

1        IN THE SUPREME COURT OF THE UNITED STATES

2    - - - - -x

3    LILLY M. LEDBETTER,                         :

4                         Petitioner                 :

5                         v.                         :    No. 05-1074

6    THE GOODYEAR TIRE &                         :

7    RUBBER COMPANY, INC.                         :

8    - - - - -x

9     Washington, D.C.

10    Monday, November 27, 2006

11  
12                         The above-entitled matter came on for  
13 oral argument before the Supreme Court of the United  
14 States at 11:03 a.m.

15 APPEARANCES:

16 KEVIN K. RUSSELL, ESQ., Washington, D.C.; on behalf  
17             of the Petitioner.

18 GLEN D. NAGER, ESQ., Washington, D.C.; on behalf of  
19             the Respondent.

20 IRVING L. GORNSTEIN, ESQ., Assistant to the Solicitor  
21             General, Department of Justice, Washington,  
22             D.C.; as amicus curiae on behalf of the  
23             Respondent.

24

25

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	KEVIN K. RUSSELL, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	GLEN D. NAGER, ESQ.	
7	On behalf of the Respondent	28
8	ORAL ARGUMENT OF	
9	IRVING L. GORNSTEIN, ESQ.	
10	As amicus curiae supporting the	
11	Respondent	46
12	REBUTTAL ARGUMENT OF	
13	KEVIN K. RUSSELL, ESQ.	
14	On behalf of Petitioner	56
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:03 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Ledbetter versus Goodyear Tire & Rubber Company.

Mr. Russell.

ORAL ARGUMENT OF KEVIN K. RUSSELL,

ON BEHALF OF PETITIONER

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

A jury found that at the time Petitioner filed her charge of discrimination with the EEOC, Respondent was paying her less for each week's work than it paid similarly situated male employees and that it did so because of her sex. The question for the Court is whether that present act of disparate treatment because of sex constituted a present violation of Title VII. This Court has already answered that question.

Consistent with the law's traditional treatment of pay as arising from recurring transactions and giving rise to recurring causes of action, and consistent with the paycheck accrual rule everyone agrees Congress adopted for the Equal Pay Act, this Court in Bazemore versus Friday held under

1 Title VII, each week's paycheck that offers less to  
2 an employee because of her race or sex --

3 JUSTICE KENNEDY: But are you saying that  
4 the rule for paycheck decisions is different than the  
5 rule for other sorts of decisions?

6 MR. RUSSELL: It -- it is. For example,  
7 the respondents give the example of promotion  
8 decisions but we think that there are analytical and  
9 well as practical and historical distinctions that  
10 Congress, that led Congress to treat pay differently.  
11 As a practical matter, while it's always the case or  
12 almost always the case that somebody knows they have  
13 been subject to disparate treatment in a promotion  
14 case -- they know that they didn't get the promotion  
15 and somebody else did -- it is frequently possible  
16 for an employee to be subject to disparate pay  
17 without ever knowing that she has been treated  
18 differently than anybody else. And certainly --

19 JUSTICE KENNEDY: That seems to me to work  
20 the other way around, just like the case we've just  
21 heard argued in the last hour. It's a question of  
22 specificity here. If the, if the employee, he  
23 alleges that promotions were based on experience and  
24 the employee didn't have the experience because of  
25 past discrimination, why is that different than the

1 paycheck rule? I take it indicates that you would  
2 not allow the, a cause of action unless the  
3 discrimination was within the statute of limitations  
4 period?

5 MR. RUSSELL: Yes. A promotion --  
6 discrimination in promotion is different analytically  
7 than with discrimination with respect to pay  
8 decisions themselves. Because in a promotion  
9 decision the employee is deprived of the opportunity  
10 to take on added responsibilities and therefore earn  
11 more pay, but in, but the pay itself is not  
12 discriminatory in the sense of treating people doing  
13 the same work differently.

14 JUSTICE SCALIA: I don't really see a vast  
15 difference between a promotion and being elevated to  
16 a higher pay grade. I mean, there may be no  
17 different responsibilities but it's a single act of  
18 discrimination: "No, you're not going to move up to  
19 the next pay level." I don't see why that's  
20 different from "no, you're not going to move up to  
21 the next job."

22 MR. RUSSELL: Because, I think the  
23 difference is that when somebody is denied a  
24 promotion for discriminatory reasons the paychecks  
25 themselves are not discriminatory. They treat

1 similarly situated workers differently.

2 JUSTICE GINSBURG: Mr. Russell, I thought  
3 that your argument was that yes, you know that you  
4 haven't got the promotion, you know you haven't got  
5 the transfer, but the spread in the pay is an  
6 incremental thing. You may think the first year you  
7 didn't get a raise, "well, so be it." But you have,  
8 you have no reason to think that there is going to be  
9 this inequality. I mean she started out getting the  
10 same pay, right?

11 MR. RUSSELL: Yes, and that practical  
12 distinction I think does support Congress's decision  
13 under the Equal Pay Act as well as under Title VII to  
14 choose a paycheck accrual rule because it's  
15 frequently that even if an employee knows she has  
16 been subject to disparate pay, it's frequently very  
17 difficult for her to have a good faith belief that  
18 that pay is intentionally discriminatory without more  
19 information.

20 So for example, if you look at that chart  
21 on page 174 of the joint appendix, which summarizes  
22 the pay decisions for one of the years at issue here,  
23 if Petitioner knew only the pay raise that she got  
24 that year, she would know that she got a 5.28 percent  
25 raise which is not - which is not suspicious. If she

1 knew what Mr. Conte had gotten, she would know that  
2 in fact that pay raise decision decreased the  
3 disparity between her pay and Mr. Todd's pay. If she  
4 knew what also happened with respect to Mr. Bice she  
5 would see that he got a higher absolute raise than  
6 she did, but she got a bigger one than Todd. It's  
7 only if Petitioner had all of the information in this  
8 chart, that she would know that that pay raise  
9 decision increased the overall disparity between her  
10 wages and the average wages of men doing the same  
11 job. And even then the amount of that disparity,  
12 standing alone wouldn't provide a sufficient reason  
13 to go claim intentional discrimination to the EEOC.

14 JUSTICE SCALIA: How does, how does time  
15 solve that difficulty?

16 MR. RUSSELL: It's only after -- one would  
17 expect in a merit system that there would be some  
18 level of variation in the area and that would work  
19 out over time. It's only when it doesn't, when the  
20 disparity persists, when the different treatment  
21 accrues again and again and the overall disparity in  
22 the wages increases, that the employee has some  
23 reasonable basis to think that it's not natural  
24 variation in the pay decisions but actually  
25 intentional discrimination.

1           In the paycheck accrual rule that's been  
2 applied by the lower courts for more than 20 years  
3 without incident, adequately balances the interest of  
4 employees and being able to come forward once they  
5 find out that there is a reason to suspect  
6 discrimination, with an employer's reasonable  
7 interest in avoiding having to defend against stale  
8 claims.

9           I think it's important to note that the  
10 Equal Pay Act, which everybody agrees has a paycheck  
11 accrual rule, imposes all of the same burdens on  
12 employers that respondents allege would have led  
13 Congress to never impose a paycheck accrual under  
14 Title VII.

15           JUSTICE GINSBURG: What happened to the  
16 Equal Pay Act claim? You started out with a Title  
17 VII claim and an equal pay claim and somewhere along  
18 the way the equal pay claim dropped out.

19           MR. RUSSELL: It did. The magistrate  
20 judge initially recommended dismissing both the Title  
21 VII and equal pay claims on the grounds that there  
22 was a nondiscriminatory reason for the disparity.  
23 The district court held that there were fact disputes  
24 that precluded that conclusion, but for some reason  
25 only reinstated the Title VII claim.



1 JUSTICE GINSBURG: Why didn't you ask for  
2 the equal pay claim? As I understand the magistrate  
3 judge he said, yes, you had made it across the first  
4 hurdle, you had a prima facie case. You showed that  
5 you're a woman, and you're getting this and all the  
6 men are getting much higher. But the employer has  
7 come forward with any other factor other than sex and  
8 the other factor is that, your inadequate  
9 performance.

10 MR. RUSSELL: We should have objected to  
11 the failure to reinstate the Equal Pay Act claim. We  
12 didn't; we didn't think it was that important and the  
13 time because we still had the Title VII claim.

14 JUSTICE GINSBURG: Because in the Title  
15 VII case assuming you're right, that you get across  
16 the first threshold, you're also faced with the same  
17 defense. Right?

18 MR. RUSSELL: Yes. It's essentially the  
19 same case kind of case in each instance. Although  
20 the jury has to find intentional discrimination in  
21 the Title VII case; under the Equal Pay Act the jury  
22 has to determine whether the employer has shown that  
23 the present disparity is the result of some factor  
24 other than sex. And so in both cases, the jury  
25 always has to consider the basis of prior decisions

1 that are the cause of the present disparity.

2 JUSTICE ALITO: Do you have to show that  
3 at the time when a particular paycheck in question is  
4 issued, there was an intent to discriminate?

5 MR. RUSSELL: No. The execution of a  
6 prior discriminatory decision constitutes a present  
7 violation of Title VII. It's frequently --

8 JUSTICE ALITO: What if the situation is  
9 that when the particular paycheck is cut, the  
10 company, the employer, whoever it is, has no intent  
11 whatsoever to discriminate? They think that they are  
12 issuing this pay on a totally nondiscriminatory  
13 basis?

14 MR. RUSSELL: It still constitutes a  
15 violation because they are executing a present  
16 disparity that is because of sex within the meaning  
17 of the statute.

18 CHIEF JUSTICE ROBERTS: So if 15 years  
19 earlier a discriminatory decision was made to give a  
20 pay raise of 4 percent rather than 5 percent, and  
21 that over the 15 years became the basis with other  
22 raises, you think you can challenge the  
23 discrimination 15 years later and say well, this was  
24 discriminatory because 15 years ago I didn't get a  
25 raise and that, carried forward, had a ripple effect

1 into the current 180-day period.

2 MR. RUSSELL: Yes. That kind of claim  
3 would be timely under section 706. The employer  
4 would have an awfully good laches defense.

5 JUSTICE KENNEDY: Would that be true if  
6 there were a change in ownership of the company, so  
7 the discrimination originally occurred under owner A,  
8 then the company is purchased by owner B, completely  
9 unrelated, and the, the disparity is used for  
10 bonuses, et cetera?

11 MR. RUSSELL: That would depend on the  
12 general rules for attributing a liability from a  
13 successful --

14 JUSTICE KENNEDY: Well, under the, under  
15 the answer that you gave to the Chief Justice and the  
16 rule you propose, what of the case of differing  
17 ownership?

18 MR. RUSSELL: I would think that they are  
19 still responsible in the same way that they are  
20 responsible for other actions that the prior company  
21 took.

22 JUSTICE SCALIA: But that, but that would  
23 not be the result if the reason for the disparity  
24 between 4 percent and 5 percent was not a, a denial  
25 of a pay increase to a higher pay level, but rather

1 denial of a promotion to another job.

2 MR. RICHARDS: That's correct.

3 JUSTICE SCALIA: If that were the case,  
4 then it washes out and you have to challenge it right  
5 away.

6 MR. RUSSELL: That is correct. And we  
7 think --

8 JUSTICE SCALIA: Does that make any sense?

9 MR. RUSSELL: Well, I think that it does  
10 for the reason that I said before, that that kind of  
11 consequence is a secondary effect of the prior  
12 unlawful employment practice, but under Evans, which  
13 that kind of problem goes to --

14 JUSTICE SCALIA: Well, you could call it a  
15 secondary effect but the only reason you want to get  
16 promoted to another job is to get more money. I  
17 think it's a primary effect.

18 MR. RUSSELL: Well even if the Court  
19 didn't think that this is a completely satisfactory  
20 analytical line to draw, as I said before there are  
21 good practical reasons for drawing it, and every  
22 reason to think that Congress did draw it, because  
23 Congress enacted this statute against the background  
24 legal principle that pay, that the pay aspects of the  
25 employment relationship arise out of recurring

1 transactions and give rise to recurring causes of  
2 action. And that's the rule that everybody  
3 acknowledges Congress adopted under the Equal Pay  
4 Act. And to hold that there is a different rule  
5 under Title VII would for example lead to the  
6 anomalous proposition that Congress intended to  
7 permit women, a white woman in 1967 to challenge the  
8 present disparity in her pay, but not a black man  
9 under Title VII because the discrimination there was  
10 racial. We don't think that Congress intended the  
11 two acts to perform in such dramatically different  
12 ways. In fact --

13 CHIEF JUSTICE ROBERTS: Well, Congress  
14 could have specifically provided for the Equal Pay  
15 Act rule under Title VII, but it didn't do that.

16 MR. RUSSELL: No, it didn't have the same  
17 elements, but there's no reason to think that the  
18 difference in the elements --

19 JUSTICE GINSBURG: It didn't have the same  
20 defenses because the Bennett amendment makes the  
21 defenses under the Equal Pay Act applicable under  
22 Title VII, right?

23 MR. RUSSELL: That's right. And as a  
24 result the claims and the process of adjudicating  
25 both kinds of claims are not particularly different.

1 JUSTICE BREYER: Suppose you go back to  
2 the 15-year old action which led to disparity that  
3 continues up to today, and suppose at the beginning  
4 or in July of 2006 the woman discovers it and brings  
5 her claim and suppose she wins. Now, is it the case  
6 -- and here I'm uncertain. I thought there was some  
7 rule in respect to getting damages that you could  
8 only go back 2 years?

9 MR. RUSSELL: There is a provision of  
10 Title VII that limits back pay to at most 2 years.

11 JUSTICE BREYER: And in that case would it  
12 mean that in this case where it happened 15 years ago  
13 and she won, but she didn't bring her act until  
14 August of 2006, that she could only then collect the  
15 extra money for the preceding 2 years?

16 MR. RUSSELL: That's correct.

17 JUSTICE BREYER: So it isn't going to open  
18 up tremendous liability for 15 or 20 years ago.

19 MR. RUSSELL: That's absolutely right, and  
20 in fact there's no reason to think that such claims  
21 are particularly common. This has been the rule in  
22 effect for 20 years in the lower courts and  
23 Respondent is unable to show any actual evidence that  
24 these kinds of claims are common. But much more  
25 common are instances in which an employee has no

1 reasonable basis for filing a charge of  
2 discrimination within 180 days of the disparity.

3 CHIEF JUSTICE ROBERTS: I suppose all  
4 they'd have to do is allege that sometime over the  
5 past -- I mean, it doesn't have to be 15 years. It  
6 could be 40 years, right -- that there was a  
7 discriminatory act, in one of the semi-annual pay  
8 reviews I was denied this, a raise that I should have  
9 gotten. It may have been 20 years ago. It may have  
10 been 40 years ago.

11 MR. RUSSELL: They can certainly make that  
12 allegation, but the employer is left open to avail  
13 itself of the equitable defenses and they'll have a  
14 very easy time of showing that there's been undue  
15 delay.

16 JUSTICE GINSBURG: Where does it say --

17 CHIEF JUSTICE ROBERTS: Why is that if  
18 they just discovered it? I just learned about what  
19 happened 30 years ago at this company and it's -- I  
20 filed right away. There's no laches.

21 MR. RUSSELL: In that case --

22 CHIEF JUSTICE ROBERTS: But then they have  
23 to go back and litigate what happened 30 years ago.

24 MR. RUSSELL: I do acknowledge the  
25 traditional laches defense would be more difficult

1 than those --

2 JUSTICE GINSBURG: I thought your answer  
3 before was that this is not -- if she's going to  
4 bring a case I got a 2 percent raise, he got a 3  
5 percent raise, her chances are very slim, but if this  
6 builds up year by year to the point where she is  
7 saying, I am being denied equal pay, it's a  
8 requirement of the antidiscrimination law that I get  
9 equal pay, so today I'm not getting equal pay, I  
10 thought -- I mean, the chance that she could win when  
11 she gets a salary review and she gets a little less  
12 than the other person are nil.

13 MR. RUSSELL: Yes, and it's only after  
14 that same kind of decision has been repeated over a  
15 number of years that you actually have a case that  
16 you can bring to the EEOC. But under Respondent's  
17 view by that time it's too late.

18 CHIEF JUSTICE ROBERTS: That's not your  
19 theory. I mean, if it happened once 20 years ago you  
20 have a case that you can bring, isn't it?

21 MR. RUSSELL: That's true, but the  
22 practical --

23 CHIEF JUSTICE ROBERTS: You've got a memo  
24 that says we're going to pay, 20 years ago, we're  
25 going to pay males this much and we're going to pay



1 females this much, and she says that obviously  
2 affected my pay over the ensuing 15, 20 years.

3 MR. RUSSELL: That's true, but the  
4 paycheck accrual rule also serves the function of the  
5 much more common case in which somebody doesn't  
6 derive notice of the potential discrimination until  
7 the discrimination has been repeated over time.

8 JUSTICE ALITO: But isn't your position  
9 that an employer violates Title VII unless the  
10 employer periodically reviews the entire pay record  
11 of every employee to make sure that there has never  
12 been an uncomplained of act of discrimination at any  
13 point in the past that would have a continuing  
14 present effect on the amount of money that the  
15 employee is paid?

16 MR. RUSSELL: No. They certainly have an  
17 incentive to do that under both the Equal Pay Act,  
18 which everybody acknowledges puts the employer  
19 subject to liability for any present disparity based  
20 on any prior decision that can't be justified as  
21 based on some factor other than sex, and that  
22 incentive has been around for a very long time and  
23 respondents aren't able to show that that's been an  
24 unmanageable burden. But employers as a matter of  
25 basic agency law know from the very beginning whether

1 or not they've been paying the plaintiff less because  
2 of her sex.

3 JUSTICE ALITO: How do they know that?  
4 10 years ago the employee got a particular, got a  
5 particular job evaluation and that dictated the  
6 amount of pay that that employee was going to get for  
7 that period and all, all subsequent pay built on that  
8 base, and then it turns out many years later that  
9 there was discrimination in the way the employee was  
10 evaluated way back when, even though there was no  
11 complaint about it; then under your theory that would  
12 be a present Title VII violation, to cut a paycheck  
13 that built, that was based on pay that was built on  
14 this act of discrimination that occurred long ago?

15 MR. RUSSELL: Because this Court made  
16 clear as recently as Faragher and Ellerth that when  
17 an employer delegates a pay-setting authority to a  
18 supervisor the discrimination undertaken by that  
19 supervisor is imputed to the employer as a matter of  
20 agency law principles.

21 JUSTICE SOUTER: Oh, yes, but that assumed  
22 a present discrimination, and it seems to me the  
23 problem that we've got is the problem of connecting a  
24 past discrimination with what may in fact be an  
25 apparently neutral act 15 or 20 years later.

1           MR. RUSSELL: Well, I don't think that the  
2 proof that the act is discriminatory is any more  
3 difficult or any more difficult in concept when it  
4 happened several years ago than when it happened 180  
5 days ago. It's still the employer -- the employee  
6 still has to show that the present disparity is  
7 because of sex. And the fact that it may be more  
8 difficult as a practical matter is something that the  
9 Court can take into account under a laches defense.

10           JUSTICE KENNEDY: Does he have to know  
11 that the present decision to continue the pay  
12 structure is discriminatory?

13           MR. RUSSELL: No. It's enough that the  
14 employer knows as a matter of basic agency law that  
15 the Petitioner is being paid less because of her sex,  
16 because of prior discriminatory decisions.

17           JUSTICE GINSBURG: The -- as I remember  
18 the facts of this case, wasn't it in 1995 that she  
19 got a substantial raise and the reason, according to  
20 her supervisor, was that he noticed that her pay was  
21 below the minimum of the appropriate range for her  
22 job?

23           MR. RUSSELL: That's true. She did get a  
24 higher raise that year and that was his testimony.  
25 He also testified that he had told her differently,

1 that she had done a very good job that year and  
2 that's why she had gotten it, and the jury was  
3 entitled to believe that.

4 JUSTICE STEVENS: May I ask a question? I  
5 didn't understand one of your answers. Supposing  
6 that today the management does not know of the prior  
7 discrimination. Just, records that have been lost,  
8 it happened a long time ago. But there was evidence  
9 that there was a firm policy that women get 20  
10 percent less than men forever and it's still -- that  
11 policy has continued up to date, but that these  
12 people making the decision today did not know that.  
13 Would there be liability or not?

14 MR. RUSSELL: There would.

15 JUSTICE STEVENS: I thought you said the  
16 other. That's why I was --

17 MR. RUSSELL: I apologize if I was unclear  
18 about that. There would be liability, and basic  
19 agency law principles impute to the employer those  
20 prior decisions. So it's not possible for Goodyear  
21 as a matter of law to claim that it did not know  
22 about those decisions when they occurred, and I'm not  
23 aware of any principle of agency law --

24 JUSTICE KENNEDY: Well, the question is  
25 whether or not there was a discriminatory act and if

1 the employer, let's say it's an employer that has  
2 just purchased a business, thinks that it's a neutral  
3 criterion to base wages or bonuses or increase on a  
4 prior pay scale and he doesn't know about the prior  
5 discrimination, why isn't that a defense?

6 MR. RUSSELL: It may be a defense. I'm  
7 not quite certain how agency law principles apply in  
8 that circumstance when there's been a change of  
9 ownership. But certainly when there hasn't been it's  
10 not unfair to the employer to say that so long as you  
11 base present pay on long past decisions it's your  
12 responsibility to make sure that that present pay is  
13 not discriminatory.

14 CHIEF JUSTICE ROBERTS: And it's not  
15 enough presumably for somebody to come in and even up  
16 everybody? I mean, if you see that the women are  
17 making 20 percent less than the men you don't escape  
18 liability by paying everybody the same going forward,  
19 because perhaps if nondiscriminatory decisions had  
20 been made the women would have making 20 percent more  
21 than the men. You have to go back and revisit every  
22 pay decision or you're exposed to liability for  
23 current pay.

24 MR. RUSSELL: That's true, that they have  
25 an incentive to do so. They also have that incentive

1   concededly under the Equal Pay Act and nothing in  
2   this Court's decision in this case is going to remove  
3   that incentive or that burden.  And the fact that  
4   Congress didn't find that burden inappropriate under  
5   the Equal Pay Act is good reason to think that  
6   Congress wouldn't have thought it was inappropriate  
7   here.

8                   JUSTICE SOUTER:  Well, what is your burden  
9   to prove?  You've talked about their burden to go  
10  back when -- do I understand it that your view is  
11  that the only thing you have to prove is that in this  
12  case a woman was being paid at a rate which is  
13  different from the rate of a man doing a comparable  
14  job?

15                   MR. RUSSELL:  No, that's not our position.  
16  We have to prove in addition that that disparity is  
17  because of sex, which necessarily --

18                   JUSTICE SOUTER:  So you too then have to  
19  go, unless you can find a present policy to  
20  discriminate on sex, you too in your proof have to go  
21  back whatever it may be, you know, the 15 or 20  
22  years?

23                   MR. RUSSELL:  Yes, and the longer that an  
24  employee waits the harder it is for her to sustain  
25  her burden of proof on that score.  And in fact --

1 CHIEF JUSTICE ROBERTS: Why is that true?  
2 I mean, it depends. I suppose it may be harder for  
3 the company to mount a defense over time, so it may  
4 be to her advantage to wait.

5 MR. RUSSELL: But if the employer can show  
6 in fact that there is a disadvantage, that there is  
7 prejudice, it can ask the court to limit the scope of  
8 the claim or eliminate it entirely under an equitable  
9 defense such as laches.

10 I think it's important to keep in mind  
11 that this is not the first time that this Court has  
12 struggled with this question when does the unlawful  
13 employment practice occur in a disparate pay case.  
14 This Court confronted precisely that question in  
15 Bazemore and held that -- and rejected the Fourth  
16 Circuit's interpretation in that case that the  
17 present payment of a disparate wage was simply a  
18 consequence and not in itself a present violation of  
19 Title VII?

20 JUSTICE SOUTER: What do you say of the  
21 explanation that was given in Bazemore? I forget the  
22 subsequent case. It was in footnote 6. You know  
23 what I mean. Which referred to Bazemore as a case  
24 that involved a present discrimination which, which  
25 is inconsistent with your theory. What do you say

1 about footnote 6?

2 MR. RUSSELL: I don't think it's  
3 inconsistent. There was present discrimination.  
4 There was, people were being paid less and it was  
5 because of their race. It just so happened that the  
6 because of their race was based on a decision that  
7 was made before the effective date of the act. I  
8 don't think --

9 JUSTICE SOUTER: Well, the policy -- I  
10 thought the assumption was that the policy was in  
11 fact a policy which, which was sort of currently  
12 honored and intended to be honored by the company,  
13 whereas the case that we're concerned about is the  
14 case in which there was a discriminatory act, you  
15 know, 5, 10, 15 years ago. Nobody remembers the  
16 discrimination now. It's just that it continues to  
17 have these ripple effect consequences. I would have  
18 thought that the subsequent explanation in Bazemore  
19 would have been inconsistent with your position with  
20 respect to the current ripple effect.

21 MR. RUSSELL: No, I don't think that's an  
22 accurate description of what was going on in  
23 Bazemore. Recall, for example, that there were  
24 plaintiffs in Bazemore --

25 JUSTICE SOUTER: Well, do you take -- I'm



1 sorry, I can't think of the name of the case. You  
2 know the case that I'm talking about with the  
3 footnote?

4 CHIEF JUSTICE ROBERTS: Lorange?

5 JUSTICE SOUTER: I guess. Do you think  
6 that the Court in the footnote misstated Bazemore and  
7 that therefore we should trust to Bazemore and not  
8 the subsequent explanation?

9 MR. RUSSELL: No. I thought -- I'd take  
10 the footnote in Lorange, if that's what you're  
11 referring to, to simply say that, like a facially  
12 discriminatory pay policy which discriminates every  
13 time it's implemented, a facially discriminatory  
14 seniority policy that discriminates every time it's  
15 implemented, the Court was -- considered in Bazemore  
16 a similar kind of recurring violation because, just  
17 like a facially discriminatory policy, a  
18 discriminatory pay structure or pay decision treats  
19 differently -- similarly situated people differently  
20 every time it's implemented.

21 JUSTICE SOUTER: But that assumes that the  
22 company in effect says, we have a pay structure and  
23 our pay structure as it is now treats people  
24 differently depending on sex, race, or whatever. And  
25 that's not the kind -- that's something very

1 different from the ripple effect argument.

2 MR. RUSSELL: I don't think that it is.  
3 For example, remember that in Bazemore there were  
4 plaintiffs, workers who were hired after the merger,  
5 after 1965, and when they were hired they were paid  
6 the same rate as the white employees, and the  
7 disparity in their wages in 1972 arose solely because  
8 of the discriminatory application of a merit-based  
9 pay raise decision, system, which is exactly the same  
10 kind of claim that we're making in this case. But  
11 this Court nonetheless held that continuing to pay  
12 workers, those workers, less than similarly situated  
13 whites because of that discrimination that occurred  
14 before the effective date of the act was still a  
15 present violation of Title VII.

16 JUSTICE STEVENS: May I ask this question?  
17 Supposing in the annual review before a promotion is  
18 concerned the officer making the recommendation was  
19 instructed not only to decide what increase would be  
20 appropriate but also to review past history and  
21 decide whether or not the employee was being paid  
22 fairly in a nondiscriminatory basis and that was part  
23 of the assignment. Would you have a case if that  
24 were the case?

25 MR. RUSSELL: The plaintiff would be

1 required to show that that de novo decision was  
2 intentionally discriminatory.

3 JUSTICE STEVENS: You couldn't rely on the  
4 past history in that situation?

5 MR. RUSSELL: That's right.

6 JUSTICE STEVENS: Because I think that's  
7 sort of what Justice -- Judge Jofla thought was going  
8 on here.

9 MR. RUSSELL: I don't think that he -- he  
10 couldn't have thought that because the facts are  
11 absolutely clear and Goodyear acknowledges in this  
12 Court that the pay system that they had in place  
13 simply made an annual decision whether to make a  
14 marginal increase into the raise and took the prior  
15 salary as given.

16 If I could, before I sit down, I'd like to  
17 make the point that to the extent the Court doesn't  
18 think Bazemore decides this case, and doesn't think  
19 that the statute is clear on this question, it should  
20 defer to the expert opinion of the EEOC on this  
21 question in which they have particular expertise  
22 because they see thousands of these claims every  
23 year. They know better than anybody else whether the  
24 paycheck accrual rule is unworkable in practice, or  
25 that the pay decision accrual rule will lead to the

1 elimination of many claims that Congress would have  
2 intended to preserve. If I could reserve the  
3 remainder of my time.

4 CHIEF JUSTICE ROBERTS: Thank you counsel.  
5 Mr. Nager, we'll hear now from you.

6 ORAL ARGUMENT OF GLEN D. NAGER

7 ON BEHALF OF RESPONDENT

8 MR. NAGER: Thank you, Mr. Chief Justice,  
9 and may it please the Court:

10 This Court has repeatedly said that a  
11 claim of intentional discrimination is timely and  
12 actionable only if it concerns intentionally  
13 discriminatory acts taken during Title VII's charge  
14 filing period.

15 And the question presented in this case  
16 asks the Court to hold that a disparity in pay states  
17 a timely actionable claim for intentional  
18 discrimination if it is merely the result of  
19 allegedly discriminatory actions taken outside of the  
20 charge filing period. The question presented is  
21 inconsistent with holding after holding of this  
22 Court. When Goodyear issued paychecks during the  
23 charge filing period, it did not commit intentionally  
24 discriminatory acts. No one at Goodyear took  
25 Miss Ledbetter's sex into account during the charge

1 filing period in deciding what to pay her.

2 JUSTICE STEVENS: Mr. Nager, can I test  
3 your theory with a hypothetical question? Supposing  
4 20 years ago, there was an actual written policy  
5 statement, we pay women 20 percent less than men.  
6 And that was written up and everybody knew it. And  
7 then nothing changed for the next 20 years, and the  
8 person then sued today. Would she be -- and there  
9 was no intent to do anything, this is just the way  
10 it's always been. Would she have a cause of action?

11 MR. NAGER: The answer to that, I think,  
12 is no, if I understand your hypothetical, if the  
13 employer was not intending to classify on the basis  
14 of gender.

15 JUSTICE STEVENS: If present intent was  
16 merely to do what we have always done, you have to go  
17 back 20 years to find out that what we have always  
18 done is the result of a policy decision made 20 years  
19 ago that we can hire women at a less expense than men  
20 so we will continue to pay the same rate. Would the  
21 per paycheck rule apply to that case?

22 MR. NAGER: I think the answer is it  
23 clearly would be untimely insofar as the allegation  
24 is that there is discrimination today merely because  
25 there was discrimination yesterday. Whether or not

1 there is discrimination going on during the charge  
2 filing period, whether or not women are intentionally  
3 being treated differently than men, I think the  
4 answer, based upon your hypothetical, is no, given  
5 what you've said.

6 JUSTICE ALITO: If the employer had a  
7 policy of paying women, all women, 20 percent less  
8 than men, and it continued that policy, surely it  
9 would know in the present day when it issued those  
10 paychecks that it was paying women less than men. So  
11 it would be intentionally discriminating at this  
12 time, wouldn't it?

13 MR. NAGER: Justice Alito, that's why I  
14 qualified my answer to Justice Stevens, because I  
15 think that the question his hypothetical raises, like  
16 your question, goes to the sufficiency of evidence  
17 necessary to prove intent during the charge filing  
18 period. And I don't want in any way to be heard that  
19 there is anything in our position in this case that  
20 tries to answer that question.

21 The reason I'm not trying to answer that  
22 question in this case is because that question is not  
23 before the Court except with one small respect. If  
24 the only thing that the plaintiff is relying upon is  
25 discrimination outside of the charge filing period,

1 that is legally insufficient under this Court's cases  
2 in Evans, Ricks, Lorance and Machinists before it.

3 What Bazemore dealt with was a case very  
4 much like your hypothetical, Justice Alito, of an  
5 allegation of an ongoing racial classification during  
6 the actionable time period. And it was because of  
7 that allegation of ongoing actionable racial  
8 classification and pay that there was both a timely  
9 claim, and according to Justice Brennan's opinion for  
10 all nine members of the Court of that -- in that  
11 case, a very serious potential error by the district  
12 court in that case as to whether or not it had been  
13 clearly erroneous in holding that the United States  
14 had failed its proof of proving an ongoing  
15 intentional race discrimination case --

16 JUSTICE SCALIA: Mr. Nager, why does it  
17 make any sense to treat this area any different from  
18 the Equal Pay Act?

19 MR. NAGER: Because they are two different  
20 statutes and the elements of the plaintiff's claims  
21 are fundamentally different. That's the fundamental  
22 flaw in the Petitioner's claim in this case. Let me  
23 explain, if I may, Justice Scalia.

24 In a Title VII case, in an intentional  
25 discrimination case, the question is whether or not

1 there is an act that is motivated by gender during  
2 the charge filing period. That is not an element of  
3 the plaintiff's cause of action in an Equal Pay Act  
4 case.

5 In an Equal Pay Act case, all the  
6 plaintiff has to do is allege they are performing  
7 equal work to a male, and that they are paid  
8 differently. And it's that cause of action that  
9 triggers the statute of limitations in an Equal Pay  
10 Act case. That's fundamentally different. As Chief  
11 Justice Roberts said --

12 JUSTICE GINSBURG: Why is it different if  
13 the one further statement is made? And the employer  
14 knew that every woman is being paid less than every  
15 man. Why isn't that sufficient under Title VII? And  
16 if you want evidence, your own supervisor said, oh,  
17 we saw one year that she was outside the range  
18 appropriate for this job.

19 MR. NAGER: Well, knowledge is a necessary  
20 condition, but it's not a sufficient condition,  
21 Justice Ginsburg. In Evans, the employer knew it  
22 previously had a sexual -- a gender-based  
23 discriminatory policy about whether or not female  
24 flight attendants could work after they got married.  
25 But that prior knowledge of prior discrimination by



1 the employer wasn't sufficient to make the neutral  
2 action taken --

3 JUSTICE GINSBURG: Evans involved a factor  
4 that simply is not present here. I mean, Evans  
5 involved a seniority system. And if this person who  
6 had been off the job were to come back two years  
7 later, and bump people who had been there every day,  
8 well, certainly that's a different case than this  
9 one, where she is saying, I should have been paid  
10 equally. I wasn't. And I know I can go back only  
11 two years. That's quite a bit different than the  
12 Evans situation.

13 MR. NAGER: Justice Ginsburg, Title VII  
14 allows proof of dissimilar treatment as evidence of  
15 present intentional discrimination, but it's not the  
16 elements of the claim. As Chief Justice Roberts was  
17 pointing out, Title VII would prohibit paying a woman  
18 the same amount as a male if the employer would have  
19 paid the female more because she had a -- more  
20 degrees or other criteria that the employer  
21 ordinarily took into account.

22 The elements of those two claims are  
23 fundamentally different. What makes this case  
24 untimely and unactionable is that there is no claim  
25 and there can be no claim because it's the law of the

1 case that Goodyear took Miss Ledbetter's sex into  
2 account during the charge filing period.

3           What Goodyear did was the same kind of  
4 neutral rule as in Evans. What Goodyear did was it  
5 said, we are looking at the pay rate contained in our  
6 payroll system, and applying those rates as they are  
7 mandated for all of our employees, male or female.  
8 And what Goodyear did at the beginning of each  
9 evaluation period was say, we are starting this  
10 payroll period with the pay rates that were paid in  
11 the last period for all of our employees, male or  
12 female, no matter what their prior causes.

13           JUSTICE GINSBURG: If only the 180 day  
14 period counts, and she can complain only about  
15 discrimination in that period, then how do you  
16 account for her being able to go back not 180 days,  
17 but two years for her remedy?

18           MR. NAGER: The two-year rule is only a  
19 damages rule that applies only in Title VII cases.  
20 And it's triggered in cases such as where there has  
21 been equitable tolling or equitable estoppel, because  
22 the employer -- it was a promotion case or a pay case  
23 --

24           JUSTICE GINSBURG: I thought it was the  
25 lid on the amount of compensation you could get in

1 Title VII cases. You can't go back more than two  
2 years for damages. But it would seem that doesn't  
3 fit at all whether you can go back only 180 days.

4 MR. NAGER: No. What the 180 days is for  
5 is determining the time period during which the  
6 allegedly illegal act must occur. That period can be  
7 tolled using a tolling rule. It can tolled for three  
8 years possibly. The back pay rule says, even if you  
9 tolled the statute of limitations for more than the  
10 two-year back pay period, you can only get back pay  
11 for two years. What is going on, of course, in this  
12 case, is they are trying to use allegedly  
13 discriminatory acts that occurred 10, 15, 20 years  
14 ago, both to make neutral acts actionable, and to get  
15 compensatory and punitive damages.

16 JUSTICE GINSBURG: Why is she claiming  
17 that in 1995, a supervisor recognized that my pay was  
18 way out of line. Isn't that what the supervisor  
19 testified?

20 MR. NAGER: He did. And he said he raised  
21 her pay up the maximum amount he was entitled to that  
22 year. And she didn't file a charge of discrimination  
23 in 1995.

24 JUSTICE GINSBURG: Maybe she thought that,  
25 well, they are on the right track. Next year, they

1 are going to raise me up to the equal pay level.

2 MR. NAGER: And what the purpose of the  
3 charge filing requirement under Title VII, as this  
4 Court has repeatedly said, is to require that  
5 employee to come forward promptly within 180 days of  
6 the date that the alleged unlawful employment action  
7 is communicated to her, and bring that claim or lose  
8 it, that the purpose of section 706 was to create  
9 repose.

10 JUSTICE GINSBURG: The question that I  
11 asked Mr. Nager that I think is really important, and  
12 that is, where do you put these pay cases? Do you  
13 put it in the box with the hostile environment that  
14 builds up over time, and as long as the environment  
15 is hostile at the time you bring your complaint, then  
16 it doesn't matter that it started 20 years ago. This  
17 notion of one year, it's 2 percent, and the other  
18 person got 3 percent, you really don't have an  
19 effective claim unless it builds up to the point  
20 where there is a noticeable disparity.

21 MR. NAGER: Justice Ginsburg, the  
22 Petitioner in this case has agreed with us that this  
23 is the kind of discrete employment action that  
24 triggers the 180-day period. It is not like a sexual  
25 harassment claim.

1 JUSTICE GINSBURG: Where is that  
2 agreement?

3 MR. NAGER: It's in their brief. They  
4 repeatedly quote the portion of Morgan which  
5 described pay claims as discrete acts subject to the  
6 discrete trigger rule in the Morgan opinion. And  
7 that, of course, is an obvious concession that they  
8 had to make in this case, because Mr. Russell would  
9 not concede when Justice Scalia asked that that first  
10 pay rate decision was not an identifiable act, that  
11 it wasn't an actionable -- immediately actionable  
12 claim.

13 JUSTICE GINSBURG: I thought that the  
14 Morgan decision quotes Bazemore for saying, under  
15 Title VII, each week's paycheck that delivered less  
16 to a black than to a similarly situated white is a  
17 wrong, actionable under Title VII.

18 MR. NAGER: And that's in the portion of  
19 the opinion that's dealing with discrete employment  
20 action. It's not in the portion of the opinion  
21 dealing with sexual harassment claims. I'm trying to  
22 answer your question about which portion of Morgan  
23 pay claims fall into.

24 JUSTICE GINSBURG: Whatever portion it's  
25 in, it says each week's paycheck that delivered less

1 to a black than to a similarly situated white is a  
2 wrong, actionable --

3 MR. NAGER: Because Justice Thomas'  
4 opinion was accurately describing the holding in  
5 Bazemore on the facts of Bazemore, because in  
6 Bazemore there was a claim, in contrast to this case,  
7 of ongoing intentional race discrimination in  
8 classifying employees on the basis of their race and  
9 paying the black employees less than the whites. If  
10 the Court would look at the remand order in the  
11 Bazemore case, they'll see that the Court did not  
12 remand with instructions that judgment be entered for  
13 the United States merely because there was a  
14 disparity in salaries.

15 JUSTICE BREYER: Justice Brennan's opinion  
16 sounds to me, part one, as if he is saying what the  
17 mistake was that the company made here is that they  
18 didn't really eradicate the effects of the past bad  
19 act, and they were trying to eradicate it.

20 MR. NAGER: Well, actually, the United  
21 States' allegations in the case were trying --

22 JUSTICE BREYER: That's another part of  
23 the case that's part two and part three about the  
24 evidence that came in. In fact, there are about six  
25 other parts. I'm just talking about part one.

1 MR. NAGER: That's part one.

2 JUSTICE BREYER: Yes. All right. So I  
3 read that. Now, this is my this is my cost/benefit  
4 analysis here. If we follow the other side's rule,  
5 it's very simple, we just said Bazemore applies,  
6 whether there's a practice or whether it was a  
7 discrete thing, or whatever, so it's simple. But we  
8 do have to distinguish pay from the other kinds of  
9 things. And we have heard them explain why there is  
10 a distinction. I want to get to your side and you  
11 can then attack both, or whatever.

12 Your side of it, it seems to me, if I  
13 agree to you, I now have to create in the law some  
14 kind of thing that sounds very complicated about  
15 whether that old bad thing was somehow a pattern or a  
16 practice that, as a pattern or a practice, didn't get  
17 eradicated within the last few years, or was a  
18 totally discrete act, and therefore, had no  
19 implication as a pattern or practice that didn't get  
20 eradicated. That sounds hard.

21 And the second thing I guess I'd have to  
22 do is to create a lot of tolling law because there  
23 will be probably a significant number of  
24 circumstances where a woman is being paid less, and  
25 all she does is for the last six months get her

1 paychecks and she doesn't really know it because pay  
2 is a complicated thing, and through no fault of her  
3 own, it takes about eight or nine months or even a  
4 year for her to find out. And we are going to have  
5 to toll, aren't we?

6           So I have, legally speaking, a complicated  
7 tolling system that I have to graft on to this, your  
8 case. I also have to start distinguishing Bazemore  
9 which is pretty hard to do. But on the other side,  
10 they are just saying, go with the flow. Nobody is  
11 really hurt, because the employer has to worry about  
12 all this stuff anyway under the Equal Pay Act. I'm  
13 giving you that summary so you can just shoot it  
14 down.

15           MR. NAGER: Well, it was a compound  
16 question, but I'll try to answer each of its parts.

17           The first point I would make is that  
18 Bazemore came after Evans and Hazelwood and Ricks,  
19 and it did not distinguish Evans or Hazelwood or  
20 Ricks on the grounds that Bazemore is a pay case and  
21 Hazelwood and Evans were not pay cases. It  
22 distinguished them on the grounds of whether or not  
23 the alleged discrimination was taking place in the  
24 charge filing period. So this notion that Bazemore  
25 stands as a proposition that Evans and Lorange and



1 that line of cases doesn't apply because they don't  
2 apply to pay cases was not the opinion of the Court  
3 in Bazemore.

4           Secondly, we are not asking you, and I  
5 don't think it takes any difficulty to apply the rule  
6 that we are proposing in this case. We are proposing  
7 the same rule that's set forth in Justice Stevens'  
8 opinion for the Court in Evans, the same rule that's  
9 set forth in Justice Powell's opinion in Ricks, the  
10 same rule that's set forward in Justice Scalia's  
11 opinion for the Court in Lorance.

12           JUSTICE STEVENS: But there is a slight  
13 difference in that you're focused on whether  
14 discrimination occurred within the 180-day period.  
15 And if I understand you correctly, discrimination  
16 would occur during the 180-day period if the employer  
17 knew of the policy that I described, because then he  
18 would be knowingly paying less.

19           MR. NAGER: No. Not if he had knowledge  
20 of --

21           JUSTICE STEVENS: I thought your answer to  
22 Justice Alito made that point.

23           MR. NAGER: Well, what I said to Justice  
24 Alito was, if the employer knew that it previously  
25 had a policy and if it knew and intended that its

1 present pay would be done for gender-related reasons  
2 or racially-related reasons, it would constitute --

3 JUSTICE STEVENS: But the question of  
4 whether just knowing that that's a source of the  
5 policy would be a gender-related reason.

6 MR. NAGER: Well, the question is whether  
7 there is a present policy. That's the point the  
8 Solicitor General makes in its brief and the point we  
9 make in our brief.

10 JUSTICE STEVENS: Well, in my hypothetical  
11 there was a policy established 20 years ago, a 20  
12 percent differential, never been changed. And the  
13 only question that would differ, in some cases the  
14 employer knows about it and in some others he  
15 doesn't.

16 MR. NAGER: And if the employer is  
17 presently applying, and knowingly and intentionally  
18 doing so, a 20 percent differential for male and  
19 female employees for no reason other than the gender  
20 of the employees, that's a present violation.

21 JUSTICE STEVENS: Well, what his reason  
22 is, this is always the way we did it. That's his  
23 reason.

24 MR. NAGER: Well, if what he's saying is,  
25 the way we have always done it is engage in gender

1 discrimination, then doing it in the present time  
2 period would state a present claim.

3 JUSTICE KENNEDY: But suppose he has no  
4 intent to discriminate as a present matter, but he  
5 also knows that his decision is necessarily based on  
6 a policy that was discriminatory some years ago.  
7 What result?

8 MR. NAGER: I think if I understood the  
9 question, Justice Kennedy, I think no present claim,  
10 because the only thing you said that he knew is that  
11 they previously engaged in discriminatory actions.

12 JUSTICE KENNEDY: He knows it, but his  
13 present decision is necessarily based on some prior  
14 decision that was discriminatory.

15 MR. NAGER: That in and of itself is not  
16 sufficient. That's the point that, the seniority  
17 system in Lorance was necessarily based upon an  
18 earlier decision that the employer --

19 JUSTICE KENNEDY: How is that -- how is  
20 that consistent with the statement in Bazemore that  
21 the employer has a duty to eradicate past  
22 discrimination?

23 MR. NAGER: Well, the duty was to  
24 eradicate the alleged ongoing facially discriminatory  
25 pay practices that preceded the enactment of Title

1 VII and were alleged to have been maintained for  
2 racially purposeful reasons after Title VII became  
3 effective to a public employer. There is no  
4 contemplation in that case that that duty would  
5 require an employer to investigate discrete  
6 employment decisions made in years gone by that  
7 weren't made the subject of a timely charge. What  
8 this Court has said repeatedly is when the charge  
9 filing period passes and no charge is brought, the  
10 employer is entitled to treat that past act as if it  
11 was a lawful act. That's what Justice Thomas'  
12 opinion in Morgan says. That's what, the opinion  
13 that Justice Stevens wrote for the Court in Evans.

14 JUSTICE SOUTER: Is that so even if they  
15 know it was in fact originally an unlawful act?

16 MR. NAGER: Yes.

17 JUSTICE SOUTER: You draw a line between  
18 present purposeful discrimination and present  
19 knowledge of past discrimination which is knowingly  
20 carried forward.

21 MR. NAGER: That's correct. Because the  
22 purpose of section 706(e) is to give repose for those  
23 past decisions.

24 JUSTICE GINSBURG: How do you describe --  
25 deal with a case like Manhart where they were

1 complaining about a pension plan that had been  
2 instituted, oh, way longer than 180 days, years and  
3 years before?

4 MR. NAGER: That plan was facially  
5 discriminatory. It included on the face of the plan  
6 gender-based mortality tables. And as Justice  
7 Scalia's opinion for the Court in Lorange and the  
8 footnote that Justice Souter pointed out to, a  
9 facially discriminatory policy necessarily evidences  
10 present intent each time it is applied, and that is  
11 the important distinction. On the one hand you have  
12 cases that are both timely and as a matter of law  
13 show present intent because they are facially  
14 discriminatory. On the other end of the continuum  
15 you have cases that are only about past  
16 discrimination and do not involve any present  
17 actionable claim of intentional discrimination, and  
18 they are both untimely and legally insufficient. And  
19 then you have the cases in the middle which concern  
20 present allegations of discriminatory practices so  
21 obnoxious, as alleged in Bazemore, that the Court  
22 held that district court may have been clearly  
23 erroneous in its conclusion that there was no present  
24 intentional discrimination.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 Mr. Nager. Mr. Gornstein?

2 ORAL ARGUMENT OF IRVING L. GORNSTEIN

3 ON BEHALF OF THE Respondent

4 MR. NAGER: Mr. Chief Justice, and may it  
5 please the Court:

6 Title VII gives employees like Petitioner  
7 180 days to challenge an individual pay decision such  
8 as a denial of a pay raise. Employees who allow the  
9 180-day period to pass may not years later and even  
10 at the end of their careers challenge their current  
11 paychecks on the grounds that they are the result of  
12 a number of discrete individually discriminatory pay  
13 decisions that occurred long ago.

14 JUSTICE GINSBURG: This would be a good  
15 Equal Pay Act case, wouldn't it?

16 MR. NAGER: If it met the requirements of  
17 the Equal Pay Act, which is that it has to be the  
18 same knowledge, skills and responsibilities and  
19 effort for the job, then every time that you have a  
20 failure to deliver equal pay for equal work there is  
21 a violation of the act. But Title VII is not an  
22 equal pay for equal work statute, it is a  
23 nondiscrimination statute, and so that you have to  
24 show intentional discrimination in pay, not just the  
25 absence of equal pay.

1 JUSTICE GINSBURG: Why doesn't it become  
2 intentional, at least after 1995, when the supervisor  
3 recognizes that he's got an employee that is out of  
4 the appropriate range for her job, whether she does  
5 it badly or well?

6 MR. GORNSTEIN: Justice Ginsburg, if an  
7 employee brought a claim within 180 days of the  
8 decision made then, that is to not, to not equalize  
9 the pay further --

10 JUSTICE GINSBURG: Why would she bring it  
11 then? They gave her a big raise that year.

12 MR. GORNSTEIN: Well, because I think what  
13 you're suggesting is they didn't give her a big  
14 enough raise, because there was still intentional  
15 discrimination from prior years that were not, that  
16 were unchallenged.

17 JUSTICE GINSBURG: Wouldn't she have every  
18 reason to expect, well, they finally noticed it, so  
19 next year I'm going to get that same size raise, but  
20 then it didn't happen the next year?

21 MR. GORNSTEIN: And if it doesn't happen  
22 that next year, then that employee has 180 days to  
23 challenge that pay decision on the ground that it's  
24 intentionally discriminatory. If she does not do  
25 that, she cannot come back 15 years later and say

1 that a decision that was made 15 years ago and 14  
2 years ago were based on my gender, and they --

3 JUSTICE GINSBURG: She is not talking  
4 about a decision made 15 or 14 in this case. She  
5 starts out even, and it builds up over time.

6 MR. GORNSTEIN: Well, I think in some, in  
7 some cases that, pay cases, it will build up over  
8 time. In some cases it will happen immediately. But  
9 in either case, what Title VII says is that you have  
10 180 days to challenge a discrete pay decision. If  
11 you do not do that, you cannot come back later, years  
12 later, four years later, six years later, or here at  
13 the end of her career, and challenge every pay  
14 decision that's been made up until then on the  
15 grounds that intent, it was intentionally  
16 discriminatory and continues to have ongoing effects.

17 JUSTICE STEVENS: But you could if the  
18 person making the decision was aware of the  
19 discriminatory policy.

20 MR. GORNSTEIN: Knowledge of prior  
21 unlawful acts is relevant evidence in deciding  
22 whether it's present day intentional discrimination.  
23 But just as in a case where there's a promotion and  
24 I'm aware that there was a prior discrimination in a  
25 promotion and that was not timely challenged, and the



1 person comes to me today and says I want my promotion  
2 now. If I'm aware that she was denied that promotion  
3 for discriminatory reason but she did not timely  
4 challenge it, my decision not to give her that  
5 promotion is not automatically discriminatory.

6 JUSTICE STEVENS: But you're changing the  
7 hypothetical. My hypothetical was simply a pay case.

8 MR. GORNSTEIN: I understand that, and I'm  
9 saying the same rule applies in a pay case that  
10 applies in a promotion case.

11 JUSTICE STEVENS: You're saying, I think  
12 contrary to your colleague if I remember correctly,  
13 that even if the employer knew of the 20 percent  
14 differential policy established 20 years ago, it  
15 could still carry it into effect today.

16 MR. GORNSTEIN: What I'm saying with  
17 respect to a policy is if you have an ongoing policy  
18 that is still being applied in the limitations  
19 period, and that your current policy is to pay less  
20 to women than to men, then of course you can sue  
21 based on the current policy.

22 CHIEF JUSTICE ROBERTS: Let's say it's the  
23 same person who made the decision. You know, five  
24 years ago he said I'm giving a 6 percent raise to  
25 men, I'm giving a 3 percent raise to women, and then

1 he decides that's illegal, and so from now on  
2 everybody is going to get a 4 percent raise every  
3 year if you meet certain standards. Is that ongoing  
4 discrimination or is that a neutral thing, that he  
5 doesn't have to take into account the past  
6 discrimination?

7 MR. GORNSTEIN: That's a neutral discrete  
8 act that was made at the time. It was not  
9 challenged.

10 CHIEF JUSTICE ROBERTS: Even though he  
11 knows that it carries forward the illegal  
12 discrimination?

13 MR. GORNSTEIN: Even when the employer --  
14 you can have an inference from knowledge of past  
15 illegal conduct that your present intent is to carry  
16 forward that differential based on the person's sex,  
17 but it is not an automatic inference. You can also,  
18 the employer could say look, that was a decision that  
19 occurred a while ago. A lot of people did this.  
20 There were decisions made that affected a lot of  
21 other people --

22 JUSTICE GINSBURG: But you're talking  
23 about --

24 MR. GORNSTEIN: -- and I didn't correct  
25 those either, and that's a neutral policy.

1 JUSTICE GINSBURG: But that's a defense.  
2 And you're talking about, yes, you might draw that  
3 inference but that inference would be wrong because I  
4 have a defense. The defense is poor performance  
5 explains it, not sex discrimination.

6 MR. GORNSTEIN: But under Title VII, poor  
7 performance isn't a defense. It is negating  
8 intentional discrimination. It's the employer's --  
9 employee's decision --

10 JUSTICE GINSBURG: I thought at least in  
11 this area, the defenses were the same as under the  
12 Equal Pay Act.

13 MR. RUSSELL: Well, there are -- there is  
14 an additional layer of defense, but still the  
15 employee has to prove an additional element in a  
16 Title VII claim, not just the absence of equal pay  
17 for equal work, it has to --

18 JUSTICE SCALIA: Mr. Gornstein, why should  
19 we listen to the Solicitor General rather than the  
20 EEOC? I mean, they have taken a different position  
21 from the one that you're urging upon us.

22 MR. GORNSTEIN: The EEOC has taken a  
23 different position but that position that the EEOC  
24 has taken has been based on its reading of this  
25 Court's decision in Bazemore, and this Court does not

1 give deference to the EEOC under Skidmore or under  
2 any other standard.

3 JUSTICE GINSBURG: So why don't we at  
4 least hear from the EEOC? That has happened in other  
5 cases where the Department of Justice and the EEOC  
6 take different positions, at least the EEOC filed a  
7 brief even though it wasn't the Government's brief.

8 MR. GORNSTEIN: That has occasionally  
9 happened in the past. It has not happened as a  
10 regular matter, or to my knowledge it does not  
11 ordinarily occur. The EEOC --

12 JUSTICE SOUTER: If the EEOC is upheld in  
13 the court of appeals and review is sought here, will  
14 the Government confess error?

15 MR. GORNSTEIN: I'm sorry, Justice Souter?

16 JUSTICE SOUTER: If the EEOC's position is  
17 upheld by one of the courts of appeals and there is  
18 an attempt to bring the case here on cert, will the  
19 Government confess error?

20 MR. GORNSTEIN: If the Court rules in the  
21 Government's favor in this case, then that case would  
22 have to be vacated and remanded for reconsideration  
23 in light of this Court's decision today. The EEOC's  
24 --

25 JUSTICE SOUTER: Well, I'm asking a

1 simpler question. Let's assume that somehow we fudge  
2 it. If -- if there is a clear cut case in which the  
3 EEOC takes a position different from the one the  
4 Government is now espousing, and a court of appeals  
5 upholds it, and cert is sought here, will the  
6 Solicitor General say please remand, or simply  
7 confess judgment?

8 MR. GORNSTEIN: Justice Souter, I would  
9 like to answer that question today but of course if  
10 the Court doesn't resolve the question today that's  
11 been decided today, but issues a new decision,  
12 anything we would have to do would have to look at  
13 that new decision and make a judgment about what the  
14 law is at that time. And so my -- my point is --

15 JUSTICE SOUTER: I think I got your point.

16 JUSTICE SCALIA: Touche.

17 MR. GORNSTEIN: To go on, there are three  
18 decisions of this Court that control the result here,  
19 Evans, Ricks and Lorance, each of which says that the  
20 employee cannot circumvent the limitations period by  
21 challenging conduct within the limitations period on  
22 the grounds that it is the result of a prior act of  
23 intentional discrimination that was not timely  
24 challenged.

25 A second reason to reject Petitioner's

1 rule is that Petitioner's rule, as Petitioner admits,  
2 creates a special rule for pay cases when there is  
3 nothing in the language of Title VII that would  
4 justify a special rule. Title VII has the same  
5 mandate of nondiscrimination for pay as for any other  
6 practice. It has the same 180-day period for pay  
7 claims as any other claim.

8           And the third reason to reject  
9 Petitioner's view is that it would undo the statute  
10 of limitations in pay cases, because the result would  
11 be, what you have here is that an employee could wait  
12 until the end of their career, or at least a very  
13 substantial number of years, and then challenge  
14 current pay on the basis of past acts that took place  
15 a long time ago. And Justice Breyer, you talked  
16 about it being limited to just back pay during the  
17 two-year period. The courts that have looked at this  
18 have not decided whether it's the 180-day period or  
19 the two-year period if you buy Petitioner's theory, I  
20 don't think he has either. But the important  
21 additional point is you're still hinging liability on  
22 past acts long ago and you're adding the possibility  
23 of compensatory relief and punitive damages, so it's  
24 not the limited damage award that you're  
25 contemplating necessarily.

1 JUSTICE BREYER: What would you do on the  
2 other side of this? It if you win on this, then  
3 don't you have to have a fairly relaxed standard of  
4 allowing the woman, tolling or something, when she  
5 just gets some paychecks that would take her a while  
6 to figure out that these are really reflecting some  
7 old discrimination and she doesn't know. It's  
8 different in that respect from the promotion itself.

9 MR. GORNSTEIN: Well in some -- if she's  
10 denied a pay raise and she's aware that other people  
11 are getting substantial pay raises -- I don't think  
12 it's that much different than somebody else getting  
13 the promotion and me not getting that promotion.

14 JUSTICE BREYER: Well, she knows this.  
15 She knows that, all these boxes on her paychecks and  
16 she's not quite sure what they mean. All right, your  
17 answer is not much different.

18 MR. GORNSTEIN: Well, to the extent that  
19 you want to address equitable tolling. That's the  
20 question, should there be equitable tolling until  
21 such time as she's aware of the disparity. But what  
22 Petitioner's theory does is says even after the  
23 employee is aware of the disparity she can wait 15  
24 more years and then sue.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Mr. Russell, you have 3 minutes remaining.

3 REBUTTAL ARGUMENT OF KEVIN K. RUSSELL

4 ON BEHALF OF THE Petitioner

5 MR. RUSSELL: I think the fundamental  
6 disagreement in this case comes down to what is the  
7 unlawful employment practice Congress was referring  
8 to when it prohibited discrimination with respect to  
9 compensation. If it is under our view, in our view,  
10 the payment of an intentionally disparate wage, then  
11 there's no question that under Bazemore the violation  
12 occurred during the limitations period. The fact  
13 that the intent was formed outside the limitations  
14 period doesn't make the present payment of a  
15 disparate wage because of sex any less intentionally  
16 discriminatory. But the difference in the  
17 conceptions, which frankly isn't answered by the  
18 plain text of this statute itself, should be resolved  
19 in light of the practical consequences of the  
20 differences in the rules.

21 The Solicitor General acknowledges that a  
22 paycheck accrual rule applies at least in a case of a  
23 policy of discrimination, but that's a very difficult  
24 rule to administer for the EEOC, which must make a  
25 determination of timeliness before it even has



1 authority to investigate a claim. It shouldn't be  
2 left to the EEOC to figure out whether there's an  
3 unwritten practice or an unwritten policy which would  
4 require an extensive investigation not only of the  
5 Petitioner's pay but of everybody else's. You recall  
6 that in Bazemore they had to conduct a multiple  
7 regression analysis to establish a pattern of  
8 discrimination there.

9 Our rule is simple to administer and has  
10 been administered for decades in the lower courts and  
11 it's the rule that the EEOC itself has chosen in  
12 construing this ambiguous aspect of the statute.

13 JUSTICE SCALIA: Do you agree that their  
14 action is just based on Bazemore or their reading of  
15 Bazemore?

16 MR. RUSSELL: No, that's incorrect. I  
17 mean, the EEOC has taken this position that you can  
18 challenge present pay disparities even before the  
19 Court's decision in Bazemore and it continued to  
20 adhere to it afterward. The fact that they cited to  
21 Bazemore shouldn't disentitle them to the kind of  
22 deference that they're ordinarily entitled to when  
23 they construe a statute that's given to them, and  
24 this is precisely the kind of question Congress would  
25 have intended them to exercise their expertise on.

1           Finally, I would like to raise the point  
2   that under Respondent's rule the Extension Service  
3   would have been permitted to pay blacks less than  
4   whites in perpetuity in Bazemore so long as it did so  
5   because of cost and not because it wanted to continue  
6   to discriminate on the basis of race. And similarly,  
7   under the Solicitor General's view an employer who  
8   had intentionally discriminated through discrete  
9   decisions against some of its employees prior to the  
10  act would be allowed to continue to do so after the  
11  act because the decision would have been the  
12  potentially unlawful act in that case and that  
13  wouldn't have been actionable.

14           We respectfully suggest that Congress  
15  intended nothing less than a complete --

16           JUSTICE ALITO: How could cost justify a  
17  dual pay scale?

18           MR. RUSSELL: It could -- the Extension  
19  Service --

20           JUSTICE ALITO: You'd have to have another  
21  factor in the decision, which was that you didn't  
22  want to change pay. But cost alone couldn't justify  
23  that.

24           MR. RUSSELL: It would be a  
25  nondiscriminatory reason. They would -- they would

1 say that, the reason we didn't immediately equalize  
2 salaries is because it cost too much, it would have  
3 required -- we'd be required to cut down on our  
4 programs. And under Respondent's view that is not  
5 intentionally pay-maintaining discrimination.

6 JUSTICE ALITO: No, you'd have to say, we  
7 don't want to spend any more and we also don't want  
8 to equalize pay. You have to say the second too.

9 MR. RUSSELL: They would say, we don't  
10 want to equalize pay because it costs too much, and  
11 that's not a discriminatory reason for maintaining  
12 the prior disparity. But ultimately --

13 JUSTICE ALITO: If you say you're not  
14 going to equalize pay, you're saying you're going to  
15 discriminate on the basis of race.

16 MR. RUSSELL: Which is what happened here.  
17 Goodyear continued to discriminate on the basis of  
18 sex, knowing as a matter of agency law that it had  
19 done so, it had set her pay for discriminatory  
20 reasons in the past.

21 CHIEF JUSTICE ROBERTS: You can equalize  
22 pay by lowering others. You don't -- raising the  
23 discriminated-against class is not the only way to  
24 equalize pay. So I don't see how cost is a  
25 justification for continuing the disparity.

1 JUSTICE GINSBURG: Not under the Equal Pay  
2 Act. You can only equalize up, not down.

3 MR. RUSSELL: That's true.

4 CHIEF JUSTICE ROBERTS: Under Title VII  
5 you can equalize either way, right?

6 MR. RUSSELL: It would, but if they chose  
7 not to equalize at all because they don't want to  
8 spend the money that would be a nondiscriminatory  
9 reason.

10 JUSTICE ALITO: You'd certainly have a  
11 very happy work force if you equalized one way.

12 MR. RUSSELL: Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 The case is submitted.

16 (Whereupon, at 12:04 p.m., the case in the  
17 above-entitled matter was submitted.)

18

19

20

21

22

23

24

25

<b>A</b>	
<b>able</b> 8:4 17:23 34:16	<b>actionable</b> 28:12 28:17 31:6,7 35:14 37:11,11 37:17 38:2 45:17 58:13
<b>above-entitled</b> 1:12 60:17	<b>actions</b> 11:20 28:19 43:11
<b>absence</b> 46:25 51:16	<b>acts</b> 13:11 28:13 28:24 35:13,14 37:5 48:21 54:14,22
<b>absolute</b> 7:5	<b>actual</b> 14:23 29:4
<b>absolutely</b> 14:19 27:11	<b>added</b> 5:10
<b>account</b> 19:9 28:25 33:21 34:2,16 50:5	<b>adding</b> 54:22
<b>accrual</b> 3:23 6:14 8:1,11,13 17:4 27:24,25 56:22	<b>addition</b> 22:16
<b>accrues</b> 7:21	<b>additional</b> 51:14 51:15 54:21
<b>accurate</b> 24:22	<b>address</b> 55:19
<b>accurately</b> 38:4	<b>adequately</b> 8:3
<b>acknowledge</b> 15:24	<b>adhere</b> 57:20
<b>acknowledges</b> 13:3 17:18 27:11 56:21	<b>adjudicating</b> 13:24
<b>act</b> 3:16,25 5:17 6:13 8:10,16 9:11,21 13:4 13:15,21 14:13 15:7 17:12,17 18:14,25 19:2 20:25 22:1,5 24:7,14 26:14 31:18 32:1,3,5 32:10 35:6 37:10 38:19 39:18 40:12 44:10,11,15 46:15,17,21 50:8 51:12 53:22 58:10,11 58:12 60:2	<b>administer</b> 56:24 57:9
<b>action</b> 3:23 5:2 13:2 14:2 29:10 32:3,8 33:2 36:6,23 37:20 57:14	<b>administered</b> 57:10
	<b>admits</b> 54:1
	<b>adopted</b> 3:24 13:3
	<b>advantage</b> 23:4
	<b>afterward</b> 57:20
	<b>agency</b> 17:25 18:20 19:14 20:19,23 21:7 59:18
	<b>ago</b> 10:24 14:12 14:18 15:9,10 15:19,23 16:19 16:24 18:4,14 19:4,5 20:8 24:15 29:4,19 35:14 36:16 42:11 43:6 46:13 48:1,2 49:14,24 50:19 54:15,22
	<b>agree</b> 39:13 57:13
	<b>agreed</b> 36:22
	<b>agreement</b> 37:2
	<b>agrees</b> 3:24 8:10
	<b>Alito</b> 10:2,8 17:8 18:3 30:6,13 31:4 41:22,24 58:16,20 59:6 59:13 60:10
	<b>allegation</b> 15:12 29:23 31:5,7
	<b>allegations</b> 38:21 45:20
	<b>allege</b> 8:12 15:4 32:6
	<b>alleged</b> 36:6 40:23 43:24 44:1 45:21
	<b>allegedly</b> 28:19 35:6,12
	<b>alleges</b> 4:23
	<b>allow</b> 5:2 46:8
	<b>allowed</b> 58:10
	<b>allowing</b> 55:4
	<b>allows</b> 33:14
	<b>ambiguous</b> 57:12
	<b>amendment</b> 13:20
	<b>amicus</b> 1:22 2:10
	<b>amount</b> 7:11 17:14 18:6 33:18 34:25 35:21
	<b>analysis</b> 39:4 57:7
	<b>analytical</b> 4:8 12:20
	<b>analytically</b> 5:6
	<b>annual</b> 26:17 27:13
	<b>anomalous</b> 13:6
	<b>answer</b> 11:15 16:2 29:11,22 30:4,14,20,21
	37:22 40:16 41:21 53:9 55:17
	<b>answered</b> 3:19 56:17
	<b>answers</b> 20:5
	<b>antidiscrimin...</b> 16:8
	<b>anybody</b> 4:18 27:23
	<b>anyway</b> 40:12
	<b>apologize</b> 20:17
	<b>apparently</b> 18:25
	<b>appeals</b> 52:13 52:17 53:4
	<b>APPEARAN...</b> 1:15
	<b>appendix</b> 6:21
	<b>applicable</b> 13:21
	<b>application</b> 26:8
	<b>applied</b> 8:2 45:10 49:18
	<b>applies</b> 34:19 39:5 49:9,10 56:22
	<b>apply</b> 21:7 29:21 41:1,2,5
	<b>applying</b> 34:6 42:17
	<b>appropriate</b> 19:21 26:20 32:18 47:4
	<b>area</b> 7:18 31:17 51:11
	<b>argued</b> 4:21
	<b>argument</b> 1:13 2:2,5,8,12 3:4 3:7 6:3 26:1 28:6 46:2 56:3
	<b>arising</b> 3:21
	<b>arose</b> 26:7
	<b>asked</b> 36:11 37:9
	<b>asking</b> 41:4 52:25
	<b>asks</b> 28:16
	<b>aspect</b> 57:12
	<b>aspects</b> 12:24
	<b>assignment</b> 26:23
	<b>Assistant</b> 1:20
	<b>assume</b> 53:1
	<b>assumed</b> 18:21
	<b>assumes</b> 25:21
	<b>assuming</b> 9:15
	<b>assumption</b> 24:10
	<b>attack</b> 39:11
	<b>attempt</b> 52:18
	<b>attendants</b> 32:24
	<b>attributing</b> 11:12
	<b>August</b> 14:14
	<b>authority</b> 18:17 57:1
	<b>automatic</b> 50:17
	<b>automatically</b> 49:5
	<b>avail</b> 15:12
	<b>average</b> 7:10
	<b>avoiding</b> 8:7
	<b>award</b> 54:24
	<b>aware</b> 20:23 48:18,24 49:2 55:10,21,23
	<b>awfully</b> 11:4
	<b>a.m</b> 1:14 3:2
<b>B</b>	
	<b>B</b> 11:8
	<b>back</b> 14:1,8,10 15:23 18:10 21:21 22:10,21 29:17 33:6,10 34:16 35:1,3,8 35:10,10 47:25 48:11 54:16
	<b>background</b> 12:23
	<b>bad</b> 38:18 39:15
	<b>badly</b> 47:5
	<b>balances</b> 8:3

<p><b>base</b> 18:8 21:3 21:11 <b>based</b> 4:23 17:19,21 18:13 24:6 30:4 43:5 43:13,17 48:2 49:21 50:16 51:24 57:14 <b>basic</b> 17:25 19:14 20:18 <b>basis</b> 7:23 9:25 10:13,21 15:1 26:22 29:13 38:8 54:14 58:6 59:15,17 <b>Bazemore</b> 3:25 23:15,21,23 24:18,23,24 25:6,7,15 26:3 27:18 31:3 37:14 38:5,5,6 38:11 39:5 40:8,18,20,24 41:3 43:20 45:21 51:25 56:11 57:6,14 57:15,19,21 58:4 <b>beginning</b> 14:3 17:25 34:8 <b>behalf</b> 1:16,18 1:22 2:4,7,14 3:8 28:7 46:3 56:4 <b>belief</b> 6:17 <b>believe</b> 20:3 <b>Bennett</b> 13:20 <b>better</b> 27:23 <b>Bice</b> 7:4 <b>big</b> 47:11,13 <b>bigger</b> 7:6 <b>bit</b> 33:11 <b>black</b> 13:8 37:16 38:1,9 <b>blacks</b> 58:3 <b>bonuses</b> 11:10 21:3</p>	<p><b>box</b> 36:13 <b>boxes</b> 55:15 <b>Brennan's</b> 31:9 38:15 <b>Breyer</b> 14:1,11 14:17 38:15,22 39:2 54:15 55:1,14 <b>brief</b> 37:3 42:8,9 52:7,7 <b>bring</b> 14:13 16:4 16:16,20 36:7 36:15 47:10 52:18 <b>brings</b> 14:4 <b>brought</b> 44:9 47:7 <b>build</b> 48:7 <b>builds</b> 16:6 36:14,19 48:5 <b>built</b> 18:7,13,13 <b>bump</b> 33:7 <b>burden</b> 17:24 22:3,4,8,9,25 <b>burdens</b> 8:11 <b>business</b> 21:2 <b>buy</b> 54:19</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 2:1 3:1 <b>call</b> 12:14 <b>career</b> 48:13 54:12 <b>careers</b> 46:10 <b>carried</b> 10:25 44:20 <b>carries</b> 50:11 <b>carry</b> 49:15 50:15 <b>case</b> 4:11,12,14 4:20 9:4,15,19 9:19,21 11:16 12:3 14:5,11 14:12 15:21 16:4,15,20 17:5 19:18 22:2,12 23:13</p>	<p>23:16,22,23 24:13,14 25:1 25:2 26:10,23 26:24 27:18 28:15 29:21 30:19,22 31:3 31:11,12,15,22 31:24,25 32:4 32:5,10 33:8 33:23 34:1,22 34:22 35:12 36:22 37:8 38:6,11,21,23 40:8,20 41:6 44:4,25 46:15 48:4,9,23 49:7 49:9,10 52:18 52:21,21 53:2 56:6,22 58:12 60:15,16 <b>cases</b> 9:24 31:1 34:19,20 35:1 36:12 40:21 41:1,2 42:13 45:12,15,19 48:7,7,8 52:5 54:2,10 <b>cause</b> 5:2 10:1 29:10 32:3,8 <b>causes</b> 3:22 13:1 34:12 <b>cert</b> 52:18 53:5 <b>certain</b> 21:7 50:3 <b>certainly</b> 4:18 15:11 17:16 21:9 33:8 60:10 <b>cetera</b> 11:10 <b>challenge</b> 10:22 12:4 13:7 46:7 46:10 47:23 48:10,13 49:4 54:13 57:18 <b>challenged</b> 48:25 50:9 53:24</p>	<p><b>challenging</b> 53:21 <b>chance</b> 16:10 <b>chances</b> 16:5 <b>change</b> 11:6 21:8 58:22 <b>changed</b> 29:7 42:12 <b>changing</b> 49:6 <b>charge</b> 3:12 15:1 28:13,20,23,25 30:1,17,25 32:2 34:2 35:22 36:3 40:24 44:7,8,9 <b>chart</b> 6:20 7:8 <b>Chief</b> 3:3,9 10:18 11:15 13:13 15:3,17 15:22 16:18,23 21:14 23:1 25:4 28:4,8 32:10 33:16 45:25 46:4 49:22 50:10 55:25 59:21 60:4,13 <b>choose</b> 6:14 <b>chose</b> 60:6 <b>chosen</b> 57:11 <b>Circuit's</b> 23:16 <b>circumstance</b> 21:8 <b>circumstances</b> 39:24 <b>circumvent</b> 53:20 <b>cited</b> 57:20 <b>claim</b> 7:13 8:16 8:17,17,18,25 9:2,11,13 11:2 14:5 20:21 23:8 26:10 28:11,17 31:9 31:22 33:16,24 33:25 36:7,19 36:25 37:12</p>	<p>38:6 43:2,9 45:17 47:7 51:16 54:7 57:1 <b>claiming</b> 35:16 <b>claims</b> 8:8,21 13:24,25 14:20 14:24 27:22 28:1 31:20 33:22 37:5,21 37:23 54:7 <b>class</b> 59:23 <b>classification</b> 31:5,8 <b>classify</b> 29:13 <b>classifying</b> 38:8 <b>clear</b> 18:16 27:11,19 53:2 <b>clearly</b> 29:23 31:13 45:22 <b>colleague</b> 49:12 <b>collect</b> 14:14 <b>come</b> 8:4 9:7 21:15 33:6 36:5 47:25 48:11 <b>comes</b> 49:1 56:6 <b>commit</b> 28:23 <b>common</b> 14:21 14:24,25 17:5 <b>communicated</b> 36:7 <b>company</b> 1:7 3:5 10:10 11:6,8 11:20 15:19 23:3 24:12 25:22 38:17 <b>comparable</b> 22:13 <b>compensation</b> 34:25 56:9 <b>compensatory</b> 35:15 54:23 <b>complain</b> 34:14 <b>complaining</b> 45:1 <b>complaint</b> 18:11</p>
---	---	--	--	--

<p>36:15  <b>complete</b> 58:15  <b>completely</b> 11:8                  12:19  <b>complicated</b>                  39:14 40:2,6  <b>compound</b>                  40:15  <b>concede</b> 37:9  <b>concededly</b> 22:1  <b>concept</b> 19:3  <b>conceptions</b>                  56:17  <b>concern</b> 45:19  <b>concerned</b> 24:13                  26:18  <b>concerns</b> 28:12  <b>concession</b> 37:7  <b>conclusion</b> 8:24                  45:23  <b>condition</b> 32:20                  32:20  <b>conduct</b> 50:15                  53:21 57:6  <b>confess</b> 52:14,19                  53:7  <b>confronted</b>                  23:14  <b>Congress</b> 3:24                  4:10,10 8:13                  12:22,23 13:3                  13:6,10,13                  22:4,6 28:1                  56:7 57:24                  58:14  <b>Congress's</b> 6:12  <b>connecting</b>                  18:23  <b>consequence</b>                  12:11 23:18  <b>consequences</b>                  24:17 56:19  <b>consider</b> 9:25  <b>considered</b>                  25:15  <b>consistent</b> 3:20                  3:23 43:20</p>	<p><b>constitute</b> 42:2  <b>constituted</b> 3:17  <b>constitutes</b> 10:6                  10:14  <b>construe</b> 57:23  <b>construing</b>                  57:12  <b>contained</b> 34:5  <b>Conte</b> 7:1  <b>contemplating</b>                  54:25  <b>contemplation</b>                  44:4  <b>continue</b> 19:11                  29:20 58:5,10  <b>continued</b> 20:11                  30:8 57:19                  59:17  <b>continues</b> 14:3                  24:16 48:16  <b>continuing</b>                  17:13 26:11                  59:25  <b>continuum</b>                  45:14  <b>contrary</b> 49:12  <b>contrast</b> 38:6  <b>control</b> 53:18  <b>correct</b> 12:2,6                  14:16 44:21                  50:24  <b>correctly</b> 41:15                  49:12  <b>cost</b> 58:5,16,22                  59:2,24  <b>costs</b> 59:10  <b>cost/benefit</b> 39:3  <b>counsel</b> 28:4                  56:1 60:14  <b>counts</b> 34:14  <b>course</b> 35:11                  37:7 49:20                  53:9  <b>court</b> 1:1,13                  3:10,16,18,25                  8:23 12:18                  18:15 19:9</p>	<p>23:7,11,14                  25:6,15 26:11                  27:12,17 28:9                  28:10,16,22                  30:23 31:10,12                  36:4 38:10,11                  41:2,8,11 44:8                  44:13 45:7,21                  45:22 46:5                  51:25 52:13,20                  53:4,10,18  <b>courts</b> 8:2 14:22                  52:17 54:17                  57:10  <b>Court's</b> 22:2                  31:1 51:25                  52:23 57:19  <b>create</b> 36:8                  39:13,22  <b>creates</b> 54:2  <b>criteria</b> 33:20  <b>criterion</b> 21:3  <b>curiae</b> 1:22 2:10  <b>current</b> 11:1                  21:23 24:20                  46:10 49:19,21                  54:14  <b>currently</b> 24:11  <b>cut</b> 10:9 18:12                  53:2 59:3</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 1:18 2:6 3:1                  28:6  <b>damage</b> 54:24  <b>damages</b> 14:7                  34:19 35:2,15                  54:23  <b>date</b> 20:11 24:7                  26:14 36:6  <b>day</b> 30:9 33:7                  34:13 48:22  <b>days</b> 15:2 19:5                  34:16 35:3,4                  36:5 45:2 46:7                  47:7,22 48:10  <b>de</b> 27:1</p>	<p><b>deal</b> 44:25  <b>dealing</b> 37:19,21  <b>dealt</b> 31:3  <b>decades</b> 57:10  <b>decide</b> 26:19,21  <b>decided</b> 53:11                  54:18  <b>decides</b> 27:18                  50:1  <b>deciding</b> 29:1                  48:21  <b>decision</b> 5:9                  6:12 7:2,9 10:6                  10:19 16:14                  17:20 19:11                  20:12 21:22                  22:2 24:6                  25:18 26:9                  27:1,13,25                  29:18 37:10,14                  43:5,13,14,18                  46:7 47:8,23                  48:1,4,10,14                  48:18 49:4,23                  50:18 51:9,25                  52:23 53:11,13                  57:19 58:11,21  <b>decisions</b> 4:4,5,8                  5:8 6:22 7:24                  9:25 19:16                  20:20,22 21:11                  21:19 44:6,23                  46:13 50:20                  53:18 58:9  <b>decreased</b> 7:2  <b>defend</b> 8:7  <b>defense</b> 9:17                  11:4 15:25                  19:9 21:5,6                  23:3,9 51:1,4,4                  51:7,14  <b>defenses</b> 13:20                  13:21 15:13                  51:11  <b>defer</b> 27:20  <b>deference</b> 52:1                  57:22</p>	<p><b>degrees</b> 33:20  <b>delay</b> 15:15  <b>delegates</b> 18:17  <b>deliver</b> 46:20  <b>delivered</b> 37:15                  37:25  <b>denial</b> 11:24                  12:1 46:8  <b>denied</b> 5:23 15:8                  16:7 49:2                  55:10  <b>Department</b>                  1:21 52:5  <b>depend</b> 11:11  <b>depending</b>                  25:24  <b>depends</b> 23:2  <b>deprived</b> 5:9  <b>derive</b> 17:6  <b>describe</b> 44:24  <b>described</b> 37:5                  41:17  <b>describing</b> 38:4  <b>description</b>                  24:22  <b>determination</b>                  56:25  <b>determine</b> 9:22  <b>determining</b>                  35:5  <b>dictated</b> 18:5  <b>differ</b> 42:13  <b>difference</b> 5:15                  5:23 13:18                  41:13 56:16  <b>differences</b>                  56:20  <b>different</b> 4:4,25                  5:6,17,20 7:20                  13:4,11,25                  22:13 26:1                  31:17,19,21                  32:10,12 33:8                  33:11,23 51:20                  51:23 52:6                  53:3 55:8,12                  55:17</p>
--	---	--	--	--

<b>differential</b> 42:12,18 49:14 50:16	26:13 28:11,18 29:24,25 30:1 30:25 31:15,25 32:25 33:15 34:15 35:22 38:7 40:23 41:14,15 43:1 43:22 44:18,19 45:16,17,24 46:24 47:15 48:22,24 50:4 50:6,12 51:5,8 53:23 55:7 56:8,23 57:8 59:5	28:16 36:20 38:14 55:21,23 59:12,25	12:11,15,17 14:22 17:14 24:17,20 25:22 26:1 49:15	33:18,20 34:22 40:11 41:16,24 42:14,16 43:18 43:21 44:3,5 44:10 49:13 50:13,18 58:7
<b>differently</b> 4:10 4:18 5:13 6:1 19:25 25:19,19 25:24 30:3 32:8	<b>discriminatory</b> 5:12,24,25 6:18 10:6,19 10:24 15:7 19:2,12,16 20:25 21:13 24:14 25:12,13 25:17,18 26:8 27:2 28:13,19 28:24 32:23 35:13 43:6,11 43:14,24 45:5 45:9,14,20 46:12 47:24 48:16,19 49:3 49:5 56:16 59:11,19	<b>disputes</b> 8:23 <b>dissimilar</b> 33:14 <b>distinction</b> 6:12 39:10 45:11 <b>distinctions</b> 4:9 <b>distinguish</b> 39:8 40:19 <b>distinguished</b> 40:22 <b>distinguishing</b> 40:8 <b>district</b> 8:23 31:11 45:22 <b>doing</b> 5:12 7:10 22:13 42:18 43:1 <b>dramatically</b> 13:11 <b>draw</b> 12:20,22 44:17 51:2 <b>drawing</b> 12:21 <b>dropped</b> 8:18 <b>dual</b> 58:17 <b>duty</b> 43:21,23 44:4 <b>D.C</b> 1:9,16,18 1:22	<b>effective</b> 24:7 26:14 36:19 44:3 <b>effects</b> 38:18 48:16 <b>effort</b> 46:19 <b>eight</b> 40:3 <b>either</b> 48:9 50:25 54:20 60:5 <b>element</b> 32:2 51:15 <b>elements</b> 13:17 13:18 31:20 33:16,22 <b>elevated</b> 5:15 <b>eliminate</b> 23:8 <b>elimination</b> 28:1 <b>Ellerth</b> 18:16 <b>else's</b> 57:5 <b>employee</b> 4:2,16 4:22,24 5:9 6:15 7:22 14:25 17:11,15 18:4,6,9 19:5 22:24 26:21 36:5 47:3,7,22 51:15 53:20 54:11 55:23 <b>employees</b> 3:14 8:4 26:6 34:7 34:11 38:8,9 42:19,20 46:6 46:8 58:9 <b>employee's</b> 51:9 <b>employer</b> 9:6,22 10:10 11:3 15:12 17:9,10 17:18 18:17,19 19:5,14 20:19 21:1,1,10 23:5 29:13 30:6 32:13,21 33:1	<b>employers</b> 8:12 17:24 <b>employer's</b> 8:6 51:8 <b>employment</b> 12:12,25 23:13 36:6,23 37:19 44:6 56:7 <b>enacted</b> 12:23 <b>enactment</b> 43:25 <b>engage</b> 42:25 <b>engaged</b> 43:11 <b>ensuing</b> 17:2 <b>entered</b> 38:12 <b>entire</b> 17:10 <b>entirely</b> 23:8 <b>entitled</b> 20:3 35:21 44:10 57:22 <b>environment</b> 36:13,14 <b>equal</b> 3:24 6:13 8:10,16,17,18 8:21 9:2,11,21 13:3,14,21 16:7,9,9 17:17 22:1,5 31:18 32:3,5,7,9 36:1 40:12 46:15,17 46:20,20,22,22 46:25 51:12,16 51:17 60:1 <b>equalize</b> 47:8 59:1,8,10,14 59:21,24 60:2 60:5,7 <b>equalized</b> 60:11 <b>equally</b> 33:10 <b>equitable</b> 15:13 23:8 34:21,21
<b>differing</b> 11:16 <b>difficult</b> 6:17 15:25 19:3,3,8 56:23 <b>difficulty</b> 7:15 41:5 <b>disadvantage</b> 23:6 <b>disagreement</b> 56:6 <b>discovered</b> 15:18 <b>discovers</b> 14:4 <b>discrete</b> 36:23 37:5,6,19 39:7 39:18 44:5 46:12 48:10 50:7 58:8 <b>discriminate</b> 10:4,11 22:20 43:4 58:6 59:15,17 <b>discriminated</b> 58:8 <b>discriminated...</b> 59:23 <b>discriminates</b> 25:12,14 <b>discriminating</b> 30:11 <b>discrimination</b> 3:12 4:25 5:3,6 5:7,18 7:13,25 8:6 9:20 10:23 11:7 13:9 15:2 17:6,7,12 18:9 18:14,18,22,24 20:7 21:5 23:24 24:3,16	<b>disentitle</b> 57:21 <b>dismissing</b> 8:20 <b>disparate</b> 3:16 4:13,16 6:16 23:13,17 56:10 56:15 <b>disparities</b> 57:18 <b>disparity</b> 7:3,9 7:11,20,21 8:22 9:23 10:1 10:16 11:9,23 13:8 14:2 15:2 17:19 19:6 22:16 26:7	<b>E</b> <b>E</b> 2:1 3:1,1 <b>earlier</b> 10:19 43:18 <b>earn</b> 5:10 <b>easy</b> 15:14 <b>EEOC</b> 3:12 7:13 16:16 27:20 51:20,22,23 52:1,4,5,6,11 52:12 53:3 56:24 57:2,11 57:17 <b>EEOC's</b> 52:16 52:23 <b>effect</b> 10:25	<b>employee</b> 4:2,16 4:22,24 5:9 6:15 7:22 14:25 17:11,15 18:4,6,9 19:5 22:24 26:21 36:5 47:3,7,22 51:15 53:20 54:11 55:23 <b>employees</b> 3:14 8:4 26:6 34:7 34:11 38:8,9 42:19,20 46:6 46:8 58:9 <b>employee's</b> 51:9 <b>employer</b> 9:6,22 10:10 11:3 15:12 17:9,10 17:18 18:17,19 19:5,14 20:19 21:1,1,10 23:5 29:13 30:6 32:13,21 33:1	



<p>55:19,20  <b>eradicate</b> 38:18                      38:19 43:21,24  <b>eradicated</b>                      39:17,20  <b>erroneous</b> 31:13                      45:23  <b>error</b> 31:11                      52:14,19  <b>escape</b> 21:17  <b>espousing</b> 53:4  <b>ESQ</b> 1:16,18,20                      2:3,6,9,13  <b>essentially</b> 9:18  <b>establish</b> 57:7  <b>established</b>                      42:11 49:14  <b>estoppel</b> 34:21  <b>et</b> 11:10  <b>evaluated</b> 18:10  <b>evaluation</b> 18:5                      34:9  <b>Evans</b> 12:12                      31:2 32:21                      33:3,4,12 34:4                      40:18,19,21,25                      41:8 44:13                      53:19  <b>everybody</b> 8:10                      13:2 17:18                      21:16,18 29:6                      50:2 57:5  <b>evidence</b> 14:23                      20:8 30:16                      32:16 33:14                      38:24 48:21  <b>evidences</b> 45:9  <b>exactly</b> 26:9  <b>example</b> 4:6,7                      6:20 13:5                      24:23 26:3  <b>executing</b> 10:15  <b>execution</b> 10:5  <b>exercise</b> 57:25  <b>expect</b> 7:17                      47:18  <b>expense</b> 29:19</p>	<p><b>experience</b> 4:23                      4:24  <b>expert</b> 27:20  <b>expertise</b> 27:21                      57:25  <b>explain</b> 31:23                      39:9  <b>explains</b> 51:5  <b>explanation</b>                      23:21 24:18                      25:8  <b>exposed</b> 21:22  <b>Extension</b> 58:2                      58:18  <b>extensive</b> 57:4  <b>extent</b> 27:17                      55:18  <b>extra</b> 14:15</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> 45:5  <b>faced</b> 9:16  <b>facially</b> 25:11,13                      25:17 43:24                      45:4,9,13  <b>facie</b> 9:4  <b>fact</b> 7:2 8:23                      13:12 14:20                      18:24 19:7                      22:3,25 23:6                      24:11 38:24                      44:15 56:12                      57:20  <b>factor</b> 9:7,8,23                      17:21 33:3                      58:21  <b>facts</b> 19:18                      27:10 38:5  <b>failed</b> 31:14  <b>failure</b> 9:11                      46:20  <b>fairly</b> 26:22 55:3  <b>faith</b> 6:17  <b>fall</b> 37:23  <b>Faragher</b> 18:16  <b>fault</b> 40:2  <b>favor</b> 52:21</p>	<p><b>female</b> 32:23                      33:19 34:7,12                      42:19  <b>females</b> 17:1  <b>figure</b> 55:6 57:2  <b>file</b> 35:22  <b>filed</b> 3:12 15:20                      52:6  <b>filing</b> 15:1 28:14                      28:20,23 29:1                      30:2,17,25                      32:2 34:2 36:3                      40:24 44:9  <b>finally</b> 47:18                      58:1  <b>find</b> 8:5 9:20                      22:4,19 29:17                      40:4  <b>firm</b> 20:9  <b>first</b> 6:6 9:3,16                      23:11 37:9                      40:17  <b>fit</b> 35:3  <b>five</b> 49:23  <b>flaw</b> 31:22  <b>flight</b> 32:24  <b>flow</b> 40:10  <b>focused</b> 41:13  <b>follow</b> 39:4  <b>footnote</b> 23:22                      24:1 25:3,6,10                      45:8  <b>force</b> 60:11  <b>forever</b> 20:10  <b>forget</b> 23:21  <b>formed</b> 56:13  <b>forth</b> 41:7,9  <b>forward</b> 8:4 9:7                      10:25 21:18                      36:5 41:10                      44:20 50:11,16  <b>found</b> 3:11  <b>four</b> 48:12  <b>Fourth</b> 23:15  <b>frankly</b> 56:17  <b>frequently</b> 4:15                      6:15,16 10:7</p>	<p><b>Friday</b> 3:25  <b>fudge</b> 53:1  <b>function</b> 17:4  <b>fundamental</b>                      31:21 56:5  <b>fundamentally</b>                      31:21 32:10                      33:23  <b>further</b> 32:13                      47:9</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 3:1  <b>gender</b> 29:14                      32:1 42:19,25                      48:2  <b>gender-based</b>                      32:22 45:6  <b>gender-related</b>                      42:1,5  <b>general</b> 1:21                      11:12 42:8                      51:19 53:6                      56:21  <b>General's</b> 58:7  <b>getting</b> 6:9 9:5,6                      14:7 16:9                      55:11,12,13  <b>Ginsburg</b> 6:2                      8:15 9:1,14                      13:19 15:16                      16:2 19:17                      32:12,21 33:3                      33:13 34:13,24                      35:16,24 36:10                      36:21 37:1,13                      37:24 44:24                      46:14 47:1,6                      47:10,17 48:3                      50:22 51:1,10                      52:3 60:1  <b>give</b> 4:7 10:19                      13:1 44:22                      47:13 49:4                      52:1  <b>given</b> 23:21                      27:15 30:4</p>	<p>57:23  <b>gives</b> 46:6  <b>giving</b> 3:22                      40:13 49:24,25  <b>GLEN</b> 1:18 2:6                      28:6  <b>go</b> 7:13 14:1,8                      15:23 21:21                      22:9,19,20                      29:16 33:10                      34:16 35:1,3                      40:10 53:17  <b>goes</b> 12:13 30:16  <b>going</b> 5:18,20                      6:8 14:17 16:3                      16:24,25,25                      18:6 21:18                      22:2 24:22                      27:7 30:1                      35:11 36:1                      40:4 47:19                      50:2 59:14,14  <b>good</b> 6:17 11:4                      12:21 20:1                      22:5 46:14  <b>Goodyear</b> 1:6                      3:4 20:20                      27:11 28:22,24                      34:1,3,4,8                      59:17  <b>Gornstein</b> 1:20                      2:9 46:1,2 47:6                      47:12,21 48:6                      48:20 49:8,16                      50:7,13,24                      51:6,18,22                      52:8,15,20                      53:8,17 55:9                      55:18  <b>gotten</b> 7:1 15:9                      20:2  <b>Government</b>                      52:14,19 53:4  <b>Government's</b>                      52:7,21  <b>grade</b> 5:16  <b>graft</b> 40:7</p>
--	--	---	---	--

<p><b>ground</b> 47:23  <b>grounds</b> 8:21              40:20,22 46:11              48:15 53:22  <b>guess</b> 25:5 39:21</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>hand</b> 45:11  <b>happen</b> 47:20,21              48:8  <b>happened</b> 7:4              8:15 14:12              15:19,23 16:19              19:4,4 20:8              24:5 52:4,9,9              59:16  <b>happy</b> 60:11  <b>harassment</b>              36:25 37:21  <b>hard</b> 39:20 40:9  <b>harder</b> 22:24              23:2  <b>Hazelwood</b>              40:18,19,21  <b>hear</b> 3:3 28:5              52:4  <b>heard</b> 4:21              30:18 39:9  <b>held</b> 3:25 8:23              23:15 26:11              45:22  <b>higher</b> 5:16 7:5              9:6 11:25              19:24  <b>hinging</b> 54:21  <b>hire</b> 29:19  <b>hired</b> 26:4,5  <b>historical</b> 4:9  <b>history</b> 26:20              27:4  <b>hold</b> 13:4 28:16  <b>holding</b> 28:21              28:21 31:13              38:4  <b>honored</b> 24:12              24:12  <b>hostile</b> 36:13,15</p>	<p><b>hour</b> 4:21  <b>hurdle</b> 9:4  <b>hurt</b> 40:11  <b>hypothetical</b>              29:3,12 30:4              30:15 31:4              42:10 49:7,7</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>identifiable</b>              37:10  <b>illegal</b> 35:6 50:1              50:11,15  <b>immediately</b>              37:11 48:8              59:1  <b>implemented</b>              25:13,15,20  <b>implication</b>              39:19  <b>important</b> 8:9              9:12 23:10              36:11 45:11              54:20  <b>impose</b> 8:13  <b>imposes</b> 8:11  <b>impute</b> 20:19  <b>imputed</b> 18:19  <b>inadequate</b> 9:8  <b>inappropriate</b>              22:4,6  <b>incentive</b> 17:17              17:22 21:25,25              22:3  <b>incident</b> 8:3  <b>included</b> 45:5  <b>inconsistent</b>              23:25 24:3,19              28:21  <b>incorrect</b> 57:16  <b>increase</b> 11:25              21:3 26:19              27:14  <b>increased</b> 7:9  <b>increases</b> 7:22  <b>incremental</b> 6:6  <b>indicates</b> 5:1</p>	<p><b>individual</b> 46:7  <b>individually</b>              46:12  <b>inequality</b> 6:9  <b>inference</b> 50:14              50:17 51:3,3  <b>information</b>              6:19 7:7  <b>initially</b> 8:20  <b>insofar</b> 29:23  <b>instance</b> 9:19  <b>instances</b> 14:25  <b>instituted</b> 45:2  <b>instructed</b> 26:19  <b>instructions</b>              38:12  <b>insufficient</b> 31:1              45:18  <b>intended</b> 13:6              13:10 24:12              28:2 41:25              57:25 58:15  <b>intending</b> 29:13  <b>intent</b> 10:4,10              29:9,15 30:17              43:4 45:10,13              48:15 50:15              56:13  <b>intentional</b> 7:13              7:25 9:20              28:11,17 31:15              31:24 33:15              38:7 45:17,24              46:24 47:2,14              48:22 51:8              53:23  <b>intentionally</b>              6:18 27:2              28:12,23 30:2              30:11 42:17              47:24 48:15              56:10,15 58:8              59:5  <b>interest</b> 8:3,7  <b>interpretation</b>              23:16  <b>investigate</b> 44:5</p>	<p>57:1  <b>investigation</b>              57:4  <b>involve</b> 45:16  <b>involved</b> 23:24              33:3,5  <b>IRVING</b> 1:20              2:9 46:2  <b>issue</b> 6:22  <b>issued</b> 10:4              28:22 30:9  <b>issues</b> 53:11  <b>issuing</b> 10:12</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>job</b> 5:21 7:11              12:1,16 18:5              19:22 20:1              22:14 32:18              33:6 46:19              47:4  <b>Jofla</b> 27:7  <b>joint</b> 6:21  <b>judge</b> 8:20 9:3              27:7  <b>judgment</b> 38:12              53:7,13  <b>July</b> 14:4  <b>jury</b> 3:11 9:20              9:21,24 20:2  <b>Justice</b> 1:21 3:3              3:9 4:3,19 5:14              6:2 7:14 8:15              9:1,14 10:2,8              10:18 11:5,14              11:15,22 12:3              12:8,14 13:13              13:19 14:1,11              14:17 15:3,16              15:17,22 16:2              16:18,23 17:8              18:3,21 19:10              19:17 20:4,15              20:24 21:14              22:8,18 23:1              23:20 24:9,25              25:4,5,21</p>	<p>26:16 27:3,6,7              28:4,8 29:2,15              30:6,13,14              31:4,9,16,23              32:11,12,21              33:3,13,16              34:13,24 35:16              35:24 36:10,21              37:1,9,13,24              38:3,15,15,22              39:2 41:7,9,10              41:12,21,22,23              42:3,10,21              43:3,9,12,19              44:11,13,14,17              44:24 45:6,8              45:25 46:4,14              47:1,6,10,17              48:3,17 49:6              49:11,22 50:10              50:22 51:1,10              51:18 52:3,5              52:12,15,16,25              53:8,15,16              54:15 55:1,14              55:25 57:13              58:16,20 59:6              59:13,21 60:1              60:4,10,13  <b>justification</b>              59:25  <b>justified</b> 17:20  <b>justify</b> 54:4              58:16,22</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>K</b> 1:16 2:3,13              3:7 56:3  <b>keep</b> 23:10  <b>Kennedy</b> 4:3,19              11:5,14 19:10              20:24 43:3,9              43:12,19  <b>KEVIN</b> 1:16 2:3              2:13 3:7 56:3  <b>kind</b> 9:19 11:2              12:10,13 16:14</p>
--	--	---	---	---

<p>25:16,25 26:10 34:3 36:23 39:14 57:21,24 <b>kinds</b> 13:25 14:24 39:8 <b>knew</b> 6:23 7:1,4 29:6 32:14,21 41:17,24,25 43:10 49:13 <b>know</b> 4:14 6:3,4 6:24 7:1,8 17:25 18:3 19:10 20:6,12 20:21 21:4 22:21 23:22 24:15 25:2 27:23 30:9 33:10 40:1 44:15 49:23 55:7 <b>knowing</b> 4:17 42:4 59:18 <b>knowingly</b> 41:18 42:17 44:19 <b>knowledge</b> 32:19,25 41:19 44:19 46:18 48:20 50:14 52:10 <b>knows</b> 4:12 6:15 19:14 42:14 43:5,12 50:11 55:14,15</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>L</b> 1:20 2:9 46:2 <b>laches</b> 11:4 15:20,25 19:9 23:9 <b>language</b> 54:3 <b>late</b> 16:17 <b>law</b> 16:8 17:25 18:20 19:14 20:19,21,23 21:7 33:25 39:13,22 45:12</p>	<p>53:14 59:18 <b>lawful</b> 44:11 <b>law's</b> 3:20 <b>layer</b> 51:14 <b>lead</b> 13:5 27:25 <b>learned</b> 15:18 <b>led</b> 4:10 8:12 14:2 <b>Ledbetter</b> 1:3 3:4 <b>Ledbetter's</b> 28:25 34:1 <b>left</b> 15:12 57:2 <b>legal</b> 12:24 <b>legally</b> 31:1 40:6 45:18 <b>let's</b> 21:1 49:22 53:1 <b>level</b> 5:19 7:18 11:25 36:1 <b>liability</b> 11:12 14:18 17:19 20:13,18 21:18 21:22 54:21 <b>lid</b> 34:25 <b>light</b> 52:23 56:19 <b>LILLY</b> 1:3 <b>limit</b> 23:7 <b>limitations</b> 5:3 32:9 35:9 49:18 53:20,21 54:10 56:12,13 <b>limited</b> 54:16,24 <b>limits</b> 14:10 <b>line</b> 12:20 35:18 41:1 44:17 <b>listen</b> 51:19 <b>litigate</b> 15:23 <b>little</b> 16:11 <b>long</b> 17:22 18:14 20:8 21:10,11 36:14 46:13 54:15,22 58:4 <b>longer</b> 22:23 45:2 <b>look</b> 6:20 38:10</p>	<p>50:18 53:12 <b>looked</b> 54:17 <b>looking</b> 34:5 <b>Lorance</b> 25:4,10 31:2 40:25 41:11 43:17 45:7 53:19 <b>lose</b> 36:7 <b>lost</b> 20:7 <b>lot</b> 39:22 50:19 50:20 <b>lower</b> 8:2 14:22 57:10 <b>lowering</b> 59:22</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>M</b> 1:3 <b>Machinists</b> 31:2 <b>magistrate</b> 8:19 9:2 <b>maintained</b> 44:1 <b>maintaining</b> 59:11 <b>making</b> 20:12 21:17,20 26:10 26:18 48:18 <b>male</b> 3:14 32:7 33:18 34:7,11 42:18 <b>males</b> 16:25 <b>man</b> 13:8 22:13 32:15 <b>management</b> 20:6 <b>mandate</b> 54:5 <b>mandated</b> 34:7 <b>Manhart</b> 44:25 <b>marginal</b> 27:14 <b>married</b> 32:24 <b>matter</b> 1:12 4:11 17:24 18:19 19:8,14 20:21 34:12 36:16 43:4 45:12 52:10 59:18 60:17 <b>maximum</b> 35:21</p>	<p><b>mean</b> 5:16 6:9 14:12 15:5 16:10,19 21:16 23:2,23 33:4 51:20 55:16 57:17 <b>meaning</b> 10:16 <b>meet</b> 50:3 <b>members</b> 31:10 <b>memo</b> 16:23 <b>men</b> 7:10 9:6 20:10 21:17,21 29:5,19 30:3,8 30:10 49:20,25 <b>merely</b> 28:18 29:16,24 38:13 <b>merger</b> 26:4 <b>merit</b> 7:17 <b>merit-based</b> 26:8 <b>met</b> 46:16 <b>middle</b> 45:19 <b>mind</b> 23:10 <b>minimum</b> 19:21 <b>minutes</b> 56:2 <b>misstated</b> 25:6 <b>mistake</b> 38:17 <b>Monday</b> 1:10 <b>money</b> 12:16 14:15 17:14 60:8 <b>months</b> 39:25 40:3 <b>Morgan</b> 37:4,6 37:14,22 44:12 <b>mortality</b> 45:6 <b>motivated</b> 32:1 <b>mount</b> 23:3 <b>move</b> 5:18,20 <b>multiple</b> 57:6</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>N</b> 2:1,1 3:1 <b>Nager</b> 1:18 2:6 28:5,6,8 29:2 29:11,22 30:13 31:16,19 32:19</p>	<p>33:13 34:18 35:4,20 36:2 36:11,21 37:3 37:18 38:3,20 39:1 40:15 41:19,23 42:6 42:16,24 43:8 43:15,23 44:16 44:21 45:4 46:1,4,16 <b>name</b> 25:1 <b>natural</b> 7:23 <b>necessarily</b> 22:17 43:5,13 43:17 45:9 54:25 <b>necessary</b> 30:17 32:19 <b>negating</b> 51:7 <b>neutral</b> 18:25 21:2 33:1 34:4 35:14 50:4,7 50:25 <b>never</b> 8:13 17:11 42:12 <b>new</b> 53:11,13 <b>nil</b> 16:12 <b>nine</b> 31:10 40:3 <b>nondiscrimin...</b> 46:23 54:5 <b>nondiscrimin...</b> 8:22 10:12 21:19 26:22 58:25 60:8 <b>note</b> 8:9 <b>notice</b> 17:6 <b>noticeable</b> 36:20 <b>noticed</b> 19:20 47:18 <b>notion</b> 36:17 40:24 <b>November</b> 1:10 <b>ново</b> 27:1 <b>number</b> 16:15 39:23 46:12 54:13</p>
---	---	---	--	---

<p><b>O</b></p> <p><b>O</b> 2:1 3:1</p> <p><b>objected</b> 9:10</p> <p><b>obnoxious</b> 45:21</p> <p><b>obvious</b> 37:7</p> <p><b>obviously</b> 17:1</p> <p><b>occasionally</b> 52:8</p> <p><b>occur</b> 23:13 35:6 41:16 52:11</p> <p><b>occurred</b> 11:7 18:14 20:22 26:13 35:13 41:14 46:13 50:19 56:12</p> <p><b>offers</b> 4:1</p> <p><b>officer</b> 26:18</p> <p><b>oh</b> 18:21 32:16 45:2</p> <p><b>old</b> 14:2 39:15 55:7</p> <p><b>once</b> 8:4 16:19</p> <p><b>ongoing</b> 31:5,7 31:14 38:7 43:24 48:16 49:17 50:3</p> <p><b>open</b> 14:17 15:12</p> <p><b>opinion</b> 27:20 31:9 37:6,19 37:20 38:4,15 41:2,8,9,11 44:12,12 45:7</p> <p><b>opportunity</b> 5:9</p> <p><b>oral</b> 1:13 2:2,5,8 3:7 28:6 46:2</p> <p><b>order</b> 38:10</p> <p><b>ordinarily</b> 33:21 52:11 57:22</p> <p><b>originally</b> 11:7 44:15</p> <p><b>outside</b> 28:19 30:25 32:17 56:13</p> <p><b>overall</b> 7:9,21</p> <p><b>owner</b> 11:7,8</p> <p><b>ownership</b> 11:6</p>	<p>11:17 21:9</p> <hr/> <p><b>P</b></p> <p><b>P</b> 3:1</p> <p><b>page</b> 2:2 6:21</p> <p><b>paid</b> 3:14 17:15 19:15 22:12 24:4 26:5,21 32:7,14 33:9 33:19 34:10 39:24</p> <p><b>part</b> 26:22 38:16 38:22,23,23,25 39:1</p> <p><b>particular</b> 10:3 10:9 18:4,5 27:21</p> <p><b>particularly</b> 13:25 14:21</p> <p><b>parts</b> 38:25 40:16</p> <p><b>pass</b> 46:9</p> <p><b>passes</b> 44:9</p> <p><b>pattern</b> 39:15,16 39:19 57:7</p> <p><b>pay</b> 3:21,24 4:10 4:16 5:7,11,11 5:16,19 6:5,10 6:13,16,18,22 6:23 7:2,3,3,8 7:24 8:10,16 8:17,18,21 9:2 9:11,21 10:12 10:20 11:25,25 12:24,24 13:3 13:8,14,21 14:10 15:7 16:7,9,9,24,25 16:25 17:2,10 17:17 18:6,7 18:13 19:11,20 21:4,11,12,22 21:23 22:1,5 23:13 25:12,18 25:18,22,23 26:9,11 27:12 27:25 28:16</p>	<p>29:1,5,20 31:8 31:18 32:3,5,9 34:5,10,22 35:8,10,10,17 35:21 36:1,12 37:5,10,23 39:8 40:1,12 40:20,21 41:2 42:1 43:25 46:7,8,12,15 46:17,20,22,24 46:25 47:9,23 48:7,10,13 49:7,9,19 51:12,16 54:2 54:5,6,10,14 54:16 55:10,11 57:5,18 58:3 58:17,22 59:8 59:10,14,19,22 59:24 60:1</p> <p><b>paycheck</b> 3:23 4:1,4 5:1 6:14 8:1,10,13 10:3 10:9 17:4 18:12 27:24 29:21 37:15,25 56:22</p> <p><b>paychecks</b> 5:24 28:22 30:10 40:1 46:11 55:5,15</p> <p><b>paying</b> 3:13 18:1 21:18 30:7,10 33:17 38:9 41:18</p> <p><b>payment</b> 23:17 56:10,14</p> <p><b>payroll</b> 34:6,10</p> <p><b>pay-maintaini...</b> 59:5</p> <p><b>pay-setting</b> 18:17</p> <p><b>pension</b> 45:1</p> <p><b>people</b> 5:12 20:12 24:4 25:19,23 33:7</p>	<p>50:19,21 55:10</p> <p><b>percent</b> 6:24 10:20,20 11:24 11:24 16:4,5 20:10 21:17,20 29:5 30:7 36:17,18 42:12 42:18 49:13,24 49:25 50:2</p> <p><b>perform</b> 13:11</p> <p><b>performance</b> 9:9 51:4,7</p> <p><b>performing</b> 32:6</p> <p><b>period</b> 5:4 11:1 18:7 28:14,20 28:23 29:1 30:2,18,25 31:6 32:2 34:2 34:9,10,11,14 34:15 35:5,6 35:10 36:24 40:24 41:14,16 43:2 44:9 46:9 49:19 53:20,21 54:6,17,18,19 56:12,14</p> <p><b>periodically</b> 17:10</p> <p><b>permit</b> 13:7</p> <p><b>permitted</b> 58:3</p> <p><b>perpetuity</b> 58:4</p> <p><b>persists</b> 7:20</p> <p><b>person</b> 16:12 29:8 33:5 36:18 48:18 49:1,23</p> <p><b>person's</b> 50:16</p> <p><b>Petitioner</b> 1:4 1:17 2:4,14 3:8 3:11 6:23 7:7 19:15 36:22 46:6 54:1 56:4</p> <p><b>Petitioner's</b> 31:22 53:25 54:1,9,19 55:22 57:5</p> <p><b>place</b> 27:12</p>	<p>40:23 54:14</p> <p><b>plain</b> 56:18</p> <p><b>plaintiff</b> 18:1 26:25 30:24 32:6</p> <p><b>plaintiffs</b> 24:24 26:4</p> <p><b>plaintiff's</b> 31:20 32:3</p> <p><b>plan</b> 45:1,4,5</p> <p><b>please</b> 3:10 28:9 46:5 53:6</p> <p><b>point</b> 16:6 17:13 27:17 36:19 40:17 41:22 42:7,8 43:16 53:14,15 54:21 58:1</p> <p><b>pointed</b> 45:8</p> <p><b>pointing</b> 33:17</p> <p><b>policy</b> 20:9,11 22:19 24:9,10 24:11 25:12,14 25:17 29:4,18 30:7,8 32:23 41:17,25 42:5 42:7,11 43:6 45:9 48:19 49:14,17,17,19 49:21 50:25 56:23 57:3</p> <p><b>poor</b> 51:4,6</p> <p><b>portion</b> 37:4,18 37:20,22,24</p> <p><b>position</b> 17:8 22:15 24:19 30:19 51:20,23 51:23 52:16 53:3 57:17</p> <p><b>positions</b> 52:6</p> <p><b>possibility</b> 54:22</p> <p><b>possible</b> 4:15 20:20</p> <p><b>possibly</b> 35:8</p> <p><b>potential</b> 17:6 31:11</p> <p><b>potentially</b></p>
---	---	--	---	---

<p>58:12  <b>Powell's</b> 41:9  <b>practical</b> 4:9,11          6:11 12:21          16:22 19:8          56:19  <b>practice</b> 12:12          23:13 27:24          39:6,16,16,19          54:6 56:7 57:3  <b>practices</b> 43:25          45:20  <b>preceded</b> 43:25  <b>preceding</b> 14:15  <b>precisely</b> 23:14          57:24  <b>precluded</b> 8:24  <b>prejudice</b> 23:7  <b>present</b> 3:16,17          9:23 10:1,6,15          13:8 17:14,19          18:12,22 19:6          19:11 21:11,12          22:19 23:17,18          23:24 24:3          26:15 29:15          30:9 33:4,15          42:1,7,20 43:1          43:2,4,9,13          44:18,18 45:10          45:13,16,20,23          48:22 50:15          56:14 57:18  <b>presented</b> 28:15          28:20  <b>presently</b> 42:17  <b>preserve</b> 28:2  <b>presumably</b>          21:15  <b>pretty</b> 40:9  <b>previously</b>          32:22 41:24          43:11  <b>prima</b> 9:4  <b>primary</b> 12:17  <b>principle</b> 12:24          20:23</p>	<p><b>principles</b> 18:20          20:19 21:7  <b>prior</b> 9:25 10:6          11:20 12:11          17:20 19:16          20:6,20 21:4,4          27:14 32:25,25          34:12 43:13          47:15 48:20,24          53:22 58:9          59:12  <b>probably</b> 39:23  <b>problem</b> 12:13          18:23,23  <b>process</b> 13:24  <b>programs</b> 59:4  <b>prohibit</b> 33:17  <b>prohibited</b> 56:8  <b>promoted</b> 12:16  <b>promotion</b> 4:7          4:13,14 5:5,6,8          5:15,24 6:4          12:1 26:17          34:22 48:23,25          49:1,2,5,10          55:8,13,13  <b>promotions</b> 4:23  <b>promptly</b> 36:5  <b>proof</b> 19:2 22:20          22:25 31:14          33:14  <b>propose</b> 11:16  <b>proposing</b> 41:6          41:6  <b>proposition</b> 13:6          40:25  <b>prove</b> 22:9,11          22:16 30:17          51:15  <b>provide</b> 7:12  <b>provided</b> 13:14  <b>proving</b> 31:14  <b>provision</b> 14:9  <b>public</b> 44:3  <b>punitive</b> 35:15          54:23  <b>purchased</b> 11:8</p>	<p>21:2  <b>purpose</b> 36:2,8          44:22  <b>purposeful</b> 44:2          44:18  <b>put</b> 36:12,13  <b>puts</b> 17:18  <b>p.m</b> 60:16</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualified</b> 30:14  <b>question</b> 3:15,19          4:21 10:3 20:4          20:24 23:12,14          26:16 27:19,21          28:15,20 29:3          30:15,16,20,22          30:22 31:25          36:10 37:22          40:16 42:3,6          42:13 43:9          53:1,9,10          55:20 56:11          57:24  <b>quite</b> 21:7 33:11          55:16  <b>quote</b> 37:4  <b>quotes</b> 37:14</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R</b> 3:1  <b>race</b> 4:2 24:5,6          25:24 31:15          38:7,8 58:6          59:15  <b>racial</b> 13:10          31:5,7  <b>racially</b> 44:2  <b>racially-related</b>          42:2  <b>raise</b> 6:7,23,25          7:2,5,8 10:20          10:25 15:8          16:4,5 19:19          19:24 26:9          27:14 36:1          46:8 47:11,14          47:19 49:24,25</p>	<p>50:2 55:10          58:1  <b>raised</b> 35:20  <b>raises</b> 10:22          30:15 55:11  <b>raising</b> 59:22  <b>range</b> 19:21          32:17 47:4  <b>rate</b> 22:12,13          26:6 29:20          34:5 37:10  <b>rates</b> 34:6,10  <b>read</b> 39:3  <b>reading</b> 51:24          57:14  <b>really</b> 5:14          36:11,18 38:18          40:1,11 55:6  <b>reason</b> 6:8 7:12          8:5,22,24          11:23 12:10,15          12:22 13:17          14:20 19:19          22:5 30:21          42:5,19,21,23          47:18 49:3          53:25 54:8          58:25 59:1,11          60:9  <b>reasonable</b> 7:23          8:6 15:1  <b>reasons</b> 5:24          12:21 42:1,2          44:2 59:20  <b>REBUTTAL</b>          2:12 56:3  <b>recall</b> 24:23 57:5  <b>recognized</b>          35:17  <b>recognizes</b> 47:3  <b>recommenda...</b>          26:18  <b>recommended</b>          8:20  <b>reconsideration</b>          52:22  <b>record</b> 17:10</p>	<p><b>records</b> 20:7  <b>recurring</b> 3:21          3:22 12:25          13:1 25:16  <b>referred</b> 23:23  <b>referring</b> 25:11          56:7  <b>reflecting</b> 55:6  <b>regression</b> 57:7  <b>regular</b> 52:10  <b>reinstate</b> 9:11  <b>reinstated</b> 8:25  <b>reject</b> 53:25          54:8  <b>rejected</b> 23:15  <b>relationship</b>          12:25  <b>relaxed</b> 55:3  <b>relevant</b> 48:21  <b>relief</b> 54:23  <b>rely</b> 27:3  <b>relying</b> 30:24  <b>remainder</b> 28:3  <b>remaining</b> 56:2  <b>remand</b> 38:10          38:12 53:6  <b>remanded</b> 52:22  <b>remedy</b> 34:17  <b>remember</b>          19:17 26:3          49:12  <b>remembers</b>          24:15  <b>remove</b> 22:2  <b>repeated</b> 16:14          17:7  <b>repeatedly</b>          28:10 36:4          37:4 44:8  <b>repose</b> 36:9          44:22  <b>require</b> 36:4          44:5 57:4  <b>required</b> 27:1          59:3,3  <b>requirement</b>          16:8 36:3</p>
---	--	--	--	---

<p><b>requirements</b> 46:16</p> <p><b>reserve</b> 28:2</p> <p><b>resolve</b> 53:10</p> <p><b>resolved</b> 56:18</p> <p><b>respect</b> 5:7 7:4 14:7 24:20 30:23 49:17 55:8 56:8</p> <p><b>respectfully</b> 58:14</p> <p><b>Respondent</b> 1:19,23 2:7,11 3:13 14:23 28:7 46:3</p> <p><b>respondents</b> 4:7 8:12 17:23</p> <p><b>Respondent's</b> 16:16 58:2 59:4</p> <p><b>responsibilities</b> 5:10,17 46:18</p> <p><b>responsibility</b> 21:12</p> <p><b>responsible</b> 11:19,20</p> <p><b>result</b> 9:23 11:23 13:24 28:18 29:18 43:7 46:11 53:18,22 54:10</p> <p><b>review</b> 16:11 26:17,20 52:13</p> <p><b>reviews</b> 15:8 17:10</p> <p><b>revisit</b> 21:21</p> <p><b>RICHARDS</b> 12:2</p> <p><b>Ricks</b> 31:2 40:18 40:20 41:9 53:19</p> <p><b>right</b> 6:10 9:15 9:17 12:4 13:22,23 14:19 15:6,20 27:5 35:25 39:2 55:16 60:5</p>	<p><b>ripple</b> 10:25 24:17,20 26:1</p> <p><b>rise</b> 3:22 13:1</p> <p><b>Roberts</b> 3:3 10:18 13:13 15:3,17,22 16:18,23 21:14 23:1 25:4 28:4 32:11 33:16 45:25 49:22 50:10 55:25 59:21 60:4,13</p> <p><b>Rubber</b> 1:7 3:5</p> <p><b>rule</b> 3:23 4:4,5 5:1 6:14 8:1,11 11:16 13:2,4 13:15 14:7,21 17:4 27:24,25 29:21 34:4,18 34:19 35:7,8 37:6 39:4 41:5 41:7,8,10 49:9 54:1,1,2,4 56:22,24 57:9 57:11 58:2</p> <p><b>rules</b> 11:12 52:20 56:20</p> <p><b>Russell</b> 1:16 2:3 2:13 3:6,7,9 4:6 5:5,22 6:2 6:11 7:16 8:19 9:10,18 10:5 10:14 11:2,11 11:18 12:6,9 12:18 13:16,23 14:9,16,19 15:11,21,24 16:13,21 17:3 17:16 18:15 19:1,13,23 20:14,17 21:6 21:24 22:15,23 23:5 24:2,21 25:9 26:2,25 27:5,9 37:8 51:13 56:2,3,5 57:16 58:18,24</p>	<p>59:9,16 60:3,6 60:12</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 2:1 3:1</p> <p><b>salaries</b> 38:14 59:2</p> <p><b>salary</b> 16:11 27:15</p> <p><b>satisfactory</b> 12:19</p> <p><b>saw</b> 32:17</p> <p><b>saying</b> 4:3 16:7 33:9 37:14 38:16 40:10 42:24 49:9,11 49:16 59:14</p> <p><b>says</b> 16:24 17:1 25:22 35:8 37:25 44:12 48:9 49:1 53:19 55:22</p> <p><b>scale</b> 21:4 58:17</p> <p><b>Scalia</b> 5:14 7:14 11:22 12:3,8 12:14 31:16,23 37:9 51:18 53:16 57:13</p> <p><b>Scalia's</b> 41:10 45:7</p> <p><b>scope</b> 23:7</p> <p><b>score</b> 22:25</p> <p><b>second</b> 39:21 53:25 59:8</p> <p><b>secondary</b> 12:11 12:15</p> <p><b>Secondly</b> 41:4</p> <p><b>section</b> 11:3 36:8 44:22</p> <p><b>see</b> 5:14,19 7:5 21:16 27:22 38:11 59:24</p> <p><b>semi-annual</b> 15:7</p> <p><b>seniority</b> 25:14 33:5 43:16</p> <p><b>sense</b> 5:12 12:8</p>	<p>31:17</p> <p><b>serious</b> 31:11</p> <p><b>serves</b> 17:4</p> <p><b>Service</b> 58:2,19</p> <p><b>set</b> 41:7,9,10 59:19</p> <p><b>sex</b> 3:15,17 4:2 9:7,24 10:16 17:21 18:2 19:7,15 22:17 22:20 25:24 28:25 34:1 50:16 51:5 56:15 59:18</p> <p><b>sexual</b> 32:22 36:24 37:21</p> <p><b>shoot</b> 40:13</p> <p><b>show</b> 10:2 14:23 17:23 19:6 23:5 27:1 45:13 46:24</p> <p><b>showed</b> 9:4</p> <p><b>showing</b> 15:14</p> <p><b>shown</b> 9:22</p> <p><b>side</b> 39:10,12 40:9 55:2</p> <p><b>side's</b> 39:4</p> <p><b>significant</b> 39:23</p> <p><b>similar</b> 25:16</p> <p><b>similarly</b> 3:14 6:1 25:19 26:12 37:16 38:1 58:6</p> <p><b>simple</b> 39:5,7 57:9</p> <p><b>simpler</b> 53:1</p> <p><b>simply</b> 23:17 25:11 27:13 33:4 49:7 53:6</p> <p><b>single</b> 5:17</p> <p><b>sit</b> 27:16</p> <p><b>situated</b> 3:14 6:1 25:19 26:12 37:16 38:1</p> <p><b>situation</b> 10:8 27:4 33:12</p>	<p><b>six</b> 38:24 39:25 48:12</p> <p><b>size</b> 47:19</p> <p><b>Skidmore</b> 52:1</p> <p><b>skills</b> 46:18</p> <p><b>slight</b> 41:12</p> <p><b>slim</b> 16:5</p> <p><b>small</b> 30:23</p> <p><b>solely</b> 26:7</p> <p><b>Solicitor</b> 1:20 42:8 51:19 53:6 56:21 58:7</p> <p><b>solve</b> 7:15</p> <p><b>somebody</b> 4:12 4:15 5:23 17:5 21:15 55:12</p> <p><b>sorry</b> 25:1 52:15</p> <p><b>sort</b> 24:11 27:7</p> <p><b>sorts</b> 4:5</p> <p><b>sought</b> 52:13 53:5</p> <p><b>sounds</b> 38:16 39:14,20</p> <p><b>source</b> 42:4</p> <p><b>Souter</b> 18:21 22:8,18 23:20 24:9,25 25:5 25:21 44:14,17 45:8 52:12,15 52:16,25 53:8 53:15</p> <p><b>speaking</b> 40:6</p> <p><b>special</b> 54:2,4</p> <p><b>specifically</b> 13:14</p> <p><b>specificity</b> 4:22</p> <p><b>spend</b> 59:7 60:8</p> <p><b>spread</b> 6:5</p> <p><b>stale</b> 8:7</p> <p><b>standard</b> 52:2 55:3</p> <p><b>standards</b> 50:3</p> <p><b>standing</b> 7:12</p> <p><b>stands</b> 40:25</p> <p><b>start</b> 40:8</p> <p><b>started</b> 6:9 8:16</p>
---	---	---	--	---

<p>36:16  <b>starting</b> 34:9  <b>starts</b> 48:5  <b>state</b> 43:2  <b>statement</b> 29:5  32:13 43:20  <b>states</b> 1:1,14  28:16 31:13  38:13,21  <b>statute</b> 5:3 10:17  12:23 27:19  32:9 35:9  46:22,23 54:9  56:18 57:12,23  <b>statutes</b> 31:20  <b>Stevens</b> 20:4,15  26:16 27:3,6  29:2,15 30:14  41:7,12,21  42:3,10,21  44:13 48:17  49:6,11  <b>structure</b> 19:12  25:18,22,23  <b>struggled</b> 23:12  <b>stuff</b> 40:12  <b>subject</b> 4:13,16  6:16 17:19  37:5 44:7  <b>submitted</b> 60:15  60:17  <b>subsequent</b> 18:7  23:22 24:18  25:8  <b>substantial</b>  19:19 54:13  55:11  <b>successful</b> 11:13  <b>sue</b> 49:20 55:24  <b>sued</b> 29:8  <b>sufficiency</b>  30:16  <b>sufficient</b> 7:12  32:15,20 33:1  43:16  <b>suggest</b> 58:14  <b>suggesting</b></p>	<p>47:13  <b>summarizes</b>  6:21  <b>summary</b> 40:13  <b>supervisor</b>  18:18,19 19:20  32:16 35:17,18  47:2  <b>support</b> 6:12  <b>supporting</b> 2:10  <b>suppose</b> 14:1,3,5  15:3 23:2 43:3  <b>Supposing</b> 20:5  26:17 29:3  <b>Supreme</b> 1:1,13  <b>sure</b> 17:11 21:12  55:16  <b>surely</b> 30:8  <b>suspect</b> 8:5  <b>suspicious</b> 6:25  <b>sustain</b> 22:24  <b>system</b> 7:17 26:9  27:12 33:5  34:6 40:7  43:17</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 2:1,1  <b>tables</b> 45:6  <b>take</b> 5:1,10 19:9  24:25 25:9  50:5 52:6 55:5  <b>taken</b> 28:13,19  33:2 51:20,22  51:24 57:17  <b>takes</b> 40:3 41:5  53:3  <b>talked</b> 22:9  54:15  <b>talking</b> 25:2  38:25 48:3  50:22 51:2  <b>test</b> 29:2  <b>testified</b> 19:25  35:19  <b>testimony</b> 19:24  <b>text</b> 56:18</p>	<p><b>Thank</b> 28:4,8  45:25 55:25  60:12,13  <b>theory</b> 16:19  18:11 23:25  29:3 54:19  55:22  <b>they'd</b> 15:4  <b>thing</b> 6:6 22:11  30:24 39:7,14  39:15,21 40:2  43:10 50:4  <b>things</b> 39:9  <b>think</b> 4:8 5:22  6:6,8,12 7:23  8:9 9:12 10:11  10:22 11:18  12:7,9,17,19  12:22 13:10,17  14:20 19:1  22:5 23:10  24:2,8,21 25:1  25:5 26:2 27:6  27:9,18,18  29:11,22 30:3  30:15 36:11  41:5 43:8,9  47:12 48:6  49:11 53:15  54:20 55:11  56:5  <b>thinks</b> 21:2  <b>third</b> 54:8  <b>Thomas</b> 38:3  44:11  <b>thought</b> 6:2 14:6  16:2,10 20:15  22:6 24:10,18  25:9 27:7,10  34:24 35:24  37:13 41:21  51:10  <b>thousands</b> 27:22  <b>three</b> 35:7 38:23  53:17  <b>threshold</b> 9:16  <b>time</b> 3:11 7:14</p>	<p>7:19 9:13 10:3  15:14 16:17  17:7,22 20:8  23:3,11 25:13  25:14,20 28:3  30:12 31:6  35:5 36:14,15  43:1 45:10  46:19 48:5,8  50:8 53:14  54:15 55:21  <b>timeliness</b> 56:25  <b>timely</b> 11:3  28:11,17 31:8  44:7 45:12  48:25 49:3  53:23  <b>Tire</b> 1:6 3:4  <b>Title</b> 3:18 4:1  6:13 8:14,16  8:20,25 9:13  9:14,21 10:7  13:5,9,15,22  14:10 17:9  18:12 23:19  26:15 28:13  31:24 32:15  33:13,17 34:19  35:1 36:3  37:15,17 43:25  44:2 46:6,21  48:9 51:6,16  54:3,4 60:4  <b>today</b> 14:3 16:9  20:6,12 29:8  29:24 49:1,15  52:23 53:9,10  53:11  <b>Todd</b> 7:6  <b>Todd's</b> 7:3  <b>told</b> 19:25  <b>toll</b> 40:5  <b>tolled</b> 35:7,7,9  <b>tolling</b> 34:21  35:7 39:22  40:7 55:4,19  55:20</p>	<p><b>totally</b> 10:12  39:18  <b>Touche</b> 53:16  <b>track</b> 35:25  <b>traditional</b> 3:20  15:25  <b>transactions</b>  3:22 13:1  <b>transfer</b> 6:5  <b>treat</b> 4:10 5:25  31:17 44:10  <b>treated</b> 4:17  30:3  <b>treating</b> 5:12  <b>treatment</b> 3:17  3:21 4:13 7:20  33:14  <b>treats</b> 25:18,23  <b>tremendous</b>  14:18  <b>tries</b> 30:20  <b>trigger</b> 37:6  <b>triggered</b> 34:20  <b>triggers</b> 32:9  36:24  <b>true</b> 11:5 16:21  17:3 19:23  21:24 23:1  60:3  <b>trust</b> 25:7  <b>try</b> 40:16  <b>trying</b> 30:21  35:12 37:21  38:19,21  <b>turns</b> 18:8  <b>two</b> 13:11 31:19  33:6,11,22  34:17 35:1,11  38:23  <b>two-year</b> 34:18  35:10 54:17,19</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimately</b> 59:12  <b>unable</b> 14:23  <b>unactionable</b>  33:24</p>
--	---	--	---	---

<b>uncertain</b> 14:6	<b>VII</b> 3:18 4:1	60:5,11	<b>year</b> 6:6,24 16:6	35:4 36:5 45:2
<b>unchallenged</b> 47:16	6:13 8:14,17	<b>ways</b> 13:12	16:6 19:24	46:7 47:7,22
<b>unclear</b> 20:17	8:21,25 9:13	<b>week's</b> 3:13 4:1	20:1 27:23	48:10
<b>uncomplained</b> 17:12	9:15,21 10:7	37:15,25	32:17 35:22,25	<b>180-day</b> 11:1
<b>understand</b> 9:2	13:5,9,15,22	<b>weren't</b> 44:7	36:17 40:4	36:24 41:14,16
20:5 22:10	14:10 17:9	<b>we'll</b> 3:3 28:5	47:11,19,20,22	46:9 54:6,18
29:12 41:15	18:12 23:19	<b>we're</b> 16:24,24	50:3	<b>1965</b> 26:5
49:8	26:15 31:24	16:25 24:13	<b>years</b> 6:22 8:2	<b>1967</b> 13:7
<b>understood</b> 43:8	32:15 33:13,17	26:10	10:18,21,23,24	<b>1972</b> 26:7
<b>undertaken</b> 18:18	34:19 35:1	<b>we've</b> 4:20 18:23	14:8,10,12,15	<b>1995</b> 19:18
<b>undo</b> 54:9	36:3 37:15,17	<b>whatsoever</b>	14:18,22 15:5	35:17,23 47:2
<b>undue</b> 15:14	44:1,2 46:6,21	10:11	15:6,9,10,19	<hr/>
<b>unfair</b> 21:10	48:9 51:6,16	<b>white</b> 13:7 26:6	15:23 16:15,19	<b>2</b>
<b>United</b> 1:1,13	54:3,4 60:4	37:16 38:1	16:24 17:2	<hr/>
31:13 38:13,20	<b>VII's</b> 28:13	<b>whites</b> 26:13	18:4,8,25 19:4	<b>2</b> 14:8,10,15
<b>unlawful</b> 12:12	<b>violates</b> 17:9	38:9 58:4	22:22 24:15	16:4 36:17
23:12 36:6	<b>violation</b> 3:18	<b>win</b> 16:10 55:2	29:4,7,17,18	<b>20</b> 8:2 14:18,22
44:15 48:21	10:7,15 18:12	<b>wins</b> 14:5	33:6,11 34:17	15:9 16:19,24
56:7 58:12	23:18 25:16	<b>woman</b> 9:5 13:7	35:2,8,11,13	17:2 18:25
<b>unmanageable</b> 17:24	26:15 42:20	14:4 22:12	36:16 39:17	20:9 21:17,20
<b>unrelated</b> 11:9	46:21 56:11	32:14 33:17	42:11 43:6	22:21 29:4,5,7
<b>untimely</b> 29:23	<hr/>	39:24 55:4	44:6 45:2,3	29:17,18 30:7
33:24 45:18	<b>W</b>	<b>women</b> 13:7	46:9 47:15,25	35:13 36:16
<b>unworkable</b> 27:24	<b>wage</b> 23:17	20:9 21:16,20	48:1,2,11,12	42:11,11,18
<b>unwritten</b> 57:3	56:10,15	29:5,19 30:2,7	48:12 49:14,24	49:13,14
57:3	<b>wages</b> 7:10,10	30:7,10 49:20	54:13 55:24	<b>2006</b> 1:10 14:4
<b>upheld</b> 52:12,17	7:22 21:3 26:7	49:25	<b>yesterday</b> 29:25	14:14
<b>upholds</b> 53:5	<b>wait</b> 23:4 54:11	<b>won</b> 14:13	<hr/>	<b>27</b> 1:10
<b>urging</b> 51:21	55:23	<b>work</b> 3:13 4:19	<b>0</b>	<b>28</b> 2:7
<b>use</b> 35:12	<b>waits</b> 22:24	5:13 7:18 32:7	<hr/>	<hr/>
<hr/>	<b>want</b> 12:15	32:24 46:20,22	<b>05-1074</b> 1:5	<b>3</b>
<b>V</b>	30:18 32:16	51:17 60:11	<hr/>	<hr/>
<b>v</b> 1:5	39:10 49:1	<b>workers</b> 6:1	<b>1</b>	<b>3</b> 2:4 16:4 36:18
<b>vacated</b> 52:22	55:19 58:22	26:4,12,12	<b>10</b> 18:4 24:15	49:25 56:2
<b>variation</b> 7:18	59:7,7,10 60:7	<b>worry</b> 40:11	35:13	<b>30</b> 15:19,23
7:24	<b>wanted</b> 58:5	<b>wouldn't</b> 7:12	<b>11:03</b> 1:14 3:2	<hr/>
<b>vast</b> 5:14	<b>washes</b> 12:4	22:6 30:12	<b>12:04</b> 60:16	<b>4</b>
<b>versus</b> 3:4,25	<b>Washington</b> 1:9	46:15 47:17	<b>14</b> 48:1,4	<hr/>
<b>view</b> 16:17	1:16,18,21	58:13	<b>15</b> 10:18,21,23	<b>4</b> 10:20 11:24
22:10 54:9	<b>wasn't</b> 19:18	<b>written</b> 29:4,6	10:24 14:12,18	50:2
56:9,9 58:7	33:1,10 37:11	26:4,12,12	15:5 17:2	<b>40</b> 15:6,10
59:4	52:7	<b>wrong</b> 37:17	18:25 22:21	<b>46</b> 2:11
<hr/>	<b>way</b> 4:20 8:18	38:2 51:3	24:15 35:13	<hr/>
<b>X</b>	11:19 18:9,10	<b>wrote</b> 44:13	47:25 48:1,4	<b>5</b>
<hr/>	29:9 30:18	<hr/>	55:23	<hr/>
<b>Y</b>	35:18 42:22,25	<b>x</b> 1:2,8	<b>15-year</b> 14:2	<b>5</b> 10:20 11:24
<hr/>	45:2 59:23	<hr/>	<b>174</b> 6:21	24:15
			<b>180</b> 15:2 19:4	<b>5.28</b> 6:24
			34:13,16 35:3	<b>56</b> 2:14
				<hr/>
				<b>6</b>
				<hr/>
				<b>6</b> 23:22 24:1



49:24				
<hr/> <b>7</b> <hr/>				
<b>706</b> 11:3 36:8				
<b>706(e)</b> 44:22				