

The Burger Court Opinion Writing Database

Riverside v. Rivera

477 U.S. 561 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: JUNE 20, 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

CHIEF JUSTICE BURGER, dissenting.

I join JUSTICE REHNQUIST's dissenting opinion. I write only to add that it would be difficult to find a better example of absurd nonsense than the judicial fixing of attorney's fees by a single judge of the \$245,465.25 fee for the \$33,350 damages award in this case.

The two attorneys receiving this nearly quarter-million-dollar fee graduated from law school in 1973 and 1974; they brought this action in 1975, which resulted in the \$33,350 jury award in 1980. Their total professional experience when this litigation began consisted of Gerald Lopez' one year service as a law clerk to a Federal District Judge and Ray Cazares' two years' experience as a trial attorney in the Defenders' Program of San Diego County. For their services the District Court found that an hourly rate of \$125-per-hour was reasonable.

Can anyone doubt that no private party would ever have dreamed of paying these two novice attorneys \$125-per-hour in 1975, which, considering inflation, would represent perhaps something more nearly a \$250-per-hour rate today? For example, as JUSTICE REHNQUIST points out, *post*, at 3, would any private litigant be willing to pay a total of \$17,785 simply for preparation of a pre-trial order?

This fee award plainly constitutes a grave abuse of discretion which should be rejected by this Court—particularly

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STYLISTIC CHANGES THROUGHOUT

p. 2.

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: JUNE 23, 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

CHIEF JUSTICE BURGER, dissenting.

I join JUSTICE REHNQUIST's dissenting opinion. I write only to add that it would be difficult to find a better example of absurd nonsense than the judicial fixing of attorney's fees by a single judge of the \$245,456.25 fee for the \$33,350 damages award in this case.

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This fee award plainly constitutes a grave abuse of discretion which should be rejected by this Court—particularly

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To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

CHANGES AS MARKED

From: **The Chief Justice**

Circulated: _____

Recirculated: JUNE 24, 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

**CITY OF RIVERSIDE, ET AL., PETITIONERS v.
SANTOS RIVERA ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT**

[June 27, 1986]

CHIEF JUSTICE BURGER, dissenting.

I join JUSTICE REHNQUIST's dissenting opinion. I write only to add that it would be difficult to find a better example of legal nonsense than the fixing of attorney's fees by a judge at \$245,456.25 for the recovery of \$33,350 damages.

The two attorneys receiving this nearly quarter-million-dollar fee graduated from law school in 1973 and 1974; they brought this action in 1975, which resulted in the \$33,350 jury award in 1980. Their total professional experience when this litigation began consisted of Gerald Lopez' one year service as a law clerk to a judge and Ray Cazares' two years' experience as a trial attorney in the Defenders' Program of San Diego County. For their services the District Court found that an hourly rate of \$125 per hour was reasonable.

Can anyone doubt that no private party would ever have dreamed of paying these two novice attorneys \$125 per hour in 1975, which, considering inflation, would represent perhaps something more nearly a \$250 per hour rate today? For example, as JUSTICE REHNQUIST points out, *post*, at 3, would any private litigant be willing to pay a total of \$17,875 simply for preparation of a pre-trial order?

This fee award plainly constitutes a grave abuse of discretion which should be rejected by this Court—particularly when we have already vacated and remanded this *identical* fee award previously—rather than simply affirming the Dis-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 4, 1986

No. 85-224

Riverside v. Rivera

Dear Lewis,

I certainly had no intention of going beyond our decided cases with respect to civil rights suits. Before taking the time to write a concurrence (which I might be happy to incorporate), would you consider letting me have suggestions? I'm quite sure we can work it out.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Powell

REALISTIC CHANGES THROUGHOUT
SEE PAGES

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: JUN 4 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court

The issue presented in this case is whether an award of attorney's fees under 42 U. S. C. § 1988 is *per se* "unreasonable" within the meaning of the statute if it exceeds the amount of damages recovered by the plaintiff in the underlying civil rights action.

I

Respondents, eight Chicano individuals, attended a party on the evening of August 1, 1975, at the Riverside, California, home of respondents Santos and Jennie Rivera. A large number of unidentified police officers, acting without a warrant, broke up the party using tear gas and, as found by the District Court, "unnecessary physical force." Many of the guests, including four of the respondents, were arrested. The District Court later found that "[t]he party was not creating a disturbance in the community at the time of the break-in." App. 188. Criminal charges against the arrestees were ultimately dismissed for lack of probable cause.

On June 4, 1976, respondents sued the city of Riverside and 31 individual police officers under 42 U. S. C. §§ 1981, 1983, 1985(3), and 1986 for allegedly violating their First, Fourth, and Fourteenth Amendment rights. The complaint, which also alleged numerous state-law claims, sought damages, and declaratory and injunctive relief. On August 5,

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PP. 1.2

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE BRENNAN announced the judgment of the Court and delivered an opinion in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join.

The issue presented in this case is whether an award of attorney's fees under 42 U. S. C. § 1988 is *per se* "unreasonable" within the meaning of the statute if it exceeds the amount of damages recovered by the plaintiff in the underlying civil rights action.

I

Respondents, eight Chicano individuals, attended a party on the evening of August 1, 1975, at the Riverside, California, home of respondents Santos and Jennie Rivera. A large number of unidentified police officers, acting without a warrant, broke up the party using tear gas and, as found by the District Court, "unnecessary physical force." Many of the guests, including four of the respondents, were arrested. The District Court later found that "[t]he party was not creating a disturbance in the community at the time of the break-in." App. 188. Criminal charges against the arrestees were ultimately dismissed for lack of probable cause.

On June 4, 1976, respondents sued the city of Riverside, its chief of police, and 30 individual police officers under 42 U. S. C. §§ 1981, 1983, 1985(3), and 1986 for allegedly violating their First, Fourth, and Fourteenth Amendment rights.

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Supreme Court of the United States
Washington, D. C. 20543

July 1, 1986

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for No. 85-224, Riverside v. Rivera:
No. 85-1341, Johnson v. Manzie

Respondent, a former prisoner of the Michigan Department of Corrections, sought declaratory relief and monetary damages for petitioners' alleged failure to provide a constitutionally adequate law library at the Huron Valley Women's Facility, where she was incarcerated, and at the Detroit House of Corrections, where she had previously been incarcerated. Her case was consolidated with a pending class action. The District Court found that at the time of trial, the law library at Huron Valley was constitutionally adequate, but that female prisoners were denied their right of access to the courts because they were not afforded paralegal services then available to male prisoners. Having determined petitioners' liability, the court set a hearing for damages, and explained that respondent would at that time be permitted to reintroduce evidence relating to the conditions of the law library at the Detroit House of Corrections, since this was an issue that the court had not resolved.

Respondent then retained counsel to represent her in the damages proceeding. The District Court, after hearing the evidence and argument presented by counsel, determined that the law library at the Detroit House of Corrections was "nonfunctional ... and for all practical purposes, non-existent" and "not in conformity with constitutional standards." The court determined, however, that respondent had suffered no actual injury as a result of this deprivation of her constitutional rights, and awarded her nominal damages in the amount of \$1. Respondent then sought attorney's fees in the amount of \$10,868, based on 86.95 hours at \$125 per hour. Following a hearing on the fee petition, the court determined that respondent was the prevailing party within the meaning of 42 U.S.C. §1988, that \$125 per hour was a reasonable rate, and that a total award of \$2500 was appropriate. Petitioners now challenge this award, arguing that because respondent recovered only nominal damages for past constitutional violations: (1) respondent was not the "prevailing party" within the meaning of §1988, and (2) the fee award was unreasonable because it was grossly disproportionate to the relief obtained. Neither claim is meritorious. Respondent was clearly the prevailing party with respect to her claim that the

Supreme Court of the United States
Washington, D. C. 20543

July 1, 1986

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for No. 85-224, Riverside v. Rivera:
No. 85-908, Cranke v. Haygood, No. 85-908

In 1958, while serving two terms for previous convictions, respondent escaped from prison and committed a robbery. He was subsequently convicted for both the robbery and the escape. The California Adult Authority fixed respondent's robbery term at ten years, and his escape term at five and one-half years, with the latter to commence after the former had expired. Respondent was granted a parole date of 12/14/70; if respondent did not violate his parole, all terms were to be discharged on 7/8/74. In 1973, respondent's parole was revoked, and his escape and robbery terms both redetermined at life imprisonment. Respondent complained that the Authority had miscalculated his sentence, and that his escape term should have run consecutively to his original two terms, rather than to his robbery term. He wrote a letter to the prison warden complaining of this. The letter was answered by petitioners, who were employed as Record Officers at the prison, and who explained that his sentence was correct.

Respondent then filed a state habeas action. The California Supreme Court found that the Authority's sentencing procedure was incorrect, and that under state law, respondent's escape term should have commenced at the time his two original terms expired. The net result of this error was that respondent should have been discharged in 1970, but did not secure release until 1975.

Respondent then filed this §1983 action against various state corrections officials, claiming that he had been denied liberty without due process of law, and subjected to cruel and unusual punishment. The District Court, prior to the time the case went to trial, either dismissed or directed verdicts for all defendants except petitioners. The jury returned a general verdict of \$2090 in damages.

Respondent then sought \$75,918.75 in attorney's fees, based on \$728.75 hours of attorney time compensated at \$75 and \$100 per hour; \$1050 in attorney expenses; and 689.5 hours of paralegal time compensated at \$25 per hour. The District Court, after making several adjustments, awarded respondent \$45,383.17 in lawyer and paralegal fees. With respect to the lawyer's fees, the court reduced the number of compensable hours by 10% to compensate for counsel's inadequate recordkeeping, and multiplied

Supreme Court of the United States
Washington, D. C. 20543

July 1, 1986

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for No. 85-224, Riverside v. Rivera:
No. 84-1973, City of McKeesport v. Cunningham
1793

In 1980, respondent purchased a home in the City of McKeesport from the United States Department of Housing and Urban Development for \$2700. She contracted to have the property rehabilitated for \$15,000, but before work could commence, the City, without prior notice to respondent, demolished the property. At trial, the jury found that the City and its building inspector had deprived respondent of her property without due process of law in violation of 42 U.S.C. §1983. Respondent was awarded \$17,000 in damages, based on the value of the home immediately prior to the demolition.

Respondent also moved for attorney fees under 42 U.S.C. §1988. Her attorney submitted an affidavit stating that he and another lawyer had spent a total of 326 hours litigating the case, and that his services were normally billed at \$100 an hour. The City did not challenge the substance of this affidavit, but argued that respondent was not entitled to recover attorney's fees because she had agreed to a contingent fee arrangement, and because she had sought vindication of her own civil rights, not those of the public at large. The district court awarded respondent \$5875 in attorney's fees. The court calculated a lodestar of \$10,950, based on 219 hours of attorney time compensated at \$50 an hour. The court then reduced the lodestar by 50%, because "plaintiff's counsel did not successfully advance new law" and because "[t]here was no indication of bad faith in the defense of this action."

The Court of Appeals reversed. First, the court found that respondent's counsel should have been compensated at a rate of \$100 per hour, since the record clearly indicated that this was his normal billing rate. Second, the court held that the District Court had erred in reducing the number of compensable hours, since petitioners had not challenged the number of hours expended by respondent's counsel, and because there was no basis in the record for concluding that these hours were unreasonable. The Court of Appeals also held that the District Court had erred in reducing the lodestar merely because respondent had not vindicated the rights of the public at large, or because petitioners had not acted in bad faith. The court remanded the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1986

85-224 - City of Riverside v. Santos Rivera

Dear Bill,

I shall await the dissent.

Sincerely yours,



Justice Brennan

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

June 17, 1986

85-224 - City of Riverside v. Rivera

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

for the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1986

Re: No. 85-224 - City of Riverside v. Santos Rivera

Dear Bill:

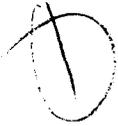
Please join me.

Sincerely,

J.M.
T.M.

Justice Brennan

cc: The Conference



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Supreme Court of the United States
Washington, D. C. 20543

June 2, 1986

Re: No. 85-224, City of Riverside v. Santos Rivera

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1986

85-224 Riverside v. Rivera

Dear Bill:

I voted with you at the Conference, and still am inclined to affirm in this case in view of the findings of fact made by the District Court and approved by the Court of Appeals.

It does seem to me, however, that your opinion may go somewhat beyond the prior decisions of this Court, particularly with respect to civil rights cases. I therefore may write a concurring opinion.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1986

85-224 Riverside v. Rivera

Dear Bill:

In circulating a separate opinion today, I did not overlook your generous note of June 4 in which you suggested we probably could reach agreement on an opinion.

As you will see, my basic view is that this case can be decided on the findings of fact found and approved by the courts below. There is a good deal of language in your well written opinion that would give me concern.

Sincerely,



Justice Brennan

lfp/ss

06/18

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: JUN 18 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE POWELL concurring.

I join only the Court's judgment. The Court's opinion reads our decision in *Hensley v. Eckerhart*, 461 U. S. 424 (1983), more expansively than I would, and more expansively than is necessary to decide this case. For me affirmance—quite simply—is required by the District Court's detailed findings of fact, which were approved by the Court of Appeals. On its face, the fee award seems unreasonable. But I find no basis for this Court to reject the findings made and approved by the courts below.

I

Because the history of the case is relevant to my views, I summarize it. City police officers, without warrants, forcibly entered a private residence where respondents were attending a party and arrested four of them. Criminal charges were lodged against those arrested, but later were dismissed. Respondents instituted this action on June 4, 1976, against petitioners City of Riverside, its chief of police, and 30 police officers. In addition to compensatory and punitive damages, the complaint sought preliminary and permanent injunctions against the City and its police force to prevent further alleged "discriminatory harassment" against Mexican Americans. At some point in the proceedings, respondents abandoned their claims for injunctive relief. On January 10,

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06/24

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: 11/27/86

Minor changes throughout.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

**CITY OF RIVERSIDE, ET AL., PETITIONERS v.
SANTOS RIVERA ET AL.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE POWELL, concurring in the judgment.

I join only the Court's judgment. The plurality opinion reads our decision in *Hensley v. Eckerhart*, 461 U. S. 424 (1983), more expansively than I would, and more expansively than is necessary to decide this case. For me affirmance—quite simply—is required by the District Court's detailed findings of fact, which were approved by the Court of Appeals. On its face, the fee award seems unreasonable. But I find no basis for this Court to reject the findings made and approved by the courts below.

I

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1986

Re: No. 85-224 City of Riverside v. Santos Rivera

Dear Bill,

I will write a dissent in this case.

Sincerely,

wm

Justice Brennan

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JUN 13 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE REHNQUIST, dissenting.

In *Hensley v. Eckerhart*, 461 U. S. 424 (1983), our leading case dealing with attorney's fees awarded pursuant to 42 U. S. C. § 1988, we said that "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." As if we had foreseen the case now before us, however, we went on to emphasize that "[t]he district court . . . should exclude from this initial fee calculation hours that were not 'reasonably expended'" on the litigation. *Id.*, at 434, quoting S. Rep. No. 94-1011, p. 6 (1976). Today, despite its adoption of a revisionist interpretation of *Hensley*, the Court nonetheless acknowledges that "*Hensley* requires a fee applicant to exercise 'billing judgment' not because he should necessarily be compensated for less than the actual number of hours spent litigating a case, but because the hours he does seek compensation for must be *reasonable*." *Ante*, p. 6, n. 4 (emphasis in original). I see no escape from the conclusion that the District Court's finding that respondents' attorneys "reasonably" spent 1,946.75 hours to recover a money judgment of \$33,350 is clearly erroneous, and that therefore the District Court's award of \$245,465.25 in attorney's fees to respondents should be reversed. The Court's affirmance of the fee award emasculates the princi-

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JUN 17 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR
joins, dissenting.

In *Hensley v. Eckerhart*, 461 U. S. 424 (1983), our leading case dealing with attorney's fees awarded pursuant to 42 U. S. C. § 1988, we said that "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." As if we had foreseen the case now before us, however, we went on to emphasize that "[t]he district court . . . should exclude from this initial fee calculation hours that were not 'reasonably expended'" on the litigation. *Id.*, at 434, quoting S. Rep. No. 94-1011, p. 6 (1976). Today, despite its adoption of a revisionist interpretation of *Hensley*, the Court nonetheless acknowledges that "*Hensley* requires a fee applicant to exercise 'billing judgment' not because he should necessarily be compensated for less than the actual number of hours spent litigating a case, but because the hours he does seek compensation for must be *reasonable*." *Ante*, p. 6, n. 4 (emphasis in original). I see no escape from the conclusion that the District Court's finding that respondents' attorneys "reasonably" spent 1,946.75 hours to recover a money judgment of \$33,350 is clearly erroneous, and that therefore the District Court's award of \$245,465.25 in attorney's fees to respondents should be reversed. The Court's affirmance of the fee award emasculates the princi-

pp 1, 5, 8 AND
STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____ JUN 19 1986

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-224

CITY OF RIVERSIDE, ET AL., PETITIONERS *v.*
SANTOS RIVERA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE REHNQUIST, with whom JUSTICE WHITE and JUSTICE O'CONNOR join, dissenting.

In *Hensley v. Eckerhart*, 461 U. S. 424, 433 (1983), our leading case dealing with attorney's fees awarded pursuant to 42 U. S. C. § 1988, we said that "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." As if we had foreseen the case now before us, we went on to emphasize that "[t]he district court . . . should exclude from this initial fee calculation hours that were not 'reasonably expended'" on the litigation. *Id.*, at 434, quoting S. Rep. No. 94-1011, p. 6 (1976). Today, despite its adoption of a revisionist interpretation of *Hensley*, the plurality nonetheless acknowledges that "*Hensley* requires a fee applicant to exercise 'billing judgment' not because he should necessarily be compensated for less than the actual number of hours spent litigating a case, but because the hours he does seek compensation for must be *reasonable*." *Ante*, at p. 6, n. 4 (emphasis in original). I see no escape from the conclusion that the District Court's finding that respondents' attorneys "reasonably" spent 1,946.75 hours to recover a money judgment of \$33,350 is clearly erroneous, and that therefore the District Court's award of \$245,456.25 in attorney's fees to respondents should be reversed. The Court's affirmance of the fee award emas-



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Supreme Court of the United States
Washington, D. C. 20543

June 2, 1986

Re: 85-224 - City of Riverside v. Rivera

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 30, 1986

No. 85-224 City of Riverside v. Rivera

Dear Bill,

For now, I will await the dissent in this case.

Sincerely,



Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 16, 1986

No. 85-224 City of Riverside v. Santos Rivera

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference