

1987

City of Riverside v. Rivera, a Windfall for Civil Rights Attorneys

Gregory Scott Heier
University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Gregory Scott Heier, *City of Riverside v. Rivera, a Windfall for Civil Rights Attorneys*, 66 Neb. L. Rev. (1987)
Available at: <https://digitalcommons.unl.edu/nlr/vol66/iss4/8>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

City of Riverside v. Rivera, A Windfall for Civil Rights Attorneys

Table of Contents

I. Introduction	808
II. Legislative and Judicial History	809
III. The Facts of <i>City of Riverside v. Rivera</i>	812
IV. The Opinions in <i>City of Riverside v. Rivera</i>	813
A. The Plurality.....	813
B. The Concurrence.....	814
C. The Dissents	815
V. Analysis	816
A. Criticisms of Plurality and Concurrence	816
B. Defense of Dissenters' Position	822
VI. Need For Legislative Reform of the Fees Act	823
VII. Conclusion	826

I. INTRODUCTION

*City of Riverside v. Rivera*¹ is the Supreme Court's latest attempt to define a "reasonable" attorney's fee under the Civil Rights Attorney's Fees Awards Act (Fees Act).² In *Rivera*, the Court affirmed a fee award of approximately \$245,000 despite the fact that the plaintiffs recovered only \$33,350 in damages. In so doing, the Court missed an opportunity to provide a measure of objective force to the definition of a reasonable attorney's fee.

The purpose of this Note is to examine the guidelines for determining a reasonable attorney's fee under the Fees Act. First, the Note will examine the legislative history of the Fees Act as well as judicial interpretation of the definition of a reasonable fee. Second, the vari-

1. 106 S. Ct. 2686 (1986).

2. 42 U.S.C. § 1988 (1982). The Fees Act states in pertinent part:

In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

ous opinions filed in *Rivera* will be outlined and analyzed. Finally, the Note proposes legislative reform that would require a more objective definition of reasonableness.

II. LEGISLATIVE AND JUDICIAL HISTORY

The enactment of the Fees Act was Congress' response to the Supreme Court's decision in *Aleyaska Pipeline Service Co. v. Wilderness Society*.³ The Court in *Aleyaska* reaffirmed the "American Rule" regarding attorney's fees and held that only Congress may authorize exceptions to the general rule that a litigant bear the expense of his own attorney's fees.⁴ Congress immediately responded to the decision by passing the Fees Act.⁵ Congress reasoned that the decision in *Aleyaska* had left "anomalous gaps" in the civil rights laws⁶ and characterized the Fees Act as "an appropriate response to the *Aleyaska* decision."⁷

Congress cited several policy reasons for allowing "fee shifting"⁸ in civil rights litigation. Congress recognized that the majority of civil rights violations affect those who cannot afford an attorney, and by enacting the Fees Act,⁹ sought to ensure effective access to the courts to all those harmed by civil rights violations.¹⁰ Congress also recognized that by allowing fee shifting arrangements in civil rights cases, it could guarantee vigorous enforcement of civil rights by private sector attorneys thereby reducing the need for reliance upon government agencies.¹¹

The legislative history of the Fees Act provides rudimentary guidelines to assist courts in determining a reasonable fee. Congress' basic mandate, as stated in the Senate Report, was that fee awards should be adequate to attract competent counsel, but should not produce windfall profits for attorneys.¹² Prevailing civil rights attorneys were

3. 421 U.S. 240 (1975).

4. *Id.* at 247.

5. S. Rep. No. 1011, 94th Cong., 2nd Sess. 1 (1976) reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 5908 [hereinafter Senate Report].

6. *Id.*

7. *Id.* at 4, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS at 5912.

8. Fee shifting is the legal term describing the practice of requiring the adversarial party to pay the costs of litigation, including attorney's fees.

9. H.R. Rep. No. 1558, 94th Cong., 2d Sess. 1 (1976) [hereinafter House Report].

10. *Id.*

11. Senate Report, *supra* note 5, at 6, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS at 5913. See also Comment, *The Contingency Factor and the Attorneys Fees Awards Act of 1976, Legislative History Requires Continued Application*, 26 SANTA CLARA L. REV. 193, 200 (1986) (provides short discussion describing the Fees Act as a practical tool to ensure vigorous private sector enforcement of civil rights while avoiding complete reliance on governmental agencies).

12. Senate Report, *supra* note 5, at 6, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS at 5913. The report states:

to be paid, as is traditional with attorneys compensated by a fee-paying client, "for all time reasonably expended on a matter."¹³

Congress cited *Johnson v. Georgia Highway Express, Inc.*,¹⁴ as establishing the appropriate standards for determining a reasonable attorney's fee.¹⁵ In *Johnson*, the United States Court of Appeals for the Fifth Circuit established twelve factors for lower courts to consider in computing a reasonable fee award.¹⁶ The court in *Johnson*, however, failed to adequately explain how each of these factors was to be applied. Consequently, courts have had a difficult time articulating clear standards for defining a reasonable attorney's fee.

The question of how the *Johnson* factors were to be applied was partially answered by the Supreme Court in *Hensley v. Eckerhart*.¹⁷ *Hensley* established that the "lodestar" figure was the most useful starting point in determining a reasonable attorney's fee.¹⁸ The lodestar figure is determined by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. The *Hensley* Court went on to state that the lower courts could consider the *Johnson* factors in adjusting either upward or downward the lodestar figure.¹⁹ Among the *Johnson* factors to be considered was the

It is intended that the amount of fees awarded under S. 2278 be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases and not be reduced because the rights involved may be nonpecuniary in nature. The appropriate standards, see *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974), are correctly applied in such cases as *Stanford Daily v. Zurcher*, 64 F.R.D. 680 (N.D. Cal. 1974); *Davis v. County of Los Angeles*, 8 E.P.D. 9444 (C.D. Cal. 1974); and *Swann v. Charlotte-Mecklenburg Board of Education*, 66 F.R.D. 483 (W.D.N.C. 1975). These cases have resulted in fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys. In computing the fee, counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, "for all times reasonably expended on a matter." *Davis*, *supra*; *Stanford Daily*, *supra*, at 684.

13. *Id.*

14. 488 F.2d 714 (5th Cir. 1974).

15. Senate Report, *supra* note 5, at 6, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS at 5913.

16. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). These factors are:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

17. 461 U.S. 424 (1983).

18. *Id.* at 433.

19. *Id.* at 434.

"important factor of the 'results obtained.'"²⁰ The Court in *Hensley* also emphasized that when a plaintiff succeeds on only some of his claims, it may not be appropriate for his attorney to receive compensation for hours spent litigating unsuccessful claims.²¹ In making the determination as to whether the attorney will receive full compensation, the Court stated that lower courts were to focus on the relationship between successful and unsuccessful claims, the significance of the overall success achieved by the plaintiff, and whether the claims arose from a "common core of facts."²²

Hensley therefore stands for the proposition that the lodestar figure is the most appropriate measure of a proper attorney's fee and that the *Johnson* factors could be considered as multipliers to the lodestar figure. Although the Court had hinted that many of the *Johnson* factors were subsumed in the lodestar figure,²³ it did not affirmatively answer how the *Johnson* factors were to be considered until later. That question was answered in *Blum v. Stenson*.²⁴

In *Blum*, the Supreme Court addressed whether the lower court had abused its discretion by granting a fifty percent upward adjustment to the lodestar figure.²⁵ While the Court rejected petitioner's argument that upward adjustments to the lodestar were never permissible,²⁶ the Court accepted petitioner's argument that the facts of the particular case did not justify an upward adjustment.²⁷ The Court said the multipliers used by the district court were presumably already contained in the lodestar.²⁸ Specifically, the Court found that the novelty and complexity of the issues presented in the action were presumably reflected in the number of billable hours and were not an appropriate basis for an adjustment of the fee.²⁹ The Court also noted that the quality of representation generally is reflected in the reasonable hourly rate.³⁰ Furthermore, because the "results obtained" generally will be subsumed within other factors used to calculate a

20. *Id.*

21. *Id.* at 435.

22. *Id.* at 435-36.

23. *Id.* at 434 n.9. The Court, foreshadowing its subsequent decision in *Blum v. Stenson*, 465 U.S. 886 (1984), did caution lower courts that many of the *Johnson* factors were already subsumed in the lodestar figure.

24. 465 U.S. 886 (1984).

25. *Id.* at 896.

26. *Id.* at 897. The Court relied on its holding in *Hensley* which stated that upward adjustments to the lodestar may be justified in cases of exceptional success. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

27. *Blum v. Stenson*, 465 U.S. 886, 898-902 (1984).

28. The district court considered the complexity of the litigation, the novelty of the issues, the high quality of the representation, the results obtained, and the riskiness of the action. *Id.* at 898.

29. *Id.* at 898-99.

30. *Id.* at 899.

reasonable fee, the Court reasoned that this factor should normally not provide an independent basis for increasing the fee award.³¹ Thus, the *Blum* decision severely limits the continued viability of the *Johnson* factors as multipliers to be used for an adjustment of the lodestar figure,³² and the lodestar figure is now strongly presumed to be the reasonable fee.

III. THE FACTS OF *CITY OF RIVERSIDE V. RIVERA*.

Against this backdrop of legislative and judicial history, *City of Riverside v. Rivera* reached and was decided by the Supreme Court. The case was originally brought in Federal district court by a group of eight Chicano individuals who attended a party in Riverside, California. A large number of police officers, acting without a warrant, broke up the party using tear gas and "unnecessary physical force."³³ Several of the party-goers were arrested. The district court later found that the party was not creating a disturbance in the community at the time of the police action. Also, all criminal charges against the arrestees were eventually dropped for lack of probable cause.

The individuals arrested sued the City of Riverside, its chief of police, and thirty individual police officers under 42 U.S.C. §§ 1981, 1983, 1985(3), and 1986 for violating their first, fourth, and fourteenth amendment rights. The petition also sought damages on various state claims alleging negligence, false arrest, and false imprisonment. The district court granted summary judgment in favor of seventeen of the defendant police officers. The case eventually went to trial with the jury returning verdicts against only five of the police officers and the City of Riverside.

Specifically, the jury found that the City and three of the police officers had violated 42 U.S.C. § 1983 and awarded \$13,300 in compensatory and punitive damages for violations of the plaintiffs' civil rights. The jury also found that the City and five of its police officers had committed various acts of common law negligence, false arrest, and false imprisonment and awarded plaintiffs' \$20,050 in damages on their state claims for total damages of \$33,350. Pursuant to 42 U.S.C.

31. *Id.* at 890.

32. The only *Johnson* factors that realistically survive the *Blum* decision are the "results obtained" and the "contingent nature of the litigation." *Hensley* and *Blum* indicate that an upward adjustment of the lodestar may be appropriate in cases of exceptional success. What constitutes exceptional success, nonetheless, remains unclear. The *Blum* Court decided not to address whether the "contingent nature of the lawsuit" would justify an upward adjustment to the lodestar. Specifically, the Court said, "We have no occasion in this case to consider whether the risk of not being the prevailing party in a § 1983 case, and therefore not being entitled to an award of attorney's fees from one's adversary, may ever justify an upward fee adjustment." *Id.* at 886 n.17.

33. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2689 (1986) (plurality opinion).

§ 1988, the Civil Rights Attorney's Fees Awards Act, the district court awarded the prevailing plaintiffs \$245,456.26 in attorney's fees.³⁴

Defendants appealed only the fee award to the United States Court of Appeals for the Ninth Circuit which affirmed the award.³⁵ Defendants then sought a *writ of certiorari* from the Supreme Court. The Supreme Court granted the *writ*, vacated the judgment of the court of appeals, and remanded for reconsideration in light of the intervening decision in *Hensley*.³⁶ On remand, the district court, after holding two additional hearings, again concluded that plaintiffs were entitled to a fee award of \$245,456.25. The court of appeals again affirmed the trial court, holding that "the district court correctly reconsidered the case in light of *Hensley* . . ."³⁷ Defendants again sought a *writ of certiorari* to the Supreme Court maintaining that the district court's award was not "reasonable" within the meaning of the Fees Act, and the *writ* was again granted.³⁸ Although no opinion spoke for a majority of the Court, the Supreme Court affirmed the fee award.³⁹

IV. THE OPINIONS IN *CITY OF RIVERSIDE V. RIVERA*

A. The Plurality

Justice Brennan, in a plurality opinion joined by Justices Marshall, Blackmun, and Stevens, stated that the issue in the case was "whether an award of attorney's fee 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."⁴⁰ The plurality opinion rejected the defendants' argument that likened a civil rights action to a private tort suit benefiting only the individual litigants involved. Brennan wrote, "Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms."⁴¹

The plurality added that the plaintiff in a civil rights action acts as a "private attorney general" vindicating policies that Congress has

34. The fee award was based on 1,946.75 hours expended by plaintiff's two attorneys at a rate of \$125 per hour and 84.5 hours expended by law clerks at a rate of \$25 per hour. *Id.* at 2690 (plurality opinion).

35. *Rivera v. City of Riverside*, 679 F.2d 795 (9th Cir. 1982).

36. *City of Riverside v. Rivera*, 461 U.S. 952 (1983).

37. *Rivera v. City of Riverside*, 763 F.2d 1580, 1582 (9th Cir. 1985).

38. *City of Riverside v. Rivera*, 106 S. Ct. 244 (1985).

39. *City of Riverside v. Rivera*, 106 S. Ct. 2686 (1986).

40. *Id.* at 2689 (plurality opinion). Stating the issue in this manner leads almost inevitably to the conclusion that the award of attorneys' fees in this case was reasonable due to the legislative history of the Fees Act which indicates that monetary damages are not a prerequisite to an award of attorney's fees. Senate Report, *supra* note 5, at 6, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS at 5913.

41. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2695 (1986) (plurality opinion).

deemed of the highest importance.⁴² The plurality, after a brief discussion of the legislative history, concluded, "Thus, Congress recognized that reasonable attorney's fees under § 1988 are not conditioned upon and need not be proportionate to an award of money damages."⁴³

The plurality also stressed that a rule of proportionality would seriously undermine Congress' purpose in passing the Fees Act.⁴⁴ The plurality emphasized that the Fees Act was intended to encourage the bringing of meritorious civil rights claims by removing the financial barrier surrounding the necessity of hiring competent counsel.⁴⁵ Furthermore, private-sector fee arrangements such as those used in the tort field were deemed insufficient to attract competent counsel in the civil rights area.⁴⁶ Therefore, in order to attract competent counsel and to guarantee sufficiently vigorous enforcement of civil rights, the plurality rejected the rule that attorney's fees must be proportionate to the damages awarded in a civil rights action.

B. The Concurrence

Justice Powell, though not convinced the fee award was fair, deferred to the judgment of the lower courts because he was unable to conclude that the detailed findings of fact made by the district court and approved by the court of appeals were clearly erroneous.⁴⁷ Justice Powell also gave brief consideration to the substantive issues in the case and concluded that neither Supreme Court decisions nor the legislative history of the Fees Act supported a rule of proportionality between fees awarded and damages recovered in a civil rights case.⁴⁸

42. *Id.* at 2695 (plurality opinion) (quoting H.R. Rep. No. 1558, 94th Cong., 2d Sess. 1, 2 (1976)).

43. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2695 (1986) (plurality opinion).

44. *Id.* at 2696 (plurality opinion).

45. *Id.* (plurality opinion).

46. *Id.* at 2696-97 (plurality opinion). The plurality stressed that civil rights actions often require substantial effort but offer only nominal or minimal damages. Private sector fee arrangements where the prevailing attorney takes a certain percentage of the judgment were classified as insufficient to guarantee vigorous enforcement of civil rights due to the minimal damages usually available.

47. *Id.* at 2699 (Powell, J., concurring). Justice Powell said,

In sum, despite serious doubts as to the fairness of the fees awarded in this case, I cannot conclude that the detailed findings made by the District Court, and accepted by the Court of Appeals, were clearly erroneous, or that the District Court abused its discretion in making this fee award.

Id. at 2700 (Powell, J., concurring). Justice Powell's argument can be summarized in his belief that the trial court's findings were not clearly erroneous for the purposes of FED. R. CIV. P. 52(a).

48. *Id.* (Powell, J., concurring).

C. The Dissents

Chief Justice Burger, joined in the dissent of Justice Rehnquist, but also wrote a short, vigorous dissent. The Chief Justice, exasperated over the size of the fee award, said, "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."⁴⁹ Stating that he viewed the fee award as a grave abuse of discretion, the Chief Justice predicted that the Court's result "will unfortunately only add fuel to the fires of public indignation over the costs of litigation."⁵⁰

Justice Rehnquist, joined by Chief Justice Burger, Justice White, and Justice O'Connor, delivered the second dissenting opinion in the case. The Rehnquist dissent relied on the Court's earlier decision in *Hensley*. While recognizing that under *Hensley* the lower courts were to use the lodestar figure as the most useful starting point in determining a fee award, the Rehnquist dissent pointed out that the *Hensley* Court had cautioned the district courts against including in the initial fee calculation hours not "reasonably expended" on the litigation.⁵¹ Rehnquist said he could find no escape from the conclusion that the district court's finding that plaintiffs' attorneys reasonably spent 1,946.75 hours to recover \$33,350 in damages was clearly erroneous. Rehnquist, dismayed by the size of the award, added, "The Court's affirmation of the fee award emasculates the principles laid down in *Hensley* and turns § 1988 into a relief act for lawyers."⁵²

Rehnquist continued his argument by accusing the trial court of not seriously considering the propriety of the fee award in light of the *Hensley* decision. Rehnquist stated that the district court viewed *Hens-*

49. *Id.* at 2701 (Burger, C.J., dissenting).

50. *Id.* (Burger, C.J., dissenting). While the Chief Justice's opinion can be criticized as rhetorical and shallow, it does have a simplistic appeal. If a fee award of roughly \$245,000 is "reasonable" when the only relief obtained is \$33,000, one can certainly wonder if there would ever be a fee award the Court considered "unreasonable."

51. *Id.* (Rehnquist, J., dissenting).

52. *Id.* at 2701-02 (Rehnquist, J., dissenting). Rehnquist later points out hours he considers unreasonable on their face and prime examples of the attorneys lack of proper "billing judgment." The examples are:

(1) The court approved almost 209 hours of "prelitigation time," for a total of \$26,118.75. (2) The court approved some 197 hours of time spent in conversations between respondents' two attorneys, for a total of \$24,625. (3) The court approved 143 hours for preparation of a pre-trial order, for a total of \$17,875.00. (4) Perhaps most egregiously, the court approved 45.50 hours of "stand-by time," or time spent by one of the respondents' attorneys, who was then based in San Diego, to wait in a Los Angeles hotel room for a jury verdict to be rendered in Los Angeles, when his co-counsel was then employed by the UCLA School of Law, less than 40 minutes' driving time from the courthouse.

Id. at 2702-03 (Rehnquist, J., dissenting).

ley not as a constraint on its discretion, but as a blueprint for justifying, after-the-fact, a fee award it had already decided to enter solely on the basis of the lodestar figure. Rehnquist further accused the trial court of failing to seriously consider the "results obtained" which *Hensley* described as the important factor in determining a reasonable fee award.⁵³

Rehnquist, in a more substantive argument, stated that the "reasonableness" of a fee award must be determined in light of both traditional billing practices in the legal profession, and in consideration of what would have been deemed reasonable if billed to affluent clients by their own attorneys.⁵⁴ Rehnquist said that this form of analysis leads inevitably to the conclusion that the fee award in this case was unreasonable.⁵⁵ While admitting that under some circumstances⁵⁶ attorney's fees could be greater than the underlying value of the litigation, the Rehnquist dissent stated that the plurality's attempt to dismiss *any* relationship between the amount of time spent on a case and the damages awarded was wholly unconvincing.⁵⁷ In a concise summary of the dissenters' position, Rehnquist stated,

One may agree with all the glowing rhetoric contained in the plurality's opinion about Congress' noble purpose in authorizing attorney's fees under § 1988 without concluding that Congress intended to turn attorneys loose to spend as many hours as possible to try a case that could reasonably be expected to result only in a relatively minor award of monetary damages.⁵⁸

V. ANALYSIS

A. Criticisms of Plurality and Concurrence

The plurality opinion gives the correct answer to the issue it addresses in this case, whether proportionality between fees awarded and underlying damage recoveries is required by the Fees Act.⁵⁹ By

53. *Id.* at 2702 (Rehnquist, J., dissenting). Rehnquist's argument does have some support in the trial court record. On remand, after convening a hearing concerning the fee award, the trial judge announced, "I tell you now that I will not change the award. I will simply go back and be more specific about it." *Id.* (Rehnquist, J., dissenting).

54. *Id.* at 2703 (Rehnquist, J., dissenting).

55. *Id.* (Rehnquist, J., dissenting). Rehnquist goes on to pose several hypotheticals attempting to illustrate how attorneys in the private sector would never be justified in charging their clients more in attorney's fees than successful outcome of the litigation could possibly yield.

56. Rehnquist admits that in certain instances, such as where the litigation is prolonged by the bad-faith conduct of the defendant or where the litigation produces significant benefits for persons other than the individual plaintiffs, larger awards of attorney's fees would be justified. *Id.* at 2704-05 (Rehnquist, J., dissenting).

57. *Id.* at 2705 (Rehnquist, J., dissenting).

58. *Id.* (Rehnquist J., dissenting).

59. The legislative history indicates that fully compensatory fee awards are available even when the rights vindicated are non-pecuniary in nature and where only

stating the issue in this manner, however, the plurality effectively dodged the real issue presented by this case. The gravamen of the defendants' argument was not that the Fees Act required mechanical proportionality in awarding attorney's fees, but that there must be some relationship between fees awarded and results obtained.⁶⁰ In fact, the defendants made it clear to the Court that they were not arguing for a blanket rule of mechanical proportionality.⁶¹ And yet, Justice Brennan wrote, "[P]etitioners and the Solicitor General submit that attorney's fees in such cases should be proportionate to the amount of damages a plaintiff recovers. Specifically, they suggest that fee awards in damages cases should be modeled upon the contingent fee arrangements commonly used in personal injury litigation."⁶² Justice Brennan's mischaracterization of the defendants' argument draws suspicion to the integrity of the opinion and detracts from its persuasiveness.

Justice Brennan's reason for focusing on the proportionality argument is obvious. By doing so, Brennan avoids having to address how two attorneys can "reasonably" spend nearly 2,000 billable hours at a rate of \$125 per hour on a case where the only relief obtained was \$33,000 in damages. It is true that fee awards are available in cases where only minimal damages are obtained.⁶³ It is also true, however, that both the legislative history⁶⁴ and judicial interpretation⁶⁵ of the Fees Act require courts to consider the important factor of the results obtained in determining the reasonableness of the fee award.

An examination of the facts of this case indicates that the fee award was grossly disproportionate to the overall relief obtained. Although plaintiffs initially brought claims against thirty-two defendants, they prevailed against only six of those defendants. Seventeen of the defendants were dismissed prior to trial and nine additional defendants were exonerated at trial. Although plaintiffs sought millions of dollars in damages, they were awarded only \$33,350 in damages, \$20,000 on their state law claims and only \$13,350 on their civil rights claims. To the extent plaintiffs sought injunctive, declaratory, or any type of relief other than money damages, these claims were dropped prior to trial or were totally unsuccessful. Neither the City of Riverside, nor its police department was required to change any of its prac-

nominal damages are recovered. Senate Report, *supra* note 5, at 6, *reprinted in* 1976 U. S. CODE CONG. & ADMIN. NEWS at 5913.

60. Reply Brief for Petitioners at 1, *City of Riverside v. Rivera*, 106 S. Ct. 2686 (1986) [hereinafter Reply Brief].

61. *Id.* "Petitioners do not now, and have never urged the adoption of a blanket rule of 'mechanical proportionality' in awarding attorney's fees under § 1988."

62. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2694 (1986) (plurality opinion).

63. *See supra* note 59.

64. House Report, *supra* note 9, at 8.

65. *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983).

tices or policies. In short, it was a case that secured only monetary relief for the individual plaintiffs with no specific benefits secured for the public at large. Despite these facts, plaintiffs' attorneys were compensated to the minute for all the time they spent litigating the case. Adding insult to injury, the two relatively novice attorneys⁶⁶ were compensated at a rate of \$125 per hour. All said and done, the plaintiffs' attorneys were awarded a fee of \$245,000, roughly seven times greater than the underlying damage recovery and almost twenty times the amount recovered on plaintiffs' civil rights claims.⁶⁷

To be sure, a civil rights litigant in vindicating his civil rights may produce indirect benefits for the general public.⁶⁸ For instance, the public obtains a psychological benefit in knowing that civil rights violations will not be ignored. Also, the award of attorney's fees has a deterrent effect in ensuring that governmental entities will not violate the civil rights of their citizens.⁶⁹ The mere recitation of these benefits should not, however, be used to dismiss any relationship between the fees awarded and the results obtained. The gross disproportionality between the fees awarded and the results obtained in this case leads to the conclusion that the fee award was unreasonable. In finding otherwise, the plurality dismisses the need for any relationship between overall relief and fees awarded and gives attorneys *carte blanche* to spend as many hours as possible on their civil rights claims.

This policy is unsound. Recognizing that many civil rights violations are brought against governmental entities, one may certainly wonder why taxpayers should be forced to pay exorbitant fee awards to attorneys who could not command similar fees in the uncoerced private market.⁷⁰ As stated by Massachusetts Attorney General, Francis X. Bellotti, "I reject the notion that our commitment to assuring the civil rights of the people is to be measured by our generosity to

66. The attorneys "total professional experience when this litigation began consisted of Gerald Lopez' 1-year service as a law clerk to a judge and Roy Cazares' two years' experience as a trial attorney in the Defenders' Program of San Diego County." *City of Riverside v. Rivera* 106 S. Ct. 2686, 2701 (1986) (Burger, C.J., dissenting).

67. For a catalogue of the facts quoted in this paragraph see Brief for Petitioners at 6-8, *City of Riverside v. Rivera* 106 S. Ct. 2686 (1986) [hereinafter *Petitioner's Brief*].

68. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2694 (1986) (plurality opinion).

69. Brief for Respondents at 45-46 n.81, *City of Riverside v. Rivera*, 106 S. Ct. 2686 (1986).

70. Smith, *Stop Making Taxpayers Subsidize Activist Lawyers*, ATTORNEY FEE AWARDS REPORTER 4, 4 (June 1986). See also, *Jacquette v. Black Hawk County*, Iowa, 710 F.2d 455, 464 (8th Cir. 1983) (Bright, J., concurring and dissenting). Judge Bright wrote,

Unfortunately, nothing this court does can alter the fact that the real losers in this case are the taxpayers who have had to pay the ultimate cost of this litigation. This case emphasizes to judges and attorneys alike the need to find ways to stem the inordinately high cost of litigation in cases like *Jacquette's*.

their lawyers.”⁷¹ The Fees Act was simply not intended to create “a civil rights fee bank to be liberally drawn upon by lawyers for their own welfare.”⁷² Unfortunately, the plurality opinion sanctions the overzealous efforts of some civil rights attorneys who under the color of public interest and through taxpayer subsidized litigation pad their own bankrolls disregarding the benefits actually conferred upon their clients and society.⁷³

Moreover, the problem of litigious attorneys is sharpened by the fact that it is the prevailing plaintiff's opponent and not the client who foots the bill in a civil rights action. A private sector attorney has sufficient incentives to insure that hours billed to a client are reasonable. In order to develop and retain satisfied clients, the private sector attorney must provide competent legal service at a competitive price. The civil rights attorney, on the other hand, is bound by no such constraints because it is the adversary and not the client who pays the bill. Thus, the civil rights attorney need not be concerned with the reasonableness of the fee and actually has the incentive to overlitigate a case. As stated by the Seventh Circuit Court of Appeals:

[W]hen a lawyer is working for his own client he sensibly limits his research and preparation in proportion to the magnitude of the results sought by his client and his client's perceived ability and willingness to pay. No such constraints work on a civil rights plaintiff's counsel. Indeed, the temptation is just the opposite. Since “the enemy” will be paying anyway, counsel is induced to read every case, depose every witness, examine fully every tactic, leave no stone unturned⁷⁴

The problem is further heightened by courts allowing civil rights attorneys to recover for all time spent on unsuccessful claims if the claims are somehow “related” or arose from the same “common core of facts” as the claims ultimately prevailed upon.⁷⁵ A finding that a claim is related does not necessarily support a finding that time spent litigating that claim was reasonable. In fact, an attorney is encouraged to overzealously pursue claims that are not likely to succeed if the attorney can be certain that the court will mechanically apply the lodestar formula to all related claims.⁷⁶ In light of the propensity of

71. Smith, *supra* note 70, at 4.

72. *Coop v. City of South Bend*, 635 F.2d 652, 655 (7th Cir. 1980).

73. Brief of Amici Curiae by Congressman Thomas J. Biley, Jr., Philip M. Crane, William E. Dannemeyer, Newt Gingrich, and the Washington Legal Foundation in Support of Petitioners at 6-8, *City of Riverside v. Rivera*, 106 S. Ct. 2686 (1986) [hereinafter Congressional Brief].

74. *Bonner v. Coughlin*, 657 F.2d 931, 935 (7th Cir. 1981) (quoting *Scott v. Bradley* 455 F. Supp. 672, 675 (E.D. Va. 1978) (original emphasis deleted)).

75. Congressional Brief, *supra* note 73, at 8-9.

76. The policy of awarding attorney's fees for time spent litigating related claims led District of Columbia Circuit Judge Wilkey to dissent to the court's approval of a fee award of \$160,000 for an underlying recovery of \$31,000 in back pay in an employment discrimination action. Judge Wilkey wrote,

This case illustrates the potential result when a large private firm, with

some lower courts to indiscriminately award fees for all related claims and the billing realities discussed above, the plurality seems all too willing to assume that the time plaintiffs' attorneys spent pursuing their myriad claims was reasonable.

The plurality can be further criticized for approving a fee award that was at least partially justified by the trial court on grounds that were irrelevant, irrational, and unsupported by the record.⁷⁷ The district court justified the large fee award by stating that the disproportionality between the fee award and the underlying damage recovery "resulted from (a) the general reluctance of jurors to make large awards against police officers, and (b) the dignified restraint which the plaintiffs exercised in describing their injuries to the jury."⁷⁸ As the defendants emphasized in their Reply Brief, however, the supposed reluctance of jurors to return verdicts against police officers was apparently not shared by the jurors in numerous other police brutality cases tried in the federal courts.⁷⁹ Furthermore, even if jurors are reluctant to return large verdicts against police officers, a court in awarding attorney's fees does not sit to retry issues submitted to the jury and "has no business trying to correct what it regards as an unfortunate tendency in the award of damages by granting inflated attorney's fees."⁸⁰

high rates customarily charged to wealthy corporate clients, brings a suit against a Government defendant with an unlimited deep pocket, and then proceeds to engage in extensive discovery and numerous pretrial motions, while being assured from the outset that all hours spent on the case will be reimbursed at the firm's customary rate so long as its efforts are relevant to issues on which it ultimately prevails. It is of little use to quibble over whether the amount of equitable relief involved in this particular case can possibly justify the high fee, because the situation in this case foreshadows and points the way toward far greater potential abuses in the future, if the hourly rate times hours formula continues to be mechanically applied.

Copeland v. Marshall, 641 F.2d 880, 911 (D.C. Cir. 1980) (Wilkey, J., dissenting). Judge Wilkey added, "In our colleagues' 'lodestar' opinion, the path of attorney's fees in Title VII litigation is easy to discern. It is Up, Up, and Away! It is *Per Calculos Ad Astra*." *Id.* at 908 (Wilkey, J., dissenting).

77. Congressional Brief, *supra* note 73, at 21-25.

78. City of Riverside v. Rivera, 106 S. Ct. 2686, 2693 (1986) (plurality opinion).

79. Reply Brief, *supra* note 60, at 17. The cases cited by petitioners are:

Roman v. City of Richmond, 570 F. Supp. 1544 (N.D. Cal. 1983) (\$3,000,000); Bell v. City of Milwaukee, 746 F.2d 1205 (7th Cir. 1984) (\$1,590,670); Estate of Davis v. Hazen, 582 F. Supp. 938 (C.D. Ill. 1983) (\$575,000); Herrera v. Valentine, 653 F.2d 1220 (8th Cir. 1981) (\$300,000); Smith v. Heath, 517 F. Supp. 774 (D. Tenn. 1980), *aff'd* 691 F.2d 220 (6th Cir. 1981) (\$132,000); Spears v. Conlish, 440 F. Supp. 490 (N.D. Ill. 1977) (\$100,000 assessed against a single police officer); Bruner v. Dunaway, 684 F.2d 422 (6th Cir. 1982) *cert. denied*, 459 U.S. 1171 (1983) (\$100,000); Stokes v. Delcambre, 710 F.2d 1120 (5th Cir. 1983) (\$310,000 in punitive damages against a local sheriff and deputy).

80. City of Riverside v. Rivera, 106 S. Ct. 2686, 2703 (1986) (Rehnquist, J., dissenting).

The second factor relied on by the trial court to justify the minimal damage award was the dignified restraint exercised by plaintiffs' counsel in presenting their case to the jury. However, the restraint exercised by counsel in presenting their case is an irrelevant factor when deciding whether the minimal results obtained justified the huge fee award.⁸¹ The restraint plaintiffs' counsel supposedly used in presenting their case to the jury was merely a tactical decision and perhaps a poor one judging by the size of the jury award. Nevertheless, the trial judge turned what was probably a tactical error into a justification for a huge fee award. This peculiar rationalization is a prime example of the trial court's strained effort to justify its fee award. Based on such reasoning, Justice Rehnquist was forced to conclude, "It is obvious to me that the District Court viewed *Hensley* not as a constraint on its discretion, but instead as a blueprint for justifying, in an after-the-fact fashion, a fee award it had already decided to enter solely on the basis of the 'lodestar.'"⁸² The plurality, on the other hand, overlooked the strained reasoning of the trial court in reaching its conclusion that the findings of the trial court were not "clearly erroneous."⁸³

Justice Powell's concurrence is also unpersuasive. While trial courts are given wide discretion in determining a reasonable fee, such discretion is not absolute.⁸⁴ *Hensley* specifically directed trial courts to consider the important factor of the results obtained.⁸⁵ In light of the disproportionality between the results obtained and the fee award in this case, Justice Powell's statement that he could not conclude that the trial court's "detailed" findings were "clearly erroneous" is unconvincing. The opinion provides trial courts desirous of providing civil rights attorneys exorbitant fees with a foolproof method of assuring affirmance on appeal. Under Powell's view, a trial court need only recite those factors that have traditionally justified full fee recoveries and the court's findings will be protected on appeal by the "clearly erroneous" standard of Federal Rule of Civil Procedure 52(a). Justice Powell's restrained concurrence, coupled with the generosity of the plurality opinion, ensures civil rights attorneys that even grossly disproportionate fees will be upheld by the Supreme Court so long as the trial court protects itself by creating an appropriate "paper trail" in support of the fee award.

81. Congressional Brief, *supra* note 73, at 23-24.

82. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2702 (1986) (Rehnquist, J., dissenting).

83. *Id.* at 2693 (plurality opinion).

84. "The court necessarily has the discretion in making the equitable judgment. This discretion however must be exercised in light of the considerations we have identified." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

85. *Id.* at 434.

B. Defense of Dissenters' Position

Of all the opinions in *Rivera*, Justice Rehnquist's dissent is the most persuasive. Rehnquist argues that an attorney exercising reasonable billing judgment could not possibly spend nearly 2,000 billable hours at a rate of \$125 per hour on litigation that produced only \$33,000 in monetary relief and no specific, identifiable benefits for persons other than the individual plaintiffs. If the term "reasonable" is to have any meaning within the fee award context, Rehnquist argues that courts must not continue to permit fee awards grossly disproportionate to the overall relief obtained.

The same arguments used to criticize the opinion of the plurality support Justice Rehnquist's conclusion that the fee award in this case was unreasonable. Rehnquist's strongest argument is that there was a total lack of billing judgment on the part of the plaintiffs' counsel in this case.⁸⁶ Beginning with the proposition that hours not properly billed to one's client are not properly billed to one's adversary, Rehnquist builds a strong case that the fee award in this case was unreasonable.⁸⁷

According to Rehnquist, an important factor in determining the reasonableness of the hours expended is the amount that can reasonably be expected to be recovered if the plaintiff prevails.⁸⁸ Just as a private sector attorney sensibly limits his research in light of the potential benefits, so too should a civil rights attorney. Thus, a civil rights attorney is justified in expending billable hours on a case up to the point where the benefits for his client and the public outweigh the costs associated with procuring those benefits. Hours expended beyond that point creates litigation primarily for the benefit of the attorney.

The question then becomes how to value the intangible, non-pecuniary value of a civil right and the indirect societal benefits produced by civil rights litigation. Rehnquist's dissent takes the position that even though these benefits are difficult to measure, this fact cannot be used to dismiss the need for any relationship between the actual tangible results achieved and the fees requested.⁸⁹ In this case, a fee award roughly seven times greater than the total recovery and nearly twenty times greater than the recovery on plaintiffs' civil rights claims was beyond that which the dissent could term reasonable.⁹⁰ By placing outer limits on the definition of a reasonable fee, the dissent takes into account both of Congress' purposes in enacting the Fees Act, promoting the vindication of civil rights while preventing windfalls to

86. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2703 (1986) (Rehnquist, J., dissenting).

87. *Id.* (Rehnquist, J., dissenting).

88. *Id.* at 2704 (Rehnquist, J., dissenting).

89. *Id.* at 2705 (Rehnquist, J., dissenting).

90. *Id.* at 2703 (Rehnquist, J., dissenting).

attorneys.⁹¹

To the extent Justice Rehnquist's hypotheticals comparing civil rights actions to purely private litigation imply that the amount recovered in a civil rights action should be an absolute cap on a reasonable attorneys fee,⁹² the opinion can be criticized. The non-pecuniary benefits should be given some weight in determining a reasonable fee. As previously stated, however, the non-pecuniary benefits should not dismiss the need for any relationship between fees awarded and the amount recovered. A sound approach to the problem of a disproportionate fee request in light of the results obtained is illustrated by *Jacquette v. Black Hawk County, Iowa*,⁹³ where the Eighth Circuit Court of Appeals said, "This does not mean that a modest damage award or settlement should dictate the size of the attorney fee, but at the same time, it cannot be ignored."⁹⁴ The approach advocated by the Eighth Circuit is consistent with the main thrust of Rehnquist's dissent in that it forces civil rights attorneys to consider what can reasonably be expected to be achieved by the litigation when exercising billing judgment.

Another criticism of Rehnquist's dissent is that it does not address the application of *Marek v. Chesny*⁹⁵ to the award of attorney's fees under the Fees Act. *Marek* held that a civil rights defendant is not liable for attorney's fees incurred subsequent to a pre-trial settlement offer when the judgment recovered at trial by the plaintiff is less than the settlement offer. While the threat of exorbitant fees should not chill good faith defenses to a civil rights action, a civil rights defendant should also realize that a reasonable settlement offer to a bona fide claim is a sensible way to limit exposure to excessive attorney's fees. As long as district courts are willing to hand out astronomical attorney's fees, the pragmatic defense counsel should bear in mind the possibility of a settlement offer.

VI. NEED FOR LEGISLATIVE REFORM OF THE FEES ACT

City of Riverside v. Rivera illustrates the need for legislative reform of the Fees Act and is by no means an isolated case.⁹⁶ *Rivera* and

91. Senate Report, *supra* note 5, at 6, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS at 5913.

92. *City of Riverside v. Rivera*, 106 S. Ct. 2686, 2703-04 (1986) (Rehnquist, J., dissenting).

93. 710 F.2d 455 (8th Cir. 1983).

94. *Id.* at 461. In *Jacquette*, the Eighth Circuit Court of Appeals held that a requested attorney's fee of over \$90,000 was properly reduced to nearly \$20,000 where the prevailing plaintiff settled an employment discrimination suit for \$1,500.

95. 105 S. Ct. 3012 (1985).

96. Other examples include: *Grendel's Den Inc. v. Larsen*, 749 F.2d 945 (1st Cir. 1985) (fee award of \$133,000 for the preservation of a liquor license on constitutional grounds); *Ramos v. Lamm*, 713 F.2d 546 (10th Cir. 1983) (fee award of over

cases like it have transformed the Fees Act from what was originally intended to assure victims of civil rights violations access to the judicial system into a vehicle by which overzealous attorneys enrich themselves at the expense of the public. The judicial system has simply failed to provide any objective force to the definition of a reasonable fee and appears at least partially willing to assist those lawyers who are exploiting the Fees Act. Legislation requiring a more definite standard of a reasonable fee should therefore be considered.

This Note proposes legislative revision that would return the Fees Act to its original purpose, promoting the vindication of civil rights while preventing windfalls to attorneys. Because many of the problems with the current system involve litigious attorneys exercising poor billing judgment,⁹⁷ the proposed reforms are aimed at assuring that both hours billed and rates charged are reasonable.

Reasonable hourly rates could be guaranteed by standardizing allowable fees. Rates charged could be based on the experience level of the attorney and systematically determined from a rate table.⁹⁸ This system would compensate civil rights attorneys at approximately the same rate that attorneys of like experience would command in the private sector. The greatest virtue of a rate table would be the high level of objectivity and simplicity. By providing hourly compensation at the same rate available in the private sector, a rate table would promote sufficiently vigorous enforcement of civil rights while preventing exorbitant fees.

Providing a guarantee that the number of hours billed is reasonable poses a more difficult problem. This Note proposes that new legislation emphasize three concepts to curb the temptation of attorneys to overlitigate their cases: (1) a nationwide requirement of meticulous time records as a prerequisite to a fee award, (2) close scrutiny of fees

\$700,000 in prison reform litigation); *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980) (fee award of \$160,000 for recovery of \$31,000 in back pay).

97. See *supra* notes 70-76 and accompanying text.

98. Kimble, *Attorney's Fees in Civil Rights Cases: An Essay on Streamlining the Formulation to Attract General Practitioners*, 69 MARQ. L. REV. 373, 391 (1985). Kimble gives as an example of a rate table that utilized by the Community Legal Services of Philadelphia. The rate table is:

Category	Range of Hourly Rates
Law Students	\$30.00 - \$50.00
Attorneys with post law school experience under two years	\$60.00 - \$85.00
Attorneys with 2-5 years experience	\$80.00 - \$120.00
Attorneys with 6-10 years experience	\$100.00 - \$160.00
Attorneys with more and 10 years experience	\$125.00 - \$180.00
Supervising Attorneys, Project Heads, Managing Attorneys, Deputy Director, Executive Director	\$130.00 - \$200.00
Paralegals I and II	\$30.00 - \$40.00
Senior and Supervisory Paralegals	\$40.00 - \$60.00

requested for unsuccessful claims, and (3) use of Federal Rule of Civil Procedure 11 sanctions against attorneys submitting exorbitant fee requests.

The requirement of meticulous time records is not a new idea.⁹⁹ However, strict application of a rule requiring precise time records would be helpful in assisting courts in setting accurate and equitable fees and would also place defense counsel in a position to make an informed decision concerning the propriety of the fee request.¹⁰⁰ The following items should be required: daily time sheets of all attorneys involved, written statements describing the precise nature of the work performed, and classification of all time worked into the various categories of claims pursued in the litigation.¹⁰¹ These strict requirements for time records would provide a strong foundation from which a reasonable fee could be determined.

Close scrutiny of fees requested for claims not prevailed on in the litigation is also needed. This Note proposes that *Hensley's* "common core of facts"¹⁰² test for determining whether a plaintiff recovers on unsuccessful claims be eliminated and that a stricter test be substituted. The proposed test would force courts to view fee awards from a results-oriented standpoint. Using the meticulous time records suggested above, billable hours could be divided between those hours spent on successful claims and those spent on unsuccessful claims.¹⁰³ Hours spent on successful claims would be presumed reasonable unless the defendant could show otherwise. On the other hand, hours spent on unsuccessful claims would be presumed to be excluded from the fee award unless plaintiff's counsel could prove in light of all the circumstances that there was a reasonable possibility of success on the claim and that the hours spent pursuing such a possibility were reasonable. By placing the burden on plaintiff's counsel to rebut a presumption of unreasonableness for hours spent on unsuccessful claims, courts could force civil rights attorneys to seriously consider the wis-

99. *New York Ass'n for Retarded Children v. Carey*, 711 F.2d 1136, 1147-48 (2d Cir. 1983); *Nat'l Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1327 (D.C. Cir. 1982) (both cases requiring meticulous time records as a pre-requisite to a fee recovery).

100. *Nat'l Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1327 (D.C. Cir. 1982).

101. *See Env'tl. Defense Fund Inc. v. Env'tl. Protection Agency* 672 F.2d 42, 54 (D.C. Cir. 1982) (providing examples of what the court believed was more than adequate documentation of time records).

102. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

103. At times, of course, it may be impossible for the attorney to determine how much time should be allocated to one claim or another. For instance, the attorney in developing the facts of the case will not necessarily know to which claim the time should be assigned. In such marginal cases, the court should allow the attorney to assign the time to the successful claim because the fact-finding process is a necessary and reasonable step in the litigation process.

dom of pursuing collateral issues when the likelihood of success on such issues is minimal. Thus, the proposed reform would encourage civil rights attorneys to sensibly limit their research in light of reasonable expectations of success.

Finally, Congress should consider the imposition of sanctions under Federal Rule of Civil Procedure 11 for exorbitant fee requests. Possibilities include monetary sanctions of consequential attorney's fees for defendants opposing an exorbitant fee request as well as judicial reprimand of an offending attorney.¹⁰⁴ If civil rights attorneys knew that sanctions would be consistently applied when exorbitant fees were requested, they would be more likely to limit fees requested to reasonable sums. The likelihood of a swift resolution of the issue of attorney's fees would be increased and judicial resources previously spent litigating awards of attorney's fees would be saved for more pressing matters.¹⁰⁵ Sanctions for exorbitant fee requests should therefore be considered as a possible component of an incentive structure to ensure that fees requested are reasonable.

VII. CONCLUSION

Exorbitant attorney's fees awards like the award in *City of Riverside v. Rivera* are literally too much of a good thing. Fee awards are necessary to ensure vigorous enforcement of civil rights, but exorbitant fee awards go beyond that purpose, enriching litigious attorneys at the expense of the public whose interest is supposedly served. Recognizing that the enforcement of civil rights is not without costs, this Note advocates reforms which seek to ensure that both hours billed and rates charged are reasonable. Civil rights attorneys would thereby be required to exercise meaningful billing judgment when litigating their cases. By providing a measure of objective force to the definition of a "reasonable" fee, the reforms suggested would return the Fees Act to its original purpose, promoting the vindication of civil rights while precluding unjustified windfalls for attorneys.

Gregory Scott Heier '88

104. See Schwarzer, *Sanctions Under the New Federal Rule 11 - A Closer Look*, 104 F.R.D. 181, 201-05 (1985) (provides complete summary of sanctions available under FED. R. CIV. P. 11).

105. In *Hensley v. Echerhart*, 461 U.S. 424 (1983), Justice Brennan said that litigation concerning the amount of a fee award "must be one of the least socially productive types of litigation imaginable . . ." *Id.* at 442 (Brennan, J., concurring in part and dissenting in part). Justice Brennan's statement is based on the fact that "attorney's fee appeals take up lawyers' and judges' time that could more profitably be devoted to other cases, including the substantive civil rights claims that § 1988 was meant to facilitate." *Id.* at 455 (Brennan, J., concurring in part and dissenting in part).