

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 83-87

**TITLE** BOARD OF EDUCATION OF PARIS UNION SCHOOL DISTRICT  
NO. 95, ET AL., Petitioners v. JESSE A. VAIL

**PLACE** Washington, D. C.

**DATE** February 28, 1984

**PAGES** 1 thru 49

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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IN THE SUPREME COURT OF THE UNITED STATES

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BOARD OF EDUCATION OF PARIS UNION :  
SCHOOL DISTRICT NO. 95, ET AL., :  
Petitioners :  
v. : No. 83-87  
JESSE A. VAIL :

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Washington, D.C.  
Tuesday, February 28, 1984

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

APPEARANCES:  
THOMAS REED MILLER, ESQ., Monticello, Ill.;  
on behalf of Petitioners.  
MARC J. ANSEL, ESQ., Champaign, Ill.;  
on behalf of Respondent.

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1	<u>C O N T E N T S</u>	
2	<u>CRAI ARGUMENT OF</u>	<u>PAGE</u>
3	THOMAS REED MILLER, ESQ.,	3
4	on behalf of Petitioners	
5	MARC J. ANSEL, ESQ.,	18
6	on behalf of Respondent	
7	THOMAS REED MILLER, ESQ.,	46
8	on behalf of Petitioners - rebuttal	
9	- - -	
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
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10  
11  
12  
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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments first this morning in Board of Education of Paris Union School District against Vail.

Mr. Miller, you may proceed when you're ready.  
ORAL ARGUMENT OF THOMAS REED MILLER, ESQ.,  
ON BEHALF OF PETITIONERS

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

This case concerns an action brought by an Illinois public school teacher against its employer, the board of education, pursuant to U.S. Code Section 1983. More specifically, in final analysis this is a breach of contract case in which both the district court and the Court of Appeals for the Seventh Circuit in a two to one decision agreed that the public school teacher had a property right protected by the United States Constitution to continued employment, which was deprived of him when the board of education did not renew his probationary contract and did not provide to him reasons for nonrenewal, nor a hearing prior to that termination.

Now, this case arises within a statutory framework called the Illinois tenure scheme, and I think because of its bearing on the case I would like to spend

1 a few moments to elaborate in regard to that particular  
2 statutory scheme. Illinois, like many states, has a  
3 statutory tenure scheme which applies to public school  
4 teachers.

5 Specifically, in Illinois the tenure act is  
6 found in Sections 24-11 and 24-12 of the Illinois School  
7 Code. For the Court's edification, those statutory  
8 provisions are set forth at pages 56 through 61 of the  
9 appendix to the petition for writ of certiorari.

10 In essence, the statutory scheme provides as  
11 follows: A public school teacher who is employed for  
12 two consecutive years in full-time service, that being  
13 the probationary period, acquires what we call tenure,,  
14 contractual continued service in the State of Illinois.  
15 Once the teacher acquires tenure, a teacher cannot be  
16 dismissed for other than cause and only after a rather  
17 elaborate procedural process has taken place.

18 To the contrary, the nonrenewal of a  
19 probationary teacher, whether it be a first year  
20 probationary teacher or a second year probationary  
21 teacher, is a rather simple procedure. The first year  
22 probationary teacher is entitled to nothing more than  
23 notice of nonrenewal to be given to that person at least  
24 60 days before the end of the current school term. For  
25 a second year probationary teacher, a notice of

1 nonrenewal must contain the reason or reasons for the  
2 nonrenewal.

3           There are no express provisions found in  
4 Section 24-11 dealing with the termination of a  
5 probationary teacher in the current contract term. It  
6 should be noted that another provision of the Illinois  
7 School Code, that being Section 10-22.4, empowers a  
8 board of education in Illinois to dismiss teachers,  
9 whether they be probationary or tenured teachers, for  
10 the following reasons: incompetency, cruelty,  
11 negligence, immorality, or other sufficient cause, and,  
12 important to this case, whenever in the opinion of the  
13 board of education the interests of the school require  
14 the dismissal.

15           It is, as I have suggested, within this  
16 statutory framework that the facts of this case came to  
17 pass.

18           QUESTION: Could the board dismiss in the  
19 middle of the first year for no cause?

20           MR. MILLER: In my judgment, yes, it could.  
21 And the reason I say that is because whenever the  
22 interests of the school requires the dismissal means to  
23 me that the board can dismiss for any reason or no  
24 reason.

25           QUESTION: Well, I would think you would apply

1 to a tenured teacher.

2 MR. MILLER: It would, except for the  
3 statutory provision found in Section 24.12 which  
4 specifically says that a tenured teacher must be  
5 dismissed for specific cause.

6 QUESTION: Well then, what about the provision  
7 that says you may dismiss a probationary teacher if you  
8 give him 60 days notice before the end of his first  
9 year?

10 MR. MILLER: That provision, of course, I  
11 think has been interpreted to mean the nonrenewal aspect  
12 of a probationary teacher's contract. In other words,  
13 that person will serve out that first year and his  
14 contract will not be renewed for a second year.

15 Under the statutory scheme, unless that  
16 nonrenewal notice is given the teacher is automatically  
17 re-employed for the second year.

18 QUESTION: Right.

19 QUESTION: But that notice is just notice and  
20 not any sort of a hearing.

21 MR. MILLER: That's correct, Justice  
22 Rehnquist.

23 QUESTION: Am I correct in recalling that none  
24 of the three judges on the Court of Appeals agreed with  
25 your analysis of state law?

1           MR. MILLER: I think that can be gleaned from  
2 the fact that the dissenting justice did not discuss  
3 that in his dissent.

4           QUESTION: He assumed there was some kind of a  
5 contractual right?

6           MR. MILLER: That's correct..

7           The district court, after a bench trial, made  
8 the following findings which are pertinent to this  
9 case:

10           First of all, that the Respondent teacher had  
11 executed a one-year employment contract with the board  
12 of education.

13           Secondly, that a consensus of the board of  
14 education, a consensus of the board, had promised, and  
15 made the promise through an oral representation of the  
16 superintendent to the teacher, that his contract would  
17 be renewed at the end of the first contract year. And  
18 that representation was made at the time of initial  
19 employment. It was not made at the end of the first  
20 contract year. Rather, it was made at the time of  
21 initial employment.

22           The Respondent relied in part upon this  
23 representation, as evidenced by the fact that he left  
24 his job in Joliet, Illinois, and moved to Paris,  
25 Illinois, to assume his coaching and administrative

1 responsibilities.

2 Another finding was that the Petitioners in  
3 fact did notify the Respondent on March the 3rd, 1981,  
4 that his contract would not be renewed, and that renewal  
5 without more did meet the strict requirements of the  
6 probationary nonrenewal notice provisions of the school  
7 code.

8 The Respondent was given no reasons for his  
9 nonrenewal and, furthermore and finally, the Respondent  
10 was not given a pre-termination hearing. As a matter of  
11 fact, he was not given a hearing by the board of  
12 education at all in this matter.

13 He did in fact bring suit in the federal  
14 district court a little more than a month after the  
15 notice of nonrenewal was given.

16 QUESTION: You have said you were commenting  
17 on the district court's findings. I take it now you're  
18 going to kind of a narrative account of what happened?

19 MR. MILLER: Yes.

20 In addition to the findings made by the  
21 district court, the district court also made certain  
22 conclusions of law, which I think are important also.  
23 The district court concluded that on the basis of the  
24 representation that was made at the time of employment  
25 that the board of education had bound itself to a

1 two-year term contract with the Respondent teacher, and  
2 that this contract was enforceable under Illinois law,  
3 that being a one-year term written contract followed by  
4 a one-year implied promise or oral contract for the  
5 second year. That was as a matter of finding  
6 enforceable under Illinois law.

7 The second finding or conclusion of law was  
8 that that two-year employment contract was property  
9 within the meaning of Section 1983.

10 QUESTION: Do you disagree with that first ,  
11 finding or conclusion of law by the district court?

12 MR. MILLER: I do, and I will address that.

13 QUESTION: You have a fairly tough row to hoe  
14 in this Court, I suppose you realize, because, you know,  
15 the district judge is obviously formerly an Illinois  
16 lawyer and three judges of the Court of Appeals did not  
17 take issue with that finding.

18 MR. MILLER: This is true, except I think that  
19 this Court has the opportunity to take a look at  
20 Illinois law in this case because of the fact that not  
21 one Illinois court has ever interpreted this particular  
22 provision, that being Section 24-11. It has never been  
23 required to interpret that.

24 QUESTION: Do you really think that's why we  
25 would grant certiorari in a case like this, in order to

1 look at Illinois law and see if it were properly applied  
2 by a district court and affirmed by a Court of Appeals?

3 MR. MILLER: I think that the state law issue  
4 certainly does come into play when we get into --

5 QUESTION: You certainly don't need to win on  
6 that to win this case, do you?

7 MR. MILLER: No, I don't believe I do. But I  
8 think that the state law issue comes into play quite  
9 significantly when we talk about the property right,  
10 because as we know from this Court's prior decisions,  
11 property rights, particularly property rights in  
12 employment, are created by state law and not the  
13 Constitution.

14 And I realize that I have a tough row to hoe  
15 when it comes to this Court looking at state law. But  
16 this is one of the points that we have raised, and we  
17 think that if the Illinois Supreme Court had been given  
18 the opportunity, had this case been filed in the state  
19 court system, that it would have held that Section 24-11  
20 does not allow for more than two successive one-year  
21 term contracts.

22 And we say that primarily on the strength that  
23 under Illinois law public entities have only those  
24 powers that are granted to them by the state  
25 legislature.

1                   QUESTION: Well, Mr. Miller, what if the board  
2 had given Vail the initial one-year contract, but at the  
3 same time had given him the statutory notice that he'd  
4 be re-employed for another year at the end of the first  
5 year? Wouldn't that have given him a valid two-year  
6 contract?

7                   MR. MILLER: Justice O'Connor, there is no  
8 statutory requirement that notice be given to the first  
9 year probationary teacher that his employment would be  
10 renewed.

11                  QUESTION: Well, the point is just that it  
12 doesn't seem inconsistent with the provisions of the  
13 statute as they're set out. So I think the argument  
14 that they can't have a two-year contract is essentially  
15 a weak one.

16                  MR. MILLER: Well, the history of the Illinois  
17 Supreme Court in interpreting the tenure provisions has  
18 been that the court has strictly construed those  
19 provisions dealing with nontenured teachers and in fact  
20 has given a tremendous amount of flexibility to boards  
21 of education in dealing with the nontenured teachers.

22                  QUESTION: Mr. Miller, you've used up more  
23 than a third of your time and you haven't really gotten  
24 to the heart of your case yet.

25                  MR. MILLER: As I would suggest to the Court,

1 there are four points on which I think this Court can  
2 reverse this case. The first we have discussed. I will  
3 move on again into the other points.

4 The second is that under the Illinois  
5 statutory scheme a probationary contract is not a  
6 property interest within the meaning of the Constitution  
7 and Section 1983, and I say that because there is no  
8 for-cause standard for discharge found in Section  
9 10-22.4, that being the statutory provision that sets  
10 forth when a board can or what a board can dismiss a  
11 teacher for.

12 It is our reading of this Court's cases, *Eck*  
13 and *Bishop*, that a for-cause standard is necessary  
14 within the statutory framework to create the kind of  
15 property interest which is protected by the  
16 Constitution.

17 QUESTION: This is only slightly different  
18 from your first argument, it seems to me, because you're  
19 really saying that if he had sued in state court he  
20 would be met with your point that there was no breach of  
21 contract because we can fire for no cause at all.

22 MR. MILLER: That's correct.

23 QUESTION: And that seems to me to be contrary  
24 to the state law finding by the district judge and the  
25 Court of Appeals.

1           MR. MILLER: I separate the issue of whether  
2 you can have a two-year contract --

3           QUESTION: I know you're talking about it in  
4 two different paragraphs, but it sounds like almost the  
5 same argument. But go ahead.

6           MR. MILLER: Well, the important point here I  
7 think is that this Court's decisions place a great deal  
8 of importance on state law interpretation, and in this  
9 case we have not had the benefit of that analysis  
10 because we have not had a state court, whether it be an  
11 appellate court or the supreme court, address either the  
12 issue of the legality of a two-year term probationary  
13 contract nor whether, if that is authorized, that term  
14 contract constitutes property within the meaning of the  
15 Constitution.

16           And if I read this Court's decisions  
17 correctly, it's that state court determination that this  
18 Court must rely on in regard to the judgmental call as  
19 to whether a property interest is involved in this  
20 case.

21           The third point which I wish to address is  
22 that, even if there is a property interest under state  
23 law, there has been no deprivation of a right secured by  
24 the Constitution. I say that because the Respondent's  
25 remedy in this case is for money damages. Under

1 Illinois law the Respondent has no right to specific  
2 performance. He has a right to recover lost pay if he  
3 is successful in his litigation.

4 We suggest that there has been no final  
5 deprivation of a right in this case because of the fact  
6 that until or unless the state would foreclose his  
7 opportunity to bring suit in the state courts to seek  
8 redress, that being for money damages, there has been no  
9 deprivation.

10 Another point which I wish to make --

11 QUESTION: Would you feel differently about  
12 that if the contract were specifically enforceable under  
13 Illinois law? Would you think then it would constitute  
14 property?

15 MR. MILLER: That would be akin to the  
16 provisions in Section 24-12 which allow for  
17 reinstatement of a tenured teacher who would be  
18 discharged and found that the discharge was not  
19 appropriate.

20 QUESTION: Would that be a protectable  
21 property interest?

22 MR. MILLER: In my judgment it would be.

23 QUESTION: Let me ask you about your  
24 deprivation argument. If you assume he had a contract  
25 right and pursuant to that contract he was getting a

1 check every week or every month or whatever it was, and  
2 then the board took action and he stopped getting that  
3 check and nobody else did anything after that, you say  
4 he's not been deprived of anything. He's just not  
5 getting the money any more.

6 MR. MILLER: That's our analysis of the  
7 deprivation issue, is that his deprivation takes place  
8 if the state were to foreclose him from bringing an  
9 action for the collection of that salary that is due him  
10 in a breach of contract case.

11 QUESTION: That sounds more like an argument  
12 that he's got adequate process available. It seems to  
13 me when he stops getting his money there's been a  
14 deprivation. I don't quite understand how you can say  
15 that's not a deprivation. Nobody does anything after  
16 that. It's a rather dramatic change in circumstances.

17 MR. MILLER: I must grant that the deprivation  
18 concept dovetails into the due process analysis also,  
19 because one of the tests that this Court has set forth  
20 when you must determine whether there has been a  
21 violation of due process or due process without law is  
22 if the deprivation is final.

23 And that brings me to my final point which I  
24 care to make. I think that on the strength of the Perry  
25 case and the Logan case decided by this Court that the

1 Respondent Vail clearly has an adequate state law  
2 remedy. He has a common law remedy in the state courts  
3 for breach of contract.

4 And as I read the Logan case, if that common  
5 law remedy will make the Respondent whole, which it  
6 would in this case because under Illinois law he is only  
7 entitled to money damages, then the state law remedy is  
8 adequate and there has been no due process violation.

9 QUESTION: You're saying that if they notified  
10 him that he was terminated, he was being terminated, and  
11 said, if you have any objection to this we'd be glad to  
12 give you a hearing in the local courts, we will be glad  
13 to litigate with you in the local courts, you think that  
14 is a satisfactory enough provision for a hearing?

15 MR. MILLER: I do, because of the fact that  
16 under our law, as I've stated, he has no right to  
17 specific performance.

18 QUESTION: When was his notice given?

19 MR. MILLER: Notice was given on March 3rd.

20 QUESTION: How far before the end of the  
21 school year? 60 days?

22 MR. MILLER: Yes. The effective date of his  
23 contract -- the termination date was, as I recall, June  
24 the 15th.

25 QUESTION: Well, he then knew he was

1 terminated.

2 MR. MILLER: Yes.

3 QUESTION: He could have, I suppose, brought  
4 suit in the state court right then, and I suppose,  
5 although you perhaps don't get specific performance,  
6 could the local courts -- suppose they didn't get around  
7 to trying the case until after June. Could they have  
8 enjoined his discharge pending outcome of the suit?

9 MR. MILLER: The notice that terminated his  
10 services said that the effective date was June the  
11 15th.

12 QUESTION: Well, so he had 60 days to bring  
13 the suit.

14 MR. MILLER: Yes, he did. He completed that  
15 year of employment. He was not terminated on the spot.

16 So yes, he could have brought the suit, but  
17 no, the Illinois state court would not have enjoined the  
18 board of education.

19 QUESTION: You mean they couldn't have  
20 enjoined the board of education?

21 MR. MILLER: That's correct, because under  
22 Illinois law he has an adequate remedy for damages, and  
23 that is the appropriate remedy for a breach of  
24 contract.

25 QUESTION: And the only remedy of a

1     probationary teacher, you say?

2                 MR. MILLER: Yes, sir.

3                 I will reserve the time I have remaining.

4                 QUESTION: You never got around to your fourth  
5 point, did you?

6                 MR. MILLER: My fourth point, Justice White,  
7 was a combination of the deprivation and due process  
8 analysis and, as I've suggested to the Court, because of  
9 the state law remedy there has been no denial of due  
10 process without law.

11                CHIEF JUSTICE BURGER: Mr. Ansel.

12                ORAL ARGUMENT OF MARC J. ANSEL, ESQ.

13                ON BEHALF OF RESPONDENT

14                MR. ANSEL: Mr. Chief Justice and may it  
15 please the Court:

16                The issue in this case is whether or not an  
17 employee of state government who is discharged in the  
18 middle of his term without reasons or an explanation is  
19 entitled to those reasons and an opportunity to respond  
20 at a meaningful time and in a meaningful manner.

21                The Petitioners' argument in this case reduces  
22 to two basic propositions: Number one, there is no  
23 federal claim because there is no state claim; number  
24 two, there is no federal claim because there is a state  
25 claim. This inherent inconsistency in the argument

1 provides no help in balancing the many interests that  
2 have to be weighed in a due process analysis.

3 QUESTION: Mr. Ansel, what elements of your  
4 client's case other than the final constitutional  
5 framing of it come from any place other than Illinois  
6 law?

7 MR. ANSEL: In fact, none of the elements of  
8 the protectable interest come from any place but  
9 Illinois law.

10 QUESTION: So it's really a diversity case  
11 without diversity.

12 MR. ANSEL: Well, it is more than a diversity  
13 case, only because of the question of whether he was  
14 entitled to a hearing or some type of pre-deprivation  
15 process under the Constitution. That is what changes it  
16 and that question is not a question of Illinois contract  
17 law. This is a constitutional question.

18 QUESTION: But all of the analysis that goes  
19 into deciding whether he has what you refer to as a  
20 protectable property interest depends entirely on  
21 Illinois contract law, doesn't it?

22 MR. ANSEL: I think for the purposes of this  
23 case I can rely on the findings of the two lower courts  
24 and say that it does, because that is all that is  
25 necessary to reach the heart of this case, which is what

1 process is actually due, given a protectable interest.  
2 This case involves a claim against a school district,  
3 which is a government employer, and in the case the  
4 Respondent proved an explicit commitment from the  
5 highest governing authorities and a breach of that  
6 commitment.

7 This could be termed, and it has been termed,  
8 a squabble between a teacher and a school board in the  
9 dissent below. But in constitutional terms, this  
10 epitomizes the arbitrary actions that are occasionally  
11 committed by state government without any adequate  
12 remedy.

13 QUESTION: Well, Mr. Ansel, do you agree that  
14 the only remedy provided under Illinois law for a breach  
15 is a damages action --

16 MR. ANSEL: That is correct.

17 QUESTION: -- for a non-tenured teacher?

18 MR. ANSEL: That is the only remedy provided  
19 by Illinois law.

20 QUESTION: And you also agree that Illinois  
21 did not provide for a hearing before the notice of  
22 termination as a matter of state law?

23 MR. ANSEL: That is correct.

24 QUESTION: Do you think that that affects the  
25 reasonableness of the reliance by a probationary teacher

1 on those processes? In other words, why would a  
2 probationary teacher have a right to expect more than  
3 the Illinois law provided in that regard?

4 MR. ANSEL: I think that the absence of an  
5 explicit provision in Illinois law for a hearing does  
6 not mean that a hearing could not be provided. But the  
7 constitutional question is whether or not a deprivation  
8 in the middle of a term where there is an expectancy  
9 remaining invokes the constitutional right to a  
10 pre-deprivation hearing.

11 QUESTION: Well, isn't it possible at least  
12 that the notion of a property interest protectable under  
13 the Fourteenth Amendment should turn at least in part on  
14 the reasonableness of the owner's reliance on whatever  
15 entitlement he has?

16 MR. ANSEL: Yes, I think it should, and in  
17 this case the reliance, based on every fact in the  
18 record, would be a reasonable reliance.

19 QUESTION: Well, but if under state law he's  
20 not entitled to a hearing, why is it reasonable to  
21 expect it?

22 MR. ANSEL: It's reasonable to expect a  
23 hearing because hearings are provided for all teachers  
24 that are terminated in the middle of their terms,  
25 because cause is an element of that termination. The

1 Petitioner, when he indicated those reasons that could  
2 constitute termination in the middle of a term, even a  
3 reason as amorphous as the interests of the district,  
4 still is sufficient to generate a cause requirement.

5 QUESTION: Well, you're arguing that as a  
6 matter of constitutional law that's so, but certainly  
7 not as a matter of state law.

8 MR. ANSEL: That is correct. I think that the  
9 cases in this Court have indicated that if somebody is  
10 provided with a protectable interest as determined by  
11 reference to state law the question of whether the  
12 procedures are sufficient to deprive them of that  
13 interest is a constitutional question. This was most  
14 recently stated in the Logan case.

15 QUESTION: Mr. Ansel, a moment ago you said  
16 that Illinois gave no adequate remedy to your client.  
17 Would your client have had a damages remedy under  
18 Illinois law?

19 MR. ANSEL: I believe that he would have had a  
20 damages remedy under Illinois law.

21 QUESTION: Well, since that's all that the  
22 district court gave him, was damages, why wasn't his  
23 remedy under Illinois law every bit as adequate as it  
24 was in the district court?

25 MR. ANSEL: I think our choice not to appeal

1 the award of damages for failure to provide additional  
2 elements should not be taken as an indication by us that  
3 those are adequate.

4 QUESTION: So really you feel your remedy in  
5 the district court wasn't adequate either?

6 MR. ANSEL: I think that that is true, and the  
7 reason is more complicated than might first appear. The  
8 first reason is, by the time the case was able to be  
9 brought to trial even in the federal court and by the  
10 time the evidence was able to be generated with the help  
11 of judicial process, the interest that he had remaining  
12 in one additional year's employment had for all  
13 practical purposes dissipated. He had begun to look for  
14 other work. They had already hired another employee.

15 But this case is limited to those  
16 circumstances because the interest remaining at the time  
17 was only one year, and the realities of litigation even  
18 in federal court are such that it's sometimes impossible  
19 to obtain complete restoration of what is lost when that  
20 deprivation takes place.

21 QUESTION: If damages is all he could get, I  
22 suppose any public employer can illegally fire a person,  
23 can fire a person in breach of contract. But the person  
24 has only, if he's a probationary teacher, has only a  
25 damages remedy --

1 MR. ANSEL: Well, I think that --

2 QUESTION: -- isn't that right? I take it you  
3 conceded that.

4 MR. ANSEL: No, I do not concede that  
5 compensatory damages in a breach of contract claim are  
6 an adequate remedy.

7 QUESTION: Well, I know, but how about under  
8 Illinois law? He gets only damages, doesn't he?

9 MR. ANSEL: That is correct, but I do not  
10 concede that that is adequate.

11 QUESTION: You mean the Constitution requires  
12 more?

13 MR. ANSEL: I think that the Constitution  
14 requires more in terms of the deprivation process,  
15 because the remedy is so inadequate under Illinois law.  
16 I'm not saying that the Constitution requires Illinois  
17 common law to provide additional remedies. I think the  
18 constitutional analysis requires an evaluation of those  
19 remedies and the question of whether or not they are  
20 adequate is significant to due process analysis.

21 It is significant because it has a direct  
22 bearing on the value of any additional safeguards that  
23 would be provided in the due process procedure.

24 QUESTION: Are you contending he had a federal  
25 constitutional right to reinstatement?

1 MR. ANSEL: I'm contending that, if he had a  
2 protectable interest, the Civil Rights Act does provide  
3 that as one remedy.

4 QUESTION: Well, I understand that, but that's  
5 not my question. Illinois law provides only a damage  
6 remedy and that's all he recovered here. Do you contend  
7 that as a matter under the Fourteenth Amendment --  
8 assume you had a clear contractual right as a matter of  
9 Illinois law -- that you had a federal constitutional  
10 right to get your job back?

11 MR. ANSEL: I am not contending that there's a  
12 federal constitutional right to get the job back. But I  
13 am contending that the Civil Rights Act, which is the  
14 implementing statute of the Fourteenth Amendment, has  
15 extended the power to the federal courts to provide  
16 these additional remedies when they are not available in  
17 state court.

18 QUESTION: I thought your argument at least  
19 was, one of your arguments was, that until he had a  
20 pre-deprivation hearing he was entitled to stay on the  
21 job.

22 MR. ANSEL: I think that is my argument.

23 QUESTION: And that on that basis if they'd  
24 have given him a pre-deprivation hearing they would have  
25 to at the end of that hearing have complied with

1 Illinois law, and he may have stayed on the job  
2 throughout his second year.

3 MR. ANSEL: I am not contending that the  
4 reinstatement remedy alone would provide him with due  
5 process.

6 QUESTION: But you say he was entitled to stay  
7 on the job and receive his weekly pay or monthly pay  
8 until they give him a hearing.

9 MR. ANSEL: That is correct.

10 QUESTION: I gather he lost his job by a 3-2  
11 vote, didn't he?

12 MR. ANSEL: I think that that was the vote  
13 when he was terminated.

14 QUESTION: And I take it your position is that  
15 if he had a hearing the 3-2 might have come out the  
16 other way?

17 MR. ANSEL: That is in my opinion the very  
18 essence of procedural process. That is --

19 QUESTION: And then he would not have lost his  
20 job at all.

21 MR. ANSEL: That is correct. The opportunity  
22 to respond after being provided with reasons could  
23 generate the opportunity to change one board member's  
24 mind. And the real loss that comes from the deprivation  
25 of employment --

1           QUESTION: Now, tell us again, where does that  
2 right to a hearing come from? The state law doesn't  
3 provide for it.

4           MR. ANSEL: The right to a hearing comes from  
5 the Civil Rights Act if state law provides a protectable  
6 interest. If state law provides a protectable interest,  
7 which the Court of Appeals and the trial court both  
8 found in this case, whether state process is adequate is  
9 a question of constitutional law. This was one of the  
10 statements in the Logan case.

11           Otherwise, if the only process due was that  
12 process provided by Illinois law, the states would be  
13 able by means of state legislation to destroy any  
14 legitimately created claim by simply providing and  
15 limiting the process in its statutes.

16           QUESTION: Well, you had 60 days to bring a  
17 suit in state court before the termination of his first  
18 year.

19           MR. ANSEL: We did bring suit within 60 days.

20           QUESTION: In the state court?

21           MR. ANSEL: No, sir. We brought suit in the  
22 federal court.

23           QUESTION: Well, I know. But you could have  
24 brought it in the state court, and you could have -- and  
25 you said you had some sort of a remedy.

1           MR. ANSEL: The only remedy --

2           QUESTION: How do you know what -- you might

3 have been able to get an injunction.

4           MR. ANSEL: I don't think there is any

5 authority in Illincis law for an injunction under these

6 circumstances. I agree with Petitioners in that

7 situation.

8           QUESTION: No, but you could have brought your

9 1983 suit in the state courts, couldn't you?

10          MR. ANSEL: Yes, I could have brought my

11 1983 --

12          QUESTION: And then I take it the state court

13 would have to apply federal law, wouldn't it?

14          MR. ANSEL: That is correct.

15          QUESTION: And if federal law entitled you to

16 an injunction you might have gotten it.

17          MR. ANSEL: That is correct.

18          QUESTION: Even though if you had a count for

19 a state remedy you can only get damages.

20          MR. ANSEL: That is correct. We could have

21 raised the federal questions in state court, and that

22 would have empowered the state court to provide the

23 additional relief that was available under the Civil

24 Rights Act.

25          However, the grant of jurisdiction and

1 authority is such that we would be permitted to go  
2 directly to federal court, and I think to have had a  
3 trial under the circumstances of this firing in Edgar  
4 County, Illinois, in Paris, Illinois, would have raised  
5 serious questions of whether or not this claimant would  
6 have been able to receive the real process that he might  
7 be do.

8 QUESTION: You might have faced a malpractice  
9 suit.

10 MR. ANSEL: Among other things, I might have  
11 faced a malpractice suit, that is true.

12 QUESTION: Why would Edgar County be so  
13 unsympathetic when all of your substantive rights are  
14 based on Illinois law? I mean, are you saying Illinois  
15 jurors wouldn't enforce Illinois law?

16 MR. ANSEL: I am saying that there is a real  
17 question, when you get into litigation in the state  
18 courts, of all of the vagaries of the statute of frauds  
19 and parole evidence and ever findings of fact and  
20 statements made in the record, and I believe that one of  
21 the purposes of allowing dual jurisdiction in the case  
22 of civil rights is to be able to avoid some of the  
23 passion and personal prejudice that might exist in state  
24 courts.

25 QUESTION: That reason has certainly been

1 traditionally advanced, the idea being that federal  
2 courts may be more sympathetic to federal law claims.  
3 But here your claim derives almost entirely from  
4 Illinois statute, Illinois case law.

5 MR. ANSEL: In fact, the only thing that  
6 arises from Illinois case law is the interest or the  
7 claim of entitlement that we seek to protect in this  
8 case. The procedures that are not provided by Illinois  
9 law, which we believe are required by the Constitution  
10 and authorized by the Civil Rights Act, are procedures  
11 that would make up for the inadequacy in Illinois law.  
12 So we do start --

13 QUESTION: Well, of course you say Illinois  
14 law is inadequate, but in a sense Illinois is perfectly  
15 capable of defining its rights and assigning what  
16 procedures shall be available to enforce them, isn't  
17 it?

18 MR. ANSEL: Yes, they are, but the question of  
19 the adequacy of those procedures is one of  
20 constitutional dimensions. At least it has been so held  
21 by the Court.

22 QUESTION: Recently.

23 MR. ANSEL: Yes, sir. In fact, the adequacy  
24 of remedy --

25 QUESTION: Do you rely on Logan for that

1 purpose?

2 MR. ANSEL: That is Logan.

3 The adequacy of the remedy provided  
4 post-deprivation requires an analysis of what process is  
5 available and what process is feasible at different  
6 points in time during the deprivation process, and at  
7 what cost. This is simply another way of stating the  
8 four elements of due process analysis that were  
9 identified in Mathews and Eldridge and used most  
10 recently in Logan.

11 If the post-deprivation remedies in this case  
12 were truly complete, that is, if the claimant could have  
13 restored to him all that would be lost in the initial  
14 deprivation, then the deprivation might not be deemed  
15 final, in that he could literally have restored what was  
16 taken away.

17 But when that interest is something more than  
18 a hobby kit or an item of tangible property, when that  
19 interest is one of employment, it is not so easy of  
20 analysis to say what is a complete remedy. When  
21 somebody is deprived of the opportunity to work, the  
22 deprivation and the loss can never be made complete.  
23 The longer the person stays off the job, particularly if  
24 he doesn't keep receiving his salary, if it has a blot  
25 on his employment record, if it takes away his

1 opportunity to work and generate a better employment  
2 record for looking for future employment --

3 QUESTION: Would you consider Judge Posner's  
4 argument about the paperclip contract? Why can't the  
5 same considerations be effective there: that the company  
6 loses its contract, it affects its business reputation,  
7 it might be a small company and all. Would your  
8 argument apply to that situation?

9 MR. ANSEL: It would -- the analysis would  
10 apply, but I believe the result would be different. I  
11 don't believe in that situation, where the nature of the  
12 private at stake is so very different than the private  
13 interest in employment -- a person who may have a  
14 contract to sell paperclips to the school district in  
15 all reality probably has many such contracts and  
16 probably is a purveyor of a product, who has no more  
17 expectation than an economic one.

18 QUESTION: But what if he isn't? What if he's  
19 a small business, this is his principal customer, and as  
20 soon as he loses this account he's going to be on the  
21 rocks for a while and have trouble getting other  
22 accounts?

23 MR. ANSEL: I think that if the interest at  
24 stake, the private interest at stake were truly  
25 substantial, as the hypothetical you might prescribe,

1 then perhaps an ear should be given to whether that  
2 interest is substantial enough to require a simple  
3 explanation.

4 QUESTION: Well, turn the case around and  
5 assume your client was a millionaire. Would he not have  
6 a claim then?

7 MR. ANSEL: I think that he may very well have  
8 a claim, because the difference between -- the impact on  
9 him is a more tangential question than evaluating the  
10 private interest of employment. Chances are if he had  
11 those economies he probably wouldn't have even bothered  
12 to try and go in and get reinstated unless he felt he  
13 was wronged. I don't think --

14 QUESTION: Well, maybe he likes to coach.

15 MR. ANSEL: Well, I think he does, and I think  
16 he likes to teach, and I think that therein lies the  
17 difference between the paperclip and teaching. There is  
18 a real expectation on the part of teachers that part of  
19 their consideration is the opportunity to teach. This  
20 is understood by all parties and was understood in this  
21 case.

22 The Respondent left a job that paid him more  
23 money. He left a job he had held for 13 years. And  
24 this was not a unilateral expectation. This was  
25 understood by both sides.

1                   QUESTION: Well, then the federal remedy must  
2 have been a great disappointment to him, just as the  
3 state remedy was, since it was only -- it would have  
4 been, just because it was only damages.

5                   MR. ANSEL: I think the disappointment that my  
6 client had was in how long it took us to be able to  
7 generate the evidence necessary to seek relief and, with  
8 the one year that he had remaining as an expectancy, the  
9 realities of federal litigation and the limits of his  
10 interest made it impossible to go for reinstatement.

11                   If we had had all the school board members  
12 tell the same story, we probably could have gotten an  
13 injunction a week later. But when we had four school  
14 board members deny and forget what the conversation was  
15 and we had only school board members admit that the  
16 promise was made, the realities of litigation prohibited  
17 us in this case from getting the full relief. And he  
18 was disappointed.

19                   QUESTION: Did you try for a preliminary  
20 injunction?

21                   MR. ANSEL: I did not try for a preliminary  
22 injunction until I could determine what was going to be  
23 said by the school board members, and that was easily  
24 found out because I was told right at the very beginning  
25 that two board members were going to say that the

1 promise was made by all of them and four board members  
2 were going to deny that that promise was made.

3 QUESTION: But that all could have come out at  
4 the preliminary injunction hearing.

5 MR. ANSEL: I think it could have, and I think  
6 at that point in time we might very well have had a  
7 hearing that would have indicated the likelihood of  
8 prevailing on the merits. I hope my client will not  
9 have it cost him because I might have failed to generate  
10 the evidence that was necessary to get that preliminary  
11 injunction in that two-month period.

12 In any event, the adequacy of a  
13 post-deprivation remedy depends upon many other factors  
14 and interests that must be weighed in the traditional  
15 due process analysis, and I think if one of the other  
16 statements in Logan is that those post-deprivation  
17 remedies are inadequate, if they do not truly make him  
18 whole, then the deprivation itself is considered final  
19 in spite of the fact that there may be inadequate  
20 remedies remaining at state law.

21 QUESTION: May I ask one other question. You  
22 are arguing that the Constitution requires a  
23 pre-deprivation hearing, and I take it the hearing would  
24 be conducted by the people who are going to make the  
25 decision to fire the man?

1           MR. ANSEL: In fact, I am arguing less than  
2 that, because the case doesn't require me to say that.  
3 I am arguing that some type of pre-deprivation process,  
4 an explanation of reasons and an opportunity to respond,  
5 is required, given the nature of his one-year remaining  
6 expectancy.

7           QUESTION: In other words, it's kind of a  
8 notice requirement rather than a hearing requirement.

9           MR. ANSEL: It's a notice of reasons and an  
10 opportunity to respond.

11          QUESTION: But would it be adequate if the  
12 response was in writing? If it's all done in writing,  
13 would that be all right?

14          MR. ANSEL: I think that if the opportunity to  
15 respond were provided in writing, and depending upon  
16 what the reasons were it might be --

17          QUESTION: You lost too many football games.

18          MR. ANSEL: I think under those circumstances  
19 a real opportunity to change their minds is what is  
20 required, and I might question, when it could be as  
21 easily provided that they could have a conference as  
22 writing a letter --

23          QUESTION: Is it correct, then, that the  
24 particular procedure that the Constitution commands  
25 depends pretty much on the facts of the particular

1 controversy?

2 MR. ANSEL: Well, I think that that is  
3 correct, because certain reasons for termination -- if  
4 the reason was only that the football record was not a  
5 good enough record, then perhaps that reason wouldn't be  
6 sufficient to generate a full-blown adversarial  
7 hearing.

8 But if the reasons are such that they raise  
9 real questions of fact and if they are such that they  
10 raise real questions of stigmatization or real questions  
11 that would have a blot on his employment record, perhaps  
12 something more than the opportunity --

13 QUESTION: Well, suppose the board had said to  
14 him, look, it's 60 days until the end of the term, we'll  
15 see you in court and we'll make all the explanation we  
16 have; we'll put the evidence on the record, and if we've  
17 breached our contract you'll get a remedy, I suppose,  
18 and they said also, we'll guarantee that the hearing in  
19 state court will be concluded within 60 days.

20 MR. ANSEL: This would not be adequate because  
21 the opportunity to work has still been taken away.

22 QUESTION: No, it hasn't yet. It won't be --

23 MR. ANSEL: But if he goes to court and wins  
24 within 60 days, the only thing he gets is money  
25 damages. He does not get to teach that second year,

1     which is one of the main reasons why --

2             QUESTION: Well, I know. But if it's decided,  
3     if it's decided that the school board has breached the  
4     contract he's going to get his damages right then, isn't  
5     he?

6             MR. ANSEL: Yes, he is. But the damages in  
7     our opinion are not adequate because he is not made  
8     whole.

9             QUESTION: Well, that is --

10            QUESTION: Isn't his best chance to save his  
11     job the opportunity to convince one of the three who  
12     voted against him that he should change his mind?

13            MR. ANSEL: I think that that would be the  
14     best opportunity, and in light of this --

15            QUESTION: Well, I don't understand why you're  
16     willing to settle for anything less than a hearing of  
17     some kind before the five of them so that maybe you can  
18     change the minds of one of the three.

19            MR. ANSEL: I am not. I want the opportunity  
20     to change their minds, and even if I could get my  
21     contract damages before he actually loses his job, he  
22     has still lost his job.

23            QUESTION: You don't want him to lose it.

24            MR. ANSEL: I want an opportunity to determine  
25     the rightful or wrongful nature of the deprivation

1 before its lost.

2 QUESTION: And you concede that the state law  
3 doesn't provide for any such hearing, but that the  
4 Constitution mandates it?

5 MR. ANSEL: I concede that state law does not  
6 provide it and, considering how easy it would be to  
7 provide him with reasons and considering how much risk  
8 there is of a wrongful deprivation when he could be  
9 terminated with no reasons, that the Constitution  
10 requires it.

11 QUESTION: What if Illinois followed their  
12 common law rule of Lumley against Wagner and said  
13 contracts for personal services simply are not  
14 enforceable, specifically enforceable, and they applied  
15 that to private contractors and also to public  
16 contractors like the school district here. Do you say  
17 that the due process part of the Fourteenth Amendment  
18 prevents Illinois from following that rather  
19 well-established rule?

20 MR. ANSEL: I don't think that the due process  
21 law prevents Illinois from following its own remedies.  
22 I think due process as implemented through the Civil  
23 Rights Act empowers the federal and state courts under  
24 federal law to provide additional remedies where state  
25 remedies are inadequate.

1           QUESTION: And would you say that in a case  
2 where Illinois followed the rule that contracts for  
3 personal services are not specifically enforceable, that  
4 1983 and the due process clause says then a federal  
5 court or a state court acting under the federal  
6 Constitution may specifically enforce contracts for  
7 personal services?

8           MR. ANSEL: I think that is correct.

9           QUESTION: When did that change occur?

10          MR. ANSEL: I'm not sure I understand what  
11 change you're talking about?

12          QUESTION: Well, I think most courts had felt  
13 that Lumley against Wagner was quite a viable rule, not  
14 just for 150 years, but right up until today.

15          MR. ANSEL: The Lumley rule is the one that  
16 states that federal courts can provide no addition --

17          QUESTION: No, the Lumley rule, it's a rule of  
18 contracts that says contracts for personal services  
19 generally are not specifically enforceable. You can get  
20 damages, but you can't force your employer to retain  
21 your services when he's decided he doesn't want them.

22          MR. ANSEL: And this is a principle of federal  
23 law?

24          QUESTION: No, I believe it's a  
25 well-recognized -- did you take contracts in law

1 school?

2 MR. ANSEL: Yes, I did.

3 QUESTION: Well, maybe they didn't treat it  
4 there. But when I went to law school it was a rule of  
5 contract damages: You could not get specific  
6 performance of a breach of contract.

7 MR. ANSEL: And I think this is the rule of  
8 Illinois law. I think this is the common law in  
9 Illinois. But I think that in light of the interest at  
10 stake in the case of employment, contract damages are an  
11 inadequate remedy.

12 QUESTION: Well, so what case from this Court  
13 has changed it so that state courts can no longer apply  
14 Lumley against Wagner?

15 MR. ANSEL: The state courts can apply it  
16 unless the Civil Rights Act is the basis for the cause  
17 of action. In that case, we invoke the powers of the  
18 court granted by that Act.

19 QUESTION: Well, what case says that a federal  
20 court may grant specific performance of a contract for  
21 personal services where the state followed a rule that  
22 you could not have specific performance?

23 MR. ANSEL: This is the meaning and the intent  
24 of the Civil Rights Act.

25 QUESTION: Well, do you have a case in this

1 Court that says that is the meaning and intent of the  
2 Civil Rights Act?

3 MR. ANSEL: I have nothing more than the  
4 remedies provided by the legislature, by the Congress  
5 when they granted, the Civil Rights Act passed.

6 QUESTION: Did Congress say, you shall have in  
7 federal court under 1983 a right to specific performance  
8 of a contract for personal services?

9 MR. ANSEL: Yes, in effect they did. They  
10 said --

11 QUESTION: Well now, when you say "in effect  
12 they did", did Congress say that in Section 1983?

13 MR. ANSEL: Yes, they did, when they said that  
14 the equitable powers that were granted by the Civil  
15 Rights Act would empower any court in which such a  
16 proceeding was brought to use those equitable remedies.

17 QUESTION: Well, until this minute I had  
18 understood all you were complaining about is that you  
19 didn't get a pre-deprivation hearing, meanwhile hanging  
20 onto the job with the hope that at the hearing you could  
21 change somebody's mind. I didn't know that you were  
22 after specific performance of anything.

23 MR. ANSEL: I'm not after specific  
24 performance, but I'm after the opportunity to remain  
25 whole --

1           QUESTION: But all you want's a hearing, a  
2 pre-deprivation hearing, wasn't it?

3           MR. ANSEL: That is correct.

4           QUESTION: What would you do about that  
5 hearing if you got it now?

6           MR. ANSEL: If we got it now, we have already  
7 lost the opportunity to work and it would no longer be  
8 adequate.

9           QUESTION: So damages is the only available  
10 remedy?

11          MR. ANSEL: In my case, under these  
12 circumstances, where the expectancy was only one more  
13 year, I think that by the time we get to the Supreme  
14 Court on appeal it is no longer practical to expect  
15 reinstatement on the part of either Petitioners or the  
16 Respondent.

17          If I might, in the few minutes remaining, I  
18 might indicate that the requirement of pre-deprivation  
19 process Petitioners say would increase or foster  
20 litigation in the federal courts. We believe that the  
21 exact opposite is true. Where somebody is deprived of a  
22 legitimate claim with no explanation and no reason, this  
23 in effect encourages litigation. This is in effect  
24 taking the posture of: Sue me if you want to know why  
25 or if you want an opportunity to be heard.

1 But to the extent that --

2 QUESTION: What would you have done if when  
3 you got the notice of termination, when your client got  
4 the notice of termination, the board had said: Should  
5 you care to have a hearing before us, please show up  
6 next Monday night at 6:00 o'clock. And so he showed up  
7 and you went completely through the whole thing and the  
8 board said: Well, we don't think we're breaking  
9 Illinois law, but even if we are you're fired, and now  
10 if you want a remedy go to court someplace, because all  
11 you can get are damages.

12 Now, suppose that had happened.

13 MR. ANSEL: I think that under the procedural  
14 due process analysis that we make here that process  
15 would have satisfied due process. Just the opportunity  
16 to be told why and respond, just a chance to change  
17 their minds before this very real loss occurs is all we  
18 seek. There is no substantial government interest in  
19 that.

20 QUESTION: Well, did he ever, as a matter of  
21 fact did he ever ask why he was fired?

22 MR. ANSEL: Yes, he did, and he was told: We  
23 don't have to give you any reasons. The lawyer who he  
24 first contacted asked for the reasons, asked for an  
25 opportunity to meet, asked for an opportunity to talk,

1 and they refused to grant it.

2 This is what caused the litigation in this  
3 case. Pre-deprivation process would narrow the issues.  
4 In many cases it would contribute to a feeling of  
5 fairness. And if this Court were to require it when  
6 somebody is deprived of a loss in the middle of their  
7 term, then it would be provided in future cases.

8 QUESTION: But Mr. Ansel, even if he had had  
9 the hearing the school board would not have been  
10 required to give him their reasons, would they?

11 MR. ANSEL: If he was not provided with  
12 reasons, then he had no meaningful opportunity at a  
13 meaningful time and there would be a violation of due  
14 process. The most fundamental requirement here is a  
15 simple explanation of why, after he was promised two  
16 years, why. That is not a heavy burden.

17 QUESTION: May I ask just one question. I  
18 know your light is on, but supposing this were a private  
19 employer and they fired a football coach and they  
20 followed precisely the procedure that was done here and  
21 then he sued later and so forth.

22 Would that individual receive due process of  
23 law within the meaning of the Fourteenth Amendment?

24 MR. ANSEL: I understand that the due process  
25 elements would not be applied in a situation of private

1 employment, and I understand that the due process clause  
2 was intended to have the government interact with the  
3 citizens on a higher level or on a fundamentally fair  
4 level, maybe one that isn't used often enough in private  
5 business.

6 If there are no further questions, I think my  
7 time is up.

8 CHIEF JUSTICE BURGER: Do you have anything  
9 further, Mr. Miller?

10 REBUTTAL ARGUMENT OF THOMAS REED MILLER, ESQ.,  
11 ON BEHALF OF PETITIONERS

12 MR. MILLER: I do, Mr. Chief Justice.

13 Just briefly, I would like to go back to the  
14 remedy issue and, contrary to what counsel I believe was  
15 attempting to imply, there is no federal common law  
16 remedy to reinstatement under the facts of this case.  
17 As a matter of fact, I believe this Court's decision in  
18 Bishop, footnote number 14, would indicate that  
19 reinstatement for the failure to provide pre-termination  
20 hearings are very rare indeed and only occur in those  
21 situations in which the statute itself is a for-cause  
22 provision.

23 QUESTION: But Mr. Miller, if the law were  
24 perfectly clear, and I don't suggest it is, that the  
25 Constitution required a public employer to give a

1 pre-termination hearing -- say that was clearly the law  
2 -- and you fired a man without giving him such a  
3 hearing, he promptly went into federal court and asked  
4 for an injunction, saying I want that hearing before the  
5 discharge becomes effective, are you saying a federal  
6 court would not in those circumstances have power to  
7 enter a temporary restraining order?

8 MR. MILLER: No, I do not believe that -- I  
9 believe that the federal court has that power to  
10 certainly issue that injunction. But what I am saying  
11 is that under Illinois law and I think the stated law of  
12 this Court that if there is shown a breach of contract  
13 that there is no remedy to reinstatement for an employee  
14 of this classification --

15 QUESTION: But that doesn't meet the claim  
16 that he wants the chance to give his side of the case.

17 MR. MILLER: No, it does not.

18 QUESTION: And you don't deny that the board  
19 refused him the opportunity?

20 MR. MILLER: I do not deny that. What I am  
21 stating to the Court is that the board's interpretation  
22 of Illinois law was that no reason need be given to the  
23 Respondent for his discharge, because of the fact that  
24 Section 10-22.4 says that whenever in the best interest  
25 of the school a discharge is warranted you may discharge

1     that person.

2                 QUESTION: Well, you're certainly close to  
3     your state law argument now.

4                 MR. MILLER: This case I believe from my point  
5     of view cries out for state court determination, because  
6     of the facts that -- or the points that there has been  
7     no state law determination of the probationary term  
8     contract, there has been no state law determination as  
9     to whether a term contract in a probationary framework  
10    is a property right.

11                And the Seventh Circuit holds in this case  
12    that a term contract is a property right, and where do  
13    we draw the line? Do all elements of term contracts  
14    then have property vestage?

15                Let's take, for an example, an element of the  
16    Respondent's contract, a fringe benefit that's a part of  
17    that total package. If that stick, if you will, is  
18    taken away from the Respondent without a pre-termination  
19    hearing, is that a violation of the Constitution?

20                It appears to me that if this Court were to  
21    hold that all term contracts, and specifically in the  
22    backdrop of a state statutory tenure scheme, are  
23    property rights, that we certainly do open up the  
24    floodgates for the federal courts to determine not only  
25    whether this is or is not a property right, but also

1 what process is due. What form does that  
2 pre-termination hearing take? Will that not be  
3 litigated extensively.

4 If the Respondent was not satisfied in this  
5 case with the form of the pre-termination hearing that  
6 he got, that would be an issue that the federal courts  
7 would have to decide likewise.

8 So for these reasons, the Petitioner board of  
9 education feels strongly that the Seventh Circuit Court  
10 of Appeals decision should be reversed. Thank you.

11 CHIEF JUSTICE BURGER: Thank you, gentlemen.  
12 The case is submitted.

13 (Whereupon, at 11:06 a.m., argument in the  
14 above-entitled case was submitted.)

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# CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:  
#83-87-BOARD OF EDUCATION OF PARIS UNION SCHOOL DISTRICT NO. 95, ET AL.,  
Petitioners v. JESSE A. VAIL

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

BY Pine Hunsaid  
(REPORTER)

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