

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 RICHLIN SECURITY SERVICE :

4 COMPANY, :

5 Petitioner :

6 v. : No. 06-1717

7 MICHAEL CHERTOFF, :

8 SECRETARY OF HOMELAND :

9 SECURITY. :

10 - - - - - x

11 Washington, D.C.

12 Wednesday, March 19, 2008

13

14 The above-entitled matter came on for oral
15 argument before the Supreme Court of the United States
16 at 10:05 a.m.

17 APPEARANCES:

18 BRIAN WOLFMAN, ESQ., Washington, D.C.; on behalf

19 of the Petitioner.

20 ANTHONY YANG, ESQ., Assistant to the Solicitor General,

21 Department of Justice, Washington, D.C.; on behalf of

22 the Respondent.

23

24

25

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	BRIAN WOLFMAN, ESQ.	
4	On behalf of the Petitioner	3
5	ANTHONY YANG, ESQ.	
6	On behalf of the Respondent	26
7	REBUTTAL ARGUMENT OF	
8	BRIAN WOLFMAN, ESQ.	
9	On behalf of the Petitioner	53
10		
11		
12		
13		
14		
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

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 06-1717, Richlin Security Service versus Chertoff.

Mr. Wolfman.

ORAL ARGUMENT OF BRIAN WOLFMAN

ON BEHALF OF THE PETITIONER

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

The Federal Circuit affirmed an award of attorney fees under the Equal Access to Justice Act, or EAJA, to Petitioner Richlin Security Service Company, but it denied Richlin an award for paralegal services at market rates on the ground that statutory attorney fees do not include work done by paralegals.

The Federal Circuit was wrong because, as this Court has explained, the statutory term "attorney fees" -- and now I'm quoting -- "takes into account the work not only of attorneys but others whose labor contributes to the work product for which an attorney bills her client." Employing that reasoning, the Court held, in Missouri versus Jenkins, that paralegal fees are compensable at market rates as attorney fees under 42 U.S.C. section 1988.

1 The question in this case is whether there
2 is any reason EAJA should be interpreted differently.
3 The answer is no. And, indeed, the only potentially
4 relevant difference between the two statutes -- that
5 EAJA requires fees to be awarded at prevailing market
6 rates, and section 1988 requires only that fees be
7 reasonable -- provides stronger support for market-based
8 recovery of paralegal fees under EAJA than it would
9 under section 1988.

10 JUSTICE GINSBURG: Mr. Wolfman, what about
11 the cap that's not present in 1988 and is present in
12 EAJA?

13 MR. WOLFMAN: Well, Justice Ginsburg, that
14 really is, when we get down to it, what the government's
15 argument boils down to. And I think the cap is
16 irrelevant for two reasons, both of which are important.
17 First, and let me -- let me first state the argument;
18 then I'll give you the answers.

19 The argument that the government posits
20 is -- taking a lead from the Federal Circuit -- is that
21 paralegal services can't be compensable at market rates
22 under EAJA because then paralegal services would be
23 fully or largely compensable, while lawyers' fees -- to
24 the extent that they exceed the cap -- would not be. And
25 again there are two answers to that: First, the argument

1 incorrectly looks at EAJA from today's perspective when
2 lawyers' rates generally exceed the fee cap.

3 JUSTICE SCALIA: Excuse me. The paralegals'
4 rates would also be subject to the -- to the cap.

5 MR. WOLFMAN: Absolutely.

6 JUSTICE SCALIA: They couldn't go above the
7 cap.

8 MR. WOLFMAN: There is no question about
9 that because -- because, Your Honor, they are attorney's
10 fees.

11 JUSTICE SCALIA: Okay.

12 MR. WOLFMAN: That's our submission. But --
13 but the problem with looking at it at the current
14 vantage point, which is what the Federal Circuit
15 essentially did, is that at the time EAJA was enacted,
16 most lawyers --

17 JUSTICE STEVENS: May I just ask you on that
18 last point: Does the government agree that the
19 paralegals' fees are subject to cap?

20 MR. WOLFMAN: Well, the government would
21 certainly agree that if there are attorney's fees, they
22 are subject to the cap. They are not willing to pay
23 above the cap for anything.

24 JUSTICE SCALIA: Indeed, would insist.

25 MR. WOLFMAN: Yes, indeed, Your Honor. But

1 anyway --

2 JUSTICE STEVENS: But they do not agree with
3 the bottom line that they are subject to the cap?

4 MR. WOLFMAN: Well, what they believe -- the
5 government believes --

6 JUSTICE STEVENS: Because they're attorney's
7 fees.

8 MR. WOLFMAN: -- and I'm sure they can
9 explain this better than I can. But what the
10 government's position is, is that they are like an
11 out-of-pocket expense --

12 JUSTICE SCALIA: Right.

13 MR. WOLFMAN: -- reimbursable only at the
14 cost to the lawyer. That's an interesting question,
15 Your Honor, because one could -- one could posit a
16 situation 20, 30 years out from now, if EAJA were not
17 amended, where even the cost to the lawyer could exceed
18 the cap. So, in a way, the government's argument sort
19 of collapses upon itself. We -- we -- our submission is
20 they are all attorney's fees and they are all subject to
21 the cap. But let me go --

22 JUSTICE SOUTER: But you -- isn't that one
23 of the problems with your argument? Because there is
24 something very strange about capping paralegal fees at
25 the same amount that they would cap a lawyer's fees for,

1 regardless of what that amount is and when they were
2 setting it.

3 MR. WOLFMAN: Well, again, that's -- that's
4 -- I took to be Justice Ginsburg's question and let me
5 try to answer it. First, as I say, by -- by positing
6 that's a strange situation, which we don't agree with,
7 but even assuming it's a strange situation, again it
8 looks at the situation from today's perspective, not at
9 the time --

10 JUSTICE SOUTER: No, I'm looking at it from
11 the perspective of the original enactment on your theory
12 at that moment. These fees were legal fees, were
13 attorney fees, and they were capped at the same amount
14 that a lawyer's time was capped at. And that's just
15 odd.

16 MR. WOLFMAN: Well, I don't believe it's
17 odd. And, again, for two reasons: At that point --
18 again, you have to take the perspective of where they
19 were at. Lawyers' fees and paralegal fees were really
20 capped at the same point, but all those fees were
21 arrayed, by and large, under the cap so that there would
22 be paralegal fees at a relatively low rate, junior
23 associates at a modest rate, and the senior partner's
24 closer to the cap.

25 JUSTICE SCALIA: Agent fees --

1 MR. WOLFMAN: By and large --

2 JUSTICE SCALIA: I mean, the problem exists
3 whether or not you make paralegal fees attorney's fees,
4 because agent fees are also subject to the same cap.

5 MR. WOLFMAN: That is true.

6 JUSTICE SCALIA: And agents were paid a good
7 deal less than that.

8 MR. WOLFMAN: That is true. That is another
9 argument that could be made. Agents, who are
10 individuals that are qualified by an administrative
11 agency, in essence, to practice law without the
12 supervision of a lawyer, they are also allowed fees
13 under the administrative part of EAJA, but not under
14 section 2412, which is the court part of EAJA.

15 JUSTICE KENNEDY: You began -- and it's not
16 just because of my notepad but because I'm interested --
17 you told Justice Ginsburg there are two reasons --

18 MR. WOLFMAN: Yes.

19 JUSTICE KENNEDY: -- why the government's
20 cap is wrong. And I'm not even sure you finished the
21 first one. What are the two reasons?

22 MR. WOLFMAN: I would love that opportunity,
23 Your Honor. The first, again, is -- and let me come
24 back to this if I didn't get it out completely -- which
25 is that, again, it's looking at the -- at the problem,

1 if there is one from the -- the current-day perspective,
2 but what you had at the time, by and large, was that
3 lawyers' and paralegal rates would be arrayed below the
4 cap. It's just not something that would have been
5 within the contemplation of Congress. But let me --

6 JUSTICE STEVENS: But may I ask you on that:
7 Supposing at the time the statute was enacted,
8 paralegals' fees were not generally treated as lawyers'
9 fees, but rather were treated as disbursements; would
10 that make a difference?

11 MR. WOLFMAN: That might have made a
12 difference, but that was not the case, Your Honor. In
13 fact, what the Court pointed out in Missouri versus
14 Jenkins, which was 1989, nine years later, paralegal
15 fees -- it appeared to be that they were separately
16 billed in about three-quarters of all law firms. In
17 1980 it was probably fewer. There was a transition
18 going on.

19 But let me give you the Court's response to
20 that problem in Missouri versus Jenkins, to the extent
21 that it is a problem. And what the Court said was,
22 whether they're separately billed or not, they were
23 subsumed within the lawyer's rates like other forms of
24 overhead. That's what the Court said in Missouri versus
25 Jenkins. And the question of how they are billed

1 doesn't -- doesn't inform the question of how you
2 interpret the term "attorney's fees." That's what the
3 Court said in Missouri versus Jenkins and what it
4 reaffirmed two years later in the West Virginia
5 Hospitals versus Casey.

6 Now, let me, if I could, get to the second
7 point which Justice Kennedy asked me about. The second
8 point is that the government's argument proves far too
9 much, because under the Federal Circuit's theory, which
10 the government has now adopted, the fees generated by
11 law firm associates would also not be compensable at
12 market rates because a much higher percentage of an
13 associate's billed rate would also fall below the cap as
14 compared to the senior partners in the firm. In other
15 words, it doesn't help explain the problem.

16 CHIEF JUSTICE ROBERTS: I'm sorry. Is your
17 point there that most associates are billed at less than
18 \$125 an hour?

19 MR. WOLFMAN: No. That's not my point, Your
20 Honor. My point is this: The -- the theory of the
21 government's argument is that you would -- you would be,
22 in essence, giving too much recovery to the lower -- to
23 the lower-billed billing agents, whether they be
24 paralegals, junior associates, and so forth. And it --
25 when you get up to the senior partners --

1 CHIEF JUSTICE ROBERTS: Too much money
2 proportionally.

3 MR. WOLFMAN: Proportionally.

4 CHIEF JUSTICE ROBERTS: Okay.

5 MR. WOLFMAN: Exactly. That's the argument.
6 In all events, some of those various individual's rates
7 will be compensated under EAJA.

8 Our point is that it proves far too much
9 because the junior associates are much more like the
10 paralegals than the senior associates at the largest K
11 Street or Wall Street law firms. And my only point -- my
12 only submission -- point in that regard is that it shows
13 that the government's argument proves too much because
14 it illustrates that the government's concern and the
15 Federal Circuit's concern, the anomaly that they have
16 pointed out, has nothing to do with the statutory term
17 "attorney fees" and nothing to do with paralegals, per
18 se. It's the phenomenon that's at work is the fact that
19 the rate -- the hyperinflation in the legal services
20 market as a whole has outstripped EAJA. That's the
21 phenomenon on which the Federal Circuit, in truth, was
22 relying, even though they put it to the paralegal
23 question.

24 JUSTICE ALITO: If -- if paralegal charges
25 are not fees but are other expenses, what would be the

1 standard for determining the rate at which they would be
2 compensable? Would it necessarily be cost under this
3 statute or would it simply be what is reasonable?

4 MR. WOLFMAN: Well, that's -- that's an
5 excellent question. I think it, in part, undermines the
6 government's position because what happened here is that
7 the Federal Circuit and the Board of Contract Appeals
8 below said, well, it's cost to the lawyer, and we are
9 going to do an Internet search and we are going to find
10 what paralegal salaries are and divide it by the
11 requisite number of hours in any year. And we are going
12 to make it \$35 an hour, and we are going to determine
13 that's the cost to the law firm.

14 But, of course, that's -- that's not the
15 cost to the law firm. What about the overhead? What
16 about the rent, utilities, and so forth, what about
17 benefits? So what you would have is a very complex cost
18 analysis.

19 Now, you're suggesting, Your Honor, that we
20 could do it on some vague notion of reasonableness. But
21 the problem is that the -- the fee-shifting statutes
22 either look to market rate or actual cost. But what is
23 interesting about the actual cost argument here -- and
24 that's true across the entire range of fee-shifting
25 statutes -- and what's interesting about --

1 JUSTICE SCALIA: This problem is going to
2 exist anyway, isn't it? I mean, even if you don't cram
3 paralegals into the other expenses, there are going to
4 be other expenses that are in the other expenses.

5 MR. WOLFMAN: But --

6 JUSTICE SCALIA: You're going to have to
7 have this same problem -- and what about the overhead
8 and so forth?

9 MR. WOLFMAN: No, that is -- with respect,
10 Justice Scalia, that is not correct because the problem
11 here is -- and I'm using your words -- is that the
12 government is cramming a in-house professional
13 services -- service into a place where no court
14 virtually in the history of American jurisprudence has
15 ever put it. Out-of-pocket --

16 JUSTICE ALITO: Well, if -- if it's simply
17 reasonableness -- because I don't see anything in the
18 statute that says that all non-fee expenses are
19 compensable at cost -- if it's simply reasonableness,
20 would it be possible to say that what would be
21 reasonable would be a rate that preserves the ratio
22 between attorney's fees and paralegal fees that existed
23 at the time when the statute was enacted so that you
24 wouldn't have the problem of attorneys being compensated
25 at the same rate as paralegals?

1 MR. WOLFMAN: Let me -- let me answer that
2 in two ways: If you were to preserve the ratio, then it
3 seems to me that the -- in many markets, the paralegals
4 are going to get right near the cap anyway or, you know,
5 between \$75 and \$100, because we know that many lawyers'
6 rates are well above the cap. If you preserve that
7 ratio --

8 JUSTICE ALITO: No. No. If the ratio -- if
9 lawyers were -- I know that if lawyers were compensated
10 at \$125 an hour when this was enacted and paralegals
11 were compensated at \$75, then it would be a 2-1 ratio,
12 and you'd preserve that.

13 MR. WOLFMAN: Yes. You could do that, and
14 then what you would have is just a static rate for all
15 players in the market, and there's no suggestion that
16 Congress intended that. After all, I'm using the term
17 "prevailing market rates."

18 JUSTICE SCALIA: Am I mistaken -- am I
19 mistaken -- you claim that even if they are expenses,
20 they should -- they should be paid for at market rate,
21 don't you?

22 MR. WOLFMAN: Well, not quite market rate,
23 but this goes to -- I said I had two responses to
24 Justice Alito's question.

25 And the problem is that when we talk about

1 out-of-pocket expenses, again, which is where the
2 government is trying to shoe-horn the paralegal
3 services, we talk about out-of-pocket expenses for the
4 client, for the prevailing party. Expenses, whether
5 they are out-of-pocket expenses or attorney fees are --
6 are awarded to the prevailing party, and the cost faced
7 by the prevailing party is the cost to the prevailing
8 party, what it paid for the paralegal services.

9 Now, that will approximate the market rate,
10 no question about it. It might not always be synonymous
11 with it.

12 Justice Alito, I am not suggesting that
13 Congress could not have done it that way, but there is
14 no suggestion that it did. After all, in this statute,
15 compared to other fee-shifting statutes, it specifically
16 said it wants to work at the prevailing market rate.
17 And the only reason that in some markets for some
18 lawyers the -- the ceiling, the cap has become a floor
19 is because of hyperinflation in the legal services
20 market. It has nothing to do with the compensability of
21 paralegal services vis-a-vis junior associates, as I've
22 mentioned.

23 JUSTICE GINSBURG: Mr. Wolfman, if there's
24 any discretion in the district judge in setting the
25 amount of the fee, then why wouldn't it be appropriate

1 to say: Now there's a cap for the lawyer is \$125 an
2 hour, but we know the true market rate for that lawyer
3 is \$200; we're going to do the same thing with the
4 paralegal. The true market rate is X, and we're going to
5 knock it down so that it will match the knock-down for
6 the lawyer.

7 MR. WOLFMAN: Well, the reason for that
8 is -- is that there -- there is no suggestion at all
9 that that's what was being contemplated in this statute.
10 And that may be the way that if you had seen this
11 phenomenon that's developed, which again is
12 hyperinflation in the legal services market, you might
13 have written it that way.

14 It's true that the courts have discretion.
15 There's always a reasonableness factor. But the
16 overriding factor is the market rate. The Congress said
17 "prevailing market rate." And to me, that would be
18 outside the bounds of any discretion that had been
19 afforded.

20 JUSTICE GINSBURG: But isn't it likely that
21 when Congress said that, it was not thinking of
22 paralegals?

23 MR. WOLFMAN: No. I think -- I don't think
24 -- with respect, I don't think that's the question.
25 Going -- that takes us back to Missouri versus Jenkins,

1 and what the Court said there is that you have
2 this word "attorney's fee," and the way of thinking of
3 attorney's fees is to include everything that goes into
4 the labor of the attorney that ultimately gets billed to
5 the client and that paralegal services are an aspect of
6 that.

7 Two years later, in West Virginia University
8 Hospitals, the Court made -- made essentially the same
9 point again, which is that -- that at the time that all
10 these fee-shifting statutes were passed, paralegal
11 services, to the extent that they existed, were
12 traditionally subsumed within the lawyer's rate. And so
13 that once law firms started billing for them
14 separately --

15 CHIEF JUSTICE ROBERTS: I'm sorry.
16 "Traditionally subsumed in the lawyer's rate," are you
17 suggesting, when this statute was passed, they weren't
18 billed separately to the client?

19 MR. WOLFMAN: No. I'm not suggesting that.
20 I'm saying traditionally, well before they were passed,
21 they were subsumed to the market rate. There -- there
22 came to be a tradition, roughly in the '70s and early
23 '80s, for the separate billing. And what the Court held
24 emphatically in Missouri versus Jenkins was that the
25 separate billing didn't tell you anything about whether

1 they were attorney's fees.

2 Let me -- let me -- if I could extend my
3 answer a little bit. You have to appreciate what the
4 government's argument is here. The government's argument
5 is that if the paralegal fee, the paralegal services, are
6 subsumed within the lawyer's rate, if there were a law
7 firm out there that still didn't do the separate billing,
8 that would be compensable as an attorney's fees when
9 billed within the lawyer's rates. But if they're billed
10 separately under EAJA, the government's position is
11 they're not compensable at market rates.

12 JUSTICE SCALIA: Of course, that's no loss
13 to the government because when you put it into the
14 lawyer's rate, you hit the ceiling for the lawyer's rate
15 that much sooner.

16 MR. WOLFMAN: That is true --

17 JUSTICE SCALIA: I can see why that would --

18 MR. WOLFMAN: -- but that was not true in
19 1980. And that's the point we are making here. And
20 it's true that it may not be, in this day and age --

21 JUSTICE SOUTER: I'm sorry. Why wasn't it
22 true in 1980? You simply mean in 1980 the two together
23 wouldn't have gotten as high as the cap?

24 MR. WOLFMAN: Absolutely. If you -- in most
25 markets for most lawyers -- we deal with this

1 extensively in our brief. We cite case after case to
2 this effect. And I think -- and I don't mean to be glib
3 here -- I think the way to put this, that in 1980 and
4 1985, that the statute covered virtually all lawyers'
5 fees rather comfortably on Main Street, if not
6 necessarily on K Street and Wall Street. I mean -- and
7 that's what the statute was for.

8 I know it's hard to appreciate that now,
9 when we see, you know, very high rates from the large
10 law firms, but put yourself back in that perspective,
11 which is -- in that vantage point, which we try to do in
12 our brief.

13 JUSTICE KENNEDY: Assume that our decision
14 will in part drive the market either way, what we do
15 will effect the way paralegals are used, the way billing
16 is done. If that is true, is there some utility in
17 simply following the EAJA so we give a consistent signal
18 to the market and then if Congress wants to change it,
19 it can? I mean --

20 MR. WOLFMAN: I'm not sure I understand the
21 question.

22 JUSTICE KENNEDY: Rather than follow EAJA, I
23 mean follow 1988 -- follow Jenkins. Follow Jenkins.

24 MR. WOLFMAN: Well, I certainly think
25 there's utility in doing that, and Congress can revisit

1 this. The difficulty is that Congress has not revisited
2 it. And Congress could revisit this and make -- I think
3 it's -- it is clear right now that the -- the purposes
4 of the statute are not being fully carried out because,
5 again, of the hyperinflation in legal services.

6 JUSTICE KENNEDY: Are there some
7 disadvantages from an economic standpoint in having two
8 structures: Jenkins for one kind of cases, EAJA in the
9 other cases as the government wants?

10 MR. WOLFMAN: Is there some --

11 JUSTICE KENNEDY: Are there some
12 disadvantages to the system?

13 MR. WOLFMAN: I -- of course, we don't think
14 there are, but the -- to be candid, the -- the Federal
15 Circuit pointed to one purported disadvantage. The
16 Federal Circuit claimed that to the extent that there
17 was some incentive that would be driven by a contrary
18 decision, it would be that lawyers would shunt off more
19 work than is efficient to paralegals, and it's --

20 CHIEF JUSTICE ROBERTS: Well, that's -- I saw
21 that analysis. This Act only applies when the
22 government's position is not substantially justified.
23 People are not going to structure their billing
24 arrangements assuming the government's position is not
25 even going to be substantially justified.

1 MR. WOLFMAN: I certainly agree that it is
2 unlikely, but as we point -- very unlikely. I agree
3 with that, Mr. Chief Justice, but there is another point
4 that I would make that we cover quite extensively in our
5 brief, which is that -- which is that -- I think you
6 have to step back and think about that for a second,
7 what the Federal Circuit did.

8 The notion that lawyers are going to shunt
9 off work to paralegals that they wouldn't otherwise
10 have, there are -- runs head long into both economic and
11 ethical constraints on the profession. Economic,
12 because if that was occurring, i.e., people were --
13 lawyers were giving paralegals work that they could not
14 sensibly do, clients would, one, insist that work not be
15 allocated like that; or, two, take their business
16 elsewhere. That's the economic constraints. If, in
17 other words, the whole premise --

18 CHIEF JUSTICE ROBERTS: That point makes
19 some assumptions about the relative abilities, say, of
20 junior associates and senior paralegals that I'm not
21 sure are well founded.

22 (Laughter.)

23 MR. WOLFMAN: Well, Mr. Chief Justice, I
24 will -- I believe that you have greater experience on
25 that than I do.

1 But I think the other answer to that is the
2 ethical constraints. Even if there weren't economic
3 constraints -- I mean, as we pointed out in our brief,
4 sure, the paralegal profession has become an impressive
5 one. They do a lot of things that lawyers used to do,
6 no question. But a lawyer can't shunt off work that
7 they can't handle because there are ethical constraints.

8 I can't, for instance, give a paralegal,
9 say, responsibility for -- principal responsibility for
10 writing an appellate brief. I could not or would not do
11 that because they can't do that, generally speaking,
12 because of their training and experience.

13 So I just think that falls apart. And
14 as you say, Mr. Chief Justice, the fact that -- of the
15 substantial justification defense and other reasons as
16 well, it's unlikely -- and this gets back to Justice
17 Kennedy's questions -- unlikely that law firms will
18 structure their practices and businesses around this
19 problem.

20 The real problem, though, is not an attack
21 on the government fisc, as we point out in our brief.
22 The impact on the public fisc for rejecting the Federal
23 Circuit's decision would be negligible. It's worth
24 noting, though, that the Federal Circuit's decision
25 would have an impact on clients most affected by it.

1 Three groups comprise the great majority of
2 EAJA applicants: Small businesses like Richlin,
3 disabled veterans, and disabled Social Security
4 claimants. In all three situations, clients will lose
5 if paralegal services are awarded at the cost of those
6 services to their lawyers. For the latter two groups,
7 veterans and Social Security claimants, Federal law, in
8 fact, requires that EAJA -- that the EAJA fee be paid to
9 the claimant.

10 So, although it makes economic sense for
11 paralegals to work on significant aspects of Social
12 Security and veterans' cases -- and that's set out at
13 some length in the amicus brief of the National
14 Association of Legal Assistants -- the claimants will
15 lose those fees under the government's view of EAJA.

16 CHIEF JUSTICE ROBERTS: Is that pertinent --
17 is that pertinent on the cap questions we've been
18 discussing too? I mean, if you're representing a
19 disabled veteran, is the lawyer typically charging more
20 than \$125 an hour?

21 MR. WOLFMAN: No. This is how it works, and
22 that's why I said Federal law provides for this. And
23 let me give you the citations. They are also set forth
24 in footnote 2 of this Court's decision in Scarborough.

25 The way the Social Security and veterans

1 situations work -- and, again, they comprise the
2 majority of these cases -- is that the Federal law
3 allows the lawyer to take a contingent fee out of the
4 back benefits, not to exceed 20 and 25 percent of the
5 veterans' or Social Security claimants' back benefits,
6 respectively.

7 But then what Federal law also provides --
8 and the citations are Public Law 99-80 section 3 and
9 Public Law 102-572 section 506(c) -- Federal law
10 provides that to the extent that there is an EAJA fee,
11 the lawyer may not double-dip and has to send that fee
12 directly back to the client. So for these relatively
13 impecunious claimants, essentially chopping the
14 paralegal fee in third or in half or something like that
15 would have a real impact on claimants. It's hard to --

16 JUSTICE BREYER: I know no one else -- I will
17 not say no one else, but not everyone else places the
18 importance on legislative history that I do, but I do.
19 And I saw here that the Senate Judiciary Committee
20 considered all these arguments; they wrote a report; and
21 they sided with the government.

22 MR. WOLFMAN: Well --

23 JUSTICE BREYER: And I know it was there,
24 but it doesn't matter to me it was on a bill that was
25 later not passed, and then unless there is something

1 different --

2 MR. WOLFMAN: Well --

3 JUSTICE BREYER: -- for that reason, because
4 in my own mind I'm thinking there were a group of people
5 on the committee, they went through the issue, they
6 reflected views of their principles, they work it out,
7 and unless something changed that makes me think that
8 isn't the working out of it, I would put a lot of weight
9 on it.

10 MR. WOLFMAN: Well --

11 JUSTICE BREYER: And now you're going to
12 tell me what there is, I hope.

13 MR. WOLFMAN: I'm certainly going to do
14 that, Justice Breyer. The first thing is -- and I do
15 want to point out for the benefit of the other members
16 of the Court that -- is that that piece of legislative
17 history accompanied vetoed legislation. But let me also
18 say that, and we explain this at some length both in
19 our opening and reply briefs, that the government relies
20 on a snippet saying that paralegals -- paralegal
21 services can be awarded, and then it says paren, at
22 cost. But there are a number of other aspects of that
23 same piece of legislative history that point in exactly
24 the opposite direction in terms of market rate recovery,
25 and in fact the Court cites -- excuse me, the committee

1 cites a case from the Sixth Circuit, the Northcross
2 case, in which paralegal services were awarded at market
3 rates.

4 CHIEF JUSTICE ROBERTS: And of course they
5 may mean -- may have meant "cost" to the client.

6 MR. WOLFMAN: And that is -- and that was my
7 next point, Mr. Chief Justice, which is that it said "at
8 cost," but at whose cost? And the problem here is that
9 this fee-shifting statute and every other fee-shifting
10 statute of which I am aware awards a fee to the
11 prevailing party. The purpose of the statute is not to
12 enrich lawyers. The purpose of the statute is to
13 provide incentive for lawyers to handle cases on behalf
14 of clients. Unless the Court has any further questions,
15 I'll reserve the balance of my time.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.

17 Mr. Yang.

18 ORAL ARGUMENT OF ANTHONY YANG

19 ON BEHALF OF THE RESPONDENT

20 MR. YANG: Thank you Mr. Chief Justice, and
21 may it please the Court:

22 EAJA authorizes Federal agencies to award
23 two distinct categories of litigation expenses against
24 the United States: fees and other expenses. The most
25 natural reading of "attorney's fees" is one that embraces

1 an attorney's time, payments for an attorney's time,
2 whereas the broader term "other expenses" naturally
3 encompasses outlays that are paid by an attorney during
4 its representation of a client including the cost of
5 paralegals whose work may be necessary for the
6 preparation of a client's case.

7 Congress recognized this distinction between
8 "attorney's fees" and "other expenses" when it enacted
9 EAJA in 1980. The relevant Senate report, like EAJA's
10 House report, stated that the ceiling on "attorney's
11 fees" --

12 CHIEF JUSTICE ROBERTS: You say the relevant
13 one was of course on a legislation that wasn't passed,
14 right?

15 MR. YANG: Actually this is even before EAJA
16 lapsed the first time; this is upon EAJA's initial
17 enactment in 1980, there was a Senate report and a House
18 report and both have functionally identical language.
19 The Senate report states that quote, "attorney's fees
20 relates only to the compensation of lawyers themselves"
21 and then goes on to explain that costs connected with
22 their representation of a particular interest in a
23 proceeding is not affected by the limitation that is the
24 cap on attorney's fees. When Congress then reenacted
25 EAJA after its repeal, Congress again made clear -- and

1 this is the report that, Mr. Chief Justice, you were
2 referring to -- made clear that the "other expenses" of
3 EAJA fees includes an attorney's out-of-pocket expenses,
4 and that those out-of-pocket expenses were illustrated
5 by the specific example of paralegal time being
6 reimbursed at cost.

7 JUSTICE GINSBURG: What is cost? One could
8 say, I'm going to look at the Internet and come up with
9 \$35 dollars an hour, or you could say in the case of a
10 paralegal there is a part of the overhead, there is the
11 fringe benefits -- so just giving the hourly rate is
12 deceptive of what the actual cost is to the law firm,
13 because the law firm has to add on to determine what in
14 fact it's paying for the paralegal, the fringe benefits
15 and part of the overhead.

16 MR. YANG: Justice Ginsburg, the government
17 agrees that more than simply salary would be
18 reimbursable as cost. And I think the appropriate way
19 to calculate cost in the context of paralegals would
20 be -- would parallel how the government calculates its
21 cost for attorneys when the government seeks attorney's
22 fees. And what the government does is it uses salary as
23 a baseline and then adds -- for the government it's 29 --
24 or approximately 29 percent of salary for other benefits.
25 And --

1 CHIEF JUSTICE ROBERTS: Well, but it might
2 be quite different for a private practitioner. Your
3 benefits for health care will probably cost you a lot
4 less than private practice and doesn't that make the
5 paralegal fees quite different from the other items of
6 expenses that are listed? You know, expert witnesses,
7 you get a bill, that's how much it costs the lawyer.
8 Studies, analysis, engineering reports, you don't have to
9 figure overhead benefits with respect to any of those.
10 All of a sudden you throw in another item, paralegal
11 costs, you put those under costs, and now you've got to
12 go through this elaborate calculation that is going to be
13 not worth it, almost, for a typical firm representing a
14 small client.

15 MR. YANG: Mr. Chief Justice, I'm not sure
16 that I agree with some of the premises that you had.
17 First, with respect to the analysis and reports and
18 such, those are not always things that are done outside
19 a law firm. The statutory text, in fact, allows the
20 reimbursement of costs for any study, analysis, report,
21 test or project; it's not limited to things that are
22 done outside of a firm. It may often be done outside --

23 CHIEF JUSTICE ROBERTS: Well, most firms,
24 an engineering report would be outside the --

25 MR. YANG: Perhaps an engineering

1 report, except for maybe, some intellectual property
2 firms but --

3 JUSTICE KENNEDY: It seems to me the
4 question is a valid one; you're running away from the
5 question.

6 MR. YANG: Well --

7 JUSTICE KENNEDY: And I'll let you answer.
8 It suggests this further inquiry. Suppose that a solo
9 practitioner knows that a paralegal in another firm is
10 very good at this and he asks the other lawyer, may I
11 use your paralegal, and he just sends that lawyer the
12 bill. What -- how would that be billed under your view?

13 MR. YANG: Well, there is now two questions
14 in the air.

15 CHIEF JUSTICE ROBERTS: Well, you can answer
16 Justice Kennedy's first.

17 JUSTICE KENNEDY: They both -- they both
18 apply to -- they both apply to outside experts.

19 MR. YANG: Well, when a paralegal is
20 outsourced, which is your question, there is two
21 potential situations. One may be that the paralegal is
22 less expensive, and if that were the case you would
23 think that firms would normally outsource their
24 paralegals if it's less expensive to obtain them from
25 the outside than the inside.

1 CHIEF JUSTICE ROBERTS: Well, but that
2 wasn't Justice Kennedy's question. His was the
3 outsourced paralegal is better at the particular task.

4 MR. YANG: Well, if the outsourced paralegal
5 is better, it may be that the actual cost to the firm is
6 the cost that the firm pays for that paralegal to the
7 third party, Your Honor.

8 JUSTICE SOUTER: Well, in that case it would
9 bill the paralegal the same way it would bill, I take
10 it, the expense of, let's say, having water tested in a
11 pollution case. It would -- it would -- I take it it
12 would bill the client dollar for dollar what it had to
13 pay.

14 MR. YANG: In fact that's right --

15 JUSTICE SOUTER: And I --

16 MR. YANG: -- and not add profit on to that
17 -- that paralegal as well.

18 JUSTICE SOUTER: They don't add a profit and
19 they don't add a profit on to -- to travel expenses and
20 things like that.

21 MR. YANG: Right.

22 JUSTICE SOUTER: So that in each -- if that
23 is so -- in each case, "cost" means cost to the client,
24 and you're coming up with a new category of expense,
25 which is cost to someone else, and why should there be a

1 subcategory of expense, in which "cost" does not mean
2 cost to the client when every other category of expense
3 does mean cost to the client?

4 MR. YANG: Justice Souter, every other
5 category does not mean cost to the client. In fact,
6 EAJA specifically provides for fees, but the fees are
7 based on the prevailing market rates for similar
8 services.

9 JUSTICE SOUTER: Because there is a separate
10 provision for fees.

11 MR. YANG: That's correct, Your Honor.

12 JUSTICE SOUTER: Yes.

13 MR. YANG: But in that context a client need
14 not incur any legal fees, have any obligation to pay any
15 fees, and courts routinely award EAJA fees when there
16 has been no cost paid by the client in fees, and
17 similarly, even if the client has no obligation
18 ultimately to pay the cost in those circumstances --
19 where for instance a firm is providing pro bono services
20 or a legal services organization is providing pro bono
21 services to a client -- the client does not have to
22 incur or pay the costs.

23 The question is whether those costs have
24 been ultimately incurred and have been incurred at the
25 rate that the firm has incurred the cost on behalf of

1 the client.

2 JUSTICE STEVENS: May I ask this question?

3 Maybe this is a -- just the same question Justice

4 Kennedy asked, but I want to be sure of your answer.

5 Suppose you had an independent firm of paralegals. I

6 don't know whether the market contains them, but it

7 surely could. A firm that they are all paralegals, and

8 they then bill the law firm at their own hourly rate, and

9 then the law firm in turn bills the client. In that

10 situation, would the market rate of the independent firm

11 of paralegals govern?

12 MR. YANG: It would be the rate that is

13 ultimately paid. If you're outsourcing the paralegals

14 it would be the rate paid by the firm for those

15 paralegals. Now it may also be, for instance --

16 JUSTICE STEVENS: Do I understand the

17 government's position that the -- the result is

18 different if a firm uses its own paralegals as opposed

19 to outsourcing them?

20 MR. YANG: The result is not different, Your

21 Honor. The result is the same in the sense that the

22 firm's cost --

23 JUSTICE STEVENS: No. But under my example

24 they would be paying the market rate for paralegals, and

25 I think you say they could be reimbursed for that.

1 MR. YANG: It wouldn't necessarily be the
2 market rate. It would be what they are paying, which may
3 well reflect the market rate.

4 JUSTICE STEVENS: They are in the market
5 to make business. I presume the paralegals would charge
6 the going rate.

7 MR. YANG: If --

8 JUSTICE STEVENS: Assume that they also
9 charged the market rate.

10 MR. YANG: It may be. But if it's the
11 market rate, there would presumably be no incentive for
12 a firm to outsource its paralegals.

13 JUSTICE KENNEDY: But again, you're not
14 answering the hypothetical. Let's assume two cases:
15 Case A, you hire an outside paralegal at \$85 an hour.
16 He is outside, he is independent. He is just like the
17 expert engineer in the Chief Justice's question, \$85 an
18 hour. Case two, it's your own paralegal. The
19 prevailing rate for which you charge general clients is
20 \$85 an hour.

21 Why should there be a difference?

22 MR. YANG: There should be a difference,
23 Your Honor, because with respect to outsourced firms,
24 there is no concern that a firm is going to add -- well,
25 if the firm is only going to bill at its cost, the firm

1 is not going to add additional profit to the outsourced
2 paralegal.

3 So if, for instance, the firm paid \$85, under
4 our view the firm could not turn around and charge \$95
5 to the client. Likewise -- and the reason that this is
6 important in the EAJA context --

7 JUSTICE KENNEDY: Under your view, they
8 can't even charge \$85 an hour.

9 MR. YANG: Well, that's correct if their
10 cost, actual cost would be less in-house. And the
11 reason that's important is because in EAJA, unlike
12 section 1988, there are several statutory differences.
13 One, EAJA provides for other expenses, so the term
14 "attorney's fees" is not the only term that needs to be
15 construed by the Court. "Other expenses" needs to be
16 construed in a manner that gives it meaningful effect.

17 And Congress recognized, again, in the
18 legislative history -- to the extent you could disagree
19 on the meaning of "other expenses" -- Congress was very
20 clear both in 1980 and then again in 1984 that "other
21 expenses" -- attorney's fees do not include things that
22 attorneys pay and only compensates attorneys for their
23 own hourly rate.

24 And the reason that the fee cap is
25 important is because EAJA, as this Court recognized in

1 Underwood, is not intended to be fully compensatory. If
2 the cap for --

3 JUSTICE GINSBURG: I know you said that a
4 few times and you have authority for it, but it seems to
5 me odd if you look at 1988 and if the attorney's fees
6 and costs -- and costs is very limited in the statute in
7 1920 -- and if you have attorney's fees and other
8 expenses, "other expenses" is a much larger category than
9 "costs" within 1988. So I -- I would think that, well,
10 EAJA is the more compensatory because it allows for more
11 items.

12 MR. YANG: Justice Ginsburg, under Jenkins'
13 rationale, Jenkins recognized that when there is not
14 another -- another box of other expenses, where in a
15 statute which was intended to be fully compensatory,
16 that attorney's fees necessarily must include
17 compensation for all types of costs that a lawyer might
18 incur in the presentation/representation of a client.
19 That works for section 1988.

20 But if that rationale were applied to the
21 EAJA context, if "attorney's fees" were given the same
22 meaning in EAJA, there is little or no work for other
23 expenses to be done in the statute, because already
24 you've pushed all of those expenses into the box of
25 attorney's fees and --

1 CHIEF JUSTICE ROBERTS: Counsel, your --
2 this question only arises when the position of your
3 client was not substantially justified. Now under
4 those -- and it was designed, to some extent, to
5 penalize you because -- because of that fact. Why
6 should we adopt a construction that, in effect,
7 penalizes the client who has had to face the Federal
8 Government when the Federal Government's position was
9 not substantially justified? They are going to have to
10 pay the paralegal fees at market rates, but they are
11 only going to get compensation at cost.

12 MR. YANG: Mr. Chief Justice, the reason
13 that you would adopt our construction is because
14 Congress is balancing more than the intent to provide
15 compensation for prevailing parties in EAJA. It was
16 also intending to balance the effect on the Federal fisc
17 and limit the government's exposure as a means of
18 passing the Act. One of the reasons --

19 CHIEF JUSTICE ROBERTS: It's kind of a
20 stretch to suggest in a situation where they pass a law
21 that only applies to individuals or small businesses
22 where they put a cap in and so on, that another way that
23 we are going to prevent damage to the fisc was to treat
24 paralegal expenses as costs rather than at market rate.
25 I suspect that was not foremost in their mind.

1 MR. YANG: Well, Mr. Chief Justice, I think
2 the legislative history illustrates that, in fact,
3 paralegals and other costs --

4 CHIEF JUSTICE ROBERTS: Well, that assumes
5 when they said "costs," that they meant costs to the firm
6 as opposed to costs to the client. And that, I think, is
7 entirely an open question.

8 MR. YANG: Well, the relevant page of the
9 legislative history in 1984 that you're talking about
10 explains that Congress wanted to adopt the views of the
11 Administrative Conference in its model rules, and goes
12 on to quote the Administrative Conference --

13 CHIEF JUSTICE ROBERTS: Well, not to belabor
14 the point, it meant that the people who drafted the
15 Senate report may have meant that.

16 MR. YANG: Well, that's a problem with all
17 legislative history.

18 JUSTICE BREYER: I don't think it is a
19 problem with legislative history.

20 (Laughter.)

21 MR. YANG: It's a feature of all legislative
22 history.

23 JUSTICE BREYER: I think that the people in
24 Congress who hire their staffs pay attention to what
25 the staffs say in precisely the same way that any other

1 executive --

2 CHIEF JUSTICE ROBERTS: Do we know what the
3 President's view was on that question when he signed the
4 legislation into law, which is what he was required to
5 do before it became law and which he did not do under
6 the prior bill?

7 MR. YANG: The President did not express a
8 view, but what we do know is that the legislative
9 history in 1984 dealt with language that was identical
10 to that ultimately passed by the Senate -- by Congress
11 and signed by the President. And that legislative
12 history explains and quotes the Administrative
13 Conference that says that what should be awarded is an
14 award of reasonable expenses of the attorney.

15 JUSTICE SCALIA: Do you know of any other
16 case where we used -- I mean it just gets worse and
17 worse. Do you know any other case where we've used the
18 legislative history of a vetoed bill to determine the
19 meaning of a later bill that was not vetoed?

20 MR. YANG: Yes, Justice Scalia.

21 JUSTICE SCALIA: Good. What is it?

22 MR. YANG: This Court has twice cited
23 unanimous opinions, the same report that we cite here,
24 one of which was in the Jean opinion. In fact, the
25 Court not only cited the Senate report, but also cited

1 the House report to the 1984 bill.

2 JUSTICE SCALIA: When was that?

3 MR. YANG: Jean?

4 JUSTICE SCALIA: Yes.

5 MR. YANG: Pardon my --

6 JUSTICE SCALIA: Never mind. Don't take --
7 don't waste your time.

8 MR. YANG: Jean was 1990.

9 JUSTICE BREYER: I mean that wouldn't be
10 surprising would it, that wouldn't be surprising because
11 you have, in fact, very complex bills that have 14
12 sections and section of the B bill could have been
13 vetoed -- been vetoed because of a problem with section
14 14 and the repassed without section 14, in which case the
15 legislative history for the other 13 sections would be
16 highly illuminating as to what they mean.

17 MR. YANG: And in fact Congress recognized that,
18 Justice Breyer, when it reenacted -- readdressed the bill
19 in 1985, the relevant legislative history specifically
20 references the bill that existed before, that it was
21 reported by the Senate --

22 JUSTICE BREYER: The question that I had in
23 respect to this statute is -- is that my impression and
24 here -- I'd like to know how they bill secretary's
25 times. I'd like to know how they bill rent. And my

1 thought is -- and I want to be either verified or told
2 I'm wrong and explain it -- that when you have no cap,
3 the lawyer and the client want to shove everything
4 possible into the rubric attorney's fees, including the
5 kitchen sink, if the plumber is there in the kitchen of
6 the law firm.

7 (Laughter.)

8 JUSTICE BREYER: That's fine. No problem.
9 There is no other way to get paid for them.

10 But where you have a cap, you should shove
11 everything the other side, if expenses are going to be
12 paid for, because that cap means that the lawyer will
13 not get his full pay back and therefore, the lower the
14 cap, the more you want to be sure it's covering only
15 that lawyer's time. And everything else goes into
16 expense so that you can pay the lawyer adequately and he
17 will recover his expenses elsewhere.

18 Was that the theory of this bill? Is there
19 any evidence that that was the theory? If you did it
20 that way, would anything get mixed up?

21 MR. YANG: Well, the theory of the bill was
22 that attorney's fees would be based at prevailing market
23 rates, and that prevailing market rates would embody a
24 certain set of costs that might be reimbursed. I would
25 think that the prevailing practice is not to bill

1 separately for the kitchen sink, but as the Court
2 explained in Missouri versus Jenkins, Missouri's
3 analysis would extend to your hypothetical, Justice
4 Breyer. It explains that reasonable attorney's fees had
5 to cover all kinds of costs, including the costs of
6 secretaries, messengers, librarians or janitors who
7 might well be cleaning the kitchen sink.

8 JUSTICE GINSBURG: Am I right that when this
9 language first came in -- this is in relation to Justice
10 Breyer's question -- there was no cap? When did the --
11 when was the cap put on?

12 MR. YANG: The cap in EAJA was imposed from
13 the very beginning.

14 JUSTICE GINSBURG: It was.

15 MR. YANG: Yes. It was. It was in the
16 Senate bill. It was -- it was removed by subcommittee,
17 reinserted by the full Judiciary Committee, passed the
18 Senate, came over to the House and continued on for
19 passage in 1980.

20 JUSTICE GINSBURG: It would be a lot of
21 weight to put on three little words: "Billed at
22 cost." If you just read those words, it could be the
23 costs to the client, the cost to the law firm and then
24 you'd have to go to this further document, the
25 Administrative Conference document, it's rather thin I

1 think.

2 MR. YANG: Well, Justice Ginsburg, we are
3 relying not only on the 1984 but also on the 1980
4 legislative history, which although it does not
5 specifically refer to paralegals, explains that in
6 connection with the term "attorney's fees" and the
7 ceiling on attorney's fees -- and I'll quote again from
8 the Senate report, which was the first: "The ceiling on
9 attorney's fees relates only to the compensation of
10 lawyers" themselves. And then goes on to say: That
11 does not include other "costs connected with their
12 representation of a particular interest in a proceeding."

13 And when Congress did that, it specifically
14 recognized that it was taking a different approach than
15 that taken in other fee-shifting statutes. The very
16 next sentence explains that the committee notes that
17 this section is not intended to limit or affect the
18 computation of reasonable "attorney's fees" under any
19 other provision of law, and gave as an example the Civil
20 Rights Act. That is section 1988.

21 So Congress knew from the very beginning
22 that its treatment of attorney's fees as being limited
23 only to attorneys and the larger, more capacious category
24 of "other expenses" as capturing all other costs that an
25 attorney might incur in the representation of a client

1 was one that was both different from other statutes, and
2 one that was intended by Congress. And it's reflected
3 not only by the legislative history, but again by the
4 fee caps.

5 The fee caps I believe you started here were
6 specifically designed and set by reference to attorney's
7 rates, the exceptions to the fee caps again specifically
8 reference attorneys. There is an exception that you can
9 exceed the fee cap when there is a limited availability
10 of the attorneys qualified at the proceedings involved.
11 And it would be anomalous in that context where Congress
12 has paid particular attention to the billing rates of
13 attorneys, set the cap based on attorney's rates with no
14 reference to paralegals to assume --

15 JUSTICE STEVENS: May I go back --

16 MR. YANG: -- that Congress intended --

17 JUSTICE STEVENS: May I go back to the
18 point, because I think you were cut off before you went
19 into the full legislative history. I'm still concerned
20 about the argument that even if they are not fees but
21 rather costs, that the costs should be those that are
22 billed to the client. And you think there is some
23 conclusive answer in the legislative history that that's
24 not the case.

25 MR. YANG: Well, the legislative history

1 when you -- again, if you look to what Congress was
2 talking about, both the Administrative Conference rules
3 and the quotation of the Administrative Conference rules
4 --

5 JUSTICE STEVENS: Which took place when?

6 MR. YANG: This was in 1984.

7 JUSTICE STEVENS: At that time were they
8 billing paralegal's fees at cost to the client? Was
9 it --

10 MR. YANG: In fact, Your Honor, there was a
11 dispute. The legislative history speaks to the
12 controversy that evolved regarding the -- whether other
13 expenses of the term would include more than what was
14 specifically enumerated in the statute. And what we
15 cite to in our brief as a footnote at page 28, footnote
16 12, there was a dispute. Several courts had concluded
17 that paralegals were reimbursed at cost. In fact, the
18 Northcross decision, which the committee report
19 specifically references -- concluded that it was costs
20 to the attorney, as this Court recognized in Jenkins.
21 Footnote seven of Jenkins discusses the Northcross
22 decision and explains that Northcross awarded
23 out-of-pocket expenses for attorney's fees at the cost
24 to the attorney.

25 And so, when you take that controversy which

1 had evolved regarding how you compensate these other
2 expenses -- and specifically paralegal expenses -- along
3 with Congress's statement that it intended to compensate
4 out-of-pocket expenses incurred with connection to a
5 case, the model rules and Northcross when you combine
6 that with the statement that paralegals are to be
7 compensated at cost, seems clear to us that Congress is
8 intending that in contrast to attorney's fees, which
9 have a profit element embedded in them and a profit
10 element capped by the fee cap that Congress imposed in
11 1980, that when read together, it seems fairly clear
12 to us that Congress intended --

13 JUSTICE STEVENS: Yes, but every expense
14 that's reimbursed at cost has a profit element in it for
15 whoever performed the service.

16 MR. YANG: But when it's within the control
17 of the firm --

18 JUSTICE STEVENS: Business or otherwise.

19 MR. YANG: -- when it's within the control of
20 the firm, there is a particular danger that the firm can
21 inflate its own costs. Whereas when it's going out to
22 the market, of course, it's not going to control the
23 profits.

24 CHIEF JUSTICE ROBERTS: Well, maybe this is
25 the same question Justice Breyer asked, but I haven't --

1 I didn't grasp the answer. Under your system it would
2 make sense for lawyers to charge separately for
3 photocopy services, telephone services, so on because
4 then they are not going to be subject to the attorney
5 fee cap. And they may think, look, the difference
6 between cost and market rate is relatively small; the
7 difference between our hourly rate and \$125 is large.

8 MR. YANG: You're asking about the
9 incentives that firms might have.

10 CHIEF JUSTICE ROBERTS: Well, I'm just
11 saying if we adopt your position, isn't it going to be,
12 I guess, worse for your client because firms will, as
13 I've been told firms sometimes do, charge separately for
14 things at a higher rate than their cost? They will
15 charge a higher rate for photocopy services because they
16 try to factor into it overhead and things like that, than
17 cost.

18 MR. YANG: Overhead profit. We don't
19 believe it's actually going to change any practices,
20 because ultimately, when you're looking at what costs
21 are reimbursable under EAJA, it has to be costs that are
22 not traditionally already paid for in the attorney's
23 fees. So you have to look not to the practice of the
24 specific firm that's at issue, you have to look at the
25 prevailing practice.

1 CHIEF JUSTICE ROBERTS: Well, I would say --
2 I would say that it's now traditional for firms to
3 charge, say, more for their photocopy services than it
4 cost them.

5 MR. YANG: Well, if that's the case under
6 our reading, of course, we would -- we would say that
7 that is -- that is not a type of expense that was
8 contemplated by EAJA, because Congress already provided
9 for profits that attorneys get from representing a party
10 within the attorney fee and cap that.

11 The whole idea of a cap is to limit the
12 reimbursement that a firm might get from EAJA below what
13 the prevailing market rates for the services would be.
14 If the -- the prevailing market rates were below the
15 cap, the cap never comes into play. The only reason for
16 that cap is to limit compensation below market rates.
17 And it would be anomalous to allow --

18 JUSTICE STEVENS: The cap doesn't apply
19 to expenses, does it?

20 MR. YANG: I didn't catch --

21 JUSTICE STEVENS: The cap does not apply to
22 reimbursement of expenses at cost?

23 MR. YANG: Precisely, because in our view
24 expenses are at cost and it is not -- you don't have the
25 same danger of having firms imbedding profit within

1 their own rate.

2 JUSTICE STEVENS: It seems to me just the
3 opposite just as the Chief Justice suggests. It seems
4 to me you're creating an incentive for the firms to --
5 to charge as much as they can -- I mean, under market
6 rates for everything other than the time of the lawyer
7 himself.

8 MR. YANG: But again, and under our view if
9 they were to -- if a firm were to charge, say, 50 cents
10 for a photocopy and it only cost 10 or 15 cents for that
11 photocopy, under our view the firm would only be
12 reimbursed for the 15 cents. There's not an incentive
13 to bill the client for anything more, because under --

14 JUSTICE STEVENS: No, "other costs" could
15 reasonably be interpreted to include overhead. It's not
16 just the paper and the copying time.

17 MR. YANG: Overhead, we don't believe, is
18 fairly attributable to a particular case. And, in fact,
19 Congress was specific about this particular point on
20 overhead in the legislative history.

21 CHIEF JUSTICE ROBERTS: Well, I think you
22 missed my point. It was even if you're right, 50 cents
23 and they only can charge 15 cents, they have an
24 incentive to separately charge for photocopying, because
25 they get the 15 cents, and otherwise if they're -- it's

1 going to -- they are going to lose it over the cap if
2 you say no, that's part of the attorney's fees.

3 MR. YANG: I guess you're right to some
4 extent there would be an incentive to shift out costs
5 even though it would be less of an incentive than
6 shifting out costs plus profit. But the reason that --
7 that the -- the reason that we think that that's a bit
8 different is because, again, Congress intended for the
9 profit-making part of a -- an attorney's compensation to
10 come out of attorney's fees, and then are capped. And
11 there is very little incentive to -- to shift out fees
12 unless the market itself is already doing that. And if
13 the market itself is already billing for photocopies,
14 then that's what you're going to get. Even if you
15 didn't separately charge for photocopies as part of your
16 rate, you could bill under EAJA. The market is
17 providing for photocopies being billed separately, you
18 can simply submit a request for photocopies.

19 JUSTICE SCALIA: When you have a -- you can
20 submit it in a letter. I've looked in your brief, I can't
21 find this Jean case that you mentioned on use of veto.
22 I have a certain morbid interest in it.

23 (Laughter.)

24 MR. YANG: It's at 496 U.S. 154. And
25 it's -- I believe it's cited, it's Commissioner, INS

1 versus Jean. And I apologize if it's not there, but I
2 thought it was.

3 JUSTICE SCALIA: Yes. No, it's all right.

4 JUSTICE GINSBURG: I'd like to go back to a
5 question that Justice Kennedy asked of Mr. Wolfman.
6 Isn't there -- doesn't it make sense to take a word like
7 "attorney's fees" and like the word "discrimination," we
8 have many different anti-discrimination statutes, but
9 there has been an attempt to give that word
10 "discrimination" the same meaning in all those statutes.
11 And here the term "attorney's fees," if it means that
12 includes paralegals in 1988, why not say every time
13 "attorney's fees" comes up, that's what it's going to
14 mean?

15 MR. YANG: As a general rule, in
16 fee-shifting statutes that are like section 1988, that
17 is in fact the rule. But the rule that similar words
18 are given a similar meaning readily yields when there is
19 indication that Congress did not intend the same to
20 apply here, and in fact for instance in the Fogerty
21 versus Fantasy case, the Court specifically rejected the
22 approach of adopting the understanding of reasonable
23 attorney's fees applied in other fee-shifting statutes,
24 because it found that the policy and legislative history
25 of the Copyright Act required, or at least suggested,

1 that Congress intended something else.

2 And here, not only do we have a different
3 legislative history, we have fundamentally different
4 statutory text. There is a second category of "other
5 expenses" that must be given meaning in conjunction with
6 "attorney's fees." It did not --

7 JUSTICE ALITO: Well on that point, does the
8 statute say that all non fee expenses are compensable at
9 cost? Or are you arguing that the work that's done by
10 paralegals is a study or analysis project?

11 MR. YANG: It's either a -- it can be a study
12 or analysis or at least analogous to that type of a -- a
13 --

14 JUSTICE ALITO: Which is it, is it a study
15 analysis or project? That seems like a strange way of
16 describing it.

17 MR. YANG: It can be -- it can be a project,
18 for instance in this case, the paralegal compiled the
19 relevant information regarding how much wages needed to
20 be developed -- repaid on the merits of the case, how much
21 taxes needed to be reimbursed. That could be understood
22 as a project, particularly when Congress has modified it
23 with any, the word "any" before.

24 CHIEF JUSTICE ROBERTS: Counsel, there are
25 occasions, aren't there, when the government is entitled

1 to attorney's fees?

2 MR. YANG: There are occasions.

3 CHIEF JUSTICE ROBERTS: Do you know how you
4 bill paralegal times -- time in those situations?

5 MR. YANG: We often don't bill them
6 separately.

7 CHIEF JUSTICE ROBERTS: You often don't bill
8 them separately.

9 MR. YANG: I -- I asked this question. I
10 have not been able to determine that we have ever billed
11 paralegal time separately. Normally, we're like every
12 other litigant in a normal fee-shifting statute that
13 would simply provide for attorneys' fees; and again, the
14 way the government calculates it, it is based on its
15 overall costs per benefit, ends up being 29 percent of
16 salary. There is an attorney's fee that benefits --
17 percentage and a small overhead charge as well. For the
18 attorney's fee, but not separately for paralegals.

19 CHIEF JUSTICE ROBERTS: Thank you, Mr. Yang.
20 Mr. Wolfman, you have four minutes remaining.

21 REBUTTAL ARGUMENT OF BRIAN WOLFMAN

22 ON BEHALF OF THE PETITIONER

23 MR. WOLFMAN: Thank you, Mr. Chief Justice.

24 I want to start where the discussion left
25 off. It harkens back to something that Mr. Yang said

1 towards the beginning of his argument. He said that,
2 that if the Federal Circuit weren't affirmed, that there
3 would be no meaning to the term "other expenses," but
4 that's just not so; it would begin to lose its meaning.

5 It means things like travel, long distance
6 phone, copying, the types of things we think of as
7 out-of-pocket expenses. The problem here is they are
8 shoe-horning a -- the government is shoe-horning what is
9 always conceived of as an in-house professional service
10 as an out-of-pocket expense, and it just does not fit
11 there.

12 Let me turn to the legislative history and
13 I'd like to do two things with that before I close. The
14 first is, let's presuppose that it should be given some
15 weight, as Justice Breyer has suggested, and the problem
16 is that it just doesn't bear the weight that the
17 government gives the report. If you look at -- and this
18 is discussed at length at page 12 of our reply brief --
19 let's turn for instance to the Administrative Conference
20 report. Here's what it says. It's a 46 Federal
21 Register 32913. It says that: With regard to expenses,
22 they should be compensable whenever the lawyer, quote,
23 "ordinarily charges clients separately for such
24 expenses." That's the situation today with paralegal
25 expenses.

1 Then it's true that the ACUS, the
2 Administrative Conference, did not issue a hard and fast
3 rule with respect to paralegal expenses. But that of
4 course is because the market wasn't uniform at that time
5 as it is today. Today it's nearly ubiquitous that
6 paralegal services are -- are separately billed. But
7 listen to what the court -- what the ACUS did say. They
8 didn't -- they declined to issue a rule because, quote,
9 "practices with respect to charging clients for paralegal
10 time vary depending on locality and field of practice."

11 But that statement reflects exactly our
12 position: That the rule the Court embraced in Jenkins
13 is that the compensability of paralegal services should
14 replicate prevailing practices in the market.

15 Now let me just end by -- by -- on this
16 note. If -- there is also the question raised about
17 whether you should give any weight to this -- this
18 report at all. We say that you should not, for the
19 reasons essentially in Justice Scalia's last question
20 on that topic; but we do -- we do talk about why the
21 Jean decision's use of that report does not bear the
22 weight that the government gives us -- gives it, and
23 that's on pages 13 and 14 of our brief, our reply brief.
24 And the reason is -- is because in Jean, no one brought
25 to the Court's attention in any of the briefs the problem

1 that the -- that legislative history accompanied vetoed
2 legislation. When it was brought to the Court's
3 attention in the Scarborough case three years ago,
4 neither the majority opinion nor the dissent cited that
5 report.

6 CHIEF JUSTICE ROBERTS: Well, but --
7 Justice Breyer is correct, isn't he, that there was no
8 reason for the Senate to sort of redo a report that they
9 had already done on a bill that was substantially
10 identical?

11 MR. WOLFMAN: That might be true in some
12 circumstances, but that's not what happened in 1985.
13 There was an extensive House report accompanying that
14 legislation. There was no Senate report. The House
15 report --

16 CHIEF JUSTICE ROBERTS: There was no Senate
17 report because they had done it just the previous year.

18 MR. WOLFMAN: I think not, Your Honor.
19 There were some other things taken up in that House
20 report and the House report is quite extensive and it
21 says nothing; it's silent on the question of paralegal
22 services.

23 Look, let me just say as I close that -- may
24 I answer the question?

25 Let me just say as I close that -- that if

1 the Court wishes to look at that report, at the very
2 best for the government, it's a wash. Thank you very
3 much.

4 CHIEF JUSTICE ROBERTS: Thank you, counsel,
5 The case is submitted.

6 (Whereupon, at 11:06 a.m., the case in the
7 above-entitled matter was submitted.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A				
abilities 21:19	agree 5:18,21 6:2 7:6 21:1,2 29:16	applicants 23:2	associate's 10:13	authority 36:4
able 53:10	agrees 28:17	applied 36:20 51:23	Association 23:14	authorizes 26:22
above-entitled 1:14 57:7	air 30:14	applies 20:21 37:21	assume 19:13 34:8,14 44:14	availability 44:9
Absolutely 5:5 18:24	Alito 11:24 13:16 14:8 15:12 52:7,14	apply 30:18,18 48:18,21 51:20	assumes 38:4	award 3:11,14 26:22 32:15 39:14
Access 3:12	Alito's 14:24	appreciate 18:3 19:8	assuming 7:7 20:24	awarded 4:5 15:6 23:5 25:21 26:2 39:13 45:22
accompanied 25:17 56:1	allocated 21:15	approach 43:14 51:22	assumptions 21:19	awards 26:10
accompanying 56:13	allow 48:17	appropriate 15:25 28:18	attack 22:20	aware 26:10
account 3:19	allowed 8:12	approximate 15:9	attempt 51:9	a.m 1:16 3:2 57:6
Act 3:12 20:21 37:18 43:20 51:25	allows 24:3 29:19 36:10	arguing 52:9	attention 38:24 44:12 55:25 56:3	
actual 12:22,23 28:12 31:5 35:10	amended 6:17	argument 1:15 2:2,7 3:3,7 4:15,17,19,25 6:18,23 8:9 10:8,21 11:5 11:13 12:23 18:4,4 26:18 44:20 53:21 54:1	attorney 3:12,15 3:18,21,24 7:13 11:17 15:5 17:4 27:3 39:14 43:25 45:20,24 47:4 48:10	B
ACUS 55:1,7	American 13:14	arguments 24:20	attorneys 3:20 13:24 28:21 35:22,22 43:23 44:8,10,13 48:9 53:13	B 40:12
add 28:13 31:16 31:18,19 34:24 35:1	amicus 23:13	arises 37:2	attorney's 5:9 5:21 6:6,20 8:3 10:2 13:22 17:2,3 18:1,8 26:25 27:1,1,8 27:10,19,24 28:3,21 35:14 35:21 36:5,7 36:16,21,25 41:4,22 42:4 43:6,7,9,18,22 44:6,13 45:23 46:8 47:22 50:2,9,10 51:7 51:11,13,23 52:6 53:1,16 53:18	back 8:24 16:25 19:10 21:6 22:16 24:4,5 24:12 41:13 44:15,17 51:4 53:25
additional 35:1	amount 6:25 7:1 7:13 15:25	arrangements 20:24	arrayed 7:21 9:3	balance 26:15 37:16
adds 28:23	analogous 52:12	arrayed 7:21 9:3	asked 10:7 33:4 46:25 51:5 53:9	balancing 37:14
adequately 41:16	analysis 12:18 20:21 29:8,17 29:20 42:3 52:10,12,15	arrayed 7:21 9:3	asking 47:8	based 32:7 41:22 44:13 53:14
administrative 8:10,13 38:11 38:12 39:12 42:25 45:2,3 54:19 55:2	anomaly 11:15	arrayed 7:21 9:3	asks 30:10	baseline 28:23
adopt 37:6,13 38:10 47:11	answer 4:3 7:5 14:1 18:3 22:1 30:7,15 33:4 44:23 47:1 56:24	arrayed 7:21 9:3	aspect 17:5	bear 54:16 55:21
adopted 10:10	answers 4:18,25	arrayed 7:21 9:3	aspects 23:11 25:22	began 8:15
adopting 51:22	ANTHONY 1:20 2:5 26:18	arrayed 7:21 9:3	Assistant 1:20	beginning 42:13 43:21 54:1
affect 43:17	anti-discrimin... 51:8	arrayed 7:21 9:3	Assistants 23:14	behalf 1:18,21 2:4,6,9 3:8 26:13,19 32:25 53:22
affirmed 3:11 54:2	anyway 6:1 13:2 14:4	arrayed 7:21 9:3	associates 7:23 10:11,17,24 11:9,10 15:21 21:20	belabor 38:13
afforded 16:19	apart 22:13	arrayed 7:21 9:3	attributable 49:18	believe 6:4 7:16 21:24 44:5 47:19 49:17 50:25
age 18:20	apologize 51:1	arrayed 7:21 9:3		benefit 25:15
agencies 26:22	Appeals 12:7	arrayed 7:21 9:3		
agency 8:11	APPEARAN... 1:17	arrayed 7:21 9:3		
agent 7:25 8:4	appeared 9:15	arrayed 7:21 9:3		
agents 8:6,9 10:23	appellate 22:10	arrayed 7:21 9:3		
ago 56:3		arrayed 7:21 9:3		

<p>53:15 benefits 12:17 24:4,5 28:11 28:14,24 29:3 29:9 53:16 best 57:2 better 6:9 31:3,5 bill 24:24 29:7 30:12 31:9,9 31:12 33:8 34:25 39:6,18 39:19 40:1,12 40:18,20,24,25 41:18,21,25 42:16 49:13 50:16 53:4,5,7 56:9 billed 9:16,22,25 10:13,17 17:4 17:18 18:9,9 30:12 42:21 44:22 50:17 53:10 55:6 billing 10:23 17:13,23,25 18:7 19:15 20:23 44:12 45:8 50:13 bills 3:22 33:9 40:11 bit 18:3 50:7 Board 12:7 boils 4:15 bono 32:19,20 bottom 6:3 bounds 16:18 box 36:14,24 Breyer 24:16,23 25:3,11,14 38:18,23 40:9 40:18,22 41:8 42:4 46:25 54:15 56:7 Breyer's 42:10 BRIAN 1:18 2:3 2:8 3:7 53:21 brief 19:1,12</p>	<p>21:5 22:3,10 22:21 23:13 45:15 50:20 54:18 55:23,23 briefs 25:19 55:25 broader 27:2 brought 55:24 56:2 business 21:15 34:5 46:18 businesses 22:18 23:2 37:21</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 calculate 28:19 calculates 28:20 53:14 calculation 29:12 candid 20:14 cap 4:11,15,24 5:2,4,7,19,22 5:23 6:3,18,21 6:25 7:21,24 8:4,20 9:4 10:13 14:4,6 15:18 16:1 18:23 23:17 27:24 35:24 36:2 37:22 41:2,10,12,14 42:10,11,12 44:9,13 46:10 47:5 48:10,11 48:15,15,16,18 48:21 50:1 capacious 43:23 capped 7:13,14 7:20 46:10 50:10 capping 6:24 caps 44:4,5,7 capturing 43:24 care 29:3 carried 20:4</p>	<p>case 3:4 4:1 9:12 19:1,1 26:1,2 27:6 28:9 30:22 31:8,11 31:23 34:15,18 39:16,17 40:14 44:24 46:5 48:5 49:18 50:21 51:21 52:18,20 56:3 57:5,6 cases 20:8,9 23:12 24:2 26:13 34:14 Casey 10:5 catch 48:20 categories 26:23 category 31:24 32:2,5 36:8 43:23 52:4 ceiling 15:18 18:14 27:10 43:7,8 cents 49:9,10,12 49:22,23,25 certain 41:24 50:22 certainly 5:21 19:24 21:1 25:13 change 19:18 47:19 changed 25:7 charge 34:5,19 35:4,8 47:2,13 47:15 48:3 49:5,9,23,24 50:15 53:17 charged 34:9 charges 11:24 54:23 charging 23:19 55:9 Chertoff 1:7 3:5 Chief 3:3,9 10:16 11:1,4 17:15 20:20</p>	<p>21:3,18,23 22:14 23:16 26:4,7,16,20 27:12 28:1 29:1,15,23 30:15 31:1 34:17 37:1,12 37:19 38:1,4 38:13 39:2 46:24 47:10 48:1 49:3,21 52:24 53:3,7 53:19,23 56:6 56:16 57:4 chopping 24:13 Circuit 3:11,17 4:20 5:14 11:21 12:7 20:15,16 21:7 26:1 54:2 Circuit's 10:9 11:15 22:23,24 circumstances 32:18 56:12 citations 23:23 24:8 cite 19:1 39:23 45:15 cited 39:22,25 39:25 50:25 56:4 cites 25:25 26:1 Civil 43:19 claim 14:19 claimant 23:9 claimants 23:4,7 23:14 24:5,13 24:15 claimed 20:16 cleaning 42:7 clear 20:3 27:25 28:2 35:20 46:7,11 client 3:22 15:4 17:5,18 24:12 26:5 27:4 29:14 31:12,23</p>	<p>32:2,3,5,13,16 32:17,21,21 33:1,9 35:5 36:18 37:3,7 38:6 41:3 42:23 43:25 44:22 45:8 47:12 49:13 clients 21:14 22:25 23:4 26:14 34:19 54:23 55:9 client's 27:6 close 54:13 56:23,25 closer 7:24 collapses 6:19 combine 46:5 come 8:23 28:8 50:10 comes 48:15 51:13 comfortably 19:5 coming 31:24 Commissioner 50:25 committee 24:19 25:5,25 42:17 43:16 45:18 Company 1:4 3:13 compared 10:14 15:15 compensability 15:20 55:13 compensable 3:24 4:21,23 10:11 12:2 13:19 18:8,11 52:8 54:22 compensate 46:1,3 compensated 11:7 13:24 14:9,11 46:7</p>
--	--	--	---	--

18:10 19:17,22 20:8 23:2,8,8 23:15 24:10 26:22 27:9,15 27:25 28:3 32:6,15 35:6 35:11,13,25 36:10,21,22 37:15 42:12 47:21 48:8,12 50:16 EAJA's 27:9,16 early 17:22 economic 20:7 21:10,11,16 22:2 23:10 effect 19:2,15 35:16 37:6,16 efficient 20:19 either 12:22 19:14 41:1 52:11 elaborate 29:12 element 46:9,10 46:14 embedded 46:9 embody 41:23 embraced 55:12 embraces 26:25 emphatically 17:24 Employing 3:22 enacted 5:15 9:7 13:23 14:10 27:8 enactment 7:11 27:17 encompasses 27:3 ends 53:15 engineer 34:17 engineering 29:8,24,25 enrich 26:12 entire 12:24 entirely 38:7 entitled 52:25	enumerated 45:14 Equal 3:12 ESQ 1:18,20 2:3 2:5,8 essence 8:11 10:22 essentially 5:15 17:8 24:13 55:19 ethical 21:11 22:2,7 events 11:6 evidence 41:19 evolved 45:12 46:1 exactly 11:5 25:23 55:11 example 28:5 33:23 43:19 exceed 4:24 5:2 6:17 24:4 44:9 excellent 12:5 exception 44:8 exceptions 44:7 excuse 5:3 25:25 executive 39:1 exist 13:2 existed 13:22 17:11 40:20 exists 8:2 expense 6:11 31:10,24 32:1 32:2 41:16 46:13 48:7 54:10 expenses 11:25 13:3,4,4,18 14:19 15:1,3,4 15:5 26:23,24 27:2,8 28:2,3,4 29:6 31:19 35:13,15,19,21 36:8,8,14,23 36:24 37:24 39:14 41:11,17 43:24 45:13,23	46:2,2,4 48:19 48:22,24 52:5 52:8 54:3,7,21 54:24,25 55:3 expensive 30:22 30:24 experience 21:24 22:12 expert 29:6 34:17 experts 30:18 explain 6:9 10:15 25:18 27:21 41:2 explained 3:18 42:2 explains 38:10 39:12 42:4 43:5,16 45:22 exposure 37:17 express 39:7 extend 18:2 42:3 extensive 56:13 56:20 extensively 19:1 21:4 extent 4:24 9:20 17:11 20:16 24:10 35:18 37:4 50:4	falls 22:13 Fantasy 51:21 far 10:8 11:8 fast 55:2 feature 38:21 Federal 3:11,17 4:20 5:14 10:9 11:15,21 12:7 20:14,16 21:7 22:22,24 23:7 23:22 24:2,7,9 26:22 37:7,8 37:16 54:2,20 fee 5:2 15:25 17:2 18:5 23:8 24:3,10,11,14 26:10 35:24 44:4,5,7,9 46:10 47:5 48:10 52:8 53:16,18 fees 3:12,15,19 3:23,24 4:5,6,8 4:23 5:10,19 5:21 6:7,20,24 6:25 7:12,12 7:13,19,19,20 7:22,25 8:3,3,4 8:12 9:8,9,15 10:2,10 11:17 11:25 13:22,22 15:5 17:3 18:1 18:8 19:5 23:15 26:24,25 27:8,11,19,24 28:3,22 29:5 32:6,6,10,14 32:15,15,16 35:14,21 36:5 36:7,16,21,25 37:10 41:4,22 42:4 43:6,7,9 43:18,22 44:20 45:8,23 46:8 47:23 50:2,10 50:11 51:7,11 51:13,23 52:6	53:1,13 fee-shifting 12:21,24 15:15 17:10 26:9,9 43:15 51:16,23 53:12 fewer 9:17 field 55:10 figure 29:9 find 12:9 50:21 fine 41:8 finished 8:20 firm 10:11,14 12:13,15 18:7 28:12,13 29:13 29:19,22 30:9 31:5,6 32:19 32:25 33:5,7,8 33:9,10,14,18 34:12,24,25,25 35:3,4 38:5 41:6 42:23 46:17,20,20 47:24 48:12 49:9,11 firms 9:16 11:11 17:13 19:10 22:17 29:23 30:2,23 34:23 47:9,12,13 48:2,25 49:4 firm's 33:22 first 3:4 4:17,17 4:25 7:5 8:21 8:23 25:14 27:16 29:17 30:16 42:9 43:8 54:14 fisc 22:21,22 37:16,23 fit 54:10 floor 15:18 Fogerty 51:20 follow 19:22,23 19:23,23 following 19:17 footnote 23:24
		F		
		face 37:7 faced 15:6 fact 9:13 11:18 22:14 23:8 25:25 28:14 29:19 31:14 32:5 37:5 38:2 39:24 40:11,17 45:10,17 49:18 51:17,20 factor 16:15,16 47:16 fairly 46:11 49:18 fall 10:13		

45:15,15,21 foremost 37:25 forms 9:23 forth 10:24 12:16 13:8 23:23 found 51:24 founded 21:21 four 53:20 fringe 28:11,14 full 41:13 42:17 44:19 fully 4:23 20:4 36:1,15 functionally 27:18 fundamentally 52:3 further 26:14 30:8 42:24	glib 19:2 go 5:6 6:21 29:12 42:24 44:15,17 51:4 goes 14:23 17:3 27:21 38:11 41:15 43:10 going 9:18 12:9 12:9,11,12 13:1,3,6 14:4 16:3,4,25 20:23,25 21:8 25:11,13 28:8 29:12 34:6,24 34:25 35:1 37:9,11,23 41:11 46:21,22 47:4,11,19 50:1,1,14 51:13 good 8:6 30:10 39:21 gotten 18:23 govern 33:11 government 4:19 5:18,20 6:5 10:10 13:12 15:2 18:13 20:9 22:21 24:21 25:19 28:16,20 28:21,22,23 37:8 52:25 53:14 54:8,17 55:22 57:2 government's 4:14 6:10,18 8:19 10:8,21 11:13,14 12:6 18:4,4,10 20:22,24 23:15 33:17 37:8,17 grasp 47:1 great 23:1 greater 21:24 ground 3:15 group 25:4	groups 23:1,6 guess 47:12 50:3	<hr/> H <hr/> half 24:14 handle 22:7 26:13 happened 12:6 56:12 hard 19:8 24:15 55:2 harkens 53:25 head 21:10 health 29:3 hear 3:3 held 3:23 17:23 help 10:15 high 18:23 19:9 higher 10:12 47:14,15 highly 40:16 hire 34:15 38:24 history 13:14 24:18 25:17,23 35:18 38:2,9 38:17,19,22 39:9,12,18 40:15,19 43:4 44:3,19,23,25 45:11 49:20 51:24 52:3 54:12 56:1 hit 18:14 HOMELAND 1:8 Honor 5:9,25 6:15 8:23 9:12 10:20 12:19 31:7 32:11 33:21 34:23 45:10 56:18 hope 25:12 Hospitals 10:5 17:8 hour 10:18 12:12 14:10 16:2 23:20	28:9 34:15,18 34:20 35:8 hourly 28:11 33:8 35:23 47:7 hours 12:11 House 27:10,17 40:1 42:18 56:13,14,19,20 hyperinflation 11:19 15:19 16:12 20:5 hypothetical 34:14 42:3	45:13 49:15 includes 28:3 51:12 including 27:4 41:4 42:5 incorrectly 5:1 incur 32:14,22 36:18 43:25 incurred 32:24 32:24,25 46:4 independent 33:5,10 34:16 indication 51:19 individuals 8:10 37:21 individual's 11:6 inflate 46:21 inform 10:1 information 52:19 initial 27:16 inquiry 30:8 INS 50:25 inside 30:25 insist 5:24 21:14 instance 22:8 32:19 33:15 35:3 51:20 52:18 54:19 intellectual 30:1 intend 51:19 intended 14:16 36:1,15 43:17 44:2,16 46:3 46:12 50:8 52:1 intending 37:16 46:8 intent 37:14 interest 27:22 43:12 50:22 interested 8:16 interesting 6:14 12:23,25 Internet 12:9 28:8
<hr/> G <hr/> G 3:1 general 1:20 34:19 51:15 generally 5:2 9:8 22:11 generated 10:10 Ginsburg 4:10 4:13 8:17 15:23 16:20 28:7,16 36:3 36:12 42:8,14 42:20 43:2 51:4 Ginsburg's 7:4 give 4:18 9:19 19:17 22:8 23:23 51:9 55:17 given 36:21 51:18 52:5 54:14 gives 35:16 54:17 55:22,22 giving 10:22 21:13 28:11	<hr/> I <hr/> idea 48:11 identical 27:18 39:9 56:10 illuminating 40:16 illustrated 28:4 illustrates 11:14 38:2 imbedding 48:25 impact 22:22,25 24:15 impecunious 24:13 importance 24:18 important 4:16 35:6,11,25 imposed 42:12 46:10 impression 40:23 impressive 22:4 incentive 20:17 26:13 34:11 49:4,12,24 50:4,5,11 incentives 47:9 include 3:16 17:3 35:21 36:16 43:11				

interpret 10:2	21:3,18,23	Kennedy's	29:7 30:10,11	36:6 43:22
interpreted 4:2	22:14,16 23:16	22:17 30:16	36:17 41:3,12	44:9
49:15	24:16,23 25:3	31:2	41:16 49:6	line 6:3
involved 44:10	25:11,14 26:4	kind 20:8 37:19	54:22	listed 29:6
in-house 13:12	26:7,16,20	kinds 42:5	lawyers 4:23 5:2	listen 55:7
35:10 54:9	27:12 28:1,7	kitchen 41:5,5	5:16 7:19 9:3,8	litigant 53:12
irrelevant 4:16	28:16 29:1,15	42:1,7	14:5,9,9 15:18	litigation 26:23
issue 25:5 47:24	29:23 30:3,7	knew 43:21	18:25 19:4	little 18:3 36:22
55:2,8	30:15,16,17	knock 16:5	20:18 21:8,13	42:21 50:11
item 29:10	31:1,2,8,15,18	knock-down	22:5 23:6	locality 55:10
items 29:5 36:11	31:22 32:4,9	16:5	26:12,13 27:20	long 21:10 54:5
i.e 21:12	32:12 33:2,3	know 14:4,5,9	43:10 47:2	look 12:22 28:8
	33:16,23 34:4	16:2 19:8,9	lawyer's 6:25	36:5 45:1 47:5
	34:8,13 35:7	24:16,23 29:6	7:14 9:23	47:23,24 54:17
J	36:3,12 37:1	33:6 36:3 39:2	17:12,16 18:6	56:23 57:1
janitors 42:6	37:12,19 38:1	39:8,15,17	18:9,14,14	looked 50:20
Jean 39:24 40:3	38:4,13,18,23	40:24,25 53:3	41:15	looking 5:13
40:8 50:21	39:2,15,20,21	knows 30:9	lead 4:20	7:10 8:25
51:1 55:21,24	40:2,4,6,9,18		left 53:24	47:20
Jenkins 3:23	40:22 41:8	L	legal 7:12 11:19	looks 5:1 7:8
9:14,20,25	42:3,8,9,14,20	labor 3:20 17:4	15:19 16:12	lose 23:4,15 50:1
10:3 16:25	43:2 44:15,17	language 27:18	20:5 23:14	54:4
17:24 19:23,23	45:5,7 46:13	39:9 42:9	32:14,20	loss 18:12
20:8 36:12,13	46:18,24,25	lapsed 27:16	legislation 25:17	lot 22:5 25:8
42:2 45:20,21	47:10 48:1,18	large 7:21 8:1	27:13 39:4	29:3 42:20
55:12	48:21 49:2,3	9:2 19:9 47:7	56:2,14	love 8:22
judge 15:24	49:14,21 50:19	largely 4:23	legislative 24:18	low 7:22
Judiciary 24:19	51:3,4,5 52:7	larger 36:8	25:16,23 35:18	lower 10:22
42:17	52:14,24 53:3	43:23	38:2,9,17,19	41:13
junior 7:22	53:7,19,23	largest 11:10	38:21 39:8,11	lower-billed
10:24 11:9	54:15 55:19	Laughter 21:22	39:18 40:15,19	10:23
15:21 21:20	56:6,7,16 57:4	38:20 41:7	43:4 44:3,19	
jurisprudence	Justice's 34:17	50:23	44:23,25 45:11	M
13:14	justification	law 8:11 9:16	49:20 51:24	Main 19:5
Justice 1:21 3:3	22:15	10:11 11:11	52:3 54:12	majority 23:1
3:9,12 4:10,13	justified 20:22	12:13,15 17:13	56:1	24:2 56:4
5:3,6,11,17,24	20:25 37:3,9	18:6 19:10	length 23:13	making 18:19
6:2,6,12,22 7:4		22:17 23:7,22	25:18 54:18	manner 35:16
7:10,25 8:2,6	K	24:2,7,8,9,9	letter 50:20	March 1:12
8:15,17,19 9:6	K 11:10 19:6	28:12,13 29:19	let's 31:10 34:14	market 3:15,24
10:7,16 11:1,4	Kennedy 8:15	33:8,9 37:20	54:14,19	4:5,21 10:12
11:24 13:1,6	8:19 10:7	39:4,5 41:6	librarians 42:6	11:20 12:22
13:10,16 14:8	19:13,22 20:6	42:23 43:19	Likewise 35:5	14:15,17,20,22
14:18,24 15:12	20:11 30:3,7	lawyer 6:14,17	limit 37:17	15:9,16,20
15:23 16:20	30:17 33:4	8:12 12:8 16:1	43:17 48:11,16	16:2,4,12,16
17:15 18:12,17	34:13 35:7	16:2,6 22:6	limitation 27:23	16:17 17:21
18:21 19:13,22	51:5	23:19 24:3,11	limited 29:21	18:11 19:14,18
20:6,11,20				

<p>25:24 26:2 32:7 33:6,10 33:24 34:2,3,4 34:9,11 37:10 37:24 41:22,23 46:22 47:6 48:13,14,16 49:5 50:12,13 50:16 55:4,14 markets 14:3 15:17 18:25 market-based 4:7 match 16:5 matter 1:14 24:24 57:7 mean 8:2 13:2 18:22 19:2,6 19:19,23 22:3 23:18 26:5 32:1,3,5 39:16 40:9,16 49:5 51:14 meaning 35:19 36:22 39:19 51:10,18 52:5 54:3,4 meaningful 35:16 means 31:23 37:17 41:12 51:11 54:5 meant 26:5 38:5 38:14,15 members 25:15 mentioned 15:22 50:21 merits 52:20 messengers 42:6 MICHAEL 1:7 mind 25:4 37:25 40:6 minutes 53:20 missed 49:22 Missouri 3:23 9:13,20,24 10:3 16:25</p>	<p>17:24 42:2 Missouri's 42:2 mistaken 14:18 14:19 mixed 41:20 model 38:11 46:5 modest 7:23 modified 52:22 moment 7:12 money 11:1 morbid 50:22 morning 3:4</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 National 23:13 natural 26:25 naturally 27:2 near 14:4 nearly 55:5 necessarily 12:2 19:6 34:1 36:16 necessary 27:5 need 32:13 needed 52:19,21 needs 35:14,15 negligible 22:23 neither 56:4 never 40:6 48:15 new 31:24 nine 9:14 non 52:8 non-fee 13:18 normal 53:12 normally 30:23 53:11 Northcross 26:1 45:18,21,22 46:5 note 55:16 notepad 8:16 notes 43:16 noting 22:24 notion 12:20 21:8</p>	<p>number 12:11 25:22</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 obligation 32:14 32:17 obtain 30:24 occasions 52:25 53:2 occurring 21:12 odd 7:15,17 36:5 Okay 5:11 11:4 once 17:13 open 38:7 opening 25:19 opinion 39:24 56:4 opinions 39:23 opportunity 8:22 opposed 33:18 38:6 opposite 25:24 49:3 oral 1:14 2:2 3:7 26:18 ordinarily 54:23 organization 32:20 original 7:11 outlays 27:3 outside 16:18 29:18,22,22,24 30:18,25 34:15 34:16 outsource 30:23 34:12 outsourced 30:20 31:3,4 34:23 35:1 outsourcing 33:13,19 outstripped 11:20 out-of-pocket 6:11 13:15</p>	<p>15:1,3,5 28:3,4 45:23 46:4 54:7,10 overall 53:15 overhead 9:24 12:15 13:7 28:10,15 29:9 47:16,18 49:15 49:17,20 53:17 overriding 16:16</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3:1 page 2:2 38:8 45:15 54:18 pages 55:23 paid 8:6 14:20 15:8 23:8 27:3 32:16 33:13,14 35:3 41:9,12 44:12 47:22 paper 49:16 paralegal 3:14 3:23 4:8,21,22 6:24 7:19,22 8:3 9:3,14 11:22,24 12:10 13:22 15:2,8 15:21 16:4 17:5,10 18:5,5 22:4,8 23:5 24:14 25:20 26:2 28:5,10 28:14 29:5,10 30:9,11,19,21 31:3,4,6,9,17 34:15,18 35:2 37:10,24 46:2 52:18 53:4,11 54:24 55:3,6,9 55:13 56:21 paralegals 3:16 5:3,19 9:8 10:24 11:10,17 13:3,25 14:3 14:10 16:22</p>	<p>19:15 20:19 21:9,13,20 23:11 25:20 27:5 28:19 30:24 33:5,7 33:11,13,15,18 33:24 34:5,12 38:3 43:5 44:14 45:17 46:6 51:12 52:10 53:18 paralegal's 45:8 parallel 28:20 Pardon 40:5 paren 25:21 part 8:13,14 12:5 19:14 28:10,15 50:2 50:9,15 particular 27:22 31:3 43:12 44:12 46:20 49:18,19 particularly 52:22 parties 37:15 partners 10:14 10:25 partner's 7:23 party 15:4,6,7,8 26:11 31:7 48:9 pass 37:20 passage 42:19 passed 17:10,17 17:20 24:25 27:13 39:10 42:17 passing 37:18 pay 5:22 31:13 32:14,18,22 35:22 37:10 38:24 41:13,16 paying 28:14 33:24 34:2 payments 27:1 pays 31:6</p>
--	--	---	---	--

penalize 37:5	49:19,22 52:7	15:7,16 16:17	proves 10:8 11:8	quote 27:19
penalizes 37:7	pointed 9:13	26:11 32:7	11:13	38:12 43:7
people 20:23	11:16 20:15	34:19 37:15	provide 26:13	54:22 55:8
21:12 25:4	22:3	41:22,23,25	37:14 53:13	quotes 39:12
38:14,23	policy 51:24	47:25 48:13,14	provided 48:8	quoting 3:19
percent 24:4	pollution 31:11	55:14	provides 4:7	
28:24 53:15	posit 6:15	prevent 37:23	23:22 24:7,10	R
percentage	positing 7:5	previous 56:17	32:6 35:13	R 3:1
10:12 53:17	position 6:10	principal 22:9	providing 32:19	raised 55:16
performed	12:6 18:10	principles 25:6	32:20 50:17	range 12:24
46:15	20:22,24 33:17	prior 39:6	provision 32:10	rate 7:22,23
perspective 5:1	37:2,8 47:11	private 29:2,4	43:19	10:13 11:19
7:8,11,18 9:1	55:12	pro 32:19,20	public 22:22	12:1,22 13:21
19:10	posits 4:19	probably 9:17	24:8,9	13:25 14:14,20
pertinent 23:16	possible 13:20	29:3	purported 20:15	14:22 15:9,16
23:17	41:4	problem 5:13	purpose 26:11	16:2,4,16,17
Petitioner 1:5	potential 30:21	8:2,25 9:20,21	26:12	17:12,16,21
1:19 2:4,9 3:8	potentially 4:3	10:15 12:21	purposes 20:3	18:6,14,14
3:13 53:22	practice 8:11	13:1,7,10,24	pushed 36:24	25:24 28:11
phenomenon	29:4 41:25	14:25 22:19,20	put 11:22 13:15	32:25 33:8,10
11:18,21 16:11	47:23,25 55:10	26:8 38:16,19	18:13 19:3,10	33:12,14,24
phone 54:6	practices 22:18	40:13 41:8	25:8 29:11	34:2,3,6,9,11
photocopies	47:19 55:9,14	54:7,15 55:25	37:22 42:11,21	34:19 35:23
50:13,15,17,18	practitioner	problems 6:23	Q	37:24 47:6,7
photocopy 47:3	29:2 30:9	proceeding	qualified 8:10	47:14,15 49:1
47:15 48:3	precisely 38:25	27:23 43:12	44:10	50:16
49:10,11	48:23	proceedings	question 4:1 5:8	rates 3:15,24 4:6
photocopying	premise 21:17	44:10	6:14 7:4 9:25	4:21 5:2,4 9:3
49:24	premises 29:16	product 3:21	10:1 11:23	9:23 10:12
piece 25:16,23	preparation	profession 21:11	12:5 14:24	11:6 14:6,17
place 13:13 45:5	27:6	22:4	15:10 16:24	18:9,11 19:9
places 24:17	present 4:11,11	professional	19:21 22:6	26:3 32:7
play 48:15	presentation/r...	13:12 54:9	30:4,5,20 31:2	37:10 41:23,23
players 14:15	36:18	profit 31:16,18	32:23 33:2,3	44:7,12,13
please 3:10	preserve 14:2,6	31:19 35:1	34:17 37:2	48:13,14,16
26:21	14:12	46:9,9,14	38:7 39:3	49:6
plumber 41:5	preserves 13:21	47:18 48:25	40:22 42:10	ratio 13:21 14:2
plus 50:6	President 39:7	50:6	46:25 51:5	14:7,8,11
point 5:14,18	39:11	profits 46:23	53:9 55:16,19	rational 36:13
7:17,20 10:7,8	President's 39:3	48:9	56:21,24	36:20
10:17,19,20	presumably	profit-making	questions 22:17	read 42:22
11:8,11,12	34:11	50:9	23:17 26:14	46:11
17:9 18:19	presume 34:5	project 29:21	30:13	readdressed
19:11 21:2,3	presuppose	52:10,15,17,22	quite 14:22 21:4	40:18
21:18 22:21	54:14	property 30:1	29:2,5 56:20	readily 51:18
25:15,23 26:7	prevailing 4:5	proportionally	quotation 45:3	reading 26:25
38:14 44:18	14:17 15:4,6,7	11:2,3		48:6

<p>reaffirmed 10:4 real 22:20 24:15 really 4:14 7:19 reason 4:2 15:17 16:7 25:3 35:5 35:11,24 37:12 48:15 50:6,7 55:24 56:8 reasonable 4:7 12:3 13:21 39:14 42:4 43:18 51:22 reasonableness 12:20 13:17,19 16:15 reasonably 49:15 reasoning 3:22 reasons 4:16 7:17 8:17,21 22:15 37:18 55:19 REBUTTAL 2:7 53:21 recognized 27:7 35:17,25 36:13 40:17 43:14 45:20 recover 41:17 recovery 4:8 10:22 25:24 redo 56:8 reenacted 27:24 40:18 refer 43:5 reference 44:6,8 44:14 references 40:20 45:19 referring 28:2 reflect 34:3 reflected 25:6 44:2 reflects 55:11 regard 11:12 54:21 regarding 45:12</p>	<p>46:1 52:19 regardless 7:1 Register 54:21 reimbursable 6:13 28:18 47:21 reimbursed 28:6 33:25 41:24 45:17 46:14 49:12 52:21 reimbursement 29:20 48:12,22 reinserted 42:17 rejected 51:21 rejecting 22:22 relates 27:20 43:9 relation 42:9 relative 21:19 relatively 7:22 24:12 47:6 relevant 4:4 27:9,12 38:8 40:19 52:19 relies 25:19 relying 11:22 43:3 remaining 53:20 removed 42:16 rent 12:16 40:25 repaid 52:20 repassed 40:14 repeal 27:25 replicate 55:14 reply 25:19 54:18 55:23 report 24:20 27:9,10,17,18 27:19 28:1 29:20,24 30:1 38:15 39:23,25 40:1 43:8 45:18 54:17,20 55:18,21 56:5 56:8,13,14,15 56:17,20,20</p>	<p>57:1 reported 40:21 reports 29:8,17 representation 27:4,22 43:12 43:25 representing 23:18 29:13 48:9 request 50:18 required 39:4 51:25 requires 4:5,6 23:8 requisite 12:11 reserve 26:15 respect 13:9 16:24 29:9,17 34:23 40:23 55:3,9 respectively 24:6 Respondent 1:22 2:6 26:19 response 9:19 responses 14:23 responsibility 22:9,9 result 33:17,20 33:21 revisit 19:25 20:2 revisited 20:1 Richlin 1:3 3:4 3:13,14 23:2 right 6:12 14:4 20:3 27:14 31:14,21 42:8 49:22 50:3 51:3 Rights 43:20 ROBERTS 3:3 10:16 11:1,4 17:15 20:20 21:18 23:16 26:4,16 27:12 29:1,23 30:15</p>	<p>31:1 37:1,19 38:4,13 39:2 46:24 47:10 48:1 49:21 52:24 53:3,7 53:19 56:6,16 57:4 roughly 17:22 routinely 32:15 rubric 41:4 rule 51:15,17,17 55:3,8,12 rules 38:11 45:2 45:3 46:5 running 30:4 runs 21:10</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 salaries 12:10 salary 28:17,22 28:24 53:16 saw 20:20 24:19 saying 17:20 25:20 47:11 says 13:18 25:21 39:13 54:20,21 56:21 Scalia 5:3,6,11 5:24 6:12 7:25 8:2,6 13:1,6,10 14:18 18:12,17 39:15,20,21 40:2,4,6 50:19 51:3 Scalia's 55:19 Scarborough 23:24 56:3 se 11:18 search 12:9 second 10:6,7 21:6 52:4 secretaries 42:6 SECRETARY 1:8 secretary's 40:24</p>	<p>section 3:25 4:6 4:9 8:14 24:8,9 35:12 36:19 40:12,13,14 43:17,20 51:16 sections 40:12 40:15 Security 1:3,9 3:4,13 23:3,7 23:12,25 24:5 see 13:17 18:17 19:9 seeks 28:21 seen 16:10 Senate 24:19 27:9,17,19 38:15 39:10,25 40:21 42:16,18 43:8 56:8,14 56:16 send 24:11 sends 30:11 senior 7:23 10:14,25 11:10 21:20 sense 23:10 33:21 47:2 51:6 sensibly 21:14 sentence 43:16 separate 17:23 17:25 18:7 32:9 separately 9:15 9:22 17:14,18 18:10 42:1 47:2,13 49:24 50:15,17 53:6 53:8,11,18 54:23 55:6 service 1:3 3:5 3:13 13:13 46:15 54:9 services 3:14 4:21,22 11:19 13:13 15:3,8 15:19,21 16:12</p>
--	---	---	---	--

17:5,11 18:5 20:5 23:5,6 25:21 26:2 32:8,19,20,21 47:3,3,15 48:3 48:13 55:6,13 56:22 set 23:12,23 41:24 44:6,13 setting 7:2 15:24 seven 45:21 shift 50:4,11 shifting 50:6 shoe-horn 15:2 shoe-horning 54:8,8 shove 41:3,10 shows 11:12 shunt 20:18 21:8 22:6 side 41:11 sided 24:21 signal 19:17 signed 39:3,11 significant 23:11 silent 56:21 similar 32:7 51:17,18 similarly 32:17 simply 12:3 13:16,19 18:22 19:17 28:17 50:18 53:13 sink 41:5 42:1,7 situation 6:16 7:6,7,8 33:10 37:20 54:24 situations 23:4 24:1 30:21 53:4 Sixth 26:1 small 23:2 29:14 37:21 47:6 53:17 snippet 25:20 Social 23:3,7,11	23:25 24:5 Solicitor 1:20 solo 30:8 sooner 18:15 sorry 10:16 17:15 18:21 sort 6:18 56:8 Souter 6:22 7:10 18:21 31:8,15 31:18,22 32:4 32:9,12 speaking 22:11 speaks 45:11 specific 28:5 47:24 49:19 specifically 15:15 32:6 40:19 43:5,13 44:6,7 45:14 45:19 46:2 51:21 staffs 38:24,25 standard 12:1 standpoint 20:7 start 53:24 started 17:13 44:5 state 4:17 stated 27:10 statement 46:3,6 55:11 states 1:1,15 26:24 27:19 static 14:14 statute 9:7 12:3 13:18,23 15:14 16:9 17:17 19:4,7 20:4 26:9,10,11,12 36:6,15,23 40:23 45:14 52:8 53:12 statutes 4:4 12:21,25 15:15 17:10 43:15 44:1 51:8,10 51:16,23	statutory 3:15 3:18 11:16 29:19 35:12 52:4 step 21:6 STEVENS 5:17 6:2,6 9:6 33:2 33:16,23 34:4 34:8 44:15,17 45:5,7 46:13 46:18 48:18,21 49:2,14 strange 6:24 7:6 7:7 52:15 Street 11:11,11 19:5,6,6 stretch 37:20 stronger 4:7 structure 20:23 22:18 structures 20:8 Studies 29:8 study 29:20 52:10,11,14 subcategory 32:1 subcommittee 42:16 subject 5:4,19 5:22 6:3,20 8:4 47:4 submission 5:12 6:19 11:12 submit 50:18,20 submitted 57:5 57:7 substantial 22:15 substantially 20:22,25 37:3 37:9 56:9 subsumed 9:23 17:12,16,21 18:6 sudden 29:10 suggest 37:20 suggested 51:25	54:15 suggesting 12:19 15:12 17:17,19 suggestion 14:15 15:14 16:8 suggests 30:8 49:3 supervision 8:12 support 4:7 Suppose 30:8 33:5 Supposing 9:7 Supreme 1:1,15 sure 6:8 8:20 19:20 21:21 22:4 29:15 33:4 41:14 surely 33:7 surprising 40:10 40:10 suspect 37:25 synonymous 15:10 system 20:12 47:1	27:2 35:13,14 43:6 45:13 51:11 54:3 terms 25:24 test 29:21 tested 31:10 text 29:19 52:4 Thank 26:16,20 53:19,23 57:2 57:4 theory 7:11 10:9 10:20 41:18,19 41:21 thin 42:25 thing 16:3 25:14 things 22:5 29:18,21 31:20 35:21 47:14,16 54:5,6,13 56:19 think 4:15 12:5 16:23,23,24 19:2,3,24 20:2 20:13 21:5,6 22:1,13 25:7 28:18 30:23 33:25 36:9 38:1,6,18,23 41:25 43:1 44:18,22 47:5 49:21 50:7 54:6 56:18 thinking 16:21 17:2 25:4 third 24:14 31:7 thought 41:1 51:2 three 23:1,4 42:21 56:3 three-quarters 9:16 throw 29:10 time 5:15 7:9,14 9:2,7 13:23 17:9 26:15 27:1,1,16 28:5 40:7 41:15
---	--	--	--	--

T

T 2:1,1

take 7:18 21:15

24:3 31:9,11

40:6 45:25

51:6

taken 43:15

56:19

takes 3:19 16:25

talk 14:25 15:3

55:20

talking 38:9

45:2

task 31:3

taxes 52:21

telephone 47:3

tell 17:25 25:12

term 3:18 10:2

11:16 14:16

<p>45:7 49:6,16 51:12 53:4,11 55:4,10 times 36:4 40:25 53:4 today 54:24 55:5 55:5 today's 5:1 7:8 told 8:17 41:1 47:13 topic 55:20 tradition 17:22 traditional 48:2 traditionally 17:12,16,20 47:22 training 22:12 transition 9:17 travel 31:19 54:5 treat 37:23 treated 9:8,9 treatment 43:22 true 8:5,8 12:24 16:2,4,14 18:16,18,20,22 19:16 55:1 56:11 truth 11:21 try 7:5 19:11 47:16 trying 15:2 turn 33:9 35:4 54:12,19 twice 39:22 two 4:4,16,25 7:17 8:17,21 10:4 14:2,23 17:7 18:22 20:7 21:15 23:6 26:23 30:13,20 34:14 34:18 54:13 type 48:7 52:12 types 36:17 54:6 typical 29:13 typically 23:19</p>	<p style="text-align: center;">U</p> <p>ubiquitous 55:5 ultimately 17:4 32:18,24 33:13 39:10 47:20 unanimous 39:23 undermines 12:5 understand 19:20 33:16 understanding 51:22 understood 52:21 Underwood 36:1 uniform 55:4 United 1:1,15 26:24 University 17:7 use 30:11 50:21 55:21 uses 28:22 33:18 utilities 12:16 utility 19:16,25 U.S 50:24 U.S.C 3:25</p> <p style="text-align: center;">V</p> <p>v 1:6 vague 12:20 valid 30:4 vantage 5:14 19:11 various 11:6 vary 55:10 verified 41:1 versus 3:5,23 9:13,20,24 10:3,5 16:25 17:24 42:2 51:1,21 veteran 23:19 veterans 23:3,7 23:12,25 24:5 veto 50:21</p>	<p>vetoed 25:17 39:18,19 40:13 40:13 56:1 view 23:15 30:12 35:4,7 39:3,8 48:23 49:8,11 views 25:6 38:10 Virginia 10:4 17:7 virtually 13:14 19:4 vis-a-vis 15:21</p> <p style="text-align: center;">W</p> <p>wages 52:19 Wall 11:11 19:6 want 25:15 33:4 41:1,3,14 53:24 wanted 38:10 wants 15:16 19:18 20:9 wash 57:2 Washington 1:11,18,21 wasn't 18:21 27:13 31:2 55:4 waste 40:7 water 31:10 way 6:18 15:13 16:10,13 17:2 19:3,14,15,15 23:25 28:18 31:9 37:22 38:25 41:9,20 52:15 53:14 ways 14:2 Wednesday 1:12 weight 25:8 42:21 54:15,16 55:17,22 went 25:5 44:18 weren't 17:17 22:2 54:2</p>	<p>West 10:4 17:7 We'll 3:3 we're 16:3,4 53:11 we've 23:17 39:17 willing 5:22 wishes 57:1 witnesses 29:6 Wolfman 1:18 2:3,8 3:6,7,9 4:10,13 5:5,8 5:12,20,25 6:4 6:8,13 7:3,16 8:1,5,8,18,22 9:11 10:19 11:3,5 12:4 13:5,9 14:1,13 14:22 15:23 16:7,23 17:19 18:16,18,24 19:20,24 20:10 20:13 21:1,23 23:21 24:22 25:2,10,13 26:6 51:5 53:20,21,23 56:11,18 word 17:2 51:6 51:7,9 52:23 words 10:15 13:11 21:17 42:21,22 51:17 work 3:16,20,21 11:18 15:16 20:19 21:9,13 21:14 22:6 23:11 24:1 25:6 27:5 36:22 52:9 working 25:8 works 23:21 36:19 worse 39:16,17 47:12 worth 22:23 29:13</p>	<p>wouldn't 13:24 15:25 18:23 21:9 34:1 40:9 40:10 writing 22:10 written 16:13 wrong 3:17 8:20 41:2 wrote 24:20</p> <p style="text-align: center;">X</p> <p>x 1:2,10 16:4</p> <p style="text-align: center;">Y</p> <p>Yang 1:20 2:5 26:17,18,20 27:15 28:16 29:15,25 30:6 30:13,19 31:4 31:14,16,21 32:4,11,13 33:12,20 34:1 34:7,10,22 35:9 36:12 37:12 38:1,8 38:16,21 39:7 39:20,22 40:3 40:5,8,17 41:21 42:12,15 43:2 44:16,25 45:6,10 46:16 46:19 47:8,18 48:5,20,23 49:8,17 50:3 50:24 51:15 52:11,17 53:2 53:5,9,19,25 year 12:11 56:17 years 6:16 9:14 10:4 17:7 56:3 yields 51:18</p> <p style="text-align: center;">\$</p> <p>\$100 14:5 \$125 10:18 14:10 16:1 23:20 47:7 \$200 16:3</p>
---	---	---	--	---

<p>\$35 12:12 28:9 \$75 14:5,11 \$85 34:15,17,20 35:3,8 \$95 35:4</p> <hr/> <p>0</p> <p>06-1717 1:6 3:4</p> <hr/> <p>1</p> <p>10 49:10 10:05 1:16 3:2 102-572 24:9 11:06 57:6 12 45:16 54:18 13 40:15 55:23 14 40:11,14,14 55:23 15 49:10,12,23 49:25 154 50:24 19 1:12 1920 36:7 1980 9:17 18:19 18:22,22 19:3 27:9,17 35:20 42:19 43:3 46:11 1984 35:20 38:9 39:9 40:1 43:3 45:6 1985 19:4 40:19 56:12 1988 3:25 4:6,9 4:11 19:23 35:12 36:5,9 36:19 43:20 51:12,16 1989 9:14 1990 40:8</p> <hr/> <p>2</p> <p>2 23:24 2-1 14:11 20 6:16 24:4 2008 1:12 2412 8:14 25 24:4</p>	<p>26 2:6 28 45:15 29 28:23,24 53:15</p> <hr/> <p>3</p> <p>3 2:4 24:8 30 6:16 32913 54:21</p> <hr/> <p>4</p> <p>42 3:25 46 54:20 496 50:24</p> <hr/> <p>5</p> <p>50 49:9,22 506(c) 24:9 53 2:9</p> <hr/> <p>7</p> <p>70s 17:22</p> <hr/> <p>8</p> <p>80s 17:23</p> <hr/> <p>9</p> <p>99-80 24:8</p>			
---	---	--	--	--