

In the
Supreme Court of the United States

BOARD OF CURATORS OF THE
UNIVERSITY OF MISSOURI, MEMBERS
OF THE BOARD OF CURATORS OF THE
UNIVERSITY OF MISSOURI,
Individually and in their
official capacities, et al.,

Petitioners,

vs

CHARLOTTE HOROWITZ,

Respondent.

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No. 76-695

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v. :
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No. 76-695 :
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CHARLOTTE HOROWITZ, :
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Respondent. :
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Washington, D. C.,

Monday, November 7, 1977.

The above-entitled matter came on for argument at
 10:05 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice
 HARRY A. BLACKMUN, Associate Justice
 LEWIS F. POWELL, JR., Associate Justice
 WILLIAM H. REHNQUIST, Associate Justice
 JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

MARVIN E. WRIGHT, ESQ., University of Missouri, 227
University Hall, Columbia, Missouri, 65201; on
behalf of the Petitioners.

ARTHUR A. BENSON II, ESQ., 2525 Commerce Tower,
911 Main Street, Kansas City, Missouri 64105;
on behalf of the Respondent.

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for the Petitioners

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for the Respondent

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for the Petitioners

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in 76-695, University of Missouri Board of Curators against Horowitz.

Mr. Wright, you may proceed whenever you're ready.

ORAL ARGUMENT OF MARVIN E. WRIGHT, ESQ.,

ON BEHALF OF THE PETITIONERS

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

I am Marvin Wright, attorney representing the Petitioners in this case. The Petitioners are: the University of Missouri, the Governing Board of that institution, the Provost for Health Sciences on the campus of the University located in Kansas City, and the Dean of the School of Medicine, located on the campus of the University of Missouri at Kansas City.

The Respondent is Ms. Charlotte Horowitz, who was a student in that medical school until her dismissal for deficient academic performance in 1973.

Now, the issue, primary issue before the Court today is that of whether or not a medical student in a public institution of higher education is entitled to notice of charges and a hearing prior to dismissal from that school for deficient academic performance.

The second issue is that of: whether or not, when a

medical student has prior knowledge of deficient academic performance and the reasons are not disclosed and made public, whether or not that student has a stigma imposed upon them under the purview of the Fourteenth Amendment, when a formal hearing is not held?

The last issue, naturally, is that of whether or not procedures which were utilized by the University of Missouri were fair to the student and complied with any requirements of procedural due process.

Now, the facts, just very briefly, of the case are this:

The school was established in 1971. The Governing Board adopted a document entitled "An Academic Plan".

Now, for purposes of the case today, this Academic Plan established what is called a Council on Evaluation, which is a committee charged with the responsibility of reviewing the academic performance of students and then making appropriate recommendations.

There is a second committee, which is referred to as a Coordinating Committee. The responsibility of this committee is to review recommendations coming out of the first-mentioned committee. This latter committee makes recommendations to the Dean of the school, and the Dean makes final decisions with respect to student dismissal.

Now, the rules and regulations of the institution, as

set forth in this academic plan, do not extend to the students the right to appear before either of these committees, or the Dean, when the question is that of an evaluation of an academic performance.

The same document sets forth the fact that graduating requirements of the institution and the primary goal naturally is that of graduating competent and safe physicians, those that are qualified not only in basic medical science knowledge, but also qualified in the sense of clinical competency.

QUESTION: If the university provided for automatic dismissal or termination on failure for two successive years to maintain an average of 70, let us say, would they need a hearing if it developed that for two years the average was 60?

MR. WRIGHT: No, Your Honor, I do not believe that it would, any more than in the case at bar. Because it boils down to a question of the academic evaluation being placed upon the professors of the institution. It is for this reason the professors have given the evaluation of 60 in your example, the school has set forth requirements of an average of 70.

QUESTION: In other words, you're saying that when the judgment is subjective by committee, it's not any different from -- on a mathematical evaluation?

MR. WRIGHT: Well, that's correct, Your Honor, because the subjective evaluation of the professors at the institution, at the University of Missouri at Kansas City,

a numerical figure is not placed upon a student's performance. But obviously, in placing a 60 on a student performance, the subjective judgment of the professor is what leads to that conclusion.

Now, the respondent in this case, Charlotte Horowitz, the University has never raised any question concerning this individual's intellectual ability. She came to the institution with fine academic credentials, having graduated from Barnard College in Chemistry, Columbia University with a Master's in Psychology. She had one year in a Ph.D. program in Pharmacology at Duke, which was the same as the first-year medical student curriculum. She attended the Women's Medical College of Pennsylvania, and for some four or five years, prior to admission at the University of Missouri, worked at the National Institute of Health.

QUESTION: Is your client a four-year school?

MR. WRIGHT: Sir, the University of Missouri at Kansas City Medical School is a six-year institution. By six years, I mean a student enters straight out of high school for a six-year curriculum.

QUESTION: Pre-med school.

MR. WRIGHT: Yes, sir.

Eleven months a year. The first two years primarily based with undergraduate work; the last four years primarily concerned with what is considered a typical type medical school

arrangement.

QUESTION: And there are repeated references in the briefs to this criterion of being a "safe" physician. That was kind of a new --

MR. WRIGHT: Yes, Your Honor.

QUESTION: -- term to me in this context. What does that mean?

MR. WRIGHT: "Safe physician", as it was described in testimony at the trial court, is that the student has sufficient medical knowledge, basic science knowledge, and the student has the ability to function in a clinical setting with patients, so as to render primary care to the general public.

Now, it's been explained that that does not mean that the student is all-knowledgeable in every conceivable medical question that would come up, but to be a "safe physician", the student would have to have sufficient knowledge to know that it was going to be necessary to obtain the assistance of other physicians or health care professionals.

So the goal of the institution and that of being a safe physician is that they can render care to the general public; primary medical care, not advanced specialized type care, because naturally that comes from internship and residencies after they would graduate from a medical school.

QUESTION: Does the university run any other medical

school?

MR. WRIGHT: Yes, Your Honor, it does.

The University operates a medical school on the campus in Columbia, Missouri. That medical school is what people have referred to as the traditional medical school.

QUESTION: That is a post-graduate school?

MR. WRIGHT: Yes, Your Honor. This is a school where, to be admitted to that school, you must have an undergraduate degree.

QUESTION: Right.

MR. WRIGHT: And then you go into four years of medical school.

QUESTION: Right.

MR. WRIGHT: Now, the school at the University of Missouri-Kansas City is a school which is referred to as a docent type institution, whereby they have shortened the years over-all, but they require going to school 11 months out of the year.

Now, a docent is a physician, a professor, who is assigned the primary responsibility of guiding this student throughout their entire --

QUESTION: And counseling.

MR. WRIGHT: Right, sir.

QUESTION: Would I be correct in the inference that I drew from the briefs that the emphasis of this medical school

is on producing practicing clinical physicians rather than on people who were going to devote their careers to medical research and so on?

MR. WRIGHT: That is true, Your Honor. The school has very readily stated from the very beginning it's the reason that the school was established: was the responsibility to provide doctors to render primary care. And the school encourages students, and notifies them of that fact when they are interviewed for admission to the school. And the respondent in this case, at the time of application to the school and interview, was so advised that the school requires not only basic medical science knowledge, but a clinical competency that all students were going to be judged on the same basis, as far as meeting any requirements for graduation.

QUESTION: Now, what does "clinical competency" mean?

MR. WRIGHT: Clinical competency, Your Honor, is the ability for a doctor to function in a patient setting. It is the ability to take the basic medical science knowledge, which one learns from books, and to apply that to a given patient, to a given situation. It involves all the way from acquiring a total and complete medical history from the patient to the proper type of examination, the proper type of testing, and then the ability to relate the basic medical knowledge into a diagnosis and a formulation plan whereby that patient can be

treated. And this is, unfortunately, the position where the institution found that the respondent in this case was not deemed to be qualified.

Now, ---

QUESTION: This wasn't as a result of written or even oral examinations, but as a result of observation of her conduct in that setting, is that it?

MR. WRIGHT: Yes, Your Honor, this is true. Now, the individual scored high on all written examinations, the didactic part of the work.

Now, as was pointed out by the -- her docent, and as pointed out by the trial judge after the trial, it's unfortunate, but the individual apparently assumed that she could become a doctor by reading a book, and not treating patients and getting the necessary experience there.

The clinical competency evaluation was naturally on a subjective judgment of the professors that she was under, and that viewed her performance in a clinical setting.

QUESTION: What were the kinds -- excuse me, go ahead, finish.

MR. WRIGHT: Your Honor, I would -- excuse me just a second -- I would also like to point out that the institution, after she had been on probation for a period of roughly seven or eight months, the committees, the two committees and the Dean notified her that she would not be a candidate to graduate

in May of 1973, some five months later. And an appeal was taken by the student, and the institution set up a panel of seven doctors, none of which had had appreciable contact with the student. So as to get the opinions of others just rather than the faculty itself of the school.

QUESTION: You say "not appreciable", how much contact?

MR. WRIGHT: Your Honor, none of them were instructors that instructed her in the medical school.

QUESTION: All right, are you saying they didn't have any contact?

MR. WRIGHT: No, Your Honor, I cannot say they didn't have any, because --

QUESTION: Well, how much?

MR. WRIGHT: Your Honor, I have -- I do not have the answer to that. They may have seen her at some time in a clinic, but they were, none of them were docents of the school, none of them were classified as sub-docents in a hospital. It's just that they may have bumped into the student at some time, making clinical rounds in a hospital.

QUESTION: Well, how were they picked?

MR. WRIGHT: How were they picked?

QUESTION: Yes.

MR. WRIGHT: Your Honor, they were selected --

QUESTION: Were they picked for their knowledge of

her?

MR. WRIGHT: No, Your Honor, they were not. They were picked because each of these individuals had had prior experience as professors in a medical school. They were individuals that the Dean knew had outstanding medical reputations, and since they had had prior experience with medical education, felt that they would be appropriate people to actually carry out a practical and oral examination.

QUESTION: They were picked by the Dean?

MR. WRIGHT: Yes, Your Honor. They were picked by the Dean.

QUESTION: And what instructions were they given? Is that in the record?

MR. WRIGHT: Yes, Your Honor, it is. The instructions were by way of a conference which the Dean held with each of these physicians; Also on March 15th letter, which is in the Appendix, the written instructions were given.

QUESTION: And they determined that her clinical ability was bad?

MR. WRIGHT: Pardon me, Your Honor?

QUESTION: What did they determine was bad?

MR. WRIGHT: Your Honor, the seven individuals each -- they did not meet as a composite group -- each one of them took the student through an oral and practical examination, functioning with one or more patients. Now, the result was

that one out of the seven said she was competent and qualified to graduate. That individual examined the student in pathology, which was strictly a laboratory setting; no patients involved.

One doctor, in General Medicine, recommended that she be graduated, though he said she was not -- would not be acceptable as an intern in his hospital.

The other five physicians, each independent of one another, came in with recommendations to either drop the student immediately from medical school, or saying she was not qualified to graduate.

Now, each of these examinations had been described, and it was so described in the trial court, as being the equivalent of what the American Medical Association has for Special Board Certification, where an individual will spend three to four hours with a given medical doctor in a clinical setting.

QUESTION: This is a little below the Special Board, isn't it? By eight years, about, isn't it?

MR. WRIGHT: Yes, Your Honor, it is. I was only pointing that out, from the standpoint of view of the time element which is involved and the seriousness which the institution had.

Following the --

QUESTION: At what level had Ms. Horowitz entered this school? You said this is a post-high school, six-year school

for people who progressed from high school, but she had already been to college and to post-graduate school, so I --

MR. WRIGHT: Yes, Your Honor.

QUESTION: What -- did she come in at the equivalent of the fifth year?

MR. WRIGHT: Yes, Your Honor, the equivalent of the fifth year. And the reason being --

QUESTION: So she would have -- if all had gone well, she would have been there for two years before graduating?

MR. WRIGHT: That's correct, Your Honor.

And she was admitted as an advanced-standing student because of her previous educational background and training.

QUESTION: What were the classes or sessions which the record indicated she failed to attend with regularity?

MR. WRIGHT: Well, Your Honor, the first time that a question arose with respect to clinical competency, it was the first rotation really she was on where a clinic was involved, was in March of '72, which is some seven months after she started attending the institution. And they were having difficulty with respect to the clinical performance.

QUESTION: Mr. Wright, I'm a little concerned, or interested, rather, why was she admitted to the school at all? In view of the type of emphasis they have on their education. Here was somebody with a college education, some medical experience, and they bring her in at an advanced standing.

Did they bring many in this way, or --

MR. WRIGHT: Yes, they brought 13 students in with advanced standing at that time.

QUESTION: Is this because the school was new, and they needed them to fill up, because it's hard to get into other medical schools, we have been told.

MR. WRIGHT: The school was new, Your Honor. I do not feel that it was a compulsion to fill the institution at all. The reason, as I previously stated, at the time of interview with the student, the student was advised as to the primary goals of the institution.

QUESTION: Does the record show where she had had medical school experience before, and why she didn't stay there?

MR. WRIGHT: Your Honor, she had one year in a Ph.D. program in Pharmacology at Duke University. Now, the significance of that is the fact that the Ph.D. program there the first year is the same curriculum as first-year medical students have at Duke University.

She next attended the Women's Medical College in Pennsylvania, and, after a few months, withdrew in good standing because of ill health.

QUESTION: How many -- sorry, to ask you so many questions, but --

MR. WRIGHT: That's all right.

QUESTION: -- approximately how many students in each

class?

MR. WRIGHT: Well, Your Honor, the school --

QUESTION: At your school, at your client's school.

MR. WRIGHT: The school -- you mean at the University of Missouri-Kansas City?

QUESTION: Yes.

MR. WRIGHT: Your Honor, I cannot give you the exact figures. I believe that the institution is running approximately 75 to 100 students per class.

QUESTION: Does the record show how many do not -- involuntarily leave?

MR. WRIGHT: No, Your Honor, there is nothing in the record pertaining to that.

QUESTION: So, as far as the record shows, Ms. Horowitz might have been the only one, or she might have been one of a dozen; is that right?

MR. WRIGHT: As far as the record is concerned, that is true, Your Honor.

I know there have been other students which have been dismissed for academic deficiency, but that is not in the record.

QUESTION: So we don't know if she was the only one or if there were twenty others or --

MR. WRIGHT: Your Honor, she was not -- she was not the only one, --

QUESTION: But the record --

MR. WRIGHT: -- has not been the only one that has been dismissed from the institution for academic deficiencies.

QUESTION: Her year were there any others, from her class were there any others?

MR. WRIGHT: I do not believe so, Your Honor. I believe she was the only one that was dismissed at that time.

Now, in this case, at the time that the respondent was dismissed from the medical school, the status of the law, so to speak, in the country was that it was not necessary for a student who was being dismissed for academic deficiencies to receive a notice of charges and a hearing.

QUESTION: You say at that time. Do you think --

MR. WRIGHT: Yes, Your Honor.

QUESTION: -- except for this case, the status of the law has changed?

MR. WRIGHT: No, Your Honor. I do not feel that it has. I think that the decision of the Eighth Circuit Court of Appeals in this case -- and I respectfully submit this -- that the Court is mistaken in the interpretation which they not only placed upon an earlier decision of theirs, but upon a misinterpretation of decisions of this Court. And I would speak primarily to the fact that the first case was that of Connally vs. University of Vermont, a medical student case, where the Court set forth the reasoning for there being no

necessity for a notice of charges and a hearing.

And there were several other cases, including the Fifth Circuit, which had held that that was true.

Now, the Eighth Circuit had handed down a Greenhill decision, that was Greenhill v. Bailey, out of the medical school of the University of Iowa. In that case, the Eighth Circuit specifically held that the student was entitled to a notice of charges and a hearing. But what they said in that case was that because the school had stated that the student did not have the intellectual ability to be a doctor; and further, they communicated that to the Association of American Medical Colleges.

Now, they italicized in their opinion the fact that they were not sending this back for any hearing on performance of the student, or an academic evaluation.

So I would submit that the case did not stand for what the Eighth Circuit majority indicated that it did.

Now, there was a dissent, we requested a rehearing or transfer of court en banc. The Chief Justice of the Eighth Circuit wrote a dissent, joined by two other judges, pointing out that they had misinterpreted Greenhill. And one of the other judges that joined in the dissent actually wrote the opinion in Greenhill.

Now, the Eighth Circuit also relied upon the Roth decision of this Court in 1972.

Now, Roth involved a non-tenured professor in the State of Wisconsin. The Court in that case did not find a deprivation of liberty interest, nor did it find a deprivation of property interest. The Court looked to the laws of Wisconsin, looked to rules and regulations of the institution, as to whether or not there was a property interest, and found none to exist.

Now, I would submit that in the case we have before the Court today that a student in higher education in the State of Missouri does not have a right to a medical education. There are no statutes in the State of Missouri extending such rights. Secondly, the University of Missouri, the rules and regulations of that university, do not extend such a right.

With respect to the liberty interest, that was covered in Roth, the Court looked to the good name, reputation, honor and integrity, as to whether or not it was adversely affected by what the government was doing to the given individual.

As I previously stated, the Court found in that case that there was not a stigma, there was not a liberty interest. Because of the fact that there was no showing that there was a charge or allegation of dishonesty, immorality, or that the charge was going to seriously damage the standing of the individual in the community.

Now, I would submit to the Court that this is certainly the situation in the case that we're considering

today, because the University, at no point in time has ever challenged the honesty, the morality, the integrity or the intellectual ability of this student.

I would further submit that the liberty interest, of the medical student and the University of Missouri, is not any greater than the liberty interest of a non-tenured professor.

Now, in the Roth decision it was pointed out that the individual might be somewhat less attractive for other employment. And I don't think there's any question but what the individual would be somewhat less attractive. But the individual was not foreclosed from seeking other employment even in the State of Wisconsin.

I would submit that in the case which we have, I don't think there's any question but what the student would be somewhat less attractive to other medical schools.

QUESTION: She couldn't be admitted to any of them, could she? Unless she was subject to be readmitted to this one. Isn't that what the rule is?

MR. WRIGHT: No, Your Honor, I don't -- I do not believe that that is the rule.

QUESTION: Isn't that the rule among the Association of Medical Colleges?

MR. WRIGHT: Not to my knowledge, no, sir. It is not.

QUESTION: You don't know?

MR. WRIGHT: I do not -- I cannot answer it clearly 100 percent guarantee, no, sir. But I do not believe that that is the ruling of the Association.

QUESTION: Is there any evidence on that subject at all?

MR. WRIGHT: Yes, Your Honor, there was evidence. There was one professor -- not professor, pardon me; one of the seven examining physicians, Dr. Cohen stated that he felt that a dismissal for academic deficiency would affect the ability of the student to get into other medical schools, and to obtain employment in other areas, health-related areas.

Now, I -- you know, I would submit that there isn't any question but what they're going to be somewhat less attractive; but it does not foreclose --

QUESTION: Did Dr. Cohen attribute that to some fixed rule, or just his subjective judgment?

MR. WRIGHT: No, Your Honor, I think that it was his subjective judgment. And he readily admitted that medical experts can disagree as far as the performance of given individuals or a given student.

QUESTION: Well, maybe I should ask another -- is this school approved by the Association?

MR. WRIGHT: Yes, Your Honor, it is.

QUESTION: When?

MR. WRIGHT: Well, it had provisional accreditation

when it opened its doors in 1971. That's all that --

QUESTION: And when did it get final approval?

MR. WRIGHT: Well, Your Honor, it received approval approximately, I believe, six or seven months ago.

QUESTION: So the rule of the Association wouldn't apply to this case, would it?

MR. WRIGHT: What rule is that, Your Honor? I'm sorry.

QUESTION: That you can't be admitted unless you are eligible to be readmitted to the school that you were let out of.

MR. WRIGHT: Well, Your Honor, the situation is, as in the performance or the evaluation of final action as far as the dismissal of the student, the Dean very readily pointed out to the coordinating committee, which is in the record, the fact that this student was free to apply for readmission to this school.

I reserve --

QUESTION: Mr. Wright.

MR. WRIGHT: Yes, Your Honor?

QUESTION: You stated that there's no right in Missouri to a medical education. I think we could accept that, certainly assume it for the moment. Is the situation changed after the medical school accepts an individual for admission to the medical school? At least there is some expectation --

MR. WRIGHT: No, Your Honor, --

QUESTION: -- of graduating, isn't there?

MR. WRIGHT: Your Honor, I do not feel that the situation changes. Undoubtedly the student is closer to becoming a medical doctor. But the admission to the school means that the student is entitled to be treated in the same manner as other students in that institution.

QUESTION: But might not that sometimes present a question as to whether or not the student is so treated?

MR. WRIGHT: Your Honor, that question arose in this case.

QUESTION: Yes.

MR. WRIGHT: The allegations were very specific in this area, and the finding was specifically that there was no disparate treatment between students and the institution.

QUESTION: Mr. Wright, if she had graduated, would she automatically have been eligible to practice medicine, or would she have had to take a further examination of some kind?

Something in the record suggests graduation qualifies the person to practice.

MR. WRIGHT: Your Honor, you must graduate from an accredited medical school in the State of Missouri before you're even eligible.--

QUESTION: I understand.

MR. WRIGHT: -- for admission to the practice of medicine. The students take examinations while they are in

school, and then also after school, in order to qualify for the practice of medicine in Missouri.

I reserve the remainder of my time.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Benson.

ORAL ARGUMENT OF ARTHUR A. BENSON II, ESQ.,

ON BEHALF OF THE RESPONDENT

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

The respondent, Charlotte Horowitz, in this case was admitted to the medical school with Petitioners' specific knowledge, in the fall of 1971 as an advanced-standing student. And at that time it is correct that she was expected to graduate within approximately two years, although the evidence in the record, appearing at pages 87 and 88 of the testimony, is that that was the bare minimum of time which it would require her to graduate, because she did not have the extensive medical background that some of her classmates admitted as advanced-standing had, such as having completed a degree in oral surgery.

The two years was a bare minimum when she was admitted to this medical school.

At the time she was admitted to the medical school, there were no course requirements for graduation, it was not

specified, and the parties have stipulated to this, in Stipulation 92 that appears at page 25 of the Appendix, that there was no particular number of courses that had to be passed in order to graduate, and that there was no particular number of courses which, if failed, would result in dismissal.

The parties have also stipulated, in Stipulation No. 29 at page 12, that this student passed every single course by receiving a satisfactory grade in every course up until May 1, 1973, at the time the committees finally determined she would not graduate.

In addition, the term "satisfactory completion of the course" is defined by stipulations of the parties, it's Stipulation 82 on page 23, as meaning that this student had met the standards of acceptable performance by students at this school.

So, at the time she had virtually completed her two years at the medical school she had passed every single course by receiving a satisfactory grade, and had been so informed.

It is apparent --

QUESTION: What about her patient relationship?

MR. BENSON: That's just what I was going to address.

She had --

QUESTION: That's one of the elements in the medical education.

MR. BENSON: Yes. The courses she took included clinical rotations. For instance, pediatrics was a rotation which she took, which included clinical exposure to sick children as well as to the healthy children; and she received a satisfactory grade for that, and it was communicated to her.

But, at the same time she was completing that course and during that course, some of the faculty were adversely evaluating her performance and were documenting their beliefs that her performance was somewhat less than satisfactory, and yet, from the record, it's clear that she never saw those evaluations until after this litigation was commenced, and they were produced in discovery; she did not know that it had been deemed by some of her professors that she had, although receiving a satisfactory grade, had not satisfactorily enough completed those courses.

She did know, however, that she was having some difficulty in clinical competence. The first that she learned was the July 5, 1972, letter placing her on probation. That letter, which appears in the Appendix at page 180, however, reflects only a concern about her relationships with other persons. And then with regard to the clinical aspect of that, states that in order to improve her relationships with other persons she needs to begin keeping to established schedules, and meeting all clinical responsibilities on time and gracefully.

Now, we're still not certain as to what "meeting a clinical responsibility gracefully" means, but that was the first reference to some allegation that she was somehow deficient in clinical abilities.

QUESTION: Mr. Benson, assuming that a medical school or any other school said that "in order to graduate you must have a passing grade in every subject that you take"; is there anything wrong with that?

MR. BENSON: No. I'm sure many schools do.

QUESTION: Well, if they had that at this school, -- do they?

MR. BENSON: No, they did not. The parties stipulated, Stipulation No. 92, that they did not.

QUESTION: That they did not have to take them; but did they say they had to pass?

MR. BENSON: No.

The stipulation, I believe, on page 25, is that "The policies and regulations of the Medical School do not state the requirements for graduation in terms of the successful completion of any number" and it should be "or percentage of courses, nor do the policies of the Medical School specify that students should not be graduated for not having successfully completed a course or courses."

QUESTION: Well, what is the basis of graduation?

MR. BENSON: I don't -- that's --

QUESTION: You see what my trouble is?

MR. BENSON: -- that's an excellent question, and that is something that this student hasn't gone through two years of this Medical School, having up until May 1st of 1973 -- having received a satisfactory grade -- and the only grades you get at this medical school are "satisfactory", "unsatisfactory" or "no credit" -- having gotten the highest grade that she could receive for --

QUESTION: But I assume you to say if they did require passing in every subject, you wouldn't be here?

MR. BENSON: Well, no, that's not quite right, because --

QUESTION: Well, if you don't, you're going to upset a whole of schools in this country.

MR. BENSON: Well, our allegation is that when a professional graduate school, where the student is in the school that was aimed at a clear and a particular field, and that school slams the door in the face of that student's being able to get into that professional field, that that is a foreclosure of a full range of employment opportunities, which this Court has in the past, in similar circumstances, and should in this case require a due process hearing.

QUESTION: Mr. Benson, you say that graduation -- or for kicking somebody out in effect, of a professional graduate school forecloses employment opportunities. But surely that

forecloses fewer professional opportunities than being flunked out of college -- being flunked out of college forecloses fewer than being flunked out of high school. It seems to me that if we were to adopt your question, your proposition, we would be left with the proposition that there's a due process hearing for flunking anyone out of any public educational institution.

MR. BENSON: Well, I believe that would be correct, and I don't believe that should be an impediment to adopting such a ruling. Because in Goss vs. Lopez this Court has required due process hearings for clearly disciplinary reasons. Now, when -- if the Court agrees that there is a foreclosure of a range of professional or employment opportunities, then a due process hearing is required; but the format to that due process hearing can be determined by the institution within the guidelines of Matthews vs. Eldridge decision of this Court; and in the example that you gave a student who flunks some course in history in an undergraduate college might find due process requirements satisfied simply by a letter from the Dean indicating that the student had failed courses A, B and C, and that if the student differed with that finding that he could appear in the Dean's office on Friday at 1:30 and, if they'd like to see the records, they could ask in advance for them to be produced. And he would have a hearing with the Dean.

I believe that would suffice, and many educational

institutions do that informally or formally now throughout the nation. And so requiring a due process hearing before the student is expelled would not place any substantial burden upon any of the educational institutions.

In a professional graduate situation, however, the due process hearing under Matthews vs. Eldridge type of test might be somewhat more involved.

In this case all we're asking for is a -- some written specifications to the student who had thought throughout her college career, her graduate career, that she was satisfactorily completing the requirements of the course, that she be --

QUESTION: What about the probation only six months after she entered the school?

MR. BENSON: Yes. At the completion of her first year she was placed on probation. As I indicated, the probation letter stated that her clinical deficiencies had to do with being on time and meeting the responsibilities gracefully.

It was -- in the later letter it was advised, and the term "clinical competence", that I believe was the February 1973 letter, which --

QUESTION: That letter was a little more detailed than timeliness and grace.

MR. BENSON: The probation letter of July stated, "keeping to established schedules; meeting all clinical responsibilities on time and gracefully", and that's the only

reference to clinical --

QUESTION: But it goes on.

MR. BENSON: It goes on to say --

QUESTION: You don't need to, but it certainly says more than those two things.

MR. BENSON: Yes. And it says "attending gracefully to personal appearance" -- "carefully to personal appearance including hand washing and grooming; participating appropriately in the activities of the school; and directing criticisms and suggestions maturely to her Docent" -- those are the types of what we maintain are clearly conduct-related accusations against her.

QUESTION: Didn't that put her on notice quite early that all was not well?

MR. BENSON: Yes, it did; no doubt about that. And she received additional notice in the February 7th letter, which appears at 182 of the Appendix, when she was told that she would not graduate. And she was told that the reasons were: "clinical competence," which is not further specified or defined, "peer and patient relations, personal hygiene, and ability to accept criticism."

It appears that it's a condensation of the same four reasons that had been spelled in the July 5th letter of probation. But --

QUESTION: Mr. Benson, the due process clause of the

Fourteenth Amendment comes into play if and only if there is a deprivation of life, liberty or property. Now, clearly here there was not a deprivation of life. It's not clear to me so far from your oral argument whether your claim is that there was a deprivation of liberty or of property.

I had understood your brief to say only that there was a deprivation of liberty.

MR. BENSON: Yes, our primary --

QUESTION: But now you provide, at least as I understood it, there was some sort of a -- that upon acceptance to this educational institution there was a vested right to graduate; and, if so, that would be a claim that there was a property right.

MR. BENSON: That's correct.

QUESTION: An equivalent more or less analogous to tenure for a faculty member, rather than -- but I didn't understand that claim to be made at all in your brief.

MR. BENSON: Well, in our brief we primarily address ourselves to the question of the liberty interest, of the foreclosure of professional responsibilities.

QUESTION: Unless there's one of those three deprivations, --

MR. BENSON: That's right.

QUESTION: -- the due process clause is not implicated at all.

MR. BENSON: Well, I believe in this case that she primarily has been deprived of her liberty interest in pursuing her chosen career, a common occupation of life in the medical profession. I believe that's been clearly established by: one, the fact that she had a job at the North Carolina Medical School, Department of Psychiatry, contingent upon receiving the degree from the school.

When she did not get the degree from the school, she lost the job at North Carolina. That's a clear foreclosure of an employment opportunity, which is of record. And, secondly, Dr. Cohen testified in his expert and uncontroverted testimony that the student was virtually precluded from ever again obtaining admission to any other medical school, or finding employment in medically related fields. A clear deprivation of her liberty interest in employment.

Now, with regard to the property interest, I believe that is secondary, but nonetheless important, because at the time she entered the school she had, I believe, a reasonable expectation of an entitlement to a degree if she would meet the requirements of the school. Now, the school here did not spell out its requirements for graduation.

QUESTION: But it did -- it did tell her that she hadn't met them.

MR. BENSON: It told her -- it told her that she had not met them, and that she would not be graduated.

QUESTION: Right.

MR. BENSON: Now, there's a difference between not being graduated and being dismissed from the school. Because at the time she was told that she would not be graduated, there was the expectation that she would be continued in school for an additional length of time. The school called that deceleration --

QUESTION: Deceleration.

MR. BENSON: -- and other students were decelerated. In fact, she was specifically told that the committees would meet at some later time to determine whether or not she would be continued in school or dismissed. And in May of 1973, the decision was made that, after this reviewing procedure, that no new information had been presented, and the school would stand by its decision not to graduate her.

Then, at the end of that month, a whole new set of hearings were held, without knowledge to her, without an opportunity to attend, at which it was decided she would be dismissed from the school. And so she was placed on notice that she would not graduate, but she was never placed on notice that she would be dismissed from the school.

QUESTION: Mr. Benson, --

QUESTION: Getting back to the two letters that you referred to, at page 180, the first paragraph refers to frequent and long discussions, and then at page 182, again the

letter opens -- of February 1973, refers to long, detailed meetings which she had had with various doctors.

Then it concludes: "Toward the conclusion of our meeting that point was made that you have the option of requesting a special set of oral and practical examinations as an appeal of the decisions which were discussed in our meeting and which are set forth in this letter."

Did she ever ask for those oral examinations?

MR. BENSON: Yes, she did. The --

QUESTION: Then what happened?

MR. BENSON: The seven examining physicians reviewed her, interviewed her, and they submitted their findings; of the seven, two recommended that she graduate, two recommended that she be dismissed, two recommended that she be continued on probation, and the recommendation of the seventh was indeterminate.

But, in any event, there was no clear majority of the recommendations from those seven examining physicians, and the medical school had established a tallying procedure as to what to do in event there was no clear majority; and that required calling the physicians together so that they might discuss the evaluations and resolve their differences. And yet the medical school failed to do this, failed to take advantage of the rule that was for the advantage of the student, and I think that's an important failure on the part of the

medical school because it precluded the opportunity that these seven examining physicians might have come together, having discussed their differences, and agreed that perhaps it would be appropriate to continue her on probation, to allow her the deceleration option that was available to many --

QUESTION: If the seven had such a collegial process and voted 4 to 3 that she was not to continue as a student, would you be here?

MR. BENSON: Well, we may be, because the --

QUESTION: Well, that's important.

MR. BENSON: It is. The process is not really an appeal, although it was called an appeal by the medical school, it was purely advisory, it was not to a higher body within the school that had any ultimate decision-making authority, and in this case it was -- the recommendations from the examining physicians came back to the same committee that had requested them. There was not an appeal. And whether that meets the procedural requirements of due process, I doubt.

But, in any event, that did not happen here, and the recommendations came back, without any unanimity, much less a majority opinion.

QUESTION: Mr. Benson, in response to my brother Stewart's question, you said that your brief discussed primarily the liberty interest, but suggested also it discussed property interest. Do you remember offhand where in your brief

you discussed property interest?

MR. BENSON: Well, in the statement of facts -- we did not -- we discussed the questions as her admissions, the interview at the time, the fact that she was interested in academic psychiatry at the time she was admitted, that the school was offering a clinical program --

QUESTION: Is any part of the legal portion of your brief devoted to discussion of property interest?

MR. BENSON: No, it does not.

QUESTION: But you are relying on it here?

MR. BENSON: Well, our primary reliance is on --

QUESTION: Yes or no, are you relying on property interest?

MR. BENSON: Yes.

QUESTION: Yes?

MR. BENSON: Yes.

QUESTION: The case really is a procedural due process case, I take it.

MR. BENSON: As to process, this case --

QUESTION: If you had had what you thought was full procedural due process, would you think the decision to expel would be subject to judicial review?

MR. BENSON: Well, if it were the same decision, it would be subject to judicial review only on an allegation of arbitrary capriciousness.

QUESTION: Well now, I take it that there was a full trial in the district court.

MR. BENSON: Yes.

QUESTION: On whether or not she was properly expelled within the rules of the university?

MR. BENSON: Well, the issue in the trial court was whether or not she was entitled to due process prior -- a due process hearing prior to her dismissal.

QUESTION: Well, --

MR. BENSON: The court made findings that she had been dismissed for reasons which were adequate. But that was not the --

QUESTION: And full compliance with the university rules had been had.

MR. BENSON: That's correct. But that is --

QUESTION: Now, why do you think the hearing that she had in the district court, with respect to the validity of her dismissal, doesn't satisfy any procedural due process requirements?

MR. BENSON: One of the advantages of the procedural due process hearing within the educational institution is, as this Court recognized in Goss vs. Lopez, is to give the aggrieved student an opportunity to characterize his conduct. It would provide an opportunity to submit --

QUESTION: She -- but she had plenty of opportunity to

characterize her conduct here in the district court, I take it.

MR. BENSON: Yes. Yes, but the question before the district court was only whether she had a legal entitlement to a pre-dismissal hearing. It was not an -- she did not come to the district court to offer evidence in mitigation, for instance, nor to characterize her conduct with regard to whether she should be entitled to a deceleration option or not.

Those issues were not before the district court.

QUESTION: Well, let me ask it this way: Suppose you won here and that the Court of Appeals was wrong, what standard would the Court require the university to impose as a pre-eviction ruling? Just probable cause to believe, or would they have to make some final --

MR. BENSON: In order to hold a hearing or to effect a dismissal, as it were?

QUESTION: To effect a dismissal.

MR. BENSON: Right. The --

QUESTION: Prior to -- what standard do they apply, and must they -- what kind of a finding must they make prior to dismissal?

MR. BENSON: They may make any finding within their discretion, provided it is neither arbitrary nor capricious nor in bad faith.

QUESTION: Yes, but what if they say there's probable cause for us to believe that you don't measure up, and so

you're being dismissed, but there will be a full hearing available to you later?

MR. BENSON: Well, --

QUESTION: Where we then must make a final judgment.

MR. BENSON: Well, the -- I believe that it should be a prior hearing, prior to dismissal, to meet the requirements of what --

QUESTION: What case do you rely on for that?

MR. BENSON: Well, in the --

QUESTION: Well, the administrative hearing must make a final judgment on the merits.

MR. BENSON: Well, in order to avoid foreclosing the range of employment opportunities, I believe it's a reasonable inference to require --

QUESTION: What if she was dismissed and then she had an opportunity for a full hearing and she won that?

MR. BENSON: And if the hearing were held some time immediately following her dismissal, I suppose it would meet the requirements of due process, provided it were sufficiently soon after her dismissal to avoid the foreclosure of a range of employment opportunities.

QUESTION: Well, what if there was a -- what if there was an administrative hearing in which they listened to her side of the story, but they made some conclusion -- they concluded there was reasonable cause to dismiss, and then told her:

"If you'd like a full hearing, we'll see you in court"?

MR. BENSON: Well, "in court" would not be satisfactory for a number of reasons. First, legally the judge of the federal district court would not have the authority to weigh facts in mitigation for dismissal.

QUESTION: What case do you rely on that the final due process hearing that makes the final judgment must be administrative rather than judicial?

MR. BENSON: It's the State that is foreclosing the range of employment opportunities, so it must be the State which affords the due process hearing. However, if the State --

QUESTION: Well, they reportedly have a court system, and say, "We just want to make sure we have a disinterested judge; we don't want to be accused of that, and we don't want to be accused of having inadequate procedures, no cross-examination, so we'll have the full -- we'll give you the full treatment in court, and if you object to the burden of proof, we will assume it."

MR. BENSON: If the State wished to establish that by statute, that would, in my opinion, meet the requirements of due process. But that didn't happen here.

QUESTION: It's already established by statute in the sense that she can go to court and sue the university.

MR. BENSON: No, because she can only go to court under the 42 U.S.C.1983, seeking here an adjudication that she was

entitled to a due process hearing in the State.

QUESTION: Well, I know, but couldn't she go and have the -- into a State court and have the kind of hearing she wants?

MR. BENSON: I believe she could only have a hearing on the issue of whether or not she was entitled to a hearing, from the State.

QUESTION: Well, why is that? I thought you said it was subject to judicial review, the judgment of a --

MR. BENSON: Only the ultimate decision of the agency which is foreclosing the employment opportunities is subject to the limited judicial review of arbitrary and capricious deprivation of her rights.

QUESTION: Well, how would they determine arbitrariness unless they reviewed the merits?

MR. BENSON: Well, the burden of proof would be substantially different. And that's no different than existing law right now. Any student who believes that he or she has been arbitrarily deprived of property or liberty interest may go to federal district court; but under the due process hearing which we believe is required here, that judicial review would be facilitated because due process would require a written notice, and it would require some record of a due process hearing. That might only be minutes, but that would provide a record of the due process hearing, a presumption of regularity

would attach to it, and the burden of proof would be substantial, for a student who wished to go on to court to review that decision on an allegational --

QUESTION: You don't want anything more than Goss v. Lopez, do you?

MR. BENSON: Beg pardon?

QUESTION: You don't want any more than is in Goss v. Lopez.

MR. BENSON: Well, I don't believe the issue is now before us as to whether or not there's a right of counsel, for instance, in such a due process hearing. I believe that that --

QUESTION: That's what I want to know. Would you be satisfied with it?

MR. BENSON: I believe that it would be sufficient to allow the medical institution to, in the first instance, establish its procedures that meet the minimal requirements of due process, so that this Court is not in the position of dictating the format of the due process hearing for every graduate educational institution in the United States.

Some might find that the right of counsel would not be -- would not facilitate the due process hearing, and in others, where the issues are more complicated, right of counsel might be of advantage to both --

QUESTION: Well, why in the world do you want counsel?

MR. BENSON: Well, I'm not certain that counsel --

QUESTION: You want a little edge on the other side now, don't you?

MR. BENSON: Well, both sides -- if counsel were available, I'm sure it would be available to both sides. But where there are --

QUESTION: Well, you don't insist on that, do you?

MR. BENSON: We're not insisting on a right of counsel at this point, we're simply saying --

QUESTION: You'd be satisfied with it?

MR. BENSON: We'd be satisfied with an administrative hearing within the educational institution, provided that rules are established in advance, and that there was written notice, and there was some means of a record --

QUESTION: What is the principal procedural defect that you complain of?

MR. BENSON: The --

QUESTION: Assuming you're entitled to due process, what is the principal defect in the proceedings given your client by the university?

MR. BENSON: Student Horowitz was not advised in writing of the details of --

QUESTION: Does the Constitution require it be in writing rather than oral? Was she advised orally? There is a lot of testimony and some findings about literally hundreds

of oral conversations.

MR. BENSON: She had hundreds of oral conversations with her Decent, who is the primary teaching --

QUESTION: Right.

MR. BENSON: And her Decent was repeatedly telling her that he clinical competency was sufficient to graduate.

QUESTION: That's not what the district court found.

MR. BENSON: Well, that's what his testimony is, in the record, that the --

QUESTION: He, for example, testified that on hundreds of occasions, or over a hundred occasions he told her that her appearance was unsatisfactory, and that repeatedly she was advised she had to have a clean white coat. Now, I don't know how important that is, but supposing she did not have a clean white coat, and never got one, would it be arbitrary for them to say, "You cannot graduate if you can't form a habit of wearing a clean white coat when you interview patients"?

MR. BENSON: No, I do not believe that would be arbitrary.

QUESTION: Well, was she not advised that that was one requirement she had to cure?

MR. BENSON: Yes, and there's no evidence that she did not --

QUESTION: Well, then, why didn't she have adequate

notice?

MR. BENSON: -- that she did not cure it.

The adequate notice that I was about to mention was to the -- the school places great reliance upon clinical competence, and yet the allegations of her alleged deficiencies in clinical competence were never spelled out to her in any means. And --

QUESTION: Now, do you insist -- is the principal -- I want to know what the major weakness is. Is it that there was -- there was oral rather than in writing or none at all?

MR. BENSON: The major weakness in this case was that she had no opportunity to appear before the committee with knowledgable --

QUESTION: She appeared before seven separate doctors.

MR. BENSON: Yes, but they had -- they had no authority, their judgments were --

QUESTION : Subject to review.

MR. BENSON: -- they covered the gamut of recommendation, and it was ignored by the medical school. But the major --

QUESTION: What was ignored by the medical school?

MR. BENSON: [sic] The judgments of the medical school, a majority of them, at least four, recommended either that she graduate on schedule or that she be continued on probation. Four of the seven recommended one of those two options. And yet

that recommendation was ignored, and she was -- she was dismissed from the medical school.

But the major deficiency is that she never had an opportunity to appear before the Coordinating Committee, which was the committee which was making the decision as to whether or not she should be graduated or not. And she had no opportunity to appear before that committee, armed with the allegations against her, knowledge of them, notice of them, and with an opportunity to rebut them.

And she had no opportunity to argue before that committee the circumstances that would characterize her conduct --

QUESTION: This argument would be equally strong in your view even if she had such opportunity before each of the seven doctors who did interview her in person?

MR. BENSON: Well, if she did, and if they had authority to continue --

QUESTION: To make decision, they can only recommend.

MR. BENSON: That's right.

QUESTION: It's not enough to appear before a recommending group, she must appear before the final decision makers.

MR. BENSON: That's right. So that --

QUESTION: What case holds that?

MR. BENSON: So that she could argue litigation.

So that she could argue the characterization of her conduct, in the event that she decided to do that instead of denying deceleration.

QUESTION: I know there are a lot of bar review procedures where the lawyer, who is subject to discipline, appears before a committee that then makes a recommendation, either to the court or to some other body to perform them, he does not specifically appear. I think that's generally been thought all right.

MR. BENSON: Those recommendations, as I understand them, are binding, unless overturned by higher authority.

That the --

QUESTION: Do you have a case that holds that there's a right to appear before the decision maker as opposed to before a body making recommendations to the decision maker?

MR. BENSON: I am certain that there are cases, but I cannot recall one --

QUESTION: This is your critical argument. You have no case right on that now.

MR. BENSON: And the -- I believe Goss vs. Lopez states in it -- that's a conduct-related case -- that the right to due process hearing is before some authority of the school.

Now, if --

QUESTION: Do you think it's constitutionally deficient to have seven doctors interview a person considered

for graduation, at length, discuss the whole problem, then the seven make written recommendations to the president of the university, the president of the university can't decide whether to dismiss without interviewing the student himself; that's your position?

MR. BENSON: Well, in this case it is, for two reasons, because the majority opinion of the -- the recommendation of the seven examining physicians was ignored, and because the procedure of the school, in establishing that process of examination, was also ignored, in that the seven examining physicians were not called together to discuss their opinions and to resolve differences.

So, in that respect, she was denied procedural due process because the school failed to follow its own rules.

QUESTION: Well, now, that's a different critical defect: failure to follow its own rules.

MR. BENSON: That's right. And we discuss that more fully in the brief.

But the primary importance of the due process hearing here is for Herowitz to have had an opportunity to have come forward and said, "I only had two years at this medical school; I may have some clinical deficiencies; it was expected that I might require more" -- I see that my time has expired.

QUESTION: May I ask one other question, because I may have missed it in your argument?

MR. BENSON: Yes, sir.

QUESTION: You emphasized the distinction between failure to graduate and being dismissed.

MR. BENSON: Yes.

QUESTION: You said she had notice of the former, but not the latter.

MR. BENSON: Yes.

QUESTION: But the letter of July -- February 7, '73, from Dean Noback, says: You have to make improvement or "you will not be able to continue in the Medical School after May of this year." Isn't that notice of possible dismissal?

MR. BENSON: Well, it's a warning, but the decision --

QUESTION: What else is a notice but a warning?

MR. BENSON: The decision as to whether or not to graduate her was not to be considered until May of 1973, and it was decided at that time to initiate a series of committee meetings to determine whether or not she should be dismissed.

QUESTION: But, is this not notice that she might -- that she was subject to dismissal?

MR. BENSON: Well, I think she knew all along, any student knows all along that you can be dismissed for something, that the schools have the authority to dismiss a student at some point for sometime; but she never received formal notice from the school that she had, because of certain deficiencies which were spelled out in the notice, a committee

would be meeting to determine whether or not she should be dismissed, and that she would have an opportunity to appear at that meeting and rebut the allegations.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Wright.

REBUTTAL ARGUMENT OF MARVIN E. WRIGHT, ESQ.,

ON BEHALF OF THE PETITIONERS

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

I would like to merely point out to the Court that it did not come as a bolt of lightning from the sky to this student, when the student was notified of dismissal from the institution. This started with -- in March of 1972, with the clinical competency problem in pediatrics, of which she was advised of the problem by her Docent. We then get to the point where, in July of '72, when she's placed on probation by the institution, after the committees had considered it, the Dean, the chairman of the Council on Evaluation and her Docent sat down and discussed with her all the problems that she was having. She received a written notification setting forth the same factors.

Again in October 1972, three months later, her Docent was concerned about her performance.

QUESTION: Well, Mr. Wright, --

MR. WRIGHT: Yes, sir?

QUESTION: --- I wanted to ask you: I take it your position is that the total process to which she was due, the university gave her.

MR. WRIGHT: That's right, ---

QUESTION: That was the end of the line. She never was going to have another hearing inside the university, or out.

MR. WRIGHT: No, Your Honor, obviously she would have a hearing outside, because that's why we're here today, but my position --

QUESTION: Well, I know, but how about in the State court, could she have got review of the university's decision to expel her?

MR. WRIGHT: Your Honor, I think that she could have.

QUESTION: Well, you think; is there some established statutory procedure?

MR. WRIGHT: No. No, Your Honor, I'm sorry, there is not.

QUESTION: Well, what would she have done -- if she had gone to State court and wanted to ---

MR. WRIGHT: Well, the State --

QUESTION: --- have a full-blown trial on her expulsion, could she have obtained it?

MR. WRIGHT: Your Honor, I don't believe so. Because I do not believe that the courts in Missouri, at least to my

knowledge, will not get into the subjective evaluation of --

QUESTION: So your answer is that under Missouri law, she is already at the end of the line when the university made its own decision. She did not get it reviewed in the State courts.

MR. WRIGHT: No, Your Honor, not as far as the subjective evaluation of grading is concerned.

QUESTION: Well, or any other basis. She could get no review in the State courts, of that decision to expel?

MR. WRIGHT: Yes, I believe she could have.

QUESTION: Well, --

MR. WRIGHT: From the standpoint of view of whether or not the decision was arbitrary or capricious, without basis in fact, the same as it is in the federal courts.

QUESTION: Well, was there an established procedure for doing that under the Missouri statutes?

MR. WRIGHT: No, Your Honor, there's not a -- that it --

QUESTION: Well, the Missouri court can enforce 1983, can it not? The State courts?

MR. WRIGHT: What, Your Honor? I'm sorry.

QUESTION: The State courts could apply Section 1983, could they not?

MR. WRIGHT: Well, I believe they could, from the standpoint of --

QUESTION: Well, that's a process, isn't it?

MR. WRIGHT: Well, yes, Your Honor, I believe it is.

And it --

QUESTION: Of course my question is, Mr. Wright, what about State law?

MR. WRIGHT: State law, Your Honor, does not require the university to have a notice of charges and a hearing.

QUESTION: No, but, Mr. Wright, I gather there's some review of administrative agency determination in Missouri courts, is there not?

MR. WRIGHT: Oh, yes, most assuredly.

QUESTION: Would this fit within any of those procedures, whatever they may be?

MR. WRIGHT: I believe that it could. There's specific statutory provisions whereby one can appeal out of an administrative hearing.

QUESTION: But would there be a hearing de novo in any such a proceeding, or would it be just a review on the record and an affirmance unless there was some basis for finding it arbitrary or capricious?

MR. WRIGHT: I believe, Your Honor, it would be a review on the record.

QUESTION: Isn't there a precedent that the University of Missouri is subject to mandamus action? In the case of Gaines v. Canada?

MR. WRIGHT: Most certainly, Your Honor.

That's true.

MR. CHIEF JUSTICE BURGER: Your time has expired,
counsel.

MR. WRIGHT: Thank you very much.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 11:09 o'clock, a.m., the case in the
above-entitled matter was submitted.]

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