

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CV No. 17-2511
	)	
	)	Washington, D.C.
vs.	)	March 22, 2018
	)	11:30 a.m.
AT&T, INC., ET AL.,	)	
	)	Day 1
Defendants.	)	
_____		

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE RICHARD J. LEON  
UNITED STATES SENIOR DISTRICT JUDGE

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Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription

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

2 DEPUTY CLERK: All rise. The United States  
3 District Court for the District of Columbia is now in  
4 session, the Honorable Richard J. Leon presiding. God save  
5 the United States and this Honorable Court. Please be  
6 seated and come to order.

7 Your Honor, this morning we have Civil Action  
8 No. 17-2511, the United States of America v.  
9 AT&T, Inc., et al.

10 Counsel for the parties, please approach the  
11 lectern and identify yourself for the record and the party  
12 or parties that you represent.

13 MR. CONRATH: Good morning, Your Honor.  
14 Craig Conrath for the United States.

15 THE COURT: Welcome back.

16 MR. WELSH: Good morning, Your Honor. Eric Welsh  
17 for the United States.

18 THE COURT: Welcome back.

19 MR. WELSH: Thank you.

20 MR. HUGHES: Good morning, Your Honor.  
21 Jared Hughes for the United States.

22 THE COURT: Welcome.

23 MR. KEMPF: Good morning, Your Honor. Don Kempf  
24 for the United States.

25 THE COURT: Welcome back.

1 MS. SCANLON: Good morning, Your Honor.

2 Lisa Scanlon for the United States.

3 THE COURT: Welcome back.

4 MS. BROWN-REILLY: Good morning, Your Honor.

5 Alexis Brown-Reilly for the United States.

6 THE COURT: Welcome back.

7 MS. BROWN-REILLY: I'd also like to introduce our  
8 paralegal, Jordan Hughes, sitting at counsel table.

9 THE COURT: Welcome.

10 MR. PETROCELLI: Good morning, Your Honor.

11 Daniel Petrocelli for Time Warner, AT&T, and DirecTV.

12 THE COURT: Welcome back.

13 MS. ROBSON: Good morning, Your Honor,  
14 Katrina Robson for AT&T, DirecTV, and Time Warner.

15 THE COURT: Welcome back.

16 MR. OPPENHEIMER: Good morning, Your Honor.

17 Randy Oppenheimer for AT&T, Time Warner, and DirecTV.

18 THE COURT: Welcome back.

19 MR. WALTERS: Good morning, Your Honor.

20 Rob Walters here for AT&T and DirecTV.

21 THE COURT: Welcome back.

22 MR. BARBUR: Good morning, Your Honor.

23 Peter Barbur representing Time Warner.

24 THE COURT: Welcome back.

25 MR. ORSINI: Good morning, Your Honor.

1 Kevin Orsini for Time Warner.

2 THE COURT: Welcome back.

3 MR. RAIFF: Good morning, Your Honor. Mike Raiff  
4 for AT&T and DirecTV.

5 THE COURT: Welcome back.

6 All right, Counsel. We're here for the opening  
7 arguments in the case.

8 As I indicated the other day, each side can have  
9 45 minutes. But you don't need to use all 45 minutes.  
10 After all, you both already previewed your opening arguments  
11 to me Tuesday. So use your best judgment.

12 Now, with regard to that location, it's probably  
13 not going to be good because it's going to block my staff's  
14 view. So you might want to set it up over here somewhere.  
15 It's going to be -- it's not going to be a good location.

16 So why don't you --

17 MR. CONRATH: May I do that now, Your Honor?

18 THE COURT: Yeah, go right ahead.

19 MR. CONRATH: Okay.

20 And, Your Honor, as I'm presenting these, may my  
21 colleague, Mr. Hughes, assist in moving the boards?

22 THE COURT: He may.

23 MR. CONRATH: All right. Thank you.

24 THE COURT: It if it will be easier for him, he  
25 can use that chair over there to sit and then go back and

1     forth, that kind of thing.

2             MR. CONRATH: Thank you. That would be more  
3     efficient, I think, and less disruptive. Thank you.

4             THE COURT: That's fine.

5             MR. CONRATH: I have --

6             THE COURT: Handout?

7             MR. CONRATH: -- copies of the boards. If the  
8     Court would like, I can hand them up.

9             THE COURT: All right. That's fine.

10            MR. CONRATH: And I've already given them to  
11     counsel.

12            THE COURT: And when he's done, Mr. Petrocelli,  
13     we'll take a five-minute break to reorganize things.

14            MR. PETROCELLI: Thank you, Your Honor.

15            THE COURT: So you'll have a chance to do that.  
16     So don't be concerned about that.

17            That'll work.

18            I can see. No problem.

19            MR. CONRATH: All right.

20            THE COURT: You can move it a little left, sir.  
21     There you go. That's fine.

22            MR. CONRATH: Sorry, Your Honor. We thought we  
23     were set up, but we apologize.

24            THE COURT: No. That's all right.

25            MR. CONRATH: We'll get it right.

1 THE COURT: Not a problem. It's a work in  
2 progress.

3 MR. CONRATH: Yeah, it is.

4 We haven't used boards before in the courtroom,  
5 Your Honor.

6 THE COURT: Well, you know, it's a new experience  
7 for all of us.

8 MR. CONRATH: In this trial.

9 I go back long enough that that was the only  
10 visual aid that was available. So --

11 THE COURT: Old school, this is an old-school  
12 operation.

13 MR. CONRATH: All right. We'll try to keep it  
14 that way, Your Honor.

15 THE COURT: All right. Go for it.

16 MR. CONRATH: Ready? All right.

17 Your Honor, may it please the Court, Craig Conrath  
18 for the United States.

19 THE COURT: I know who you are.

20 MR. CONRATH: Yeah, I know.

21 Your Honor, 90 million American households  
22 subscribe to a pay-TV service like cable or satellite. And  
23 for a long time, those consumers have dutifully paid their  
24 monthly bills, even as they went up, year after year.

25 For those 90 million households, every dollar the

1 cable TV bill goes up is a dollar they can't spend on  
2 something else.

3 The evidence will show that this merger will hurt  
4 those pay-TV consumers, would harm competition in the market  
5 for pay TV. Prices would go up; innovation would go down.

6 That's why this merger would violate the antitrust  
7 laws, Section 7 of the Clayton Act, to be specific.

8 What does Clayton Act, Section 7, ask the Court to  
9 do?

10 Well, we talked about that maybe a day or so  
11 ago --

12 THE COURT: Yeah.

13 MR. CONRATH: -- a couple times. It asks the  
14 Court to make a prediction. The statute says no company can  
15 acquire another company if the effect "may be substantially  
16 to lessen competition."

17 Now, no one could know for sure what would happen  
18 in the future, but Congress has tasked the Court with the  
19 responsibility to look at the specific group of consumers  
20 who are affected by the merger and ask whether they'll be  
21 harmed by it.

22 The Courts, including the Supreme Court, have been  
23 clear about what this directive means. It means if there's  
24 even a reasonable probability or appreciable danger of harm  
25 to consumers in the affected market, the merger should not

1 happen.

2           So what's the method that courts use to make that  
3 prediction? Well, look hard at the market, at the facts,  
4 and consider what would change with the merger. It would be  
5 great if we could actually see the future, but we can't. So  
6 we use other avenues.

7           I mean, one possibility is to look at the business  
8 documents that were part of the deal. But the  
9 businesspeople and the lawyers who are putting those  
10 together know that they might eventually find their way to  
11 the Justice Department and even to a court, so they're not  
12 that reliable a guide.

13           And the executives tend to be believers in their  
14 deals. That's their job, after all.

15           So courts don't focus on intent. What they focus  
16 on is effects, effects in the market.

17           So our job in this trial is to look at the facts  
18 about the pay-TV industry, cable and satellite companies,  
19 pay-TV providers, I may call them from time to time.

20           These companies have to get programming for their  
21 services in order to provide that programming to their  
22 customers.

23           What we have to ask is: What would be the effects  
24 if the biggest pay-TV provider buys one of the most  
25 important sellers of television programming?

1           AT&T has already given us a roadmap to answering  
2 this question. And we have the quote here on a board.

3           Back in 2012, in a filing at the Federal  
4 Communications Commission, AT&T said that "vertically  
5 integrated providers," which is like what AT&T wants to be  
6 by controlling Time Warner, "have the incentive and ability  
7 to use, and indeed have used whenever and wherever they can,  
8 that control as a weapon to hinder competition."

9           AT&T said that back when they were -- before they  
10 were trying to buy Time Warner, so back when they were just  
11 a pay TV provider. So it would have been their ox being  
12 gored if the prices for TV programming went up.

13           Back then, they could see the problem clearly.

14           Vertical integration in this industry can, indeed,  
15 be a weapon to hinder competition.

16           And you can see on the board also that DirecTV, in  
17 a different proceeding, said something about the end result  
18 of all this: Higher prices and lower-quality service to  
19 consumers, for consumers.

20           The evidence will show how these anti-competitive  
21 effects are likely to happen in the case of this merger.  
22 Time Warner would be a weapon for AT&T, because AT&T's  
23 competitors need Time Warner programming.

24           How much do pay-TV providers need that Time Warner  
25 programming? Well, there's one pretty good and a little bit

1 colorful description about how important Turner programming  
2 is. It comes from the CEO of Turner networks.

3 He wrote that one of AT&T's competitors, Dish  
4 Sling, that would -- that their service would be crap  
5 without Turner programming. Now, he didn't actually write  
6 "crap," Your Honor. He said something else, a word I'm not  
7 going to use in your courtroom.

8 THE COURT: Oh, we've heard all kinds of stuff in  
9 this courtroom. Trust me. Don't be shy.

10 MR. CONRATH: I won't.

11 Well, whatever the word, Your Honor, the meaning  
12 was clear: Time Warner programming is important to AT&T's  
13 competitors.

14 The words "incentive and ability" that we can also  
15 see here in the quotation from AT&T are important tools in  
16 the prediction process that the Court is called upon to  
17 undertake in the course of evaluating a merger. It's  
18 standard to evaluate what would likely happen in the future  
19 by looking at what a merged company will have both the  
20 incentive and the ability to do.

21 And the logic is that when a company can do  
22 something, as ability, and they would profit from doing it,  
23 the incentive, that's evidence of what likely will happen in  
24 the future.

25 In this trial, we're going to focus on evidence

1 that bears on both incentive and ability.

2 The ability to hinder competition comes from  
3 Time Warner, the content that competitors need, the weapon.

4 The incentive for AT&T to hinder competition comes  
5 from its massive investment in traditional pay TV.

6 AT&T bought DirecTV for \$67 billion, just in 2015.  
7 And that's on top of the pay TV business that they already  
8 had, one using telephone lines.

9 AT&T is now the largest pay TV company in the  
10 country. They have more than 23 million subscribers. Those  
11 millions of subscribers are profitable both on their own and  
12 also because they buy other services from AT&T.

13 That legacy business is, in AT&T's own words, a  
14 cash cow. That gives AT&T a big incentive to protect that  
15 cash cow from competition, from innovation, from disruption.

16 Combining that incentive with the ability to use  
17 Time Warner as a weapon would lead directly to consumer  
18 price increases.

19 When the merged company negotiates with AT&T's  
20 competitors, it will raise their prices, even more than they  
21 normally would; as a result, consumers will pay hundreds and  
22 millions of dollars more for pay TV. That incentive to harm  
23 competition is particularly strong when it comes to  
24 innovation.

25 Using the Internet, there are some new innovators

1 trying to get into this industry, trying to compete in a way  
2 that could really disrupt the old business model. They're  
3 coming right for AT&T's pay-TV cash cow.

4 But these new innovators need Time Warner content,  
5 and AT&T will have the incentive to use its control of that  
6 content to slow those innovators down.

7 Now, AT&T is going to say that they want this  
8 merger so they can speed up innovation. But the evidence  
9 will confirm its incentive to make sure that innovation  
10 doesn't threaten its existing profits.

11 As AT&T says in its documents, what they want in  
12 the industry is stability, not disruption.

13 Not long ago, Time Warner, still an independent  
14 company, worked with another company to make some particular  
15 Time Warner content viewable in an innovative way.

16 An AT&T executive who learned of that said that it  
17 "sets him on fire," his words, when a programmer like  
18 Time Warner does something like that to "deteriorate the  
19 value of AT&T's traditional bundled."

20 The AT&T executive who wrote those words was  
21 Mr. Stankey, and he's the AT&T executive who would be in  
22 charge of Time Warner if the merger were to go through.

23 Buying Time Warner would give AT&T a weapon to  
24 slow down innovation and to protect its pay TV cash cow.

25 The evidence, Your Honor, will -- that we present

1 at trial will confirm just what AT&T said six years ago,  
2 that owning important programming would give it a weapon to  
3 hinder competition.

4 It would hinder existing competition by giving  
5 DirecTV the ability to make content more expensive for  
6 DirecTV's rivals, and it would hinder emerging competition  
7 that needs Time Warner content to be successful in their  
8 attempt to shake up the business.

9 If the merger goes forward, consumers all across  
10 America will be worse off as a result.

11 Now, let me turn now just briefly to talk about  
12 the legal standard, and then I'll go on to preview the  
13 evidence.

14 This case is governed by Section 7 of the  
15 Clayton Act, which outlaws mergers and acquisitions where  
16 the effect "may be substantially to lessen competition."

17 The antitrust laws reflect this country's  
18 longstanding devotion to a competitive free-market economic  
19 system.

20 The antitrust laws protect competitive free  
21 markets. And Section 7 does that specifically by preventing  
22 mergers that are likely to harm competition.

23 Section 7 applies to all mergers, vertical and  
24 horizontal or otherwise.

25 Congress actually amended the statute in 1950 to

1 confirm that it applies to vertical mergers.

2 Now, it's true that the vast majority of vertical  
3 mergers are not likely to be an anti-competitive.

4 By the way, the same thing is true about the vast  
5 majority of horizontal mergers.

6 Last year, about 2,000 mergers were filed for  
7 antitrust review, horizontal, vertical, and other.

8 Less than 2 percent of those even got a very close  
9 look.

10 What's important here in this case is not what we  
11 think about vertical or horizontal mergers in general, but  
12 what the evidence shows about this merger in specific.

13 And the evidence in this case, the witnesses, the  
14 documents, the economic analysis, all will show that the  
15 effect of this merger may be substantially to lessen  
16 competition.

17 The Supreme Court has repeatedly explained that  
18 the Clayton Act is designed to prevent harmful trends  
19 towards consolidation before they occur. As a result, the  
20 statute requires the Court to make a prediction, as we've  
21 talked about.

22 The "may" is in there for a reason, as the  
23 Supreme Court explained, in the quotation on the second half  
24 of this board.

25 Congress used the words "may be substantially to

1 lessen competition" to indicate that its concern was with  
2 probabilities, not certainties.

3 And the emphasis put there on "may" was put there  
4 by the Supreme Court.

5 The Court should stop this merger before it  
6 happens, if we prove that there's a reasonable probability  
7 of harm.

8 To examine a likelihood of harm, to make the  
9 prediction that the law calls for, the Court should  
10 undertake a comprehensive inquiry in the words of the  
11 D.C. Circuit in the *Baker Hughes* case.

12 The general dynamics in the Supreme Court kind of  
13 explained this approach: "Only examination of a particular  
14 market, its structure, history, and probable future, can  
15 provide the appropriate setting for judging the probable  
16 anti-competitive effects of the merger."

17 The idea is the Court should take in evidence that  
18 tells it about what's going on in the marketplace and use  
19 its judgment and the evidence that we put in to forecast  
20 effects.

21 Basically, determine, based on a comprehensive  
22 review, whether the market -- merger may substantially  
23 lessen competition. That's the task before the Court.

24 It's a challenging task, and we know it. But we  
25 understand that it's our job to give you the evidence that

1 is persuasive that will make it not just possible but easy  
2 and obvious for the Court to find that this merger would  
3 harm competition.

4 Let me turn, then, to talking about how we'll ask  
5 the Court to examine the market for pay TV.

6 I'll start by explaining what the evidence will  
7 show about the value of Time Warner content and why it can  
8 be a weapon to hinder competition.

9 Then I'll talk about two significant ways that  
10 competition would be harmed. First, the evidence that  
11 consumer prices would go up; second, the evidence that  
12 innovation would slow down.

13 The first thing that the evidence will show is  
14 that there's no good substitute for Time Warner content.  
15 Time Warner's customers, pay-TV providers, will tell you  
16 that they needed to compete. That's an important point in  
17 dispute, Your Honor, and the weight of the evidence will  
18 show just how important that content really is.

19 For example, you'll hear from our first witness  
20 today, Ms. Fenwick, who works for a cable company called  
21 Cox Communications. She's knowledgeable about these --  
22 about this industry. She'll be able to explain to the Court  
23 the facts about the pay-TV market, since it's our first  
24 witness.

25 And like our other industry fact witnesses, she'll

1 tell the Court how this market works and what it's like on  
2 the ground, so that the Court can have that information in  
3 making its prediction about the likely effects of the  
4 merger.

5 She'll explain specifically about what makes  
6 Time Warner programming so important to companies like hers.

7 This board has a basic background for Time Warner.  
8 It has three main components: Turner, HBO, and  
9 Warner Brothers.

10 Warner Brothers, off here on the right, produces  
11 content, shows and movies.

12 HBO has great shows like *Game of Thrones* and  
13 *Westworld* years ago, had *Sopranos*.

14 In September, it earned 29 prime time Emmy Awards,  
15 the most of any network, for the 16th year in a row,  
16 Your Honor.

17 The Turner networks here in the bottom part of the  
18 chart are some of the most valuable networks there are.  
19 Almost all pay-TV subscriptions in the United States today  
20 come with a core of Turner networks like TNT, TBS, and CNN.  
21 They're carried broadly because they have so many shows that  
22 consumers want to watch.

23 The industry fact witnesses, like Ms. Fenwick and  
24 the others we'll bring, will explain the consumers very much  
25 like to watch Turner programming. As a result, if you're a

1 pay-TV provider, you really want to have that content  
2 available for your consumers. In fact, it's generally  
3 viewed as must-have content.

4           You won't just hear that from industry witnesses.  
5 You'll also see that in AT&T documents. You'll see that in  
6 Time Warner documents. And expert analysis will confirm how  
7 important Turner content is.

8           And after all, AT&T is paying \$108 billion in  
9 total for Time Warner. They're paying that much because  
10 they know that Time Warner has great programming.

11           The evidence will show that there's no good  
12 substitute for much of Time Warner's programming. Surely,  
13 there are lots of things to watch. There's always something  
14 to watch on the TV today.

15           But when consumers want to watch, for example, the  
16 NBA playoffs on TNT, the fact that they could turn somewhere  
17 else and watch a Disney movie isn't really a very good  
18 substitute.

19           A week ago in the NCAA March Madness when a No. 16  
20 University of Maryland, Baltimore County, finally beat a  
21 No. 1 University of Virginia, it was all live on Turner.

22           And for all the other content you might watch in  
23 the world, if you're a basketball fan, there's no substitute  
24 for watching a game like that live. And it was available on  
25 Turner.

1           What would consumers do if that kind of  
2 programming, the programming they really want, weren't  
3 available at their pay-TV provider?

4           Well, some of them would switch to another  
5 provider that did have that programming, like, for example,  
6 AT&T's DirecTV, the largest provider in the country. That's  
7 a key point of leverage that AT&T would gain.

8           We'll present a lot of evidence on that point,  
9 that pay TV competitors would lose subscribers and they  
10 wouldn't be able to sign up new ones as well if they didn't  
11 have Time Warner content.

12           You heard a suggestion a couple days ago that it  
13 would just be a few consumers. But the evidence will show  
14 that it could be tens of thousands or hundreds of thousands  
15 of consumers and enough to make a difference, a real  
16 difference for pay-TV providers.

17           Some industry witnesses have actually studied the  
18 question in an analytical way and done their own projections  
19 in the ordinary course of business of how many consumers  
20 they would lose. And you'll see that evidence, Your Honor.

21           And we'll also present expert testimony about a  
22 consumer survey on the subject.

23           The point is that without Time Warner, AT&T's  
24 competitors would stand to lose customers and their loss  
25 would be AT&T's gain. That's why the merger would give AT&T

1 a weapon to hinder competition.

2           So how would AT&T likely use that weapon,  
3 Your Honor? First of all, they'd charge more for  
4 Time Warner content to their competitors. They'd have the  
5 incentive and, with Time Warner, the ability to do that, so  
6 we can predict that they would do that.

7           We'll present industry witnesses and economic  
8 expertise that confirm the likelihood that this would  
9 happen. Let me summarize that briefly.

10           Prices for this market are set in negotiations.  
11 That's how you decide what you're going to pay for content  
12 if you're a pay-TV provider. They're long, complicated  
13 negotiations.

14           We'll bring in some of the negotiators who can  
15 testify so that the Court can learn facts about how these  
16 negotiations happen.

17           The outcome of negotiations like that depends on  
18 how much bargaining leverage each side has.

19           The bargaining that each side -- the bargaining  
20 leverage that each side has is a function of what its  
21 alternative is.

22           The alternative to a deal for television content  
23 is a blackout of that content. The provider wouldn't be  
24 able to offer Turner programming to its customers, sometimes  
25 also called a takedown or going dark.

1           Before the merger, that's not good for either  
2 side. Each of them definitely stands something to lose.  
3 That's why the two sides in these negotiations generally  
4 come to a deal, although not always. There are some  
5 blackouts.

6           But after the merger, one thing changes: A  
7 blackout isn't all bad for the merged firm. If there's a  
8 blackout, the pay-TV provider who had been negotiating with  
9 Turner is going to lose customers, customers who really like  
10 their Turner content, tens of thousands or hundreds of  
11 thousands of them.

12           And DirecTV, the biggest producer -- provider in  
13 the country, who competes everywhere, is going to get some  
14 of those customers.

15           So after the merger, a blackout is not as bad as  
16 it was before the merger, for just Time Warner as an  
17 independent company. So that changes the bargaining  
18 dynamic.

19           The merged firm has more bargaining leverage than  
20 Time Warner did before the merger, so it's going to get  
21 higher prices for Time Warner than Time Warner was able to  
22 do before the merger when it was independent.

23           That result will be bad for AT&T and its  
24 competitors, for sure, the other TV providers. But what's  
25 really important is that that will be bad for competition.

1 AT&T's competitor will have higher costs, so they'll be  
2 weaker competitors.

3 AT&T will benefit from facing weaker competition,  
4 and consumers will pay higher prices as a result of that  
5 weaker competition.

6 AT&T would face weaker competition for another  
7 reason too. Rights now, HBO is a great competitive tool for  
8 pay-TV providers, who are competing with other providers to  
9 sign up customers. So they'll try to steal away customers,  
10 one from the other.

11 You'll see, you know, sign up with us and get  
12 three months of HBO or things like that. It's a good  
13 promotional tool because consumers know HBO and they like  
14 it. And now HBO, as an independent company, can work with  
15 different providers and is willing to.

16 But, of course, since it's HBO's name, HBO can  
17 control those promotional offers.

18 But once AT&T owns HBO, how willing is HBO, an  
19 AT&T company, going to be to let AT&T's competitors use HBO  
20 that way? How willing are they going to let them use HBO as  
21 a promotional tool to take customers that AT&T wants to get?  
22 Not very likely.

23 So that's another way competition would be  
24 softened, weakened by the merger, and consumers lose out  
25 when competition is weakened.

1           Your Honor, our economic expert will independently  
2 confirm the prediction that the merger will lead to higher  
3 prices in pay TV.

4           Economics can take data and information and help  
5 to analyze the effects of a merger.

6           You'll hear testimony from Professor Carl Shapiro,  
7 one of the nation's leading antitrust economists. He'll  
8 explain, based on his view of the industry and the evidence,  
9 the concerns about this merger are well-founded.

10           Professor Shapiro will also explain that he used a  
11 Nash bargaining model to predict the likely effects of this  
12 merger on competition.

13           Economic models are commonly used in merger cases.  
14 We used them just last year in this case, in this  
15 courthouse, in the *Anthem* trial and the *Aetna* trial.  
16 Different kinds of economic models, but economic models are  
17 a common tool.

18           The Nash model is based on the insights of Nobel  
19 Prize-winning economist John Nash. You may remember his  
20 work from the movie about his life, *A Beautiful Mind*.

21           THE COURT: Yeah.

22           MR. CONRATH: The foundation of the Nash  
23 bargaining model is just the insight that the outcome of a  
24 negotiation depends on what each side's best alternative is  
25 if there's no deal in the negotiation.

1           As we talked about before, the merger would give  
2 the merged firm more bargaining leverage.

3           In this case, Professor Shapiro's Nash model  
4 projects that the merger would increase prices to pay-TV  
5 consumers by more than \$400 million. And that's a  
6 conservative estimate, as Professor Shapiro will explain.

7           Professor Shapiro's model actually builds in the  
8 possible positive effect of the merger to lower some prices  
9 a bit. That's because after the merger, AT&T could charge  
10 itself a lower price for Time Warner content than maybe what  
11 it's paying today. That's the kind of thing that is  
12 something that's often discussed in general as a potential  
13 benefit from vertical integration.

14           Professor Shapiro fully accounts for that effect  
15 in his model.

16           It turns out that in the particular facts of this  
17 merger and this industry, that effect would be small,  
18 compared to the overall price increase that the merger would  
19 likely bring.

20           The model predicts a net -- net price increase to  
21 pay-TV consumers of over \$400 million.

22           Now, do we think that the model projects the exact  
23 number down to the penny of what market-wide prices would go  
24 up?

25           No, no, it's not that kind of precision. But it's

1 a separate confirmation that the merger would drive up  
2 consumer pay-TV bills all across the country.

3 Defendants' economists, of course, will nitpick  
4 every piece of this model. They'll attack every number that  
5 goes into it.

6 But you'll see that it's straightforward and it's  
7 based on how the industry works, as the Court will learn  
8 from the industry witnesses who actually negotiate these  
9 deals.

10 So what do the defendants say about this  
11 \$400 million in harm? Well, they argue that maybe for any  
12 one consumer, that's only \$6 a year or more in higher places  
13 for their cable TV. They say that's just pocket change,  
14 just a fancy cup of coffee.

15 Really, their -- in essence, their answer is:  
16 Look, consumers can afford it.

17 What we'll grant you, Your Honor, that it's highly  
18 unlikely that any one consumer will be able to bring a case  
19 over a \$6 increase in prices. But that's actually why we  
20 have a Clayton Act, and it's why we have an antitrust  
21 division. That's why we have Public Law enforcement,  
22 Your Honor.

23 The antitrust division brings cases all the time  
24 to protect millions of people from paying just a few more  
25 dollars each. That's how the antitrust laws work to keep a

1 competitive free market.

2           Thousands and thousands of people, throughout the  
3 economy, making their own decisions, each trying to save a  
4 few bucks at a time at every level of every market is what  
5 gives us in this country the kind of competitive free-market  
6 economy we have that's the envy of the world, Your Honor.

7           So when defendants try to tell us that this is  
8 just a fancy cup of coffee, that's not just an attack on  
9 this merger case; that's an attack on -- a frontal attack on  
10 law enforcement, on antitrust law enforcement.

11           And it's not just that it's a lot of money across  
12 the economy, hundreds of millions of dollars per year. It's  
13 also a big increase in the price of Turner programming.

14           Turner content only makes up a few dollars' worth  
15 of each cable subscription, and it would be going up around  
16 10 percent. Effectively, consumers would be faced to pay  
17 for what's like an extra month of Turner programming every  
18 year, even though they only get 12 months. That would be a  
19 huge, unjustified wealth transfer, Your Honor.

20           And the fact that there will be any consumer price  
21 increase at all demonstrates that this merger would harm  
22 competition substantially. If the harm to competition  
23 weren't substantial, it couldn't lead to higher prices.

24           Chief Judge Howell's description in the *H&R Block*  
25 case is similar to what Judge Tatel said in *Whole Foods*.

1 All the government has to show under Section 7 is a  
2 "appreciable danger of higher prices."

3 The evidence in this case will show that,  
4 so this merger would substantially, substantially lessen  
5 competition.

6 Your Honor, now, let me turn to the evidence we'll  
7 present to show that the second major way AT&T can use  
8 Time Warner as a weapon to hinder competition.

9 The second substantial lessening of competition  
10 from the merger would be harm to innovation.

11 In the market for pay TV, the incumbents, the  
12 traditional pay-TV companies, like AT&T, DirecTV, still  
13 dominate. The evidence will show that they have over  
14 90 percent of the subscribers.

15 Internal documents will confirm that the pay-TV  
16 business is still profitable and that they expect it to be  
17 profitable for years to come.

18 There are, however, some Internet companies that  
19 actually do offer pay-TV services that compete directly with  
20 them. They provide a bundle of live pay-TV channels as a  
21 substitute for a cable or satellite subscription.

22 But you don't need a cable box. You don't have to  
23 wait for an installer. You usually don't need a long-term  
24 contract.

25 Sometimes these companies are called virtual

1 MVPDs, another example of psychiatry jargon.

2           These companies are just starting out in the  
3 market.

4           You'll hear at trial from several of these new  
5 emerging pay-TV competitors.

6           Now, I'm not talking here right now about  
7 companies like Netflix or Amazon. They do have video  
8 programming, and they're important. But they're basically  
9 on-demand programming. They don't have live content like  
10 traditional pay TV.

11           In fact, just for example, most Netflix  
12 subscribers are also pay-TV subscribers, something like  
13 80 percent.

14           The on-demand companies are more like a supplement  
15 than a substitute for a pay-TV service.

16           People buy both, not one or the other.

17           The emerging competitors, though, that are the  
18 most direct challenge to cable and satellite companies are  
19 the online, live pay-TV companies. They have the potential  
20 to bring a lot of new competition to the pay-TV market.

21           They have the potential to be disruptive. They  
22 could undermine the status quo that's been really highly  
23 profitable for the companies that are there.

24           And that threatens AT&T, because AT&T earns a lot  
25 of money from its millions of existing DirecTV subscribers.

1           AT&T has an incentive to slow down this new  
2 competition in order to protect its pay-TV cash cow.

3           The evidence will show that the merger would give  
4 AT&T also the ability to harm these new online competitors.  
5 How? Because they need Time Warner content for pretty much  
6 the same reasons that the traditional competitors need  
7 Time Warner content.

8           It's valuable. It's unique. And consumers really  
9 want it. And you'll lose customers if you don't have it, or  
10 you won't be able to sign them up in the first place.

11           That's true for all of those new online pay-TV  
12 competitors.

13           The merger would take a tool these new competitors  
14 need to compete and turn it into a weapon for AT&T.

15           How? How could it be? Well, they could threaten  
16 to withhold the content or some of it. That could help them  
17 raise the prices, the costs, to these new competitors. And  
18 new competitors are often on the edge. They need to have  
19 reasonable costs in order to compete.

20           They might even raise it more at a higher level  
21 than the traditional pay-TV providers would see.

22           Also, AT&T might be able to impose contract terms  
23 that would make it hard for the new competitors to be  
24 successful, contract terms that an independent Time Warner  
25 has not had the incentive to impose.

1           Dish's Sling service is an example of one of these  
2 new competitors. It was just launched in 2015.

3 Mr. Schlichting, who runs Sling will be a witness in this  
4 case, and he's knowledgeable about this marketplace.

5           Mr. Schlichting will explain that Sling offers two  
6 base packages: blue and orange. Each one is around \$20 for  
7 a core set of channels, and then you can add on other things  
8 that appeal to your own particular preferences.

9           You can imagine that that \$20 price point can be a  
10 real competitive challenge when compared to the traditional  
11 big and expensive cable or satellite bundle.

12           Both of Sling's base packages have Turner  
13 channels. They have it so that their customers can get  
14 access to live sports, news, and other programming that  
15 Turner offers. That's how important Turner programming is  
16 to Dish Sling and these other emerging pay-TV providers.

17           It was actually the Dish Sling service that  
18 Turner's CEO wrote would be "crap without Turner."

19           But defendants now claim that these emerging  
20 competitors in general would be not crap without Turner but  
21 just fine without Turner. That's their position now.

22           But that's not what the evidence will show.

23           For example, in their answer to our complaint,  
24 defendants made a big deal out of the fact that Google  
25 launched a live-TV service called YouTube TV without Turner

1 programming. That was in November in their Answer.

2 But guess what happened next. It turned out that  
3 apparently launching without Turner content didn't work out  
4 that well. And just last month, in February, YouTube TV  
5 announced that they're adding Turner programming.

6 So in November, defendants thought that this  
7 example would prove their case; but by February, the market  
8 had spoken. And it turns out that Turner program is really  
9 important to a new competitor.

10 AT&T has actually launched its own online service,  
11 DirecTV Now. Just like all the other successful online  
12 services, it includes Time Warner content.

13 And defendants will probably say that it shows  
14 they're embracing this future.

15 But it's important to remember this. This is a  
16 rub. AT&T didn't want its online service to damage its  
17 existing pay-TV business. In AT&T's words, its golden  
18 goose.

19 The biggest incumbent is the least likely to leave  
20 the disruption that might threaten its golden goose.

21 So why does a combination of incentive and  
22 ability -- ability to hamper innovative competition make a  
23 merger anti-competitive. Well, because it would give AT&T  
24 power to squelch new competition that otherwise could really  
25 take away customers from AT&T.

1           It's one thing for AT&T to build new products  
2 itself; and if those are successful, that's great.  
3 Antitrust laws say that's just fine.

4           But buying up an input that your prospective  
5 competitors and your emerging competitors need, giving  
6 yourself the power to hold it hostage, that's  
7 anti-competitive. That would harm competition; it would  
8 harm consumers.

9           And looking at the market more broadly, AT&T  
10 wouldn't be the only vertically integrated company that has  
11 content that it could use in this way. The merged  
12 Comcast-NBCU has a similar structure and similar incentives.

13           AT&T's own documents recognize this fact.

14           They say that because NBCU is owned by Comcast,  
15 NBCU is one of the least-disruptive players.

16           So after this merger, not one but two of the  
17 nation's most important programming companies would be  
18 controlled by large pay-TV providers, would be vertically  
19 integrated.

20           Any new entrants who want to compete with those  
21 large pay-TV providers would face the challenge of getting  
22 programming from two of their very people that they want to  
23 disrupt.

24           In fact, one of the reasons AT&T pursued this deal  
25 is that it knows that controlling who gets valuable

1 programming to distribute through these new competitors  
2 would help AT&T to shape the future of the video ecosystem.  
3 That's their words.

4           The problem is that they have every incentive to  
5 shape that future in a way that harms competition and  
6 consumers to shape it in a way that protects their cash cow.

7           That's another significant harm that would come  
8 from the merger. Beyond increasing pay-TV bills and  
9 consumer prices going up, this merger would likely cause  
10 innovation to slow down.

11           For both of those reasons, this merger may  
12 substantially lessen competition, and it should be enjoined.

13           Now, in this litigation, in the filings and  
14 arguments we've had so far, AT&T's been telling a different  
15 story about the Internet.

16           AT&T has claimed that online competitors, the  
17 FAANG companies -- Facebook, Apple, Amazon, Netflix, and  
18 Google -- are dominating.

19           AT&T is just chasing taillights, they've told you.

20           Now, it's true that there are several Internet  
21 companies that are even bigger than the merged AT&T and  
22 Time Warner would be; that is, they're bigger in market  
23 capitalization.

24           But that's due to things like book sales and  
25 Internet searches, social media, and all that. They're

1 small in the market for live pay TV.

2 In fact, the only one who's really got a service  
3 is Google, and they're less than 1 percent of the live  
4 pay-TV market.

5 In that market, those companies are the ones  
6 chasing taillights, and they're chasing DirecTV's  
7 taillights.

8 Actually, the defendants' whole focus on market  
9 capitalization is a little unusual. It may be a way that  
10 CEOs make comparisons, but it's not a standard tool in  
11 merger analysis or merger case law.

12 Defendants say they want to be big like the FAANG  
13 companies, but that's no justification at all for a merger.

14 The antitrust laws have never recognized an  
15 exception that might allow an anti-competitive merger, one  
16 that would harm consumers, just because the defendants can  
17 point to other bigger companies in other markets.

18 And, you know, some form of this argument shows up  
19 in just about every merger case. In the *Staples* case, they  
20 said, What about Amazon?

21 But the facts turned out, no.

22 So these arguments aren't going to wash here  
23 either.

24 Let me talk about the efficiencies that the  
25 defendants claim as part of a defense.

1           Courts are generally sceptical about efficiencies  
2 defense. They have to be verifiable, merger-specific, and  
3 they have to flow through to consumers.

4           Verifiable, because we don't want to approve a  
5 merger that would hurt consumers on merely some speculative  
6 promises.

7           I'd like to show the Court a bit of evidence about  
8 one of these. They have an efficiency that they call  
9 content intelligence, which is they're going to use  
10 consumers' data and the theory that it will help Time Warner  
11 make better programming.

12           This is -- so the problem with this is that AT&T  
13 doesn't know the programming business like Time Warner does.

14           You can see here what the team inside  
15 Warner Brothers thought about it in May of last year. This  
16 is an internal email to the Warner Brothers CEO that  
17 explains that this content intelligence efficiency was a  
18 top-down number.

19           The first bullet.

20           They didn't -- AT&T didn't go to the  
21 Warner Brothers team and say, Here's an idea. What do you  
22 think it's worth?

23           They said, Here's an idea. It's worth this  
24 amount.

25           And I'm not going to say the number, because it's,

1 they claim it in confidentiality. We were asked to come up  
2 with this amount.

3 But when you hear that evidence in this Court,  
4 you're going to find out it's pretty much in the middle of  
5 that range.

6 But more revealing is what it says below. What  
7 did the Warner Brothers team think about this?

8 They said, yeah, there may be some good ideas  
9 here, but it's speculative, unproven, and untested.

10 That's going to be the case not only of this  
11 efficiency but all the ones that you hear about.

12 AT&T also claims a lot of synergies about  
13 advertising. For example, they say they'd like to be able  
14 to use consumers' data the way Facebook uses consumers'  
15 data. They say that if they could collect information from  
16 your cable box about what you watch and where and how often  
17 and maybe match it up with locator information from your  
18 AT&T cell phone about where you go, they could figure out  
19 ads to sell to you, to send to you specifically and charge  
20 higher prices for those.

21 Well, those might be good for AT&T, maybe for  
22 advertisers; but to be relevant in this case, they'd have to  
23 prove that it's good for consumers. And that's going to be  
24 a real burden.

25 Your Honor, defendants are going to claim that

1 this merger isn't anti-competitive, but they also make  
2 another argument. In essence, they say there's no problem  
3 here, but we can fix it.

4           After the Complaint was filed, they came up with a  
5 do-it-yourself fix. They sent a thousand letters to a  
6 thousand pay-TV providers, offering to have arbitrators set  
7 the prices and terms. And we heard the other day that  
8 something like 20 have actually accepted it. And the Court  
9 will hear evidence during the trial some of the reasons why  
10 that is.

11           In conclusion, Your Honor, the likely harms of  
12 this merger are serious, and consumers deserve a serious  
13 remedy.

14           Fortunately, the merger law has long had a serious  
15 remedy. In fact, the Clayton Act has a default remedy, the  
16 only one mentioned in the statute, and it has no risk of  
17 failure. The Supreme Court has repeatedly called the  
18 preferred remedy.

19           How do you prevent an unlawful merger? By  
20 blocking it. Stop the merger; stop the harm.

21           And, Your Honor, that's what we're asking the  
22 Court to do. Thank you.

23           THE COURT: Thank you, Mr. Conrath.

24           We'll take a five-minute-or-so recess to give  
25 Mr. Petrocelli a chance to set up his boards and be in ready

1 position when we return.

2 MR. PETROCELLI: Thank you.

3 THE COURT: We'll stand in recess.

4 DEPUTY CLERK: All rise.

5 (Recess from 12:24 p.m. to 12:37 p.m.)

6 DEPUTY CLERK: The United States District Court  
7 for the District of Columbia is again in session, the  
8 Honorable Richard J. Leon presiding. God save the United  
9 States and this Honorable Court. Please be seated and come  
10 to order.

11 Your Honor, re-calling Civil Case No. 17-2511, the  
12 United States of America v. AT&T, Incorporated, et al.

13 THE COURT: Mr. Petrocelli, when you're ready.

14 MR. PETROCELLI: I am, Your Honor. Thank you very  
15 much.

16 And let me thank the Court and its staff once  
17 again for all the hard work and time and effort that you've  
18 put into this case. And I know that you have moved your  
19 schedule around to accommodate this trial.

20 And on behalf of AT&T and DirecTV and Time Warner  
21 and all the people who work for the company -- and we have  
22 our corporate representatives here, Mr. John Stankey from  
23 AT&T, Mr. Coleman Breland from Time Warner, we have Chairman  
24 and CEO Randall Stephenson of AT&T and Chairman and CEO  
25 Jeff Bewkes of Time Warner a few rows back -- and we're very

1 grateful to now have this opportunity to begin this trial,  
2 Your Honor, and particularly privileged and honored to be  
3 able to present the case to Your Honor.

4 Not long ago in one of these hearings we had, I  
5 mentioned to you, Your Honor, that this was a simple and  
6 straightforward case. And you said you would hold me to it.

7 THE COURT: I will.

8 MR. PETROCELLI: And I'm going to take this one  
9 step further today and say that it's not only a simple and  
10 straightforward case, but it's a case where there is only  
11 one just, clear-cut outcome; and that is to deny the  
12 government's case to block this historic merger.

13 And there's a simple reason for that, Your Honor,  
14 and it's because they cannot meet their heavy burden of  
15 proof. They cannot prove that this merger is likely to  
16 lessen competition, let alone to lessen it substantially.

17 We spoke earlier this week that this is a case,  
18 unlike most of the cases that you deal with and we lawyers  
19 deal with, where we're actually trying to predict what's  
20 going to happen in the future.

21 And you commented, Your Honor, that it's  
22 unsettling and that you wish you'd had a crystal ball, okay?

23 Now --

24 THE COURT: I'm looking for one.

25 MR. PETROCELLI: Okay.

1           Now, Your Honor, the reality is, is that, as much  
2 as you might want to a crystal ball, you're not going to get  
3 a crystal ball, because it's the government's burden to make  
4 sure you don't need a crystal ball. It's the government's  
5 burden to convince the Court that it is likely that this  
6 merger is going to substantially lessen competition. And  
7 they must do it with evidence grounded in real-world facts.

8           I agree with Mr. Conrath's statement of the law  
9 that we're dealing not with certainties, but we're also not  
10 dealing, in the words of the Supreme Court, with ephemeral  
11 possibilities.

12           The government has to show that it is more  
13 probable than not that this merger will substantially lessen  
14 competition.

15           And as Your Honor knows, the government hasn't  
16 actually tried a vertical merger case since going back to  
17 the '70s. The cases that they've tried are horizontal  
18 merger cases. And no crystal ball is needed at all in the  
19 horizontal merger cases because in those cases, a competitor  
20 is being eliminated when two competitors join.

21           Competition is, by definition, being reduced. And  
22 the question is: By how much?

23           And there are mathematical formulas. And if you  
24 hit the right number, harm to competition is presumed under  
25 the law. The government gets the benefit and the Court gets

1 the benefit of a legal presumption. And the government  
2 doesn't have to do much more than that.

3 In vertical cases, there aren't no formulas and  
4 there aren't no presumptions, and the case has to be tried  
5 the good old-fashioned way.

6 Judge Kavanaugh explained why this is in a Circuit  
7 Court opinion, Your Honor, involving actually this very  
8 business. It was a case involving *Comcast Cable*  
9 *Communications*.

10 And Judge Kavanaugh said that vertical integration  
11 is generally pro-competitive, because it encourages product  
12 innovation, lowers costs for businesses, and creates  
13 efficiencies, and thus reduces price and leads to better  
14 goods and services for consumers.

15 That's why the vertical merger that does present a  
16 problem is, in Your Honor's own words, the rare breed of  
17 horse.

18 And this merger, Your Honor, is no rare breed of  
19 horse.

20 I also agree with what Mr. Conrath said when he  
21 indicated that courts look at the following factors: the  
22 market structure, the history of the market, and the  
23 probable future, in trying to assess the merger.

24 The problem here, Your Honor, is that the  
25 government has not taken into account any of these

1 conditions.

2 Let me start with the market condition.

3 If you could put that up.

4 We talked about this a couple of days ago.

5 Mr. Conrath was attempting to suggest that we  
6 shouldn't look at all these vertically integrated companies,  
7 like Google and Facebook and Amazon and Hulu and Netflix.  
8 But all of these companies are running away with the  
9 industry, Your Honor. They have radically transformed it.

10 And they are directly competing with the  
11 distributors you're going to hear in this case, the  
12 programmers you're going to hear in this case. They're all  
13 a part of the same business. And they pose competitive  
14 challenges in two important respects.

15 First of all, they're offering lower-priced pay-TV  
16 services. Hulu does. Google does. Others are offering  
17 SVOD services. Those are subscription on-demand services,  
18 where you cannot get a live channel, but you can get a show  
19 you want and you can binge it and you can watch 10 or 20 in  
20 a row, all weekend if you want.

21 This is pulling people out of the pay-TV system to  
22 sign up for these terrific innovative offerings, oftentimes  
23 at much, much lower prices. So they are directly a part of  
24 this competitive landscape. And if you're not trying to  
25 keep up with these people, you're not going to be in

1 business very long.

2 But, secondly, and most importantly -- and,  
3 frankly, the government ignores this entirely -- they are  
4 dominating the world of advertising. And they are competing  
5 with cable and satellite television for ad dollars. And  
6 it's because they have massive amounts of customer  
7 information; they know what their customers want; they know  
8 their preferences; and they can feed customers very relevant  
9 ads.

10 I'm a big sports fan. They feed me sports ads,  
11 okay? So they don't give me ads about artwork, okay?

12 They're now moving into the TV business and taking  
13 away ad dollars out of the TV business.

14 Now, look what happens, because it has a direct  
15 effect on consumers.

16 As the television industry -- I mentioned this a  
17 couple of days ago -- now has a dual-revenue stream and has  
18 had for years. The networks like Turner and others get  
19 money from the distributors for all the subscriptions that  
20 they sell to subscribers; but, secondly, they get money from  
21 advertisers, a dual-revenue stream.

22 It used to be they only got it from advertisers.  
23 Now, and in the case of Turner, it's typically been  
24 50 percent advertising revenue, 50 percent subscription  
25 revenue.

1           But look what's happened. As these tech giants  
2 have dominated the advertising industry, they're taking ad  
3 dollars away; and Turner and other programmers like Turner  
4 are seeing their ad revenues get stressed. As their ad  
5 revenues get stressed, there's more pressure on raising  
6 prices for the programming.

7           Now, with a merger like this, Your Honor, if you  
8 can now compete, becoming vertically integrated -- you get  
9 the same information that these other vertically integrated  
10 companies are getting -- you're able to provide these  
11 targeted, relevant ads for higher prices; advertisers will  
12 pay more; and that relieves the pressure on consumer prices.

13           So it boils down to this: General Motors and  
14 MasterCard will pay you more money, and consumers will pay  
15 less. Their cable bills go down as the advertising money  
16 goes up.

17           And the government has fundamentally ignored that  
18 critical connection.

19           The other thing that they have ignored,  
20 Your Honor, is actual pricing effects about what has  
21 happened in the marketplace already.

22           I don't know if Your Honor -- well, I'm sure  
23 Your Honor remembers, but we wanted to get the pricing data  
24 that was in the government's files with respect to the  
25 Comcast-NBCU merger and some other mergers that they

1 examined.

2           They wouldn't give it us to.

3           And, in fact, we sent them an interrogatory. And  
4 we asked them, well, what's your position on whether prices  
5 rose in the Comcast-NBCU merger that happened seven, eight  
6 years ago and that you advocated to be approved?

7           And they said, in an interrogatory -- in fact,  
8 I think it's No. 8 or so -- they said, we take no position  
9 on whether -- on what happened to prices with respect to the  
10 Comcast-NBCU merger and other mergers.

11           They deliberately refused to look at the very  
12 pricing data that they had in their files that would have  
13 been the most relevant evidence about what happens in this  
14 business, with a comparable merger, when a programmer and a  
15 distributor merge, and what's going to happen to prices.

16           Ask yourself, Your Honor: Why didn't they look at  
17 that data. When we asked Professor Shapiro why he didn't  
18 look at that data, he said, I didn't look at it. Didn't  
19 think it was relevant.

20           Nobody looked at it.

21           Now, fortunately, we were able to get the pricing  
22 data when we came to court and had to litigate it. And when  
23 we got it, Your Honor, not surprisingly, it showed that the  
24 prices after the Comcast-NBCU merger did not increase beyond  
25 what the normal industry prices were. They were less than

1 that, less than that.

2 And that is a critical piece of evidence, among  
3 many others that we're going to discuss in this trial, that  
4 the government has turned a blind eye to, in order to try to  
5 look elsewhere to make the case that this merger will harm  
6 competition.

7 When -- you're going to hear, for example --  
8 they're going to call witnesses. These are cooperating  
9 competitor witnesses. They're all working closely with the  
10 government. They don't want to see this merger go -- get  
11 approved.

12 And Mr. Conrath said in court a couple of days ago  
13 that their concern is that there's going to be  
14 anti-competitive harm.

15 No, Your Honor, that is not their concern. Their  
16 concern is that there's going to be a pro-competitive  
17 conduct in facing a new and stronger competitor as a result  
18 of this transaction. That's their concern.

19 They have no ability to predict what's going to  
20 happen.

21 And as you're going to hear, they have no  
22 hard-core, no fact-based evidence to back up their  
23 suggestions that somehow, they're going to be disadvantaged.

24 The day before the merger, they're paying X for  
25 Time Warner, for the Turner networks; then they're going to

1 say the day after the merger, they're going to pay more than  
2 X? Of course, they're not.

3 In fact, they're going to pay less for the  
4 programming, and we're going to explain that when we put  
5 them on the stand, Your Honor.

6 Now, the other theory that is divorced from  
7 reality is not only this price increase theory, of which  
8 I'm going to spend a little bit of time dissecting, but this  
9 other theory that they have that we're going to collude, if  
10 the merger is allowed, with Comcast-NBCU.

11 Why would we collude with them? They're a bitter  
12 rival.

13 In fact, there was a big dispute about a month ago  
14 because they aired a commercial that we thought was not  
15 truthful. And we had a little bit of a row with them, and  
16 they agreed to change the commercial. I mean, this is how  
17 tough these two companies compete.

18 And beyond that, Your Honor, Comcast and NBCU is  
19 rooted in hard-lined, wire cables to your home. That's  
20 their business. And they do very well. They transmit the  
21 Internet, frankly, better than most other companies do.

22 AT&T is rooted in the wireless world. We're in a  
23 totally -- we have totally different business interests,  
24 objectives, and alignments.

25 In fact, the whole wireless environment is, in

1 large part, what is driving this transaction. And you are  
2 going to hear Randall Stephenson, the chairman and CEO, and  
3 other witnesses testify that this is one of the drivers of  
4 acquiring Time Warner: In order to take the content which  
5 has been generally available throughout the traditional  
6 pay-TV system and take that mobile so that anybody with  
7 their cell phone or their iPad or some tablet can watch  
8 television, whether it's a single show, whether it's a live  
9 channel, wherever they are, however they want it. On a  
10 train, on a subway, even on an airplane, you can get the  
11 WiFi.

12 That's their world, and that's the world that  
13 they're moving to. And that's what's driving this  
14 transaction.

15 I mean, the government is accusing us of trying to  
16 buy Time Warner to impede the growth of some of these new  
17 delivery systems.

18 Your Honor, that's preposterous.

19 AT&T and DirecTV are directly involved in these  
20 new systems.

21 You'll see there, DirecTV Now, that is a virtual  
22 MVPD. That's the very type of service that the government  
23 is claiming we're trying to suppress by this merger. That  
24 makes no sense.

25 The more people can watch these channels on a

1 device, the more they're using the device, the more they're  
2 connected to AT&T's wireless network, the better it is for  
3 AT&T's business.

4           The wireless part of their business is the biggest  
5 part. The more Time Warner's content, the more Turner's  
6 networks can be exploded out into the mobile environment,  
7 the more money they make, because these other companies pay  
8 license fees. It generates enormous advertising revenue.

9           We're not trying to suppress or impede this  
10 transformation. It's the government's theory, Your Honor,  
11 that that is fundamentally stuck in the past.

12           The government is pretending that we're trying  
13 this case back in 1980 or '90 before any of this came along.  
14 This transformation is what makes this merger an imperative.

15           Your Honor, from Time Warner's perspective, you  
16 have to ask yourself: Why would they be interested in  
17 merging?

18           Very importantly, Time Warner has been a great,  
19 great company for many, many years, producing all kinds of  
20 content: movies, television shows, the Turner networks.  
21 But they are a wholesaler.

22           If you look at Turner, for example, right in the  
23 middle of that chart, they are a wholesaler. They don't  
24 have a direct relationship with the customer. They've got  
25 to go through one of those distributors in order to have

1 their networks delivered directly to the customer.

2 The customer has the direct relationship with the  
3 distributors: with Charter, with DirecTV, with Cox and all  
4 those other companies.

5 In the middle there is the network, Turner, and  
6 other networks situated just like Turner. They're a trapped  
7 wholesaler. They're a trapped wholesaler. And it worked  
8 for years. It was fine. But the world has changed.

9 It's a brave, new world. And you can't be a  
10 trapped wholesaler anymore. Why not? A couple of reasons.

11 Number one, you need to have a direct relationship  
12 with your customer these days. That's why all those other  
13 vertically integrated companies are running away with it.  
14 They have a direct relationship.

15 They acquire the content. They aggregate it.  
16 They deliver it. They have your billing records. They have  
17 customer information about you. They can create what it is  
18 you want and give it to you where you want it. That's the  
19 beauty of vertical integration.

20 When you're a wholesaler, you're just selling to a  
21 retailer, and the retailer has the relationship.

22 So from Time Warner's perspective, what's  
23 imperative is to now have that direct relationship with the  
24 customer, to get the information from the customer so they  
25 can make better programming.

1           Your Honor, they have no retail stores. They have  
2 no billing systems. They don't even know the emails or  
3 names of the people who watch their content. They are  
4 strictly secluded off from that.

5           And this merger now puts them together with the  
6 company that does have the direct relationship with the  
7 customer and puts them in an opportunity to now compete with  
8 all the other vertical companies.

9           And it comes back to advertising once again,  
10 because Turner's advertising, as I indicated, is stressed.  
11 But with the information from Time Warner -- excuse me, from  
12 DirecTV, from the DirecTV set box, from the DirecTV mobile  
13 network, they can take that information, create  
14 more-relevant ads for sponsors. Sponsors will pay more  
15 money for the Turner network ads. And that will allow  
16 Turner to reduce its prices to consumers. As the  
17 advertisers pay more, the consumers pay less.

18           So advertising is critical. And advertising is  
19 critical to AT&T as a rationale for this merger as well,  
20 because right now, Your Honor, Facebook and Google are  
21 dominating the digital advertising world. I think the  
22 statistics are, I don't know, 80 or 90 percent of every  
23 growth in digital ad comes -- goes to those two companies.

24           What AT&T has, it has massive technical  
25 infrastructure. It has know-how. It has capability. It

1 has data. And it can put together the same kind of  
2 advertising service that Google and Facebook offer the  
3 digital world; it can do the same thing in the television  
4 world. You're going to hear about that. It's called the  
5 programmatic platform.

6 And, again, once you can enable these  
7 more-relevant ads, you can charge advertisers way more  
8 money. And you can then release and relieve the pressure on  
9 the consumer pricing.

10 And you're going to hear about that quite a bit.

11 The DirecTV, Your Honor, when AT&T acquired it  
12 just a couple of years ago, they were very public that  
13 they're buying this not because they're in love with the  
14 satellite business. They understood that it was, in a  
15 sense, a declining business in that people were starting to  
16 cut the cord already to go over to these Internet  
17 distribution systems.

18 But the vision of the company was to take this  
19 20 million-plus subscriber base that DirecTV had in the  
20 satellite business and start to transition that to the  
21 Internet distribution business.

22 And within one year of buying DirecTV, true to  
23 their word, they launched DirecTV Now; and that is their  
24 virtual distribution business that Mr. Conrath is claiming  
25 we're trying to kill off. And that business right now is

1 growing rapidly.

2           And there are many others. As you can see in that  
3 box right there, you have YouTube TV, you have  
4 PlayStation Vue, and you have several others. It is a  
5 growing part of the business, and AT&T and Time Warner want  
6 to grow right along with it.

7           The second part of Mr. Stephenson,  
8 Randall Stephenson's vision, in addition to buying DirecTV  
9 and taking that out to the Internet world, was to now buy  
10 some content that he could then enable for mobile users.

11           And the problem with what you're going to hear in  
12 the trial, Your Honor, is that distributors like DirecTV  
13 have been trying hard to obtain the rights from people who  
14 own content to do new and innovative things.

15           Imagine you picking up your mobile phone and  
16 watching a five-minute clip of your favorite new show or all  
17 your favorite television shows reduced down to a highlight  
18 reel or something like that so you can catch up real quick.

19           You can't get the rights from content owners to do  
20 that. They won't let you experiment with their content.  
21 They call that bargaining friction. And you're going to  
22 hear about bargaining friction.

23           But when you own the content, you've eliminated  
24 the friction. You can now do what you want with the  
25 content, and you can make new innovative uses of it.

1           And as people start to see it, others will follow;  
2 and then the content becomes even more valuable.

3           And so that is very much part of the rationale for  
4 this merger, is to be able to do things with content that  
5 you can't do unless you own it.

6           And Mr. Bewkes of Time Warner, Mr. Stephenson of  
7 AT&T are going to get on that witness stand there,  
8 Your Honor, and they're going to tell you exactly why they  
9 made this deal and why it's a perfect fit for both companies  
10 and why all the things the government is saying make no  
11 economic sense and are the very opposite of what they're  
12 trying to do with this merger.

13           Now, let me turn to what I previously called the  
14 government's shrinking case. And the reason I called it  
15 that, Your Honor, is because if a vertical merger were to be  
16 a rare horse, a rare breed of horse, it would be the kind of  
17 case where you control a critical input.

18           Imagine that a company that makes airplanes bought  
19 the company that made the navigation software for the  
20 airplane. And they bought that and they controlled it, and  
21 nobody else could get their hands on it. That would be a  
22 problem, okay? Because they were foreclosing it or  
23 withholding from the rest of the market.

24           There is no claim of withholding content in this  
25 case. Despite everything that you heard from Mr. Conrath,

1 the government is not claiming that the Turner networks will  
2 be withheld from anybody.

3 And the reason they're not claiming that is  
4 because it would be financially ruinous for Turner to not be  
5 as widely distributed to the consumers as possible. They  
6 would lose advertising money, and they would lose  
7 subscription fees.

8 Their own expert, Professor Shapiro, has  
9 acknowledged under oath and will on the stand that it would  
10 not be profitable, it would not be profitable for this  
11 company, post merger, to keep those networks from anybody.  
12 It makes no economic sense.

13 They're not claiming that HBO will be withheld.  
14 They're not claiming that any of the Warner Brothers movies  
15 will be withheld. They're not claiming that any of the  
16 Warner Brothers shows will be withheld. They're not  
17 claiming that Warner Brothers' prices will go up or that  
18 HBO's prices will go up.

19 So what are they claiming?

20 We're down to Your Honor to one thing, Your Honor,  
21 one simple thing. They say that after the merger, not that  
22 Turner is going to be withheld from other distributors like  
23 Charter and Comcast, but that we're going to ask for money  
24 for it and we're going to have more leverage.

25 Why would we have more leverage? If anything,

1 we would have less leverage because Charter isn't going to  
2 want to pay more for Turner, because DirecTV, which is in  
3 the same family, is going to benefit.

4 If anything, you want to hamper your competitor,  
5 not help your competitor.

6 So how do they get to this bargaining notion that  
7 we're going to have more leverage?

8 They rely, Your Honor, on an academic model that  
9 I don't know has ever been used to prove an antitrust case  
10 like this before. No withholding. No actual evidence of  
11 price increases, because the government didn't want to look  
12 at the actual evidence.

13 But they're going to put an expert on who's going  
14 to say that he can model how people will think and game out  
15 their negotiation process and that somehow, as a result of  
16 that, the distributor is going to end up paying more money  
17 for the Turner networks.

18 There's absolutely no basis whatsoever for this  
19 hypothetical model that you're going to hear about. It  
20 might have interest in a classroom, Your Honor, but it has  
21 absolutely no business in this courtroom in this case.

22 And the reason for that, Your Honor, is that in  
23 order to come up with this price increase, Professor Shapiro  
24 just made a number of ridiculous assumptions and also  
25 ignored many others. Valid inputs were completely ignored.

1           Let me give you an example. First of all, he  
2 comes up with the price increase of 27 cents initially, per  
3 subscriber, per month. Then he fiddled with it, and he came  
4 up with 45 cents.

5           And then he says that computes to \$400 million a  
6 year to consumers, because there's roughly 90 million pay-TV  
7 consumers. So when you do the math and you take 45 cents a  
8 month times 12 months a year, it's like 5 or \$6 a year and  
9 then times 90 million. So you get to this \$400 million  
10 number, Your Honor.

11           But the reality is, to be clear, that we're  
12 talking about 5 or \$6 a year for a person's cable bill going  
13 up.

14           Now, do we think that's going to happen?  
15 Absolutely not. We think he's dead wrong.

16           But even if you agreed with his assessment,  
17 Your Honor, even if you accepted it, it wouldn't constitute  
18 a substantial lessening of competition, because there would  
19 be all kinds of other countervailing benefits that would  
20 offset this 5-, \$6-a-month annual increase.

21           But the reality is, Your Honor, he is not correct;  
22 there will be no price increase. And he's attempting to use  
23 a computer instead of real evidence to predict the price  
24 increase, some kind of computer program that he's come up  
25 with.

1           And here's what he does: He assumes that after  
2 the merger, that Time Warner can threaten, not actually  
3 withhold the Turner networks, but they can threaten to  
4 withhold it, okay?

5           And by threatening to withhold it, he assumes that  
6 the distributor is going to be shaking in their boots and,  
7 as a result, is going to give in, give in to the demand.

8           And as I indicated to you, that's a completely  
9 unfounded proposition that these distributors, who fight  
10 like you would not believe for every last contract point,  
11 are going to give in because of this merger.

12           Now, what he does to come up with this number is  
13 he assumes that both parties are figuring out, well, look,  
14 if I threaten and he believes my threat, he may think he's  
15 going to lose a number of subscribers.

16           And so he assumes how many subscribers would be  
17 lost by -- let's say it's a negotiation between Turner and  
18 Comcast. He assumes that Comcast would lose 12 and a half  
19 percent of their subscribers merely on account of a threat  
20 to withhold the programming.

21           And if Comcast is thinking, I'm going to lose  
22 12 and a half percent of their subscribers, which is an  
23 astronomical number that has never happened in the history  
24 of pay TV before, the idea is that they're willing to pay  
25 more.

1           Where do you get this 12 and a half percent  
2 number?

3           So did he go and look at actual, historical  
4 situations when there were blackouts involving Turner, and  
5 there were a couple? He did not look at them. Had he  
6 looked at them, Your Honor, he would have found that in one  
7 particular blackout that lasted about a -- almost a month,  
8 instead of 12.5 percent, it was one-half of 1 percent,  
9 .5 percent, 20 times less than Shapiro's  
10 12 and a half percent of people who actually left because  
11 Turner wasn't on TV for one month.

12           Now, he relied on a survey that somebody did,  
13 where they asked people on the street, hey, what would you  
14 do if Turner wasn't on TV? Would you cancel your pay  
15 subscription?

16           Your Honor, that's an absurd way to try to get  
17 serious about estimating this issue. People will say  
18 anything in a survey.

19           But you know how hard it is to cancel your pay-TV  
20 thing? First, we know how long it takes to get through to  
21 somebody, and then you have to stay home from work. And  
22 then, you know, they've got to climb on your roof and take  
23 off a satellite or burrow behind your furniture and find  
24 your cable thing. It's like a -- it's a big pain. And many  
25 people don't do it.

1           Could you imagine, like if your power went out,  
2 would you call up your power company and say, I cancel my  
3 power? Of course not. You would wait.

4           And these blackouts, when they do occur,  
5 Your Honor, they're over within a couple of days, a week or  
6 two. The longest that Turner has ever experienced has been,  
7 I think, 30 days. And they have only had about two  
8 blackouts in their history of any consequence.

9           And Professor Shapiro, frankly, ignored them both.  
10          Instead, he relies on this survey.

11          Guess who prepared the survey? A competitor  
12 cooperator with working the government on this case. And  
13 they hired a survey company. I would like to say the name,  
14 but I'm told it's confidential. I don't think it should be  
15 confidential, but we'll deal with that later on.

16          But this company hires this survey. The survey  
17 goes out, and they do this survey. And the numbers come  
18 back, and they're not so good for the survey. People are  
19 not saying they would cancel on account of losing Turner  
20 networks.

21          So the survey guy talk to the competitor. They  
22 have a conversation. After the conversation, the competitor  
23 changes the number, and he made it a higher number.

24          The name of this company is Altman Vilandrie.  
25 That's the survey company, and they're going to be

1     testifying. And we're going to go through that on the  
2     witness stand with them.

3             Now, the government knew this. And the survey guy  
4     knew it. And the competitor knew it. But guess who didn't  
5     know it, Your Honor. Professor Shapiro.

6             And when we took his deposition, he said that this  
7     survey was the single most important piece of information  
8     that he was relying on to determine how many people would  
9     leave in the event of a Turner blackout, and yet he had not  
10    been told that this number had been changed and was outside  
11    of the protocol for which the survey was done.

12            That's number one, Your Honor.

13            Number two, it's not enough in going through this  
14    bargaining model of his to know how many people might leave  
15    in the event of a blackout. You then have to ask the second  
16    question: Well, if they do leave, where do they go?

17            So if you cancel your Comcast cable subscription  
18    because Turner is not on, where are you going to go to get  
19    TV?

20            Mr. Shapiro assumed that many of those people  
21    would go to DirecTV. And in making that assumption, he  
22    assumed that only 10 percent of subscribers, if they  
23    canceled their subscription, would go to these online  
24    distributors. They would just say, you know what? I'm done  
25    with pay-TV bundles, pay-TV subscriptions. I'm going to go

1 get one of these cheaper things. He only assumed 10 percent  
2 of people would cut the cord, as they call it.

3 Cord cutting is vastly higher than 10 percent,  
4 Your Honor. Cord cutting double that amount right now.

5 And if you -- so he used a deliberately low  
6 number, which made -- which helped to come up with this  
7 45 percent price increase. And I'll come back to that in a  
8 second.

9 The third thing he did is he used an old profit  
10 margin. You have to ask the third question in order to do  
11 this bargaining model.

12 How many people would leave Comcast? How many of  
13 those people would go to DirectTV? And how much money would  
14 that be worth to DirectTV? What's the profit that DirectTV  
15 would make on that?

16 Well, Professor Shapiro used a 2016 profit margin  
17 instead of a 2017 profit margin. The 2017 profit margin was  
18 40 percent lower, 40 percent lower. Why? Because  
19 everybody's cutting the cord, and new people are not even  
20 coming into this system. They're just going directly to the  
21 Internet.

22 You mentioned the other day, Your Honor,  
23 Millennials. It's actually way beyond the Millennials.  
24 It's multiple generations of people.

25 Let me mention another flaw in his estimate,

1 Your Honor, his prediction.

2 He comes up with this 45 cents a month/\$5 a year,  
3 but he doesn't take into account that in the real world,  
4 there actually can't be any such price increase because  
5 there are binding contracts. He disregarded that.

6 In other words, Turner just entered into a binding  
7 contract with Comcast. They can't change a price for four  
8 years. And they have contracts with all these other  
9 distributors.

10 And you can't just, the day after the merger, say,  
11 oh, I'm now going to increase my price. You've got binding  
12 contracts.

13 And he didn't take the contracts into account,  
14 Your Honor.

15 Now, if you go back -- and I'm going to go back  
16 over these three things, three or four things. If we  
17 eliminate this ridiculous 12 and a half percent departure  
18 rate and we assume, let's say, 5 percent -- and that's  
19 really high -- 5 percent of customers would leave their  
20 cable system if Turner wasn't on it. Your Honor, that  
21 eliminates the 45 cents entirely. That brings it not only  
22 to zero but less than zero, just that one input, that one  
23 correction.

24 Secondly, if you assume not 10 percent but  
25 20 percent of people go out, if they cancel their pay-TV

1 system, they go out to one of these online distributors,  
2 that completely eliminates the price increase as well.

3 So you have a second and independent reason why  
4 45 cents goes to zero.

5 If you correct for the profit margin, he used the  
6 wrong profit margin. He didn't use the more current one.  
7 That wipes out two-thirds of the price increase.

8 If you take into account that there are actual  
9 contracts that prevent you from raising the prices in 2018  
10 alone, that wipes out the price increase.

11 If you fix for all these errors, Your Honor, you  
12 fix for all these errors, which Professor Carlton will do  
13 when he testifies, you don't get a 45-cents-a-month price  
14 increase; you get a 50-cents-a-month price decrease to  
15 everybody. Using the government's math, that's a half a  
16 billion dollars of price decreases to American pay-TV  
17 consumers, a half a billion dollars.

18 So that's what you're going to hear on the stand,  
19 Your Honor, and that the evidence -- that that's going to  
20 come in.

21 But it doesn't stop there. It isn't just about --  
22 and let me make something clear, and Mr. Conrath conceded  
23 this. This is not a real calculation by Professor Shapiro.  
24 This is not, for example, a statistically significant  
25 number.

1           This is a rough-type estimate. And even if you  
2 accepted everything he said as true, 45 cents a month is  
3 within the range that it might as well be zero, because  
4 there's no level of confidence associated with that  
5 calculation.

6           So even if you took the 45 cents, you can't use it  
7 as an accurate predictor of what would happen. In reality,  
8 Your Honor, if you correct for any number of these flaws,  
9 you're going to end up with a number well below zero, giving  
10 everybody a price decrease.

11           Another important thing Professor Shapiro  
12 disregarded, as a vertically merged company, Time Warner,  
13 Turner, AT&T, the entire merged company is going to be  
14 subject to the FCC's program access rules, Your Honor.  
15 Congress enacted the statute. The FCC promulgated rules.  
16 That is a deliberate judgment of Congress, how to deal with  
17 vertically integrated companies in this business.

18           And these rules take care of any kind of pricing  
19 abuse of the sort alleged by the government. And if there's  
20 any problem there, any mischief, the program access rules  
21 prevent that.

22           If you're going to model what people are going to  
23 do in the future, you have to take into account the law that  
24 governs their business. He did not take into account the  
25 law.

1           Secondly, Your Honor, he did not take into account  
2 the arbitration commitment that Turner provided to everybody  
3 after the lawsuit was filed.

4           And not that we thought there was going to be any  
5 price increase or there was any intention to increase  
6 prices, but the government was saying that we wanted to  
7 erase any doubt, so Turner put out an irrevocable offer  
8 that's binding under New York law.

9           And they say only 20 people have accepted it.  
10 That's because they're waiting to see what happens with the  
11 merger, and they want to hold their powder because they want  
12 to come testify first. So they don't want to sign it and  
13 then come testify; they want to come belittle it, see what  
14 happens.

15           But I'll bet you this, Your Honor: If and when  
16 this merger is cleared, every one of them is going to sign  
17 that arbitration offer because it's disadvantageous to  
18 Turner because it prevents them from canceling any  
19 programming, withholding any programming, and puts all the  
20 leverage in the lap of the distributor.

21           Because I'm out of time, I'm going to say one  
22 thing about this collusion issue.

23           It's absurd on its face, as I indicated before,  
24 because Comcast and AT&T are rivals. We don't have the same  
25 business interests, nor could we collude, Your Honor,

1 because we have contracts.

2           How could we withhold programming? How could NBC  
3 withhold programming? They've got contracts. We've got  
4 contracts. The contracts are different. They're different  
5 expiration dates, different timelines. You could never pull  
6 such a thing off.

7           Nor would we have any interest in doing that  
8 because we are a virtual MVPD, and we want to distribute the  
9 Turner networks as widely as possible.

10           Comcast does not have a virtual business.

11           And lastly, Your Honor, we asked Professor Shapiro  
12 about this. We said, okay, you're the economist; you're the  
13 expert. Have you done any economic analysis -- have you  
14 done any economic quantification showing that after a  
15 merger, it is likely that Comcast and AT&T will collude to  
16 hurt virtual MVPDs?

17           He said there's a risk. He used the word "risk."

18           I said, "Well, okay, well, how probable is it,  
19 though?" Because the law doesn't deal in risks. We deal in  
20 probabilities.

21           He said, "I cannot give the Court a probability."

22           We said, "Well, was it greater than, let's say,  
23 1 percent?"

24           He said, "I'm not going to get into that game."

25           Well, Your Honor, it's not a game. But if it's a

1 game, the DOJ loses, because they needed evidence. And not  
2 even their expert would support this theory, that it was  
3 more likely than not that there was going to be coordination  
4 post merger and that coordination would harm competition.

5 I submit to you they have absolutely zero evidence  
6 on that subject.

7 So with that, Your Honor, we look forward to  
8 having you hear the witnesses. We are going to do our best  
9 to keep this trial moving. And we look forward to a  
10 decision.

11 And we submit that the decision should be to deny  
12 the government's request to deprive consumers of the  
13 benefits of this historic merger.

14 Thank you.

15 THE COURT: Very good.

16 All right. Well, we'll take the luncheon recess  
17 and reconvene at 2:50.

18 Now, we'll hear the first witness. Mr. Conrath  
19 will call the first witness for the government, and we'll go  
20 until 5:30. We'll take a break somewhere in the middle,  
21 probably at about midway, something like that, for 10 or  
22 15 minutes.

23 So unless there's something else, Counsel, we need  
24 to address at the moment -- you can put the boards wherever  
25 you want to store them. And we'll have our first witness

1 when we reconvene.

2 We'll stand in recess.

3 DEPUTY CLERK: All rise.

4 This Honorable Court will stand in recess until  
5 the return of court.

6 (Proceedings concluded at 1:22 p.m.)

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## C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: March 22, 2018      /S/ William P. Zaremba

William P. Zaremba, RMR, CRR