1 IN THE SUPREME COURT OF THE UNITED STATES

2 -x

3 AMERICAN NEEDLE, INC., :

4 Petitioner :

5 v. : No. 08-661

6 NATIONAL FOOTBALL :

7 LEAGUE, ET AL. :

8 -x

9 Washington, D.C.

10 Wednesday, January 13, 2010

11

12 The above-entitled matter came on for

13 oral argument before the Supreme Court of the United

14 States at 10:08 a.m.

15 APPEARANCES:

16 GLEN D. NAGER, ESQ., Washington, D.C.; on behalf of

17 Petitioner.

18 MALCOLM L. STEWART, ESQ., Deputy Solicitor General,

19 Department of Justice, Washington, D.C.; on

20 behalf of the United States, as amicus curiae,

21 supporting neither party.

22 GREGG H. LEVY ESQ., Washington, D.C.; on behalf of

23 Respondents.

24

25

1 C O N T E N T S

2 ORAL ARGUMENT OF PAGE
3 GLEN D. NAGER, ESQ.
4 On behalf of the Petitioner 3
5 MALCOLM L. STEWART, ESQ.
6 On behalf of behalf of the United States,
7 as amicus curiae, supporting neither party 29
8 GREGG H. LEVY, ESQ.
9 On behalf of the Respondents 39
10 REBUTTAL ARGUMENT OF
11 GLEN D. NAGER, ESQ.
12 On behalf of the Petitioner 65
13
14
15
16
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S

2 (10:08 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument

4 first this morning in Case 08-661, American

5 Needle v. The National Football League.

6 Mr. Nager.

7 ORAL ARGUMENT OF GLEN D. NAGER

8 ON BEHALF OF THE PETITIONER

9 MR. NAGER: Thank you, Mr. Chief Justice,

10 and may it please the Court:

11 In this case, the Court of Appeals for the

12 Seventh Circuit held that an agreement of the 32 teams

13 of the National Football League was immune from any

14 scrutiny under section 1 of the Sherman Act on the

15 ground that the agreement allegedly fails the

16 plurality of actor requirement of this Court's

17 jurisprudence.

18 The 32 teams of the National Football League

19 are separately owned and controlled profit-making

20 enterprises. Under this Court's decision in NCAA, as

21 well as the Court's more general joint venture

22 jurisprudence, those clubs are entities whose distinct

23 agreements are, indeed, subject to section 1 scrutiny.

24 The fact of the matter is there is a long-

25 standing consensus, judicial and legislative, that

1 agreements among sports teams about whether and how
2 they will participate in the marketplace is subject to
3 scrutiny under the Sherman Act, section 1.
4 The Court's decision in NCAA is most
5 directly on point. In that case, the Court held that
6 a policy of the NCAA that restricted the ability of
7 member institutions of the NCAA to sell TV rights
8 violated section 1. Just as with the NFL, the
9 decisions of the NCAA were ultimately controlled by
10 the vote of its members, and for that reason, the
11 Court held that the NCAA policy was a horizontal
12 restraint, and it --
13 JUSTICE SOTOMAYOR: But there was no joint
14 venture with respect to the television rights, meaning
15 there was no separate activity, other than the
16 televising of the shows at issue. Here, the Solicitor
17 General is saying there is a joint venture, and it has
18 to do with the licensing of trademarks, with their
19 quality control, et cetera.
20 Isn't that a substantial difference?
21 MR. NAGER: No, I don't -- I don't think so,
22 because what we’re -- what we’re asking about here is
23 -- is the question of whether or not the agreement of
24 the teams involves a plurality of actors. And just as
25 in NCAA, the members' institutions -- because they

1 controlled the operation of the NCAA and the policy
2 that it was promulgating, there was a plurality of
3 actors.
4 So, too, here, the 32 teams of the National
5 Football League have entered into an agreement and
6 control the use, collectively, of the trademarks and
7 logos of the individual teams. And for that reason,
8 there is concerted activity that is involved.
9 Justice Sotomayor, the point that you raise
10 might be of -- a point of difference that the NFL
11 could argue in the context of an ancillary restraint
12 analysis, in the context of a rule of reason analysis,
13 but it’s not a point of distinction that they can
14 argue properly in the context of the concerted conduct
15 inquiry.
16 The NCAA case simply applies the consistent
17 teachings of this Court in cases like Sealy, BMI, and
18 Copperweld, that separately owned and controlled
19 entities entering into agreements -- those agreements
20 constitute concerted conduct subject to scrutiny under
21 the antitrust laws. The --
22 JUSTICE GINSBURG: Does that cover
23 everything that the NFLA does? Because everything is
24 subject to agreement. It's all concerted action. So,
25 is everything under the Sherman Act, and then it goes

1 to rule of reason analysis? Or are there some things
2 that escape, entirely, antitrust analysis?
3 MR. NAGER: Certainly everything in the --
4 that's challenged in this case, because this involves
5 a restriction on the activities of the venturers
6 themselves. But more generally, I would -- I would
7 answer your question, Justice Ginsburg, to say that
8 yes, that everything that these 32 separately owned
9 and controlled teams joined together to do by -- in
10 concert, by agreement, by consent, is a contract.
11 JUSTICE KENNEDY: Changes in the -- in the
12 rule apply? They make a change to make it -- give
13 the passer more protection, but there's -- this really
14 hurts certain teams, which mostly run, and so -- rule
15 of reason?
16 MR. NAGER: Yes, it is concerted activity.
17 I don't think it would be a plausible rule of reason
18 claim.
19 JUSTICE KENNEDY: Well, how -- you know the
20 litigation system. How do we know?
21 MR. NAGER: Well, I think we know the
22 following, Justice Kennedy: That under this Court's
23 rule of reasons jurisprudence, a plaintiff has to be
24 able to plead an identifiable anticompetitive effect
25 in a market in which the defendant plausibly has

1 market power, and the -- the plaintiff also has to be
2 one who can --
3 JUSTICE KENNEDY: Well, my -- my
4 hypothetical: Two or three teams which aren't
5 particularly popular in the league are hurt by the
6 rule change. And --
7 MR. NAGER: That --
8 JUSTICE KENNEDY: And notice, there's --
9 that the owners sit around the room, they are liable
10 for a conspiracy. I mean, this is serious stuff.
11 Triple damages.
12 I don't -- and my question, really, was the
13 same as Justice Ginsburg's. Can you give us a zone
14 where we are sure a rule of reason inquiry will be --
15 would be inappropriate? We can take care of it on
16 summary judgment. Because if you don't have some sort
17 of section 1 carve-out for joint action, then -- then
18 everything is under the rule of reason.
19 MR. NAGER: Well, Justice Kennedy, let me
20 answer your question in two parts. First of all, to
21 the extent that the Court is looking for a zone, the
22 concerted conduct doctrine is the wrong place to do
23 it, because remember, if something is deemed not to be
24 concerted conduct, it is a per -- then it's per se,
25 not subject to section 1 and per se legal. And I

1 think for the Court's jurisprudence over the last
2 30 years, the Court has been trying to get out of per
3 se rules and have a more focused inquiry into what the
4 anticompetitive effects and pro-competitive effects of
5 a particular restraint are. The concerted conduct
6 doctrine would be a very blunt tool to use for that
7 purpose.
8 Now, that is not to say -- and I appreciate
9 your question -- in the NCAA case itself, where
10 conditions of competition and the like were raised,
11 Justice Stevens's opinion for the Court says that in
12 contrast to the TV restraint, these other types of
13 rules and regulations of the sports league are
14 presumptively competitive, pro-competitive,
15 presumptively favorable to consumers, because they are
16 integral and bound up with the creation of the
17 football venture itself.
18 JUSTICE ALITO: Well, let me give you
19 another example that you mention in your brief. The
20 NFL teams agree among themselves regarding scheduling:
21 They’ll play 16 games a year and they will have a
22 playoff schedule and they won't play any other games.
23 Now, would that be a clear case under the rule of
24 reason? You mention and some of your amici mention
25 that, for example, the English football leagues

1 operate very differently.

2 MR. NAGER: Justice Alito, if I -- I may not

3 have gotten all of your question, but let me answer it

4 in two parts. The antitrust laws do not require joint

5 ventures to maximize output. They don't require joint

6 ventures to maximize competition. They simply

7 prohibit people entering into contracts from

8 unreasonably restraining trade.

9 So a mere agreement among the team owners

10 that they would have a 14-game schedule rather than a

11 16-game schedule is not a prima facie showing of an

12 anticompetitive impact, because all it's showing us is

13 what the joint venturers have done with their own

14 output. They have -- you haven't alleged a

15 market-wide reduction in output. Now, if by your

16 question you were saying, in addition --

17 JUSTICE ALITO: Well, what if one of the

18 team wants -- one of the teams wants to play

19 additional games --

20 MR. NAGER: Well --

21 JUSTICE ALITO: -- against a rival team

22 where they will get more money?

23 MR. NAGER: What I -- what I was going to

24 jump right to is: If in addition to changing the

25 league schedule, the team owners in concert agreed to

1 prohibit the teams of the National Football League
2 from -- from playing any other games -- doing an
3 exhibition game in Japan, the Redskins and the Giants
4 playing another game -- that might show a market-wide
5 reduction in output. And the Court's decision in NCAA
6 says very specifically that the most important
7 condition of ensuring the competitiveness of joint
8 ventures is ensuring the freedom of the individual
9 venturers to produce output, increase output.
10 Now, that doesn't mean that a league rule of
11 that type would be unlawful. All I'm trying to
12 suggest is if, in addition to changing the schedule of
13 games for the league, they also imposed a restriction
14 on the individual venturers from producing additional
15 games on their own, we might have something that
16 looked more like a plausible rule of restraint --
17 JUSTICE SOTOMAYOR: They couldn't -- they
18 couldn't stop that team from joining another league?
19 Let's assume -- and I -- you know, I don't know enough
20 about football, but let's assume there are two leagues
21 playing. One of them plays on Saturday and the other
22 plays on Sunday. You’re suggesting that the venture
23 couldn't stop their members from joining that other
24 league? What's the purpose of being in a venture if
25 -- if you are free to reject it and go to somewhere

1 else?

2 MR. NAGER: What I'm saying is, first of

3 all, it would plainly be concerted activity on the

4 part of the team owners because they would have

5 entered into a horizontal restraint on the activity of

6 the venturers. Whether or not that horizontal

7 restraint violated the antitrust laws, one would have

8 to go through the following analysis, Justice

9 Sotomayor: First, we would ask whether or not that

10 restriction is an ancillary -- an ancillary restraint.

11 And an ancillary restraint, starting with

12 Judge Taft, later Chief Justice Taft's, opinion in the

13 Addison Pipe case, is: Is that restraint reasonably

14 necessary to achieve the efficiency-enhancing purposes

15 of the joint venture and is it no broader than

16 necessary?

17 CHIEF JUSTICE ROBERTS: It seems --

18 MR. NAGER: And if it is, then we would

19 analyze that restraint by reference not only to its

20 own pro-competitive benefits and anticompetitive

21 effects; we would analyze it by reference to the

22 benefits of the joint venture as a whole.

23 CHIEF JUSTICE ROBERTS: Counsel, it seems to

24 me -- your last few answers seem to me to beg the

25 question. You start out by saying, well, obviously

1 it's a horizontal agreement among the teams, and then
2 you explain how you are going to analyze it.
3 I thought that was the very question before
4 us: Whether these sorts of rules and regulations are
5 horizontal agreements between the teams or whether
6 they are part of a particular -- a single entity's
7 articulation of rules.
8 MR. NAGER: Well, Mr. Chief Justice, you are
9 exactly right, and the real --
10 CHIEF JUSTICE ROBERTS: That you have been
11 begging the question? Is that -- that part?
12 (Laughter.)
13 MR. NAGER: Well, let me try to address
14 Justice Sotomayor's subsequent question in the context
15 of the way you are posing the question,
16 Mr. Chief Justice.
17 The reason it's a horizontal restraint is
18 because these -- under the Court's doctrine,
19 consistent teachings, whether it be Sealy, BMI,
20 Copperweld, these teams are separately owned. They're
21 separate decision-makers joining together, and they're
22 making a decision about how they are going to jointly
23 produce something or not produce something. And
24 that's what makes it concerted activity under this
25 Court's consistent teachings. The distinction between

1 unilateral activity under section 1 and concerted
2 activity under section 1 has consistently been the
3 distinction between ownership integration of assets --
4 JUSTICE STEVENS: Can I --
5 MR. NAGER: -- and contract integration of
6 assets.
7 JUSTICE STEVENS: Can I interrupt with this
8 question? Is it not part of your burden not only to
9 argue there are multiple actors, but also that their
10 agreement has an adverse effect on competition?
11 MR. NAGER: It -- absolutely, as the
12 plaintiff in the case, Justice Stevens, that we do.
13 That is not the ground of decision of the court below.
14 JUSTICE STEVENS: I understand it isn't, but
15 it is part of your burden to say that this is not a
16 pro-competitive agreement.
17 MR. NAGER: Absolutely. And I'm not --
18 JUSTICE SCALIA: But not -- not here.
19 MR. NAGER: In the -- I'm sorry, Justice --
20 JUSTICE SCALIA: Not here.
21 MR. NAGER: I -- I don't have to argue -- I
22 mean, I don't think I have to argue in this Court. I
23 just have to answer your questions, but --
24 JUSTICE STEVENS: Well, you at least have to
25 relate it.

1 JUSTICE SCALIA: If -- if we find for you
2 and it goes back, then you would -- you would bear
3 that burden.
4 MR. NAGER: That's correct. And, in fact,
5 in this case, Justice Stevens, I would point out that
6 the NFL initially moved to dismiss the -- the rule of
7 reason count on the ground that it didn't state a
8 cognizable, plausible rule of reason claim, and the
9 district court judge denied that motion.
10 He found that the complaint alleged a market
11 in which he could not say, as a matter of law, that
12 the NFL defendants did not have market power, and he
13 recognized that the -- that the teams had agreed
14 together to prohibit competition in an aspect of their
15 licensing activity and in an aspect of their
16 merchandising activity.
17 JUSTICE SCALIA: How does it work?
18 JUSTICE STEVENS: But what if he -- what if
19 he further concluded that the agreement had the
20 overall effect of stimulating additional -- it was
21 pro-competitive in that it would equalize the economic
22 strength of the teams and, therefore, made them all
23 better competitors on the playing field? Would that
24 have been a defense?
25 MR. NAGER: I'm sorry, Justice Stevens, I'm

1 not quite sure. I thought you were saying if in the
2 response to a motion to dismiss --
3 JUSTICE STEVENS: Right.
4 MR. NAGER: -- he had -- had held --
5 JUSTICE STEVENS: He said: Sure, there's an
6 agreement here, but the burden is on the plaintiff to
7 show that the agreement has an adverse effect on
8 competition. And that the -- as I understand the
9 facts, you've -- there's revenue sharing here, isn't
10 there? That they -- they all share in the product of
11 the sales of the joint product?
12 MR. NAGER: Well, let me explain what
13 they've done, and I will then explain why it does have
14 a -- identifiable anticompetitive effects, which
15 certainly satisfy the pleading standards for a rule of
16 reason claim.
17 What the teams did here was they got
18 together and they agreed that they would not
19 themselves individually license their trademarks or
20 logos. They agreed that they -- under -- the current
21 market system included the issuance of multiple
22 blanket licenses. They would eliminate all but one of
23 those blanket licenses from the market, and they would
24 give it in the exclusive control of Reebok, and they
25 would limit the circumstances in which they competed

1 against each other and with Reebok, and said --
2 JUSTICE BREYER: All right. So I thought --
3 I thought -- as I read your complaint, almost every
4 word of it had to do with pro -- per se violations.
5 So I forget those here, right?
6 MR. NAGER: The per se violation was
7 dismissed and --
8 JUSTICE BREYER: You forget -- just yes or
9 no. I forget it. Okay.
10 MR. NAGER: -- is not before the Court.
11 JUSTICE BREYER: Now, I've suddenly heard
12 you talk -- the only thing left I could see was where
13 you say, by their agreement to grant an exclusive
14 license to Reebok, they unreasonably restrained trade
15 in the markets. That's what I'm supposed to focus on?
16 MR. NAGER: Well, no. What I -- what I
17 would say, Justice --
18 JUSTICE BREYER: What other paragraph do you
19 want me to focus on?
20 MR. NAGER: Well, what I would point you to
21 is the statement -- I mean, if --
22 JUSTICE BREYER: No, I'm interested in the
23 complaint at the moment.
24 MR. NAGER: What the complaint talks about
25 is the granting of an exclusive license here.

1 JUSTICE BREYER: Yes. Okay. So I'm looking
2 at the complaint.
3 MR. NAGER: -- with the exclusivity as to --
4 JUSTICE BREYER: Fine. I get the point.
5 I'm asking a question. And I just heard you say that
6 you want, for example, were it -- you want the
7 Patriots to sell T-shirts in competition with the
8 Saints, or whoever. The Red Sox. All right. You see
9 the point? The Red Sox -- I know baseball better.
10 (Laughter.)
11 JUSTICE BREYER: You want the Red Sox to
12 compete in selling T-shirts with the Yankees; is that
13 right?
14 MR. NAGER: The ability to compete. Yes.
15 JUSTICE BREYER: Yes. Okay. I don't know a
16 Red Sox fan who would take a Yankees sweatshirt if you
17 gave it away.
18 (Laughter.)
19 JUSTICE BREYER: I mean, I don't know where
20 you’re going to get your expert from that is going to
21 say there is competition --
22 MR. NAGER: Well --
23 JUSTICE BREYRE: -- between those two
24 products. I think they would rather -- they would
25 rather wear a baseball, a football, a hockey shirt.

1 MR. NAGER: I understand the -- the point.
2 JUSTICE BREYER: But you’re going to go back
3 and prove that actually there is competition between
4 those --
5 MR. NAGER: Well, I understand the point you
6 are making. I would also make the point that --
7 JUSTICE BREYER: Is that what this case is
8 about?
9 MR. NAGER: In part. But you've got to
10 recognize what the competition is for. The
11 competition is for fans. And the fact of the matter
12 is you're right that someone who has lived in New York
13 City for a long time is unlikely to be a Red Sox fan
14 and easily be persuaded to be a Red Sox fan, but the
15 person who is 3 years old can easily be persuaded.
16 JUSTICE BREYER: They have very small
17 allowances, the 3-year-olds.
18 (Laughter.)
19 JUSTICE BREYER: All right. You think -- I
20 guess you have a right to that. I'm not -- you have a
21 right, but that's what you’re going to have to try --
22 MR. NAGER: Well --
23 JUSTICE BREYRE: -- to prove: That they're
24 --
25 MR. NAGER: But the other point I would make

1 is --

2 JUSTICE BREYER: Yes.

3 Mr. NAGER: -- that's just showing that each

4 team has substantial market power.

5 JUSTICE BREYER: Yes.

6 Mr. NAGER: And again, they --

7 JUSTICE BREYER: But I'm trying to look --

8 what I'm trying to get in my mind is what specific

9 restraint you are focusing on.

10 You listed three or four, and one of them is

11 you want, in effect -- I'm joking about it, but it's

12 true -- you are arguing that the Yankees should

13 compete with the Red Sox in selling shirts.

14 Another thing you are complaining about,

15 which is the one I understand less, is that these

16 teams got together and they agreed that they would

17 just have one person sell all this stuff together.

18 And what you think is that they individually should

19 have decided whether to choose that one person, or

20 maybe to choose two people, or three.

21 MR. NAGER: We --

22 JUSTICE BREYER: Is that right?

23 MR. NAGER: Not quite.

24 JUSTICE BREYER: No.

25 JUSTICE SCALIA: Mr. Nager, do I have to

1 figure this out here? Is --
2 MR. NAGER: No.
3 JUSTICE SCALIA: Is this issue before us
4 here? Or is it just the issue of whether the lower
5 court was wrong to dismiss your suit on the basis that
6 this is a unitary operation?
7 MR. NAGER: You're --
8 JUSTICE SCALIA: I thought that was the only
9 issue.
10 MR. NAGER: That is the only issue,
11 Justice Scalia.
12 JUSTICE SCALIA: Well, why am I worrying
13 about this other stuff?
14 MR. NAGER: Because counsel has an
15 obligation to respond to questions.
16 (Laughter.)
17 JUSTICE BREYER: I find --
18 MR. NAGER: I appreciate, Your Honor --
19 JUSTICE BREYER: I find it easier --
20 Mr. NAGER: You'd be a good blocker.
21 JUSTICE BREYER: -- to think about the case
22 if I know what's going on. And I'm not certain this
23 is irrelevant, but given Justice Scalia's persuasive
24 remark, I will withdraw my question.
25 (Laughter.)

1 MR. NAGER: Thank you, Justice Breyer.
2 JUSTICE KENNEDY: Well, but it seems to me
3 what we are doing is exploring the consequences of
4 completely discarding the unitary theory.
5 MR. NAGER: Well, we're not --
6 JUSTICE KENNEDY: And so -- and the earlier
7 questions, it seemed to me, were helpful. The
8 Saturday/Sunday scheduling issue, it seems to me,
9 pretty clearly on its face does limit competition.
10 You -- you have one day instead of two days.
11 Then Justice Stevens said: Suppose it makes
12 them better players because they are rested and so
13 they can perform better. I take it that was the
14 purpose of the question. And I -- I still don't get
15 any answers. I don't know where we are with this.
16 MR. NAGER: The answer to --
17 JUSTICE KENNEDY: And -- and it's a
18 difficult area, but I'd like -- and -- but I'd like
19 some guidance.
20 MR. NAGER: Well, the guidance I would give
21 you, Justice Kennedy, is that as Justice Scalia says,
22 the only question before the Court is whether or not
23 these agreements constitute concerted activity. They
24 plainly do, because they are agreements between
25 separately owned and controlled competing businesses.

1 JUSTICE GINSBURG: Mr. Nager, I think you
2 answered my question originally: Yes, everything.
3 Because they are separate entities, they agree on
4 everything. There’s agreement in every case. So
5 there’s nothing that you would take outside, and you
6 put everything under the rule of reason analysis.
7 MR. NAGER: That -- that is correct. But
8 that doesn't mean that the rule of reason is some
9 unstructured, indeterminate --
10 JUSTICE GINSBURG: One -- one concern in the
11 litigation is, you know, if it doesn't come under the
12 Sherman Act at all, they go home after the case is
13 dismissed on the -- on the pleadings.
14 But once you say no, it's got to be a rule
15 of reason analysis, then you have discovery, which can
16 be costly. And I thought that that was a feature of
17 this case, that the -- that the plaintiff wanted more
18 discovery, and the court said: You've had enough.
19 MR. NAGER: Well, no. The -- the judge only
20 allowed discovery on the single entity issue. He did
21 not allow discovery on -- on the rule of reason
22 question. So there's been -- not been -- discovery on
23 the substance of the case has not been conducted.
24 So in that regard, the question of how the
25 case would be managed going forward is something that

1 would be in the hands of the district court on remand
2 from this Court and the court of appeals, after this
3 erroneous conclusion that the agreements don't
4 constitute concerted conduct is put to the side.
5 CHIEF JUSTICE ROBERTS: Counsel, could you
6 articulate for me as succinctly as possible the extent
7 to which your position departs from the position of
8 the Solicitor General?
9 MR. NAGER: The Solicitor General's position
10 is correct insofar as it criticizes the Seventh
11 Circuit's reasoning.
12 The test that the Solicitor General proposes
13 is conceptually and doctrinally unsound, and it will
14 create a lack of clarity where there presently exists
15 clarity in the cases, and it will produce inefficiency
16 and waste in the conduct of litigation that does not
17 presently exist. And I could give --
18 CHIEF JUSTICE ROBERTS: Well, I would have
19 thought it's just the transfer of the inefficiency and
20 lack of clarity from the -- the first question to the
21 rule of reason. I mean, I'm not quite sure it -- you
22 don't have the same problem. It's just a question of
23 where you want to rest the inefficiency and confusion.
24 MR. NAGER: Well, I understand your point,
25 Mr. Chief Justice: That to the extent that rule of

1 reason inquiries are not as refined as they need to
2 be, since the Solicitor General's concerted conduct
3 inquiry includes rule of reason inquiries -- indeed,
4 on its effective merger standard, it says it has to
5 survive a rule of reason analysis or somehow be
6 waived, or you would have to do it as part of the
7 concerted conduct inquiry, so that there is no doubt
8 to the extent that -- that the rule of reason is a
9 continuing project of this Court, we would be
10 transferring some of that project into the concerted
11 conduct inquiry.
12 With all respect, Mr. Chief Justice, I don't
13 think that would be a healthy development in the law.
14 The courts actually understand the concerted conduct
15 doctrine as it presently exists.
16 CHIEF JUSTICE ROBERTS: Well, I -- I thought
17 the purpose of their submission was to respond to some
18 of the questions we've seen, like scheduling, like
19 what the rules are going to be about, about the game.
20 There are some things that it just seems odd to
21 subject to a rule of reason analysis. And you
22 yourself have said: Well, that’s going to be an easy
23 case under the rule of reason. Why doesn't it make
24 sense to sort of carve those out at the outset, rather
25 than at the end of the case?

1 MR. NAGER: Well, I think the answer is, you
2 should -- you should use English language and doctrine
3 to address the issue that you are actually trying to
4 address, rather than call it something else.
5 Right now, we have an antitrust doctrine
6 that says you've got to have concerted conduct and you
7 have to have an unreasonable restraint of trade. We
8 have courts that understand how to apply this Court's
9 cases on concerted conduct. This Court, for
10 understandable reasons, is sensitive to the fact that
11 the rule of reason is not quite as well understood and
12 is an evolutionary doctrine, perfectly well understood
13 by me.
14 There are certain issues this Court has
15 said come up in a rule of reason analysis and, to
16 quote the Court from Cal. Dental, "can be dealt with
17 in the twinkling of an eye"; that is, some claims, as
18 the NCAA Court said, are not going to be serious rule
19 of reason claims and can be dismissed on the
20 pleadings. The Court said that in Twombly as well.
21 JUSTICE STEVENS: And as I understand your
22 position, that could be the result in this case. We
23 don't know whether the district court was right or
24 wrong in what he did on the -- on the rule of reason
25 issue.

1 MR. NAGER: In terms of what this Court --
2 obviously, on my client's behalf, I have to vigorously
3 state to the Court we think we have a bona fide,
4 serious rule of reason claim -- but, yes, Justice
5 Stevens --
6 JUSTICE STEVENS: And one thing I wondered
7 about the record: There is discussion in the briefs
8 about the fact that the teams share the revenues from
9 these -- these sales. Is that -- how did that get in
10 the record, the revenue sharing aspect of their -- of
11 the different teams' participation?
12 MR. NAGER: Well, I -- I didn't handle the
13 case below, so I don't quite know how it got into the
14 record. It is my -- certainly my understanding that
15 there is an affidavit in the record that says that the
16 revenues that the NFLP entity receives are distributed
17 to the teams in equal shares, so that that --
18 JUSTICE STEVENS: Would -- wouldn't that --
19 that affidavit support the conclusion that this is
20 basically a pro-competitive agreement because it tends
21 to make competition stronger on the playing field,
22 and, therefore, that's a sufficient defense under the
23 rule of reason, and that's the end of the ball game?
24 MR. NAGER: I -- I think not. You have to
25 remember that that agreement to not compete and have

1 only one entity --

2 JUSTICE STEVENS: Yes, but you are not just

3 competing --

4 MR. NAGER: That's the very thing the case

5 challenges.

6 JUSTICE STEVENS: But with regard to sales

7 of the paraphernalia and so forth that you have here,

8 you're not just competing among the members of the

9 league; you're competing in a market that includes all

10 sports paraphernalia.

11 MR. NAGER: No, our market was alleged and

12 held not to be legally invalid by the district court,

13 to be NFL-logoed hats and apparel.

14 JUSTICE STEVENS: That assumes there is no

15 competition between the sales of those logos and the

16 sales of other sports logos.

17 MR. NAGER: Well, that -- that's correct.

18 And the district court judge held that that was a --

19 based upon this Court's decision in NCAA and the

20 International Boxing case, was a plausible market to

21 allege in which the NFL teams had market power. And

22 so it would be a question for the district court

23 managing the case going forward to determine whether

24 or not that was a factually supportable market.

25 JUSTICE SOTOMAYOR: Counsel, you -- the

1 Solicitor General is asking us to remand under his new
2 test to find out whether you are challenging the joint
3 venture or challenging simply the licensing to one
4 individual or one entity. What are you doing? Do you
5 have an answer to that?
6 MR. NAGER: Well, the -- the answer is --
7 JUSTICE SOTOMAYOR: Meaning -- I don't --
8 MR. NAGER: I understood -- that the
9 American Needle said in the court below that what it
10 was challenging was the grant of an exclusive license
11 to NFLP that prohibited the individual team
12 competition and limited all competition in the market
13 in blanket licenses.
14 When the case came to this Court, on page 2
15 of the orange brief, the NFL said they understood
16 exactly what our case was -- this is on page 2, the
17 second sentence: "American Needle alleged that the
18 decades-old agreement among the member clubs to
19 collectively market such intellectual property was
20 unlawful under Sections 1 and 2 of the Sherman Act, at
21 least after the 2001 decision to collectively license
22 the marks to a single headwear manufacturer."
23 The NFL stood -- understood exactly what we
24 were arguing, and they have understood it throughout
25 this case, as did the lower courts. I'm not quite

1 sure why the Solicitor General doesn't understand it.
2 JUSTICE GINSBURG: Is your point that your
3 client wasn't hurt until they dealt exclusively with
4 one manufacturer?
5 MR. NAGER: That's correct,
6 Justice Ginsburg.
7 JUSTICE GINSBURG: So you have nothing --
8 you had no damages before?
9 MR. NAGER: Before.
10 CHIEF JUSTICE ROBERTS: Thank you,
11 Mr. Nager.
12 Mr. Stewart.
13 ORAL ARGUMENT OF MALCOLM L. STEWART
14 ON BEHALF OF THE UNITED STATES
15 AS AMICUS CURIAE, SUPPORTING NEITHER PARTY
16 MR. STEWART: Mr. Chief Justice, and may it
17 please the Court:
18 I think that by focusing on a rather mundane
19 aspect of the NFL commissioner's powers, this may help
20 to explain why the United States is not four-square in
21 support of either party's theory in this case. Among
22 the powers that is vested in the commissioner by the
23 NFL -- by the NFL constitution is the power to incur
24 expenses to carry on the ordinary business of the
25 league, and this includes renting office space, hiring

1 employees, and procuring supplies.

2 And if the commissioner, pursuant to that

3 delegation of authority, decides from which company

4 he's going to -- to acquire paper for the league's

5 offices or decides what the wage scale for secretaries

6 in the league offices should be, our view is that

7 that's the conduct of a single entity. It may be that

8 the commissioner's power to do those things is

9 ultimately derived from the consent of the individual

10 teams within the league, but once that consent has

11 been given, once that authority has been centralized,

12 then the commissioner's decision about a paper

13 supplier or wages for employees --

14 JUSTICE BREYER: And then the question I

15 have -- I now understand this much better in light of

16 that. And -- but I don't -- and -- and I see your

17 point. What I'm not certain about is: Is it better

18 to characterize it as a single entity, in which case

19 we get into the kind of confusion that I think exists

20 in this case? Or just say, look, it's a joint

21 venture?

22 If Panagra creates a joint venture, of

23 course they are going to buy things like office space

24 and employees, so it's reasonable by definition. We

25 don't even look into it. Those things that are close

1 enough -- take your criteria from 17, page 17, which
2 are excellent criteria in my mind, and you say these
3 are the criteria by which we decide whether those
4 ancillary parts of a joint venture that is itself
5 reasonable are also reasonable.
6 MR. STEWART: I guess we would say two
7 things: The first is, up to now there has been no
8 such thing in the law as concerted action that is per
9 se legal or per se reasonable.
10 JUSTICE BREYER: No, no. We wouldn't say
11 per se. We are saying that the justification here:
12 They are reasonable. Why are they reasonable?
13 Because there is a legitimate joint venture, and this
14 is an ancillary part of that legitimate joint venture.
15 People can attack it, but it's going to be
16 no easier to attack than if they tried to attack what
17 you call a single entity.
18 MR. STEWART: I guess my point is that if,
19 for instance, a disappointed bidder for the paper
20 supply conduct -- contract challenged this as a
21 section 1 violation and said the commissioner's
22 decision to go to Staples rather than Office Depot was
23 unreasonable --
24 JUSTICE BREYER: I see.
25 MR. STEWART: -- because Office Depot was

1 offering a better product at a lower price -- that
2 there are certainly decisions that the commissioner
3 could make with respect to procurement of supplies or
4 the setting of wage levels that would be unreasonable
5 in a business judgment sense, in that they wouldn't
6 effectively carry on the mission of the organization,
7 but they wouldn't be unreasonable in the -- the
8 section 1 sense.
9 And the other thing I would say is that line
10 of argument could have been made in Copperweld; that
11 is, the Court could have concluded that --
12 JUSTICE BREYER: Copperweld -- look, your
13 second criteria opens it up to attack in precisely the
14 same way that my use of rule of reason does, because
15 they are going to have to show it doesn't
16 significantly affect actual or potential competition.
17 Therefore, they file their claim; they say they win
18 under the second criteria. That's precisely the same
19 as a person filing his claim and saying it's
20 unreasonable.
21 We are only talking terminology, but what
22 worries me about this is the terminology, because I
23 think that the lower courts have taken Copperweld
24 terminology and transferred it to a place where it
25 does, I think, perhaps not belong.

1 MR. STEWART: Well -- well, in Dagher, for
2 instance, the Court was dealing with a situation
3 that's in some ways analogous to the one that you have
4 here; that is, a joint venture in which entities that
5 were economic competitors in some aspects of their
6 businesses joined forces with respect to other
7 aspects. And the Court in Dagher didn't squarely
8 resolve these questions, whether section 1 applied,
9 but it said that in pricing its products, Equilon, the
10 joint venture, was acting as a single firm, a single
11 entity.
12 The other point I would like to make
13 about my -- my paper and employee example is that, in
14 our view, the NFL commissioner, when carrying out
15 those functions on behalf of the league, would be
16 acting as a single entity, even though his power was
17 derived from the consent of the teams. But if the Jets
18 and the Giants agreed among themselves as to what
19 wages they would pay their secretaries or from whom
20 they would buy paper, that would be an entirely
21 different thing. The fact that those teams are for
22 some purposes part of a --
23 JUSTICE STEVENS: May I ask you this
24 question, Mr. Stewart? Would the antitrust issue
25 before us be any different if instead of giving an

1 exclusive contract to one purveyor of the product, the
2 commissioner had entered into a multitude of different
3 contracts, but specified a minimum price in every one
4 he specified?
5 MR. STEWART: I think the section -- the
6 question of whether section 1 applied would not be any
7 different; that is, the central section 1 that --
8 JUSTICE STEVENS: So the fact that this is
9 an exclusive agreement is kind of a red herring in
10 this case, isn't it?
11 MR. STEWART: It -- it may not be a red
12 herring with respect to the ultimate resolution of the
13 case; that is, if the court on -- the lower court, on
14 remand, if the case were remanded, applied rule of
15 reason analysis, the -- the precise nature of the
16 contract might bear on whether the restraint was
17 reasonable, but it wouldn't bear on the question of
18 whether concerted activity was involved; that is,
19 what --
20 CHIEF JUSTICE ROBERTS: I don't -- I'm
21 sorry. I didn't mean to interrupt your answer.
22 MR. STEWART: I guess my point was, once --
23 once the teams decided that they would -- rather than
24 each negotiating individually, either with a single
25 licensee or with multiple licensees, once they decided

1 they would negotiate as a collective and that any
2 potential licensee had to go to the collective rather
3 than to the individual teams, that's the central
4 section 1 issue. And if the -- the collective had
5 decided, we will give contracts to a multitude of
6 potential bidders, that would not have affected the
7 fact that concerted action was involved.
8 CHIEF JUSTICE ROBERTS: So under your --
9 following of your paper case, are you saying that if
10 the teams delegated to the commissioner the authority
11 to decide whether we are going to enter -- whether the
12 league is going to enter into one contract on logo
13 products or let each team decide, that would be all
14 right?
15 MR. STEWART: That would -- that initial
16 delegation of authority would be subject to a
17 section 1 challenge, because that would be concerted
18 action in the same way that the Court in Dagher
19 said --
20 CHIEF JUSTICE ROBERTS: Well, why isn't the
21 decision to order paper from one company rather than
22 another subject to section 1 challenge?
23 MR. STEWART: Because that -- that occurs
24 after the point at which the commissioner has been
25 vested with that authority.

1 If somehow a plaintiff wanted to say there
2 was an -- there was illicit concerted action when the
3 teams agreed to give the commissioner this general
4 power, that would be subject to section 1 review. It
5 seems -- because that would be concerted action. It
6 seems highly unlikely that such a challenge would
7 prevail. But if --
8 CHIEF JUSTICE ROBERTS: Why is that? I
9 mean, if I'm Office Depot and I'm selling paper to
10 the -- to the Giants -- or does this only apply to the
11 commissioner's office?
12 MR. STEWART: This only applies to carrying
13 out the ordinary business of the league. It -- it
14 would only apply to the commissioner's running of --
15 of the league office, not the running of the
16 individual teams. And as I say, our central point is
17 that --
18 JUSTICE SOTOMAYOR: Could -- using your
19 example, could you tell me what the different
20 questions would be under the single control theory
21 you're proposing and a rule of reason application in
22 its normal course? So, what are the questions you
23 would ask under your theory, and how do they differ
24 from what would happen under a rule of reason
25 analysis?

1 MR. STEWART: I guess under our theory, we
2 would first ask, as to an entity like this, which is
3 entities that compete in some respects with --
4 JUSTICE SOTOMAYOR: Let's -- let's not go
5 into this case. Let's -- let's stay with your single
6 commissioner.
7 MR. STEWART: I think we would ask first:
8 Is -- is the commissioner acting as a single entity
9 when he exercises delegated authority in making a
10 business judgment about which supplier to buy paper or
11 what the wages should be?
12 If the answer is yes, then the section 1
13 inquiry is over, then the case is no different from a
14 challenge to the --
15 JUSTICE SOTOMAYOR: Well, how does that stop
16 any group of competitors from coming in and saying:
17 Gee, I want to sell my gas; I'm going to let this
18 single commissioner decide how much my gas will sell
19 for, and if he chooses to sell it at the same price to
20 everybody, both gas products, that's okay. How do you
21 get to that?
22 MR. STEWART: Well, I think if a single
23 business is deciding whether to buy paper from one
24 supplier or from several, that wouldn't be subject to
25 section 1 review, because the decision of the single

1 business might affect the welfare of the competitors,
2 but it wouldn't be concerted action.
3 And our point is that when -- I think the
4 way in which our position differs from that of the two
5 parties is that on the one hand, I think it is the
6 logical implication of Petitioner's position that
7 because the commissioner's authority to buy supplies
8 for the league or hire referees for the league is
9 ultimately derived from the consent of the individual
10 teams who are independently owned, the logic of
11 Petitioner's position suggests that that would be
12 subject to section 1 scrutiny.
13 On the other hand, the logic of the NFL's
14 position suggests that because the commissioner can
15 set price, can decide from whom to buy paper on behalf
16 of the league, the Jets and the Giants could reach a
17 similar agreement, and the -- or the Jets and the
18 Giants could agree on the prices they will pay
19 secretaries --
20 CHIEF JUSTICE ROBERTS: No, no, no, no,
21 because they are not part of the broader concerted
22 entity. There's no separate -- you're saying, well,
23 just because all 32 teams can act as -- as an
24 individual entity, any group of those teams can act as
25 an individual entity.

1 MR. STEWART: I think that follows logically
2 from the position that this is one entity. Because in
3 Copperweld, for instance, the Court noted that
4 coordination between different divisions of a single
5 company would not be subject to section 1 scrutiny,
6 and that implies not just that all the divisions could
7 get together, but that any two could confer among
8 themselves without raising section 1 concerns.
9 CHIEF JUSTICE ROBERTS: Thank you, counsel.
10 Mr. Levy.
11 ORAL ARGUMENT OF GREGG H. LEVY
12 ON BEHALF OF THE RESPONDENTS
13 MR. LEVY: Good morning, Mr. Chief Justice,
14 and may it please the Court:
15 The formation of a professional sports
16 league, like the formation of any joint venture, may
17 be subject to section 1 scrutiny. Were it not for an
18 act of Congress, the merger of the National Football
19 League and the American Football League in 1970 would
20 be one such example. But there is no challenge to
21 venture formation here.
22 There is no dispute that the NFL, including
23 its licensing arm, NFL Properties, is a lawful
24 venture. If venture formation is not an issue, then
25 decisions by the venture about the venture's product

1 are unilateral venture decisions, unilateral venture
2 actions. They are not concerted actions of the -- of
3 the venture's members.
4 JUSTICE KENNEDY: Well, do we have to ask
5 what was the intent at the beginning, as kind of an
6 originalism thing? Everybody sits around and says:
7 Let's have a football league. And 20 years later,
8 they say: You know, the sale of hats and shirts is a
9 pretty good thing; let's get into that business, too.
10 That would -- that would -- that's case 1.
11 Case 2 is, when they formed the league
12 initially, 30 years ago, they said: And be sure we
13 will sell hats, and -- I don't understand the base
14 point from which I find that this is a single entity.
15 MR. LEVY: Your Honor, we know here that at
16 least as of 1963, when NFL Properties was formed, that
17 there was a single entity formed, a single entity to
18 produce and promote NFL football.
19 Now, I take issue with your suggestion --
20 your implication that there was a decision made here:
21 Let's set up a separate line of business; we are going
22 to sell hats also. That's not what happened, and the
23 record on that is unambiguously clear here. It's
24 undisputed. Clubs --
25 JUSTICE KENNEDY: Well, do you take issue

1 with my question that this is a relevant inquiry? Is
2 it part of the original agreement or isn't it, and why
3 is it that the original agreement is somehow
4 sacrosanct? I don't understand.
5 MR. LEVY: I'm not suggesting that the
6 original agreement is sacrosanct. That's why I
7 suggested that by 1963 -- or the mid-1960s, when NFL
8 Properties was formed, there was venture formation at
9 that point.
10 At that point, what was the question? The
11 question was: How should the league, how should the
12 venture members, best promote the venture product?
13 And the decision was made to use the licenses of their
14 intellectual property as a promotional tool.
15 On that issue, the discovery and the record
16 below was undisputed. There is documentary evidence
17 from the NFL Properties' articles of incorporation.
18 There's testimony from an NFL executive, Mr. Herzog.
19 And the best proof, if there were any question about
20 that, is reflected in the -- the organic documents of
21 NFL Properties, which at the outset said that, if
22 there were any revenues from the licensing activities,
23 they would be donated to charitable and educational
24 causes.
25 Now, you know, Dagher confirmed the general

1 principle, but if the venture is lawfully formed, the
2 venture's decisions about how best to produce and
3 promote its product are venture decisions, not the
4 decisions of the venture members.
5 But Copperweld provides the framework that
6 decides the issue here, and neither Mr. Stewart nor
7 Mr. Nager mention Copperweld, except in passing.
8 Copperweld is the case by which this Court turned the
9 page, if you will, on the formalism of prior cases,
10 including Sealy, which Mr. Nager --
11 JUSTICE GINSBURG: May -- may I ask you to
12 go back just one step? Because you seem to treat this
13 as though the NFLP was formed in 1963 and that was the
14 end of it, but another description is: Well, it was
15 formed, but then there were some teams that were not
16 in it until later, and there were some other parts,
17 that it has expanded. What it does has expanded since
18 1963.
19 So it wasn't one point in time where there
20 was formation, and then if you didn't -- if you're not
21 challenging that, everything else is okay.
22 MR. LEVY: Well, I -- I don't disagree with
23 that, Your Honor. I think that in 1970, the league
24 expanded. There was a merger. That merger of the
25 National Football League and the American Football

1 League would have been subject to section 1 challenge
2 because it involved venture formation, but an act of
3 Congress said that that wasn't necessary.
4 After 1970, there have been six teams, I
5 believe, that have been added, essentially created, if
6 you will, like Adam's rib. They have been created
7 from the other NFL clubs, but it's essentially the
8 same venture. The venture has expanded its production
9 capability by adding new teams. It's expanded its
10 output by adding new teams.
11 And the role of licensing of intellectual
12 property throughout that process has remained the
13 same. The role has been to promote the venture's
14 product. It's not --
15 JUSTICE SOTOMAYOR: Excuse me. Did the
16 teams -- did the NFL Properties or some centralized
17 entity always exploit the trademarks of all the
18 franchises, or was there a long period of time in
19 which they each individually franchised their
20 products?
21 MR. LEVY: The record, Your Honor, says --
22 reflects that there was very little exploitation of
23 intellectual property of the franchises prior to the
24 creation of NFL Properties.
25 JUSTICE SOTOMAYOR: But there was some, and

1 that was done by the individual teams?

2 MR. LEVY: It was done, and it was done -- I

3 mean, that's sort of an historic artifact. It was

4 done, I believe collectively, through Roy Rogers

5 Enterprises. But the -- but the teams continued to

6 own their intellectual property. That's right.

7 JUSTICE BREYER: The problem, as I see, for

8 you in this case is that the basic conclusion is in

9 the court of appeals, where it says: "Viewed in this

10 light, the NFL teams are best described as a single

11 source of economic power when promoting NFL football

12 through licensing." Well, how do we know that?

13 MR. LEVY: Well --

14 JUSTICE BREYER: Their allegation is that

15 that isn't true. And I have -- and Copperweld just

16 seems to me to be very confusing on this, since --

17 since my hornbook knowledge of it was we have

18 Copperweld to deal with the case that we don't make

19 booths in department stores compete in price against

20 each other. All right?

21 Normally, however, we say independent

22 vendors can't get together and say they fix prices.

23 That's per se. And joint ventures are in the middle,

24 so we apply a rule of reason.

25 Now, very simple. I thought that has been

1 the law since Panagra. I don't know what, in fact,
2 Copperweld has to do with it. And they are saying
3 that this basic joint venture for promoting is not a
4 reasonable agreement. So why shouldn't they have
5 their shot? You might well win, but they want to make
6 that claim.
7 MR. LEVY: The reason we know that this is
8 not your typical joint venture is because Copperweld
9 established a standard that said that what section 1
10 is intended to regulate is not matters of form, not
11 general market conditions, but rather the sudden
12 joining together of independent sources of economic
13 power. That's --
14 JUSTICE BREYER: Fine, but that's the
15 conclusion here. That's not the -- that's the
16 conclusion. The question is: Should they be
17 permitted to join their centers of economic power into
18 one when they promote and sell their T-shirts,
19 sweatshirts, et cetera?
20 MR. LEVY: But --
21 JUSTICE BREYER: Now, you can't answer that
22 question by announcing the conclusion.
23 MR. LEVY: But, Your Honor, we know that
24 they are not independent sources of economic power,
25 because none of them can produce the product of the

1 venture on their own. No NFL club can produce a
2 single unit of production, a single game or --
3 JUSTICE BREYER: Well, can't it ask someone
4 to do that?
5 Oh. Oh, you are saying the game.
6 MR. LEVY: That's -- that’s right.
7 JUSTICE BREYER: What does a game to do with
8 this? I thought we were talking about T-shirts and
9 helmets, and I -- I thought it's the simplest thing in
10 the world. You pick up the phone and say: Hello,
11 Shanghai, do you have a helmet?
12 (Laughter.)
13 MR. LEVY: Your Honor, if -- if this were a
14 venture designed to go out and license or manufacture
15 or distribute caps, you’d be right. But this is
16 different, and we -- the undisputed evidence in the
17 record below demonstrates it's different.
18 It's different because the purpose of the
19 licensing here is to promote the product. It's to
20 promote the game. And the NFL member clubs are not
21 independent sources of economic power in generating
22 that game.
23 JUSTICE BREYER: This is a summary judgment
24 motion?
25 MR. LEVY: Yes. It was a summary judgment.

1 JUSTICE SCALIA: Well, the stated purpose is
2 to promote the game. The purpose is to make money. I
3 don't think that they care whether the sale of the
4 helmet or the T-shirt promotes the game. They -- they
5 sell it to make money from the sale.
6 MR. LEVY: I --
7 JUSTICE SCALIA: Now, it promotes the game
8 if the money from the sale goes to the whole group, I
9 suppose. But -- but don't tell me that there is not
10 -- absent this agreement, there would not be an
11 independent, individual incentive for each of the
12 teams to sell as many of its own -- of its own shirts
13 and helmets as possible.
14 MR. LEVY: Your Honor, I’d agree with you
15 100 percent that the purpose of the licensing is to
16 make money, but not necessarily to make money through
17 the royalties. The purpose of the licensing is to
18 improve and promote the attractiveness of the game
19 product, to get more people interested in watching the
20 games on television, to get more people interested in
21 buying tickets to the game.
22 JUSTICE SCALIA: Well, I suppose that --
23 that could -- that issue could be tried.
24 MR. LEVY: And --
25 JUSTICE SCALIA: But I don't -- I don't

1 think so. And I suppose that's a triable issue, as to
2 whether the purpose of -- of selling these things is
3 to promote the whole NFL or to promote the particular
4 team.
5 MR. LEVY: And --
6 JUSTICE SCALIS: It wants its own adherents
7 and wants to sell its own product.
8 MR. LEVY: In the abstract, that's a triable
9 issue, Your Honor, but not here. Here, the record was
10 undisputed. There's evidence in the record on that
11 point. The record -- there was evidentiary -- there
12 was documentary evidence. There's evidence that goes
13 back to the organic documents of NFL Properties. And
14 as I mentioned before, in the early days, the -- the
15 net revenues, if any, the net royalties of the
16 licensing operations went to charity. So there's no
17 -- there's no question here. Discovery was allowed on
18 this issue, and the record is undisputed.
19 So we have a classic case, a perfect, clean
20 opportunity for this Court to apply the principles of
21 Copperweld and the principles of Dagher to an area of
22 the law that has been troubled for many years. Since
23 1984, the courts have wrestled with the question of
24 how to deal with professional sports leagues and
25 section 1 claims against professional sports leagues.

1 And the cases the courts have been -- have
2 -- and with the exception of this case and the Bulls
3 II case, the courts have been guided principally by
4 pre-Copperweld precedent that rests on an era of
5 formalism, an era when even an agreement between a
6 parent and its subsidiary --
7 JUSTICE SOTOMAYOR: What decision could the
8 sports teams make that would be subject to the
9 antitrust scrutiny under your definition of the
10 permissible range of the joint venture activities? It
11 seems to me that if the venture wanted to make sure
12 all the teams hired secretaries at the same
13 $1,000-a-year salary, that under your theory, that's
14 okay, because it's a joint venture.
15 MR. LEVY: Your Honor, my view is that the
16 -- the NFL clubs are not separate sources of
17 independent power. As a result, they are a unit.
18 They are a single entity, and it's a --
19 JUSTICE SOTOMAYOR: So the answer to my
20 question is there is -- you are seeking through this
21 ruling what you haven't gotten from Congress: an
22 absolute bar to an antitrust claim.
23 MR. LEVY: No, Your Honor, that's not right.
24 JUSTICE SOTOMAYOR: So -- so answer my
25 question. What decision --

1 MR. LEVY: The direct answer to your
2 question is this: With regard to section 1 claims --
3 let's put aside section 2 claims. Let's put aside
4 claims between the NFL and other leagues. Let's put
5 aside claims that relate to nonventure conduct, like
6 the example of creating a trucking company that's
7 reflected in our brief.
8 The -- I can understand an argument, and we
9 suggested as much in our brief below, that if the
10 league engages in a practice of representing itself,
11 going to the market -- the clubs go to market as
12 independent entities. I can see an argument that
13 would basically say, based on estoppel principles,
14 that they should not be able to agree on -- on uniform
15 prices or uniform wages for secretaries, for example.
16 We did -- we made the point in our brief in
17 the context of -- of coaches. But even -- even in the
18 context of coaches, put aside for a moment, section 2
19 remains available to the coaches if in fact they can
20 demonstrate that there has been monopolization or
21 attempted monopolization of a market.
22 But the line that I draw is the line between
23 production and promotion of the game. Coaches are
24 closer to production and promotion of the game than
25 secretaries, but I -- you know, there may be some --

1 some gap there. But -- but as long as the NFL clubs
2 are -- are members of a unit; if they compete as a
3 unit in the entertainment marketplace, as -- to use
4 the language that Justice Rehnquist used -- they
5 should be deemed a single entity and not subject to
6 section 1 --
7 JUSTICE BREYER: But now the question is:
8 Are you basing that on economic-related data about the
9 pros and the cons of -- you know, the economic harms
10 of stopping them from competing versus the economic
11 benefits of allowing them to act as a separate -- as a
12 single entity? Or are you basing it on a pure legal
13 word called "single entity"?
14 And what worried -- I thought when I read
15 the opinion, first, of the district court, that he's
16 just following what I think started in the Seventh
17 Circuit, unfortunately, of taking this word "single
18 entity" and throwing around -- throwing it around all
19 over the place and stopping the economic analysis.
20 But then when I read the last paragraphs of
21 his opinion, he seems to be saying, when I go back to
22 the record, which you want me to do, I will discover
23 that there is lots of information showing economic
24 benefit to this venture of promoting together.
25 There's nothing to suggest they could compete, and so

1 it's clear, to the point where they don't get to
2 trial, that this is a reasonable agreement.
3 All right. Now, is -- have I -- am I right
4 in thinking what you are thinking?
5 MR. LEVY: That's not my position, Your
6 Honor.
7 JUSTICE BREYER: All right. Good. Then I
8 want to know what your position is.
9 MR. LEVY: My position is based on the
10 intended scope of the Sherman Act, section 1 of the
11 Sherman Act, which this Court, in Copperweld, made
12 clear. The principle is articulated five or six
13 separate times in the Copperweld opinion that section
14 1 of the Sherman Act is intended to regulate the
15 sudden joining together of separate sources of
16 economic power. That’s --
17 JUSTICE BREYER: Yes --
18 MR. LEVY: That's not this case.
19 JUSTICE BREYER: Well, I wouldn't read --
20 can you read Copperweld as follows? Copperweld is
21 ratifying a decision by an entrepreneur or several to
22 organize his entrepreneurial entity as one where there
23 are obvious efficiencies in doing that, such as it
24 would obviously be inefficient to have the sales
25 people behind counters in a single department store

1 competing with each other in price.

2 A joint venture is a situation where it's

3 debatable whether or not there is that kind of

4 efficiency in organization, and, therefore, we apply a

5 rule of reason. That's Panagra. I don't see anything

6 in Copperweld that’s intended to overrule Panagra.

7 And as long as Panagra is not overruled, we would

8 apply, at least to major decisions by joint ventures,

9 a rule of reason.

10 Now, what is wrong with -- and you might

11 still win on the rule of reason. But why isn't that

12 analysis correct? I’m putting it forward as a

13 hypothesis for you to discuss.

14 MR. LEVY: The analysis is not correct

15 because there has been no challenge to venture

16 formation here. I don't disagree that if there had

17 been a challenge to venture formation here, that the

18 considerations that you identify with regard to

19 Panagra would apply. But that's not the case here.

20 There’s really no ambiguity about what has been

21 challenged here.

22 JUSTICE BREYER: There is very definitely a

23 joint venture here to play football, but there isn't a

24 joint venture to build houses, and there isn't a joint

25 venture obviously in sight to promote.

1 So they're saying that there's such a
2 different activity, the playing of football versus the
3 promotion of a logo, that we ought to go and look
4 under a rule of reason as to whether a joint venture
5 in promoting a logo is justified in terms of
6 competition's harms and economic benefits.
7 MR. LEVY: Justice Breyer, I agree with you
8 that there is a difference, an important difference,
9 between venture and nonventure activity. If the NFL
10 clubs were to create a trucking company or, in your
11 example, would go off and build houses, that's not a
12 venture activity.
13 JUSTICE BREYER: Well, it would be if they
14 tried to do it, but, there, they would be attacked on
15 the ground that under the rule of reason, they do not
16 have the justification such that the antitrust law
17 would allow them to do it.
18 MR. LEVY: Well --
19 JUSTICE BREYER: And they are saying: And
20 promoting is precisely the same. That's why it seems
21 to me to be something that you can't decide in theory.
22 It's a matter of going back to economic facts with
23 witnesses and so forth.
24 MR. LEVY: Your Honor, the ancillary
25 restraints doctrine would enable the court, in the

1 circumstance that you describe, to categorize the
2 decision to build housing as a non-venture activity --
3 a non-venture decision, and, therefore, it would be
4 evaluated independently of the considerations that
5 apply to the venturers' objective.
6 But, here, you cannot separate the -- the
7 venture activity of -- of -- for both football --
8 JUSTICE STEVENS: Well, but you -- you
9 certainly could because they certainly could --
10 theoretically, each club could sell its own logo.
11 MR. LEVY: Each -- of course, each club
12 could sell its own logo, Your Honor, but the clubs
13 have decided that the most effective way to promote --
14 JUSTICE STEVENS: They have decided not to
15 do it that way, but it could be done.
16 MR. LEVY: Forgive me. I shouldn't speak
17 over you.
18 The clubs have decided that the most
19 effective way to promote their product, to promote NFL
20 football, is to do so collectively, to ensure that the
21 marks of all 32 clubs are -- are out there, in --
22 JUSTICE STEVENS: But maybe they also
23 collectively decide the best way to make money and
24 finance -- attendance and so forth, all agree on a
25 housing program that they all jointly sponsor.

1 MR. LEVY: Well, Your Honor, that -- I
2 respectfully suggest that doesn't --
3 JUSTICE STEVENS: It would be the most
4 effective way to -- to raise the money to pay these
5 players who make so much money.
6 MR. LEVY: Well, that doesn't -- there's a
7 plausibility standard that really has to be applied in
8 terms of the -- of the arguments at issue.
9 CHIEF JUSTICE ROBERTS: Well, but if it's a
10 plausibility standard at the threshold inquiry,
11 there's a range of things, and I guess your -- your
12 friend on the other side is just saying selling logos
13 is closer to selling houses than it is to playing
14 football.
15 MR. LEVY: Well, but there is a difference
16 here, Your Honor, because there is a record. This --
17 this wasn't decided on a motion to dismiss. It was
18 decided on summary judgment. There was undisputed
19 evidence that the purpose of the licensing, going back
20 40 years -- 45 years, at this point, was to promote
21 the game, and that's not an implausible determination
22 to be made, but the -- but the evidence was
23 undisputed.
24 The case was decided on summary judgment,
25 and so -- you know, this is not a situation where --

1 where there’s the type of -- you know, the range of
2 issues that needs to be -- you know, that needs to be
3 resolved, of the kind that you described.
4 You know, this is a situation that Judge
5 Moran --
6 CHIEF JUSTICE ROBERTS: So if there’s a
7 factual -- if there’s a factual dispute about whether
8 a particular activity of the league is designed to
9 promote the game or is designed simply to make more
10 money, than that is the sort of thing that goes to
11 trial?
12 MR. LEVY: Well, I wouldn't -- I wouldn't
13 put it in terms of “make more money” because I have
14 agreed with Justice Scalia --
15 CHIEF JUSTICE ROBERTS: Or do something
16 else, do something other than promote the game?
17 MR. LEVY: If -- Your Honor, just as in
18 Dagher -- in Dagher, the issue was how to price the
19 product. It's a fundamental decision that any venture
20 has to make. This is a decision -- the undisputed
21 evidence shows that this is a decision about how to
22 promote the product, and that’s no different from
23 pricing a product in terms of the -- you know, the
24 operations of a venture.
25 You can't -- you can't hope to market a

1 product, unless you have decided on how to promote it,
2 and the antitrust laws in the Sherman Act encourage
3 promotion. They encourage -- Copperweld encourages
4 business people to make the judgment about how best to
5 produce and to promote their product and how best to
6 compete in the marketplace.
7 They made very clear that they don't want
8 those judgments cabined or inhibited or chilled by --
9 by decisions by the court or decisions by a jury.
10 But, here, Judge Moran did what we thought was the --
11 and we continue to think is the most appropriate way
12 to serve the interests of both the Sherman Act and the
13 considerations that this Court has recognized in
14 Twombly and other cases, and that’s to provide an
15 early opportunity for a determination of whether or
16 not the venture -- the venture conduct, the venture
17 decision that is at issue, is a venture decision of a
18 single entity or whether it is a collective decision
19 of the -- of the venture participants.
20 He allowed discovery limited to the single
21 entity issue. The -- the -- there is no challenge to
22 the scope of discovery here. We have a complete
23 record on this point that confirms and addresses the
24 question that you presented, that the purpose of
25 licensing here is to promote the product.

1 But even if it weren't -- even if it
2 weren't, I'd suggest that -- that the -- the evidence
3 shows that fans identify with the logos, and we are
4 talking about the logos and the marks here, not
5 because they have some sort of intrinsic value, not
6 because they, you know, derive -- they derive some
7 value from their attractiveness or appeal,
8 independently in the marketplace; they derive their
9 value from their identification with an NFL club that
10 competes on the football field. And even -- even
11 American Needle's president so confirmed in the
12 declaration that he submitted in the case.
13 So we have here a record that makes this --
14 this judgment for the Court relatively
15 straightforward. It provides a straightforward
16 opportunity for this -- this Court to confirm the
17 principles established in -- established in Copperweld
18 and to -- and to extend the principles that this Court
19 noted in Dagher.
20 JUSTICE SOTOMAYOR: The -- if the
21 reasonableness of this decision, that T-shirts promote
22 the game, is so self-evident, then why wouldn't the
23 rule of reason control completely?
24 MR. LEVY: Well, Your Honor, I don't have --
25 JUSTICE SOTOMAYOR: Why do we need to even

1 go to the single-entity question when, by your own
2 answer, it is undisputed, so abundantly clear, so
3 reasonable?
4 MR. LEVY: The answer --
5 JUSTICE SOTOMAYOR: What's the need to -- to
6 label it "single entity," as opposed to label it what
7 it is, reasonable?
8 MR. LEVY: The answer, Your Honor, is
9 inherent in the rule of reason. In the modern era,
10 defending a claim like this on the merits involves an
11 investment of tens of millions of dollars, thousands
12 of hours of executive time, hours and hours of court
13 time. In the Salvino case, there were 3 years of
14 discovery spent on rule of reason issues --
15 JUSTICE SOTOMAYOR: But is not the whole
16 purpose, and I certainly sympathize with that
17 argument. But isn't the proposition of antitrust law
18 that we have a reason for worrying about concerted
19 activity? We have a genuine concern as -- well,
20 Congress does -- about independent entities joining
21 together and fixing prices.
22 And we permit them to do so, as Justice
23 Breyer indicated, when the venture has a purpose
24 that's independent than -- from the individual
25 interests, but we say, when it doesn't, we have to

1 ensure, under the rule of reason, that what they are
2 doing is reasonable.
3 I'm -- I'm very swayed by your arguments,
4 but I can very much see a counterargument that
5 promoting T-shirts is only to make money. It doesn't
6 really promote the game. It promotes the making of
7 money. And once you fix prices for making money,
8 that's a Sherman Act violation.
9 MR. LEVY: But, Your Honor, I would agree
10 with almost everything that you said, but we are not
11 dealing here with independent sources of economic
12 power. These clubs are not independent. None could
13 produce their product on their own.
14 JUSTICE SOTOMAYOR: But they own the
15 trademarks, so they could.
16 MR. LEVY: They do, but the trademarks don't
17 have any value. They don't have any purpose
18 independent of the game. The trademarks are invented
19 to identify the clubs on the field. They are -- they
20 are promoted and distributed to -- to encourage
21 loyalty among fans of the clubs. The -- the
22 trademarks are simply a tool that the clubs use to --
23 JUSTICE BREYER: So let's call it "NFL
24 supermarket." Red Sox supermarket, Patriots
25 automobile shop, Patriots tractor store -- everything

1 becomes Patriots. Everything -- no competition
2 anywhere. Now, you say that's ridiculous, and once
3 you say that's ridiculous, you are now into the
4 business of deciding whether this aspect of the
5 undeniable legal joint venture to play baseball or
6 football -- whether this aspect is properly the
7 subject of merger.
8 And once you're into that, you're into your
9 $7 million, and I can't really think of anything
10 that's going to help you there.
11 MR. LEVY: Well --
12 JUSTICE BREYER: And the SG in its brief,
13 you see, on that key 16 and 17, it seemed to me,
14 simply reproduces in precisely somewhat different
15 language, but precisely the argument you are now
16 having: Is this the kind of thing that should be
17 merged? We know by applying the rule of reason.
18 And, second, if it is merged, is this
19 particular aspect of it something where there could be
20 competition, and there isn't much justification?
21 That's their rule, too. Again, we are back to the
22 rule of reason. So, how do I save you the $7 million?
23 MR. LEVY: But, Your Honor, this case is the
24 perfect example. We were able to resolve this case on
25 summary judgment without incurring the burden of rule

1 of reason discovery, and your reference to the
2 Patriots tractor store drives home a distinction that
3 I think is worth leaving with the Court at this point.
4 This is not a situation, like the situation
5 to which we adverted in our brief, where John Deere
6 and International Harvester get together and fix the
7 prices of their logos for sale to cap manufacturers.
8 John Deere and International Harvester, for
9 many years -- I mean, early on, they gave away the
10 hats throughout the Midwest to encourage farmers to
11 buy their farm equipment. They are independent
12 sources of economic power.
13 JUSTICE SCALIA: Well, you -- you say that
14 the -- that the trademarks have no value apart from
15 the -- from the game. I guess you could say the same
16 thing for each individual franchise of each of the 32
17 clubs. They are worthless, if NFL football
18 disappears. So does that mean they -- they can agree
19 to fix the price at which their -- their franchises
20 will be sold, by concerted agreement, because after
21 all, they're worthless apart from the NFL?
22 MR. LEVY: Well, I -- I certainly agree with
23 your -- your premise, Your Honor, that they are
24 worthless apart from the -- except -- I mean, there's
25 some residual value. I don't -- I don't --

1 JUSTICE SCALIA: Yes.
2 MR. LEVY: I don't dispute -- dispute that.
3 Could they agree on prices for their franchises to be
4 sold? Yes, I assume they could agree because they are
5 not independent sources of economic power.
6 JUSTICE SCALIA: Oh, okay, you --
7 JUSTICE BREYER: So we don't even ask the
8 question whether under the rule of reason such a thing
9 is reasonable or justified?
10 MR. LEVY: Your Honor --
11 JUSTICE SCALIA: I thought I was reducing it
12 to the absurd. But you --
13 (Laughter.)
14 MR. LEVY: You know, I -- I can bring the
15 basic point that I -- I want to leave you with back to
16 our example that's a little bit closer to home.
17 In 1999 -- 1919, when Judge Covington and
18 Mr. Burling went to join forces, they formed a law
19 firm, a venture. Ninety years later, that venture
20 decides on the prices, the rates that Mr. Ludwin and I
21 will -- will decide for our -- will charge for our
22 services. Sometimes that venture, the firm, decides
23 that we won't do business with a particular client or
24 that we'll limit our business to a particular client
25 in a particular industry.

1 Nobody suggests that that decision of the
2 venture, a lawful venture, is subject to section 1
3 scrutiny as a violation of the Sherman Act,
4 constitutes a concerted refusal to deal.
5 But if Mr. Ludwin and I leave the -- leave
6 the firm and we set up solo practices and then decide
7 on what our rates are going to be or then decide on
8 what our -- what clients we will serve and not serve,
9 that is an agreement between independent competitors.
10 That's the fundamental difference.
11 That is a fundamentally different situation
12 between -- compared to the situation of the firm
13 setting our rates. And it reflects the intersection
14 of Copperweld and Dagher. It shows how Dagher and
15 Copperweld fit together hand in glove to demonstrate
16 that the NFL, for purposes of promoting its football
17 product, is a single entity.
18 CHIEF JUSTICE ROBERTS: Thank you, counsel.
19 Mr. Nager, you have 3 minutes remaining.
20 REBUTTAL ARGUMENT OF GLEN D. NAGER
21 ON BEHALF OF THE PETITIONER
22 MR. NAGER: Thank you, Mr. Chief Justice.
23 I'd just like to pick up on a question that
24 Chief Justice Roberts asked me with a point that
25 Justice Breyer made, which is that both the Solicitor

1 General's position and the NFL's position are taking
2 rule of reason concepts and trying to push them into
3 the concerted conduct inquiry, which will have the
4 effect, of course, of confusing courts that presently
5 understand the inquiry. That's Justice Breyer's point
6 about terminology.
7 It also has substantive impact because of
8 the way litigation gets conducted. As Mr. Levy has
9 said, this case was litigated below at the district
10 court judge's direction only on the concerted conduct
11 question, not on the -- the rule of reason questions.
12 So, American Needle didn't have the opportunity to
13 conduct discovery and make proof about anticompetitive
14 effects and to try to rebut the arguments that the NFL
15 was making about pro-competitive justifications.
16 The NFL's argument is asking -- they are
17 asking for a per se rule of legality for everything
18 that the NFL does that is related to football. That
19 can't be the --
20 CHIEF JUSTICE ROBERTS: What's the answer to
21 the -- what's the answer to the hypothetical Mr. Levy
22 ended with, the law firm?
23 MR. NAGER: On the -- the partnership
24 example? Well, the partnership is -- is as follows:
25 As -- as to the extent that there’s case law

1 on the subject, as with all joint ventures, the case
2 law treats law firm partnerships as joint ventures and
3 subjects them to the rule of reason, and every
4 commentator, whether it be Judge Bork or anyone else,
5 has said: But, of course, law firms don't have market
6 power so they couldn't possibly have anticompetitive
7 effects on the market, and a rule of reason claim
8 trying to challenge the rates at which a law firm sets
9 its partnership rates wouldn't pass -- survive a
10 motion to dismiss.
11 With respect to his analogy to Dagher, the
12 difference between the Dagher effects -- of course
13 this Court in Dagher didn't accept the argument that
14 I made on behalf of Texaco and Shell that they should
15 be treated as a single entity if, in fact, their
16 formation was lawful. This Court only ruled on the --
17 on the price-fixing issue.
18 But the argument that was made in Dagher was
19 if you had a wholly integrated joint venture, one in
20 which there had been a complete pooling of relevant
21 capital, a complete sharing of profits and losses, and
22 an enforceable non-compete agreement, in those
23 circumstances the -- the owners of that joint venture
24 were not like typical joint venturers; they, in fact,
25 were like the shareholders in a publicly held company

1 because their only interest at that point is in their
2 investment. They have no other economic interests
3 that are affected by their ownership and control of
4 that entity. And at that point, they could be treated
5 as one.
6 And Justice Thomas's opinion for the Court
7 has some resonance of that in it, but it specifically
8 says it's only addressing it in terms of the per se
9 rule.
10 CHIEF JUSTICE ROBERTS: Thank you, counsel.
11 The case is submitted.
12 (Whereupon, at 11:19 a.m., the case in the
13 above-entitled matter was submitted.)
14
15
16
17
18
19
20
21
22
23
24
25

A

ability 4:6 17:14
able 6:24 50:14 62:24
above-entitled 1:12 68:13
absent 47:10
absolute 49:22
absolutely 13:11 13:17
abstract 48:8
absurd 64:12
abundantly 60:2
accept 67:13
achieve 11:14
acquire 30:4
act 3:14 4:3 5:25 22:12 28:20 38:23,24 39:18 43:2 51:11 52:10,11,14 58:2,12 61:8 65:3
acting 33:10,16 37:8
action 5:24 7:17 31:8 35:7,18 36:2,5 38:2
actions 40:2,2
activities 6:5 41:22 49:10
activity 4:15 5:8 6:16 11:3,5 12:24 13:1,2 14:15,16 21:23 34:18 54:2,9 54:12 55:2,7 57:8 60:19
actor 3:16
actors 4:24 5:3 13:9
actual 32:16
Adam's 43:6
added 43:5
adding 43:9,10
Addison 11:13
addition 9:16,24 10:12
additional 9:19 10:14 14:20
address 12:13 25:3,4
addresses 58:23
addressing 68:8
adherents 48:6
adverse 13:10 15:7
adverted 63:5
affect 32:16 38:1
affidavit 26:15 26:19
ago 40:12
agree 8:20 22:3 38:18 47:14 50:14 54:7 55:24 61:9 63:18,22 64:3 64:4
agreed 9:25 14:13 15:18,20 19:16 33:18 36:3 57:14
agreement 3:12 3:15 4:23 5:5 5:24 6:10 9:9 12:1 13:10,16 14:19 15:6,7 16:13 22:4 26:20,25 28:18 34:9 38:17 41:2,3,6 45:4 47:10 49:5 52:2 63:20 65:9 67:22
agreements 3:23 4:1 5:19,19 12:5 21:23,24 23:3
AL 1:7
Alito 8:18 9:2,17 9:21
allegation 44:14
allege 27:21
alleged 9:14 14:10 27:11 28:17
allegedly 3:15
allow 22:21 54:17
allowances 18:17
allowed 22:20 48:17 58:20
allowing 51:11
ambiguity 53:20
American 1:3 3:4 28:9,17 39:19 42:25 59:11 66:12
amici 8:24
amicus 1:20 2:7 29:15
analogous 33:3
analogy 67:11
analysis 5:12,12 6:1,2 11:8 22:6 22:15 24:5,21 25:15 34:15 36:25 51:19 53:12,14
analyze 11:19 11:21 12:2
ancillary 5:11 11:10,10,11 31:4,14 54:24
announcing 45:22
answer 6:7 7:20 9:3 13:23 21:16 25:1 28:5,6 34:21 37:12 45:21 49:19,24 50:1 60:2,4,8 66:20 66:21
answered 22:2
answers 11:24 21:15
anticompetitive 6:24 8:4 9:12 11:20 15:14 66:13 67:6
antitrust 5:21 6:2 9:4 11:7 25:5 33:24 49:9,22 54:16 58:2 60:17
apart 63:14,21 63:24
apparel 27:13
appeal 59:7
appeals 3:11 23:2 44:9
APPEARAN... 1:15
application 36:21
applied 33:8 34:6,14 56:7
applies 5:16 36:12
apply 6:12 25:8 36:10,14 44:24 48:20 53:4,8 53:19 55:5
applying 62:17
appreciate 8:8 20:18
appropriate 58:11
area 21:18 48:21
argue 5:11,14 13:9,21,22
arguing 19:12 28:24
argument 1:13 2:2,10 3:3,7 29:13 32:10 39:11 50:8,12 60:17 62:15 65:20 66:16 67:13,18
arguments 56:8 61:3 66:14
arm 39:23
articles 41:17
articulate 23:6
articulated 52:12
articulation 12:7
artifact 44:3
aside 50:3,3,5,18
asked 65:24
asking 4:22 17:5 28:1 66:16,17
aspect 14:14,15 26:10 29:19 62:4,6,19
aspects 33:5,7
assets 13:3,6
assume 10:19,20 64:4
assumes 27:14
attack 31:15,16 31:16 32:13
attacked 54:14
attempted 50:21
attendance 55:24
attractiveness 47:18 59:7
authority 30:3 30:11 35:10,16 35:25 37:9 38:7
automobile 61:25
available 50:19
a.m 1:14 3:2 68:12

B

back 14:2 18:2 42:12 48:13 51:21 54:22 56:19 62:21 64:15
ball 26:23
bar 49:22
base 40:13

baseball 17:9,25 62:5
based 27:19 50:13 52:9
basic 44:8 45:3 64:15
basically 26:20 50:13
basing 51:8,12
basis 20:5
bear 14:2 34:16 34:17
beg 11:24
begging 12:11
beginning 40:5
behalf 1:16,20 1:22 2:4,6,6,9 2:12 3:8 26:2 29:14 33:15 38:15 39:12 65:21 67:14
believe 43:5 44:4
belong 32:25
benefit 51:24
benefits 11:20 11:22 51:11 54:6
best 41:12,19 42:2 44:10 55:23 58:4,5
better 14:23 17:9 21:12,13 30:15,17 32:1
bidder 31:19
bidders 35:6
bit 64:16
blanket 15:22 15:23 28:13
blocker 20:20
blunt 8:6
BMI 5:17 12:19
bona 26:3
booths 44:19
Bork 67:4
bound 8:16
Boxing 27:20
Breyer 16:2,8,11 16:18,22 17:1 17:4,11,15,19 18:2,7,16,19 19:2,5,7,22,24 20:17,19,21 21:1 30:14 31:10,24 32:12 44:7,14 45:14 45:21 46:3,7 46:23 51:7 52:7,17,19 53:22 54:7,13 54:19 60:23 61:23 62:12 64:7 65:25
Breyer's 66:5
BREYRE 17:23 18:23
brief 8:19 28:15 50:7,9,16 62:12 63:5
briefs 26:7
bring 64:14
broader 11:15 38:21
build 53:24 54:11 55:2
Bulls 49:2
burden 13:8,15 14:3 15:6 62:25
Burling 64:18
business 29:24 32:5 36:13 37:10,23 38:1 40:9,21 58:4 62:4 64:23,24
businesses 21:25 33:6
buy 30:23 33:20 37:10,23 38:7 38:15 63:11
buying 47:21

C

C 2:1 3:1
cabined 58:8
Cal 25:16
call 25:4 31:17 61:23
called 51:13
cap 63:7
capability 43:9
capital 67:21
caps 46:15
care 7:15 47:3
carry 29:24 32:6
carrying 33:14 36:12
carve 24:24
carve-out 7:17
case 3:4,11 4:5 5:16 6:4 8:9,23 11:13 13:12 14:5 18:7 20:21 22:4,12 22:17,23,25 24:23,25 25:22 26:13 27:4,20 27:23 28:14,16 28:25 29:21 30:18,20 34:10 34:13,14 35:9 37:5,13 40:10 40:11 42:8 44:8,18 48:19 49:2,3 52:18 53:19 56:24 59:12 60:13 62:23,24 66:9 66:25 67:1 68:11,12
cases 5:17 23:15 25:9 42:9 49:1 58:14
categorize 55:1
causes 41:24
centers 45:17
central 34:7 35:3 36:16
centralized 30:11 43:16
certain 6:14 20:22 25:14 30:17
certainly 6:3 15:15 26:14 32:2 55:9,9 60:16 63:22
cetera 4:19 45:19
challenge 35:17 35:22 36:6 37:14 39:20 43:1 53:15,17 58:21 67:8
challenged 6:4 31:20 53:21
challenges 27:5
challenging 28:2 28:3,10 42:21
change 6:12 7:6
Changes 6:11
changing 9:24 10:12
characterize 30:18
charge 64:21
charitable 41:23
charity 48:16
Chief 3:3,9 11:12,17,23 12:8,10,16 23:5,18,25 24:12,16 29:10 29:16 34:20 35:8,20 36:8 38:20 39:9,13 56:9 57:6,15 65:18,22,24 66:20 68:10
chilled 58:8
choose 19:19,20
chooses 37:19
Circuit 3:12 51:17
Circuit's 23:11
circumstance 55:1
circumstances 15:25 67:23
City 18:13
claim 6:18 14:8 15:16 26:4 32:17,19 45:6 49:22 60:10 67:7
claims 25:17,19 48:25 50:2,3,4 50:5
clarity 23:14,15 23:20
classic 48:19
clean 48:19
clear 8:23 40:23 52:1,12 58:7 60:2
clearly 21:9
client 29:3 64:23 64:24
clients 65:8
client's 26:2
close 30:25
closer 50:24 56:13 64:16
club 46:1 55:10 55:11 59:9
clubs 3:22 28:18 40:24 43:7 46:20 49:16 50:11 51:1 54:10 55:12,18 55:21 61:12,19 61:21,22 63:17
coaches 50:17 50:18,19,23
cognizable 14:8
collective 35:1,2 35:4 58:18
collectively 5:6 28:19,21 44:4 55:20,23
come 22:11

25:15
coming 37:16
commentator 67:4
commissioner 29:22 30:2 32:2 33:14 34:2 35:10,24 36:3 37:6,8,18 38:14
commissioner's 29:19 30:8,12 31:21 36:11,14 38:7
company 30:3 35:21 39:5 50:6 54:10 67:25
compared 65:12
compete 17:12 17:14 19:13 26:25 37:3 44:19 51:2,25 58:6
competed 15:25
competes 59:10
competing 21:25 27:3,8,9 51:10 53:1
competition 8:10 9:6 13:10 14:14 15:8 17:7,21 18:3 18:10,11 21:9 26:21 27:15 28:12,12 32:16 62:1,20
competition's 54:6
competitive 8:14
competitiveness 10:7
competitors 14:23 33:5 37:16 38:1 65:9
complaining 19:14
complaint 14:10 16:3,23,24 17:2
complete 58:22 67:20,21
completely 21:4 59:23
concepts 66:2
conceptually 23:13
concern 22:10 60:19
concerns 39:8
concert 6:10 9:25
concerted 5:8,14 5:20,24 6:16 7:22,24 8:5 11:3 12:24 13:1 21:23 23:4 24:2,7,10 24:14 25:6,9 31:8 34:18 35:7,17 36:2,5 38:2,21 40:2 60:18 63:20 65:4 66:3,10
concluded 14:19 32:11
conclusion 23:3 26:19 44:8 45:15,16,22
condition 10:7
conditions 8:10 45:11
conduct 5:14,20 7:22,24 8:5 23:4,16 24:2,7 24:11,14 25:6 25:9 30:7 31:20 50:5 58:16 66:3,10 66:13
conducted 22:23
66:8
confer 39:7
confirm 59:16
confirmed 41:25 59:11
confirms 58:23
confusing 44:16 66:4
confusion 23:23 30:19
Congress 39:18 43:3 49:21 60:20
cons 51:9
consensus 3:25
consent 6:10 30:9,10 33:17 38:9
consequences 21:3
considerations 53:18 55:4 58:13
consistent 5:16 12:19,25
consistently 13:2
conspiracy 7:10
constitute 5:20 21:23 23:4
constitutes 65:4
constitution 29:23
consumers 8:15
context 5:11,12 5:14 12:14 50:17,18
continue 58:11
continued 44:5
continuing 24:9
contract 6:10 13:5 31:20 34:1,16 35:12
contracts 9:7 34:3 35:5
contrast 8:12
control 4:19 5:6 15:24 36:20 59:23 68:3
controlled 3:19 4:9 5:1,18 6:9 21:25
coordination 39:4
Copperweld 5:18 12:20 32:10,12,23 39:3 42:5,7,8 44:15,18 45:2 45:8 48:21 52:11,13,20,20 53:6 58:3 59:17 65:14,15
correct 14:4 22:7 23:10 27:17 29:5 53:12,14
costly 22:16
counsel 11:23 20:14 23:5 27:25 39:9 65:18 68:10
count 14:7
counterargum... 61:4
counters 52:25
course 30:23 36:22 55:11 66:4 67:5,12
court 1:1,13 3:10,11 4:5,11 5:17 7:21 8:2 8:11 13:13,22 14:9 16:10 20:5 21:22 22:18 23:1,2,2 24:9 25:9,14 25:16,18,20,23 26:1,3 27:12 27:18,22 28:9 28:14 29:17 32:11 33:2,7
34:13,13 35:18 39:3,14 42:8 44:9 48:20 51:15 52:11 54:25 58:9,13 59:14,16,18 60:12 63:3 66:10 67:13,16 68:6
courts 24:14 25:8 28:25 32:23 48:23 49:1,3 66:4
Court's 3:16,20 3:21 4:4 6:22 8:1 10:5 12:18 12:25 25:8 27:19
cover 5:22
Covington 64:17
create 23:14 54:10
created 43:5,6
creates 30:22
creating 50:6
creation 8:16 43:24
criteria 31:1,2,3 32:13,18
criticizes 23:10
curiae 1:20 2:7 29:15
current 15:20

D

D 1:16 2:3,11 3:1,7 65:20
Dagher 33:1,7 35:18 41:25 48:21 57:18,18 59:19 65:14,14 67:11,12,13,18
damages 7:11 29:8
data 51:8
day 21:10
days 21:10

48:14
deal 44:18 48:24 65:4
dealing 33:2 61:11
dealt 25:16 29:3
debatable 53:3
decades-old 28:18
decide 31:3 35:11,13 37:18 38:15 54:21 55:23 64:21 65:6,7
decided 19:19 34:23,25 35:5 55:13,14,18 56:17,18,24 58:1
decides 30:3,5 42:6 64:20,22
deciding 37:23 62:4
decision 3:20 4:4 10:5 12:22 13:13 27:19 28:21 30:12 31:22 35:21 37:25 40:20 41:13 49:7,25 52:21 55:2,3 57:19,20,21 58:17,17,18 59:21 65:1
decisions 4:9 32:2 39:25 40:1 42:2,3,4 53:8 58:9,9
decision-make... 12:21
declaration 59:12
deemed 7:23 51:5
Deere 63:5,8
defendant 6:25
defendants 14:12
defending 60:10
defense 14:24 26:22
definitely 53:22
definition 30:24 49:9
delegated 35:10 37:9
delegation 30:3 35:16
demonstrate 50:20 65:15
demonstrates 46:17
denied 14:9
Dental 25:16
department 1:19 44:19 52:25
departs 23:7
Depot 31:22,25 36:9
Deputy 1:18
derive 59:6,6,8
derived 30:9 33:17 38:9
describe 55:1
described 44:10 57:3
description 42:14
designed 46:14 57:8,9
determination 56:21 58:15
determine 27:23
development 24:13
differ 36:23
difference 4:20 5:10 54:8,8 56:15 65:10 67:12
different 26:11
33:21,25 34:2 34:7 36:19 37:13 39:4 46:16,17,18 54:2 57:22 62:14 65:11
differently 9:1
differs 38:4
difficult 21:18
direct 50:1
direction 66:10
directly 4:5
disagree 42:22 53:16
disappears 63:18
disappointed 31:19
discarding 21:4
discover 51:22
discovery 22:15 22:18,20,21,22 41:15 48:17 58:20,22 60:14 63:1 66:13
discuss 53:13
discussion 26:7
dismiss 14:6 15:2 20:5 56:17 67:10
dismissed 16:7 22:13 25:19
dispute 39:22 57:7 64:2,2
distinct 3:22
distinction 5:13 12:25 13:3 63:2
distribute 46:15
distributed 26:16 61:20
district 14:9 23:1 25:23 27:12,18,22 51:15 66:9
divisions 39:4,6
doctrinally 23:13
doctrine 7:22 8:6 12:18 24:15 25:2,5 25:12 54:25
documentary 41:16 48:12
documents 41:20 48:13
doing 10:2 21:3 28:4 52:23 61:2
dollars 60:11
donated 41:23
doubt 24:7
draw 50:22
drives 63:2
D.C 1:9,16,19,22

E

E 2:1 3:1,1
earlier 21:6
early 48:14 58:15 63:9
easier 20:19 31:16
easily 18:14,15
easy 24:22
economic 14:21 33:5 44:11 45:12,17,24 46:21 51:9,10 51:19,23 52:16 54:6,22 61:11 63:12 64:5 68:2
economic-rela... 51:8
educational 41:23
effect 6:24 13:10 14:20 15:7 19:11 66:4
effective 24:4 55:13,19 56:4
effectively 32:6
effects 8:4,4 11:21 15:14 66:14 67:7,12
efficiencies 52:23
efficiency 53:4
efficiency-enh... 11:14
either 29:21 34:24
eliminate 15:22
employee 33:13
employees 30:1 30:13,24
enable 54:25
encourage 58:2 58:3 61:20 63:10
encourages 58:3
ended 66:22
enforceable 67:22
engages 50:10
English 8:25 25:2
ensure 55:20 61:1
ensuring 10:7,8
enter 35:11,12
entered 5:5 11:5 34:2
entering 5:19 9:7
enterprises 3:20 44:5
entertainment 51:3
entirely 6:2 33:20
entities 3:22 5:19 22:3 33:4 37:3 50:12 60:20
entity 22:20 26:16 27:1 28:4 30:7,18

31:17 33:11,16 37:2,8 38:22 38:24,25 39:2 40:14,17,17 43:17 49:18 51:5,12,13,18 52:22 58:18,21 60:6 65:17 67:15 68:4
entity's 12:6
entrepreneur 52:21
entrepreneurial 52:22
equal 26:17
equalize 14:21
Equilon 33:9
equipment 63:11
era 49:4,5 60:9
erroneous 23:3
escape 6:2
ESQ 1:16,18,22 2:3,5,8,11
essentially 43:5 43:7
established 45:9 59:17,17
estoppel 50:13
et 1:7 4:19 45:19
evaluated 55:4
everybody 37:20 40:6
evidence 41:16 46:16 48:10,12 48:12 56:19,22 57:21 59:2
evidentiary 48:11
evolutionary 25:12
exactly 12:9 28:16,23
example 8:19,25 17:6 33:13 36:19 39:20
50:6,15 54:11 62:24 64:16 66:24
excellent 31:2
exception 49:2
exclusive 15:24 16:13,25 28:10 34:1,9
exclusively 29:3
exclusivity 17:3
Excuse 43:15
executive 41:18 60:12
exercises 37:9
exhibition 10:3
exist 23:17
exists 23:14 24:15 30:19
expanded 42:17 42:17,24 43:8 43:9
expenses 29:24
expert 17:20
explain 12:2 15:12,13 29:20
exploit 43:17
exploitation 43:22
exploring 21:3
extend 59:18
extent 7:21 23:6 23:25 24:8 66:25
eye 25:17

F

face 21:9
facie 9:11
fact 3:24 14:4 18:11 25:10 26:8 33:21 34:8 35:7 45:1 50:19 67:15,24
facts 15:9 54:22
factual 57:7,7
factually 27:24
fails 3:15
fan 17:16 18:13 18:14
fans 18:11 59:3 61:21
farm 63:11
farmers 63:10
favorable 8:15
feature 22:16
fide 26:3
field 14:23 26:21 59:10 61:19
figure 20:1
file 32:17
filing 32:19
finance 55:24
find 14:1 20:17 20:19 28:2 40:14
Fine 17:4 45:14
firm 33:10 64:19 64:22 65:6,12 66:22 67:2,8
firms 67:5
first 3:4 7:20 11:2,9 23:20 31:7 37:2,7 51:15
fit 65:15
five 52:12
fix 44:22 61:7 63:6,19
fixing 60:21
focus 16:15,19
focused 8:3
focusing 19:9 29:18
following 6:22 11:8 35:9 51:16
follows 39:1 52:20 66:24
football 1:6 3:5 3:13,18 5:5 8:17,25 10:1 10:20 17:25 39:18,19 40:7
40:18 42:25,25 44:11 53:23 54:2 55:7,20 56:14 59:10 62:6 63:17 65:16 66:18
forces 33:6 64:18
forget 16:5,8,9
Forgive 55:16
form 45:10
formalism 42:9 49:5
formation 39:15 39:16,21,24 41:8 42:20 43:2 53:16,17 67:16
formed 40:11,16 40:17 41:8 42:1,13,15 64:18
forth 27:7 54:23 55:24
forward 22:25 27:23 53:12
found 14:10
four 19:10
four-square 29:20
framework 42:5
franchise 63:16
franchised 43:19
franchises 43:18 43:23 63:19 64:3
free 10:25
freedom 10:8
friend 56:12
functions 33:15
fundamental 57:19 65:10
fundamentally 65:11
further 14:19

G

G 3:1
game 10:3,4 24:19 26:23 46:2,5,7,20,22 47:2,4,7,18,21 50:23,24 56:21 57:9,16 59:22 61:6,18 63:15
games 8:21,22 9:19 10:2,13 10:15 47:20
gap 51:1
gas 37:17,18,20
Gee 37:17
general 1:18 3:21 4:17 23:8 23:12 28:1 29:1 36:3 41:25 45:11
generally 6:6
General's 23:9 24:2 66:1
generating 46:21
genuine 60:19
Giants 10:3 33:18 36:10 38:16,18
Ginsburg 5:22 6:7 22:1,10 29:2,6,7 42:11
Ginsburg's 7:13
give 6:12 7:13 8:18 15:24 21:20 23:17 35:5 36:3
given 20:23 30:11
giving 33:25
GLEN 1:16 2:3 2:11 3:7 65:20
glove 65:15
go 10:25 11:8 18:2 22:12 31:22 35:2

37:4 42:12 46:14 50:11 51:21 54:3,11 60:1
goes 5:25 14:2 47:8 48:12 57:10
going 9:23 12:2 12:22 17:20,20 18:2,21 20:22 22:25 24:19,22 25:18 27:23 30:4,23 31:15 32:15 35:11,12 37:17 40:21 50:11 54:22 56:19 62:10 65:7
good 20:20 39:13 40:9 52:7
gotten 9:3 49:21
grant 16:13 28:10
granting 16:25
GREGG 1:22 2:8 39:11
ground 3:15 13:13 14:7 54:15
group 37:16 38:24 47:8
guess 18:20 31:6 31:18 34:22 37:1 56:11 63:15
guidance 21:19 21:20
guided 49:3

H

H 1:22 2:8 39:11
hand 38:5,13 65:15
handle 26:12
hands 23:1
happen 36:24
happened 40:22
harms 51:9 54:6
Harvester 63:6 63:8
hats 27:13 40:8 40:13,22 63:10
headwear 28:22
healthy 24:13
hear 3:3
heard 16:11 17:5
held 3:12 4:5,11 15:4 27:12,18 67:25
Hello 46:10
helmet 46:11 47:4
helmets 46:9 47:13
help 29:19 62:10
helpful 21:7
herring 34:9,12
Herzog 41:18
highly 36:6
hire 38:8
hired 49:12
hiring 29:25
historic 44:3
hockey 17:25
home 22:12 63:2 64:16
Honor 20:18 40:15 42:23 43:21 45:23 46:13 47:14 48:9 49:15,23 52:6 54:24 55:12 56:1,16 57:17 59:24 60:8 61:9 62:23 63:23 64:10
hope 57:25
horizontal 4:11 11:5,6 12:1,5 12:17
hornbook 44:17
hours 60:12,12 60:12
houses 53:24 54:11 56:13
housing 55:2,25
hurt 7:5 29:3
hurts 6:14
hypothesis 53:13
hypothetical 7:4 66:21

I

identifiable 6:24 15:14
identification 59:9
identify 53:18 59:3 61:19
II 49:3
illicit 36:2
immune 3:13
impact 9:12 66:7
implausible 56:21
implication 38:6 40:20
implies 39:6
important 10:6 54:8
imposed 10:13
improve 47:18
inappropriate 7:15
incentive 47:11
included 15:21
includes 24:3 27:9 29:25
including 39:22 42:10
incorporation 41:17
increase 10:9
incur 29:23
incurring 62:25
independent 44:21 45:12,24 46:21 47:11 49:17 50:12 60:20,24 61:11 61:12,18 63:11 64:5 65:9
independently 38:10 55:4 59:8
indeterminate 22:9
indicated 60:23
individual 5:7 10:8,14 28:4 28:11 30:9 35:3 36:16 38:9,24,25 44:1 47:11 60:24 63:16
individually 15:19 19:18 34:24 43:19
industry 64:25
inefficiency 23:15,19,23
inefficient 52:24
information 51:23
inherent 60:9
inhibited 58:8
initial 35:15
initially 14:6 40:12
inquiries 24:1,3
inquiry 5:15 7:14 8:3 24:3,7 24:11 37:13 41:1 56:10 66:3,5
insofar 23:10
instance 31:19 33:2 39:3
institutions 4:7 4:25
integral 8:16
integrated 67:19
integration 13:3 13:5
intellectual 28:19 41:14 43:11,23 44:6
intended 45:10 52:10,14 53:6
intent 40:5
interest 68:1
interested 16:22 47:19,20
interests 58:12 60:25 68:2
International 27:20 63:6,8
interrupt 13:7 34:21
intersection 65:13
intrinsic 59:5
invalid 27:12
invented 61:18
investment 60:11 68:2
involved 5:8 34:18 35:7 43:2
involves 4:24 6:4 60:10
irrelevant 20:23
issuance 15:21
issue 4:16 20:3,4 20:9,10 21:8 22:20 25:3,25 33:24 35:4 39:24 40:19,25 41:15 42:6 47:23 48:1,9 48:18 56:8 57:18 58:17,21 67:17
issues 25:14 57:2 60:14
it's 5:13 23:19 68:8

I'd 21:18,18 47:14 59:2
I'm 53:12 61:3

J

January 1:10
Japan 10:3
Jets 33:17 38:16 38:17
John 63:5,8
join 45:17 64:18
joined 6:9 33:6
joining 10:18,23 12:21 45:12 52:15 60:20
joint 3:21 4:13 4:17 7:17 9:4,5 9:13 10:7 11:15,22 15:11 28:2 30:20,22 31:4,13,14 33:4,10 39:16 44:23 45:3,8 49:10,14 53:2 53:8,23,24,24 54:4 62:5 67:1 67:2,19,23,24
jointly 12:22 55:25
joking 19:11
judge 11:12 14:9 22:19 27:18 57:4 58:10 64:17 67:4
judge's 66:10
judgment 7:16 32:5 37:10 46:23,25 56:18 56:24 58:4 59:14 62:25
judgments 58:8
judicial 3:25
jump 9:24
jurisprudence 3:17,22 6:23 8:1
jury 58:9
Justice 1:19 3:3 3:9 4:13 5:9,22 6:7,11,19,22 7:3,8,13,19 8:11,18 9:2,17 9:21 10:17 11:8,12,17,23 12:8,10,14,16 13:4,7,12,14 13:18,19,20,24 14:1,5,17,18 14:25 15:3,5 16:2,8,11,17 16:18,22 17:1 17:4,11,15,19 17:23 18:2,7 18:16,19,23 19:2,5,7,22,24 19:25 20:3,8 20:11,12,17,19 20:21,23 21:1 21:2,6,11,17 21:21,21 22:1 22:10 23:5,18 23:25 24:12,16 25:21 26:4,6 26:18 27:2,6 27:14,25 28:7 29:2,6,7,10,16 30:14 31:10,24 32:12 33:23 34:8,20 35:8 35:20 36:8,18 37:4,15 38:20 39:9,13 40:4 40:25 42:11 43:15,25 44:7 44:14 45:14,21 46:3,7,23 47:1 47:7,22,25 48:6 49:7,19 49:24 51:4,7 52:7,17,19 53:22 54:7,13 54:19 55:8,14 55:22 56:3,9 57:6,14,15 59:20,25 60:5 60:15,22 61:14 61:23 62:12 63:13 64:1,6,7 64:11 65:18,22 65:24,25 66:5 66:20 68:6,10
justification 31:11 54:16 62:20
justifications 66:15
justified 54:5 64:9

K

Kennedy 6:11 6:19,22 7:3,8 7:19 21:2,6,17 21:21 40:4,25
key 62:13
kind 30:19 34:9 40:5 53:3 57:3 62:16
know 6:19,20,21 10:19,19 17:9 17:15,19 20:22 21:15 22:11 25:23 26:13 40:8,15 41:25 44:12 45:1,7 45:23 50:25 51:9 52:8 56:25 57:1,2,4 57:23 59:6 62:17 64:14
knowledge 44:17

L

L 1:18 2:5 29:13
label 60:6,6
lack 23:14,20
language 25:2 51:4 62:15
Laughter 12:12 17:10,18 18:18 20:16,25 46:12 64:13
law 14:11 24:13 31:8 45:1 48:22 54:16 60:17 64:18 66:22,25 67:2 67:2,5,8
lawful 39:23 65:2 67:16
lawfully 42:1
laws 5:21 9:4 11:7 58:2
league 1:7 3:5 3:13,18 5:5 7:5 8:13 9:25 10:1 10:10,13,18,24 27:9 29:25 30:6,10 33:15 35:12 36:13,15 38:8,8,16 39:16,19,19 40:7,11 41:11 42:23,25 43:1 50:10 57:8
leagues 8:25 10:20 48:24,25 50:4
league's 30:4
leave 64:15 65:5 65:5
leaving 63:3
left 16:12
legal 7:25 31:9 51:12 62:5
legality 66:17
legally 27:12
legislative 3:25
legitimate 31:13 31:14
let's 10:19,20 37:4,5,5 40:7,9 40:21 50:3,3,4 61:23
let's 37:4
levels 32:4
Levy 1:22 2:8 39:10,11,13 40:15 41:5 42:22 43:21 44:2,13 45:7 45:20,23 46:6 46:13,25 47:6 47:14,24 48:5 48:8 49:15,23 50:1 52:5,9,18 53:14 54:7,18 54:24 55:11,16 56:1,6,15 57:12,17 59:24 60:4,8 61:9,16 62:11,23 63:22 64:2,10,14 66:8,21
liable 7:9
license 15:19 16:14,25 28:10 28:21 46:14
licensee 34:25 35:2
licensees 34:25
licenses 15:22 15:23 28:13 41:13
licensing 4:18 14:15 28:3 39:23 41:22 43:11 44:12 46:19 47:15,17 48:16 56:19 58:25
light 30:15 44:10
limit 15:25 21:9 64:24
limited 28:12 58:20
line 32:9 40:21 50:22,22
listed 19:10
litigated 66:9

litigation 6:20 22:11 23:16 66:8
little 43:22 64:16
lived 18:12
logic 38:10,13
logical 38:6
logically 39:1
logo 35:12 54:3 54:5 55:10,12
logos 5:7 15:20 27:15,16 56:12 59:3,4 63:7
long 3:24 18:13 43:18 51:1 53:7
look 19:7 30:20 30:25 32:12 54:3
looked 10:16
looking 7:21 17:1
losses 67:21
lots 51:23
lower 20:4 28:25 32:1,23 34:13
loyalty 61:21
Ludwin 64:20 65:5

M

major 53:8
making 12:22 18:6 37:9 61:6 61:7 66:15
MALCOLM 1:18 2:5 29:13
managed 22:25
managing 27:23
manufacture 46:14
manufacturer 28:22 29:4
manufacturers 63:7
market 6:25 7:1 14:10,12 15:21 15:23 19:4 27:9,11,20,21 27:24 28:12,19 45:11 50:11,11 50:21 57:25 67:5,7
marketplace 4:2 51:3 58:6 59:8
markets 16:15
market-wide 9:15 10:4
marks 28:22 55:21 59:4
matter 1:12 3:24 14:11 18:11 54:22 68:13
matters 45:10
maximize 9:5,6
mean 7:10 10:10 13:22 16:21 17:19 22:8 23:21 34:21 36:9 44:3 63:9 63:18,24
meaning 4:14 28:7
member 4:7 28:18 46:20
members 4:10 4:25 10:23 27:8 40:3 41:12 42:4 51:2
mention 8:19,24 8:24 42:7
mentioned 48:14
merchandising 14:16
mere 9:9
merged 62:17,18
merger 24:4 39:18 42:24,24 62:7
merits 60:10
middle 44:23
Midwest 63:10
mid-1960s 41:7
million 62:9,22
millions 60:11
mind 19:8 31:2
minimum 34:3
minutes 65:19
mission 32:6
modern 60:9
moment 16:23 50:18
money 9:22 47:2 47:5,8,16,16 55:23 56:4,5 57:10,13 61:5 61:7,7
monopolization 50:20,21
Moran 57:5 58:10
morning 3:4 39:13
motion 14:9 15:2 46:24 56:17 67:10
moved 14:6
multiple 13:9 15:21 34:25
multitude 34:2 35:5
mundane 29:18

N

N 2:1,1 3:1
Nager 1:16 2:3 2:11 3:6,7,9 4:21 6:3,16,21 7:7,19 9:2,20 9:23 11:2,18 12:8,13 13:5 13:11,17,19,21 14:4,25 15:4 15:12 16:6,10 16:16,20,24 17:3,14,22 18:1,5,9,22,25 19:3,6,21,23 19:25 20:2,7 20:10,14,18,20 21:1,5,16,20 22:1,7,19 23:9 23:24 25:1 26:1,12,24 27:4,11,17 28:6,8 29:5,9 29:11 42:7,10 65:19,20,22 66:23
National 1:6 3:5 3:13,18 5:4 10:1 39:18 42:25
nature 34:15
NCAA 3:20 4:4 4:6,7,9,11,25 5:1,16 8:9 10:5 25:18 27:19
necessarily 47:16
necessary 11:14 11:16 43:3
need 24:1 59:25 60:5
Needle 1:3 3:5 28:9,17 66:12
Needle's 59:11
needs 57:2,2
negotiate 35:1
negotiating 34:24
neither 1:21 2:7 29:15 42:6
net 48:15,15
new 18:12 28:1 43:9,10
NFL 4:8 5:10 8:20 14:6,12 27:21 28:15,23 29:19,23,23 33:14 39:22,23 40:16,18 41:7 41:17,18,21 43:7,16,24 44:10,11 46:1 46:20 48:3,13 49:16 50:4 51:1 54:9 55:19 59:9 61:23 63:17,21 65:16 66:14,18
NFLA 5:23
NFLP 26:16 28:11 42:13
NFL's 38:13 66:1,16
NFL-logoed 27:13
Ninety 64:19
nonventure 50:5 54:9
non-compete 67:22
non-venture 55:2,3
normal 36:22
Normally 44:21
noted 39:3 59:19
notice 7:8

O

O 2:1 3:1
objective 55:5
obligation 20:15
obvious 52:23
obviously 11:25 26:2 52:24 53:25
occurs 35:23
odd 24:20
offering 32:1
office 29:25 30:23 31:22,25 36:9,11,15
offices 30:5,6
Oh 46:5,5 64:6
okay 16:9 17:1 17:15 37:20 42:21 49:14 64:6

old 18:15
once 22:14 30:10,11 34:22 34:23,25 61:7 62:2,8
opens 32:13
operate 9:1
operation 5:1 20:6
operations 48:16 57:24
opinion 8:11 11:12 51:15,21 52:13 68:6
opportunity 48:20 58:15 59:16 66:12
opposed 60:6
oral 1:13 2:2 3:7 29:13 39:11
orange 28:15
order 35:21
ordinary 29:24 36:13
organic 41:20 48:13
organization 32:6 53:4
organize 52:22
original 41:2,3,6
originalism 40:6
originally 22:2
ought 54:3
output 9:5,14,15 10:5,9,9 43:10
outset 24:24 41:21
outside 22:5
overall 14:20
overrule 53:6
overruled 53:7
owned 3:19 5:18 6:8 12:20 21:25 38:10
owners 7:9 9:9 9:25 11:4 67:23
ownership 13:3 68:3

P

P 3:1
page 2:2 28:14 28:16 31:1 42:9
Panagra 30:22 45:1 53:5,6,7 53:19
paper 30:4,12 31:19 33:13,20 35:9,21 36:9 37:10,23 38:15
paragraph 16:18
paragraphs 51:20
paraphernalia 27:7,10
parent 49:6
part 11:4 12:6 12:11 13:8,15 18:9 24:6 31:14 33:22 38:21 41:2
participants 58:19
participate 4:2
participation 26:11
particular 8:5 12:6 48:3 57:8 62:19 64:23,24 64:25
particularly 7:5
parties 38:5
partnership 66:23,24 67:9
partnerships 67:2
parts 7:20 9:4 31:4 42:16
party 1:21 2:7 29:15
party's 29:21
pass 67:9
passer 6:13
passing 42:7
Patriots 17:7 61:24,25 62:1 63:2
pay 33:19 38:18 56:4
people 9:7 19:20 31:15 47:19,20 52:25 58:4
percent 47:15
perfect 48:19 62:24
perfectly 25:12
perform 21:13
period 43:18
permissible 49:10
permit 60:22
permitted 45:17
person 18:15 19:17,19 32:19
persuaded 18:14 18:15
persuasive 20:23
Petitioner 1:4,17 2:4,12 3:8 65:21
Petitioner's 38:6 38:11
phone 46:10
pick 46:10 65:23
Pipe 11:13
place 7:22 32:24 51:19
plainly 11:3 21:24
plaintiff 6:23 7:1 13:12 15:6 22:17 36:1
plausibility 56:7 56:10
plausible 6:17 10:16 14:8 27:20
plausibly 6:25
play 8:21,22 9:18 53:23 62:5
players 21:12 56:5
playing 10:2,4 10:21 14:23 26:21 54:2 56:13
playoff 8:22
plays 10:21,22
plead 6:24
pleading 15:15
pleadings 22:13 25:20
please 3:10 29:17 39:14
plurality 3:16 4:24 5:2
point 4:5 5:9,10 5:13 14:5 16:20 17:4,9 18:1,5,6,25 23:24 29:2 30:17 31:18 33:12 34:22 35:24 36:16 38:3 40:14 41:9,10 42:19 48:11 50:16 52:1 56:20 58:23 63:3 64:15 65:24 66:5 68:1,4
policy 4:6,11 5:1
pooling 67:20
popular 7:5
posing 12:15
position 23:7,7,9 25:22 38:4,6 38:11,14 39:2 52:5,8,9 66:1,1
possible 23:6 47:13
possibly 67:6
potential 32:16 35:2,6
power 7:1 14:12 19:4 27:21 29:23 30:8 33:16 36:4 44:11 45:13,17 45:24 46:21 49:17 52:16 61:12 63:12 64:5 67:6
powers 29:19,22
practice 50:10
practices 65:6
precedent 49:4
precise 34:15
precisely 32:13 32:18 54:20 62:14,15
premise 63:23
presented 58:24
presently 23:14 23:17 24:15 66:4
president 59:11
presumptively 8:14,15
pretty 21:9 40:9
prevail 36:7
pre-Copperwe... 49:4
price 32:1 34:3 37:19 38:15 44:19 53:1 57:18 63:19
prices 38:18 44:22 50:15 60:21 61:7 63:7 64:3,20
price-fixing 67:17
pricing 33:9 57:23
prima 9:11

principally 49:3
principle 42:1 52:12
principles 48:20 48:21 50:13 59:17,18
prior 42:9 43:23
pro 16:4
problem 23:22 44:7
process 43:12
procurement 32:3
procuring 30:1
produce 10:9 12:23,23 23:15 40:18 42:2 45:25 46:1 58:5 61:13
producing 10:14
product 15:10 15:11 32:1 34:1 39:25 41:12 42:3 43:14 45:25 46:19 47:19 48:7 55:19 57:19,22,23 58:1,5,25 61:13 65:17
production 43:8 46:2 50:23,24
products 17:24 33:9 35:13 37:20 43:20
professional 39:15 48:24,25
profits 67:21
profit-making 3:19
program 55:25
prohibit 9:7 10:1 14:14
prohibited 28:11
project 24:9,10
promote 40:18 41:12 42:3 43:13 45:18 46:19,20 47:2 47:18 48:3,3 53:25 55:13,19 55:19 56:20 57:9,16,22 58:1,5,25 59:21 61:6
promoted 61:20
promotes 47:4,7 61:6
promoting 44:11 45:3 51:24 54:5,20 61:5 65:16
promotion 50:23,24 54:3 58:3
promotional 41:14
promulgating 5:2
proof 41:19 66:13
properly 5:14 62:6
Properties 39:23 40:16 41:8,17 41:21 43:16,24 48:13
property 28:19 41:14 43:12,23 44:6
proposes 23:12
proposing 36:21
proposition 60:17
pros 51:9
protection 6:13
prove 18:3,23
provide 58:14
provides 42:5 59:15
pro-competitive 8:4,14 11:20 13:16 14:21 26:20 66:15
publicly 67:25
pure 51:12
purpose 8:7 10:24 21:14 24:17 46:18 47:1,2,15,17 48:2 56:19 58:24 60:16,23 61:17
purposes 11:14 33:22 65:16
pursuant 30:2
purveyor 34:1
push 66:2
put 22:6 23:4 50:3,3,4,18 57:13
putting 53:12

Q

quality 4:19
question 4:23 6:7 7:12,20 8:9 9:3,16 11:25 12:3,11,14,15 13:8 17:5 20:24 21:14,22 22:2,22,24 23:20,22 27:22 30:14 33:24 34:6,17 41:1 41:10,11,19 45:16,22 48:17 48:23 49:20,25 50:2 51:7 58:24 60:1 64:8 65:23 66:11
questions 13:23 20:15 21:7 24:18 33:8 36:20,22 66:11
quite 15:1 19:23 23:21 25:11 26:13 28:25
quote 25:16

R

R 3:1
raise 5:9 56:4
raised 8:10
raising 39:8
range 49:10 56:11 57:1
rates 64:20 65:7 65:13 67:8,9
ratifying 52:21
reach 38:16
read 16:3 51:14 51:20 52:19,20
real 12:9
really 6:13 7:12 53:20 56:7 61:6 62:9
reason 4:10 5:7 5:12 6:1,15,17 7:14,18 8:24 12:17 14:7,8 15:16 22:6,8 22:15,21 23:21 24:1,3,5,8,21 24:23 25:11,15 25:19,24 26:4 26:23 32:14 34:15 36:21,24 44:24 45:7 53:5,9,11 54:4 54:15 59:23 60:9,14,18 61:1 62:17,22 63:1 64:8 66:2 66:11 67:3,7
reasonable 30:24 31:5,5,9 31:12,12 34:17 45:4 52:2 60:3 60:7 61:2 64:9
reasonableness 59:21
reasonably 11:13
reasoning 23:11
reasons 6:23 25:10
rebut 66:14
REBUTTAL 2:10 65:20
receives 26:16
recognize 18:10
recognized 14:13 58:13
record 26:7,10 26:14,15 40:23 41:15 43:21 46:17 48:9,10 48:11,18 51:22 56:16 58:23 59:13
red 17:8,9,11,16 18:13,14 19:13 34:9,11 61:24
Redskins 10:3
reducing 64:11
reduction 9:15 10:5
Reebok 15:24 16:1,14
referees 38:8
reference 11:19 11:21 63:1
refined 24:1
reflected 41:20 50:7
reflects 43:22 65:13
refusal 65:4
regard 22:24 27:6 50:2 53:18
regarding 8:20
regulate 45:10 52:14
regulations 8:13 12:4
Rehnquist 51:4
reject 10:25
relate 13:25

50:5
related 66:18
relatively 59:14
relevant 41:1 67:20
remained 43:12
remaining 65:19
remains 50:19
remand 23:1 28:1 34:14
remanded 34:14
remark 20:24
remember 7:23 26:25
renting 29:25
representing 50:10
reproduces 62:14
require 9:4,5
requirement 3:16
residual 63:25
resolution 34:12
resolve 33:8 62:24
resolved 57:3
resonance 68:7
respect 4:14 24:12 32:3 33:6 34:12 67:11
respectfully 56:2
respects 37:3
respond 20:15 24:17
Respondents 1:23 2:9 39:12
response 15:2
rest 23:23
rested 21:12
restrained 16:14
restraining 9:8
restraint 4:12 5:11 8:5,12 10:16 11:5,7 11:10,11,13,19 12:17 19:9 25:7 34:16
restraints 54:25
restricted 4:6
restriction 6:5 10:13 11:10
rests 49:4
result 25:22 49:17
revenue 15:9 26:10
revenues 26:8 26:16 41:22 48:15
review 36:4 37:25
rib 43:6
ridiculous 62:2 62:3
right 9:24 12:9 15:3 16:2,5 17:8,13 18:12 18:19,20,21 19:22 25:5,23 35:14 44:6,20 46:6,15 49:23 52:3,3,7
rights 4:7,14
rival 9:21
Roberts 3:3 11:17,23 12:10 23:5,18 24:16 29:10 34:20 35:8,20 36:8 38:20 39:9 56:9 57:6,15 65:18,24 66:20 68:10
Rogers 44:4
role 43:11,13
room 7:9
Roy 44:4
royalties 47:17 48:15
rule 5:12 6:1,12 6:14,17,23 7:6 7:14,18 8:23 10:10,16 14:6 14:8 15:15 22:6,8,14,21 23:21,25 24:3 24:5,8,21,23 25:11,15,18,24 26:4,23 32:14 34:14 36:21,24 44:24 53:5,9 53:11 54:4,15 59:23 60:9,14 61:1 62:17,21 62:22,25 64:8 66:2,11,17 67:3,7 68:9
ruled 67:16
rules 8:3,13 12:4 12:7 24:19
ruling 49:21
run 6:14
running 36:14 36:15

S

S 2:1 3:1
sacrosanct 41:4 41:6
Saints 17:8
salary 49:13
sale 40:8 47:3,5 47:8 63:7
sales 15:11 26:9 27:6,15,16 52:24
Salvino 60:13
satisfy 15:15
Saturday 10:21
Saturday/Sun... 21:8
save 62:22
saying 4:17 9:16 11:2,25 15:1 31:11 32:19 35:9 37:16 38:22 45:2 46:5 51:21 54:1,19 56:12
says 8:11 10:6 21:21 24:4 25:6 26:15 40:6 43:21 44:9 68:8
scale 30:5
Scalia 13:18,20 14:1,17 19:25 20:3,8,11,12 21:21 47:1,7 47:22,25 57:14 63:13 64:1,6 64:11
Scalia's 20:23
SCALIS 48:6
schedule 8:22 9:10,11,25 10:12
scheduling 8:20 21:8 24:18
scope 52:10 58:22
scrutiny 3:14,23 4:3 5:20 38:12 39:5,17 49:9 65:3
se 7:24,25 8:3 16:4,6 31:9,9 31:11 44:23 66:17 68:8
Sealy 5:17 12:19 42:10
second 28:17 32:13,18 62:18
secretaries 30:5 33:19 38:19 49:12 50:15,25
section 3:14,23 4:3,8 7:17,25 13:1,2 31:21 32:8 33:8 34:5 34:6,7 35:4,17 35:22 36:4 37:12,25 38:12 39:5,8,17 43:1 45:9 48:25 50:2,3,18 51:6 52:10,13 65:2
Sections 28:20
see 16:12 17:8 30:16 31:24 44:7 50:12 53:5 61:4 62:13
seeking 49:20
seen 24:18
self-evident 59:22
sell 4:7 17:7 19:17 37:17,18 37:19 40:13,22 45:18 47:5,12 48:7 55:10,12
selling 17:12 19:13 36:9 48:2 56:12,13
sense 24:24 32:5 32:8
sensitive 25:10
sentence 28:17
separate 4:15 12:21 22:3 38:22 40:21 49:16 51:11 52:13,15 55:6
separately 3:19 5:18 6:8 12:20 21:25
serious 7:10 25:18 26:4
serve 58:12 65:8 65:8
services 64:22
set 38:15 40:21 65:6
sets 67:8
setting 32:4 65:13
Seventh 3:12

23:10 51:16
SG 62:12
Shanghai 46:11
share 15:10 26:8
shareholders 67:25
shares 26:17
sharing 15:9 26:10 67:21
Shell 67:14
Sherman 3:14 4:3 5:25 22:12 28:20 52:10,11 52:14 58:2,12 61:8 65:3
shirt 17:25
shirts 19:13 40:8 47:12
shop 61:25
shot 45:5
show 10:4 15:7 32:15
showing 9:11,12 19:3 51:23
shows 4:16 57:21 59:3 65:14
side 23:4 56:12
sight 53:25
significantly 32:16
similar 38:17
simple 44:25
simplest 46:9
simply 5:16 9:6 28:3 57:9 61:22 62:14
single 12:6 22:20 28:22 30:7,18 31:17 33:10,10,16 34:24 36:20 37:5,8,18,22 37:25 39:4 40:14,17,17 44:10 46:2,2 49:18 51:5,12 51:13,17 52:25 58:18,20 60:6 65:17 67:15
single-entity 60:1
sit 7:9
sits 40:6
situation 33:2 53:2 56:25 57:4 63:4,4 65:11,12
six 43:4 52:12
small 18:16
sold 63:20 64:4
Solicitor 1:18 4:16 23:8,9,12 24:2 28:1 29:1 65:25
solo 65:6
somewhat 62:14
sorry 13:19 14:25 34:21
sort 7:16 24:24 44:3 57:10 59:5
sorts 12:4
Sotomayor 4:13 5:9 10:17 11:9 27:25 28:7 36:18 37:4,15 43:15,25 49:7 49:19,24 59:20 59:25 60:5,15 61:14
Sotomayor's 12:14
source 44:11
sources 45:12,24 46:21 49:16 52:15 61:11 63:12 64:5
Sox 17:8,9,11,16 18:13,14 19:13 61:24
space 29:25 30:23
speak 55:16
specific 19:8
specifically 10:6 68:7
specified 34:3,4
spent 60:14
sponsor 55:25
sports 4:1 8:13 27:10,16 39:15 48:24,25 49:8
squarely 33:7
standard 24:4 45:9 56:7,10
standards 15:15
standing 3:25
Staples 31:22
start 11:25
started 51:16
starting 11:11
state 14:7 26:3
stated 47:1
statement 16:21
States 1:1,14,20 2:6 29:14,20
stay 37:5
step 42:12
Stevens 13:4,7 13:12,14,24 14:5,18,25 15:3,5 21:11 25:21 26:5,6 26:18 27:2,6 27:14 33:23 34:8 55:8,14 55:22 56:3
Stevens's 8:11
Stewart 1:18 2:5 29:12,13,16 31:6,18,25 33:1,24 34:5 34:11,22 35:15 35:23 36:12 37:1,7,22 39:1 42:6
stimulating 14:20
stood 28:23
stop 10:18,23 37:15
stopping 51:10 51:19
store 52:25 61:25 63:2
stores 44:19
straightforward 59:15,15
strength 14:22
stronger 26:21
stuff 7:10 19:17 20:13
subject 3:23 4:2 5:20,24 7:25 24:21 35:16,22 36:4 37:24 38:12 39:5,17 43:1 49:8 51:5 62:7 65:2 67:1
subjects 67:3
submission 24:17
submitted 59:12 68:11,13
subsequent 12:14
subsidiary 49:6
substance 22:23
substantial 4:20 19:4
substantive 66:7
succinctly 23:6
sudden 45:11 52:15
suddenly 16:11
sufficient 26:22
suggest 10:12 51:25 56:2 59:2
suggested 41:7 50:9
suggesting 10:22 41:5
suggestion 40:19
suggests 38:11 38:14 65:1
suit 20:5
summary 7:16 46:23,25 56:18 56:24 62:25
Sunday 10:22
supermarket 61:24,24
supplier 30:13 37:10,24
supplies 30:1 32:3 38:7
supply 31:20
support 26:19 29:21
supportable 27:24
supporting 1:21 2:7 29:15
suppose 21:11 47:9,22 48:1
supposed 16:15
Supreme 1:1,13
sure 7:14 15:1,5 23:21 29:1 40:12 49:11
survive 24:5 67:9
swayed 61:3
sweatshirt 17:16
sweatshirts 45:19
sympathize 60:16
system 6:20 15:21

T

T 2:1,1
Taft 11:12
Taft's 11:12
take 7:15 17:16 21:13 22:5 31:1 40:19,25
taken 32:23

talk 16:12
talking 32:21 46:8 59:4
talks 16:24
teachings 5:17 12:19,25
team 9:9,18,21 9:25 10:18 11:4 19:4 28:11 35:13 48:4
teams 3:12,18 4:1,24 5:4,7 6:9,14 7:4 8:20 9:18 10:1 12:1 12:5,20 14:13 14:22 15:17 19:16 26:8,11 26:17 27:21 30:10 33:17,21 34:23 35:3,10 36:3,16 38:10 38:23,24 42:15 43:4,9,10,16 44:1,5,10 47:12 49:8,12
televising 4:16
television 4:14 47:20
tell 36:19 47:9
tends 26:20
tens 60:11
terminology 32:21,22,24 66:6
terms 26:1 54:5 56:8 57:13,23 68:8
test 23:12 28:2
testimony 41:18
Texaco 67:14
Thank 3:9 21:1 29:10 39:9 65:18,22 68:10
that's 6:4 24:22 27:4 32:18 46:6 50:6 52:16 53:6 57:22 58:14 60:24
theoretically 55:10
theory 21:4 29:21 36:20,23 37:1 49:13 54:21
there's 7:8 15:5 15:9 22:4,5 41:18 48:10,12 48:16,17 53:20 54:1 56:6,11 57:1,6,7 63:24 66:25
They'll 8:21
they're 12:20,21 54:1 63:21
thing 16:12 19:14 26:6 27:4 31:8 32:9 33:21 40:6,9 46:9 57:10 62:16 63:16 64:8
things 6:1 24:20 30:8,23,25 31:7 48:2 56:11
think 4:21 6:17 6:21 8:1 13:22 17:24 18:19 19:18 20:21 22:1 24:13 25:1 26:3,24 29:18 30:19 32:23,25 34:5 37:7,22 38:3,5 39:1 42:23 47:3 48:1 51:16 58:11 62:9 63:3
thinking 52:4,4
Thomas's 68:6
thought 12:3 15:1 16:2,3 20:8 22:16 23:19 24:16 44:25 46:8,9 51:14 58:10 64:11
thousands 60:11
three 7:4 19:10 19:20
threshold 56:10
throwing 51:18 51:18
tickets 47:21
time 18:13 42:19 43:18 60:12,13
times 52:13
tool 8:6 41:14 61:22
tractor 61:25 63:2
trade 9:8 16:14 25:7
trademarks 4:18 5:6 15:19 43:17 61:15,16 61:18,22 63:14
transfer 23:19
transferred 32:24
transferring 24:10
treat 42:12
treated 67:15 68:4
treats 67:2
triable 48:1,8
trial 52:2 57:11
tried 31:16 47:23 54:14
Triple 7:11
troubled 48:22
trucking 50:6 54:10
true 19:12 44:15
try 12:13 18:21 66:14
trying 8:2 10:11 19:7,8 25:3 66:2 67:8
turned 42:8
TV 4:7 8:12
twinkling 25:17
two 7:4,20 9:4 10:20 17:23 19:20 21:10 31:6 38:4 39:7
Twombly 25:20 58:14
type 10:11 57:1
types 8:12
typical 45:8 67:24
T-shirt 47:4
T-shirts 17:7,12 45:18 46:8 59:21 61:5

U

ultimate 34:12
ultimately 4:9 30:9 38:9
unambiguously 40:23
undeniable 62:5
understand 13:14 15:8 18:1,5 19:15 23:24 24:14 25:8,21 29:1 30:15 40:13 41:4 50:8 66:5
understandable 25:10
understanding 26:14
understood 25:11,12 28:8 28:15,23,24
undisputed 40:24 41:16 46:16 48:10,18 56:18,23 57:20 60:2
unfortunately 51:17
uniform 50:14 50:15
unilateral 13:1 40:1,1
unit 46:2 49:17 51:2,3
unitary 20:6 21:4
United 1:1,13,20 2:6 29:14,20
unlawful 10:11 28:20
unreasonable 25:7 31:23 32:4,7,20
unreasonably 9:8 16:14
unsound 23:13
unstructured 22:9
use 5:6 8:6 25:2 32:14 41:13 51:3 61:22

V

v 1:5 3:5
value 59:5,7,9 61:17 63:14,25
vendors 44:22
venture 3:21 4:14,17 8:17 10:22,24 11:15 11:22 28:3 30:21,22 31:4 31:13,14 33:4 33:10 39:16,21 39:24,24,25 40:1,1 41:8,12 41:12 42:1,3,4 43:2,8,8 45:3,8 46:1,14 49:10 49:11,14 51:24 53:2,15,17,23 53:24,25 54:4

54:9,12 55:7 57:19,24 58:16 58:16,16,17,19 60:23 62:5 64:19,19,22 65:2,2 67:19 67:23
venturers 6:5 9:13 10:9,14 11:6 55:5 67:24
ventures 9:5,6 10:8 44:23 53:8 67:1,2
venture's 39:25 40:3 42:2 43:13
versus 51:10 54:2
vested 29:22 35:25
view 30:6 33:14 49:15
Viewed 44:9
vigorously 26:2
violated 4:8 11:7
violation 16:6 31:21 61:8 65:3
violations 16:4
vote 4:10

W

wage 30:5 32:4
wages 30:13 33:19 37:11 50:15
waived 24:6
want 16:19 17:6 17:6,11 19:11 23:23 37:17 45:5 51:22 52:8 58:7 64:15
wanted 22:17 36:1 49:11
wants 9:18,18
48:6,7
Washington 1:9 1:16,19,22
wasn't 29:3 42:19 43:3 56:17
waste 23:16
watching 47:19
way 12:15 32:14 35:18 38:4 55:13,15,19,23 56:4 58:11 66:8
ways 33:3
wear 17:25
Wednesday 1:10
welfare 38:1
went 48:16 64:18
weren't 59:1,2
we're 21:5
we've 24:18
we'll 3:3 64:24
we're 4:22,22
wholly 67:19
win 32:17 45:5 53:11
withdraw 20:24
witnesses 54:23
wondered 26:6
word 16:4 51:13 51:17
work 14:17
world 46:10
worried 51:14
worries 32:22
worrying 20:12 60:18
worth 63:3
worthless 63:17 63:21,24
wouldn't 26:18 31:10 32:5,7 34:17 37:24 38:2 52:19 57:12,12 59:22
67:9
wrestled 48:23
wrong 7:22 20:5 25:24 53:10

X

x 1:2,8

Y

Yankees 17:12 17:16 19:12
year 8:21
years 8:2 18:15 40:7,12 48:22 56:20,20 60:13 63:9 64:19
York 18:12
you'd 46:15
you're 10:22 17:20 18:2,21 20:7 27:8,9 36:21 38:22 42:20 62:8,8

Z

zone 7:13,21

$

$1,000-a-year 49:13
$7 62:9,22

0

08-661 1:5 3:4

1

1 3:14,23 4:3,8 7:17,25 13:1,2 28:20 31:21 32:8 33:8 34:6 34:7 35:4,17 35:22 36:4 37:12,25 38:12 39:5,8,17 40:10 43:1 45:9 48:25 50:2 51:6
52:10,14 65:2
10:08 1:14 3:2
100 47:15
11:19 68:12
13 1:10
14-game 9:10
16 8:21 62:13
16-game 9:11
17 31:1,1 62:13
1919 64:17
1963 40:16 41:7 42:13,18
1970 39:19 42:23 43:4
1984 48:23
1999 64:17

2

2 28:14,16,20 40:11 50:3,18
20 40:7
2001 28:21
2010 1:10
29 2:7

3

3 2:4 18:15 60:13 65:19
3-year-olds 18:17
30 8:2 40:12
32 3:12,18 5:4 6:8 38:23 55:21 63:16
39 2:9

4

40 56:20
45 56:20

6

65 2:12