as an expression by Congress that the  
7 courts should be aware of the dynamic potential in the  
8 marketplace --

9 JUSTICE GINSBURG: But in those cases you  
10 didn't have the counterpart to Miller-Tydings and  
11 McGuire. That's what makes this -- this one different  
12 in terms of congressional attention.

13 MR. OLSON: The repeal of those statutes,  
14 Justice Ginsburg, repealed per se legality rules. It  
15 was not a congressional expression against the rule of  
16 reason --

17 JUSTICE STEVENS: No, but there was in the  
18 patent case, though, Mr. Olson. We relied on the fact  
19 that the patent law changed.

20 MR. OLSON: Yes, you did.

21 JUSTICE STEVENS: Yes.

22 MR. OLSON: And that was a, that was one  
23 factor, however, Justice Stevens. I think, as I read  
24 that opinion, the Court was also concerned with the fact  
25 that the, the per se rule which -- and the Court said

1 the same thing just a few weeks ago in the  
2 Weyerhaeuser case -- to the extent that there's  
3 practices that can be procompetitive, the Court should  
4 not set a low threshold of illegality, especially low  
5 per se illegality threshold. There were -- there have  
6 been -- it is worth emphasizing that the Court has  
7 repeatedly said we don't want per se rules when we  
8 don't have a substantial body of economic experience  
9 that shows us that this practice --

10 CHIEF JUSTICE ROBERTS: What about -- what  
11 about the reliance interest, though? I mean, hasn't a  
12 whole industry of discount stores developed in reliance  
13 on the Dr. Miles rule? And don't we need to be  
14 concerned about the disruption to that established  
15 practice?

16 MR. OLSON: There's really no evidence that  
17 the marketplace as it exists today is a result of the  
18 Dr. Miles rule of 1911, Chief Justice --

19 JUSTICE SOUTER: Isn't there evidence that  
20 the, basically that the rise of the Wal-Mart's and the  
21 Targets is correlated with the demise of fair trade?  
22 So that -- there's that correlation.

23 MR. OLSON: Actually I looked into that,  
24 Justice Souter. And my, my limited historical research  
25 is that the -- those discounters were coming on strong

1 before 1975 which is when the, the Consumer Price --  
2 whatever it was -- Act was passed in response to that.

3 There are -- the evidence basically shows  
4 that -- and this Court has said -- that it's interbrand  
5 competition that ultimately produces lower prices.

6 JUSTICE BREYER: Well, I don't know. We  
7 have -- you talk about evidence -- just for fun I got  
8 out of the library a book by Professor B. S. Yamey,  
9 called Resale Price Maintenance, where he has five  
10 economists -- now maybe you're not going to count them  
11 as economists. Now I didn't find in that book a single  
12 argument that isn't also in your briefs, nor did I find  
13 in your brief as single argument that isn't in the book.

14 There's one interesting thing about the  
15 book. It was written in 1966. So I guess my question  
16 is what's changed? Now I know two things have changed.

17 One is there's evidence in Canada, Britain,  
18 and in the States that were under Miller-Tydings, that  
19 when you got rid of resale price maintenance, prices  
20 went down. That's changed. And the second thing that's  
21 changed is there's far more concentration, I gather,  
22 today in the retail side of the market than there  
23 used to be, a factor which makes resale price  
24 maintenance dangerous because it's more likely to take  
25 place at the request of the dealers.

1                   Now, I see those two changes. My question  
2 to you is looking at Yamey's book which is called Resale  
3 Price Maintenance, so you might have found even it even  
4 on Google, and -- what's changed? What's new?

5                   MR. OLSON: Well, a number of things have  
6 changed. The -- the number of respected individuals,  
7 notwithstanding that book, who have looked at it and  
8 have focused on the marketplace, have said that because  
9 it allows -- it increases the possibility of interbrand  
10 competition, it can provide incentives for dealers to  
11 provide service, differences in the products. And other  
12 things that have happened since then, are this Court's  
13 decision in the Sylvania case, which -- which involved  
14 an elaborate analysis of vertical restrictions and found  
15 that they are largely procompetitive and undermine the  
16 ruling -- the reason for a per se rule.

17                   This Court's decision in State Oil versus  
18 Khan, and the other cases that this Court is very well  
19 aware of where per se rules have systematically been  
20 dismantled because they are artificial themselves in the  
21 marketplace. This --

22                   JUSTICE SCALIA: Mr. Olson --

23                   JUSTICE KENNEDY: Does brand competition  
24 generally help retailers, or is this a question that  
25 can't be answered?

1 MR. OLSON: Did you say inter --

2 JUSTICE KENNEDY: Interbrand, interbrand  
3 competition? Do retailers like interbrand competition?

4 MR. OLSON: Well, I don't know that -- I  
5 don't know whether people like competition. But the  
6 antitrust laws like competition and this Court likes  
7 competition. And this Court has said that interbrand --

8 JUSTICE KENNEDY: Well, but we're talking  
9 about inter -- we're talking about retailers. It, it  
10 seems to me at the outset of the argument, you -- you  
11 acknowledged, and I think it is the general rule -- that  
12 if the retailers themselves have this retail price  
13 maintenance, it is invalid. Well, if the manufacturer  
14 does this just for the convenience of the retailers, and  
15 that's -- many of the examples in your brief, it is for  
16 the convenience and for the benefit of the retailers,  
17 then why shouldn't there be a per se rule? Why should  
18 we allow the manufacturer to do something that we  
19 wouldn't allow the retailers to do, if it's for the  
20 retailers?

21 MR. OLSON: Well, the manufacturer is very  
22 unlikely to do this for the convenience of the  
23 retailers, to -- because it's in the interest of the  
24 manufacturer to have the retail price as low as possible  
25 so that the manufacturer will sell as many of the

1 manufacturer's products as possible.

2 JUSTICE SCALIA: If -- if, if indeed that's,  
3 that's what he's aiming at, low price. Is it the object  
4 of the -- is the sole object of the Sherman Act to  
5 produce low prices?

6 MR. OLSON: No.

7 JUSTICE SCALIA: I thought it was consumer  
8 welfare.

9 MR. OLSON: Yes, yes, it is.

10 JUSTICE SCALIA: And I thought some  
11 consumers would prefer more service at a higher price.

12 MR. OLSON: Precisely.

13 JUSTICE SCALIA: So the mere fact that it  
14 would increase prices doesn't prove anything. It  
15 doesn't prove that it's serving consumer welfare. If,  
16 in fact, it's giving the consumer a choice of more  
17 service at a somewhat higher price, that would enhance  
18 consumer welfare, so long as there are competitive  
19 products at a lower price, wouldn't it?

20 MR. OLSON: That's -- that's absolutely  
21 correct.

22 JUSTICE SCALIA: So I don't know why, why we  
23 should have to focus our entire attention on whether  
24 it's going to -- going to produce higher prices or not.  
25 The market out there has different goods at different

1 prices which have different qualities that attract  
2 different consumers.

3 MR. OLSON: I -- I agree completely. I  
4 would like to reserve the balance of my time for  
5 rebuttal, but let me say that that's what this Court has  
6 said over and over again. If you -- the purpose of the  
7 antitrust laws is not price, but it's competition,  
8 because competition between competing manufacturers give  
9 the consumers more choice. Some people may want the  
10 cheapest product. Some people may want the product  
11 that's more available to them. They may wish the return  
12 policy or the warranty policy or the repair policy that  
13 the dealer provides. And in this marketplace  
14 particularly, that system of providing competition is  
15 consistent with the antitrust laws and has produced  
16 success in the marketplace.

17 JUSTICE GINSBURG: Mr. Olson, before you sit  
18 down, there's just one thing that wasn't covered in your  
19 argument or in the brief, but the complaint alleged in  
20 this case that Leegin allowed certain favored dealers to  
21 discount; not this plaintiff, but others were allowed to  
22 discount. And if that was true, as a matter of fact,  
23 then that would be a -- a plain violation of antitrust  
24 law, wouldn't it?

25 MR. OLSON: This -- but the case was never



1 litigated on that basis. It wasn't considered on that  
2 basis in the court of appeals. It came up sort of as a  
3 late thought in the opposition to the petition for  
4 certiorari. But that is not this case. The case was  
5 litigated on the per se rule of Dr. Miles.

6 CHIEF JUSTICE ROBERTS: Thank you,  
7 Mr. Olson.

8 JUSTICE GINSBURG: It is in the complaint.

9 CHIEF JUSTICE ROBERTS: Thank you,  
10 Mr. Olson.

11 Mr. Hungar.

12 ORAL ARGUMENT OF THOMAS G. HUNGAR

13 ON BEHALF OF UNITED STATES,

14 AS AMICUS CURIAE SUPPORTING PETITIONER

15 MR. HUNGAR: Thank you Mr. Chief Justice,  
16 and may it please the Court.

17 The same considerations that led this Court  
18 in Sylvania and State Oil to reject outmoded per se  
19 rules compel that same result here. The Dr. Miles rule  
20 conflicts with this Court's modern antitrust  
21 jurisprudence in three fatal respects --

22 JUSTICE BREYER: Maybe I'll put my question,  
23 which is really just one through this. I understand  
24 perfectly well that per se rules are a result of  
25 balancing different things. Of course, resale price

1 maintenance does raise prices, and it is very often  
2 anticompetitive. Of course, sometimes, there are good  
3 reasons for it that might help consumers.

4 Now, in addition, you need clear rules. Now  
5 those three sets of things require a balance. And we  
6 have a hundred years of history where this Court and  
7 Congress and others have balanced those three sets of  
8 considerations, and they've come out one way. Now, the  
9 Department of Justice wants to rebalance them and come  
10 out the other way.

11 There are good arguments on both sides. Why  
12 should we overrule a case that's 96 years old, in the  
13 absence of any -- any -- congressional indication that  
14 that's a good idea, when it's simply a question in a  
15 difficult area of people reaching a slightly different  
16 weight on some these three sets of things?

17 MR. HUNGAR: Several reasons, Your Honor.  
18 It's not -- it's not a close question whether this Court  
19 under its modern antitrust jurisprudence as an initial  
20 matter would impose a per se rule in this context.  
21 There is economic -- there is consensus among the  
22 respected economists --

23 JUSTICE BREYER: I would think it is quite a  
24 close question.

25 MR. HUNGAR: I don't think so, Your Honor.

1 Given --

2 JUSTICE BREYER: All right, so go ahead.

3 MR. HUNGAR: Given that this Court's test,  
4 the question this Court's modern cases ask, in  
5 distinguishing between the rule of reason and the per se  
6 rule, is whether the challenged conduct is always or  
7 almost always anticompetitive. That's what the Court  
8 has said.

9 JUSTICE BREYER: Price fixing, horizontal, I  
10 guess, or territorial divisions, we should overturn  
11 those too.

12 MR. HUNGAR: Certainly not, Your Honor,  
13 because that conduct is almost always anticompetitive in  
14 our experience and in the experience of the courts. But  
15 the same is not true in the resale price maintenance  
16 context. Dr. Miles has foreclosed the courts from  
17 conducting the kind of analysis that would actually look  
18 into this question. But the empirical data that are  
19 available suggest that anticompetitive  
20 explanations for resale price maintenance do not have  
21 very much explanatory power. When you actually look at  
22 the cases that have been litigated, they involve  
23 manufacturers without market power, unconcentrated  
24 markets, no evidence in the vast majority of those cases  
25 of any cartelization going on. So the anticompetitive

1 explanations, while certainly valid in some cases, do  
2 not appear to explain most of the resale price  
3 maintenance that has been litigated. It's true that  
4 resale price maintenance can, but does not always, result  
5 in price increases, but, as Justice Scalia pointed out,  
6 price is not the only thing that consumers care about.  
7 And there is widespread consensus in the economic  
8 literature and in this Court's recent cases that  
9 price-based vertical restraints, just like non-priced  
10 vertical restraints, while they generally reduce  
11 intrabrand competition, generally enhance interbrand  
12 competition.

13 In *Monsanto* and *Business Electronics*,  
14 this Court made clear that price vertical restraints,  
15 like minimum resale price maintenance, frequently, in  
16 fact usually, have the same or similar effects to the  
17 non-price vertical restraints to which this Court now  
18 applies rule of reason analysis. So the reason in  
19 answer to your questions to --

20 JUSTICE STEVENS: Wouldn't your argument  
21 also apply to a conspiracy among the New York dealers in  
22 this product just to fix price there? Because there's  
23 plenty of interbrand competition, I think. I don't  
24 think you can say it's absolutely clear that that would  
25 always be anticompetitive because they would also agree

1 to provide additional services.

2 MR. HUNGAR: No, Your Honor, because  
3 horizontal -- the important thing to keep in mind is  
4 that the incentives of the manufacturer when the  
5 manufacturer --

6 JUSTICE STEVENS: No, I'm just talking about  
7 a case in which it's the dealers who want to agree to  
8 provide extra services at higher prices as their method  
9 of better serving the public and they all agree that  
10 they have to be conscious about the competition from  
11 other brands. Why can we be absolutely certain that's  
12 always going to be harmful to the consumer?

13 MR. HUNGAR: Your Honor, the reason why we  
14 know that is always or almost always harmful is that the  
15 incentives at a horizontal level of a retailer cartel,  
16 just like the incentives of the participants in a  
17 manufacturing cartel --

18 JUSTICE STEVENS: They might be precisely  
19 the same as the manufacturers: We think we'll make  
20 more -- all make more money if we concentrate on service  
21 rather than price.

22 MR. HUNGAR: No, Your Honor, because the  
23 manufacturer's incentive is not to increase the profits  
24 of the retailers, but the retailers when they get  
25 together obviously have a very different incentive,

1 which is not to benefit the manufacturer.

2 JUSTICE BREYER: What you say is right.

3 What you say there is right. I feel I'm back in 1966.

4 The argument against that is we don't know which way

5 the push comes. The large retailers, Home Depot,

6 whatever they are, huge retailers, they want -- or maybe

7 it isn't the discounters, it's some other ones. We

8 don't know which way. You're throwing it into court.

9 You're throwing it before 12 people who may or may not

10 work this thing out. So the argument against what

11 you're saying is not logic. It's empirical and

12 administrative.

13 MR. HUNGAR: Your Honor --

14 JUSTICE BREYER: That's what it was. That's

15 what it is now, I guess.

16 MR. HUNGAR: Your Honor, in State Oil the

17 same argument was made. The argument was made that,

18 while we don't have compelling empirical evidence that

19 Albrecht results in harm to the economy, we don't have

20 compelling empirical evidence that resale price

21 maintenance, maximum resale price maintenance, is

22 generally procompetitive, and in the absence of such

23 empirical evidence there's no basis for overturning

24 precedent. This Court unanimously --

25 JUSTICE SOUTER: We do have empirical

1 evidence, though, don't we, that the decision of this  
2 case is going to be very significant in the sort of  
3 battle between Wal-Mart and the Main Street stores; and  
4 why should this Court in effect take a shot in the dark  
5 at resolving that, as distinct from leaving it to  
6 Congress, which is in a position to know more about  
7 where the shot is going to land than we are?

8 MR. HUNGAR: This Court -- I'm sorry.  
9 There's no empirical evidence that I'm aware of about  
10 what impact eliminating Dr. Miles would have on the  
11 Wal-Marts of the world.

12 JUSTICE SOUTER: That's my point. But it  
13 seems to me that there is a body of some empirical  
14 evidence that the success of the Wal-Marts and the  
15 Targets and the Home Depots was a success which was  
16 correlated with the elimination of price maintenance by  
17 the States.

18 MR. HUNGAR: I don't think so, Your Honor.  
19 In fact, as Mr. Olson pointed out, the K-Marts of the  
20 world began during the fair trade era.

21 JUSTICE SOUTER: They began, but they have  
22 flourished in the post-fair trade era.

23 MR. HUNGAR: Yes, Your Honor, but I think  
24 considerations like the opening up of international  
25 trade and the development of markets like China to

1 supply low-cost goods have a lot more to do with the  
2 success of the Wal-Mart's of the world than a rule like  
3 Dr. Miles.

4 Remember, it's perfectly legal under current  
5 law for manufacturers to impose the same sort of  
6 constraints as long as they do it by fiat and unilateral  
7 enforcement rather than by agreement. So the suggestion  
8 that somehow this is going to revolutionize the economy  
9 if Dr. Miles is overruled is simply unsupportable.

10 CHIEF JUSTICE ROBERTS: Well then, what's  
11 the great benefit in changing the rule if it's  
12 perfectly legal to achieve the same result already?

13 MR. HUNGAR: As the Ping amicus brief -- the  
14 Ping Golf Club Manufacturer amicus brief -- indicates  
15 it's extremely expensive and inefficient to follow the  
16 Colgate regime, that for those manufacturers for whom  
17 resale price maintenance would be in effect a strategy  
18 like Leegin, it's much more efficient to do it in many  
19 circumstances by agreement, rather than the disruption  
20 that is entailed when you terminate a dealer without  
21 further discussion for discounting one item in order to  
22 keep your policy in place.

23 JUSTICE SOUTER: But doesn't that answer  
24 your argument that there isn't reason to believe that  
25 there is going to be disruption if Dr. Miles goes,



1 because now it's going to be easy?

2 MR. HUNGAR: Your Honor, in 1945 during the  
3 height of the fair trade era the FTC did a study which  
4 concluded that only about 5 percent of the economy was  
5 affected by fair trade. And the fair trade regime,  
6 remember, is a different and more extreme regime. There  
7 it was per se legality, not rule of reason. So it's  
8 just -- there's just no basis for these assertions that  
9 somehow the economy is going to be massively changed.  
10 But it is also perfectly clear and undisputed that there  
11 are circumstances in which it is more efficient for a  
12 manufacturer to adopt resale price maintenance. It will  
13 enhance its ability to compete and it will provide  
14 consumers more of what they want, and that is a good  
15 thing and the antitrust laws should not automatically  
16 foreclose that merely because in a small percentage of  
17 cases it is conceivable that there can be  
18 anticompetitive effects.

19 JUSTICE SOUTER: Isn't it fair to say that  
20 there is reason to believe that there may be a massive  
21 reorientation in the retail economy if Dr. Miles goes?  
22 And that gets to my problem, why should we be the people  
23 to make a guess as opposed to the Congress as the  
24 institution to make the guess?

25 MR. HUNGAR: I'm not aware of any reason to

1 believe that, Your Honor, based on the historical record  
2 and based on the modern realities. The Wal-Mart's of the  
3 world have succeeded because of their discounting  
4 strategy. That's not going to change, and manufacturers  
5 have an incentive to have their goods sold through those  
6 stores, so that's not going to change either in the vast  
7 majority of cases. And with respect --

8 JUSTICE GINSBURG: If the rule of reason is  
9 the one that applies, I gathered, perhaps incorrectly,  
10 from Mr. Olson's remarks that this would be -- this case  
11 would be thrown out on summary judgment, it would never  
12 get to trial. How do you think the rule of reason would  
13 operate if it were the rubric under which this case were  
14 to be decided?

15 MR. HUNGAR: Your Honor, I think it would  
16 operate as it does usually, which is the plaintiff would  
17 be required to establish an anticompetitive effect  
18 resulting from the challenged conduct, and once that  
19 burden is overcome the defendant would be required to  
20 come up with some legitimate business justification,  
21 some procompetitive results that outweigh that. And  
22 only if they could do that would they succeed.

23 JUSTICE GINSBURG: Well, that's the formula,  
24 but I take it from what you said and Mr. Olson said that  
25 the plaintiff could never get across the first

1 threshold?

2 MR. HUNGAR: We don't agree with that, Your  
3 Honor. In cases where resale price maintenance is being  
4 used to facilitate cartelization, either at the  
5 manufacturer or the retail level, the plaintiff could  
6 prevail. Also in, for example, in an oligopolistic  
7 market.

8 JUSTICE GINSBURG: But in this case, this  
9 case has none of those features.

10 MR. HUNGAR: Well, right.

11 JUSTICE GINSBURG: This case loses under the  
12 rule of reason, right?

13 MR. HUNGAR: We don't know that. It seems  
14 likely to assume that, though, and that's not a bad  
15 thing. Leegin is obviously not dominant in the market.  
16 It's obviously not going to succeed unless what it is  
17 offering at a higher price is what consumers want, and  
18 that is a good thing under the antitrust laws.

19 CHIEF JUSTICE ROBERTS: Thank you,  
20 Mr. Hungar.

21 MR. HUNGAR: Thank you.

22 CHIEF JUSTICE ROBERTS: Mr. Coykendall.

23 ORAL ARGUMENT OF ROBERT W. COYKENDALL

24 ON BEHALF OF THE RESPONDENT

25 MR. COYKENDALL: Thank you, Mr. Chief

1 Justice, and may it please the Court:

2 As recently as last month, this Court  
3 restated a guiding principle of antitrust jurisprudence:  
4 Discouraging price cuts and depriving consumers of low  
5 prices is bad antitrust policy. RPM prohibits price --

6 JUSTICE SCALIA: Is that right? I mean, you  
7 really think that antitrust policy means when -- any  
8 arrangement that produce a higher price is bad?

9 MR. COYKENDALL: Well, we aren't talking  
10 about any arrangement --

11 JUSTICE SCALIA: I mean, a lot of consumers  
12 want, you know, extended warranties. They want show  
13 rooms where they can go and look at things. All of  
14 which costs more money. And where you cannot have  
15 resale price maintenance the customers -- or you have  
16 the free-rider problem. The customers shop at the place  
17 that has the big show room, it looks at all the product  
18 there, and then goes and buys it from somebody else who  
19 has not incurred that expense.

20 Now, I just don't think that all that  
21 customers want is cheap. I think they want other things  
22 besides cheap. I think they want service. I think they  
23 want selection. I think they want the ability to view  
24 goods and so forth. Why do you discount all of those  
25 values?

1                   MR. COYKENDALL: I don't discount all those  
2 things. All those things are available under our  
3 current regime where we have a per se prohibition  
4 against resale price maintenance.

5                   JUSTICE SCALIA: Well, they aren't  
6 available. This company thought that it could provide  
7 higher service if it could assure its retailers that  
8 they would not be undercut by people who are not  
9 providing that kind of service.

10                  MR. COYKENDALL: And there's no question  
11 that even the plaintiff in this case was providing that  
12 service. He was providing it more efficiently and he  
13 just wanted to pass those efficiencies on.

14                  JUSTICE SCALIA: I don't, I don't know that  
15 there's no question about that. There's certainly no  
16 question that this company was successful in breaking  
17 into a difficult market with its strategy of assuring  
18 its retailers a cushion so that they could provide the  
19 service.

20                  MR. COYKENDALL: The record shows that with  
21 this specific company, most of the growth of its sales  
22 occurred before it established a resale price  
23 maintenance policy. So there are no demonstrated  
24 benefits from this company of imposing and enforcing a  
25 resale price maintenance policy.

1 CHIEF JUSTICE ROBERTS: What is your main  
2 objection to -- I mean, it's hard to oppose a rule of  
3 reason. Why, why can't the rule of reason work to  
4 promote the objectives you've just articulated?

5 MR. COYKENDALL: Well, as a practical matter  
6 for someone in my position -- or plaintiff's position --  
7 it's impossible for a small dealer to muster the  
8 resources in order to put forth --

9 CHIEF JUSTICE ROBERTS: For a small dealer.  
10 But as we've already heard, the dealers who engage in the  
11 discount policy are places like Target and Wal-Mart.  
12 Those aren't small dealers. Those are behemoths in the  
13 retailing industry.

14 MR. COYKENDALL: I would suggest that those  
15 are not the people that really are being protected by  
16 this particular per se prohibition. It is the small  
17 mom-and-pop operation like my client that wants to  
18 innovate and expand and pass on efficiencies and compete  
19 with the big discounters who might have power of their  
20 own in order to secure discounts.

21 JUSTICE ALITO: So you don't agree with the  
22 argument that we've heard this morning that the  
23 transformation of American retailing since the 1970s and  
24 the rise of the large-scale low-price retailers has  
25 anything to do with the end of the fair trade laws and

1 that overruling Dr. Miles would reverse that?

2 MR. COYKENDALL: No, I absolutely agree with  
3 that. But it's resale price maintenance that enables  
4 these initiators, these small companies, these small  
5 operations, to grow and innovate, achieve the  
6 efficiencies, and pass those on, attract customers by  
7 reducing prices. And all that is stopped by imposition  
8 of a resale price maintenance.

9 JUSTICE ALITO: Is there anything to suggest  
10 that the large-scale low-price retailers who were  
11 supposedly dependent on Dr. Miles are -- support its  
12 retention? Have they filed amicus briefs here or  
13 otherwise suggested that this is essential to their  
14 continuing operation?

15 MR. COYKENDALL: Again, the large-scale  
16 dominant players in the retail industry have their own  
17 market power. They don't need the protection of the  
18 per se rule in order to enforce them. It's the next  
19 generation that this rule really aims to protect.

20 JUSTICE SCALIA: I don't understand that. I  
21 mean, if it was really the case that they were going to  
22 be losing, losing profits, I think they would have been  
23 here. I mean, we talk about the Wal-Marts and the  
24 Targets. They're not here on amicus briefs because  
25 they're -- what they're selling is cheap. They are

1 selling price, and people who want low price and for  
2 whom that's of value above all other things are going to  
3 continue to go to those stores. So they're not going to  
4 be harmed by the fact that some manufacturers want to  
5 provide not just the low price -- of course, they'll try  
6 to keep the price as low as possible -- but service.

7 I just don't see what, what harm can  
8 possibly come, so long as there's no market dominance,  
9 from allowing some people to make their money on service  
10 and -- rather than cheap price.

11 MR. COYKENDALL: Well, again I would suggest  
12 that under this current system the way it is we have  
13 both the full-service providers of complete service that  
14 offer goods at a certain price and we have discounters  
15 selling those same goods. There is currently a mix of  
16 service and price that better serves the economy than  
17 just having one cookie cutter -- a one-size-fits-all  
18 approach that you would have with resale price  
19 maintenance.

20 JUSTICE KENNEDY: Well, I thought the per se  
21 rule was the cookie cutter approach.

22 MR. COYKENDALL: Well, in terms of  
23 prohibiting price or in terms of, yes, prohibiting price  
24 fixing, that's true. But it permits stores to have full  
25 price and full service and charge high prices for that



1 service, and it permits discounters to reduce price,  
2 reduce service and cater to those customers who want the  
3 goods with lower service.

4 JUSTICE BREYER: The Internet -- is it --  
5 you would have said four years ago, or I think we are in  
6 this argument, you would have said -- it's the large  
7 discounters, the growing discounters, the Walgreens' of  
8 the world who want to get rid of resale price  
9 maintenance, it's there to help the mom and pops. Okay.  
10 They're in now, they're big, and they may want to  
11 maintain resale prices because they may want to extract  
12 the extra profit, while the Internet little company  
13 comes in and says I can get it to you cheaper.

14 Now I can imagine circumstances like you  
15 say. I can imagine they're not like you say. I don't  
16 know. And so what should I do if I really don't know?

17 MR. COYKENDALL: Well, there is no doubt  
18 that resale price maintenance raises prices to  
19 consumers. The only economic doubt is whether there are  
20 any redeeming effects of those prices; and that's where  
21 the economic dispute of this is.

22 CHIEF JUSTICE ROBERTS: Well, I thought the  
23 Ping brief that was referenced earlier made a point that  
24 it made, the prices may be -- resale price -- the  
25 current Dr. Miles rule may result in increased prices

1 because of the inefficiencies for those retailers, or of  
2 those manufacturers who want to establish a regime where  
3 something other than price is important, and they have  
4 to do that unilaterally, which increases inefficiencies.

5 MR. COYKENDALL: Well, Your Honor, I would  
6 suggest that, first of all, eliminating the per se rule  
7 would not decrease the inefficiencies of the Colgate  
8 doctrine. If they want to impose resale price  
9 maintenance in order to avoid even a rule of reason  
10 approach, they would have to go through --

11 JUSTICE GINSBURG: Even with the tremendous  
12 anomaly that the employer -- that the -- the  
13 manufacturer cannot do this by agreement, but he can do  
14 it just as a matter -- just unilaterally and terminate  
15 any dealer that won't go along? Those two sit  
16 uncomfortably with each other. Colgate seems to say you  
17 can achieve the same end but we're not going to let you  
18 do it by agreement, you have to do it on your own, and  
19 then you have to do the draconian thing of terminating  
20 the dealer.

21 MR. COYKENDALL: I believe that anomaly  
22 really lies at the heart of the Sherman Antitrust Act  
23 which is aimed at contracts, combinations and  
24 conspiracies. Unilateral conduct isn't reached by that,  
25 it's the price of being in a fair country. People can

1 deal in ways that they want to with this particular  
2 issue.

3 But again, eliminating the per se rule will  
4 not help Ping out if they want to maintain their resale  
5 price maintenance as legal, as unilateral. They'll  
6 still have to go through these same machinations.

7 CHIEF JUSTICE ROBERTS: Why is that? Why  
8 can't -- eliminating the rule, I thought the whole point  
9 was they would just put in their contracts, you have to  
10 sell it at this price, and they could enforce the  
11 contracts, rather than having to have these machinations  
12 of making sure they don't do anything that looks like an  
13 agreement with their retailers?

14 MR. COYKENDALL: Well, again, then they  
15 would be subject to a rule of reason analysis and the  
16 uncertainties occasioned with that as to whether this  
17 contract is lawful. If they want to avoid that, then of  
18 course, they would have to stick with the Colgate  
19 doctrine.

20 Your Honor, in this particular case we have  
21 clear evidence that RPM was used to facilitate a  
22 horizontal retailer cartel. We have evidence -- as is  
23 shown in the briefs -- that Leegin would gather its  
24 dealers in a dealer meeting, discuss the policy, agree  
25 to changes, and reach a consensus, and then enforce that

1 policy against everyone.

2 One of the evils of resale price maintenance  
3 is specifically this: It does facilitate the formation  
4 of cartels.

5 JUSTICE STEVENS: Yes, but the conspiracy  
6 that it facilitated is just with intrabrand  
7 competition. There wasn't any conspiracy that affected  
8 interbrand competition.

9 MR. COYKENDALL: Retail --

10 JUSTICE STEVENS: So I'm not sure that  
11 economically it makes any difference whether the dealers  
12 are the one who decide to do it or the manufacturer was,  
13 or they all did it at the same time.

14 MR. COYKENDALL: Horizontal conspiracies,  
15 even among a single brand, has always been a per se  
16 violation of the antitrust law. You can look back at  
17 the --

18 JUSTICE STEVENS: No, but if we say the rule  
19 of reason should apply to all cases that just affect  
20 intrabrand competition, I'm not sure why we should keep  
21 this outmoded rule about horizontal conspiracies that  
22 only affect intrabrand competition.

23 MR. COYKENDALL: There you're striking  
24 really at the heart of the -- the heart of the Sherman  
25 Act, et al., holding that horizontal conspiracies, which

1 nobody believes promote competition, could be justified  
2 under the same thinking.

3 JUSTICE SCALIA: No, but it's a totally -- I  
4 cannot imagine why a horizontal conspiracy among dealers  
5 could ever produce consumer welfare. It will be a  
6 horizontal conspiracy to get more money out of the  
7 consumer; but whereas the manufacturer who wants to  
8 impose resale price maintenance, his interest isn't to  
9 give the retailer as much -- more money than the  
10 retailer is now making. He's going to try to keep their  
11 margin just as low as it ever was, so that he can sell  
12 as many of his products as possible consistent with his  
13 desire to sell his product by attaching to it more  
14 service, better warranty, more showrooms, whatever.

15 I mean, a horizontal conspiracy, the  
16 incentives are entirely different. When you're dealing  
17 with a manufacturer, it seems to me his incentive is  
18 still to keep the price as low as possible, consistent  
19 with the additional good that he wants to give consumers  
20 to attract those consumers to his product.

21 MR. COYKENDALL: In this particular case  
22 there is a complete alignment of incentives, because the  
23 manufacturer was also a retailer competing in this  
24 market. He has the incentive to increase retailer  
25 profits.

1 JUSTICE SCALIA: Well, if that's the case  
2 and if that makes a difference, the rule of reason would  
3 allow you to make that argument. But you -- but you  
4 want to say it's bad across the board for everybody. If  
5 indeed there's something peculiar about this case, the  
6 rule of reason would allow you to argue that.

7 MR. COYKENDALL: Well, Your Honor, we would  
8 suggest that the horizontal conspiracy between Leegin as  
9 a retailer and the other retailers offering its products  
10 is more than just a rule of reason approach. That would  
11 be per se illegal under this Court's precedents.

12 Retail price maintenance also has the  
13 problem we discussed earlier of perpetuating incumbent  
14 forms of distribution at the expense of the innovative  
15 and more efficient distribution means. Retailers, in  
16 retail competition matters, retailers should be entitled  
17 to innovate, pass efficiencies along to customers in the  
18 form of lower prices, attract new customers, and grow in  
19 that manner.

20 JUSTICE GINSBURG: Mr. Coykendall, the -- on  
21 the question -- you alleged in the complaint that there  
22 was some discounting allowed by, how do you pronounce  
23 it, Leegin?

24 MR. COYKENDALL: Leegin.

25 JUSTICE GINSBURG: Leegin. And Mr. Olson

1 said that that wasn't pursued at trial; is that correct?

2 MR. COYKENDALL: That particular aspect was  
3 referred to; it wasn't pursued as a separate part of  
4 this. Prior to trial, the judge did rule that the  
5 Dr. Miles line of cases applied and the conduct would be  
6 judged under per se rule. So certain aspects with  
7 respect to the horizontal conspiracy and the differences  
8 in discounts -- I mean, developed that much.

9 JUSTICE GINSBURG: Suppose you were to lose,  
10 you would still have that claim, I take it?

11 MR. COYKENDALL: Well, yes. We would  
12 suggest the record is sufficient that, on remand, the  
13 instruction given the jury as to the standard by which  
14 their conduct could be judged could be sustained as a  
15 per se violation under the rules related to horizontal  
16 conspiracies as well. And again, I would suggest that  
17 perhaps if the Court doesn't reach that, it should  
18 remand to the Fifth Circuit for them to consider whether  
19 that is a possibility.

20 Resale price maintenance can distort  
21 consumer choice. The retailers -- so the person comes  
22 into the store -- the retailers can exercise pressure to  
23 influence the selection of higher margin products over  
24 ones that may better fit the consumer needs. That is an  
25 evil of resale price maintenance, whether or not it does

1 promote efficiencies.

2           And if resale price maintenance does act as  
3 it is theorized, to increase retailer services, some  
4 consumers will be worse off, they'll be paying for  
5 services they don't want.

6           There are alternatives to RPM.

7           JUSTICE SCALIA: I don't suppose there's any  
8 -- I don't suppose there's any way to protect against  
9 the fallout to the consumer, is there? I mean if  
10 indeed, if indeed a store presses on a consumer a  
11 product that's more expensive than what he needs or --  
12 and what he wants, is this a real argument against this,  
13 that there's some stupid consumers whose can be conned?  
14 I mean, whatever rule we adopt, that's going to be the  
15 situation.

16           MR. COYKENDALL: Well, if -- what you're  
17 doing is you're building in this high margin that gives  
18 the retailer an incentive to do that. If there is no  
19 resale price maintenance so that margin isn't  
20 guaranteed, the incentive disappears. What is clear is  
21 that retail -- resale price maintenance is a blunt  
22 instrument to achieve any economies.

23           JUSTICE SCALIA: You're assuming that the --  
24 that the retailer has a higher margin on the resale  
25 price good. Why do you assume that?



1           MR. COYKENDALL: That's the only incentive,  
2 the only reason for imposing resale price maintenance.

3           JUSTICE SCALIA: He's only going to be given  
4 the thing if he does the kind of additional service that  
5 the manufacturer wants. That's the whole purpose of it.  
6 And the manufacturer is going to try to keep his margin  
7 just as low as he can consistent with the -- you know --  
8 consistent with selling as many products as he can.

9           MR. COYKENDALL: Well, there are more  
10 efficient ways than RPM to achieve any benefits of  
11 efficiency, such as contracts with the retailers to  
12 provide those additional demand creating services. He  
13 could pay the retailers to provide those services. He  
14 could provide those services directly, and I would  
15 suggest --

16           CHIEF JUSTICE ROBERTS: Why would you argue  
17 that those are more efficient than resale price  
18 maintenance?

19           MR. COYKENDALL: Resale price  
20 maintenance amounts to nothing more than throwing money  
21 at the problem. You're guaranteeing a margin and you're  
22 hoping that it's going to be used somehow for the  
23 consumer's benefit, and you've got no guarantee that any  
24 dealer is going to use the margin that they're  
25 guaranteed in any way to service the consumers.

1           And I would suggest that in geographically  
2 isolated areas --

3           CHIEF JUSTICE ROBERTS: Well, you can add  
4 the contractual provisions you were talking about to a  
5 contract that has a minimum resale price. The minimum  
6 resale price is to take away the incentive from the  
7 retailer not to carry through on the non-price aspects.

8           MR. COYKENDALL: If you have a contract  
9 requiring those services, you don't need the minimum  
10 resale price. That's just completely unnecessary. And  
11 that would prohibit an efficient dealer from passing on  
12 those efficiencies to its consumers.

13           JUSTICE KENNEDY: Does that presume a  
14 contract in which the retailer has a separate charge for  
15 the service?

16           MR. COYKENDALL: It could be. It may not.

17           JUSTICE KENNEDY: Because if not, I don't see  
18 how that would work -- under your rule.

19           MR. COYKENDALL: Well, under -- the idea is  
20 the manufacturer chooses to deal with only those dealers  
21 that offer this particular service. They sign a  
22 contract to provide that service. If they don't want to  
23 provide that service, they don't sign the contract,  
24 they don't get the goods. It's as simple as that.

25           If the question is providing a larger margin

1 to the dealer, the most efficient way is for the  
2 manufacturer simply to lower their wholesale price, and  
3 the margin the dealer receives is higher.

4 Again, if there are other efficiencies, they  
5 might be achieved by exclusive territories as permitted  
6 by Sylvania or by the Colgate doctrine.

7 I would suggest the experience of the 30  
8 years following the elimination of the fair trade laws  
9 have shown the wisdom of the Dr. Miles decision which  
10 places faith in the free market system. This Court  
11 should continue to honor its precedents and respect the  
12 will of Congress by adhering to the Dr. Miles rule.

13 CHIEF JUSTICE ROBERTS: Your reference to  
14 the will of Congress, they haven't enacted legislation  
15 that supports the result you seek.

16 MR. COYKENDALL: Your Honor, as this Court  
17 observed in Sylvania, Congress by repealing the  
18 Miller-Tydings McGuire Act did indicate its support for  
19 the per se rule. I believe the Court should adhere to  
20 that holding as well.

21 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
22 Ms. Underwood.

23 ORAL ARGUMENT OF BARBARA D. UNDERWOOD

24 ON BEHALF OF NEW YORK AS AMICUS CURIAE

25 SUPPORTING THE RESPONDENT

1 MS. UNDERWOOD: Mr. Chief Justice, and may  
2 it please the Court:

3 When a manufacturer agrees with its  
4 retailers to fix a minimum resale price, the whole point  
5 of the agreement is to prevent price competition among  
6 retailers, to prevent discounting. For almost 100 years  
7 the Court has interpreted section 1 of the Sherman Act  
8 to prohibit such price-fixing agreements. Any change in  
9 that fundamental understanding of the statute should be  
10 made by Congress and not by this Court.

11 The per se rule against resale price  
12 maintenance is different in at least three ways from  
13 other antitrust rules that this Court has overturned.  
14 First, unlike the other rules, it alone has been settled  
15 law for a century, reaffirmed over and over again by  
16 this Court.

17 CHIEF JUSTICE ROBERTS: Well, it's also been  
18 settled law for 90 years under the Colgate doctrine that  
19 manufacturers can achieve the same results, albeit more  
20 inefficiently. Doesn't it make sense to allow them to  
21 adopt the most efficient means to an end that is already  
22 completely legal?

23 MS. UNDERWOOD: No. That tension that you  
24 -- that supposed anomaly that you describe is simply a  
25 result of the fact that the antitrust rule -- law does

1 not prohibit all anticompetitive behavior. It prohibits  
2 agreements that are anti -- that restrain competition.

3 And so it will often be the case that it is  
4 possible for somebody unilaterally to do something that  
5 has the same effect as an agreement, or approximately  
6 the same effect, as the antitrust law simply draws that  
7 line because of a different value, a value in preserving  
8 the independent action of individuals.

9 It is, however --

10 JUSTICE SCALIA: I'm not sure it's often the  
11 case. Give me some other examples where you can achieve  
12 the same industry-wide effect unilaterally.

13 MS. UNDERWOOD: Well, as you have observed,  
14 virtually any vertical restriction could be accomplished  
15 by having the manufacturer integrate the retailing  
16 function and become one entity instead of two entities.  
17 Then the possibility of conspiracy or agreement is  
18 eliminated and the manufacturer, if he simply integrates  
19 the whole function, is -- can fix prices, fix his, what  
20 are in effect his own prices and be outside the reach of  
21 the antitrust laws. There are other reasons why a  
22 manufacturer might not find it convenient to do that  
23 integration, but it is certainly possible by ceasing to  
24 be multiple entities and to become one entity to avoid  
25 the prohibitions of the antitrust law.

1           It is also -- so, this is old and well  
2 settled. Unlike the Schwinn rule against territorial  
3 restraints which was overturned only 10 years after it  
4 was established, or the Albrecht rule against maximum  
5 resale price maintenance which was overturned 29 years  
6 after it was established, this has a much more settled  
7 pedigree in the law and expectations have grown up  
8 around it.

9           Second, it was endorsed and relied on by  
10 Congress, not enacted by Congress but endorsed and  
11 relied on by Congress, when Congress repealed the fair  
12 trade laws in 1975 by amending the very statute this  
13 Court is now asked to interpret.

14           JUSTICE SCALIA: Were they relying on  
15 Dr. Miles or were they relying on us? That's the  
16 question.

17           MS. UNDERWOOD: They were relying --

18           JUSTICE SCALIA: They left the situation  
19 where it was, which is that the antitrust law is as  
20 determined by this Court, and we had shown our  
21 willingness to update the antitrust law when sound  
22 economic doctrine suggests is necessary.

23           MS. UNDERWOOD: No. The legislative history  
24 described in some detail in the Antitrust Institute's  
25 brief shows that actually they were returning the law to

1 the per se rule against resale price maintenance, that  
2 they thought resale price maintenance was bad and should  
3 be prohibited.

4 This is -- it is also true that --

5 CHIEF JUSTICE ROBERTS: But of course, they  
6 could always pass a law saying that if their intent is  
7 so clear. They didn't do that here.

8 MS. UNDERWOOD: That's true, they did not do  
9 that here and I'm not suggesting that they did, only  
10 that, uniquely among the rules that this Court has  
11 established in the antitrust area, this rule has  
12 received the repeated attention of Congress; and so the  
13 Court's deference to Congress and reluctance to overturn  
14 the rule should be at its peak as compared with those  
15 other rules.

16 And third, price is different. This Court  
17 has said that price competition is the central nervous  
18 system of the economy. Other restraints, to be sure,  
19 might indirectly affect price, but not with the same  
20 absolute force. Territorial restraints don't absolutely  
21 prevent price competition because customers can travel  
22 or order by phone, mail, or Internet, and indeed under  
23 territorial restraints there are often multiple  
24 retailers in a particular territory who can compete.  
25 Maximum price maintenance doesn't prevent price

1 competition at all unless, as the Court noted in Khan,  
2 it's really minimum resale price maintenance in disguise,  
3 in which case the Court in Khan said it's illegal.

4           Manufacturers can of course pay retailers  
5 for the services that enhance the product that are being  
6 advanced as the procompetition benefit of resale price  
7 maintenance. But the question for this Court is whether  
8 the manufacturer should be allowed to use a price-fixing  
9 agreement to make that payment to buy those services,  
10 and that's not a question of fact for a jury to decide  
11 in a rule of reason trial. That's a question of  
12 statutory interpretation for this Court. It's a  
13 question really of what kind of currency a manufacturer  
14 can use to buy those retailer services.

15           It's also true that the claim that  
16 price fixing works to induce those services is both  
17 debatable and untested. The retailers have no  
18 obligations to provide services under the retail price  
19 maintenance agreement at issue in this case and in other  
20 cases.

21           CHIEF JUSTICE ROBERTS: But they could. I  
22 mean, you could easily write the agreement saying you  
23 have to charge this much and because you have to charge  
24 this much you also have to provide the training, the  
25 service, whatever the non-price inducements are.



1 MS. UNDERWOOD: You could. You could also  
2 require those things without resale price maintenance  
3 and then the retailer would be free to decide to raise  
4 the price to pay for that or to provide it so  
5 efficiently that he could in effect engage --

6 CHIEF JUSTICE ROBERTS: But then the  
7 retailer, but then the retailer might have a real  
8 incentive not to do a good job on the service because  
9 they really want to market it for price, not for  
10 service.

11 MS. UNDERWOOD: That really depends, doesn't  
12 it, on what the consumers in the market want, and if  
13 it's correct, if the manufacturer -- if the claim on  
14 behalf of the manufacturer here is correct that what the  
15 customers want is service, the retailers are in at least  
16 as good a position to identify that fact as not.

17 I think the point --

18 CHIEF JUSTICE ROBERTS: Well, but there you  
19 have the free-rider problem, which is you go to the  
20 fancy show room, you figure out what you want, and then  
21 you buy it at the discount store.

22 MS. UNDERWOOD: Yes. That's at its peak,  
23 perhaps, when you're talking about electronics. When  
24 the shopping experience alone is what is thought to be  
25 the benefit, which is often the case, you can't free

1 ride on that. You either shop in the place where you  
2 like to shop or you shop -- or you have a different  
3 shopping experience in Target.

4 JUSTICE SCALIA: But some manufacturers want  
5 their product associated with excellent service, high  
6 warranty, and all of that. And there is no way to get  
7 that uniformly for that product without this kind  
8 of agreement.

9 MS. UNDERWOOD: Yes, there is. The  
10 manufacturer can contract for it. The manufacturer can  
11 decline to deal with people who don't provide it. The  
12 very same point that was being made earlier.

13 I think that the point here is that  
14 permitting resale price maintenance would be such a  
15 drastic change in the longstanding settled  
16 interpretation of the Sherman Act that it doesn't really  
17 qualify as the kind of common law evolution that this  
18 Court has said is appropriate ordinarily in making  
19 antitrust rules under the Sherman Act. If that change  
20 is to be made at all, it should be made by Congress and  
21 not by this Court.

22 JUSTICE STEVENS: Am I correct on the  
23 congressional point that there was a period when  
24 Congress would have prohibited the Solicitor General  
25 from making the argument he made today?

1 MS. UNDERWOOD: Yes, there was such a  
2 period. And this Court noted that fact in --

3 JUSTICE STEVENS: So there was a legislative  
4 expression of a position on this particular issue?

5 MS. UNDERWOOD: There was a legislative  
6 expression of position on this particular issue.

7 CHIEF JUSTICE ROBERTS: And that no longer  
8 is applicable?

9 MS. UNDERWOOD: That is -- the Solicitor  
10 General is no longer barred from making that argument,  
11 as is evident today. What he --

12 JUSTICE SCALIA: I guess Congress changed  
13 its mind then.

14 MS. UNDERWOOD: No, I think Congress found  
15 it unnecessary or perhaps questioned the wisdom or  
16 constitutionality of barring the Solicitor General from  
17 making particular arguments.

18 JUSTICE SCALIA: I find it hard to believe  
19 that.

20 (Laughter.)

21 MS. UNDERWOOD: But Congress has  
22 consistently -- well, and the repeal -- the reason the  
23 repeal of the Miller-Tydings Act seems particularly  
24 relevant is that it is indeed -- it was an amendment to  
25 this statute that this Court is being asked to

1 interpret, so it sheds some light on the on the meaning  
2 of this statute as it stands.

3 JUSTICE GINSBURG: As Mr. Olson pointed out,  
4 under the fair trade laws this was per se legal. So  
5 that's quite a different thing.

6 MS. UNDERWOOD: Yes. But when Congress  
7 repealed that, there were considerable -- there was  
8 considerable expression of legislative history, for  
9 those who find legislative history helpful, that  
10 declared opposition to resale price maintenance, not  
11 simply that it was sometimes helpful and sometimes  
12 hurtful. So to the extent Congress's intent can be  
13 gleaned from that legislative history, it was an intent  
14 to return to the regime of per se illegality.

15 JUSTICE GINSBURG: Maybe on the year by  
16 year, don't spend any money on, maybe Congress decided  
17 that wasn't an appropriate technique, but Congress has  
18 used that after, hasn't it, in other cases?

19 MS. UNDERWOOD: It has, but I would question  
20 the wisdom of that technique as a method of expressing  
21 Congress's view. The fact that Congress went so far as  
22 to use it once suggests a very strong view indeed.

23 CHIEF JUSTICE ROBERTS: Thank you,  
24 Ms. Underwood.

25 Mr. Olson, you have 3 minutes remaining.

1 REBUTTAL ARGUMENT OF THEODORE B. OLSON  
2 ON BEHALF OF THE PETITIONER

3 MR. OLSON: The Respondent and its amici  
4 seem to recognize that what this Court said in State Oil  
5 versus Khan, that a vertical restraint imposed by a  
6 single manufacturer or wholesaler may stimulate  
7 interbrand competition even as it reduces intrabrand  
8 competition and, by the way, it enhances intrabrand  
9 competition on matters of service and availability and  
10 other things in addition to price. The Respondent and  
11 their amici seem to have acknowledged these  
12 procompetitive factors but say you should do it by a  
13 contract with 5,000 different retailers, which you then  
14 have to go out and enforce, or you have to do it under a  
15 Colgate system, which the Ping brief demonstrates it's a  
16 blunt instrument, it requires terminating retailers with  
17 which you have had a relationship for years, it prohibits  
18 even talking to the loyal retailers to fix small  
19 problems.

20 JUSTICE STEVENS: But you're just giving  
21 them an additional ground for termination.

22 MR. OLSON: Pardon me?

23 JUSTICE STEVENS: You're just giving, you're  
24 just suggesting we should give them an additional ground  
25 for termination.

1           MR. OLSON: No. What we're suggesting is  
2 that the agreement is something that -- the details can be  
3 worked out. The manufacturer can -- and the Ping brief  
4 explains this. The manufacturer can go to the retailer  
5 and say: Look, maybe you didn't get it right, your  
6 salesperson said the wrong thing; let's fix it, because  
7 we want to be dealing together. The antitrust laws --  
8 in other words, what the Respondent and its amici want --  
9 or they suggest forward integration, so you just acquire  
10 all your retailers.

11           The benefits of these type of arrangements  
12 provide the consumers with choices. It stimulates  
13 interbrand competition. It promotes intrabrand  
14 competition on things other than price. It provides  
15 consumers with more choices. It ultimately gives more  
16 freedom to the manufacturer to stimulate the sale of its  
17 products, to enter the marketplace.

18           These are things that the Court has said,  
19 and provides a more varied marketplace. The Court has  
20 repeatedly said that the presumptive rule is a rule of  
21 reason. Per se rules should be tossed out or not  
22 adopted unless they're dealing with a practice which is  
23 invariably anticompetitive. This practice, as  
24 acknowledged, is procompetitive. It provides many  
25 opportunities, and it is irrational for vertical

1 restrictions to exist in this world in the non-price  
2 area or the maximum price area as subject to the rule of  
3 reason and the minimum retail price maintenance under a  
4 rigid per se rule that cannot be changed.

5           And as this Court has repeatedly held,  
6 Congress intended by the use of restraint of trade and  
7 the unreasonable restraint of trade for this court to  
8 continue to breathe life into the restrictions of the  
9 antitrust laws in the benefit of the consumer and in the  
10 benefit of competition, eliminating rigid per se rules  
11 which make it unlawful for a manufacturer to do  
12 something that's rational in the marketplace, to give  
13 consumer choices, or to do it in some indirect way that  
14 is a lawyer's dream and an entrepreneur's nightmare  
15 makes no sense at all.

16           For all those reasons, the rule of reason in  
17 this area, as in the other areas, should replace the  
18 per se rule which is rigid and anticompetitive at the  
19 end of the day.

20           Thank you.

21           CHIEF JUSTICE ROBERTS: Thank you,  
22 Mr. Olson.

23           The case is submitted.

24           (Whereupon, at 11:05 a.m., The case in the  
25 above-entitled matter was submitted.)

<b>A</b>				
<b>ability</b> 25:13 28:23	11:1 33:5 <b>agree</b> 16:3 20:25 21:7,9 27:2 30:21 31:2 35:24	24:13,14 31:12 31:24 43:24 <b>amounts</b> 41:20 <b>anachronistic</b> 9:4	38:10 <b>appropriate</b> 50:18 52:17 <b>approximately</b> 45:5	<b>attempted</b> 4:11 <b>attention</b> 10:12 15:23 47:12 <b>attract</b> 16:1 31:6 37:20 38:18
<b>above-entitled</b> 1:12 55:25	<b>agreed</b> 5:1 <b>agreement</b> 4:8 24:7,19 34:13 34:18 35:13 44:5 45:5,17 48:9,19,22 50:8 54:2	<b>analysis</b> 3:18 13:14 19:17 20:18 35:15 <b>announced</b> 9:12 <b>anomaly</b> 34:12 34:21 44:24 <b>answer</b> 20:19 24:23	<b>area</b> 6:2 18:15 47:11 55:2,2 55:17 <b>areas</b> 42:2 55:17 <b>argue</b> 38:6 41:16 <b>argument</b> 1:13 2:2,5,8,13 3:3 3:6 4:5 9:22,25 10:2,4 12:12 12:13 14:10 16:19 17:12 20:20 22:4,10 22:17,17 24:24 27:23 30:22 33:6 38:3 40:12 43:23 50:25 51:10 53:1	<b>automatically</b> 25:15 <b>availability</b> 53:9 <b>available</b> 16:11 19:19 29:2,6 <b>avoid</b> 34:9 35:17 45:24 <b>aware</b> 9:22 10:7 13:19 23:9 25:25 <b>a.m</b> 1:14 3:2 55:24
<b>accomplished</b> 45:14	<b>agreements</b> 44:8 45:2 <b>agrees</b> 6:7 44:3 <b>ahead</b> 19:2 <b>aimed</b> 34:23 <b>aiming</b> 15:3 <b>aims</b> 31:19 <b>al</b> 1:24 36:25 <b>albeit</b> 44:19 <b>Albrecht</b> 22:19 46:4	<b>answered</b> 13:25 <b>anti</b> 45:2 <b>anticompetitive</b> 3:12,23,25 4:4 9:14 18:2 19:7 19:13,19,25 20:25 25:18 26:17 45:1 54:23 55:18 <b>antitrust</b> 4:3 9:11 10:6 14:6 16:7,15,23 17:20 18:19 25:15 27:18 28:3,5,7 34:22 36:16 44:13,25 45:6,21,25 46:19,21,24 47:11 50:19 54:7 55:9	<b>argued</b> 41:16 <b>argument</b> 1:13 2:2,5,8,13 3:3 3:6 4:5 9:22,25 10:2,4 12:12 12:13 14:10 16:19 17:12 20:20 22:4,10 22:17,17 24:24 27:23 30:22 33:6 38:3 40:12 43:23 50:25 51:10 53:1 <b>arguments</b> 18:11 51:17 <b>arrangement</b> 5:13,25 9:13 28:8,10 <b>arrangements</b> 10:4 54:11 <b>articulated</b> 30:4 <b>artificial</b> 13:20 <b>asked</b> 46:13 51:25 <b>asking</b> 5:22 6:6 <b>aspect</b> 39:2 <b>aspects</b> 39:6 42:7 <b>assertions</b> 25:8 <b>associated</b> 50:5 <b>assume</b> 27:14 40:25 <b>assuming</b> 40:23 <b>assure</b> 29:7 <b>assuring</b> 29:17 <b>attaching</b> 37:13	<hr/> <b>B</b> <hr/> <b>B</b> 1:16 2:3,14 3:6 12:8 53:1 <b>back</b> 4:12 22:3 36:16 <b>bad</b> 27:14 28:5,8 38:4 47:2 <b>balance</b> 16:4 18:5 <b>balanced</b> 18:7 <b>balancing</b> 17:25 <b>BARBARA</b> 1:23 2:11 43:23 <b>barred</b> 51:10 <b>barring</b> 51:16 <b>bars</b> 3:16 <b>based</b> 3:21 26:1 26:2 <b>basically</b> 11:20 12:3 <b>basis</b> 17:1,2 22:23 25:8 <b>battle</b> 23:3 <b>began</b> 23:20,21 <b>behalf</b> 1:16,19 1:21,24 2:4,10 2:15 3:7 17:13 27:24 43:24 49:14 53:2
<b>accord</b> 4:10	<b>agreements</b> 44:8 45:2 <b>agrees</b> 6:7 44:3 <b>ahead</b> 19:2 <b>aimed</b> 34:23 <b>aiming</b> 15:3 <b>aims</b> 31:19 <b>al</b> 1:24 36:25 <b>albeit</b> 44:19 <b>Albrecht</b> 22:19 46:4 <b>alignment</b> 37:22 <b>ALITO</b> 30:21 31:9 <b>alleged</b> 16:19 38:21 <b>allow</b> 9:23 14:18 14:19 38:3,6 44:20 <b>allowed</b> 9:19 16:20,21 38:22 48:8 <b>allowing</b> 32:9 <b>allows</b> 13:9 <b>alternatives</b> 40:6 <b>amending</b> 46:12 <b>amendment</b> 51:24 <b>American</b> 7:21 8:3 30:23 <b>amici</b> 53:3,11 54:8 <b>amicus</b> 1:20,24 2:7,12 17:14	<b>answer</b> 20:19 24:23 <b>answered</b> 13:25 <b>anti</b> 45:2 <b>anticompetitive</b> 3:12,23,25 4:4 9:14 18:2 19:7 19:13,19,25 20:25 25:18 26:17 45:1 54:23 55:18 <b>antitrust</b> 4:3 9:11 10:6 14:6 16:7,15,23 17:20 18:19 25:15 27:18 28:3,5,7 34:22 36:16 44:13,25 45:6,21,25 46:19,21,24 47:11 50:19 54:7 55:9 <b>anti-consumer</b> 7:24 <b>appeals</b> 17:2 <b>appear</b> 20:2 <b>APPEARAN...</b> 1:15 <b>applicable</b> 51:8 <b>applied</b> 39:5 <b>applies</b> 3:13,17 20:18 26:9 <b>apply</b> 20:21 36:19 <b>approach</b> 32:18 32:21 34:10	<b>area</b> 6:2 18:15 47:11 55:2,2 55:17 <b>areas</b> 42:2 55:17 <b>argue</b> 38:6 41:16 <b>argument</b> 1:13 2:2,5,8,13 3:3 3:6 4:5 9:22,25 10:2,4 12:12 12:13 14:10 16:19 17:12 20:20 22:4,10 22:17,17 24:24 27:23 30:22 33:6 38:3 40:12 43:23 50:25 51:10 53:1 <b>arguments</b> 18:11 51:17 <b>arrangement</b> 5:13,25 9:13 28:8,10 <b>arrangements</b> 10:4 54:11 <b>articulated</b> 30:4 <b>artificial</b> 13:20 <b>asked</b> 46:13 51:25 <b>asking</b> 5:22 6:6 <b>aspect</b> 39:2 <b>aspects</b> 39:6 42:7 <b>assertions</b> 25:8 <b>associated</b> 50:5 <b>assume</b> 27:14 40:25 <b>assuming</b> 40:23 <b>assure</b> 29:7 <b>assuring</b> 29:17 <b>attaching</b> 37:13	<hr/> <b>B</b> <hr/> <b>B</b> 1:16 2:3,14 3:6 12:8 53:1 <b>back</b> 4:12 22:3 36:16 <b>bad</b> 27:14 28:5,8 38:4 47:2 <b>balance</b> 16:4 18:5 <b>balanced</b> 18:7 <b>balancing</b> 17:25 <b>BARBARA</b> 1:23 2:11 43:23 <b>barred</b> 51:10 <b>barring</b> 51:16 <b>bars</b> 3:16 <b>based</b> 3:21 26:1 26:2 <b>basically</b> 11:20 12:3 <b>basis</b> 17:1,2 22:23 25:8 <b>battle</b> 23:3 <b>began</b> 23:20,21 <b>behalf</b> 1:16,19 1:21,24 2:4,10 2:15 3:7 17:13 27:24 43:24 49:14 53:2
<b>act</b> 3:16 12:2 15:4 34:22 36:25 40:2 43:18 44:7 50:16,19 51:23 <b>action</b> 9:21 45:8 <b>add</b> 42:3 <b>addition</b> 7:8 18:4 53:10 <b>additional</b> 21:1 37:19 41:4,12 53:21,24 <b>adhere</b> 43:19 <b>adhering</b> 43:12 <b>administrative</b> 22:12 <b>adopt</b> 25:12 40:14 44:21 <b>adopted</b> 54:22 <b>advanced</b> 48:6 <b>affect</b> 36:19,22 47:19 <b>agencies</b> 9:9 <b>ago</b> 9:16 10:2	<b>agreed</b> 5:1 <b>agreement</b> 4:8 24:7,19 34:13 34:18 35:13 44:5 45:5,17 48:9,19,22 50:8 54:2 <b>agreements</b> 44:8 45:2 <b>agrees</b> 6:7 44:3 <b>ahead</b> 19:2 <b>aimed</b> 34:23 <b>aiming</b> 15:3 <b>aims</b> 31:19 <b>al</b> 1:24 36:25 <b>albeit</b> 44:19 <b>Albrecht</b> 22:19 46:4 <b>alignment</b> 37:22 <b>ALITO</b> 30:21 31:9 <b>alleged</b> 16:19 38:21 <b>allow</b> 9:23 14:18 14:19 38:3,6 44:20 <b>allowed</b> 9:19 16:20,21 38:22 48:8 <b>allowing</b> 32:9 <b>allows</b> 13:9 <b>alternatives</b> 40:6 <b>amending</b> 46:12 <b>amendment</b> 51:24 <b>American</b> 7:21 8:3 30:23 <b>amici</b> 53:3,11 54:8 <b>amicus</b> 1:20,24 2:7,12 17:14	24:13,14 31:12 31:24 43:24 <b>amounts</b> 41:20 <b>anachronistic</b> 9:4 <b>analysis</b> 3:18 13:14 19:17 20:18 35:15 <b>announced</b> 9:12 <b>anomaly</b> 34:12 34:21 44:24 <b>answer</b> 20:19 24:23 <b>answered</b> 13:25 <b>anti</b> 45:2 <b>anticompetitive</b> 3:12,23,25 4:4 9:14 18:2 19:7 19:13,19,25 20:25 25:18 26:17 45:1 54:23 55:18 <b>antitrust</b> 4:3 9:11 10:6 14:6 16:7,15,23 17:20 18:19 25:15 27:18 28:3,5,7 34:22 36:16 44:13,25 45:6,21,25 46:19,21,24 47:11 50:19 54:7 55:9 <b>anti-consumer</b> 7:24 <b>appeals</b> 17:2 <b>appear</b> 20:2 <b>APPEARAN...</b> 1:15 <b>applicable</b> 51:8 <b>applied</b> 39:5 <b>applies</b> 3:13,17 20:18 26:9 <b>apply</b> 20:21 36:19 <b>approach</b> 32:18 32:21 34:10	38:10 <b>appropriate</b> 50:18 52:17 <b>approximately</b> 45:5 <b>area</b> 6:2 18:15 47:11 55:2,2 55:17 <b>areas</b> 42:2 55:17 <b>argue</b> 38:6 41:16 <b>argument</b> 1:13 2:2,5,8,13 3:3 3:6 4:5 9:22,25 10:2,4 12:12 12:13 14:10 16:19 17:12 20:20 22:4,10 22:17,17 24:24 27:23 30:22 33:6 38:3 40:12 43:23 50:25 51:10 53:1 <b>arguments</b> 18:11 51:17 <b>arrangement</b> 5:13,25 9:13 28:8,10 <b>arrangements</b> 10:4 54:11 <b>articulated</b> 30:4 <b>artificial</b> 13:20 <b>asked</b> 46:13 51:25 <b>asking</b> 5:22 6:6 <b>aspect</b> 39:2 <b>aspects</b> 39:6 42:7 <b>assertions</b> 25:8 <b>associated</b> 50:5 <b>assume</b> 27:14 40:25 <b>assuming</b> 40:23 <b>assure</b> 29:7 <b>assuring</b> 29:17 <b>attaching</b> 37:13	<b>attempted</b> 4:11 <b>attention</b> 10:12 15:23 47:12 <b>attract</b> 16:1 31:6 37:20 38:18 <b>automatically</b> 25:15 <b>availability</b> 53:9 <b>available</b> 16:11 19:19 29:2,6 <b>avoid</b> 34:9 35:17 45:24 <b>aware</b> 9:22 10:7 13:19 23:9 25:25 <b>a.m</b> 1:14 3:2 55:24



<p><b>behavior</b> 45:1  <b>behemoths</b>  30:12  <b>believe</b> 9:12  24:24 25:20  26:1 34:21  43:19 51:18  <b>believes</b> 37:1  <b>benefit</b> 14:16  22:1 24:11  41:23 48:6  49:25 55:9,10  <b>benefits</b> 7:24  29:24 41:10  54:11  <b>better</b> 21:9  32:16 37:14  39:24  <b>big</b> 28:17 30:19  33:10  <b>blue</b> 7:20  <b>blunt</b> 40:21  53:16  <b>board</b> 38:4  <b>body</b> 11:8 23:13  <b>book</b> 12:8,11,13  12:15 13:2,7  <b>brand</b> 13:23  36:15  <b>brands</b> 21:11  <b>breaking</b> 29:16  <b>breathe</b> 55:8  <b>Breyer</b> 7:12 8:1  8:8,12,13,16  8:23 12:6  17:22 18:23  19:2,9 22:2,14  33:4  <b>brief</b> 12:13  14:15 16:19  24:13,14 33:23  46:25 53:15  54:3  <b>briefs</b> 12:12  31:12,24 35:23  <b>Brighton</b> 4:18  6:19,20,21</p>	<p><b>Britain</b> 12:17  <b>broad</b> 3:25  <b>building</b> 40:17  <b>burden</b> 26:19  <b>business</b> 6:13  20:13 26:20  <b>buy</b> 8:4 48:9,14  49:21  <b>buys</b> 28:18</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 2:1 3:1  <b>called</b> 12:9 13:2  <b>Canada</b> 12:17  <b>care</b> 20:6  <b>carry</b> 42:7  <b>cartel</b> 7:6 21:15  21:17 35:22  <b>cartelization</b>  19:25 27:4  <b>cartels</b> 36:4  <b>case</b> 3:4 4:11,15  4:16 6:18 7:7  7:10 10:2,3,18  11:2 13:13  16:20,25 17:4  17:4 18:12  21:7 23:2  26:10,13 27:8  27:9,11 29:11  31:21 35:20  37:21 38:1,5  45:3,11 48:3  48:19 49:25  55:23,24  <b>cases</b> 10:9 13:18  19:4,22,24  20:1,8 25:17  26:7 27:3  36:19 39:5  48:20 52:18  <b>cater</b> 33:2  <b>ceasing</b> 45:23  <b>central</b> 47:17  <b>century</b> 44:15  <b>certain</b> 3:21 9:5  16:20 21:11</p>	<p>32:14 39:6  <b>certainly</b> 4:16  7:6 19:12 20:1  29:15 45:23  <b>certiorari</b> 17:4  <b>challenged</b> 19:6  26:18  <b>change</b> 9:23  26:4,6 44:8  50:15,19  <b>changed</b> 9:9  10:19 12:16,16  12:20,21 13:4  13:6 25:9  51:12 55:4  <b>changes</b> 13:1  35:25  <b>changing</b> 24:11  <b>charge</b> 32:25  42:14 48:23,23  <b>cheap</b> 28:21,22  31:25 32:10  <b>cheaper</b> 33:13  <b>cheapest</b> 16:10  <b>Chicago</b> 7:13  <b>Chief</b> 3:3,8 6:23  11:10,18 17:6  17:9,15 24:10  27:19,22,25  30:1,9 33:22  35:7 41:16  42:3 43:13,21  44:1,17 47:5  48:21 49:6,18  51:7 52:23  55:21  <b>China</b> 23:25  <b>choice</b> 15:16  16:9 39:21  <b>choices</b> 54:12,15  55:13  <b>chooses</b> 42:20  <b>chronologically</b>  9:4  <b>Circuit</b> 39:18  <b>circumstances</b>  8:19 24:19</p>	<p>25:11 33:14  <b>claim</b> 39:10  48:15 49:13  <b>clear</b> 6:18 18:4  20:14,24 25:10  35:21 40:20  47:7  <b>client</b> 30:17  <b>close</b> 18:18,24  <b>Club</b> 24:14  <b>Colgate</b> 24:16  34:7,16 35:18  43:6 44:18  53:15  <b>combinations</b>  34:23  <b>come</b> 8:11 18:8  18:9 26:20  32:8  <b>comes</b> 5:25 22:5  33:13 39:21  <b>coming</b> 11:25  <b>Commission</b>  9:11  <b>common</b> 50:17  <b>companies</b> 31:4  <b>company</b> 6:19  6:20 29:6,16  29:21,24 33:12  <b>compared</b> 47:14  <b>compel</b> 17:19  <b>compelling</b>  22:18,20  <b>compete</b> 25:13  30:18 47:24  <b>competing</b> 4:20  5:8 16:8 37:23  <b>competition</b> 4:2  4:24 12:5  13:10,23 14:3  14:3,5,6,7 16:7  16:8,14 20:11  20:12,23 21:10  36:7,8,20,22  37:1 38:16  44:5 45:2  47:17,21 48:1</p>	<p>53:7,8,9 54:13  54:14 55:10  <b>competitive</b>  6:22 15:18  <b>complaint</b> 16:19  17:8 38:21  <b>complete</b> 32:13  37:22  <b>completely</b> 16:3  42:10 44:22  <b>conceivable</b>  25:17  <b>concentrate</b>  21:20  <b>concentration</b>  12:21  <b>concerned</b> 10:24  11:14  <b>concluded</b> 25:4  <b>conclusion</b> 7:22  8:12  <b>conduct</b> 19:6,13  26:18 34:24  39:5,14  <b>conducting</b>  19:17  <b>conflicts</b> 17:20  <b>Congress</b> 9:18  9:19,22 10:6  18:7 23:6  25:23 43:12,14  43:17 44:10  46:10,10,11,11  47:12,13 50:20  50:24 51:12,14  51:21 52:6,16  52:17,21 55:6  <b>congressional</b>  9:21 10:12,15  18:13 50:23  <b>Congress's</b>  52:12,21  <b>connection</b> 4:17  10:3  <b>conned</b> 40:13  <b>conscious</b> 21:10  <b>consensus</b> 3:25</p>
--	---	--	---	---

8:20,24,24 18:21 20:7 35:25 <b>consider</b> 9:2 39:18 <b>considerable</b> 3:22 52:7,8 <b>considerations</b> 17:17 18:8 23:24 <b>considered</b> 9:2 17:1 <b>consistent</b> 16:15 37:12,18 41:7 41:8 <b>consistently</b> 51:22 <b>conspiracies</b> 34:24 36:14,21 36:25 39:16 <b>conspiracy</b> 20:21 36:5,7 37:4,6,15 38:8 39:7 45:17 <b>constitutional...</b> 51:16 <b>constraints</b> 24:6 <b>construed</b> 10:5 <b>consumer</b> 12:1 15:7,15,16,18 21:12 37:5,7 39:21,24 40:9 40:10 55:9,13 <b>consumers</b> 7:21 15:11 16:2,9 18:3 20:6 25:14 27:17 28:4,11 33:19 37:19,20 40:4 40:13 41:25 42:12 49:12 54:12,15 <b>consumer's</b> 41:23 <b>context</b> 4:7 18:20 19:16 <b>continue</b> 32:3	43:11 55:8 <b>continuing</b> 31:14 <b>contract</b> 35:17 42:5,8,14,22 42:23 50:10 53:13 <b>contracts</b> 34:23 35:9,11 41:11 <b>contractual</b> 42:4 <b>convenience</b> 14:14,16,22 <b>convenient</b> 45:22 <b>convention</b> 5:14 <b>cookie</b> 32:17,21 <b>correct</b> 15:21 39:1 49:13,14 50:22 <b>correlated</b> 11:21 23:16 <b>correlation</b> 11:22 <b>costs</b> 28:14 <b>counsel</b> 43:21 <b>count</b> 8:13,25 12:10 <b>counterpart</b> 10:10 <b>country</b> 34:25 <b>course</b> 6:14 8:5 17:25 18:2 32:5 35:18 47:5 48:4 <b>court</b> 1:1,13 3:9 3:17,21 4:1,22 5:18 6:12 7:10 8:18,19 9:2,2,3 9:7,8,23 10:5 10:24,25 11:3 11:6 12:4 13:18 14:6,7 16:5 17:2,16 17:17 18:6,18 19:7 20:14,17 22:8,24 23:4,8 28:1,2 39:17	43:10,16,19 44:2,7,10,13 44:16 46:13,20 47:10,16 48:1 48:3,7,12 50:18,21 51:2 51:25 53:4 54:18,19 55:5 55:7 <b>courts</b> 10:7 19:14,16 <b>Court's</b> 13:12 13:17 17:20 19:3,4 20:8 38:11 47:13 <b>covered</b> 5:4 16:18 <b>Coykendall</b> 1:21 2:9 27:22,23 27:25 28:9 29:1,10,20 30:5,14 31:2 31:15 32:11,22 33:17 34:5,21 35:14 36:9,14 36:23 37:21 38:7,20,24 39:2,11 40:16 41:1,9,19 42:8 42:16,19 43:16 <b>creating</b> 41:12 <b>Creative</b> 1:3 3:4 <b>curiae</b> 1:20,25 2:7,12 17:14 43:24 <b>currency</b> 48:13 <b>current</b> 24:4 29:3 32:12 33:25 <b>currently</b> 32:15 <b>cushion</b> 29:18 <b>customers</b> 28:15 28:16,21 31:6 33:2 38:17,18 47:21 49:15 <b>cuts</b> 28:4 <b>cutter</b> 32:17,21	<b>D</b>	<b>D</b> 1:23 2:11 3:1 43:23 <b>dangerous</b> 12:24 <b>dark</b> 23:4 <b>data</b> 19:18 <b>day</b> 55:19 <b>DBA</b> 1:7 <b>deal</b> 35:1 42:20 50:11 <b>dealer</b> 16:13 24:20 30:7,9 34:15,20 35:24 41:24 42:11 43:1,3 <b>dealers</b> 4:9,10 4:10,18,20 5:1 5:1,8,13 6:1,11 6:14,15 12:25 13:10 16:20 20:21 21:7 30:10,12 35:24 36:11 37:4 42:20 <b>dealing</b> 9:3 37:16 54:7,22 <b>dealt</b> 5:11 10:3 <b>debatable</b> 48:17 <b>decide</b> 8:6,16 36:12 48:10 49:3 <b>decided</b> 26:14 52:16 <b>decision</b> 6:11 13:13,17 23:1 43:9 <b>decisions</b> 4:1 <b>declared</b> 52:10 <b>decline</b> 50:11 <b>decrease</b> 34:7 <b>defendant</b> 26:19 <b>deference</b> 47:13 <b>demand</b> 41:12 <b>demise</b> 11:21 <b>demonstrated</b> 29:23	<b>demonstrates</b> 53:15 <b>Department</b> 1:18 9:16 18:9 <b>dependent</b> 31:11 <b>depends</b> 49:11 <b>Depot</b> 22:5 <b>Depots</b> 23:15 <b>depriving</b> 28:4 <b>Deputy</b> 1:18 <b>describe</b> 44:24 <b>described</b> 46:24 <b>desire</b> 37:13 <b>detail</b> 46:24 <b>details</b> 54:2 <b>determine</b> 3:18 <b>determined</b> 46:20 <b>developed</b> 11:12 39:8 <b>development</b> 23:25 <b>difference</b> 36:11 38:2 <b>differences</b> 13:11 39:7 <b>different</b> 5:13 6:8 9:16 10:11 15:25,25 16:1 16:2 17:25 18:15 21:25 25:6 37:16 44:12 45:7 47:16 50:2 52:5 53:13 <b>differently</b> 8:6 <b>difficult</b> 4:6 6:21 18:15 29:17 <b>dimensions</b> 5:16 <b>directly</b> 41:14 <b>disappears</b> 40:20 <b>discount</b> 11:12 16:21,22 28:24 29:1 30:11 49:21
---	---	---	----------	--	--

<b>discounters</b> 11:25 22:7 30:19 32:14 33:1,7,7	<b>drastic</b> 50:15 <b>draw</b> 5:23 <b>draws</b> 45:6 <b>dream</b> 55:14 <b>drug</b> 7:17,19 <b>dynamic</b> 10:7 <b>D.C</b> 1:10,16,19	49:5 <b>either</b> 26:6 27:4 50:1 <b>elaborate</b> 13:14 <b>Electronic</b> 6:13 <b>electronics</b> 6:13 20:13 49:23	25:3 <b>especially</b> 11:4 <b>ESQ</b> 1:16,21,23 2:3,6,9,11,14 <b>essential</b> 31:13 <b>Essentially</b> 9:25 <b>establish</b> 26:17 34:2 <b>established</b> 7:9 11:14 29:22 46:4,6 47:11 <b>et</b> 1:24 36:25 <b>everybody</b> 38:4 <b>evidence</b> 11:16 11:19 12:3,7 12:17 19:24 22:18,20,23 23:1,9,14 35:21,22 <b>evident</b> 51:11 <b>evil</b> 39:25 <b>evils</b> 36:2 <b>evolution</b> 50:17 <b>example</b> 6:24 27:6 <b>examples</b> 14:15 45:11 <b>excellent</b> 50:5 <b>exclusive</b> 43:5 <b>exercise</b> 39:22 <b>exist</b> 55:1 <b>exists</b> 11:17 <b>expand</b> 30:18 <b>expectations</b> 46:7 <b>expense</b> 28:19 38:14 <b>expensive</b> 24:15 40:11 <b>experience</b> 3:22 11:8 19:14,14 43:7 49:24 50:3 <b>expert</b> 7:16 <b>explain</b> 20:2 <b>explains</b> 54:4 <b>explanations</b>	19:20 20:1 <b>explanatory</b> 19:21 <b>expressing</b> 52:20 <b>expression</b> 10:6 10:15 51:4,6 52:8 <b>extended</b> 28:12 <b>extent</b> 11:2 52:12 <b>extra</b> 21:8 33:12 <b>extract</b> 33:11 <b>extreme</b> 25:6 <b>extremely</b> 24:15
<b>discounts</b> 30:20 39:8 <b>Discouraging</b> 28:4 <b>discuss</b> 35:24 <b>discussed</b> 38:13 <b>discussion</b> 24:21 <b>disguise</b> 48:2 <b>dismantled</b> 13:20 <b>dispute</b> 33:21 <b>disruption</b> 11:14 24:19,25 <b>distinct</b> 23:5 <b>distinction</b> 5:23 <b>distinguish</b> 4:7 5:17 <b>distinguishing</b> 19:5 <b>distort</b> 39:20 <b>distribution</b> 38:14,15 <b>Division</b> 9:11 <b>divisions</b> 19:10 <b>doctrine</b> 34:8 35:19 43:6 44:18 46:22 <b>doing</b> 6:16 40:17 <b>dominance</b> 32:8 <b>dominant</b> 27:15 31:16 <b>doubt</b> 33:17,19 <b>Dr</b> 8:3,9 11:13 11:18 17:5,19 19:16 23:10 24:3,9,25 25:21 31:1,11 33:25 39:5 43:9,12 46:15 <b>draconian</b> 34:19	<hr/> <b>E</b> <hr/> <b>E</b> 2:1 3:1,1 <b>earlier</b> 33:23 38:13 50:12 <b>easily</b> 48:22 <b>easy</b> 25:1 <b>economic</b> 3:22 11:8 18:21 20:7 33:19,21 46:22 <b>economically</b> 36:11 <b>economies</b> 40:22 <b>economist</b> 7:15 8:2,5 <b>economists</b> 4:1 4:13 7:2,11,13 8:11,14,21 12:10,11 18:22 <b>economy</b> 22:19 24:8 25:4,9,21 32:16 47:18 <b>effect</b> 23:4 24:17 26:17 45:5,6 45:12,20 49:5 <b>effective</b> 6:19 <b>effects</b> 20:16 25:18 33:20 <b>efficiencies</b> 29:13 30:18 31:6 38:17 40:1 42:12 43:4 <b>efficiency</b> 41:11 <b>efficient</b> 24:18 25:11 38:15 41:10,17 42:11 43:1 44:21 <b>efficiently</b> 29:12	<b>eliminated</b> 45:18 <b>eliminating</b> 23:10 34:6 35:3,8 55:10 <b>elimination</b> 23:16 43:8 <b>emphasizing</b> 11:6 <b>empirical</b> 19:18 22:11,18,20,23 22:25 23:9,13 <b>employer</b> 34:12 <b>enables</b> 31:3 <b>enacted</b> 43:14 46:10 <b>endorsed</b> 46:9 46:10 <b>enforce</b> 31:18 35:10,25 53:14 <b>enforcement</b> 7:22 24:7 <b>enforcing</b> 9:9 29:24 <b>engage</b> 30:10 49:5 <b>enhance</b> 15:17 20:11 25:13 48:5 <b>enhances</b> 53:8 <b>entailed</b> 24:20 <b>enter</b> 6:21 54:17 <b>entire</b> 15:23 <b>entirely</b> 37:16 <b>entities</b> 45:16,24 <b>entitled</b> 38:16 <b>entity</b> 45:16,24 <b>entrepreneur's</b> 55:14 <b>era</b> 23:20,22	<b>facilitate</b> 7:5 27:4 35:21 36:3 <b>facilitated</b> 36:6 <b>fact</b> 3:25 4:8 10:18,24 15:13 15:16 16:22 20:16 23:19 32:4 44:25 48:10 49:16 51:2 52:21 <b>factor</b> 8:21,22 9:1 10:23 12:23 <b>factors</b> 53:12 <b>fair</b> 9:19 11:21 23:20 25:3,5,5 25:19 30:25 34:25 43:8 46:11 52:4 <b>faith</b> 43:10 <b>fallout</b> 40:9 <b>fancy</b> 49:20 <b>far</b> 8:3 12:21 52:21 <b>fatal</b> 17:21 <b>favored</b> 16:20 <b>features</b> 27:9 <b>Federal</b> 9:11 <b>feel</b> 22:3	

<p><b>fell</b> 7:19  <b>fiat</b> 24:6  <b>field</b> 7:16  <b>Fifth</b> 39:18  <b>figure</b> 49:20  <b>filed</b> 31:12  <b>find</b> 6:16,25              12:11,12 45:22              51:18 52:9  <b>first</b> 3:4 26:25              34:6 44:14  <b>fit</b> 39:24  <b>five</b> 12:9  <b>fix</b> 20:22 44:4              45:19,19 53:18              54:6  <b>fixed</b> 9:6  <b>fixing</b> 19:9              32:24 48:16  <b>flourished</b> 23:22  <b>focus</b> 15:23  <b>focused</b> 13:8  <b>follow</b> 24:15  <b>following</b> 43:8  <b>force</b> 47:20  <b>foreclose</b> 25:16  <b>foreclosed</b> 19:16  <b>form</b> 38:18  <b>formation</b> 36:3  <b>forms</b> 3:14              38:14  <b>formula</b> 26:23  <b>forth</b> 7:14 28:24              30:8  <b>forward</b> 54:9  <b>found</b> 7:7 13:3              13:14 51:14  <b>four</b> 33:5  <b>free</b> 43:10 49:3              49:25  <b>freedom</b> 54:16  <b>free-rider</b> 28:16              49:19  <b>frequently</b>              20:15  <b>FTC</b> 7:15 25:3  <b>full</b> 32:24,25</p>	<p><b>full-service</b>              32:13  <b>fun</b> 12:7  <b>function</b> 45:16              45:19  <b>fundamental</b>              44:9  <b>further</b> 24:21</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 1:18 2:6 3:1              17:12  <b>gather</b> 12:21              35:23  <b>gathered</b> 26:9  <b>general</b> 1:18,23              14:11 50:24              51:10,16  <b>generally</b> 13:24              20:10,11 22:22  <b>generation</b>              31:19  <b>geographically</b>              42:1  <b>getting</b> 4:9  <b>Ginsburg</b> 4:5              9:15 10:9,14              16:17 17:8              26:8,23 27:8              27:11 34:11              38:20,25 39:9              52:3,15  <b>give</b> 6:24 16:8              37:9,19 45:11              53:24 55:12  <b>given</b> 19:1,3              39:13 41:3  <b>gives</b> 40:17              54:15  <b>giving</b> 15:16              53:20,23  <b>gleaned</b> 52:13  <b>go</b> 19:2 28:13              32:3 34:10,15              35:6 49:19              53:14 54:4  <b>goal</b> 4:3</p>	<p><b>goes</b> 24:25 25:21              28:18  <b>going</b> 12:10              15:24,24 19:25              21:12 23:2,7              24:8,25 25:1,9              26:4,6 27:16              31:21 32:2,3              34:17 37:10              40:14 41:3,6              41:22,24  <b>Golf</b> 24:14  <b>good</b> 7:16 18:2              18:11,14 25:14              27:18 37:19              40:25 49:8,16  <b>goods</b> 8:4 15:25              24:1 26:5              28:24 32:14,15              33:3 42:24  <b>Google</b> 13:4  <b>great</b> 24:11  <b>ground</b> 53:21,24  <b>grow</b> 31:5 38:18  <b>growing</b> 33:7  <b>grown</b> 46:7  <b>growth</b> 29:21  <b>guarantee</b> 41:23  <b>guaranteed</b>              40:20 41:25  <b>guaranteeing</b>              41:21  <b>guess</b> 12:15              19:10 22:15              25:23,24 51:12  <b>guiding</b> 28:3</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>happen</b> 6:4,12              7:11  <b>happened</b> 13:12  <b>hard</b> 30:2 51:18  <b>harm</b> 22:19 32:7  <b>harmed</b> 32:4  <b>harmful</b> 21:12              21:14  <b>hear</b> 3:3</p>	<p><b>heard</b> 30:10,22  <b>heart</b> 34:22              36:24,24  <b>height</b> 25:3  <b>held</b> 4:12 55:5  <b>help</b> 7:5 13:24              18:3 33:9 35:4  <b>helpful</b> 52:9,11  <b>high</b> 32:25 40:17              50:5  <b>higher</b> 15:11,17              15:24 21:8              27:17 28:8              29:7 39:23              40:24 43:3  <b>highly</b> 6:21  <b>historical</b> 11:24              26:1  <b>history</b> 18:6              46:23 52:8,9              52:13  <b>holding</b> 36:25              43:20  <b>Home</b> 22:5              23:15  <b>honor</b> 18:17,25              19:12 21:2,13              21:22 22:13,16              23:18,23 25:2              26:1,15 27:3              34:5 35:20              38:7 43:11,16  <b>hoping</b> 41:22  <b>horizontal</b> 4:7              4:10 5:4,8,9              7:6,9 19:9 21:3              21:15 35:22              36:14,21,25              37:4,6,15 38:8              39:7,15  <b>huge</b> 22:6  <b>hundred</b> 18:6  <b>hundreds</b> 4:20  <b>Hungar</b> 1:18 2:6              17:11,12,15              18:17,25 19:3              19:12 21:2,13</p>	<p>21:22 22:13,16              23:8,18,23              24:13 25:2,25              26:15 27:2,10              27:13,20,21  <b>hurtful</b> 52:12  <b>hypothetical</b> 6:1</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 18:14 42:19  <b>identify</b> 49:16  <b>illegal</b> 38:11              48:3  <b>illegality</b> 3:10              11:4,5 52:14  <b>Illinois</b> 10:3  <b>imagine</b> 33:14              33:15 37:4  <b>impact</b> 23:10  <b>important</b> 21:3              34:3  <b>impose</b> 5:15 6:2              6:6 7:4,23              18:20 24:5              34:8 37:8  <b>imposed</b> 3:14,20              53:5  <b>imposing</b> 29:24              41:2  <b>imposition</b> 31:7  <b>impossible</b> 30:7  <b>incentive</b> 5:20              21:23,25 26:5              37:17,24 40:18              40:20 41:1              42:6 49:8  <b>incentives</b> 13:10              21:4,15,16              37:16,22  <b>Incorporated</b>              3:5  <b>incorrectly</b> 26:9  <b>increase</b> 5:21              15:14 21:23              37:24 40:3  <b>increased</b> 33:25  <b>increases</b> 13:9</p>
--	--	---	--	--

<p>20:5 34:4  <b>incumbent</b>                  38:13  <b>incurred</b> 28:19  <b>independent</b>                  45:8  <b>independently</b>                  6:9  <b>indicate</b> 43:18  <b>indicates</b> 24:14  <b>indication</b> 18:13  <b>indirect</b> 55:13  <b>indirectly</b> 47:19  <b>individuals</b> 13:6                  45:8  <b>induce</b> 48:16  <b>inducements</b>                  48:25  <b>industry</b> 4:16                  7:17 11:12                  30:13 31:16  <b>industry-wide</b>                  45:12  <b>inefficiencies</b>                  34:1,4,7  <b>inefficient</b> 24:15  <b>inefficiently</b>                  44:20  <b>influence</b> 39:23  <b>initial</b> 18:19  <b>initiators</b> 31:4  <b>innovate</b> 30:18                  31:5 38:17  <b>innovative</b>                  38:14  <b>Institute's</b> 46:24  <b>institution</b> 25:24  <b>instruction</b>                  39:13  <b>instrument</b>                  40:22 53:16  <b>integrate</b> 45:15  <b>integrates</b> 45:18  <b>integration</b>                  45:23 54:9  <b>intended</b> 55:6  <b>intent</b> 47:6</p>	<p>52:12,13  <b>inter</b> 14:1,9  <b>interbrand</b> 4:2                  4:23 12:4 13:9                  14:2,2,3,7                  20:11,23 36:8                  53:7 54:13  <b>interest</b> 6:15                  11:11 14:23                  37:8  <b>interested</b> 7:12  <b>interesting</b>                  12:14  <b>international</b>                  23:24  <b>Internet</b> 33:4,12                  47:22  <b>interpret</b> 46:13                  52:1  <b>interpretation</b>                  48:12 50:16  <b>interpreted</b> 44:7  <b>intradbrand</b>                  20:11 36:6,20                  36:22 53:7,8                  54:13  <b>invalid</b> 14:13  <b>invariably</b> 3:23                  3:25 54:23  <b>involve</b> 19:22  <b>involved</b> 5:10                  7:6 13:13  <b>irrational</b> 54:25  <b>isolated</b> 42:2  <b>issue</b> 7:10 35:2                  48:19 51:4,6  <b>item</b> 24:21</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>jeans</b> 7:20  <b>job</b> 49:8  <b>judge</b> 39:4  <b>judged</b> 39:6,14  <b>judgment</b> 26:11  <b>jurisprudence</b>                  17:21 18:19                  28:3</p>	<p><b>jury</b> 39:13 48:10  <b>Justice</b> 1:19 3:3                  3:8 4:5,25 5:4                  5:5,12,22 6:5                  6:23 7:12 8:1,8                  8:12,13,16,23                  9:15,16 10:9                  10:14,17,21,23                  11:10,18,19,24                  12:6 13:22,23                  14:2,8 15:2,7                  15:10,13,22                  16:17 17:6,8,9                  17:15,22 18:9                  18:23 19:2,9                  20:5,20 21:6                  21:18 22:2,14                  22:25 23:12,21                  24:10,23 25:19                  26:8,23 27:8                  27:11,19,22                  28:1,6,11 29:5                  29:14 30:1,9                  30:21 31:9,20                  32:20 33:4,22                  34:11 35:7                  36:5,10,18                  37:3 38:1,20                  38:25 39:9                  40:7,23 41:3                  41:16 42:3,13                  42:17 43:13,21                  44:1,17 45:10                  46:14,18 47:5                  48:21 49:6,18                  50:4,22 51:3,7                  51:12,18 52:3                  52:15,23 53:20                  53:23 55:21  <b>justification</b>                  26:20  <b>justified</b> 37:1</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>Kan</b> 1:21  <b>KAY'S</b> 1:7,8  <b>keep</b> 21:3 24:22</p>	<p>32:6 36:20                  37:10,18 41:6  <b>KENNEDY</b>                  13:23 14:2,8                  32:20 42:13,17  <b>Khan</b> 5:19 10:5                  13:18 48:1,3                  53:5  <b>kind</b> 19:17 29:9                  41:4 48:13                  50:7,17  <b>KLOSET</b> 1:8  <b>know</b> 7:13 12:6                  12:16 14:4,5                  15:22 21:14                  22:4,8 23:6                  27:13 28:12                  29:14 33:16,16                  41:7  <b>K-Marts</b> 23:19</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>land</b> 23:7  <b>large</b> 22:5 33:6  <b>largely</b> 13:15  <b>larger</b> 42:25  <b>large-scale</b>                  30:24 31:10,15  <b>late</b> 17:3  <b>Laughter</b> 8:17                  51:20  <b>law</b> 10:19 16:24                  24:5 36:16                  44:15,18,25                  45:6,25 46:7                  46:19,21,25                  47:6 50:17  <b>lawful</b> 5:2 35:17  <b>laws</b> 4:3 9:19                  10:6 14:6 16:7                  16:15 25:15                  27:18 30:25                  43:8 45:21                  46:12 52:4                  54:7 55:9  <b>lawyer's</b> 55:14  <b>leading</b> 8:20</p>	<p><b>Leather</b> 1:3 3:5  <b>leaving</b> 23:5  <b>led</b> 17:17  <b>Leegin</b> 1:3 3:4                  6:20 16:20                  24:18 27:15                  35:23 38:8,23                  38:24,25  <b>left</b> 46:18  <b>legal</b> 24:4,12                  35:5 44:22                  52:4  <b>legality</b> 10:14                  25:7  <b>legislation</b> 43:14  <b>legislative</b> 46:23                  51:3,5 52:8,9                  52:13  <b>legitimate</b> 26:20  <b>let's</b> 54:6  <b>level</b> 21:15 27:5  <b>library</b> 12:8  <b>lies</b> 34:22  <b>life</b> 55:8  <b>light</b> 52:1  <b>likes</b> 14:6  <b>limited</b> 11:24  <b>line</b> 39:5 45:7  <b>literature</b> 20:8  <b>litigated</b> 17:1,5                  19:22 20:3  <b>little</b> 5:20 33:12  <b>logic</b> 22:11  <b>long</b> 7:16 9:15                  15:18 24:6                  32:8  <b>longer</b> 51:7,10  <b>longstanding</b>                  50:15  <b>look</b> 19:17,21                  28:13 36:16                  54:5  <b>looked</b> 4:14 8:11                  11:23 13:7  <b>looking</b> 13:2  <b>looks</b> 28:17                  35:12</p>
---	---	---	---	--

<p><b>lose</b> 39:9  <b>loses</b> 27:11  <b>losing</b> 31:22,22  <b>lot</b> 24:1 28:11  <b>low</b> 11:4,4 14:24            15:3,5 28:4            32:1,5,6 37:11            37:18 41:7  <b>lower</b> 12:5 15:19            33:3 38:18            43:2  <b>low-cost</b> 24:1  <b>low-price</b> 30:24            31:10  <b>loyal</b> 53:18</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>machinations</b>            35:6,11  <b>mail</b> 47:22  <b>main</b> 23:3 30:1  <b>maintain</b> 33:11            35:4  <b>maintenance</b>            3:11,24 4:14            7:18,23 12:9            12:19,24 13:3            14:13 18:1            19:15,20 20:3            20:4,15 22:21            22:21 23:16            24:17 25:12            27:3 28:15            29:4,23,25            31:3,8 32:19            33:9,18 34:9            35:5 36:2 37:8            38:12 39:20,25            40:2,19,21            41:2,18,20            44:12 46:5            47:1,2,25 48:2            48:7,19 49:2            50:14 52:10            55:3  <b>majority</b> 8:10            19:24 26:7</p>	<p><b>making</b> 35:12            37:10 50:18,25            51:10,17  <b>manner</b> 38:19  <b>manufacturer</b>            4:8 5:10,15,20            5:25 6:3,6,8,10            6:17 7:5 14:13            14:18,21,24,25            21:4,5 22:1            24:14 25:12            27:5 34:13            36:12 37:7,17            37:23 41:5,6            42:20 43:2            44:3 45:15,18            45:22 48:8,13            49:13,14 50:10            50:10 53:6            54:3,4,16            55:11  <b>manufacturers</b>            6:15 16:8            19:23 21:19            24:5,16 26:4            32:4 34:2            44:19 48:4            50:4  <b>manufacturer's</b>            15:1 21:23  <b>manufacturing</b>            6:20 21:17  <b>March</b> 1:11  <b>margin</b> 37:11            39:23 40:17,19            40:24 41:6,21            41:24 42:25            43:3  <b>margins</b> 7:19  <b>market</b> 7:4            12:22 15:25            19:23 27:7,15            29:17 31:17            32:8 37:24            43:10 49:9,12  <b>marketing</b> 3:14  <b>marketplace</b></p>	<p>4:17 6:22 10:8            11:17 13:8,21            16:13,16 54:17            54:19 55:12  <b>markets</b> 19:24            23:25  <b>massive</b> 7:24,24            25:20  <b>massively</b> 25:9  <b>matter</b> 1:12            16:22 18:20            30:5 34:14            55:25  <b>matters</b> 38:16            53:9  <b>maximum</b> 22:21            46:4 47:25            55:2  <b>McGuire</b> 10:11            43:18  <b>mean</b> 9:18 11:11            28:6,11 30:2            31:21,23 37:15            39:8 40:9,14            48:22  <b>meaning</b> 52:1  <b>means</b> 28:7            38:15 44:21  <b>meeting</b> 35:24  <b>mere</b> 15:13  <b>merely</b> 25:16  <b>method</b> 21:8            52:20  <b>Miles</b> 8:3,9            11:13,18 17:5            17:19 19:16            23:10 24:3,9            24:25 25:21            31:1,11 33:25            39:5 43:9,12            46:15  <b>Miller-Tydings</b>            10:10 12:18            43:18 51:23  <b>million</b> 7:21  <b>mind</b> 21:3 51:13  <b>minimum</b> 3:23</p>	<p>20:15 42:5,5,9            44:4 48:2 55:3  <b>minutes</b> 52:25  <b>misguided</b> 3:12  <b>mix</b> 32:15  <b>modern</b> 17:20            18:19 19:4            26:2  <b>mom</b> 33:9  <b>mom-and-pop</b>            30:17  <b>Monday</b> 1:11  <b>money</b> 21:20            28:14 32:9            37:6,9 41:20            52:16  <b>Monsanto</b> 20:13  <b>month</b> 28:2  <b>morning</b> 3:4            30:22  <b>motivation</b> 5:24  <b>multiple</b> 45:24            47:23  <b>muster</b> 30:7</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 2:1,1 3:1  <b>nearly</b> 3:23  <b>necessary</b> 46:22  <b>need</b> 11:13 18:4            31:17 42:9  <b>needs</b> 39:24            40:11  <b>nervous</b> 47:17  <b>never</b> 16:25            26:11,25  <b>new</b> 1:23,24 5:1            13:4 20:21            38:18 43:24  <b>nightmare</b>            55:14  <b>non-price</b> 20:17            42:7 48:25            55:1  <b>non-priced</b> 20:9  <b>noted</b> 48:1 51:2  <b>notwithstandi...</b></p>	<p>13:7  <b>number</b> 13:5,6  <b>N.Y</b> 1:24</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 2:1 3:1  <b>object</b> 15:3,4  <b>objection</b> 30:2  <b>objectives</b> 30:4  <b>obligations</b>            48:18  <b>observed</b> 43:17            45:13  <b>obviously</b> 21:25            27:15,16  <b>occasioned</b>            35:16  <b>occurred</b> 29:22  <b>offer</b> 32:14            42:21  <b>offering</b> 27:17            38:9  <b>Oil</b> 5:19 10:5            13:17 17:18            22:16 53:4  <b>Okay</b> 33:9  <b>old</b> 18:12 46:1  <b>oligopolistic</b>            27:6  <b>Olson</b> 1:16 2:3            2:14 3:5,6,8            4:6,13,25 5:3,7            5:18,24 6:10            6:23 7:1,25 8:7            8:10,15,18 9:1            9:25 10:13,18            10:20,22 11:16            11:23 13:5,22            14:1,4,21 15:6            15:9,12,20            16:3,17,25            17:7,10 23:19            26:24 38:25            52:3,25 53:1,3            53:22 54:1            55:22  <b>Olson's</b> 26:10</p>
---	---	--	---	---

<p><b>once</b> 26:18 52:22</p> <p><b>ones</b> 22:7 39:24</p> <p><b>one-size-fits-all</b> 32:17</p> <p><b>opening</b> 23:24</p> <p><b>operate</b> 9:19 26:13,16</p> <p><b>operation</b> 30:17 31:14</p> <p><b>operations</b> 31:5</p> <p><b>opinion</b> 10:24</p> <p><b>opportunities</b> 54:25</p> <p><b>oppose</b> 30:2</p> <p><b>opposed</b> 25:23</p> <p><b>opposite</b> 8:12</p> <p><b>opposition</b> 17:3 52:10</p> <p><b>oral</b> 1:12 2:2,5,8 3:6 17:12 27:23 43:23</p> <p><b>order</b> 24:21 30:8 30:20 31:18 34:9 47:22</p> <p><b>ordinarily</b> 50:18</p> <p><b>outdated</b> 3:11</p> <p><b>outmoded</b> 17:18 36:21</p> <p><b>outset</b> 14:10</p> <p><b>outside</b> 45:20</p> <p><b>outweigh</b> 26:21</p> <p><b>overcome</b> 26:19</p> <p><b>overrule</b> 18:12</p> <p><b>overruled</b> 24:9</p> <p><b>overruling</b> 31:1</p> <p><b>overturn</b> 8:8 19:10 47:13</p> <p><b>overturned</b> 44:13 46:3,5</p> <p><b>overturning</b> 22:23</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 3:1</p> <p><b>PAGE</b> 2:2</p> <p><b>Pardon</b> 53:22</p>	<p><b>part</b> 39:3</p> <p><b>participant</b> 4:17</p> <p><b>participants</b> 21:16</p> <p><b>particular</b> 6:2 30:16 35:1,20 37:21 39:2 42:21 47:24 51:4,6,17</p> <p><b>particularly</b> 16:14 51:23</p> <p><b>pass</b> 29:13 30:18 31:6 38:17 47:6</p> <p><b>passed</b> 6:5 12:2</p> <p><b>passing</b> 42:11</p> <p><b>patent</b> 10:18,19</p> <p><b>pay</b> 8:3 41:13 48:4 49:4</p> <p><b>paying</b> 40:4</p> <p><b>payment</b> 48:9</p> <p><b>peak</b> 47:14 49:22</p> <p><b>peculiar</b> 38:5</p> <p><b>pedigree</b> 46:7</p> <p><b>people</b> 8:25 14:5 16:9,10 18:15 22:9 25:22 29:8 30:15 32:1,9 34:25 50:11</p> <p><b>percent</b> 7:19,20 25:4</p> <p><b>percentage</b> 25:16</p> <p><b>perfectly</b> 17:24 24:4,12 25:10</p> <p><b>period</b> 50:23 51:2</p> <p><b>permits</b> 32:24 33:1</p> <p><b>permitted</b> 43:5</p> <p><b>permitting</b> 50:14</p> <p><b>perpetuating</b> 38:13</p> <p><b>person</b> 39:21</p>	<p><b>petition</b> 17:3</p> <p><b>Petitioner</b> 1:5 1:17,20 2:4,7 2:15 3:7 17:14 53:2</p> <p><b>phone</b> 47:22</p> <p><b>Ping</b> 24:13,14 33:23 35:4 53:15 54:3</p> <p><b>place</b> 12:25 24:22 28:16 50:1</p> <p><b>places</b> 30:11 43:10</p> <p><b>plain</b> 16:23</p> <p><b>plainly</b> 3:24</p> <p><b>plaintiff</b> 16:21 26:16,25 27:5 29:11</p> <p><b>plaintiff's</b> 30:6</p> <p><b>player</b> 9:18</p> <p><b>players</b> 31:16</p> <p><b>please</b> 3:9 17:16 28:1 44:2</p> <p><b>plenty</b> 20:23</p> <p><b>point</b> 8:25 23:12 33:23 35:8 44:4 49:17 50:12,13,23</p> <p><b>pointed</b> 20:5 23:19 52:3</p> <p><b>points</b> 7:17</p> <p><b>policy</b> 16:12,12 16:12 24:22 28:5,7 29:23 29:25 30:11 35:24 36:1</p> <p><b>pops</b> 33:9</p> <p><b>position</b> 23:6 30:6,6 49:16 51:4,6</p> <p><b>possibility</b> 13:9 39:19 45:17</p> <p><b>possible</b> 14:24 15:1 32:6 37:12,18 45:4 45:23</p>	<p><b>possibly</b> 32:8</p> <p><b>post-fair</b> 23:22</p> <p><b>potential</b> 10:7</p> <p><b>power</b> 7:4 19:21 19:23 30:19 31:17</p> <p><b>powerful</b> 7:4</p> <p><b>practical</b> 30:5</p> <p><b>practice</b> 3:22 11:9,15 54:22 54:23</p> <p><b>practices</b> 11:3</p> <p><b>precedent</b> 22:24</p> <p><b>precedents</b> 38:11 43:11</p> <p><b>precisely</b> 5:16 15:12 21:18</p> <p><b>prefer</b> 15:11</p> <p><b>preserving</b> 45:7</p> <p><b>presses</b> 40:10</p> <p><b>pressure</b> 39:22</p> <p><b>presume</b> 42:13</p> <p><b>presumptive</b> 54:20</p> <p><b>presumptively</b> 3:17</p> <p><b>Pretty</b> 7:16</p> <p><b>prevail</b> 27:6</p> <p><b>prevent</b> 44:5,6 47:21,25</p> <p><b>price</b> 3:10,24 4:14 5:2 7:18 7:23 12:1,9,19 12:23 13:3 14:12,24 15:3 15:11,17,19 16:7 17:25 19:9,15,20 20:2,4,5,6,14 20:15,22 21:21 22:20,21 23:16 24:17 25:12 27:3,17 28:4,5 28:8,15 29:4 29:22,25 31:3 31:8 32:1,1,5,6 32:10,14,16,18</p>	<p>32:23,23,25 33:1,8,18,24 34:3,8,25 35:5 35:10 36:2 37:8,18 38:12 39:20,25 40:2 40:19,21,25 41:2,17,19 42:5,6,10 43:2 44:4,5,11 46:5 47:1,2,16,17 47:19,21,25,25 48:2,6,16,18 49:2,4,9 50:14 52:10 53:10 54:14 55:2,3</p> <p><b>prices</b> 12:5,19 15:5,14,24 16:1 18:1 21:8 28:5 31:7 32:25 33:11,18 33:20,24,25 38:18 45:19,20</p> <p><b>price-based</b> 20:9</p> <p><b>price-fixing</b> 44:8 48:8</p> <p><b>principle</b> 28:3</p> <p><b>Prior</b> 39:4</p> <p><b>probably</b> 7:7,8</p> <p><b>problem</b> 25:22 28:16 38:13 41:21 49:19</p> <p><b>problems</b> 53:19</p> <p><b>procompetition</b> 48:6</p> <p><b>procompetitive</b> 11:3 13:15 22:22 26:21 53:12 54:24</p> <p><b>produce</b> 15:5,24 28:8 37:5</p> <p><b>produced</b> 16:15</p> <p><b>produces</b> 12:5</p> <p><b>product</b> 16:10 16:10 20:22 28:17 37:13,20</p>
--	--	---	--	--

40:11 48:5 50:5,7 <b>products</b> 1:4 3:5 4:19,21 6:18 6:21 13:11 15:1,19 37:12 38:9 39:23 41:8 54:17 <b>Professor</b> 7:14 12:8 <b>profit</b> 33:12 <b>profits</b> 21:23 31:22 37:25 <b>programs</b> 4:23 <b>prohibit</b> 42:11 44:8 45:1 <b>prohibited</b> 47:3 50:24 <b>prohibiting</b> 32:23,23 <b>prohibition</b> 5:4 29:3 30:16 <b>prohibitions</b> 45:25 <b>prohibits</b> 28:5 45:1 53:17 <b>promote</b> 4:2,23 30:4 37:1 40:1 <b>promotes</b> 6:17 54:13 <b>pronounce</b> 38:22 <b>pronounceme...</b> 9:8 <b>protect</b> 31:19 40:8 <b>protected</b> 30:15 <b>protection</b> 31:17 <b>prove</b> 15:14,15 <b>provide</b> 13:10 13:11 21:1,8 25:13 29:6,18 32:5 41:12,13 41:14 42:22,23 48:18,24 49:4 50:11 54:12 <b>providers</b> 32:13	<b>provides</b> 16:13 54:14,19,24 <b>providing</b> 16:14 29:9,11,12 42:25 <b>provisions</b> 42:4 <b>PSKS</b> 1:7 3:5 <b>public</b> 21:9 <b>purpose</b> 16:6 41:5 <b>pursued</b> 39:1,3 <b>push</b> 22:5 <b>put</b> 17:22 30:8 35:9	<b>realities</b> 26:2 <b>really</b> 11:16 17:23 28:7 30:15 31:19,21 33:16 34:22 36:24 48:2,13 49:9,11 50:16 <b>reason</b> 3:13,18 5:11 6:16,24 7:8,14 9:5 10:16 13:16 19:5 20:18,18 21:13 24:24 25:7,20,25 26:8,12 27:12 30:3,3 34:9 35:15 36:19 38:2,6,10 41:2 48:11 51:22 54:21 55:3,16 <b>reasons</b> 18:3,17 45:21 55:16 <b>rebalance</b> 18:9 <b>rebuttal</b> 2:13 16:5 53:1 <b>received</b> 47:12 <b>receives</b> 43:3 <b>recognize</b> 4:1 53:4 <b>recognized</b> 3:11 <b>recommended</b> 5:14 <b>record</b> 6:18 26:1 29:20 39:12 <b>redeeming</b> 33:20 <b>reduce</b> 20:10 33:1,2 <b>reduces</b> 53:7 <b>reducing</b> 31:7 <b>reference</b> 43:13 <b>referenced</b> 33:23 <b>referred</b> 39:3 <b>regime</b> 24:16 25:5,6 29:3 34:2 52:14	<b>reject</b> 17:18 <b>related</b> 39:15 <b>relationship</b> 53:17 <b>relationships</b> 6:14 <b>relevant</b> 51:24 <b>reliance</b> 11:11 11:12 <b>relied</b> 10:18 46:9,11 <b>reluctance</b> 47:13 <b>relying</b> 46:14,15 46:17 <b>remaining</b> 52:25 <b>remand</b> 39:12 39:18 <b>remarks</b> 26:10 <b>remember</b> 24:4 25:6 <b>reorientation</b> 25:21 <b>repair</b> 16:12 <b>repeal</b> 10:13 51:22,23 <b>repealed</b> 10:14 46:11 52:7 <b>repealing</b> 43:17 <b>repeated</b> 47:12 <b>repeatedly</b> 4:22 8:19 11:7 54:20 55:5 <b>replace</b> 55:17 <b>replaced</b> 3:12 <b>request</b> 12:25 <b>require</b> 7:3 18:5 49:2 <b>required</b> 26:17 26:19 <b>requires</b> 53:16 <b>requiring</b> 42:9 <b>resale</b> 3:10,24 4:14 7:18,23 12:9,19,23 13:2 17:25 19:15,20 20:2	20:4,15 22:20 22:21 24:17 25:12 27:3 28:15 29:4,22 29:25 31:3,8 32:18 33:8,11 33:18,24 34:8 35:4 36:2 37:8 39:20,25 40:2 40:19,21,24 41:2,17,19 42:5,6,10 44:4 44:11 46:5 47:1,2 48:2,6 49:2 50:14 52:10 <b>research</b> 11:24 <b>reserve</b> 16:4 <b>resolution</b> 6:6 <b>resolving</b> 23:5 <b>resources</b> 30:8 <b>respect</b> 9:7,10 26:7 39:7 43:11 <b>respected</b> 8:21 13:6 18:22 <b>respects</b> 17:21 <b>Respondent</b> 1:22,25 2:10 2:12 27:24 43:25 53:3,10 54:8 <b>response</b> 12:2 <b>restated</b> 28:3 <b>restrain</b> 45:2 <b>restraint</b> 3:19 5:8,15 6:7 9:20 53:5 55:6,7 <b>restraints</b> 3:17 4:2 7:23 9:6,7 9:17 20:9,10 20:14,17 46:3 47:18,20,23 <b>restriction</b> 45:14 <b>restrictions</b> 3:15 13:14 55:1,8
	<b>Q</b>			
	<b>qualify</b> 50:17 <b>qualities</b> 16:1 <b>question</b> 12:15 13:1,24 17:22 18:14,18,24 19:4,18 29:10 29:15,16 38:21 42:25 46:16 48:7,10,11,13 52:19 <b>questioned</b> 51:15 <b>questions</b> 20:19 <b>quite</b> 7:16 18:23 52:5			
	<b>R</b>			
	<b>R</b> 3:1 <b>raise</b> 18:1 49:3 <b>raises</b> 33:18 <b>rare</b> 3:20 7:3 9:13 <b>rarely</b> 4:3,15 <b>rational</b> 55:12 <b>reach</b> 35:25 39:17 45:20 <b>reached</b> 34:24 <b>reaching</b> 18:15 <b>read</b> 10:23 <b>reaffirmed</b> 44:15 <b>real</b> 40:12 49:7			



<b>result</b> 11:17 17:19,24 20:4 24:12 33:25 43:15 44:25	27:10,12 28:6 54:5	<b>rules</b> 3:20 5:9 7:9 10:14 11:7 13:19 17:19,24 18:4 39:15 44:13,14 47:10 47:15 50:19 54:21 55:10	46:9	36:24 44:7 50:16,19
<b>resulting</b> 26:18	<b>rigid</b> 9:6 55:4,10 55:18	<b>ruling</b> 13:16	<b>Secondly</b> 8:12	<b>SHOES</b> 1:8
<b>results</b> 22:19 26:21 44:19	<b>rise</b> 11:20 30:24	<b>run</b> 8:9	<b>section</b> 44:7	<b>shop</b> 28:16 50:1 50:2,2
<b>retail</b> 3:24 5:1 8:4 12:22 14:12,24 25:21 27:5 31:16 36:9 38:12,16 40:21 48:18 55:3	<b>risk</b> 8:9	<b>S</b>	<b>secure</b> 30:20	<b>shopping</b> 49:24 50:3
<b>retailer</b> 21:15 35:22 37:9,10 37:23,24 38:9 40:3,18,24 42:7,14 48:14 49:3,7,7 54:4	<b>ROBERT</b> 1:21 2:9 27:23	<b>S</b> 2:1 3:1 12:8	<b>see</b> 6:12 13:1 32:7 42:17	<b>shot</b> 23:4,7
<b>retailers</b> 7:3 13:24 14:3,9 14:12,14,16,19 14:20,23 21:24 21:24 22:5,6 29:7,18 30:24 31:10 34:1 35:13 38:9,15 38:16 39:21,22 41:11,13 44:4 44:6 47:24 48:4,17 49:15 53:13,16,18 54:10	<b>ROBERTS</b> 3:3 6:23 11:10 17:6,9 24:10 27:19,22 30:1 30:9 33:22 35:7 41:16 42:3 43:13,21 44:17 47:5 48:21 49:6,18 51:7 52:23 55:21	<b>sale</b> 54:16	<b>seen</b> 8:23	<b>show</b> 28:12,17 49:20
<b>retailing</b> 30:13 30:23 45:15	<b>room</b> 28:17 49:20	<b>sales</b> 6:17 29:21	<b>seldom</b> 7:11	<b>shown</b> 35:23 43:9 46:20
<b>retention</b> 31:12	<b>rooms</b> 28:13	<b>salesperson</b> 54:6	<b>selection</b> 28:23 39:23	<b>showrooms</b> 37:14
<b>return</b> 16:11 52:14	<b>RPM</b> 28:5 35:21 40:6 41:10	<b>saved</b> 7:20	<b>sell</b> 14:25 35:10 37:11,13	<b>shows</b> 11:9 12:3 29:20 46:25
<b>returning</b> 46:25	<b>rubric</b> 26:13	<b>saying</b> 22:11 47:6 48:22	<b>selling</b> 31:25 32:1,15 41:8	<b>side</b> 12:22
<b>reverse</b> 31:1	<b>rule</b> 3:10,13,18 5:11 6:24 7:8 7:14 9:5,5,6,13 10:15,25 11:13 11:18 13:16 14:11,17 17:5 17:19 18:20 19:5,6 20:18 24:2,11 25:7 26:8,12 27:12 30:2,3 31:18 31:19 32:21 33:25 34:6,9 35:3,8,15 36:18,21 38:2 38:6,10 39:4,6 40:14 42:18 43:12,19 44:11 44:25 46:2,4 47:1,11,14 48:11 54:20,20 55:2,4,16,18	<b>says</b> 7:20 33:13	<b>sense</b> 44:20 55:15	<b>sides</b> 18:11
<b>revolutionize</b> 24:8		<b>Scalia</b> 13:22 15:2,7,10,13 15:22 20:5 28:6,11 29:5 29:14 31:20 37:3 38:1 40:7 40:23 41:3 45:10 46:14,18 50:4 51:12,18	<b>separate</b> 39:3 42:14	<b>sign</b> 42:21,23
<b>rid</b> 7:17,18,21 8:3 12:19 33:8		<b>schizoid</b> 9:5	<b>separate</b> 39:3 42:14	<b>significant</b> 23:2
<b>ride</b> 50:1		<b>school</b> 7:13	<b>serves</b> 32:16	<b>similar</b> 20:16
<b>right</b> 19:2 22:2,3		<b>Schwinn</b> 46:2	<b>service</b> 13:11 15:11,17 21:20 28:22 29:7,9 29:12,19 32:6 32:9,13,16,25 33:1,2,3 37:14 41:4,25 42:15 42:21,22,23 48:25 49:8,10 49:15 50:5 53:9	<b>single</b> 12:11,13 36:15 53:6
		<b>se</b> 3:10,20 5:6,9 9:6 10:14,25 11:5,7 13:16 13:19 14:17 17:5,18,24 18:20 19:5 25:7 29:3 30:16 31:18 32:20 34:6 35:3 36:15 38:11 39:6,15 43:19 44:11 47:1 52:4,14 54:21 55:4,10 55:18	<b>services</b> 21:1,8 40:3,5 41:12 41:13,14 42:9 48:5,9,14,16 48:18	<b>sit</b> 16:17 34:15
		<b>second</b> 12:20	<b>serving</b> 15:15 21:9	<b>situation</b> 6:25 7:1,4 40:15 46:18
			<b>set</b> 11:4	<b>slightly</b> 18:15
			<b>sets</b> 18:5,7,16	<b>small</b> 25:16 30:7 30:9,12,16 31:4,4 53:18
			<b>settled</b> 44:14,18 46:2,6 50:15	<b>sold</b> 4:19 26:5
			<b>Sharp</b> 6:13	<b>sole</b> 15:4
			<b>sheds</b> 52:1	<b>Solicitor</b> 1:18,23 50:24 51:9,16
			<b>Sherer</b> 7:15 8:24	<b>somebody</b> 28:18 45:4
			<b>Sherman</b> 3:16 15:4 34:22	<b>somewhat</b> 4:6 15:17
				<b>sorry</b> 23:8
				<b>sort</b> 17:2 23:2 24:5

<p><b>sound</b> 46:21  <b>sounds</b> 8:1  <b>Souter</b> 11:19,24                  22:25 23:12,21                  24:23 25:19  <b>specific</b> 29:21  <b>specifically</b> 36:3  <b>spend</b> 52:16  <b>standard</b> 3:13                  39:13  <b>stands</b> 52:2  <b>State</b> 5:19 10:5                  13:17 17:18                  22:16 53:4  <b>States</b> 1:1,13,20                  12:18 17:13                  23:17  <b>statute</b> 44:9                  46:12 51:25                  52:2  <b>statutes</b> 10:13  <b>statutory</b> 48:12  <b>Stevens</b> 4:25 5:4                  5:5,12,22 6:5                  10:17,21,23                  20:20 21:6,18                  36:5,10,18                  50:22 51:3                  53:20,23  <b>stick</b> 35:18  <b>stimulate</b> 53:6                  54:16  <b>stimulates</b> 54:12  <b>stopped</b> 31:7  <b>store</b> 39:22                  40:10 49:21  <b>stores</b> 7:19                  11:12 23:3                  26:6 32:3,24  <b>strategy</b> 6:19                  24:17 26:4                  29:17  <b>Street</b> 23:3  <b>striking</b> 36:23  <b>strong</b> 7:4 11:25                  52:22  <b>study</b> 25:3</p>	<p><b>stupid</b> 40:13  <b>subject</b> 35:15                  55:2  <b>submitted</b> 55:23                  55:25  <b>substantial</b> 11:8  <b>succeed</b> 26:22                  27:16  <b>succeeded</b> 26:3  <b>success</b> 16:16                  23:14,15 24:2  <b>successful</b> 4:9                  6:22 29:16  <b>sufficient</b> 39:12  <b>suggest</b> 19:19                  30:14 31:9                  32:11 34:6                  38:8 39:12,16                  41:15 42:1                  43:7 54:9  <b>suggested</b> 31:13  <b>suggesting</b> 6:1                  47:9 53:24                  54:1  <b>suggestion</b> 24:7  <b>suggests</b> 46:22                  52:22  <b>summary</b> 26:11  <b>supply</b> 24:1  <b>support</b> 31:11                  43:18  <b>supporting</b> 1:20                  1:25 2:7,12                  17:14 43:25  <b>supports</b> 43:15  <b>suppose</b> 4:25                  39:9 40:7,8  <b>supposed</b> 8:13                  44:24  <b>supposedly</b>                  31:11  <b>Supreme</b> 1:1,13  <b>sure</b> 35:12 36:10                  36:20 45:10                  47:18  <b>sustained</b> 39:14  <b>Sylvania</b> 5:19</p>	<p>10:1,1 13:13                  17:18 43:6,17  <b>system</b> 16:14                  32:12 43:10                  47:18 53:15  <b>systematically</b>                  13:19</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 2:1,1  <b>take</b> 12:24 23:4                  26:24 39:10                  42:6  <b>talk</b> 12:7 31:23  <b>talking</b> 14:8,9                  21:6 28:9 42:4                  49:23 53:18  <b>Target</b> 30:11                  50:3  <b>Targets</b> 11:21                  23:15 31:24  <b>technique</b> 52:17                  52:20  <b>tends</b> 7:14  <b>tension</b> 44:23  <b>term</b> 10:2  <b>terminate</b> 24:20                  34:14  <b>terminating</b>                  34:19 53:16  <b>termination</b>                  53:21,25  <b>terms</b> 10:12                  32:22,23  <b>territorial</b> 19:10                  46:2 47:20,23  <b>territories</b> 43:5  <b>territory</b> 47:24  <b>test</b> 19:3  <b>Thank</b> 17:6,9,15                  27:19,21,25                  43:21 52:23                  55:20,21  <b>THEODORE</b>                  1:16 2:3,14 3:6                  53:1  <b>theorized</b> 40:3</p>	<p><b>thing</b> 11:1 12:14                  12:20 16:18                  20:6 21:3                  22:10 25:15                  27:15,18 34:19                  41:4 52:5 54:6  <b>things</b> 12:16                  13:5,12 17:25                  18:5,16 28:13                  28:21 29:2,2                  32:2 49:2                  53:10 54:14,18  <b>think</b> 5:3,7 6:3                  6:10 8:5,15                  10:23 14:11                  18:23,25 20:23                  20:24 21:19                  23:18,23 26:12                  26:15 28:7,20                  28:21,22,22,23                  31:22 33:5                  49:17 50:13                  51:14  <b>thinking</b> 37:2  <b>thinks</b> 8:2  <b>third</b> 47:16  <b>THOMAS</b> 1:18                  2:6 17:12  <b>thought</b> 15:7,10                  17:3 29:6                  32:20 33:22                  35:8 47:2                  49:24  <b>thousands</b> 4:19                  4:20  <b>three</b> 17:21 18:5                  18:7,16 44:12  <b>threshold</b> 11:4,5                  27:1  <b>throwing</b> 22:8,9                  41:20  <b>thrown</b> 26:11  <b>time</b> 7:16 10:1                  16:4 36:13  <b>today</b> 9:10 11:17                  12:22 50:25                  51:11</p>	<p><b>Tool</b> 10:3  <b>tossed</b> 54:21  <b>totally</b> 37:3  <b>trade</b> 3:17 9:11                  9:19 11:21                  23:20,22,25                  25:3,5,5 30:25                  43:8 46:12                  52:4 55:6,7  <b>training</b> 48:24  <b>transformation</b>                  30:23  <b>travel</b> 47:21  <b>tremendous</b>                  34:11  <b>trial</b> 26:12 39:1                  39:4 48:11  <b>true</b> 16:22 19:15                  20:3 32:24                  47:4,8 48:15  <b>try</b> 32:5 37:10                  41:6  <b>two</b> 10:2 12:16                  13:1 34:15                  45:16  <b>tying</b> 10:4  <b>type</b> 54:11</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimately</b> 12:5                  54:15  <b>unanimously</b>                  22:24  <b>uncertainties</b>                  35:16  <b>uncomfortably</b>                  34:16  <b>unconcentrated</b>                  19:23  <b>undercut</b> 29:8  <b>undermine</b>                  13:15  <b>understand</b>                  17:23 31:20  <b>understanding</b>                  44:9  <b>Underwood</b></p>
--	---	---	---	---

<p>1:23 2:11 43:22,23 44:1 44:23 45:13 46:17,23 47:8 49:1,11,22 50:9 51:1,5,9 51:14,21 52:6 52:19,24 <b>undisputed</b> 25:10 <b>uniform</b> 7:22 <b>uniformly</b> 50:7 <b>unilateral</b> 24:6 34:24 35:5 <b>unilaterally</b> 34:4,14 45:4 45:12 <b>uniquely</b> 47:10 <b>United</b> 1:1,13,19 17:13 <b>unlawful</b> 5:6 7:9 55:11 <b>unnecessary</b> 42:10 51:15 <b>unrealistic</b> 6:3 <b>unreasonable</b> 3:16,19 55:7 <b>unsupportable</b> 24:9 <b>untested</b> 48:17 <b>update</b> 46:21 <b>use</b> 4:14 41:24 48:8,14 52:22 55:6 <b>usually</b> 20:16 26:16</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p>v 1:6 <b>valid</b> 20:1 <b>value</b> 32:2 45:7 45:7 <b>values</b> 28:25 <b>varied</b> 54:19 <b>vast</b> 8:10 19:24 26:6 <b>versus</b> 3:5 5:19</p>	<p>6:13 10:5 13:17 53:5 <b>vertical</b> 3:23 4:2 4:7 5:15 6:7 9:6,7,17 13:14 20:9,10,14,17 45:14 53:5 54:25 <b>vertically</b> 3:14 <b>view</b> 8:25 9:10 9:17 28:23 52:21,22 <b>violate</b> 7:7 <b>violation</b> 5:9 6:25 16:23 36:16 39:15 <b>virtually</b> 3:21 45:14</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>W</b> 1:21 2:9 27:23 <b>Walgreens</b> 33:7 <b>Wal-Mart</b> 23:3 30:11 <b>Wal-Marts</b> 11:20 23:11,14 24:2 26:2 31:23 <b>want</b> 7:14 11:7 16:9,10 21:7 22:6 25:14 27:17 28:12,12 28:21,21,22,23 28:23 32:1,4 33:2,8,10,11 34:2,8 35:1,4 35:17 38:4 40:5 42:22 49:9,12,15,20 50:4 54:7,8 <b>wanted</b> 29:13 <b>wants</b> 18:9 30:17 37:7,19 40:12 41:5 <b>warranties</b> 28:12</p>	<p><b>warranty</b> 16:12 37:14 50:6 <b>Washington</b> 1:10,16,19 <b>wasn't</b> 16:18 17:1 36:7 39:1 39:3 52:17 <b>way</b> 5:10 18:8 18:10 22:4,8 32:12 40:8 41:25 43:1 50:6 53:8 55:13 <b>ways</b> 35:1 41:10 44:12 <b>weeks</b> 11:1 <b>weight</b> 18:16 <b>welfare</b> 15:8,15 15:18 37:5 <b>went</b> 7:19 12:20 52:21 <b>Weyerhaeuser</b> 11:2 <b>we'll</b> 3:3 21:19 <b>we're</b> 8:13 14:8 14:9 34:17 54:1 <b>we've</b> 30:10,22 <b>wholesale</b> 43:2 <b>wholesaler</b> 53:6 <b>Wichita</b> 1:21 <b>widely</b> 3:11 <b>widespread</b> 20:7 <b>willingness</b> 46:21 <b>wisdom</b> 43:9 51:15 52:20 <b>wish</b> 16:11 <b>withdrew</b> 9:20 <b>words</b> 54:8 <b>work</b> 22:10 30:3 42:18 <b>worked</b> 7:15 54:3 <b>works</b> 48:16 <b>world</b> 23:11,20 24:2 26:3 33:8</p>	<p>55:1 <b>worse</b> 40:4 <b>worth</b> 11:6 <b>wouldn't</b> 14:19 15:19 16:24 20:20 <b>write</b> 48:22 <b>written</b> 7:2 12:15 <b>wrong</b> 54:6</p> <hr/> <p style="text-align: center;"><b>X</b></p> <p>x 1:2,9</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p><b>Yamey</b> 12:8 <b>Yamey's</b> 13:2 <b>year</b> 52:15,16 <b>years</b> 18:6,12 33:5 43:8 44:6 44:18 46:3,5 53:17 <b>York</b> 1:23,24 5:1 20:21 43:24</p> <hr/> <p style="text-align: center;"><b>\$</b></p> <p><b>\$200</b> 7:21</p> <hr/> <p style="text-align: center;"><b>0</b></p> <p><b>06-480</b> 1:6 3:4</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p>1 44:7 <b>10</b> 46:3 <b>10:03</b> 1:14 3:2 <b>100</b> 44:6 <b>11:05</b> 55:24 <b>12</b> 22:9 <b>17</b> 2:7 <b>1911</b> 11:18 <b>1945</b> 25:2 <b>1966</b> 12:15 22:3 <b>1970s</b> 30:23 <b>1975</b> 12:1 46:12</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p><b>20</b> 7:19</p>	<p><b>2007</b> 1:11 <b>26</b> 1:11 <b>27</b> 2:10 <b>29</b> 46:5</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p><b>3</b> 2:4 52:25 <b>30</b> 43:7</p> <hr/> <p style="text-align: center;"><b>4</b></p> <p><b>40</b> 7:19 <b>43</b> 2:12</p> <hr/> <p style="text-align: center;"><b>5</b></p> <p><b>5</b> 25:4 <b>5,000</b> 4:18 53:13 <b>53</b> 2:15</p> <hr/> <p style="text-align: center;"><b>9</b></p> <p><b>90</b> 44:18 <b>96</b> 18:12</p>
--	--	--	---	---