



	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	DANIEL R. ORTIZ, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	SRI SRINIVASAN, ESQ.	
7	For United States, as amicus curiae,	20
8	in support of neither party	
9	ORAL ARGUMENT OF	
10	GREGORY G. GARRE, ESQ.	
11	On behalf of the Respondents	32
12	REBUTTAL ARGUMENT OF	
13	DANIEL R. ORTIZ, ESQ.	
14	On behalf of the Petitioner	53
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next this morning in Case 11-556, Vance v. Ball State University.

Mr. Ortiz.

ORAL ARGUMENT OF DANIEL R. ORTIZ

ON BEHALF OF THE PETITIONER

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

This case concerns who counts and who does not count as a supervisor under Title VII. The parties and the United States agree that the Seventh Circuit rule violates the holding of Faragher, the reasoning of Faragher and this Court's other central Title VII precedents, including Burlington Northern and Staub, and the common-sense meaning of the word "supervisor."

The parties even agree as to the general legal standard, although they style it a little bit different -- differently, that those harassers whose employer-conferred authority over their victims enables or materially augments the harassment should count as supervisors.

This is not a standard, Your Honor, that imposes automatic liability on employers. Victims must

1 still prove actionable harassment, and employers can  
2 still take advantage of the Ellerth/Faragher affirmative  
3 defense.

4 CHIEF JUSTICE ROBERTS: Let's say you have a  
5 work room. There are five people who work there. And  
6 the employer has a rule that the senior employee gets to  
7 pick the music that's going to play all day long. And  
8 the senior employee says to one of the other  
9 employees -- you know, if you don't date me -- I know  
10 you don't like country music; if you don't date me, it's  
11 going to be country music all day long.

12 Now, that affects the daily activities of  
13 that other employee. I would have thought, under your  
14 theory, that means that that senior employee is a  
15 supervisor.

16 MR. ORTIZ: No, Your Honor, because in that  
17 circumstance the adverse action would not amount to --  
18 would not be severe. Or, perhaps it would be  
19 pervasive --

20 CHIEF JUSTICE ROBERTS: Well, that could  
21 be -- that could be far more severe than, for example --

22 JUSTICE SCALIA: Hard rock instead of --

23 (Laughter.)

24 CHIEF JUSTICE ROBERTS: It could be far more  
25 severe than simply saying, all right -- you know, you're

1 going to -- as in this case -- you're going to be  
2 cutting the celery rather than -- you know, baking the  
3 bread, or whatever.

4 MR. ORTIZ: Well, no, Your Honor, this is  
5 the -- the severity is an objective standard; it's not a  
6 subjective. So in this case, someone's intense  
7 dislike -- maybe it's debilitating, subjective --  
8 dislike of rock music, some forms of country music --  
9 might impair the performance of some in the workplace;  
10 but, from an objective reasonable employee's standpoint,  
11 I don't believe that that would be the case. Not all --

12 CHIEF JUSTICE ROBERTS: Well, but, I mean,  
13 there are places where the environment -- you know, an  
14 assembly line or something like that -- where the task  
15 may not be that different, but how you -- the  
16 environment in which you have to perform them may be far  
17 more significant than whether or not you're attaching  
18 the door handles or the front fenders.

19 MR. ORTIZ: Oh, for sure, Your Honor, but  
20 that has to be judged on a case-by-case basis.

21 CHIEF JUSTICE ROBERTS: Well, exactly. And  
22 I would have thought the benefit of the Seventh  
23 Circuit's test was that you don't have to go through  
24 those case-by-case basis. I think we can have a  
25 reasonable debate about whether the music you have to

1 listen to for eight hours is objectively a significant  
2 enough interference with the daily activities to qualify  
3 under your test.

4 But the Seventh Circuit test makes clear --  
5 it doesn't give any kind of immunity; it just makes  
6 clear what type of analysis is going to be applied to  
7 the allegation.

8 MR. ORTIZ: Well, Your Honor, the Respondent  
9 actually exaggerates the determinativeness of the  
10 Seventh Circuit rule, and the indeterminativeness --  
11 both indeterminativeness and unpredictability of the  
12 Second Circuit rule.

13 The Seventh Circuit itself has recognized --  
14 the judges in the Seventh Circuit itself have recognized  
15 that the rule does not really well fit the realities of  
16 the workplace. It also just moves uncertainty from one  
17 category to another.

18 The category of supervisor may be a little  
19 bit tidier; but, under the Seventh Circuit's approach,  
20 the category of co-worker is very unpredictable.

21 The Seventh Circuit itself, in  
22 *Doe v. Oberweis Dairy*, recognized that once you move  
23 people who can take -- have this kind of power over  
24 their victims but can't actually take tangible employment  
25 actions against them into the category of co-workers,

1 all of a sudden you have to apply a sliding scale of  
2 negligence. Not only that, but the jury is the one who  
3 applies it.

4 So for those categories -- this exact  
5 category of employee, Your Honor, the employee --  
6 employer going forward has very little idea of  
7 whether -- what standard of care is that a particular  
8 jury would apply in that case and whether the jury would  
9 decide it is met or not.

10 The Seventh Second -- Seventh Circuit rule,  
11 in the overall, is no more determinative than the Second  
12 Circuit rule.

13 Also, Respondent points to no cases in the  
14 Second Circuit or the other circuits that have adopted  
15 this rule where courts have identified problems with its  
16 application. And that --

17 JUSTICE ALITO: Well, could you explain  
18 what the materially augments rule means? Could you  
19 provide a definition of that? The authority to assign  
20 daily tasks has to be sufficient to do what?

21 MR. ORTIZ: It has to be sufficient to  
22 enable the harasser to instill either fear in the victim  
23 that the victim should not turn the harasser in, or that  
24 it may have to do with the harasser's ability to control  
25 the physical location of the victim. That can augment

1 harassment.

2           If an harasser can steer a victim to a  
3 location where the harasser has an opportunity to  
4 harass, and, indeed, may have an opportunity to harass  
5 without other employees or other people in the company  
6 seeing in, that would materially augment --

7           JUSTICE ALITO: There are situations where  
8 the -- the assignment of responsibilities is extremely  
9 unpleasant, and so it's easy to see how the testimony  
10 would apply in that situation.

11           But there are also a lot of situations, like  
12 the Chief Justice's example, where it's really very  
13 unclear. I don't know how courts are going to -- how  
14 courts can grapple with that.

15           MR. ORTIZ: Well, Your Honor, this --

16           JUSTICE ALITO: You said that being  
17 subjected to country music or hard rock or Wagner -- you  
18 know, every single day in the workplace would not be  
19 sufficient. I don't know. Some people might think that  
20 it was -- that that is.

21           MR. ORTIZ: Justice Alito, this part of the  
22 standard, particularly the materiality requirement, is  
23 meant to track this Court's standard in Burlington  
24 Northern, where it said that only actions that are  
25 materially adverse to the employee would count.



1           And this Court identified the materiality  
2 requirement there as actually working to make the  
3 standard more objective, not --

4           JUSTICE GINSBURG: Mr. Ortiz, why isn't the  
5 question that you're presenting academic in this case?  
6 Because didn't the district judge say that there had  
7 been no showing that Davis' conduct was sufficiently  
8 severe or pervasive?

9           It wouldn't matter if the supervisor -- if  
10 the conduct was not sufficiently severe or pervasive  
11 harassment, and, equally, if the company responded every  
12 time a complaint was lodged. The district court found  
13 both of those things, that it wasn't severe and  
14 pervasive, and that every time she claimed -- complained  
15 an investigation was made.

16           MR. ORTIZ: Justice Ginsburg, we actually  
17 tried to bring those things up before the Seventh  
18 Circuit, but the Seventh Circuit found it unnecessary to  
19 reach them because of its holding as to supervisory  
20 liability.

21           If this Court were to reverse the Seventh  
22 Circuit's affirmance of summary judgment of the district  
23 court, the case would then be remanded to the Seventh  
24 Circuit, where it could either look at these  
25 alternative -- these other holdings, or the thing would

1 be -- it could be remanded at that point and sent back  
2 to the district court for another look.

3           The district court's reasoning, the Seventh  
4 Circuit noted, when it was talking about other incidents  
5 of harassment was very unusual. What the district court  
6 did was it divided all of the incidents into two  
7 categories.

8           One category -- one category consisted of  
9 events that by themselves were not overtly racial in  
10 nature and the other category consisted of those events  
11 that were overtly racial in nature, where a racial  
12 epithet had been hurled at someone, for example, and  
13 said with respect to the first category, the things --  
14 the events that on their face did not announce racial  
15 animosity, that there wasn't any racial nexus, so they  
16 didn't count, and swept all those events out and then  
17 looked at the remaining ones where the connection to  
18 racial animus was overt. And it said, well, these,  
19 there may be some, but they just don't count.

20           So the Seventh Circuit itself discredited  
21 the reasoning of the district court in those very  
22 holdings.

23           JUSTICE KAGAN: Mr. Ortiz, suppose I agree  
24 with your standard, but I just can't find on the record  
25 as it has been presented in this Court any evidence that

1 Davis actually served as Vance's supervisor. What -- I  
2 mean, what's your best -- so if that's true, I would be  
3 tempted to actually just decide the thing rather than to  
4 remand it.

5 So as against that approach, what is your  
6 best evidence that there was a supervisory relationship  
7 under your standard here?

8 MR. ORTIZ: First, Justice Kagan, it is  
9 important to keep in mind that the record was developed  
10 under the wrong legal standard. But even considering  
11 that --

12 JUSTICE KAGAN: Well, is that the case? Is  
13 there evidence that you did not present because the  
14 Seventh Circuit applied a different standard?

15 MR. ORTIZ: There was evidence that was  
16 probably not developed below because the Seventh  
17 Circuit's standard was so absolute. But there is  
18 actually evidence in the record, we believe plenty of  
19 evidence, sufficient certainly to overcome summary  
20 judgment, although perhaps not enough for partial  
21 summary judgment on this question in our favor.

22 JUSTICE GINSBURG: What other than the job  
23 description? The job description says that the catering  
24 specialist has authority to direct or lead the part-time  
25 employees. But what concrete instances of Davis

1 exercising supervisory authority over Vance is there in  
2 this record?

3 MR. ORTIZ: Well, Justice -- there is two  
4 separate questions, Justice Ginsburg. One is instances  
5 of it; others is whether she has the authority or not.  
6 Because this Court has held in Faragher itself that it  
7 is the authority that makes the difference, not the  
8 actual exercising of it in a particular case.

9 But let me go through what is in the record  
10 now, much of it which is in the Joint Appendix but not  
11 all, because we were not aware that we would be opposing  
12 a summary judgment motion before this Court.

13 First, William Kimes, who is the director of  
14 the university banquet and catering division, the sort of  
15 head of this 60-some-person department. Two employees  
16 testified that he told them that Davis was a supervisor.  
17 One of them was Vance; that could be found on page 198  
18 of the Joint Appendix. Another is an employee who was  
19 in Vance's position named Dawn Knox, and that statement  
20 can be found on page 386 of the Joint Appendix.

21 William Kimes himself testified in his  
22 deposition that Davis, quote: "Directed and led other  
23 employees in the kitchen." That can be found on page  
24 367 of the Joint Appendix. In an internal investigation  
25 by compliance officers at Ball State --

1 JUSTICE GINSBURG: What I mean is not the  
2 statement, well, she's a supervisor. But comparable to  
3 Faragher, where the lifeguard who didn't have authority  
4 to hire her or fire her said, if you don't date me, you  
5 are going to be cleaning the toilets. We don't have  
6 anything like that in this record.

7 MR. ORTIZ: Well, there was no overt threat  
8 like that in the record, but the person who was hurling  
9 racial epithets at her was in a position of authority  
10 over her, both according to the job description, also  
11 according to her understanding, according --

12 JUSTICE GINSBURG: But that was also -- that  
13 would be for a very confined period. It would only be  
14 when the -- when Vance was a part-time employee. Once  
15 she is a full-time employee there isn't that.

16 MR. ORTIZ: No, Your Honor. There is two  
17 separate provisions in the job description which cover  
18 the whole period of time here. The harassment started  
19 around September 2005, went in through August -- went to  
20 August 2007 with one incident, March 1st, I believe it  
21 was, 2008. On January 1st, 2007, Ms. Vance received a  
22 promotion from part-time to full-time.

23 Page 13 on the Joint Appendix has this item  
24 that you pointed to, Justice, which specifically lists  
25 among the duties and responsibilities of the catering

1 specialist leading and directing part-time employees.  
2 However, page 12 of the Joint Appendix lists under  
3 positions supervised by the catering specialist, exactly  
4 Vance's position. So when she moved from full-time --  
5 sorry, from part-time to full-time on -- in January  
6 2007, the supervisory nexus in the job description  
7 merely jumped from page 13 to page 12. But it was  
8 covered for that whole period of time.

9 JUSTICE ALITO: What was the most unpleasant  
10 thing that Davis could have assigned the Petitioner to  
11 do? Maybe chopping onions all day, every day?

12 MR. ORTIZ: Certainly within the -- within  
13 the job duties that she traditionally did, the kind of  
14 things she had to work with, what she had to do, things  
15 like this, working with onions, chopping onions all day  
16 might be punishment. Unfortunately again, though, the  
17 record wasn't developed under an understanding that all  
18 of this would be relevant.

19 JUSTICE ALITO: But that would materially  
20 augment? Chopping onions all day would be enough?

21 MR. ORTIZ: Yes, Your Honor.

22 JUSTICE ALITO: Chopping -- how about  
23 chopping other things, just chopping? You are the  
24 sous-chef, you are going to be chopping all day every  
25 day. Would that be enough?

1                   MR. ORTIZ: Possibly, Your Honor. It  
2 depends, again, on questions which would depend upon how  
3 you had to chop, how heavy the knives were, whether you  
4 would get repetitive injuries.

5                   JUSTICE GINSBURG: Mr. Ortiz, did she ever  
6 have that authority, because the record as far as we  
7 have it says that the work assignments, what Vance was  
8 doing, came from the chef or from Kimes, and the most  
9 that Davis did was transmit the chef's orders of where  
10 people would be stationed.

11                   MR. ORTIZ: Your Honor, it is not quite  
12 clear at this point. Vance, in an internal  
13 investigation at Ball State University, Ms. Vance told  
14 the compliance officer who was conducting the  
15 investigation that Davis delegated jobs to her in the  
16 kitchen. That appears in Document 59-16 on page 2.

17                   JUSTICE SOTOMAYOR: Counsel, may I interrupt  
18 a moment on --

19                   MR. ORTIZ: Yes, Your Honor.

20                   JUSTICE SOTOMAYOR: -- following up on an  
21 issue raised in part by the Chief and by Justice  
22 Ginsburg. Assuming that Davis was a direct supervisor,  
23 would there be an affirmative defense available to the  
24 employer?

25                   MR. ORTIZ: For sure, Your -- for sure, Your

1 Honor.

2 JUSTICE SOTOMAYOR: That would be your  
3 position?

4 MR. ORTIZ: Yes.

5 JUSTICE SOTOMAYOR: That this could not be  
6 grounds that someone who directs an employee's  
7 day-to-day activity should be treated like someone who  
8 hasn't actually undertaken the threat because the  
9 situations are different.

10 MR. ORTIZ: Yes, Your Honor. This is --  
11 this falls out of the structure of the affirmative  
12 defense as laid out in Ellerth and Faragher.

13 JUSTICE SOTOMAYOR: Is that what this fight  
14 is about? What if we were to say that the EEOC's test  
15 governed or the Second Circuit test governed, but  
16 because of the nature of the difference between formal  
17 supervisors who take tangible work activities and  
18 informal supervisors who the employer would have less  
19 control over and less knowledge about their activities,  
20 that we would require an employee to complain. Would  
21 that be a crazy rule, and why?

22 MR. ORTIZ: That this Court would require  
23 under those circumstances?

24 JUSTICE SOTOMAYOR: Would require, would  
25 permit the affirmative defense to be raised by an



1 employer.

2 MR. ORTIZ: It doesn't actually map on well  
3 to the structure of the affirmative defenses laid out in  
4 Ellerth and Faragher.

5 JUSTICE SOTOMAYOR: No, but there is a  
6 difference between those supervisors who take direct  
7 activity, tangible direct actions, who are in power to  
8 do that, and supervisors who don't have that power,  
9 because supervisors who don't have that power are  
10 supervised -- their actions are supervised in a way that  
11 non-tangible employment supervisors are not.

12 MR. ORTIZ: But under the existing  
13 affirmative -- affirmative defense, as I understand it,  
14 Your Honor, an employee who doesn't complain, unless  
15 they are reasonable in not complaining, in most cases  
16 would make the affirmative defense unavailable to the  
17 employer. Is it the question concerning the difference  
18 between unreasonably failing to complain --

19 JUSTICE SOTOMAYOR: No, it's whether,  
20 whether or not this whole fight is over that issue.

21 MR. ORTIZ: That -- this whole -- the fight  
22 is in -- in part about that issue. That is certainly  
23 not the only --

24 JUSTICE SOTOMAYOR: No, because it's also  
25 about the burden of proof.

1 MR. ORTIZ: Yes.

2 JUSTICE SOTOMAYOR: So if we keep the burden  
3 of proof with respect to -- to the employer raising the  
4 affirmative defense, does that solve half your problem?

5 MR. ORTIZ: Yes, Your Honor. It makes it  
6 better.

7 And this Court has recognized the  
8 affirmative defense appropriately allocates the burdens  
9 between the employee and the employer going forward.

10 Your Honor, the Seventh Circuit rule,  
11 although unsupported by Respondent, is supported by  
12 several of the Respondents' amici. As I said, they tend  
13 to oversell the determinativeness of the Seventh Circuit  
14 rule. They exaggerate the -- the uncertainty that  
15 they predict will happen under the --

16 JUSTICE SOTOMAYOR: Would you tell me what  
17 you see as the major difference between the EEOC and the  
18 Second Circuit rule, and why one is compelled over the  
19 other?

20 It's the regulatory agency charged with  
21 oversight of -- of the implementation of the statute.  
22 Why shouldn't we give deference to it on --

23 MR. ORTIZ: Your Honor --

24 JUSTICE SOTOMAYOR: -- the standard it sets  
25 forth?

1 MR. ORTIZ: -- it is -- it is entitled to  
2 deference under Skidmore, no more. And it is our  
3 understanding, although the government --

4 JUSTICE SCALIA: Excuse me. Why -- why --  
5 why no more? Why just Skidmore?

6 MR. ORTIZ: Because it's -- it's only  
7 informal guidance, Your Honor. It hasn't gone through  
8 rulemaking, formal adjudication and those processes  
9 which elevate the amount of deference --

10 JUSTICE SCALIA: That's an absolute rule?

11 MR. ORTIZ: Well, Your Honor, it's a little  
12 bit contentious on this Court. No, Your Honor, it's a  
13 little bit contentious on this Court; but, following  
14 Mead Products, for example, it wouldn't be entitled to  
15 more than Skidmore -- deference.

16 JUSTICE GINSBURG: Have you answered the  
17 argument it shouldn't get any deference because what --  
18 what the EEOC guidance does is it is -- it is  
19 interpreting two decisions of this Court, and this  
20 Court, not the EEOC, is in the best position to  
21 determine what those two cases mean?

22 MR. ORTIZ: Well, what it is, Your Honor, is  
23 it represents an interpretation of the word "agent" in  
24 Title VII.

25 Now, where -- where the statute -- the

1 statutory term gives off and this Court's interpretation  
2 begins is, in some cases, a tough question.

3 But in this case, the EEOC -- the EEOC is  
4 really giving definition to the word "agent" in Title  
5 VII, not so much this Court's interpretations in  
6 Faragher and Ellerth.

7 If there are no further questions, Your  
8 Honor, I would like to reserve my remaining time for  
9 rebuttal.

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.

11 Mr. Srinivasan?

12 ORAL ARGUMENT OF SRI SRINIVASAN,

13 FOR UNITED STATES, AS AMICUS CURIAE,

14 IN SUPPORT OF NEITHER PARTY

15 MR. SRINIVASAN: Thank you,

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

17 When a person controls a subordinate's daily  
18 work activities and subjects her to harassment, that  
19 person qualifies as a supervisor for purposes of the  
20 Faragher-Ellerth vicarious liability affirmative defense  
21 framework.

22 When it controls daily work activities and,  
23 therefore, for example, can compel the cleaning of  
24 toilets for a year, the principle that the agency  
25 relationship augments the ability to carry out the

1 harassment is implicated in that the victim will lack  
2 the same ability to resist the harassment or to report  
3 it as would be the case if the harassment were conducted  
4 by a coworker that --

5 CHIEF JUSTICE ROBERTS: What about -- what  
6 about the music hypothetical?

7 MR. SRINIVASAN: Well --

8 CHIEF JUSTICE ROBERTS: Where -- where do  
9 you think your test comes out on that?

10 MR. SRINIVASAN: I think it comes out, most  
11 likely, against concluding that the person is a  
12 supervisor. And the reason is that, under the EEOC  
13 enforcement guidance, that accounts for situations in  
14 which the authority is exercised over a limited field, a  
15 limited number of tasks or assignments. And this is at  
16 page 92(a) of the petition appendix.

17 And I think that would qualify under that  
18 provision because it's limited.

19 CHIEF JUSTICE ROBERTS: Why -- it doesn't  
20 really have to do with the number of tasks. It isn't an  
21 assignment of tasks. It's something that clearly  
22 affects the daily activities of the employee in a way  
23 that could be used to implement or facilitate  
24 harassment.

25 MR. SRINIVASAN: It could, Your Honor. I

1 don't disagree with that, and I don't disagree that  
2 there are going to be cases that raise issues at the  
3 margins.

4           But one way to think about the spectrum of  
5 options available to the Court today is to envision that  
6 on one end, you have harassment that's perpetrated by a  
7 coworker, and you consider the types of harassment that  
8 that might entail. And on the other end, you have  
9 harassment that's perpetrated by a supervisor with  
10 authority over tangible employment actions.

11           CHIEF JUSTICE ROBERTS: And -- and your  
12 tests sort of use that, just as you've posed it, as some  
13 broad continuum in which we're going to have countless  
14 cases trying to figure out whether music falls closer to  
15 this end or -- you know, what -- the senior employee  
16 controls the thermostat, is that closer to this end or  
17 that end? Or cutting onions?

18           It seems to me that every single case has  
19 its own peculiar facts, and courts are going to be --  
20 have to figure out where on the continuum it resides.

21           MR. SRINIVASAN: Well -- well, I guess, Your  
22 Honor, as Your Honor put it to -- to Petitioner's  
23 counsel, the competing approach would be the approach  
24 adopted by the Seventh Circuit; but, that approach has  
25 some serious flaws.

1                   For example, it wouldn't cover the  
2 supervisor's conduct that was at issue in Faragher  
3 itself, where the supervisor threatened that he would  
4 make the harassment victim clean the toilets for a year  
5 if she didn't succumb to the harassment. And I think  
6 that's a pretty significant cost.

7                   JUSTICE ALITO: Well, isn't cleaning the  
8 toilets a limited -- isn't the authority to decide who  
9 cleans the toilets the same as the authority to decide  
10 what the music is going to be? It's one thing.

11                   I thought -- and your answer on the music  
12 was, well, that probably wouldn't count because it's the  
13 authority to decide just one thing.

14                   MR. SRINIVASAN: Well, we don't -- I guess,  
15 we don't know enough about the threat to force her to  
16 clean the toilets for a year to know whether it's only  
17 one thing. But it could be, for example, that if  
18 there -- in the scope of a particular day, you have  
19 three particular options as to what you might do,  
20 monitor the beach, clean the facilities, including the  
21 toilets, or prepare meals, then it's something that  
22 covers the entire day.

23                   JUSTICE ALITO: But your argument is if the  
24 only authority was to decide who cleans the toilets,  
25 then -- then that would not -- that wouldn't count,

1 because that's just one thing.

2 MR. SRINIVASAN: No, I think that -- I don't  
3 think we have an answer to that until we know how much  
4 of the day's work is encompassed by cleaning the  
5 toilets.

6 JUSTICE GINSBURG: I thought in Faragher it  
7 was that -- that the lifeguard gave her her daily work  
8 assignments. He controlled what she would do on the  
9 job.

10 MR. SRINIVASAN: He -- he controlled every  
11 aspect of her -- of her day's work, and cleaning the  
12 toilets was one aspect of it. So that was a  
13 particularly poignant example that he visited on her as  
14 a way to perpetuate the harassment.

15 JUSTICE ALITO: Well, that can't possibly be  
16 what the case means. Suppose that it's -- it's the  
17 assignment of offices, and all of the offices except one  
18 have heating and air conditioning, but one has no  
19 heating and no air conditioning.

20 And so -- and that's the only authority that  
21 this person has is to assign desks. That person says,  
22 if you don't do whatever it is that I want you to do,  
23 I'm putting you in the office where there's no heating,  
24 and there's no air conditioning. And you would say that  
25 doesn't count because it's just one thing. It's not a



1 broad range of authorities -- of authorities.

2 MR. SRINIVASAN: It doesn't constitute  
3 authority over daily work activities. And I guess  
4 that's what the EEOC guidance authorities --

5 JUSTICE BREYER: Have you --

6 MR. SRINIVASAN: We haven't encountered it  
7 in real cases.

8 JUSTICE BREYER: Well, you've looked this  
9 up. And apparently, for about a dozen years, the EEOC  
10 has had, as -- as an alternative basis for qualifying as  
11 a supervisor, the individual has authority to direct the  
12 employee's daily work activities.

13 And in addition, we have three circuits that  
14 for some period of years have been following roughly the  
15 same kind of rule.

16 Now, has this problem of the country music  
17 or the other problems raised, have they turned out to be  
18 a significant problem in those circuits or for the EEOC?

19 MR. SRINIVASAN: They haven't,  
20 Justice Breyer.

21 JUSTICE BREYER: They have, or they have  
22 not?

23 MR. SRINIVASAN: They have not. I'm sorry.  
24 They have not turned out to be an issue, and  
25 that's what --

1 CHIEF JUSTICE ROBERTS: How do you know  
2 that? Are you just saying they have not generated  
3 actual Federal -- Federal court reported cases?

4 Do you have any idea how this works on the  
5 ground when people complain about the exercise of  
6 authority by a coworker who has specific  
7 responsibilities that might be reviewed as supervisory?

8 MR. SRINIVASAN: Well, they haven't -- I  
9 guess that's two components to the answer,  
10 Mr. Chief Justice -- they haven't generated reported or  
11 underreported decisions, as far as we've seen. And this  
12 is not scientific, and it's just based on our  
13 conversations with the EEOC lawyers who are charged with  
14 dealing with right to sue letters and the like. They  
15 haven't encountered these sorts of situations.

16 CHIEF JUSTICE ROBERTS: The EEOC lawyers  
17 think the EEOC plan is working just fine.

18 MR. SRINIVASAN: Well, that -- I -- I  
19 understand that that's not entirely surprising, but --

20 JUSTICE BREYER: But I guess they'd tell  
21 you. There are three who signed the brief, or four.  
22 And I guess they'd tell you, wouldn't they --

23 MR. SRINIVASAN: Right.

24 JUSTICE BREYER: -- what the problems are,  
25 if they have problems.

1                   MR. SRINIVASAN: Right. In our  
2 conversations with them about the way in which these  
3 issues arise --

4                   JUSTICE BREYER: I mean, we can ask the  
5 other side the same question. They've seen the cases in  
6 the circuits. Have they seen instances in the EEOC or  
7 before the circuits where it's turned out to be a  
8 serious problem, like the country music or any of the  
9 other hypotheticals raised?

10                  MR. SRINIVASAN: And I don't think it has,  
11 Justice Breyer.

12                  And I think it's important to bear in mind  
13 that the nature of this inquiry is such that there's  
14 going to be cases at the margins that raise difficult  
15 questions; but, in Ellerth, the Court recognized that.

16                  JUSTICE KAGAN: Could I ask you how the  
17 Seventh Circuit test works in operation?

18                  We're in a university setting here, so let  
19 me give you a university hypo. There's a professor, and  
20 the professor has a secretary. And the professor  
21 subjects that secretary to living hell, complete hostile  
22 work environment on the basis of sex, all right? But  
23 the professor has absolutely no authority to fire the  
24 secretary. What would the Seventh Circuit say about  
25 that situation?

1                   MR. SRINIVASAN: That if there's no  
2 authority over -- to -- to direct annual  
3 employment actions, then --

4                   JUSTICE KAGAN: No, no, the secretary is  
5 fired by the head of secretarial services. Professors  
6 don't have the ability to fire secretaries; but,  
7 professors do have the ability to make secretarial lives  
8 living hells. So what does the Seventh Circuit say  
9 about that?

10                  MR. SRINIVASAN: The professor would not  
11 qualify as a supervisor for purposes of Ellerth-Faragher  
12 framework.

13                  JUSTICE KAGAN: Under the Seventh Circuit  
14 test.

15                  MR. SRINIVASAN: And so you'd look at it as  
16 a -- you'd look at the professor as a coworker, and  
17 you'd apply the same standards that applied to  
18 harassment conducted by the coworker.

19                  JUSTICE KAGAN: Even though, of course, it's  
20 actually more difficult for the secretary to complain  
21 about the professor than it would be for the secretary  
22 to complain about the head of secretarial services.

23                  MR. SRINIVASAN: Yes. And I think that's a  
24 useful frame of reference that I was trying to  
25 articulate earlier, which is that we can envision the

1 cases as falling on a spectrum between ability to  
2 complain when the harassment is perpetrated by a  
3 coworker on the one hand, and ability to complain when  
4 harassment is perpetrated by a supervisor with tangible  
5 employment authority --

6 JUSTICE KAGAN: And Mr. Srinivasan, if I can  
7 just continue on about this, because I just don't even  
8 understand the Seventh Circuit test. Would the Seventh  
9 Circuit test also say that -- that that person is not a  
10 supervisor even if the professor evaluates the secretary  
11 on a yearly basis?

12 MR. SRINIVASAN: The Seventh Circuit would  
13 say that as far as we can tell. They don't appear to  
14 have a proviso for circumstances in which the harasser  
15 has a role in determining tangible employment actions,  
16 because that is one thing that the EEOC guidance takes  
17 account of.

18 It's that -- not just that somebody counts  
19 as a supervisor when they themselves undertake tangible  
20 employment action, but if they have a substantial role  
21 in making recommendations that in turn trigger tangible  
22 employment actions, the EEOC would take the position  
23 that that qualifies. Now, that's not an issue in this  
24 case, but that's --

25 CHIEF JUSTICE ROBERTS: You've -- you've

1 talked several times about this going along the  
2 spectrum. Where -- where are we supposed to cut off  
3 the -- where's the cutting line in the spectrum?

4 MR. SRINIVASAN: Well, I think that the --  
5 control over daily work activities is where we would  
6 draw the line. And that's what has come up the most in  
7 the cases. The reported decisions have conflicts on --  
8 have a conflict on that issue, and that is where the  
9 EEOC guidance draws the line.

10 Now, I think it would be helpful, if the  
11 Court were going to issue an opinion that adopts that  
12 line, to elaborate on -- on that line a little bit in  
13 the following sense: That relaying instructions that  
14 are -- that are disseminated by one person wouldn't  
15 count for those purposes. That's in the EEOC guidance.  
16 And -- and it's the functions of a job that actually  
17 matter, not the job title. That is also in the EEOC  
18 guidance.

19 So I think there are some aspects of the  
20 EEOC guidance that elaborate on that line about control  
21 over daily activities that I think I would commend to  
22 the Court, that it might well --

23 JUSTICE SOTOMAYOR: Do we have a developed  
24 record enough to do that in this case?

25 MR. SRINIVASAN: I'm sorry? I didn't hear

1 you.

2 JUSTICE SOTOMAYOR: Do -- do we have a  
3 developed record enough? Petitioner's counsel says we  
4 don't, that the Seventh Circuit test didn't permit them  
5 to develop the record sufficiently to clarify all of  
6 these issues. We certainly have snippets or -- or lack  
7 snippets, as the case may be. But is the record  
8 sufficiently developed for the Court to even  
9 pronounce -- make pronouncements of that nature?

10 MR. SRINIVASAN: I think -- I think the real  
11 question, Justice Sotomayor, is whether the parties had  
12 a sufficient opportunity to develop the record. Because  
13 if you take the record in the case as a given, we think  
14 that the record would support the grant of summary  
15 judgment for Ball State University, because there isn't  
16 a sufficient showing in the record if you take it as a  
17 given that the relevant supervisory -- the relevant  
18 putative supervisory employee, Davis, had control over  
19 day-to-day work activities.

20 The question that remains is whether the  
21 record should be allowed to be expanded.

22 JUSTICE ALITO: The conclusion in your brief  
23 is that the judgment of the court of appeals should be  
24 vacated and the case remanded for further proceedings,  
25 and now -- now you are telling us that we should -- we

1 should basically write an opinion on summary judgment.

2 MR. SRINIVASAN: No. I think if you take  
3 the record as a given, that a grant of summary judgment  
4 in favor of the employer would be in order. But in the  
5 normal course what this Court does when it announces a  
6 new standard is it remands for the lower courts to deal  
7 with the application of the standard to the facts. And  
8 the conclusion in our brief is just, I think, a  
9 parroting of that normal conclusion.

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
11 Mr. Garre.

12 ORAL ARGUMENT OF GREGORY G. GARRE

13 ON BEHALF OF THE RESPONDENTS

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

16 The judgment of the court of appeals should  
17 be affirmed because the record establishes that the only  
18 employees whose status is at issue lacked the  
19 supervisory authority necessary to trigger vicarious  
20 liability under Title VII.

21 JUSTICE ALITO: We took this case to decide  
22 whether the Faragher and Ellerth -- and Ellerth  
23 supervisory liability rule is limited to those harassers  
24 who have the power to hire, fire, demote, promote,  
25 transfer, or discipline their victim. And your answer



1 to that is no; is that right?

2 MR. GARRE: That's right. We don't think  
3 the Seventh Circuit test is the complete answer to the  
4 question of who may qualify as a supervisor. But we  
5 think it's clear that the -- the person whose status is  
6 at issue did not qualify and therefore, the judgment  
7 should be affirmed. This Court --

8 JUSTICE ALITO: All right. Well, if we --  
9 if we agree with that without having any party defending  
10 the rule that was adopted by three circuits, then  
11 surely -- well, then, why shouldn't we just remand this  
12 case for the lower courts to decide this, this summary  
13 judgment issue, and -- and permit further development of  
14 the record if the record isn't fully developed?

15 MR. GARRE: Well, most importantly, Justice  
16 Alito, because the courts need guidance on how to apply  
17 the EEOC and the Second Circuit standard. The best way  
18 to provide that guidance is to do what this Court often  
19 does, which is to apply the facts to the standard.

20 In this case, applying the record facts to  
21 the standard that we think applies, the "materially  
22 enables the harassment" standard, it's clear that Ms.  
23 Davis, the person who is at issue, does not qualify as a  
24 supervisor. And the reason why it's clear is the record  
25 is uncontradicted that either the chef or Mr. Kimes made

1 the daily assignments through the prep sheets. The prep  
2 sheets are what every employee in the kitchen got each  
3 day and they would tell you: Dice vegetables for 60  
4 people; prepare boxed lunches for 20; prepare six  
5 vegetable trays.

6 That's -- that was their daily assignments,  
7 and the record is absolutely clear, JA 2 - 277 to 278, JA  
8 424 -- that all the employees got the prep sheets from  
9 the chef or Mr. Kimes.

10 It's also absolutely clear that Mr. Kimes  
11 was the one who controlled the schedule in the kitchen.  
12 He is the one that told employees what times of days  
13 that they could work. He controlled the schedule.

14 JUSTICE ALITO: I understand Mr. Ortiz to  
15 say that there's at least a dispute of fact about  
16 whether Davis could have controlled what Petitioner did  
17 on a daily basis.

18 MR. GARRE: There is -- there is neither a  
19 material nor genuine dispute on that, Your Honor. It at  
20 the very --

21 JUSTICE ALITO: Doesn't her job description  
22 say that she can assign tasks in the kitchen?

23 MR. GARRE: But they -- they omit the -- the  
24 clause that follows, which is critical, which is "via  
25 demonstration, coaching, or overseeing to ensure

1 efficiency." That is on page Joint Appendix 13. And  
2 that job description has to be read in light of the  
3 record that makes crystal clear that it was the chef who  
4 did the daily assignments for the prep sheets.

5 And there -- and there are examples of the  
6 prep sheets as an exhibit to Ms. Fultz's affidavit, the  
7 affidavits at 424 of the Joint Appendix. The -- the  
8 exhibits are LLL and JJJ --

9 JUSTICE SCALIA: We didn't take this case  
10 to -- to decide those factual questions.

11 MR. GARRE: Your Honor, you --

12 JUSTICE SCALIA: We really didn't. We took  
13 it principally to decide whether the Seventh Circuit  
14 rule was -- was right or not. And you don't even defend  
15 that. So there is nobody here defending the Seventh  
16 Circuit.

17 MR. GARRE: Well, Your Honor has excellent  
18 briefing defending the Seventh Circuit. The Chamber of  
19 Commerce and other amici have defended it. We certainly  
20 think that it -- that -- that it's a superior --

21 JUSTICE SCALIA: They are not talking to us  
22 here, are they?

23 MR. GARRE: No, Your Honor. We think it's a  
24 superior bright line, but, as we say in our brief, we  
25 think that ultimately this Court's precedents compel

1 that the Court reject that. And I think most -- most  
2 squarely we look at the Faragher decision. We look at  
3 lifeguard Silverman in Faragher, who had the authority  
4 to control all aspects of the victim's schedule and  
5 daily activities in a virtually unchecked manner.

6 So if the Court is looking for an example  
7 that it wants to point to of someone who could qualify  
8 under the non-Seventh Circuit category, we think that  
9 lifeguard Silverman, from this Court's precedents, would  
10 be the example that this Court would hold out.

11 JUSTICE GINSBURG: Was that -- that question  
12 wasn't presented. It was -- it was just assumed that --  
13 that Silverman would qualify as a -- as a supervisor.

14 MR. GARRE: That -- that's absolutely right,  
15 Justice Ginsburg. And I think, for some of the reasons  
16 that Justice Kagan brought up in her colloquy with --  
17 with Mr. Srinivasan, I think the logic of the Court's  
18 precedents, agency principles adopted, would lead to the  
19 conclusion that someone who does control virtually all  
20 aspects of one's schedule but yet lacks the authority to  
21 hire, fire, or demote, nevertheless still would be  
22 qualified as someone who --

23 CHIEF JUSTICE ROBERTS: Every -- every  
24 time -- every time you adopt a rule rather than a  
25 multifactor analysis, there are going to be particular

1 cases that fall outside the rule that look like a harsh  
2 result. Now, here it simply affects the nature. It  
3 doesn't give any immunity for harassment, it just  
4 affects the nature of the showing that might be made.

5           You have no difficulty, as representing an  
6 employer, by saying that in every case an allegation of  
7 this sort is made you have to go through a case-by-case  
8 description of the particular responsibilities, whether  
9 it's the thermostat, whether it's the music, whether  
10 it's the assignment of everything -- that the employee  
11 does, and decide on that basis whether or not you should  
12 compensate the victim, or -- or whether or not you  
13 should go to court?

14           MR. GARRE: We do have great difficulty,  
15 Your Honor. First of all, if we are wrong about what  
16 this Court's precedents compel, then this Court should  
17 adopt the Seventh Circuit principle, and we've -- we've  
18 said that in our brief, if we're wrong in our  
19 understanding of the Court's precedents.

20           Secondly, we think that the -- the Court can  
21 and should establish meaningful limits on what this  
22 broader category of supervisors would require, and I  
23 think the case law illustrates that. If you look at the  
24 leading circuits who apply the standard --

25           CHIEF JUSTICE ROBERTS: Well, I think -- I

1 think your friend on the other side was -- made a good  
2 point in his reply brief, which is the variety of  
3 circumstances you think courts should look at just  
4 happen to correspond with the factual issues that you  
5 would have resolved in your favor.

6 MR. GARRE: Well, I -- I would take issue  
7 with that. We -- we tried to provide guideposts that  
8 would be helpful. But if you look at, for example, the  
9 principle that the EEOC agrees with, which -- which is  
10 just that limited or marginal occasion authority to lead  
11 or oversee by virtue of a paper title, its grade, or  
12 seniority is not sufficient.

13 JUSTICE SCALIA: What does that have to do  
14 with agency? That's what I don't understand. Why --  
15 why do any of these tests have to do with agency?

16 MR. GARRE: Well, Your Honor --

17 JUSTICE SCALIA: I mean, I can understand  
18 Congress writing a statute that says -- you know, any --  
19 any person given -- given authority by the employer,  
20 which authority is used to make it more difficult for a  
21 person to complain about racial or sexual harassment, is  
22 bad. But the statute doesn't say that. It says apply  
23 agency principles.

24 How does agency have anything to do with the  
25 line you're arguing that we take here?

1           MR. GARRE:  What this Court said in Faragher  
2 and Ellerth -- and I appreciate that you dissented in  
3 the case, but what this Court said was it adopted  
4 Section 219(2)(d) of the Restatement (Second) of Agency,  
5 the notion that if -- if there was -- if the employee  
6 was aided in the accomplishment of the harassment by  
7 virtue of an agency relation, that that would be the  
8 agency trigger for liability.

9           JUSTICE SCALIA:  Then why not leave it  
10 there?  If that's what the agency is --

11           MR. GARRE:  And RMA then --

12           JUSTICE SCALIA:  -- then you don't need it  
13 at all.  So the music -- the music would -- the  
14 thermostat would qualify.  It would all qualify.

15           MR. GARRE:  I don't think it would, Your  
16 Honor, because we agree, certainly, with the EEOC that  
17 there are material limits to how far that principle  
18 could be stretched.

19           The Court in Ellerth made clear that there  
20 were limits to the vicarious liability of employers in  
21 this context.

22           JUSTICE SCALIA:  Why?  Why?  I mean, if  
23 that's your principle, apply the principle.

24           MR. GARRE:  Well, for the very --

25           JUSTICE SCALIA:  If you are aided -- you

1 know, you're going to work in a cold room unless you --  
2 you know, comply with my sexual advances, apply the  
3 principle. What's so hard about that? That's a clear  
4 line.

5 MR. GARRE: This is the balance I think that  
6 the Court struck in Ellerth, Your Honor, which was -- it  
7 took into account that the statute was passed against  
8 the backdrop of agency principles; but, yet, Congress  
9 also was cognizant that imposing vicarious liability on  
10 the employer for acts that the Court recognized were not  
11 themselves authorized by the employer, that that was a  
12 punitive aspect of that, and the Court would establish  
13 limits.

14 And I think our position takes into account  
15 that there have to be limits in this area, on the extent  
16 of vicarious liability, in order to give effect to  
17 Congress's intent; but, also recognizes, in the  
18 situation like you had with the lifeguard in Faragher,  
19 that that person did have authority that would assist in  
20 the harassment - date me or clean the toilets, as  
21 the lifeguard in Faragher said.

22 And so the Court, I think, struck a  
23 reasonable balance. And taking the balance and what  
24 this Court said, we think the proper way to resolve this  
25 case is to adopt something like the EEOC rule or the



1 Second Circuit rule, but to make clear there are limits.  
2 And the best way to make clear that there are limits is  
3 to make clear that on the record in this case Ms. Davis  
4 did not qualify as a supervisor.

5 Now, my friend said they didn't have the  
6 opportunity to develop evidence to the contrary; but,  
7 the fact is, from the outset, they litigated this case  
8 as if the Seventh Circuit standard did not apply.

9 The reasons that they gave for why Ms. Davis  
10 was a supervisor, in the lower court, was that, one,  
11 they pointed to the job description, that she had this  
12 other authority to "lead and direct," and they also  
13 pointed to the fact that she didn't clock in.

14 Those are irrelevant under the Seventh  
15 Circuit test. So all along, they had in their mind that  
16 they wanted to try to show that Davis was different, and  
17 it did have some marginal authority to lead --

18 JUSTICE ALITO: What guidance would your --  
19 what guidance would the kind of opinion that you're  
20 suggesting we write really provide? The -- the guidance  
21 would be that if someone has no authority to assign  
22 daily work, then that person isn't -- and also has no  
23 authority to hire, fire, promote, et cetera, then that  
24 person isn't a supervisor.

25 How much guidance is that?

1           MR. GARRE: I think it's a lot of guidance,  
2 Justice Alito. I think that the flip side of that is  
3 the Court would make clear that merely having some  
4 occasional or marginal authority to lead or direct by  
5 virtue of one's better paper title or seniority is not  
6 sufficient to trigger vicarious liability. I think  
7 that's going to resolve the mine-run of the cases in  
8 which this question has come up and been litigated, at  
9 least to the courts of appeals.

10           If you look, for example, at the difference  
11 between something like the Mack case out of the Second  
12 Circuit and the Mikels case out of the Fourth Circuit,  
13 in Mikels, we had an example of two police officers, one  
14 had a higher paper rank, corporal versus private, and it  
15 was alleged that the corporal was a supervisor. And the  
16 court said, no, no, no, he's not a supervisor, all there  
17 is, is some marginal occasional authority. That's not  
18 sufficient.

19           It was clear that the victim in that case  
20 wasn't shy about telling the harasser where to go, to  
21 tell him off. And that's the kind of --

22           JUSTICE GINSBURG: But why should that --  
23 why should that matter? I know you said that in your  
24 brief, Mr. Garre, if the -- if the alleged victim talked  
25 back.

1           But in one of the very first cases that we  
2 had in this line, Harris v. Forklift, there was -- it  
3 was the boss, so there was no question about supervisor,  
4 and he was really making things hard for this employee;  
5 but, she was very firm, and she talked back to him.

6           But, still, that's not what we said that  
7 counted. We said, is she being subjected to terms and  
8 conditions of employment that she would not be subjected  
9 to but for her sex.

10           MR. GARRE: Right. And we -- we don't think  
11 that that's a dispositive criterion. We recognize the  
12 point that the person gets to establish superior ability  
13 to stand up to despicable treatment. But I think what  
14 our point is, is that it's part of the equation that you  
15 would look at.

16           In essence, did the person treat the alleged  
17 harasser like a co-employee, or did the person treat the  
18 alleged harasser like a supervisor? And in this case,  
19 the record is clear that she treated her like a  
20 co-employee, someone who -- they obviously had  
21 disagreements among them.

22           And I think that's what we take this piece  
23 of evidence to assist the Court on the question  
24 presented. I think -- but we think what was sufficient  
25 to resolve the question presented is the clear and

1 unrefuted evidence that the prep sheets, the daily  
2 activities were assigned by the chef or Mr. Kimes, that  
3 Mr. Kimes had the authority to control the schedule.

4           And if you want to go further than that, the  
5 record also shows that Mr. Kimes had the authority to  
6 review -- to do annual reviews. Mr. Kimes had the  
7 authority to evaluate. He had all the kind of authority  
8 that one would expect in a supervisor.

9           And so you would ask the question, what's  
10 left? Essentially nothing. And whatever is left, we  
11 agree with the EEOC, is not, as a matter of law,  
12 sufficient to trigger vicarious liability.

13           That doesn't mean she can't present her  
14 claim. It -- it means that it's just simply analyzed  
15 under the framework for co-workers, in which she bears  
16 the burden of establishing that the employer was  
17 negligent in not responding to it.

18           And as Judge Wood, for the court of appeals,  
19 and Judge Barker made clear in their detailed opinions,  
20 this was not a situation where the employer stuck its  
21 head in the sand and ignored incidents of unpleasantries  
22 or, in some cases, despicable racial epithets --

23           JUSTICE ALITO: If you were willing to  
24 concede that this would be a close case under the Second  
25 Circuit standard or under the EEOC guidance, then there

1 might be an argument in favor of our applying those  
2 tests -- or one of those tests to the facts of the case,  
3 because then that might provide some guidance, even  
4 though we are supposed to be a court of review, not a  
5 court of first view.

6           But you're saying this is an extremely weak  
7 case under those standards; and, therefore, what is --  
8 what benefit is there in our applying this? Just send  
9 it back and have it done in the normal course by the  
10 court of appeals or by the district court.

11           MR. GARRE: Well, Your Honor, we don't think  
12 it's a close case, but my friend does, and his amici do.  
13 And I think the damaging signal that this Court would  
14 send by remanding on this record would be that, whatever  
15 it might say in its opinion, that would have virtually  
16 no force in terms of establishing a standard that made  
17 clear that this -- whatever else may be true about what  
18 would qualify, something like this does not qualify.

19           And, again, like this Court did in the  
20 Global Tech case, when the Court establishes a standard,  
21 oftentimes, it applies the standard to the facts and  
22 appreciates that that's the best way, the most judicial  
23 way of providing guidance on what that standard means.

24           JUSTICE SOTOMAYOR: Mr. Garre, there is one  
25 BSU internal document that -- a note to the file by a

1 compliance officer, who apparently investigated one of  
2 the complaints, that says that -- Kimes is recorded as  
3 saying -- he's the avowed supervisor -- that he, quote,  
4 "knows Davis has given direction to Vance, and that he  
5 just doesn't know what else to do."

6           Doesn't that defeat summary judgment on its  
7 face?

8           MR. GARRE: It doesn't, Your Honor, if you  
9 agree with our principle, that the EEOC also agrees  
10 with, that having some limited or marginal authority to  
11 lead or direct, as a matter of law, is not sufficient.

12           So that that piece of evidence, giving it its  
13 reasonable inference, would not be sufficient to create  
14 a material issue. It also wouldn't be sufficient  
15 creating -- looking at the body of the evidence, which  
16 makes crystal clear that the prep sheets are really what  
17 was driving the daily activities in this workplace. And  
18 it was Kimes or the chef that did the prep sheets, not  
19 Ms. Davis at all.

20           And it -- and it was also not material in  
21 light of the evidence that Mr. Kimes did the schedule.

22           Ms. Davis was asked at her deposition on  
23 page 135, quote, "Was there ever" -- "have you ever been  
24 assigned to a less meaningful or fulfilling job  
25 classification?" And her response was yes, and she

1 pointed to an example by Mr. Kimes, because it was  
2 Mr. Kimes who had the authority to make those  
3 assignments, not Ms. Davis.

4           So the mere fact that you've got some  
5 marginal evidence drawn from snippets, giving it a  
6 reasonable inference that she at times had some ability  
7 to lead or direct, as the job description says, "by  
8 coaching, demonstration or overseeing," is not  
9 sufficient as a matter of law to entitle her to summary  
10 judgment, nor do we think that this Court should take  
11 the unusual step of remanding so that she can dig into  
12 events six years old through new discovery.

13           Again --

14           JUSTICE KAGAN: Mr. Garre, could I ask you  
15 about that? You said before that there is no -- nothing  
16 to suggest that she left anything on the table because  
17 of the nature of the Seventh Circuit standard.

18           So what's the best place in the record for  
19 us to look -- to decide that question as to whether she  
20 at all didn't present or didn't develop evidence because  
21 of the nature of the Seventh Circuit standard?

22           MR. GARRE: Well, first, I would look at her  
23 summary judgment briefs, Your Honor, and in those briefs  
24 she argued that Davis was a supervisor because, one,  
25 under the job description she had the authority to lead

1 and direct, the same sorts of things that we are talking  
2 now and would be talking about under the EEOC and Second  
3 Circuit tests. And, two, she points to the fact that  
4 they didn't clock in, again something that is irrelevant  
5 under the Seventh Circuit test.

6           So this wasn't a case where the litigant  
7 felt themselves bound by the legal standard and one  
8 could surmise that they would have pursued it  
9 differently. I think I would look at that first. And  
10 then I would look at her deposition transcript which is  
11 in the Joint Appendix and the three affidavits that she  
12 put in, in this case, which are in the Joint Appendix.

13           At some point you would expect her to come  
14 along and try to rebut the notion that Mr. Kimes and  
15 Ms. Fultz assigned the daily activities through the prep  
16 sheets. In fact, it's just the contrary. If anything,  
17 in her own affidavit she seems to accept that the prep  
18 sheets were done by Kimes and the chef. That's at JA  
19 430. You -- you would expect her to contest the notion  
20 that Mr. Kimes was the one who did the scheduling, who  
21 did her annual reviews, who disciplined her on occasion.  
22 After all, she was claiming that Davis was the  
23 supervisor, and she didn't feel bound by the Seventh  
24 Circuit tests.

25           So you would expect to see some indication



1 of how Ms. Davis actually assigned her something to do,  
2 changed her schedule, the like. Instead what you find  
3 is all those sorts of allegations, she made them, but  
4 all those sorts of allegations were directed to Mr.  
5 Kimes. That was the basis for her retaliation claim,  
6 which isn't before the Court. But there are all the  
7 sorts of things that you might expect one to complain  
8 about against a supervisor in this sort of vein: She  
9 made me cut vegetables instead of doing the baking like  
10 I like to do; she didn't assign me enough overtime so I  
11 could make more money; she changed my hours.

12 Those allegations were made. They were directed  
13 at Mr. Kimes and that's perfectly consistent with the  
14 record evidence. There was Kimes and the chef who had  
15 the authority to do her daily activities, and Kimes had  
16 the authority to do the schedule.

17 It's not enough for her to come here today,  
18 I don't think, and just speculate that having an  
19 opportunity to go through greater discovery, which in  
20 essence would amount to a fishing expedition, the Court  
21 should take the unusual step of remanding to give her an  
22 opportunity for discovery. This Court -- although we  
23 acknowledge oftentimes this Court does remand for the  
24 lower courts to undertake that inquiry, it certainly  
25 doesn't always do so. So Global-Tech is one example;

1 we've cited many more in our briefs.

2           And here, I think, again, the parties --  
3 there is broad agreement on what the standard should be.  
4 Something like the EEOC or Second Circuit test is, we  
5 think, the best way to frame it. But given the debate  
6 among the parties about what that test means and how it  
7 applies to Davis here, I think it's absolutely critical  
8 for the Court to apply the legal test to the record  
9 facts and hold that Ms. Davis is not a supervisor and to  
10 affirm the judgment below.

11           Although it's not before this Court, if one  
12 wants to go to the next step and think about the  
13 affirmative defenses and the like, this isn't a case  
14 where the Court would be putting to rest a valid Title  
15 VII claim.

16           But the claim was extensively looked at  
17 below by Judge Barker in the district court, Judge Wood  
18 and her colleagues on the court of appeal, and they  
19 found an environment in which Ball State reacted  
20 responsibly to the allegations that were made,  
21 investigated them and took prompt action where the  
22 investigation warranted it, particularly with respect to  
23 the most despicable things that were uncovered, racial  
24 epithets that were used by another employee,  
25 Ms. McVicker, not Ms. Davis.

1           The only allegations against Ms. Davis that  
2 we think are relevant here during the time period that  
3 Ms. Davis was a part-time employee were: One, the  
4 so-called elevator incident where Ms. Davis allegedly  
5 blocked Ms. Vance as she got out of the elevator, which  
6 isn't race-based at all, we don't think; and two, the  
7 alleged use of words like "Sambo" or  
8 "Buckwheat" to refer --

9           JUSTICE GINSBURG: Mr. Ortiz said it wasn't  
10 just part-time. He called my attention to the page  
11 before that says she also -- that Davis also directed --

12           MR. GARRE: Well, we disagree with that,  
13 Your Honor. If you look on page JA 12, the job  
14 description position function, the last sentence says,  
15 "Requires leadership of up to 20 part-time substitute  
16 and student employees." So we think it's clear.

17           We said -- this is in our red brief and  
18 there wasn't any response to it in the yellow brief --  
19 that any authority, any conceivable supervisory  
20 authority, could have only existed when Ms. Vance was a  
21 part-time employee.

22           But we don't think that that's relevant,  
23 Your Honor, because putting -- putting aside whether she  
24 had authority over catering assistants who were part  
25 time or full time, the record is absolutely clear that

1 Ms. Davis just lacked the authority that would have been  
2 sufficient to trigger vicarious liability. And again we  
3 think the paradigm case where that authority is present  
4 is something like the lifeguard in Silverman where they  
5 control all aspects of the daily activities, one's  
6 schedule, one's daily work assignments, and down the  
7 line.

8           Here there is no evidence that any of that  
9 authority that was possessed, and the record makes clear  
10 beyond doubt that all that authority was possessed by  
11 others, Ms. -- the chef and Mr. Kimes.

12           And I think, as the amicus brief makes  
13 clear, this is consistent with workplaces across America  
14 today, where jobs are less hierarchical, more  
15 collaborative, and so where you have got more senior  
16 employees by virtue of their experience or job title,  
17 just a paper title, are in a broad sense team leaders of  
18 the like in the workplace.

19           That doesn't mean they are supervisors in  
20 any traditional sense, and it certainly doesn't mean  
21 they are supervisors for purposes of triggering  
22 vicarious liability under Title VII.

23           So for those reasons, we would urge this  
24 Court to affirm the judgment below, to make clear in  
25 order to provide the needed guidance to the courts of

1 appeals and the assumption that something like the EEOC  
2 or Second Circuit standard does apply to determine who  
3 is a supervisor triggering vicarious liability. Ms.  
4 Davis, the only employee who is at issue, does not meet  
5 that standard.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 MR. GARRE: If you have no more questions,  
8 thank you.

9 CHIEF JUSTICE ROBERTS: Mr. Ortiz, you have  
10 4 more minutes remaining.

11 REBUTTAL ARGUMENT OF DANIEL R. ORTIZ

12 ON BEHALF OF THE PETITIONER

13 MR. ORTIZ: Thank you, Your Honor.

14 The Seventh Circuit rule is not one that can  
15 be justified in terms of its superior judicial  
16 manageability, administrability, despite producing a few  
17 odd results.

18 As Justice Kagan's question revealed, it  
19 produces truly perverse results. Someone who can tell  
20 you what to do in your job day-to-day, manage you during  
21 the whole job period, what kind of tasks you have to do,  
22 was not necessarily considered a supervisor, while the  
23 person upstairs in human resources that you may never  
24 see or even know would be considered your supervisor.

25 JUSTICE KENNEDY: Well, if you adopted that

1 rule I suppose you could couple it with an increased  
2 duty of care on the part of the employer to take  
3 necessary steps to prevent forbidden harassment. In  
4 other words, you up the duty of care on the part of the  
5 employer generally.

6 MR. ORTIZ: Well, Justice Kennedy, that in  
7 fact is one thing the Seventh Circuit has tried to do,  
8 but it dispels any kind of certainty and predictability  
9 in the rule, because the duty of care of course would be  
10 determined by a jury only after hearing a particular  
11 case.

12 Second, my friend tries to get out from  
13 under the clear import of the job description here by  
14 saying directing and leading somehow don't count because  
15 that is accomplished through oversight. Oversight,  
16 however, is a common synonym for supervision itself.  
17 It's merely a dog chasing its own tail.

18 Third, it's no surprise that many of the  
19 things that Ms. Vance referred to, the particular  
20 instance she referred to went back to William Kimes. Of  
21 course, is that related to the retaliation part of her  
22 claim, which is not before this Court.

23 Also, Your Honor, Faragher in the end is not  
24 a toilet cleaning case. The district court did not  
25 find -- made no finding on that. The court of appeals

1 didn't mention it. This Court in its Faragher opinion  
2 mentioned only that it was an allegation in the  
3 complaint.

4           It is not clear -- the allegation of the  
5 complainant was that he said that, not that Silverman  
6 actually had that authority. And it was clear from the  
7 case that he actually wasn't interested in even dating  
8 Faragher, it was just a way of humiliating her in the  
9 workplace. So just as Faragher's expressed, it was not  
10 clear that was even something that Silverman had  
11 authority to do.

12           And finally, if this Court is worried about  
13 sending signals, think about what kind of signal it will  
14 be sending to litigants in the future if it were to  
15 affirm, simply affirm here. In the future, whenever  
16 anyone is thinking that they may want to challenge a  
17 rule, no matter how well-settled it is in a particular  
18 circuit, they would have an incentive to, through  
19 discovery, to produce information that might be relevant  
20 to any future twist.

21           JUSTICE BREYER: Well, is there any? You  
22 said he went through, you weren't preceding on the --  
23 your client, originally in district court, not preceding  
24 on the basis of this straight Seventh Circuit test. He  
25 had the EEOC look into it; the Government itself says

1 that we should affirm and they have EEOC lawyers on it.

2 And so is there any piece of information  
3 that would be relevant that you know of that you would  
4 introduce, were it sent back, say to the district court,  
5 that you have not already introduced?

6 MR. ORTIZ: Well, Your Honor, first, the  
7 Solicitor General's office does not now take the  
8 position that affirmance is proper.

9 JUSTICE BREYER: I read what they said in  
10 the last page of their brief. They said either affirm,  
11 that was their first thing, or send it back. Okay. Now  
12 my question remains the same.

13 MR. ORTIZ: Yes.

14 JUSTICE BREYER: Is there --

15 MR. ORTIZ: There is.

16 JUSTICE BREYER: What is it?

17 MR. ORTIZ: On page 197 of the Joint  
18 Appendix, in the deposition testimony of Ms. Vance, she  
19 says that Davis told her what to do, what not to do. In  
20 the internal memo to the file that Justice Sotomayor  
21 pointed to, William Kimes, who had the authority --

22 JUSTICE SOTOMAYOR: I think Justice Breyer's  
23 question was what's not in the record?

24 MR. ORTIZ: Oh, what's not -- I'm sorry,  
25 Your Honor.



1 JUSTICE SOTOMAYOR: Do you have something  
2 that's not in the record that will materially add to  
3 this discourse?

4 MR. ORTIZ: Yes, Your Honor. Thank you.

5 In document number 62-3, which concerns the  
6 deposition testimony of another employee -- is not in  
7 the Joint Appendix, which -- which -- which is the  
8 deposition testimony of another employee named Julie  
9 Murphy. Ms. Murphy testifies that Davis, quote unquote,  
10 gave orders in the kitchen. That's on page 24, I  
11 believe.

12 On page 38, she testifies that Davis was  
13 understood as a supervisor.

14 And on page 37, she indicates that she  
15 received particular orders from Davis to do different  
16 things, like clean a particular piece of kitchen  
17 equipment, at different times.

18 CHIEF JUSTICE ROBERTS: That's all in the  
19 record in this Court.

20 MR. ORTIZ: Yes.

21 CHIEF JUSTICE ROBERTS: Just not in the  
22 Joint Appendix.

23 MR. ORTIZ: Just not in the Joint Appendix,  
24 Your Honor.

25 Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel.

2 The case is submitted.

3 (Whereupon, at 12:06 p.m., he case in the

4 above-entitled matter was submitted.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<b>A</b>				
<b>ability</b> 7:24 20:25 21:2 28:6,7 29:1,3 43:12 47:6	53:16 <b>adopt</b> 36:24 37:17 40:25	32:21 33:8,16 34:14,21 41:18 42:2 44:23	12:18,20,24 13:23 14:2 21:16 35:1,7 48:11,12 56:18 57:7,22,23	<b>assigned</b> 14:10 44:2 46:24 48:15 49:1
<b>above-entitled</b> 1:11 58:4	<b>adopted</b> 7:14 22:24 33:10 36:18 39:3 53:25	<b>allegation</b> 6:7 37:6 55:2,4	<b>application</b> 7:16 32:7	<b>assignment</b> 8:8 21:21 24:17 37:10
<b>absolute</b> 11:17 19:10	<b>adopts</b> 30:11	<b>allegations</b> 49:3 49:4,12 50:20 51:1	<b>applied</b> 6:6 11:14 28:17	<b>assignments</b> 15:7 21:15 24:8 34:1,6 35:4 47:3 52:6
<b>absolutely</b> 27:23 34:7,10 36:14 50:7 51:25	<b>advances</b> 40:2	<b>alleged</b> 42:15,24 43:16,18 51:7	<b>applies</b> 7:3 33:21 45:21 50:7	<b>assist</b> 40:19 43:23
<b>academic</b> 9:5	<b>adverse</b> 4:17 8:25	<b>allegedly</b> 51:4	<b>apply</b> 7:1,8 8:10 28:17 33:16,19 37:24 38:22 39:23 40:2 41:8 50:8 53:2	<b>assistants</b> 51:24
<b>accept</b> 48:17	<b>affidavit</b> 35:6 48:17	<b>allocates</b> 18:8	<b>applying</b> 33:20 45:1,8	<b>assumed</b> 36:12
<b>accomplished</b> 54:15	<b>affidavits</b> 35:7 48:11	<b>allowed</b> 31:21	<b>appreciate</b> 39:2	<b>Assuming</b> 15:22
<b>accomplishme...</b> 39:6	<b>affirm</b> 50:10 52:24 55:15,15 56:1,10	<b>alternative</b> 9:25 25:10	<b>appreciates</b> 45:22	<b>assumption</b> 53:1
<b>account</b> 29:17 40:7,14	<b>affirmance</b> 9:22 56:8	<b>America</b> 52:13	<b>approach</b> 6:19 11:5 22:23,23 22:24	<b>attaching</b> 5:17
<b>accounts</b> 21:13	<b>affirmative</b> 4:2 15:23 16:11,25 17:3,13,13,16 18:4,8 20:20 50:13	<b>amici</b> 18:12 35:19 45:12	<b>appropriately</b> 18:8	<b>attention</b> 51:10
<b>acknowledge</b> 49:23	<b>affirmed</b> 32:17 33:7	<b>amicus</b> 1:19 2:7 20:13 52:12	<b>area</b> 40:15	<b>augment</b> 7:25 8:6 14:20
<b>action</b> 4:17 29:20 50:21	<b>agency</b> 18:20 20:24 36:18 38:14,15,23,24 39:4,7,8,10 40:8	<b>amount</b> 4:17 19:9 49:20	<b>argued</b> 47:24	<b>augments</b> 3:22 7:18 20:25
<b>actionable</b> 4:1	<b>agent</b> 19:23 20:4	<b>analysis</b> 6:6 36:25	<b>arguing</b> 38:25	<b>August</b> 13:19,20
<b>actions</b> 6:25 8:24 17:7,10 22:10 28:3 29:15,22	<b>agree</b> 3:13,18 10:23 33:9 39:16 44:11 46:9	<b>analyzed</b> 44:14	<b>argument</b> 1:12 2:2,5,9,12 3:3 3:7 19:17 20:12 23:23 32:12 45:1 53:11	<b>authorities</b> 25:1 25:1,4
<b>activities</b> 4:12 6:2 16:17,19 20:18,22 21:22 25:3,12 30:5 30:21 31:19 36:5 44:2 46:17 48:15 49:15 52:5	<b>agreement</b> 50:3	<b>animosity</b> 10:15	<b>articulate</b> 28:25	<b>authority</b> 3:21 7:19 11:24 12:1,5,7 13:3,9 15:6 21:14 22:10 23:8,9 23:13,24 24:20 25:3,11 26:6 27:23 28:2 29:5 32:19 36:3,20 38:10 38:19,20 40:19 41:12,17,21,23 42:4,17 44:3,5 44:7,7 46:10 47:2,25 49:15 49:16 51:19,20 51:24 52:1,3,9 52:10 55:6,11 56:21
<b>activity</b> 16:7 17:7	<b>agrees</b> 38:9 46:9	<b>animus</b> 10:18	<b>aside</b> 51:23	<b>authorized</b> 40:11
<b>acts</b> 40:10	<b>aided</b> 39:6,25	<b>announce</b> 10:14	<b>asked</b> 46:22	<b>automatic</b> 3:25
<b>actual</b> 12:8 26:3	<b>air</b> 24:18,19,24	<b>announces</b> 32:5 44:6 48:21	<b>aspect</b> 24:11,12 40:12	
<b>add</b> 57:2	<b>AL</b> 1:6	<b>annual</b> 28:2 44:6 48:21	<b>aspects</b> 30:19 36:4,20 52:5	
<b>addition</b> 25:13	<b>Alito</b> 7:17 8:7,16 8:21 14:9,19 14:22 23:7,23 24:15 31:22	<b>answer</b> 23:11 24:3 26:9 32:25 33:3	<b>assembly</b> 5:14	
<b>adjudication</b> 19:8		<b>answered</b> 19:16	<b>assign</b> 7:19 24:21 34:22 41:21 49:10	
<b>administrabili...</b>		<b>apparently</b> 25:9 46:1		
		<b>appeal</b> 50:18		
		<b>appeals</b> 31:23 32:16 42:9 44:18 45:10 53:1 54:25		
		<b>appear</b> 29:13		
		<b>APPEARAN...</b> 1:14		
		<b>appears</b> 15:16		
		<b>appendix</b> 12:10		

<p><b>available</b> 15:23 22:5 <b>avowed</b> 46:3 <b>aware</b> 12:11 <b>a.m</b> 1:13 3:2</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>back</b> 10:1 42:25 43:5 45:9 54:20 56:4,11 <b>backdrop</b> 40:8 <b>bad</b> 38:22 <b>baking</b> 5:2 49:9 <b>balance</b> 40:5,23 40:23 <b>Ball</b> 1:6 3:4 12:25 15:13 31:15 50:19 <b>banquet</b> 12:14 <b>Barker</b> 44:19 50:17 <b>based</b> 26:12 <b>basically</b> 32:1 <b>basis</b> 5:20,24 25:10 27:22 29:11 34:17 37:11 49:5 55:24 <b>beach</b> 23:20 <b>bear</b> 27:12 <b>bears</b> 44:15 <b>begins</b> 20:2 <b>behalf</b> 1:16,21 2:4,11,14 3:8 32:13 53:12 <b>believe</b> 5:11 11:18 13:20 57:11 <b>benefit</b> 5:22 45:8 <b>best</b> 11:2,6 19:20 33:17 41:2 45:22 47:18 50:5 <b>better</b> 18:6 42:5 <b>beyond</b> 52:10 <b>bit</b> 3:19 6:19</p>	<p>19:12,13 30:12 <b>blocked</b> 51:5 <b>body</b> 46:15 <b>boss</b> 43:3 <b>bound</b> 48:7,23 <b>boxed</b> 34:4 <b>bread</b> 5:3 <b>Breyer</b> 25:5,8 25:20,21 26:20 26:24 27:4,11 55:21 56:9,14 56:16 <b>Breyer's</b> 56:22 <b>brief</b> 26:21 31:22 32:8 35:24 37:18 38:2 42:24 51:17,18 52:12 56:10 <b>briefing</b> 35:18 <b>briefs</b> 47:23,23 50:1 <b>bright</b> 35:24 <b>bring</b> 9:17 <b>broad</b> 22:13 25:1 50:3 52:17 <b>broader</b> 37:22 <b>brought</b> 36:16 <b>BSU</b> 45:25 <b>Buckwheat</b> 51:8 <b>burden</b> 17:25 18:2 44:16 <b>burdens</b> 18:8 <b>Burlington</b> 3:16 8:23</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 2:1 3:1 <b>called</b> 51:10 <b>care</b> 7:7 54:2,4,9 <b>carry</b> 20:25 <b>case</b> 3:4,11 5:1,6 5:11 7:8 9:5,23 11:12 12:8 20:3 21:3 22:18 24:16</p>	<p>29:24 30:24 31:7,13,24 32:21 33:12,20 35:9 37:6,23 39:3 40:25 41:3,7 42:11 42:12,19 43:18 44:24 45:2,7 45:12,20 48:6 48:12 50:13 52:3 54:11,24 55:7 58:2,3 <b>cases</b> 7:13 17:15 19:21 20:2 22:2,14 25:7 26:3 27:5,14 29:1 30:7 37:1 42:7 43:1 44:22 <b>case-by-case</b> 5:20,24 37:7 <b>categories</b> 7:4 10:7 <b>category</b> 6:17,18 6:20,25 7:5 10:8,8,10,13 36:8 37:22 <b>catering</b> 11:23 12:14 13:25 14:3 51:24 <b>celery</b> 5:2 <b>central</b> 3:15 <b>certainly</b> 11:19 14:12 17:22 31:6 35:19 39:16 49:24 52:20 <b>certainty</b> 54:8 <b>cetera</b> 41:23 <b>challenge</b> 55:16 <b>Chamber</b> 35:18 <b>changed</b> 49:2,11 <b>charged</b> 18:20 26:13 <b>Charlottesville</b> 1:15 <b>chasing</b> 54:17</p>	<p><b>chef</b> 15:8 33:25 34:9 35:3 44:2 46:18 48:18 49:14 52:11 <b>chef's</b> 15:9 <b>Chief</b> 3:3,9 4:4 4:20,24 5:12 5:21 8:12 15:21 20:10,16 21:5,8,19 22:11 26:1,10 26:16 29:25 32:10,14 36:23 37:25 53:6,9 57:18,21 58:1 <b>chop</b> 15:3 <b>chopping</b> 14:11 14:15,20,22,23 14:23,24 <b>circuit</b> 3:13 6:4 6:10,12,13,14 6:21 7:10,12 7:14 9:18,18 9:24 10:4,20 11:14 16:15 18:10,13,18 22:24 27:17,24 28:8,13 29:8,9 29:12 31:4 33:3,17 35:13 35:16,18 36:8 37:17 41:1,8 41:15 42:12,12 44:25 47:17,21 48:3,5,24 50:4 53:2,14 54:7 55:18,24 <b>circuits</b> 7:14 25:13,18 27:6 27:7 33:10 37:24 <b>Circuit's</b> 5:23 6:19 9:22 11:17 <b>circumstance</b> 4:17 <b>circumstances</b></p>	<p>16:23 29:14 38:3 <b>cited</b> 50:1 <b>claim</b> 44:14 49:5 50:15,16 54:22 <b>claimed</b> 9:14 <b>claiming</b> 48:22 <b>clarify</b> 31:5 <b>classification</b> 46:25 <b>clause</b> 34:24 <b>clean</b> 23:4,16,20 40:20 57:16 <b>cleaning</b> 13:5 20:23 23:7 24:4,11 54:24 <b>cleans</b> 23:9,24 <b>clear</b> 6:4,6 15:12 33:5,22,24 34:7,10 35:3 39:19 40:3 41:1,2,3 42:3 42:19 43:19,25 44:19 45:17 46:16 51:16,25 52:9,13,24 54:13 55:4,6 55:10 <b>clearly</b> 21:21 <b>client</b> 55:23 <b>clock</b> 41:13 48:4 <b>close</b> 44:24 45:12 <b>closer</b> 22:14,16 <b>coaching</b> 34:25 47:8 <b>cognizant</b> 40:9 <b>cold</b> 40:1 <b>collaborative</b> 52:15 <b>colleagues</b> 50:18 <b>colloquy</b> 36:16 <b>come</b> 30:6 42:8 48:13 49:17 <b>comes</b> 21:9,10 <b>commend</b> 30:21 <b>Commerce</b></p>
--	---	---	---	--

<p>35:19  <b>common</b> 54:16  <b>common-sense</b>  3:17  <b>company</b> 8:5  9:11  <b>comparable</b>  13:2  <b>compel</b> 20:23  35:25 37:16  <b>compelled</b> 18:18  <b>compensate</b>  37:12  <b>competing</b>  22:23  <b>complain</b> 16:20  17:14,18 26:5  28:20,22 29:2  29:3 38:21  49:7  <b>complainant</b>  55:5  <b>complained</b>  9:14  <b>complaining</b>  17:15  <b>complaint</b> 9:12  55:3  <b>complaints</b> 46:2  <b>complete</b> 27:21  33:3  <b>compliance</b>  12:25 15:14  46:1  <b>comply</b> 40:2  <b>components</b>  26:9  <b>concede</b> 44:24  <b>conceivable</b>  51:19  <b>concerning</b>  17:17  <b>concerns</b> 3:11  57:5  <b>concluding</b>  21:11  <b>conclusion</b></p>	<p>31:22 32:8,9  36:19  <b>concrete</b> 11:25  <b>conditioning</b>  24:18,19,24  <b>conditions</b> 43:8  <b>conduct</b> 9:7,10  23:2  <b>conducted</b> 21:3  28:18  <b>conducting</b>  15:14  <b>confined</b> 13:13  <b>conflict</b> 30:8  <b>conflicts</b> 30:7  <b>Congress</b> 38:18  40:8  <b>Congress's</b>  40:17  <b>connection</b>  10:17  <b>consider</b> 22:7  <b>considered</b>  53:22,24  <b>considering</b>  11:10  <b>consisted</b> 10:8  10:10  <b>consistent</b> 49:13  52:13  <b>constitute</b> 25:2  <b>contentious</b>  19:12,13  <b>contest</b> 48:19  <b>context</b> 39:21  <b>continue</b> 29:7  <b>continuum</b>  22:13,20  <b>contrary</b> 41:6  48:16  <b>control</b> 7:24  16:19 30:5,20  31:18 36:4,19  44:3 52:5  <b>controlled</b> 24:8  24:10 34:11,13  34:16</p>	<p><b>controls</b> 20:17  20:22 22:16  <b>conversations</b>  26:13 27:2  <b>corporal</b> 42:14  42:15  <b>correspond</b> 38:4  <b>cost</b> 23:6  <b>counsel</b> 15:17  20:10 22:23  31:3 32:10  53:6 58:1  <b>count</b> 3:12,22  8:25 10:16,19  23:12,25 24:25  30:15 54:14  <b>counted</b> 43:7  <b>countless</b> 22:13  <b>country</b> 4:10,11  5:8 8:17 25:16  27:8  <b>counts</b> 3:11  29:18  <b>couple</b> 54:1  <b>course</b> 28:19  32:5 45:9 54:9  54:21  <b>court</b> 1:1,12  3:10 9:1,12,21  9:23 10:2,5,21  10:25 12:6,12  16:22 18:7  19:12,13,19,20  20:16 22:5  26:3 27:15  30:11,22 31:8  31:23 32:5,15  32:16 33:7,18  36:1,6,10  37:13,16,20  39:1,3,19 40:6  40:10,12,22,24  41:10 42:3,16  43:23 44:18  45:4,5,10,10  45:13,19,20  47:10 49:6,20</p>	<p>49:22,23 50:8  50:11,14,17,18  52:24 54:22,24  54:25 55:1,12  55:23 56:4  57:19  <b>courts</b> 7:15 8:13  8:14 22:19  32:6 33:12,16  38:3 42:9  49:24 52:25  <b>court's</b> 3:15  8:23 10:3 20:1  20:5 35:25  36:9,17 37:16  37:19  <b>cover</b> 13:17 23:1  <b>covered</b> 14:8  <b>covers</b> 23:22  <b>coworker</b> 21:4  22:7 26:6  28:16,18 29:3  <b>co-employee</b>  43:17,20  <b>co-worker</b> 6:20  <b>co-workers</b> 6:25  44:15  <b>crazy</b> 16:21  <b>create</b> 46:13  <b>creating</b> 46:15  <b>criterion</b> 43:11  <b>critical</b> 34:24  50:7  <b>crystal</b> 35:3  46:16  <b>curiae</b> 1:19 2:7  20:13  <b>cut</b> 30:2 49:9  <b>cutting</b> 5:2  22:17 30:3</p>	<p>30:21 34:1,6  34:17 35:4  36:5 41:22  44:1 46:17  48:15 49:15  52:5,6  <b>Dairy</b> 6:22  <b>damaging</b> 45:13  <b>DANIEL</b> 1:15  2:3,13 3:7  53:11  <b>date</b> 4:9,10 13:4  40:20  <b>dating</b> 55:7  <b>Davis</b> 9:7 11:1  11:25 12:16,22  14:10 15:9,15  15:22 31:18  33:23 34:16  41:3,9,16 46:4  46:19,22 47:3  47:24 48:22  49:1 50:7,9,25  51:1,3,4,11  52:1 53:4  56:19 57:9,12  57:15  <b>Dawn</b> 12:19  <b>day</b> 4:7,11 8:18  14:11,11,15,20  14:24,25 23:18  23:22 34:3  <b>days</b> 34:12  <b>day's</b> 24:4,11  <b>day-to-day</b> 16:7  31:19 53:20  <b>deal</b> 32:6  <b>dealing</b> 26:14  <b>debate</b> 5:25 50:5  <b>debilitating</b> 5:7  <b>decide</b> 7:9 11:3  23:8,9,13,24  32:21 33:12  35:10,13 37:11  47:19  <b>decision</b> 36:2  <b>decisions</b> 19:19</p>
--	---	--	--	--

<p>26:11 30:7  <b>defeat</b> 46:6  <b>defend</b> 35:14  <b>defended</b> 35:19  <b>defending</b> 33:9  35:15,18  <b>defense</b> 4:3  15:23 16:12,25  17:13,16 18:4  18:8 20:20  <b>defenses</b> 17:3  50:13  <b>deference</b> 18:22  19:2,9,15,17  <b>definition</b> 7:19  20:4  <b>delegated</b> 15:15  <b>demonstration</b>  34:25 47:8  <b>demote</b> 32:24  36:21  <b>department</b>  1:18 12:15  <b>depend</b> 15:2  <b>depends</b> 15:2  <b>deposition</b> 12:22  46:22 48:10  56:18 57:6,8  <b>Deputy</b> 1:17  <b>description</b>  11:23,23 13:10  13:17 14:6  34:21 35:2  37:8 41:11  47:7,25 51:14  54:13  <b>desks</b> 24:21  <b>despicable</b>  43:13 44:22  50:23  <b>despite</b> 53:16  <b>detailed</b> 44:19  <b>determinative</b>  7:11  <b>determinative...</b>  6:9 18:13  <b>determine</b> 19:21</p>	<p>53:2  <b>determined</b>  54:10  <b>determining</b>  29:15  <b>develop</b> 31:5,12  41:6 47:20  <b>developed</b> 11:9  11:16 14:17  30:23 31:3,8  33:14  <b>development</b>  33:13  <b>Dice</b> 34:3  <b>difference</b> 12:7  16:16 17:6,17  18:17 42:10  <b>different</b> 3:20  5:15 11:14  16:9 41:16  57:15,17  <b>differently</b> 3:20  48:9  <b>difficult</b> 27:14  28:20 38:20  <b>difficulty</b> 37:5  37:14  <b>dig</b> 47:11  <b>direct</b> 11:24  15:22 17:6,7  25:11 28:2  41:12 42:4  46:11 47:7  48:1  <b>directed</b> 12:22  49:4,12 51:11  <b>directing</b> 14:1  54:14  <b>direction</b> 46:4  <b>director</b> 12:13  <b>directs</b> 16:6  <b>disagree</b> 22:1,1  51:12  <b>disagreements</b>  43:21  <b>discipline</b> 32:25  <b>disciplined</b></p>	<p>48:21  <b>discourse</b> 57:3  <b>discovery</b> 47:12  49:19,22 55:19  <b>discredited</b>  10:20  <b>dislike</b> 5:7,8  <b>dispels</b> 54:8  <b>dispositive</b>  43:11  <b>dispute</b> 34:15,19  <b>disseminated</b>  30:14  <b>dissented</b> 39:2  <b>district</b> 9:6,12  9:22 10:2,3,5  10:21 45:10  50:17 54:24  55:23 56:4  <b>divided</b> 10:6  <b>division</b> 12:14  <b>document</b> 15:16  45:25 57:5  <b>Doe</b> 6:22  <b>dog</b> 54:17  <b>doing</b> 15:8 49:9  <b>door</b> 5:18  <b>doubt</b> 52:10  <b>dozen</b> 25:9  <b>draw</b> 30:6  <b>drawn</b> 47:5  <b>draws</b> 30:9  <b>driving</b> 46:17  <b>duties</b> 13:25  14:13  <b>duty</b> 54:2,4,9  <b>D.C</b> 1:8,18,21</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>E</b> 2:1 3:1,1  <b>earlier</b> 28:25  <b>easy</b> 8:9  <b>EEOC</b> 18:17  19:18,20 20:3  20:3 21:12  25:4,9,18  26:13,16,17</p>	<p>27:6 29:16,22  30:9,15,17,20  33:17 38:9  39:16 40:25  44:11,25 46:9  48:2 50:4 53:1  55:25 56:1  <b>EEOC's</b> 16:14  <b>effect</b> 40:16  <b>efficiency</b> 35:1  <b>eight</b> 6:1  <b>either</b> 7:22 9:24  33:25 56:10  <b>elaborate</b> 30:12  30:20  <b>elevate</b> 19:9  <b>elevator</b> 51:4,5  <b>Ellerth</b> 16:12  17:4 20:6  27:15 32:22,22  39:2,19 40:6  <b>Ellerth-Farag...</b>  28:11  <b>Ellerth/Farag...</b>  4:2  <b>employee</b> 4:6,8  4:13,14 7:5,5  8:25 12:18  13:14,15 16:20  17:14 18:9  21:22 22:15  31:18 34:2  37:10 39:5  43:4 50:24  51:3,21 53:4  57:6,8  <b>employees</b> 4:9  8:5 11:25  12:15,23 14:1  32:18 34:8,12  51:16 52:16  <b>employee's</b> 5:10  16:6 25:12  <b>employer</b> 4:6  7:6 15:24  16:18 17:1,17  18:3,9 32:4</p>	<p>37:6 38:19  40:10,11 44:16  44:20 54:2,5  <b>employers</b> 3:25  4:1 39:20  <b>employer-con...</b>  3:21  <b>employment</b>  6:24 17:11  22:10 28:3  29:5,15,20,22  43:8  <b>enable</b> 7:22  <b>enables</b> 3:21  33:22  <b>encompassed</b>  24:4  <b>encountered</b>  25:6 26:15  <b>enforcement</b>  21:13  <b>ensure</b> 34:25  <b>entail</b> 22:8  <b>entire</b> 23:22  <b>entirely</b> 26:19  <b>entitle</b> 47:9  <b>entitled</b> 19:1,14  <b>environment</b>  5:13,16 27:22  50:19  <b>envision</b> 22:5  28:25  <b>epithet</b> 10:12  <b>epithets</b> 13:9  44:22 50:24  <b>equally</b> 9:11  <b>equation</b> 43:14  <b>equipment</b>  57:17  <b>ESQ</b> 1:15,17,21  2:3,6,10,13  <b>essence</b> 43:16  49:20  <b>Essentially</b>  44:10  <b>establish</b> 37:21  40:12 43:12</p>
--	---	---	---	---

<p><b>establishes</b> 32:17 45:20  <b>establishing</b> 44:16 45:16  <b>et</b> 1:6 41:23  <b>evaluate</b> 44:7  <b>evaluates</b> 29:10  <b>events</b> 10:9,10 10:14,16 47:12  <b>evidence</b> 10:25 11:6,13,15,18 11:19 41:6 43:23 44:1 46:12,15,21 47:5,20 49:14 52:8  <b>exact</b> 7:4  <b>exactly</b> 5:21 14:3  <b>exaggerate</b> 18:14  <b>exaggerates</b> 6:9  <b>example</b> 4:21 8:12 10:12 19:14 20:23 23:1,17 24:13 36:6,10 38:8 42:10,13 47:1 49:25  <b>examples</b> 35:5  <b>excellent</b> 35:17  <b>Excuse</b> 19:4  <b>exercise</b> 26:5  <b>exercised</b> 21:14  <b>exercising</b> 12:1 12:8  <b>exhibit</b> 35:6  <b>exhibits</b> 35:8  <b>existed</b> 51:20  <b>existing</b> 17:12  <b>expanded</b> 31:21  <b>expect</b> 44:8 48:13,19,25 49:7  <b>expedition</b> 49:20  <b>experience</b></p>	<p>52:16  <b>explain</b> 7:17  <b>expressed</b> 55:9  <b>extensively</b> 50:16  <b>extent</b> 40:15  <b>extremely</b> 8:8 45:6</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> 10:14 46:7  <b>facilitate</b> 21:23  <b>facilities</b> 23:20  <b>fact</b> 34:15 41:7 41:13 47:4 48:3,16 54:7  <b>facts</b> 22:19 32:7 33:19,20 45:2 45:21 50:9  <b>factual</b> 35:10 38:4  <b>failing</b> 17:18  <b>fall</b> 37:1  <b>falling</b> 29:1  <b>falls</b> 16:11 22:14  <b>far</b> 4:21,24 5:16 15:6 26:11 29:13 39:17  <b>Faragher</b> 3:14 3:15 12:6 13:3 16:12 17:4 20:6 23:2 24:6 32:22 36:2,3 39:1 40:18,21 54:23 55:1,8  <b>Faragher's</b> 55:9  <b>Faragher-Elle...</b> 20:20  <b>favor</b> 11:21 32:4 38:5 45:1  <b>fear</b> 7:22  <b>Federal</b> 26:3,3  <b>feel</b> 48:23  <b>felt</b> 48:7  <b>fenders</b> 5:18  <b>field</b> 21:14  <b>fight</b> 16:13</p>	<p>17:20,21  <b>figure</b> 22:14,20  <b>file</b> 45:25 56:20  <b>finally</b> 55:12  <b>find</b> 10:24 49:2 54:25  <b>finding</b> 54:25  <b>fine</b> 26:17  <b>fire</b> 13:4 27:23 28:6 32:24 36:21 41:23  <b>fired</b> 28:5  <b>firm</b> 43:5  <b>first</b> 10:13 11:8 12:13 37:15 43:1 45:5 47:22 48:9 56:6,11  <b>fishing</b> 49:20  <b>fit</b> 6:15  <b>five</b> 4:5  <b>flaws</b> 22:25  <b>flip</b> 42:2  <b>following</b> 15:20 19:13 25:14 30:13  <b>follows</b> 34:24  <b>forbidden</b> 54:3  <b>force</b> 23:15 45:16  <b>Forklift</b> 43:2  <b>formal</b> 16:16 19:8  <b>forms</b> 5:8  <b>forth</b> 18:25  <b>forward</b> 7:6 18:9  <b>found</b> 9:12,18 12:17,20,23 50:19  <b>four</b> 26:21  <b>Fourth</b> 42:12  <b>frame</b> 28:24 50:5  <b>framework</b> 20:21 28:12 44:15</p>	<p><b>friend</b> 38:1 41:5 45:12 54:12  <b>front</b> 5:18  <b>fulfilling</b> 46:24  <b>full</b> 51:25  <b>fully</b> 33:14  <b>full-time</b> 13:15 13:22 14:4,5  <b>Fultz</b> 48:15  <b>Fultz's</b> 35:6  <b>function</b> 51:14  <b>functions</b> 30:16  <b>further</b> 20:7 31:24 33:13 44:4  <b>future</b> 55:14,15 55:20</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 1:21 2:10 3:1 32:12  <b>Garre</b> 1:21 2:10 32:11,12,14 33:2,15 34:18 34:23 35:11,17 35:23 36:14 37:14 38:6,16 39:1,11,15,24 40:5 42:1,24 43:10 45:11,24 46:8 47:14,22 51:12 53:7  <b>general</b> 1:17 3:18  <b>generally</b> 54:5  <b>General's</b> 56:7  <b>generated</b> 26:2 26:10  <b>genuine</b> 34:19  <b>Ginsburg</b> 9:4,16 11:22 12:4 13:1,12 15:5 15:22 19:16 24:6 36:11,15 42:22 51:9  <b>give</b> 6:5 18:22 27:19 37:3</p>	<p>40:16 49:21  <b>given</b> 31:13,17 32:3 38:19,19 46:4 50:5  <b>gives</b> 20:1  <b>giving</b> 20:4 46:12 47:5  <b>Global</b> 45:20  <b>Global-Tech</b> 49:25  <b>go</b> 5:23 12:9 37:7,13 42:20 44:4 49:19 50:12  <b>going</b> 4:7,11 5:1 5:1 6:6 7:6 8:13 13:5 14:24 18:9 22:2,13,19 23:10 27:14 30:1,11 36:25 40:1 42:7  <b>good</b> 38:1  <b>governed</b> 16:15 16:15  <b>government</b> 19:3 55:25  <b>grade</b> 38:11  <b>grant</b> 31:14 32:3  <b>grapple</b> 8:14  <b>great</b> 37:14  <b>greater</b> 49:19  <b>GREGORY</b> 1:21 2:10 32:12  <b>ground</b> 26:5  <b>grounds</b> 16:6  <b>guess</b> 22:21 23:14 25:3 26:9,20,22  <b>guidance</b> 19:7 19:18 21:13 25:4 29:16 30:9,15,18,20 33:16,18 41:18 41:19,20,25 42:1 44:25</p>
--	--	--	--	--

45:3,23 52:25 <b>guideposts</b> 38:7	36:21 41:23 <b>hold</b> 36:10 50:9 <b>holding</b> 3:14 9:19 <b>holdings</b> 9:25 10:22 <b>Honor</b> 3:24 4:16 5:4,19 6:8 7:5 8:15 13:16 14:21 15:1,11 15:19 16:1,10 17:14 18:5,10 18:23 19:7,11 19:12,22 20:8 21:25 22:22,22 34:19 35:11,17 35:23 37:15 38:16 39:16 40:6 45:11 46:8 47:23 51:13,23 53:13 54:23 56:6,25 57:4,24 <b>hostile</b> 27:21 <b>hours</b> 6:1 49:11 <b>human</b> 53:23 <b>humiliating</b> 55:8 <b>hurled</b> 10:12 <b>hurling</b> 13:8 <b>hypo</b> 27:19 <b>hypothetical</b> 21:6 <b>hypotheticals</b> 27:9	<b>implementation</b> 18:21 <b>implicated</b> 21:1 <b>import</b> 54:13 <b>important</b> 11:9 27:12 <b>importantly</b> 33:15 <b>imposes</b> 3:25 <b>imposing</b> 40:9 <b>incentive</b> 55:18 <b>incident</b> 13:20 51:4 <b>incidents</b> 10:4,6 44:21 <b>including</b> 3:16 23:20 <b>increased</b> 54:1 <b>indeterminati...</b> 6:10,11 <b>indicates</b> 57:14 <b>indication</b> 48:25 <b>individual</b> 25:11 <b>inference</b> 46:13 47:6 <b>informal</b> 16:18 19:7 <b>information</b> 55:19 56:2 <b>injuries</b> 15:4 <b>inquiry</b> 27:13 49:24 <b>instance</b> 54:20 <b>instances</b> 11:25 12:4 27:6 <b>instill</b> 7:22 <b>instructions</b> 30:13 <b>intense</b> 5:6 <b>intent</b> 40:17 <b>interested</b> 55:7 <b>interference</b> 6:2 <b>internal</b> 12:24 15:12 45:25 56:20 <b>interpretation</b> 19:23 20:1	<b>interpretations</b> 20:5 <b>interpreting</b> 19:19 <b>interrupt</b> 15:17 <b>introduce</b> 56:4 <b>introduced</b> 56:5 <b>investigated</b> 46:1 50:21 <b>investigation</b> 9:15 12:24 15:13,15 50:22 <b>irrelevant</b> 41:14 48:4 <b>issue</b> 15:21 17:20,22 23:2 25:24 29:23 30:8,11 32:18 33:6,13,23 38:6 46:14 53:4 <b>issues</b> 22:2 27:3 31:6 38:4 <b>item</b> 13:23	<b>judged</b> 5:20 <b>judges</b> 6:14 <b>judgment</b> 9:22 11:20,21 12:12 31:15,23 32:1 32:3,16 33:6 33:13 46:6 47:10,23 50:10 52:24 <b>judicial</b> 45:22 53:15 <b>Julie</b> 57:8 <b>jumped</b> 14:7 <b>jury</b> 7:2,8,8 54:10 <b>Justice</b> 1:18 3:3 3:9 4:4,20,22 4:24 5:12,21 7:17 8:7,16,21 9:4,16 10:23 11:8,12,22 12:3,4 13:1,12 13:24 14:9,19 14:22 15:5,17 15:20,21 16:2 16:5,13,24 17:5,19,24 18:2,16,24 19:4,10,16 20:10,16 21:5 21:8,19 22:11 23:7,23 24:6 24:15 25:5,8 25:20,21 26:1 26:10,16,20,24 27:4,11,16 28:4,13,19 29:6,25 30:23 31:2,11,22 32:10,14,21 33:8,15 34:14 34:21 35:9,12 35:21 36:11,15 36:16,23 37:25 38:13,17 39:9 39:12,22,25 41:18 42:2,22
<b>H</b> <b>half</b> 18:4 <b>hand</b> 29:3 <b>handles</b> 5:18 <b>happen</b> 18:15 38:4 <b>harass</b> 8:4,4 <b>harasser</b> 7:22,23 8:2,3 29:14 42:20 43:17,18 <b>harassers</b> 3:20 32:23 <b>harasser's</b> 7:24 <b>harassment</b> 3:22 4:1 8:1 9:11 10:5 13:18 20:18 21:1,2,3,24 22:6,7,9 23:4,5 24:14 28:18 29:2,4 33:22 37:3 38:21 39:6 40:20 54:3 <b>hard</b> 4:22 8:17 40:3 43:4 <b>Harris</b> 43:2 <b>harsh</b> 37:1 <b>head</b> 12:15 28:5 28:22 44:21 <b>hear</b> 3:3 30:25 <b>hearing</b> 54:10 <b>heating</b> 24:18,19 24:23 <b>heavy</b> 15:3 <b>held</b> 12:6 <b>hell</b> 27:21 <b>hells</b> 28:8 <b>helpful</b> 30:10 38:8 <b>hierarchical</b> 52:14 <b>higher</b> 42:14 <b>hire</b> 13:4 32:24	<b>I</b> <b>idea</b> 7:6 26:4 <b>identified</b> 7:15 9:1 <b>ignored</b> 44:21 <b>illustrates</b> 37:23 <b>immunity</b> 6:5 37:3 <b>impair</b> 5:9 <b>implement</b> 21:23	<b>J</b> <b>JA</b> 34:7,7 48:18 51:13 <b>January</b> 13:21 14:5 <b>JJJ</b> 35:8 <b>job</b> 11:22,23 13:10,17 14:6 14:13 24:9 30:16,17 34:21 35:2 41:11 46:24 47:7,25 51:13 52:16 53:20,21 54:13 <b>jobs</b> 15:15 52:14 <b>Joint</b> 12:10,18 12:20,24 13:23 14:2 35:1,7 48:11,12 56:17 57:7,22,23 <b>judge</b> 9:6 44:18 44:19 50:17,17		



44:23 45:24 47:14 51:9 53:6,9,18,25 54:6 55:21 56:9,14,16,20 56:22,22 57:1 57:18,21 58:1 <b>Justice's</b> 8:12 <b>justified</b> 53:15	16:19 <b>knows</b> 46:4 <b>Knox</b> 12:19	39:17,20 40:13 40:15 41:1,2 <b>line</b> 5:14 30:3,6 30:9,12,12,20 35:24 38:25 40:4 43:2 52:7 <b>listen</b> 6:1 <b>lists</b> 13:24 14:2 <b>litigant</b> 48:6 <b>litigants</b> 55:14 <b>litigated</b> 41:7 42:8 <b>little</b> 3:19 6:18 7:6 19:11,13 30:12 <b>lives</b> 28:7 <b>living</b> 27:21 28:8 <b>LLL</b> 35:8 <b>location</b> 7:25 8:3 <b>lodged</b> 9:12 <b>logic</b> 36:17 <b>long</b> 4:7,11 <b>look</b> 9:24 10:2 28:15,16 36:2 36:2 37:1,23 38:3,8 42:10 43:15 47:19,22 48:9,10 51:13 55:25 <b>looked</b> 10:17 25:8 50:16 <b>looking</b> 36:6 46:15 <b>lot</b> 8:11 42:1 <b>lower</b> 32:6 33:12 41:10 49:24 <b>lunches</b> 34:4	<b>manner</b> 36:5 <b>map</b> 17:2 <b>March</b> 13:20 <b>marginal</b> 38:10 41:17 42:4,17 46:10 47:5 <b>margins</b> 22:3 27:14 <b>material</b> 34:19 39:17 46:14,20 <b>materiality</b> 8:22 9:1 <b>materially</b> 3:22 7:18 8:6,25 14:19 33:21 57:2 <b>matter</b> 1:11 9:9 30:17 42:23 44:11 46:11 47:9 55:17 58:4 <b>McVicker</b> 50:25 <b>Mead</b> 19:14 <b>meals</b> 23:21 <b>mean</b> 5:12 11:2 13:1 19:21 27:4 38:17 39:22 44:13 52:19,20 <b>meaning</b> 3:17 <b>meaningful</b> 37:21 46:24 <b>means</b> 4:14 7:18 24:16 44:14 45:23 50:6 <b>meant</b> 8:23 <b>meet</b> 53:4 <b>memo</b> 56:20 <b>mention</b> 55:1 <b>mentioned</b> 55:2 <b>mere</b> 47:4 <b>merely</b> 14:7 42:3 54:17 <b>met</b> 7:9 <b>Mikels</b> 42:12,13 <b>mind</b> 11:9 27:12 41:15	<b>mine-run</b> 42:7 <b>minutes</b> 53:10 <b>moment</b> 15:18 <b>Monday</b> 1:9 <b>money</b> 49:11 <b>monitor</b> 23:20 <b>morning</b> 3:4 <b>motion</b> 12:12 <b>move</b> 6:22 <b>moved</b> 14:4 <b>moves</b> 6:16 <b>multifactor</b> 36:25 <b>Murphy</b> 57:9,9 <b>music</b> 4:7,10,11 5:8,8,25 8:17 21:6 22:14 23:10,11 25:16 27:8 37:9 39:13,13
<hr/> <b>K</b> <hr/> <b>Kagan</b> 10:23 11:8,12 27:16 28:4,13,19 29:6 36:16 47:14 <b>Kagan's</b> 53:18 <b>keep</b> 11:9 18:2 <b>Kennedy</b> 53:25 54:6 <b>Kimes</b> 12:13,21 15:8 33:25 34:9,10 44:2,3 44:5,6 46:2,18 46:21 47:1,2 48:14,18,20 49:5,13,14,15 52:11 54:20 56:21 <b>kind</b> 6:5,23 14:13 25:15 41:19 42:21 44:7 53:21 54:8 55:13 <b>kitchen</b> 12:23 15:16 34:2,11 34:22 57:10,16 <b>knives</b> 15:3 <b>know</b> 4:9,9,25 5:2,13 8:13,18 8:19 22:15 23:15,16 24:3 26:1 38:18 40:1,2 42:23 46:5 53:24 56:3 <b>knowledge</b>	<hr/> <b>L</b> <hr/> <b>lack</b> 21:1 31:6 <b>lacked</b> 32:18 52:1 <b>lacks</b> 36:20 <b>laid</b> 16:12 17:3 <b>Laughter</b> 4:23 <b>law</b> 37:23 44:11 46:11 47:9 <b>lawyers</b> 26:13 26:16 56:1 <b>lead</b> 11:24 36:18 38:10 41:12,17 42:4 46:11 47:7,25 <b>leaders</b> 52:17 <b>leadership</b> 51:15 <b>leading</b> 14:1 37:24 54:14 <b>leave</b> 39:9 <b>led</b> 12:22 <b>left</b> 44:10,10 47:16 <b>legal</b> 3:19 11:10 48:7 50:8 <b>letters</b> 26:14 <b>Let's</b> 4:4 <b>liability</b> 3:25 9:20 20:20 32:20,23 39:8 39:20 40:9,16 42:6 44:12 52:2,22 53:3 <b>lifeguard</b> 13:3 24:7 36:3,9 40:18,21 52:4 <b>light</b> 35:2 46:21 <b>limited</b> 21:14,15 21:18 23:8 32:23 38:10 46:10 <b>limits</b> 37:21	<hr/> <b>M</b> <hr/> <b>Mack</b> 42:11 <b>MAETTA</b> 1:3 <b>major</b> 18:17 <b>making</b> 29:21 43:4 <b>manage</b> 53:20 <b>manageability</b> 53:16	<hr/> <b>N</b> <hr/> <b>N</b> 2:1,1 3:1 <b>named</b> 12:19 57:8 <b>nature</b> 10:10,11 16:16 27:13 31:9 37:2,4 47:17,21 <b>necessarily</b> 53:22 <b>necessary</b> 32:19 54:3 <b>need</b> 33:16 39:12 <b>needed</b> 52:25 <b>negligence</b> 7:2 <b>negligent</b> 44:17 <b>neither</b> 1:19 2:8 20:14 34:18 <b>never</b> 53:23 <b>nevertheless</b> 36:21 <b>new</b> 32:6 47:12 <b>nexus</b> 10:15 14:6 <b>non-Seventh</b>	

36:8 <b>non-tangible</b> 17:11 <b>normal</b> 32:5,9 45:9 <b>Northern</b> 3:16 8:24 <b>note</b> 45:25 <b>noted</b> 10:4 <b>notion</b> 39:5 48:14,19 <b>November</b> 1:9 <b>number</b> 21:15 21:20 57:5	32:1 41:19 45:15 55:1 <b>opinions</b> 44:19 <b>opportunity</b> 8:3 8:4 31:12 41:6 49:19,22 <b>opposing</b> 12:11 <b>options</b> 22:5 23:19 <b>oral</b> 1:11 2:2,5,9 3:7 20:12 32:12 <b>order</b> 32:4 40:16 52:25 <b>orders</b> 15:9 57:10,15 <b>originally</b> 55:23 <b>Ortiz</b> 1:15 2:3 2:13 3:6,7,9 4:16 5:4,19 6:8 7:21 8:15,21 9:4,16 10:23 11:8,15 12:3 13:7,16 14:12 14:21 15:1,5 15:11,19,25 16:4,10,22 17:2,12,21 18:1,5,23 19:1 19:6,11,22 34:14 51:9 53:9,11,13 54:6 56:6,13 56:15,17,24 57:4,20,23 <b>outset</b> 41:7 <b>outside</b> 37:1 <b>overall</b> 7:11 <b>overcome</b> 11:19 <b>oversee</b> 38:11 <b>overseeing</b> 34:25 47:8 <b>oversell</b> 18:13 <b>oversight</b> 18:21 54:15,15 <b>overt</b> 10:18 13:7 <b>overtime</b> 49:10	<b>overtly</b> 10:9,11 <hr/> <b>P</b> <hr/> <b>P</b> 3:1 <b>page</b> 2:2 12:17 12:20,23 13:23 14:2,7,7 15:16 21:16 35:1 46:23 51:10,13 56:10,17 57:10 57:12,14 <b>paper</b> 38:11 42:5,14 52:17 <b>paradigm</b> 52:3 <b>parrotting</b> 32:9 <b>part</b> 8:21 15:21 17:22 43:14 51:24 54:2,4 54:21 <b>partial</b> 11:20 <b>particular</b> 7:7 12:8 23:18,19 36:25 37:8 54:10,19 55:17 57:15,16 <b>particularly</b> 8:22 24:13 50:22 <b>parties</b> 3:12,18 31:11 50:2,6 <b>party</b> 1:20 2:8 20:14 33:9 <b>part-time</b> 11:24 13:14,22 14:1 14:5 51:3,10 51:15,21 <b>passed</b> 40:7 <b>peculiar</b> 22:19 <b>people</b> 4:5 6:23 8:5,19 15:10 26:5 34:4 <b>perfectly</b> 49:13 <b>perform</b> 5:16 <b>performance</b> 5:9 <b>period</b> 13:13,18 14:8 25:14	51:2 53:21 <b>permit</b> 16:25 31:4 33:13 <b>perpetrated</b> 22:6,9 29:2,4 <b>perpetuate</b> 24:14 <b>person</b> 13:8 20:17,19 21:11 24:21,21 29:9 30:14 33:5,23 38:19,21 40:19 41:22,24 43:12 43:16,17 53:23 <b>pervasive</b> 4:19 9:8,10,14 <b>perverse</b> 53:19 <b>petition</b> 21:16 <b>Petitioner</b> 1:4 1:16 2:4,14 3:8 14:10 34:16 53:12 <b>Petitioner's</b> 22:22 31:3 <b>physical</b> 7:25 <b>pick</b> 4:7 <b>piece</b> 43:22 46:12 56:2 57:16 <b>place</b> 47:18 <b>places</b> 5:13 <b>plan</b> 26:17 <b>play</b> 4:7 <b>please</b> 3:10 20:16 32:15 <b>plenty</b> 11:18 <b>poignant</b> 24:13 <b>point</b> 10:1 15:12 36:7 38:2 43:12,14 48:13 <b>pointed</b> 13:24 41:11,13 47:1 56:21 <b>points</b> 7:13 48:3 <b>police</b> 42:13 <b>posed</b> 22:12 <b>position</b> 12:19	13:9 14:4 16:3 19:20 29:22 40:14 51:14 56:8 <b>positions</b> 14:3 <b>possessed</b> 52:9 52:10 <b>possibly</b> 15:1 24:15 <b>power</b> 6:23 17:7 17:8,9 32:24 <b>precedents</b> 3:16 35:25 36:9,18 37:16,19 <b>preceding</b> 55:22 55:23 <b>predict</b> 18:15 <b>predictability</b> 54:8 <b>prep</b> 34:1,1,8 35:4,6 44:1 46:16,18 48:15 48:17 <b>prepare</b> 23:21 34:4,4 <b>present</b> 11:13 44:13 47:20 52:3 <b>presented</b> 10:25 36:12 43:24,25 <b>presenting</b> 9:5 <b>pretty</b> 23:6 <b>prevent</b> 54:3 <b>principally</b> 35:13 <b>principle</b> 20:24 37:17 38:9 39:17,23,23 40:3 46:9 <b>principles</b> 36:18 38:23 40:8 <b>private</b> 42:14 <b>probably</b> 11:16 23:12 <b>problem</b> 18:4 25:16,18 27:8 <b>problems</b> 7:15
--	---	---	---	--

<p>31:24  <b>processes</b> 19:8  <b>produce</b> 55:19  <b>produces</b> 53:19  <b>producing</b> 53:16  <b>Products</b> 19:14  <b>professor</b> 27:19              27:20,20,23              28:10,16,21              29:10  <b>professors</b> 28:5              28:7  <b>promote</b> 32:24              41:23  <b>promotion</b>              13:22  <b>prompt</b> 50:21  <b>pronounce</b> 31:9  <b>pronounceme...</b>              31:9  <b>proof</b> 17:25 18:3  <b>proper</b> 40:24              56:8  <b>prove</b> 4:1  <b>provide</b> 7:19              33:18 38:7              41:20 45:3              52:25  <b>providing</b> 45:23  <b>provision</b> 21:18  <b>provisions</b> 13:17  <b>provviso</b> 29:14  <b>punishment</b>              14:16  <b>punitive</b> 40:12  <b>purposes</b> 20:19              28:11 30:15              52:21  <b>pursued</b> 48:8  <b>put</b> 22:22 48:12  <b>putative</b> 31:18  <b>putting</b> 24:23              50:14 51:23,23  <b>p.m</b> 58:3</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualified</b> 36:22</p>	<p><b>qualifies</b> 20:19              29:23  <b>qualify</b> 6:2              21:17 28:11              33:4,6,23 36:7              36:13 39:14,14              41:4 45:18,18  <b>qualifying</b> 25:10  <b>question</b> 9:5              11:21 17:17              20:2 27:5              31:11,20 33:4              36:11 42:8              43:3,23,25              44:9 47:19              53:18 56:12,23  <b>questions</b> 12:4              15:2 20:7              27:15 35:10              53:7  <b>quite</b> 15:11  <b>quote</b> 12:22 46:3              46:23 57:9</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R</b> 1:15 2:3,13              3:1,7 53:11  <b>race-based</b> 51:6  <b>racial</b> 10:9,11              10:11,14,15,18              13:9 38:21              44:22 50:23  <b>raise</b> 22:2 27:14  <b>raised</b> 15:21              16:25 25:17              27:9  <b>raising</b> 18:3  <b>range</b> 25:1  <b>rank</b> 42:14  <b>reach</b> 9:19  <b>reacted</b> 50:19  <b>read</b> 35:2 56:9  <b>real</b> 25:7 31:10  <b>realities</b> 6:15  <b>really</b> 6:15 8:12              20:4 21:20              35:12 41:20</p>	<p>43:4 46:16  <b>reason</b> 21:12              33:24  <b>reasonable</b> 5:10              5:25 17:15              40:23 46:13              47:6  <b>reasoning</b> 3:14              10:3,21  <b>reasons</b> 36:15              41:9 52:23  <b>rebut</b> 48:14  <b>rebuttal</b> 2:12              20:9 53:11  <b>received</b> 13:21              57:15  <b>recognize</b> 43:11  <b>recognized</b> 6:13              6:14,22 18:7              27:15 40:10  <b>recognizes</b>              40:17  <b>recommendat...</b>              29:21  <b>record</b> 10:24              11:9,18 12:2,9              13:6,8 14:17              15:6 30:24              31:3,5,7,12,13              31:14,16,21              32:3,17 33:14              33:14,20,24              34:7 35:3 41:3              43:19 44:5              45:14 47:18              49:14 50:8              51:25 52:9              56:23 57:2,19  <b>recorded</b> 46:2  <b>red</b> 51:17  <b>refer</b> 51:8  <b>reference</b> 28:24  <b>referred</b> 54:19              54:20  <b>regulatory</b>              18:20  <b>reject</b> 36:1</p>	<p><b>related</b> 54:21  <b>relation</b> 39:7  <b>relationship</b>              11:6 20:25  <b>relaying</b> 30:13  <b>relevant</b> 14:18              31:17,17 51:2              51:22 55:19              56:3  <b>remaining</b> 10:17              20:8 53:10  <b>remains</b> 31:20              56:12  <b>remand</b> 11:4              33:11 49:23  <b>remanded</b> 9:23              10:1 31:24  <b>remanding</b>              45:14 47:11              49:21  <b>remands</b> 32:6  <b>repetitive</b> 15:4  <b>reply</b> 38:2  <b>report</b> 21:2  <b>reported</b> 26:3              26:10 30:7  <b>representing</b>              37:5  <b>represents</b>              19:23  <b>require</b> 16:20,22              16:24 37:22  <b>requirement</b>              8:22 9:2  <b>Requires</b> 51:15  <b>reserve</b> 20:8  <b>resides</b> 22:20  <b>resist</b> 21:2  <b>resolve</b> 40:24              42:7 43:25  <b>resolved</b> 38:5  <b>resources</b> 53:23  <b>respect</b> 10:13              18:3 50:22  <b>responded</b> 9:11  <b>Respondent</b> 6:8              7:13 18:11</p>	<p><b>Respondents</b>              1:22 2:11              18:12 32:13  <b>responding</b>              44:17  <b>response</b> 46:25              51:18  <b>responsibilities</b>              8:8 13:25 26:7              37:8  <b>responsibly</b>              50:20  <b>rest</b> 50:14  <b>Restatement</b>              39:4  <b>result</b> 37:2  <b>results</b> 53:17,19  <b>retaliation</b> 49:5              54:21  <b>revealed</b> 53:18  <b>reverse</b> 9:21  <b>review</b> 44:6 45:4  <b>reviewed</b> 26:7  <b>reviews</b> 44:6              48:21  <b>right</b> 4:25 26:14              26:23 27:1,22              33:1,2,8 35:14              36:14 43:10  <b>RMA</b> 39:11  <b>ROBERTS</b> 3:3              4:4,20,24 5:12              5:21 20:10              21:5,8,19              22:11 26:1,16              29:25 32:10              36:23 37:25              53:6,9 57:18              57:21 58:1  <b>rock</b> 4:22 5:8              8:17  <b>role</b> 29:15,20  <b>room</b> 4:5 40:1  <b>roughly</b> 25:14  <b>rule</b> 3:14 4:6              6:10,12,15              7:10,12,15,18</p>
--	---	--	---	--

16:21 18:10,14 18:18 19:10 25:15 32:23 33:10 35:14 36:24 37:1 40:25 41:1 53:14 54:1,9 55:17 <b>rulemaking</b> 19:8	<b>secretarial</b> 28:5 28:7,22 <b>secretaries</b> 28:6 <b>secretary</b> 27:20 27:21,24 28:4 28:20,21 29:10 <b>Section</b> 39:4 <b>see</b> 8:9 18:17 48:25 53:24 <b>seeing</b> 8:6 <b>seen</b> 26:11 27:5 27:6 <b>send</b> 45:8,14 56:11 <b>sending</b> 55:13 55:14 <b>senior</b> 4:6,8,14 22:15 52:15 <b>seniority</b> 38:12 42:5 <b>sense</b> 30:13 52:17,20 <b>sent</b> 10:1 56:4 <b>sentence</b> 51:14 <b>separate</b> 12:4 13:17 <b>September</b> 13:19 <b>serious</b> 22:25 27:8 <b>served</b> 11:1 <b>services</b> 28:5,22 <b>sets</b> 18:24 <b>setting</b> 27:18 <b>Seventh</b> 3:13 5:22 6:4,10,13 6:14,19,21 7:10,10 9:17 9:18,21,23 10:3,20 11:14 11:16 18:10,13 22:24 27:17,24 28:8,13 29:8,8 29:12 31:4 33:3 35:13,15 35:18 37:17 41:8,14 47:17	47:21 48:5,23 53:14 54:7 55:24 <b>severe</b> 4:18,21 4:25 9:8,10,13 <b>severity</b> 5:5 <b>sex</b> 27:22 43:9 <b>sexual</b> 38:21 40:2 <b>sheets</b> 34:1,2,8 35:4,6 44:1 46:16,18 48:16 48:18 <b>show</b> 41:16 <b>showing</b> 9:7 31:16 37:4 <b>shows</b> 44:5 <b>shy</b> 42:20 <b>side</b> 27:5 38:1 42:2 <b>signal</b> 45:13 55:13 <b>signals</b> 55:13 <b>signed</b> 26:21 <b>significant</b> 5:17 6:1 23:6 25:18 <b>Silverman</b> 36:3 36:9,13 52:4 55:5,10 <b>simply</b> 4:25 37:2 44:14 55:15 <b>single</b> 8:18 22:18 <b>situation</b> 8:10 27:25 40:18 44:20 <b>situations</b> 8:7,11 16:9 21:13 26:15 <b>six</b> 34:4 47:12 <b>Skidmore</b> 19:2,5 19:15 <b>sliding</b> 7:1 <b>snippets</b> 31:6,7 47:5 <b>Solicitor</b> 1:17 56:7	<b>solve</b> 18:4 <b>somebody</b> 29:18 <b>someone's</b> 5:6 <b>sorry</b> 14:5 25:23 30:25 56:24 <b>sort</b> 12:14 22:12 37:7 49:8 <b>sorts</b> 26:15 48:1 49:3,4,7 <b>Sotomayor</b> 15:17,20 16:2 16:5,13,24 17:5,19,24 18:2,16,24 30:23 31:2,11 45:24 56:20,22 57:1 <b>sous-chef</b> 14:24 <b>so-called</b> 51:4 <b>specialist</b> 11:24 14:1,3 <b>specific</b> 26:6 <b>specifically</b> 13:24 <b>spectrum</b> 22:4 29:1 30:2,3 <b>speculate</b> 49:18 <b>squarely</b> 36:2 <b>SRI</b> 1:17 2:6 20:12 <b>Srinivasan</b> 1:17 2:6 20:11,12 20:15 21:7,10 21:25 22:21 23:14 24:2,10 25:2,6,19,23 26:8,18,23 27:1,10 28:1 28:10,15,23 29:6,12 30:4 30:25 31:10 32:2 36:17 <b>stand</b> 43:13 <b>standard</b> 3:19 3:24 5:5 7:7 8:22,23 9:3 10:24 11:7,10	11:14,17 18:24 32:6,7 33:17 33:19,21,22 37:24 41:8 44:25 45:16,20 45:21,23 47:17 47:21 48:7 50:3 53:2,5 <b>standards</b> 28:17 45:7 <b>standpoint</b> 5:10 <b>started</b> 13:18 <b>State</b> 1:6 3:4 12:25 15:13 31:15 50:19 <b>statement</b> 12:19 13:2 <b>States</b> 1:1,12,19 2:7 3:13 20:13 <b>stationed</b> 15:10 <b>status</b> 32:18 33:5 <b>statute</b> 18:21 19:25 38:18,22 40:7 <b>statutory</b> 20:1 <b>Staub</b> 3:16 <b>steer</b> 8:2 <b>step</b> 47:11 49:21 50:12 <b>steps</b> 54:3 <b>straight</b> 55:24 <b>stretched</b> 39:18 <b>struck</b> 40:6,22 <b>structure</b> 16:11 17:3 <b>stuck</b> 44:20 <b>student</b> 51:16 <b>style</b> 3:19 <b>subjected</b> 8:17 43:7,8 <b>subjective</b> 5:6,7 <b>subjects</b> 20:18 27:21 <b>submitted</b> 58:2 58:4 <b>subordinate's</b>
<b>S</b>				
<b>S</b> 2:1 3:1 <b>Sambo</b> 51:7 <b>sand</b> 44:21 <b>saying</b> 4:25 26:2 37:6 45:6 46:3 54:14 <b>says</b> 4:8 11:23 15:7 24:21 31:3 38:18,22 46:2 47:7 51:11,14 55:25 56:19 <b>scale</b> 7:1 <b>SCALIA</b> 4:22 19:4,10 35:9 35:12,21 38:13 38:17 39:9,12 39:22,25 <b>schedule</b> 34:11 34:13 36:4,20 44:3 46:21 49:2,16 52:6 <b>scheduling</b> 48:20 <b>scientific</b> 26:12 <b>scope</b> 23:18 <b>Second</b> 6:12 7:10,11,14 16:15 18:18 33:17 39:4 41:1 42:11 44:24 48:2 50:4 53:2 54:12 <b>Secondly</b> 37:20				

20:17	<b>supervisors</b> 3:23	22:10 29:4,15	<b>things</b> 9:13,17	19:24 20:4
<b>substantial</b>	16:17,18 17:6	29:19,21	10:13 14:14,14	30:17 32:20
29:20	17:8,9,11	<b>task</b> 5:14	14:23 43:4	38:11 42:5
<b>substitute</b> 51:15	37:22 52:19,21	<b>tasks</b> 7:20 21:15	48:1 49:7	50:14 52:16,17
<b>succumb</b> 23:5	<b>supervisory</b>	21:20,21 34:22	50:23 54:19	52:22
<b>sudden</b> 7:1	9:19 11:6 12:1	53:21	57:16	<b>today</b> 22:5 49:17
<b>sue</b> 26:14	14:6 26:7	<b>team</b> 52:17	<b>think</b> 5:24 8:19	52:14
<b>sufficient</b> 7:20	31:17,18 32:19	<b>Tech</b> 45:20	21:9,10,17	<b>toilet</b> 54:24
7:21 8:19	32:23 51:19	<b>tell</b> 18:16 26:20	22:4 23:5 24:2	<b>toilets</b> 13:5
11:19 31:12,16	<b>supervisor's</b>	26:22 29:13	24:3 26:17	20:24 23:4,8,9
38:12 42:6,18	23:2	34:3 42:21	27:10,12 28:23	23:16,21,24
43:24 44:12	<b>support</b> 1:19 2:8	53:19	30:4,10,19,21	24:5,12 40:20
46:11,13,14	20:14 31:14	<b>telling</b> 31:25	31:10,10,13	<b>told</b> 12:16 15:13
47:9 52:2	<b>supported</b> 18:11	42:20	32:2,8 33:2,5	34:12 56:19
<b>sufficiently</b> 9:7	<b>suppose</b> 10:23	<b>tempted</b> 11:3	33:21 35:20,23	<b>tough</b> 20:2
9:10 31:5,8	24:16 54:1	<b>tend</b> 18:12	35:25 36:1,8	<b>track</b> 8:23
<b>suggest</b> 47:16	<b>supposed</b> 30:2	<b>term</b> 20:1	36:15,17 37:20	<b>traditional</b>
<b>suggesting</b>	45:4	<b>terms</b> 43:7	37:23,25 38:1	52:20
41:20	<b>Supreme</b> 1:1,12	45:16 53:15	38:3 39:15	<b>traditionally</b>
<b>summary</b> 9:22	<b>sure</b> 5:19 15:25	<b>test</b> 5:23 6:3,4	40:5,14,22,24	14:13
11:19,21 12:12	15:25	16:14,15 21:9	42:1,2,6 43:10	<b>transcript</b> 48:10
31:14 32:1,3	<b>surely</b> 33:11	27:17 28:14	43:13,22,24,24	<b>transfer</b> 32:25
33:12 46:6	<b>surmise</b> 48:8	29:8,9 31:4	45:11,13 47:10	<b>transmit</b> 15:9
47:9,23	<b>surprise</b> 54:18	33:3 41:15	48:9 49:18	<b>trays</b> 34:5
<b>superior</b> 35:20	<b>surprising</b> 26:19	48:5 50:4,6,8	50:2,5,7,12	<b>treat</b> 43:16,17
35:24 43:12	<b>swept</b> 10:16	55:24	51:2,6,16,22	<b>treated</b> 16:7
53:15	<b>synonym</b> 54:16	<b>testified</b> 12:16	52:3,12 55:13	43:19
<b>supervised</b> 14:3		12:21	56:22	<b>treatment</b> 43:13
17:10,10	<b>T</b>	<b>testifies</b> 57:9,12	<b>thinking</b> 55:16	<b>tried</b> 9:17 38:7
<b>supervision</b>	<b>T</b> 2:1,1	<b>testimony</b> 8:9	<b>Third</b> 54:18	54:7
54:16	<b>table</b> 47:16	56:18 57:6,8	<b>thought</b> 4:13	<b>tries</b> 54:12
<b>supervisor</b> 3:12	<b>tail</b> 54:17	<b>tests</b> 22:12 38:15	5:22 23:11	<b>trigger</b> 29:21
3:17 4:15 6:18	<b>take</b> 4:2 6:23,24	45:2,2 48:3,24	24:6	32:19 39:8
9:9 11:1 12:16	16:17 17:6	<b>thank</b> 20:10,15	<b>threat</b> 13:7 16:8	42:6 44:12
13:2 15:22	29:22 31:13,16	32:10,14 53:6	23:15	52:2
20:19 21:12	32:2 35:9 38:6	53:8,13 57:4	<b>threatened</b> 23:3	<b>triggering</b> 52:21
22:9 23:3	38:25 43:22	57:25 58:1	<b>three</b> 23:19	53:3
25:11 28:11	47:10 49:21	<b>theory</b> 4:14	25:13 26:21	<b>true</b> 11:2 45:17
29:4,10,19	54:2 56:7	<b>thermostat</b>	33:10 48:11	<b>truly</b> 53:19
33:4,24 36:13	<b>takes</b> 29:16	22:16 37:9	<b>tidier</b> 6:19	<b>try</b> 41:16 48:14
41:4,10,24	40:14	39:14	<b>time</b> 9:12,14	<b>trying</b> 22:14
42:15,16 43:3	<b>talked</b> 30:1	<b>they'd</b> 26:20,22	13:18 14:8	28:24
43:18 44:8	42:24 43:5	<b>thing</b> 9:25 11:3	20:8 36:24,24	<b>turn</b> 7:23 29:21
46:3 47:24	<b>talking</b> 10:4	14:10 23:10,13	51:2,25,25	<b>turned</b> 25:17,24
48:23 49:8	35:21 48:1,2	23:17 24:1,25	<b>times</b> 30:1 34:12	27:7
50:9 53:3,22	<b>tangible</b> 6:24	29:16 54:7	47:6 57:17	<b>twist</b> 55:20
53:24 57:13	16:17 17:7	56:11	<b>title</b> 3:12,15	<b>two</b> 10:6 12:3,15

26:9 42:13 48:3 51:6 <b>type</b> 6:6 <b>types</b> 22:7	6:11 <b>unpredictable</b> 6:20 <b>unquote</b> 57:9 <b>unreasonably</b> 17:18 <b>unrefuted</b> 44:1 <b>unsupported</b> 18:11 <b>unusual</b> 10:5 47:11 49:21 <b>upstairs</b> 53:23 <b>urge</b> 52:23 <b>use</b> 22:12 51:7 <b>useful</b> 28:24	<b>view</b> 45:5 <b>VII</b> 3:12,15 19:24 20:5 32:20 50:15 52:22 <b>violates</b> 3:14 <b>Virginia</b> 1:15 <b>virtually</b> 36:5,19 45:15 <b>virtue</b> 38:11 39:7 42:5 52:16 <b>visited</b> 24:13	<b>William</b> 12:13 12:21 54:20 56:21 <b>willing</b> 44:23 <b>Wood</b> 44:18 50:17 <b>word</b> 3:17 19:23 20:4 <b>words</b> 51:7 54:4 <b>work</b> 4:5,5 14:14 15:7 16:17 20:18,22 24:4,7,11 25:3 25:12 27:22 30:5 31:19 34:13 40:1 41:22 52:6 <b>working</b> 9:2 14:15 26:17 <b>workplace</b> 5:9 6:16 8:18 46:17 52:18 55:9 <b>workplaces</b> 52:13 <b>works</b> 26:4 27:17 <b>worried</b> 55:12 <b>wouldn't</b> 9:9 19:14 23:1,12 23:25 26:22 30:14 46:14 <b>write</b> 32:1 41:20 <b>writing</b> 38:18 <b>wrong</b> 11:10 37:15,18	<hr/> <b>1</b> <hr/> <b>1st</b> 13:20,21 <b>11-556</b> 1:4 3:4 <b>11:06</b> 1:13 3:2 <b>12</b> 14:2,7 51:13 <b>12:06</b> 58:3 <b>13</b> 13:23 14:7 35:1 <b>135</b> 46:23 <b>197</b> 56:17 <b>198</b> 12:17 <hr/> <b>2</b> <hr/> <b>2</b> 15:16 34:7 <b>20</b> 2:7 34:4 51:15 <b>2005</b> 13:19 <b>2007</b> 13:20,21 14:6 <b>2008</b> 13:21 <b>2012</b> 1:9 <b>219(2)(d)</b> 39:4 <b>24</b> 57:10 <b>26</b> 1:9 <b>277</b> 34:7 <b>278</b> 34:7 <hr/> <b>3</b> <hr/> <b>3</b> 2:4 <b>32</b> 2:11 <b>367</b> 12:24 <b>37</b> 57:14 <b>38</b> 57:12 <b>386</b> 12:20 <hr/> <b>4</b> <hr/> <b>4</b> 53:10 <b>424</b> 34:8 35:7 <b>430</b> 48:19 <hr/> <b>5</b> <hr/> <b>53</b> 2:14 <b>59-16</b> 15:16 <hr/> <b>6</b> <hr/> <b>60</b> 34:3 <b>60-some-person</b> 12:15
<hr/> <b>U</b> <hr/> <b>ultimately</b> 35:25 <b>unavailable</b> 17:16 <b>uncertainty</b> 6:16 18:14 <b>unchecked</b> 36:5 <b>unclear</b> 8:13 <b>uncontradicted</b> 33:25 <b>uncovered</b> 50:23 <b>underreported</b> 26:11 <b>understand</b> 17:13 26:19 29:8 34:14 38:14,17 <b>understanding</b> 13:11 14:17 19:3 37:19 <b>understood</b> 57:13 <b>undertake</b> 29:19 49:24 <b>undertaken</b> 16:8 <b>Unfortunately</b> 14:16 <b>United</b> 1:1,12,18 2:7 3:13 20:13 <b>university</b> 1:6 3:5 12:14 15:13 27:18,19 31:15 <b>unnecessary</b> 9:18 <b>unpleasant</b> 8:9 14:9 <b>unpleasantries</b> 44:21 <b>unpredictability</b>	<hr/> <b>V</b> <hr/> <b>v</b> 1:5 3:4 6:22 43:2 <b>vacated</b> 31:24 <b>valid</b> 50:14 <b>Vance</b> 1:3 3:4 12:1,17 13:14 13:21 15:7,12 15:13 46:4 51:5,20 54:19 56:18 <b>Vance's</b> 11:1 12:19 14:4 <b>variety</b> 38:2 <b>vegetable</b> 34:5 <b>vegetables</b> 34:3 49:9 <b>vein</b> 49:8 <b>versus</b> 42:14 <b>vicarious</b> 20:20 32:19 39:20 40:9,16 42:6 44:12 52:2,22 53:3 <b>victim</b> 7:22,23 7:25 8:2 21:1 23:4 32:25 37:12 42:19,24 <b>victims</b> 3:21,25 6:24 <b>victim's</b> 36:4	<hr/> <b>W</b> <hr/> <b>Wagner</b> 8:17 <b>want</b> 24:22 44:4 55:16 <b>wanted</b> 41:16 <b>wants</b> 36:7 50:12 <b>warranted</b> 50:22 <b>Washington</b> 1:8 1:18,21 <b>wasn't</b> 9:13 10:15 14:17 36:12 42:20 48:6 51:9,18 55:7 <b>way</b> 17:10 21:22 22:4 24:14 27:2 33:17 40:24 41:2 45:22,23 50:5 55:8 <b>weak</b> 45:6 <b>well-settled</b> 55:17 <b>went</b> 13:19,19 54:20 55:22 <b>weren't</b> 55:22 <b>We'll</b> 3:3 <b>we're</b> 22:13 27:18 37:18 <b>we've</b> 26:11 37:17,17 50:1	<hr/> <b>X</b> <hr/> <b>x</b> 1:2,7 <hr/> <b>Y</b> <hr/> <b>year</b> 20:24 23:4 23:16 <b>yearly</b> 29:11 <b>years</b> 25:9,14 47:12 <b>yellow</b> 51:18	

<b>62-3 57:5</b>				
<hr/> <b>9</b> <hr/>				
<b>92(a) 21:16</b>				