

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: COMMISSIONER OF INTERNAL REVENUE, Petitioner
v. NADER E. SOLIMAN

CASE NO: 91-998

PLACE: Washington, D.C.

DATE: October 5, 1992

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IN THE SUPREME COURT OF THE UNITED STATES

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COMMISSIONER OF INTERNAL :
REVENUE, :
Petitioner :
v. : No. 91-998
NADER E. SOLIMAN :
- - - - - X

Washington, D.C.
Monday, October 5, 1992

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:03 a.m.

APPEARANCES:
KENT L. JONES, ESQ., Assistant to the Solicitor General,
Department of Justice, Washington, D.C.; on behalf of
the Petitioner.
DAVID M. SOKOLOW, ESQ., Takoma Park, Maryland; on behalf
of the Respondent.

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1 PROCEEDINGS

2 (10:03 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning in No. 91-998, Commissioner of Internal
5 Revenue v. Nader E. Soliman.

6 Mr. Jones.

7 ORAL ARGUMENT OF KENT L. JONES

8 ON BEHALF OF THE PETITIONER

9 MR. JONES: Mr. Chief Justice, and may it please
10 the Court:

11 Home office expenses are a conceptual hybrid of
12 business expenses, which are generally deductible, and
13 personal expenses, which generally are not. Prior to 1976
14 most courts concluded that the expenses of a home office
15 may be deducted if the office was appropriate and helpful
16 to the taxpayer's business. In 1976, however, Congress
17 concluded that that broad standard should be rejected
18 because it was too difficult to administer and too prone
19 to abuse. In its place Congress enacted Section 280A of
20 the Internal Revenue Code to establish a detailed set of
21 restrictive criteria for home office deductions. As
22 relevant to this case, the statute now permits a deduction
23 only if the home office is used exclusively as the
24 taxpayer's principal place of business.

25 The taxpayer in this case is a doctor who spends

1 approximately 70 percent of his time administering medical
2 services to patients at hospitals, principally at Suburban
3 Hospital in Bethesda. He also spends approximately 30
4 percent of his time doing paperwork related to his
5 practice in an office at his home.

6 The tax court and court of appeals held that the
7 doctor's home office constitutes his principal place of
8 business under the statute because the office is essential
9 to the doctor's business, he spends a substantial amount
10 of time there, and he maintains no other office. The
11 statute, however, does not permit a deduction merely
12 because essential and substantial work-related tasks are
13 performed at home. Instead it plainly requires that the
14 home office be the taxpayer's principal place of business.

15 As this Court has consistently held, the words
16 of revenue statutes should, where possible, be given their
17 ordinary meaning, and in *Malat v. Riddell* this Court held
18 that in ordinary usage the word principal is synonymous
19 with primary or of first importance. Under the plain
20 language of Section 280A, therefore, the courts must make
21 a comparison of each of the various locations in which the
22 taxpayer conducts his business to determine which one of
23 them is primary or of first importance.

24 QUESTION: Mr. Jones, what is the standard of
25 review? Is it de novo as a mixed question of law and fact

1 here, do you suppose?

2 MR. JONES: There is a legal standard that must
3 be met, which is what I just described, that the home be
4 the most important place of business. The factual
5 findings of the tax court or the district court are
6 reviewed on a clearly erroneous basis.

7 QUESTION: Do you think there can be only one
8 principal place of business under the statute? I mean, is
9 that the notion?

10 MR. JONES: Yes, that is the logical result of
11 the language, and in fact as this Court held in *Malat v.*
12 *Riddell*, principal means most important. You can't have
13 two places that are most important.

14 QUESTION: Under the Fourth Circuit view and
15 test that we're reviewing do you think it leaves it open
16 to find more than one principal place of business?

17 MR. JONES: Certainly, as the Court also held in
18 *Malat v. Riddell*, the word substantial cannot be equated
19 with principal. That case involved a provision of the
20 Internal Revenue Code which required a finding as to what
21 was the taxpayer's primary purpose in holding certain
22 property, and the Court held in *Malat* that a finding that
23 the taxpayer had a substantial purpose of holding the
24 property did not satisfy the requirement of what was his
25 principal purpose. Substantial is a word of quantity.

1 Principal is a word of comparison. You can have many
2 substantial activities, but you can only have one
3 principal one. You can have many substantial locations of
4 business, but you can only have one principal one.

5 QUESTION: Doesn't the Commissioner -- the
6 Commissioner says that he has to determine where the
7 principal place of business is, but you just said that you
8 have to compare what goes on in the various places and how
9 important they are and things like that. So you
10 apparently then in applying the statute apply the same
11 test that the tax court does.

12 MR. JONES: No. The tax courts had two tests,
13 and we don't recommend either one of them. In this case
14 the test that the tax court applied was they developed as
15 a rule that if the office is essential to the taxpayer's
16 business --

17 QUESTION: I know, but what's the general --
18 they say they apply total circumstances.

19 MR. JONES: Facts and circumstances.

20 QUESTION: Don't you apply that?

21 MR. JONES: Yes, sir. But they do --

22 QUESTION: So you do have the same general test.

23 MR. JONES: We start out at the same point.

24 QUESTION: Isn't that right?

25 MR. JONES: Yes, sir.

1 QUESTION: Well, that's all I wanted to know.
2 You apply the same test, and you think the court of
3 appeals misapplied it here.

4 MR. JONES: No, sir, we don't apply -- they --
5 the tax court and the court of appeals applied two tests.
6 They said they were going to look at the facts and
7 circumstances of each case, which we think is the
8 appropriate beginning point. But then they said that we
9 can answer each case by concluding that if the home office
10 is essential, you need an office, and if there is a
11 substantial use made of that office, and if no other
12 office is used by the taxpayer, that will be his primary
13 place of business. That is the portion of the opinions
14 below that we object to.

15 QUESTION: Well, that's just a misapplication of
16 the same test you used.

17 MR. JONES: It's possible to view it that way,
18 Justice White, but actually we think that the tax court
19 resurrected a sub standard, a legal standard that if met
20 satisfies, in their view, the statute. And we think their
21 sub standard is wrong, and that is the issue that we
22 presented to the Court on certiorari.

23 QUESTION: May I ask you, Mr. Jones, do you
24 measure the, do you get your answer solely by looking at
25 the amount of time spent in the various locations?

1 MR. JONES: No, we agree with the basic
2 principle described by Meiers and Weissman and in the
3 proposed regulations, which is that you look to both the
4 time spent and the importance of the activities at each
5 location.

6 QUESTION: Well, in this particular case I guess
7 the doctor had three hospitals he went to --

8 MR. JONES: That's correct.

9 QUESTION: -- and one of them a lot more time
10 was spent than in the office. Supposing he went to eight
11 hospitals and each of them he spent less time than the
12 home office, precisely the same amount of time in the home
13 office that he did in this case. Would he then prevail?

14 MR. JONES: Well, I have two answers to that.

15 QUESTION: One, it's either yes or no.

16 (Laughter.)

17 MR. JONES: Well, no, actually --

18 QUESTION: You can't give both.

19 QUESTION: Those are his two answers.

20 MR. JONES: Those are my two answers.

21 (Laughter.)

22 MR. JONES: The first answer is that the fact
23 finder as a matter of first instance is entitled to make a
24 determination of two things. What was his principal job
25 function.

1 QUESTION: We've got all that in this case. He
2 does his bookkeeping, his phone calls, his computer,
3 whatever he has, his files. That's what he has there.
4 Now, is that enough to do it?

5 MR. JONES: Well, your question is if his work
6 level is spread throughout many areas --

7 QUESTION: He has eight hospitals instead of
8 three. That's a very simple question.

9 MR. JONES: Right. Our view is that the fact
10 finder could conclude in that scenario that his home was
11 his principal place of business, but I wish to point --

12 QUESTION: That isn't a fact finding. That's a
13 conclusion of law.

14 MR. JONES: Well, the finding is that he spends,
15 is how much time he spends at various locations and how
16 important those are, and then from those --

17 QUESTION: Well, we know in this case, Mr.
18 Jones. I want this -- really you can't -- can you have
19 two separate cases on precisely the same facts, one in
20 Washington and one in New York, and have them come out
21 differently?

22 MR. JONES: Fact finders sometimes don't agree
23 even on the same record, but we think that there are sub
24 standards that the courts can look to that will resolve
25 the ordinary case.

1 QUESTION: Are you really saying in my, the case
2 I give to you, there is no right answer? The fact finder
3 can do just what he wants?

4 MR. JONES: Well, a priori I don't think there
5 is necessarily a correct answer, although I --

6 QUESTION: Is the problem that you have in
7 answering Justice Stevens' question the concession that I
8 believe you made in your brief that there is always a
9 principal place of business?

10 MR. JONES: Well, that was the second answer I
11 was going to give Justice Stevens, which is that this is
12 not a statute in which the Government has to establish
13 where the principal place of business is. This is a
14 statute where the taxpayer has to establish that his home
15 is his principal place of business.

16 QUESTION: Well, do you concede that there is
17 always a principal place of business or do you argue that
18 in some cases, say in Justice Stevens' hypothetical or a
19 traveling salesman who just goes to 100 different places,
20 that there is no principal place of business at all?

21 MR. JONES: Taking the word most important to
22 its logical extreme you would think that in almost every
23 case a fact finder could find a location that was most
24 important.

25 QUESTION: I'm talking about the statute and

1 your position. Is it your position that in the case
2 before us there is somewhere out there a principal place
3 of business?

4 MR. JONES: Our position under the statute is
5 that the taxpayer has not established that his home is his
6 principal place of business and that is all that this case
7 requires. It is also our position and the tax courts have
8 found that the hospital is necessarily his most important
9 place of business. The tax court found that while the
10 doctor's activities in his house were essential to his
11 medical practice they were, and I quote, ancillary to the
12 primary income generating services he performed as an
13 anesthesiologist at the hospitals. As the Ninth Circuit
14 held on the same basic facts in the Pomarantz case, the
15 location where you spend the most of your time doing your
16 most important business functions is necessarily your
17 principal place of business.

18 QUESTION: I am correct that in your brief you
19 conceded the proposition that at least in this case there
20 is a principal place of business, is that not correct?

21 MR. JONES: In this case we affirmatively state
22 that the hospital, Suburban Hospital, is his principal
23 place of business, yes, sir.

24 QUESTION: Well, it seems to me that that's the
25 difficulty of your position. I simply don't know why you

1 concede that.

2 MR. JONES: Well, we think that the facts permit
3 no other conclusion. It is clear from the facts that the
4 most time was spent at Suburban Hospital. It is also
5 clear from the tax court's findings that Suburban Hospital
6 is where he performed his most important functions. When
7 you spend the most of your time performing your most
8 important functions at a single location, that is
9 necessarily your principal place of business.

10 QUESTION: Why was --

11 QUESTION: Mr. Jones, the tax court majority
12 found for the taxpayer and the dissenters in the tax court
13 criticized the majority for having adopted kind of a facts
14 and circumstances test that would really furnish no
15 guiding principle. And yet I gather that you really think
16 it is strictly a facts and circumstances test.

17 MR. JONES: Chief Justice Rehnquist, I think
18 that the dissent in the tax court and in the court of
19 appeals criticized the majorities for having adopted this
20 test based upon essential need, substantial use. It is
21 true that when the tax court started out writing its
22 opinion it said we're going to look to facts and
23 circumstances, but then they blinded themselves to all of
24 the operations of the doctor. They looked only to his
25 management activities.

1 QUESTION: So you think that the majority in the
2 tax court applied the right test, they just didn't get the
3 right result?

4 MR. JONES: I think they started down that
5 direction but they went a step that was not, that cannot
6 be related to the statute. Let me see if I can compare
7 what the tax court did before and after this case.

8 Originally under the statute the tax court
9 adopted what they called the focal point test which looks
10 simply to the location where goods and services are
11 provided. In other words they gave no weight to where
12 management activities were conducted.

13 QUESTION: You think that's wrong?

14 MR. JONES: We think that that's wrong. The
15 statute by referring to principal place of business
16 doesn't exclude management activities as a matter of
17 course.

18 QUESTION: Well, if you're not going to exclude
19 management activities, which I take it is synonymous with
20 what I think you referred to as ancillary activities a
21 moment ago --

22 MR. JONES: Correct.

23 QUESTION: -- then why don't you simply adopt or
24 propose that we adopt a straight time test, wherever the
25 taxpayer spends the greater part of the time will be the

1 principal place. We won't be making qualitative
2 judgments. Why isn't that the simplest way out?

3 MR. JONES: Well, the statute doesn't say the
4 office where the taxpayer spends the most time. It
5 says --

6 QUESTION: No, but there's nothing in the
7 statute that excludes that as a construction, is there?

8 MR. JONES: Well, in our view there is.

9 QUESTION: Why?

10 MR. JONES: The principal place of business
11 requires some reference to what it is he is doing.

12 QUESTION: Well of course, but you're admitting
13 that, as I understand it, that what you call management
14 activities or the place of management activities may
15 qualify as the principal place of business, and once you
16 do that I don't know why your insistence on some
17 qualitative sense of importance is anything but just
18 injecting a kind of wild card for the fact finder.

19 MR. JONES: It is not in our view a wild card.
20 In our view it is a fundamental relationship to what
21 Congress sought to do. What they intended to do was to
22 allow a deduction not simply because the taxpayer used the
23 office a lot, but only when it was his principal place of
24 business.

25 QUESTION: Well, if it's not a wild card tell us

1 what it is. Is it a king or an ace or a deuce? How much
2 is the fact that the activity in question is the delivery
3 of services rather than administrative activities,
4 management activities, how much is that worth? Each
5 minute is worth 3 minutes of management activities, or
6 what?

7 MR. JONES: Justice Scalia, one of the problems
8 with answering a question like that in the abstract is
9 that in different professions the primary, the
10 relationship between the primary and secondary activities
11 is not going to be the same.

12 QUESTION: Well then at least admit it's a wild
13 card.

14 MR. JONES: It is a card that has a different
15 value from case to case.

16 QUESTION: That's what a wild card is.

17 (Laughter.)

18 MR. JONES: Well, in my view a wild card is
19 whatever you need it to be. In this case we think it is a
20 card that has a different value based upon the genuine
21 functions of the enterprise. Let me --

22 QUESTION: The Government disagrees, as I
23 recall, with the Drucker case --

24 MR. JONES: Yes, sir.

25 QUESTION: -- the musician who spent a whole lot

1 of time practicing at home and just a little time
2 conducting the concert. Now, you disagree with that
3 because you think the concert hall was the principal place
4 of business. Why, because performance is worth 10 times
5 as much as practice, or what?

6 MR. JONES: Well, actually Drucker is a good
7 example of the point. Drucker, we're willing to assume
8 that the importance of the function of performing compared
9 to the function of practice is closer than in Dr.
10 Soliman's case where we think that the provision of
11 medical services is much greater compared to sending the
12 bills out.

13 Our real problem with the Drucker case is not
14 with the legal standard it applied. Drucker said what we
15 think is the law, that you look to where the dominant
16 portion of the work was performed considering the time and
17 the importance of the activities involved. Our problem
18 with Drucker is not with the legal standard but with the
19 court's management of the record in that case. Judge van
20 Graphlin decided that case based upon an aphorism. He
21 started out the decision by telling a story of the
22 musician who is walking down the street of New York. A
23 stranger stops him and asks him what's the best way to get
24 to Carnegie Hall, and the musician answers practice,
25 practice, practice.

1 QUESTION: It's an old one.

2 MR. JONES: Judge van Graphlin used that joke to
3 determine what the proper weighting of the various
4 activities should be. He concluded that practice was just
5 as important as performance. Since he spent more time
6 practicing his home office is his principal place of
7 business. Our view about Drucker is simply that Judge van
8 Graphlin carried the joke too far. He shouldn't have used
9 it as a basis for reversing a non-clearly erroneous fact
10 finding as to where the principal place of business was.

11 QUESTION: You don't really think, I didn't
12 think -- I thought when you started out you said the
13 historical facts are subject to the clearly erroneous but
14 principal place of business is a legal question. I
15 thought that's what you said at the outset.

16 MR. JONES: If I said that what I meant to say
17 was that there are legal sub standards that guide the fact
18 finder. The legal sub standard we think is what is the
19 most important place of business. We think there's a
20 second sub standard which is just a matter of logic, and
21 that is where you spend most of your time doing your most
22 important work. That's your principal place of business.
23 It is clearly a fact finding as to where you spend the
24 most time.

25 QUESTION: What if you spend the most amount of

1 time doing your least important work? I mean, it's an
2 easy question if you spend the most amount of time doing
3 your most important work. I guess that's easy. What if
4 you spend the most amount of time doing a middling
5 importance work?

6 MR. JONES: Well, that's Drucker. That's the
7 concert musician. He spent --

8 QUESTION: Well, what's the answer to that?

9 MR. JONES: Well, the answer to that case is
10 that the fact finder has to make the decision in the first
11 instance. If I were the fact finder I would have
12 concluded that the concert hall, as the tax court did,
13 that the concert hall was his principal place of business.

14 QUESTION: But you say a fact finder in two
15 different jurisdictions with the same facts could come out
16 differently? That there's no rule of law that would
17 govern that case, it's simply on the same facts different
18 judges can come to a different conclusion?

19 MR. JONES: I think our system recognizes that
20 fact finders if they are not clearly erroneous can
21 determine basic facts, and if those basic facts satisfy
22 the legal requirements of the statute then there is no
23 basis for reversal.

24 QUESTION: But when you --

25 QUESTION: Excuse me, go ahead.

1 QUESTION: I was just going to say under your
2 argument the doctor could never have a home office because
3 it's always more important, he makes most of his money
4 performing operations in the hospital and it's certainly
5 more important than keeping the books correctly.

6 MR. JONES: That's probably right.

7 QUESTION: That's really what your position is?

8 MR. JONES: I would think that a doctor who
9 spent 70 percent of his time in his hospital and 30
10 percent of his time sending the bills out --

11 QUESTION: I think you would say the same if he
12 spent 90 percent at home and did 10 very valuable and
13 important operations. That would still be more important
14 than what he did at home under your approach.

15 MR. JONES: I don't have an a priori answer to
16 that. I think the fact finder is going to have to make
17 that determination. Congress gave us a relatively vague
18 but nonetheless principled standard. The problem with the
19 decision in this case is that the tax court and court of
20 appeals adopted a sub standard that does not satisfy the
21 requirement that the home office be the most important
22 place of business. Instead they adopted a sub standard
23 that allows a deduction for the most important office of
24 the business.

25 QUESTION: Mr. Jones, don't you recognize or

1 won't you agree that what you refer to as a fact finder's
2 determination about relative importance is really a
3 twofold determination? It's a determination about fact in
4 the first instance, but it's also a determination of
5 value. It's not merely a fact finding. And you, it seems
6 to me, are simply leaving the legal standard to the fact
7 finder under the guise of finding facts because you do not
8 seem to recognize any standard of review, any legal
9 standard for this concept of importance. Isn't that a
10 fair criticism of your position?

11 MR. JONES: Justice Souter, I don't think it's
12 unfair but I don't think it's any more fair than
13 criticizing any other statute that requires fact findings
14 to be made about basic facts. Fact finders are in the
15 business, that is their job description. They are judges,
16 they make judgments about --

17 QUESTION: And they're making, in your case
18 they're making some law too because they are determining
19 as a matter of law what is important and what is
20 unimportant. And they're not doing it on any strictly
21 factual basis such as time or such as relationship to
22 essential activity. It's up to them.

23 MR. JONES: Exactly the same result applies
24 under the diversity jurisdiction statute which also makes
25 reference to principal place of business. The courts of

1 appeals have recognized that the fact finder, in each case
2 it is a question of fact as to where the dominant portion
3 of the operations of the business were conducted, and that
4 although you can have a basic sub standard the sub
5 standard in this case is where did you spend the most time
6 doing your most important work. The fact finder is going
7 to have to make the determination about what is most
8 important.

9 With all respect to Judge van Graphlin, it is
10 not the function of an appellate court in the absence of a
11 clearly erroneous finding to come up with a different
12 result about relative importance.

13 QUESTION: That's the standard you propose,
14 where do you spend the most amount of your time doing your
15 most important work?

16 MR. JONES: I don't think that answers every
17 question. Yes, that is the standard that we propose
18 and --

19 QUESTION: Well, that will always be a principal
20 place of business --

21 MR. JONES: Absolutely.

22 QUESTION: -- but you would acknowledge that you
23 can have a principal place of business that does not
24 produce a, that is not the answer to that question?

25 MR. JONES: Yes, sir.

1 QUESTION: Okay.

2 QUESTION: Mr. Jones, Section 280 is confined to
3 a dwelling unit, isn't it?

4 MR. JONES: Yes, sir.

5 QUESTION: And so whatever we decide here is
6 rather narrowly restricted. Let me change the facts a
7 little bit. Suppose this taxpayer had rented a place in
8 an office building instead of his home. What would the
9 SG's position be as to that? Would it be deductible?

10 MR. JONES: In the ordinary course it would be
11 deductible under 162 as an ordinary and necessary business
12 expense.

13 QUESTION: But under different sections of the
14 Code.

15 MR. JONES: Yes, sir. That's really the point.
16 Congress was skeptical about the quality of proof in home
17 office deduction cases. They thought that the general
18 standard ordinary and necessary was prone to abuse.

19 QUESTION: But my hypothetical assumes no other
20 change in the facts.

21 MR. JONES: Correct.

22 QUESTION: That's all he does, he spends as much
23 time in the rented office as he did at home. And there
24 you would allow the deduction?

25 MR. JONES: Yes, sir. There is no requirement

1 that a rented office be a principal place of business.
2 Congress consciously chose for homes to impose more
3 restrictive standards. That's the whole point of Section
4 280A. It's not that -- when Congress said that it was too
5 difficult to administer the Section 162 standard for home
6 offices I suppose they had in mind the fact that it's
7 unrealistic for the Commissioner to go into millions of
8 taxpayers' houses to find out how they're really using
9 their spare bedrooms as offices. So Congress adopted what
10 they hoped would be more restrictive and more definitive
11 rules that have to be met in addition to the normal
12 standards of 162.

13 QUESTION: Mr. Jones, can we adopt at least, at
14 least some sub rule so that these cases don't have to be
15 litigated forever and ever? It's desirable to avoid
16 litigating these things all the time, isn't it?

17 MR. JONES: The Commissioner certainly shares
18 that desire.

19 QUESTION: What about a sub rule that ordinarily
20 the principal place of business, ordinarily, even though
21 you don't have to adopt a rigid point of sale rule, that
22 almost always the principal place of business will be
23 where the goods produced are sold or the services
24 performed are rendered?

25 MR. JONES: That is the focal point test that

1 the tax court applied before this case, and as I said
2 before, we think the problem with that test -- and the
3 Commissioner had not proposed it, the tax court developed
4 it on its own.

5 QUESTION: I understand.

6 MR. JONES: The problem with that test is it
7 ignores management functions. The problem with the test
8 of the court of appeals here --

9 QUESTION: But you want to ignore them in most
10 cases. I mean, you say that they're relatively
11 unimportant compared with -- practice, practice, practice.

12 MR. JONES: I don't have an a priori answer to
13 that. There may well be businesses where management is
14 everything. For example if you run a rental car company
15 and you have only licensees around the country and all you
16 do in managing your business is advise them on how to run
17 their business, management is everything. There is no
18 other operation.

19 QUESTION: Well then there's no choice. He
20 doesn't do his business anywhere else except his home.

21 MR. JONES: In that situation his home would
22 probably be his principal place of business.

23 QUESTION: No problem in that case.

24 MR. JONES: The point I'd like to make in
25 closing is that deductions are a matter of legislative

1 grace. The decision of the court of appeals ignored the
2 language that Congress consciously chose to erect a
3 restrictive prohibition against home office deductions,
4 and from ignoring the language of the statute the court
5 reached an erroneous conclusion in this case and should be
6 reversed.

7 Reserve the balance, please.

8 QUESTION: Thank you, Mr. Jones.

9 Mr. Sokolow, we'll hear now from you.

10 ORAL ARGUMENT OF DAVID M. SOKOLOW

11 ON BEHALF OF THE RESPONDENT

12 MR. SOKOLOW: Mr. Chief Justice, and may it
13 please the Court:

14 We are here today to resolve the controversy
15 which has arisen between the tax court and the
16 Commissioner over the proper interpretation of the phrase
17 principal place of business for purposes of claiming home
18 office deductions under Internal Revenue Code Section
19 280A. This case arose from the Commissioner's use of the
20 focal point test to deny a home office deduction to Dr.
21 Nader Soliman.

22 Under the focal point test a taxpayer's
23 principal place of business is the location where goods
24 and services are provided to his customers and revenues
25 are generated. However, when a taxpayer's business is

1 based in his home but his services are provided elsewhere
2 the focal point test automatically prevents the deduction
3 of what would otherwise be completely legitimate expenses.

4 This illogical result is in no way supported by
5 the legislative history of the statute. Congress enacted
6 Section 280A to prevent taxpayers from deducting expenses
7 for home offices maintained solely for their personal
8 convenience. In denying a deduction to a taxpayer whose
9 business requires the use of a home office, the focal
10 point test goes far beyond the intent of Congress.

11 The tax court recognized the injustice of the
12 focal point test and devised a reasonable and logical
13 interpretation of the entire phrase principal place of
14 business.

15 QUESTION: Mr. Sokolow, what do you think, when
16 280A was adopted what deductions do you think that ruled
17 out that could have been taken under the old appropriate
18 and helpful test?

19 MR. SOKOLOW: Mr. Chief Justice, it primarily
20 ruled out deductions for employees who were maintaining
21 home offices merely for their personal convenience. They
22 were being provided with an office on the job site but
23 they were doing some work at home, and this statute
24 eliminated that.

25 QUESTION: You don't think that it ruled out

1 also deductions where the word principal would not readily
2 apply? I think the Government makes a certain amount of
3 the idea that principal suggests a comparison.

4 MR. SOKOLOW: Principal does, the word itself
5 connotes some type of comparison. In the purpose, in the
6 context of the statute, however, I don't think that
7 comparison is necessary.

8 QUESTION: Why not?

9 MR. SOKOLOW: I think the findings of the
10 Soliman case show that those type of comparisons can't be
11 made in this type of case by the nature of the functions
12 that are performed.

13 QUESTION: Well then what is left of the word
14 principal in the statute? Certainly we, if we have to
15 throw away either case results or the language of the
16 statute, we throw away the case results.

17 MR. SOKOLOW: I believe that the word principal
18 was used because primarily in the case of these employees
19 they were trying to claim that they had two places of
20 business, and only the one at their employer's location
21 was their primary place of business. They were using a
22 secondary office merely for their personal convenience.
23 So they had two office locations, and I think the word
24 principal was chosen to differentiate between the two and
25 eliminate the use of the home office.

1 QUESTION: You don't think the word principal
2 applies to a claim of deduction under this section made by
3 someone who is not an employee?

4 MR. SOKOLOW: No, Your Honor, I believe it
5 applies to all taxpayers, independent contractors and
6 employees.

7 QUESTION: What do you think it means then as
8 applied to all these others, what does it mean? What does
9 the word, what is the content of the word principal in the
10 statute that you urge upon us?

11 MR. SOKOLOW: In the context of this statute I
12 think principal place of business has a specific
13 definition. You don't need to take apart each word and
14 try to define principal. I think what the court has done
15 is devise a test to determine whether a home office is the
16 principal place of business using that phrase as a term of
17 art.

18 QUESTION: Principal place of business means the
19 same thing as place of business? They should have really
20 said place of business?

21 MR. SOKOLOW: No, I don't believe it's any place
22 of business. It has to be the principal place of
23 business.

24 QUESTION: Okay. Now, what does it mean to be
25 the principal place of business? Give me what is the

1 content of that word principal that you affirm.

2 MR. SOKOLOW: I affirm that the content, the
3 definition of that is now the new Soliman test, that it's
4 being applied specifically in the context of a home office
5 deduction. That's what Congress was concerned about with
6 the statute. They weren't trying to define principal
7 place of business for diversity purposes or any other
8 purpose, they were just looking on whether we should allow
9 a home office deduction. And that's all this new
10 definition does.

11 QUESTION: Could there be more than one
12 principal place of business in a given situation?

13 MR. SOKOLOW: I don't believe so, no.

14 QUESTION: Don't you think the Fourth Circuit
15 test leaves open that possibility?

16 MR. SOKOLOW: No, I don't. There could be
17 more --

18 QUESTION: I would have thought that that's
19 exactly what it did.

20 MR. SOKOLOW: No, I believe -- we're looking at
21 whether a home office deduction is allowable, and if we're
22 just looking at which is the location for the home office
23 deduction, principal place of business can only be one
24 location.

25 QUESTION: What if there's another office that's

1 also used?

2 MR. SOKOLOW: Under the new Soliman test if that
3 office is used for his business purposes then his home
4 office would not be his principal place of business.

5 QUESTION: Even though the other office is used
6 less time?

7 MR. SOKOLOW: That's correct. The availability
8 of an office which meets all the requirements of the
9 taxpayer's business would take him out of the Soliman test
10 and his home office then could not be considered his
11 principal place of business.

12 QUESTION: May I interrupt you? In this case I
13 gather the doctor had both billing records at home and
14 also patient records that describe what the patients'
15 problems were and so forth?

16 MR. SOKOLOW: That's correct.

17 QUESTION: Supposing that he had just the
18 billing records at home and he had the records that dealt
19 with particular treatment for patients in some office at a
20 hospital that was provided by the hospital. Would then
21 the home still be a principal place of business? And say
22 the timing was exactly as it is in this case.

23 MR. SOKOLOW: If we assume that the only space
24 he was given in the hospital was to store records as
25 opposed to do the rest of his business then it wouldn't

1 change the facts of this case.

2 QUESTION: Well, suppose he had a desk and a
3 chair there and he made some entries on the patient
4 records and so forth but he didn't do his billing from
5 there. He did his billing at home.

6 MR. SOKOLOW: What the court found is that the
7 office has to be available to the taxpayer, and that is
8 determined under all facts and circumstances. That's
9 where that analysis comes from.

10 QUESTION: Well, my facts and circumstances are
11 that he has a desk and a chair in the hospital where he
12 does his, keeps track of who his patients are and where
13 they are, but he does all his billing and credit work and
14 banking and so forth in his home office. Can he still,
15 could that home office still, and assume the time is just
16 as it is now, would that home office still qualify as a
17 principal place of business in your view?

18 MR. SOKOLOW: If Dr. Soliman could do all his
19 business functions in that office in the hospital --

20 QUESTION: I have described what he did and I'm
21 asking you what the result is.

22 MR. SOKOLOW: I need to differentiate between
23 what he did and what he could do. If that office was
24 available for him to do all those functions then he would
25 not get the home office deduction. If he could have done

1 his billing work at the hospital office but he chose to do
2 it --

3 QUESTION: Well then let's assume he could not
4 have done that. All he could do is what he in fact did,
5 namely keep track of what kind of anesthesia he gave his
6 patients and so forth.

7 MR. SOKOLOW: Then I believe the essential
8 nature of the rest of those functions would still entitle
9 him to a home office deduction.

10 QUESTION: I suppose you would have a better
11 case if your client were an internist and saw patients in
12 his home?

13 MR. SOKOLOW: If he saw patients in his home,
14 Your Honor, there is a separate section of 280A that would
15 automatically entitle him to the deduction. It wouldn't
16 have to be defined as his principal place of business.

17 QUESTION: I gather from your response to
18 Justice Stevens that you think the phrase the principal
19 place of business should be understood simply to mean an
20 essential place of business? Isn't that essentially what
21 you're urging upon us?

22 MR. SOKOLOW: An essential place of business is
23 one of the three parts of the Soliman test, so that would
24 be one factor that would have to be considered.

25 QUESTION: What are the others?

1 MR. SOKOLOW: Excuse me?

2 QUESTION: What is necessary in addition to
3 that?

4 MR. SOKOLOW: In addition to that it needs to be
5 essential --

6 QUESTION: I said that, an essential place of
7 business. What in addition to that?

8 MR. SOKOLOW: You need to spend a substantial
9 amount of time there.

10 QUESTION: Okay.

11 MR. SOKOLOW: And there has to be no other
12 location available to perform the office functions of the
13 business.

14 QUESTION: Where do you get the requirement of
15 no other available place?

16 MR. SOKOLOW: These are from the court's ruling.
17 That's the three part test that they developed.

18 QUESTION: But what does that have to do with
19 principal place of business? Suppose the hospital does
20 offer the doctor a full office facility but he never uses
21 it? Same facts as this except that he could use an office
22 in the hospital. That would change the case in your view?

23 MR. SOKOLOW: Yes, it would.

24 QUESTION: On what theory?

25 MR. SOKOLOW: The theory is the intent of

1 Congress in enacting the statute. They did not want
2 people deducting expenses for the use of their home unless
3 they absolutely had to have a home office there.

4 QUESTION: Well, suppose he has his brother who
5 has a free office that's not being used right next to him?
6 Does he lose his principal place of business deduction? I
7 just don't understand the rationale for that.

8 MR. SOKOLOW: In that circumstance if his
9 brother had an office that he could have used to do all
10 his functions for his business, yes, he would lose the
11 deduction.

12 QUESTION: So it's really a two part test. I
13 mean the third part of your three part test is really just
14 essential. I mean we say an essential place of business,
15 it means that there's no other place he could have used.
16 That's what essential means. So it's two parts. It has
17 to be an essential place of business, and number two he
18 has to spend a substantial amount of time there. Is that
19 right?

20 MR. SOKOLOW: Well, I wouldn't define essential
21 as there's no other place.

22 QUESTION: Well what does it mean then?

23 MR. SOKOLOW: The lower court described it as
24 essential to the nature of the functions performed there,
25 that the office was essential to his business. If he did

1 not perform his administrative functions he could not
2 continue in business.

3 QUESTION: I see. The functions performed there
4 have to be essential.

5 MR. SOKOLOW: That's correct.

6 QUESTION: Okay.

7 QUESTION: But then it also has to be
8 exclusively used for the business purpose too, doesn't it?
9 That still --

10 MR. SOKOLOW: That's correct. The Soliman test
11 is entirely consistent with congressional intent. It will
12 allow a home office deduction in only limited and
13 specified circumstances. As a result it continues to
14 prevent the abuses which occurred prior to the enactment
15 of the statute. These abuses resulted from the tax
16 court's use of the appropriate and helpful standard to
17 determine whether or not a taxpayer was entitled to claim
18 a home office deduction. That standard permitted a
19 typical 9 to 5 employee to place a typewriter in his den,
20 call it an office, and deduct part of his monthly rent and
21 utility bills.

22 The Soliman test is not a reaffirmation of the
23 appropriate and helpful standard. It is much stricter
24 than that standard because it requires a finding that the
25 home office is essential to the taxpayer's business. In

1 addition the Soliman test incorporates the requirements of
2 Section 280A that the office be used exclusively and
3 regularly for business purposes and that an employee will
4 be entitled to a home office deduction only if the office
5 is used, is maintained for the convenience of his
6 employer. These crucial requirements were not a part of
7 the appropriate and helpful standard.

8 The Soliman test is also a more logical and
9 rational approach than the comparative analysis now
10 proposed by the Commissioner. In establishing the Soliman
11 test the tax court acknowledged that the amount of time
12 spent in the home office was one of several important
13 factors to consider.

14 QUESTION: Suppose a taxpayer spends 10 percent
15 of his time in the home. Is that substantial, do you
16 think, 10 percent of his working time there?

17 MR. SOKOLOW: I believe, Justice Scalia, that's
18 a determination that's going to have to be made by the
19 fact finders. It's --

20 QUESTION: Whether he spent 10 percent, I
21 suppose, but what do you consider substantial? 20
22 percent?

23 MR. SOKOLOW: Dr. Soliman spent 30 percent of
24 his time in his home office. I consider that substantial.

25 QUESTION: All right. 30 percent is

1 substantial. And if someone spends 30 percent of his time
2 in that home office that becomes, within the meaning of
3 the statute, his principal place of business?

4 MR. SOKOLOW: If that office is essential to his
5 business and he has no other location available to perform
6 those functions --

7 QUESTION: It becomes his principal place of
8 business?

9 MR. SOKOLOW: For purposes of a home office
10 deduction, correct.

11 QUESTION: That's just such a strange use of
12 language. I just don't know how you can leap to that. It
13 does say the principal place of business, the principal
14 place of business for any trade or business of the
15 taxpayer.

16 MR. SOKOLOW: I understand conceptually
17 principal we automatically want to say which is more
18 important, but I think it's important to look at what
19 Congress was trying to accomplish with this statute.

20 QUESTION: But where better to look than at the
21 words it actually adopted, which was the word principal?

22 MR. SOKOLOW: That's correct, but I believe that
23 the test developed by the court in this case will
24 accomplish the intent of Congress.

25 QUESTION: Maybe it will, but, you know,

1 Congress cannot write a bad statute, right? I mean
2 Congress cannot possibly write a statute that somehow
3 fails to accomplish its intent because if it does we will
4 rewrite it for them? Is that the theory of law that
5 you're arguing on us? I mean maybe they did intend what
6 you're now telling us, but the question is whether they
7 enacted what you're now telling us. And what they enacted
8 is the principal place of business.

9 MR. SOKOLOW: Justice Scalia, they enacted that
10 phrase but they gave us no clue of what they intended that
11 specific phrase to mean. All that the tax court has now
12 done is set up a test that will determine whether or not a
13 taxpayer's home office is a principal place of business.
14 We're not telling Congress that they were right or wrong.
15 The court is just saying this is now going to be, this is
16 now the test to interpret that phrase.

17 QUESTION: But we have to decide here whether
18 the test that the tax court adopted is actually consistent
19 with the phrase principal. You agree with that?

20 MR. SOKOLOW: Yes, I do.

21 QUESTION: And you think it is?

22 MR. SOKOLOW: Yes, I believe it is. The
23 Commissioner also contends that the relative importance of
24 the functions performed at the various business locations
25 must be compared to determine whether a taxpayer's home

1 office is his principal place of business. The tax court,
2 however, rejected this comparison of functions in favor of
3 a more appropriate test. Rather than require a finding
4 that a home office is more important than another business
5 location the Soliman test requires that the office be
6 essential to the taxpayer's business. There is no higher
7 standard than essential. It is defined as something
8 indispensable. This requirement of the Soliman test makes
9 a comparison of functions meaningless. Once it has been
10 determined that a home office is essential to the
11 taxpayer's business it simply cannot be less important
12 than another business location.

13 In his efforts to reverse this case the
14 Commissioner has repeatedly overstated the impact of the
15 Soliman test. He contends that the Soliman test will
16 vastly expand the class of taxpayers entitled to claim
17 home office deductions. There is simply no merit to that
18 contention. This class will be expanded to include only a
19 select group of taxpayers who are being unjustly denied
20 home office deductions under the focal point test.

21 These taxpayers must be engaged in businesses
22 which require essential organizational and management
23 functions which are distinct from the services provided to
24 their customers. They must spend a substantial amount of
25 time on these administrative functions and they must have

1 no other location available to perform these functions of
2 their business. The impact of the Soliman test will be
3 substantially less than professed by the Commissioner.

4 The Commissioner also contends that teachers who
5 grade papers at home will be entitled to claim a home
6 office deduction merely because they lack after hours
7 access to their school. On the contrary, both the Soliman
8 test and the specific language of Section 280A will deny
9 home office deductions to these teachers for three
10 reasons. First, they are provided with fully adequate
11 offices on the job site. Second, they take work home with
12 them merely because it is more convenient to do so.
13 Maintaining a home office is not essential to their
14 business. And third, as employees of their school systems
15 teachers will be entitled to claim a home office deduction
16 only if the office is required as a condition of their
17 employment. Few if any school systems have such a
18 requirement.

19 The Soliman test is a realistic recognition of
20 the way a modern business is conducted. It recognizes
21 that businessmen such as Dr. Soliman often need to perform
22 essential administrative functions for the continued
23 maintenance and growth of their business. If no location
24 is provided to perform these administrative functions they
25 are entirely justified in establishing an office in their

1 home. There is simply no basis to conclude that Congress
2 would have objected to the deduction of a home office
3 expense by a taxpayer such as Dr. Soliman.

4 QUESTION: Mr. Sokolow, one of the provisions of
5 280A(c)(1) is that it doesn't have to be the principal
6 place of business but it is sufficient if it is a place of
7 business when what occurs there is that the office is used
8 by patients, clients, or customers in meeting or dealing
9 with the taxpayer. Doesn't that suggest that, although
10 perhaps you can't have a rigid point of sale or point of
11 performance of services test, nonetheless the point of
12 sale or the point of performing the services is of
13 enormous importance to Congress, if you're talking about
14 congressional intent?

15 What this statute says is even if it's not your
16 principal place of business, if it's a place of business
17 where you're selling the goods or performing the services
18 we'll allow a deduction for that. So doesn't that suggest
19 that what counsel for the Government was saying has some
20 truth in it, that it isn't just adding up time, that
21 what's very significant in following congressional intent
22 is where the services are provided or where the goods are
23 sold?

24 MR. SOKOLOW: Justice Scalia, I would agree with
25 counsel for the Commissioner that where those services are

1 provided should not be the exclusive test, that management
2 function should be considered. I think the exception for
3 a place of business for meeting of clients recognized that
4 doctors and professional people of that nature who
5 maintain those offices often had an office in their home
6 just to meet with clients and a separate office where they
7 did their administrative work, and that was not causing a
8 problem. I think it's important to focus on what was
9 causing the problem, and it was not independent
10 contractors such as Dr. Soliman. It was not psychiatrists
11 who treated patients in their home and had a separate
12 office. It was employees who were taking these deductions
13 merely for their personal convenience.

14 We urge the Court to affirm this decision, not
15 just to uphold the validity of the deduction taken by Dr.
16 Soliman but more importantly to allow small businessmen
17 living in jurisdictions other than the Fourth Circuit the
18 home office deductions which are being denied to them by
19 the Commissioner in his use of the focal point test.

20 Thank you.

21 QUESTION: Thank you, Mr. Sokolow.

22 Mr. Jones, you have 4 minutes remaining.

23 REBUTTAL ARGUMENT OF KENT L. JONES

24 ON BEHALF OF THE PETITIONER

25 MR. JONES: The fact that an office is essential

1 to a business cannot satisfy the requirement that the
2 office be the principal place of business. An office is
3 essential to almost any business. As we know from the
4 Baie case, even a hot dog stand may require an office for
5 paperwork. Saying that an office is essential to the
6 business is simply another way of saying that it's an
7 ordinary and necessary, appropriate and helpful business
8 expense.

9 As Chief Judge Nims said in his dissent in this
10 case, the standard adopted by the court of appeals, by the
11 majority, simply resurrects the broad standard that
12 Congress expressly rejected in enacting Section 280A.

13 QUESTION: I suppose if this doctor had a lot of
14 things in his car like, you know, a computer and a filing
15 cabinet and things like that he could deduct it, just like
16 as if he rented an office.

17 MR. JONES: That sounds like it may be correct.
18 I wouldn't want to state on behalf of the Commissioner a
19 definite answer to that hypothetical.

20 (Laughter.)

21 MR. JONES: But the point that you're making is
22 the same one that I discussed with Justice Blackmun,
23 expenses that are ordinary and necessary to the business
24 that are not involved in use of the home are deductible as
25 an ordinary matter. But Congress required a much higher

1 standard, did it for the very purpose of restricting home
2 office deductions, and the standard that the court of
3 appeals adopted simply is not faithful to the language
4 that Congress used.

5 QUESTION: You haven't commented on the proposed
6 regulation. Is there anything you'd like to -- that tends
7 to cut against you, don't you think?

8 MR. JONES: Justice Stevens, the proposed
9 regulation says exactly what we think is right, but then
10 it says something in addition. It says you look to the
11 time and the importance of the activities at each
12 location, and then it has a sentence at the end that was
13 made much of below. And the sentence at the end says that
14 a traveling salesman who spends a lot of his time on the
15 road and engages in substantial activities at home may
16 qualify for a deduction. That has been the Commissioner's
17 position since 1966. We're not, we don't reject that
18 position now. We think that it is possible for a fact
19 finder in that situation to conclude that if he spends 40
20 percent of his time or 30 percent of his time in his house
21 doing important paperwork for his sales work and the rest
22 of his 60 percent of the time is spread among 100
23 different locations --

24 QUESTION: That can be the principal place of
25 business --

1 MR. JONES: It could be.

2 QUESTION: -- within the meaning of the statute.

3 MR. JONES: That's right. Looking at the time
4 and the importance of the functions performed at each
5 location we don't think the statute itself provides the
6 answer.

7 QUESTION: Does the proposed regulation stay a
8 proposed regulation forever? It has been proposed for
9 quite a while, hasn't it?

10 MR. JONES: It has been proposed for 12 years.

11 (Laughter.)

12 MR. JONES: Of course the statute has been
13 amended twice since then and the courts have generated
14 different points of view --

15 QUESTION: How do you get rid of a proposed
16 regulation? Can you ignore it?

17 (Laughter.)

18 MR. JONES: We get rid of it by withdrawing it,
19 and it may be that it will be withdrawn. Certainly it
20 cannot be adopted in its current form because this statute
21 has twice been amended and many of its details don't
22 relate to --

23 QUESTION: So in effect it really isn't a
24 proposed regulation anymore?

25 MR. JONES: It was a proposed regulation.

1 QUESTION: It was.

2 MR. JONES: Right. We don't -- one of the
3 reasons I haven't emphasized it is because it doesn't seem
4 that in good faith we can rely on a 12-year-old proposed
5 regulation.

6 QUESTION: Well, and also the definition of
7 principal place of business in the regulation is a little
8 bit different from your position with regard to the
9 statutory language, I think.

10 MR. JONES: It gives a little bit more emphasis
11 to the place where income is generated.

12 QUESTION: It's not quite as literal, at least
13 as Justice Scalia would read the statute in his questions.

14 MR. JONES: I think that there's room under the
15 statute to agree with exactly what the regulation says,
16 but I don't think that the regulation, by emphasizing
17 slightly more where the income is generated, really adds
18 that much to the fundamental inquiry of where is the most
19 important place in the business. That's going to,
20 different industries are going to have different reactions
21 to where, is it important where they sell the goods or
22 where they make them.

23 Thank you.

24 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Jones.

25 The case is submitted.

1 (Whereupon, at 10:54 a.m., the case in the
2 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

Commissioner of Internal Revenue, Petitioner v. Nader E. Soliman

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

***BY** Ann-Marie Federico*

(REPORTER)