

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-1360

TITLE LEONARD WEBB, Petitioner v. COUNTY BOARD OF EDUCATION
OF DYER COUNTY, TENNESSEE, ET AL.

PLACE Washington, D. C.

DATE October 29, 1984

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IN THE SUPREME COURT OF THE UNITED STATES

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LEONARD WEBB, :

Petitioner :

v. :

No. 83-1360

COUNTY BOARD OF EDUCATION OF :

DYER COUNTY, TENNESSEE, ET AL. :

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Washington, D.C.

Monday, October 29, 1984

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:57 o'clock p.m.

APPEARANCES:

CHARLES STEPHEN RAISTON, ESQ., of New York, N.Y.;
on behalf of Petitioner.

S. FUSSELL HEADRICK, ESQ., of Memphis, Tenn.;
on behalf of Respondents.

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: Mr. Ralston, I think
3 you may proceed whenever you're ready.

4 ORAL ARGUMENT OF CHARLES STEPHEN RALSTON, ESQ.
5 ON BEHAIF OF THE PETITIONER

6 MR. RALSTON: Thank you. Mr. Chief Justice
7 and may it please the Court:

8 This case presents for the Court a single
9 issue, and that is whether or not attorney time expended
10 before a civil rights action is brought under 1981 and
11 1983, Title 42 of the United States Code, is filed in
12 federal court, work done before that filing, can that
13 time be excluded from a fee award simply because the
14 time was spent pursuing the same federal claim in an
15 available state administrative proceeding.

16 Our position, Petitioner's position, is quite
17 simply that it should not and cannot be excluded, that
18 it is awardable under the specific language of 42 U.S.C.
19 Section 1988 and under the decisions of this Court that
20 interpret that statute. Our position is, first, that if
21 that time, as we contend it was here, is reasonably
22 expended, reasonably spent, then within the meaning of
23 Section 1988 and this Court's decision in Hensley versus
24 Eckerhart, then it can be compensated for. That is, it
25 is chargeable to the defendant when the plaintiff

1 prevails in his federal court action.

2 QUESTION: Could you have brought the
3 proceeding in court without going into the
4 administrative process?

5 MR. RALSTON: Yes, Mr. Chief Justice, we could
6 have gone straight to the federal court, and that is
7 true. And the court below based their decision on the
8 principle that, since it was not mandatory that the
9 state administrative proceedings be exhausted and we did
10 not have to go into federal court, therefore the time
11 should not be compensated for.

12 QUESTION: Do you read the opinions of the
13 courts as encouraging, even if they do not require, the
14 exhaustion of administrative remedies?

15 MR. RALSTON: Your Honor, in the Patsy case,
16 which held that exhaustion is not required, this Court
17 pointed out that one of the concerns of Congress when it
18 passed 1983 was to provide concurrent remedies in both
19 state and federal courts. So there's certainly no
20 intention of Congress or the decisions of this Court to
21 discourage the going and utilization of an available
22 state remedy, which is precisely the result of the
23 decision below.

24 The result would be to tell to a potential
25 plaintiff that, go straight into federal court, do not

1 spend any time at all pursuing any other available
2 remedy. Go into federal court, because if you don't you
3 will lose any time you spend prior to going into federal
4 court.

5 QUESTION: Mr. Ralston, the district court's
6 memorandum as I read it refers to the state
7 administrative proceeding as one before the County Board
8 of Education of Dyer County, Tennessee.

9 MR. RALSTON: Yes, Your Honor.

10 QUESTION: You say you were pursuing the
11 federal claim before that, the County Board. What's the
12 nature of that proceeding under Tennessee?

13 MR. RALSTON: Your Honor, we have reprinted in
14 our brief, our main brief, in the appendix, pages 1a to
15 4a, the statute under Tennessee law which sets out the
16 proceeding. Now, that proceeding and what occurred
17 before the Dyer County Board of Education followed that
18 statute.

19 There's a right to charges, there's a right to
20 have witnesses subpoenaed, there's a right to be
21 represented by counsel. There's a right to present the
22 claims that the person has and have them considered by
23 the Board. And indeed, the statute even provides that
24 if the teacher prevails the Board can award the teacher
25 his costs.

1 So it is an administrative proceeding and a
2 quasi-judicial proceeding.

3 QUESTION: What are the standards for showing
4 that you're entitled to reinstatement? Is it kind of a
5 breach of tenure kind of thing?

6 MR. RALSTON: Certainly under the tenure act
7 there is that. You'd have the right to do that. If
8 your rights under the Tennessee tenure law have been
9 violated, you can present those.

10 But the statute does not limit what can be
11 presented to the Board. Section 512(4), which is at 3a
12 of our appendix, states that: "The teacher may present
13 witnesses and shall have full opportunity to present his
14 contentions and to support them with evidence and
15 argument."

16 QUESTION: Is there any indication in this
17 statutory language that a federal claim is
18 contemplated?

19 MR. RALSTON: There is certainly no language
20 that indicates that it could not be presented. It
21 simply says "present his contentions," and in fact in
22 this case Mr. Webb's attorney presented squarely claims
23 arising under the Fourteenth Amendment to the
24 Constitution, presented evidence to support the claim
25 that racial discrimination was behind the attempted

1 disciplinary action.

2 QUESTION: Do you ordinarily expect a County
3 Board of Supervisors to pass on constitutional claims?

4 MR. RALSTON: Well, Your Honor, it certainly
5 is not the normal kind of case they'll handle. But to
6 give an example, we said in our brief, the basic claim
7 of Mr. Webb was that everything was fine in his
8 employment until integration came and he, a black
9 teacher, was assigned to teach in a predominantly white
10 school and he imposed the same kind of discipline he had
11 imposed throughout his career on a white student, and
12 that was the reason why he was discharged.

13 Now, assume for the moment -- and he presented
14 evidence to support that claim. Assume for the moment
15 it turned out that indeed there was such a policy. A
16 document had appeared saying that a black teacher who
17 disciplined white students should be discharged. It's
18 inconceivable to me that the County Board would not have
19 dealt with that claim and reinstated Mr. Webb.

20 QUESTION: But they probably would have dealt
21 with it under some principle of state law, rather than
22 saying something was unconstitutional.

23 MR. RALSTON: Your Honor, the members of the
24 County Board I would assume, as are all other state
25 officials, are bound by oath to support the Constitution

1 of the United States and to conform their activities to
2 that Constitution.

3 QUESTION: I don't really claim to know
4 anything about Tennessee proceedings. Are you familiar
5 with the way County Boards in Tennessee conduct their
6 affairs, whether this is a typical claim brought before
7 them?

8 MR. RALSTON: Your Honor, I am not. I am
9 familiar with the record in this case, and in this case
10 the claims were squarely presented, listened to. Most
11 of the testimony before the Board dealt with -- most, at
12 least half of it, dealt with the racial discrimination
13 claim under the Constitution.

14 QUESTION: I would find it rather strange to
15 have the constitutional issues presented to and passed
16 on by an administrative agency or a County Board. For
17 example, what if the County Board had concluded that
18 this action comported entirely with Tennessee law, it
19 violated nothing in Tennessee law. We've had a hearing
20 on it and everybody turned square corners. Do you think
21 it would have entertained a constitutional argument?

22 MR. RALSTON: Your Honor, if given the
23 hypothetical I've given, if it had emerged that in fact
24 there was a policy to discharge black teachers in
25 violation of their rights to be free of racial

1 discrimination, I would hope that they would entertain
2 such a claim and that they would not allow such a
3 discharge.

4 QUESTION: But it certainly could hardly
5 comport with Tennessee law, then, could it?

6 MR. RALSTON: It might not have. But it was
7 presented as a federal constitutional claim.

8 But the issue again -- again, the facts of
9 this case is the claim was presented, it was heard by
10 the Board, it was not excluded, evidence was not
11 excluded. And indeed, reading the transcript, it even
12 indicates it was objected to.

13 And the question again is whether it was
14 reasonable to attempt to have those rights vindicated by
15 the County Board before going straight into federal
16 court. Now, we pointed out that the judge in the
17 district court excluded absolutely all time spent prior
18 to the actual sitting down and drawing up of the
19 complaint to go into federal court, the 82.8 hours as
20 shown by the joint appendix. Pages 39 to 47 set out the
21 time.

22 But everything prior to the work done in
23 August of 1977 to actually prepare to go to federal
24 court was excluded. And in that time such things were
25 done as to investigate the case, talk to witnesses, talk

1 to the client, to in fact in effect have depositions of
2 two witnesses, at least two witnesses of the defendant
3 -- all time that would be compensable if it had been
4 done in connection with the federal court action.

5 Yet it's excluded, absolutely simply because
6 that work was done in connection with the state
7 administrative proceeding. And again, our contention is
8 it was reasonable to do that work and in fact it was the
9 type of work that anyone would have done if he had gone
10 straight into federal court and prosecuted his federal
11 claim.

12 QUESTION: Is there any provision for judicial
13 review of the County Board's decision at the end of this
14 sort of an administrative process?

15 MR. RALSTON: Yes, Your Honor. Under
16 Tennessee law review can be sought in the Tennessee
17 courts.

18 QUESTION: And I take it, then, that your
19 constitutional claim was rejected by the County Board?

20 MR. RALSTON: They simply issued a short
21 decision saying --

22 QUESTION: Well, they certainly didn't grant
23 it.

24 MR. RALSTON: They certainly didn't grant it.

25 QUESTION: So ordinarily you would say they

1 rejected it.

2 MR. RALSTON: Yes.

3 QUESTION: So why didn't you take it to the
4 Tennessee courts?

5 MR. RALSTON: Well, at that point, Your Honor,
6 we had the option of going either to federal court or to
7 state court, and the counsel decided that they would
8 prefer going to federal court at that point, now that
9 they were going to have to go to court.

10 QUESTION: You don't think that -- you don't
11 think that if you don't appeal a county commission's
12 judgment, that doesn't foreclose you from another
13 judicial action?

14 MR. RALSTON: No, Your Honor, we would not say
15 -- no, we take the position that it doesn't. This Court
16 has held --

17 QUESTION: There's no administrative res
18 judicata?

19 MR. RALSTON: Not under a claim under 1981, I
20 would urge not.

21 QUESTION: Why not?

22 MR. RALSTON: In the same way that this Court
23 has held that in a Title VII case the fact that one goes
24 to --

25 QUESTION: Title VII requires you to go to the

1 court and specifically leaves the court open after
2 you've resorted to that.

3 MR. RALSTON: Yes, but 1981 and 1983 also
4 allow an independent federal claim to be brought. I
5 might just say that this argument was never made in the
6 court below, that this had some preclusive effect.

7 QUESTION: It may not, it may not. But if you
8 had taken this -- if you had taken an appeal from the
9 county commission's judgment into the Tennessee courts
10 and you had lost there, you could not come over to
11 federal court?

12 MR. RALSTON: Well, as I --

13 QUESTION: Could you?

14 MR. RALSTON: Well, if the federal
15 constitutional claims had been raised and had a final
16 decision from the state courts, yes. If they were not
17 raised, then it would depend on Tennessee law, as I
18 understand the decisions of this Court.

19 QUESTION: Well, if they weren't raised you
20 weren't entitled to attorneys' fees.

21 MR. RALSTON: If they weren't raised in state
22 court, yes. But if they'd been raised in the
23 administrative process and then gone to state court
24 without raising them, whether we could get into federal
25 court would depend on Tennessee law.

1 But if we had gone to a Tennessee court,
2 raised them and had lost, then that would have been
3 preclusive.

4 QUESTION: Mr. Ralston, did any of the
5 proceedings in the administrative agency get into the
6 federal court suit in any way?

7 MR. RALSTON: Yes, Your Honor. Our response
8 -- at some point during the litigation, the transcript
9 of the proceedings before the Board of Education were
10 filed, introduced by the Plaintiff. It was subsequent
11 to that that the case was settled.

12 QUESTION: Did those proceedings have any
13 relevance to the settlement at all?

14 MR. RALSTON: Well, the record is not clear,
15 although in the hearing on counsel fees the district
16 court stated that he had in fact read those
17 proceedings. He did not elaborate, but he did discuss
18 that --

19 QUESTION: Were they stipulated into evidence,
20 so that the facts were brought before the court by way
21 of stipulating that record in?

22 MR. RALSTON: It was introduced as an
23 attachment to an affidavit by counsel for Mr. Webb
24 attesting to their accuracy. The case didn't get to the
25 point where they were stipulated into evidence because

1 the case was settled prior to trial.

2 QUESTION: Oh, I see.

3 MR. RALSTON: They were put in at a point
4 where motions for summary judgment were pending before
5 the district court relating to a number of issues. None
6 of those motions were ever resolved because the case was
7 settled.

8 QUESTION: Mr. Ralston, may I ask whether by
9 relying on Carey you're asking us to hold that Section
10 1988 creates an independent action for attorneys' fees
11 for time spent in administrative proceedings, or whether
12 you are asking us to say that you can recover something
13 for attorneys' fees just to the extent you would be able
14 to do so anyway, like for discovery conducted before a
15 federal action?

16 It isn't clear to me what you're asking.

17 MR. RALSTON: In the present case, the Court
18 only need reach the second point, because in this case
19 we had an action filed in federal court to raise the
20 merits of the claim, there was no final disposition in
21 the state administrative processes. So this case itself
22 presents the claim that the time spent in the
23 administrative process can be compensated because it was
24 reasonable time spent in connection with the federal
25 Court action.

1 QUESTION: And what do you think about the
2 other question?

3 MR. RALSTON: The other question -- Carey did
4 hold, at least in the context of a Title VII case, that
5 an action could be brought solely for the purpose of
6 obtaining counsel fees. And we would think such a
7 result would be consistent with Carey.

8 Alternatively, as we pointed out, an action
9 might lie in state court under Maine versus Thiboutot to
10 recover counsel fees if the person were fully successful
11 with regard to his federal constitutional claim in the
12 state administrative proceeding. And that is not the
13 case here.

14 QUESTION: A moment ago, in answer to Justice
15 O'Connor's question, you said there had been -- at least
16 I understood you to say that there had been no final
17 disposition of the state administrative proceeding.

18 MR. RALSTON: I'm sorry. Not in favor of the
19 plaintiff. The disposition had been to --

20 QUESTION: Against the plaintiff.

21 MR. RALSTON: Against the plaintiff.

22 QUESTION: Right.

23 MR. RALSTON: I'm sorry, I did not mean to
24 indicate otherwise.

25 QUESTION: May I ask you a factual question,

1 Mr. Ralston? I understood you to say earlier that the
2 court allowed you fees from the period of August '78
3 forward, and I looked at pages 46 and 47 of the
4 transcript and I wonder if you meant '78 or '79, because
5 it --

6 MR. RALSTON: '79, I'm sorry. I misspoke.
7 From 3-7 August '79, preparation and forwarding of the
8 complaint in federal court, that was the time allowed.
9 Everything else before that was excluded.

10 QUESTION: And is it your contention that
11 everything that precedes that, it was reasonably
12 necessary in order to prepare and prosecute the federal
13 case?

14 MR. RALSTON: That is our contention. Now,
15 the district court never reached the question whether
16 there were particular parts of that 82.8 hours that
17 might or might not have been reasonably spent. So there
18 was never any decision, and the Respondents' main claim
19 was none of it could be compensated for because it was
20 done in connection with the administrative proceeding.
21 They did raise some general objections to a couple of
22 items.

23 But the issue of whether every minute of that
24 time should have been compensated for was never
25 reached. Ordinarily in these cases, the district court

1 will look at the time --

2 QUESTION: Of course, the district court did
3 something else that smacks of a compromise in a way. He
4 gave you, I think, \$120 or \$125 an hour for all that
5 time, and then added a 25 percent amount for it. And I
6 guess your rate, your going rate, was only -- was a
7 lesser amount at the beginning of the period, was it
8 not?

9 MR. RALSTON: It's my understanding that the
10 rate at the beginning of the period may have been less.
11 But he gave the current rate for the time spent in
12 federal court and then enhanced it by a multiplier.
13 Now, this case was decided before Blum versus Stenson.

14 QUESTION: Right.

15 MR. RALSTON: And the Respondents did not
16 cross-petition on that issue. So it really is not
17 before the Court at all.

18 I just might point out that, even with that
19 multiplier, since the court excluded far more than half
20 of the hours requested, the total amount given was still
21 substantially less than what would have been given if
22 that 82.8 hours had been included and no multiplier
23 given at all.

24 QUESTION: Right. But you're in effect, your
25 legal position here is that at least some of time should

1 have been counted? You're not necessarily claiming that
2 every hour of the four or five years of negotiating with
3 the school board was necessary for the lawsuit? Or are
4 you saying it's more or less like Carey, that it was all
5 essential?

6 There's quite a difference in theory. I guess
7 I'm repeating Justice O'Connor's question in a way.

8 MR. RALSTON: Well, our contention would be,
9 if we were in the situation in district court to justify
10 all those hours, that they could be justified. The
11 district court --

12 QUESTION: As necessary to the federal
13 litigation?

14 MR. RALSTON: As necessary. Now, the district
15 court might say, well, some percentage wasn't really
16 related to the federal question and, using a Hensley
17 type analysis, split some of it off. But again, that
18 was never done in the district court because of the
19 district court's ruling as a matter of law that none of
20 it was compensable, period.

21 QUESTION: Well, he at least gave you the time
22 it took you to write the complaint.

23 MR. RALSTON: Pardon?

24 QUESTION: He didn't begin with the filing of
25 the complaint, at least.

1 QUESTION: Yes, he allowed us to prepare and
2 write it. But anything else was not allowed. And as
3 we've pointed out in our brief, the time spent in
4 preparation to filing the investigation and talking to
5 people is an important amount of time spent, and
6 certainly a substantial amount of the time spent was
7 very comparable to just what one would do through
8 discovery.

9 This Court has pointed out, for example, in
10 Chandler versus Rotabush that the time -- the record of
11 an administrative proceeding may be very useful to a
12 court in sharpening the issues, limiting what happened.
13 And that certainly is, we're arguing, we take the
14 position, is the case here.

15 Again, the central point that we would make is
16 that the lower courts here became focused in on the
17 mandatory issue, and our position is that the statute
18 does not say any mandatory proceeding. It says any
19 proceeding. The fact that a proceeding is mandatory, it
20 must be followed, certainly makes it reasonable to
21 follow it, but it doesn't follow the other way, that
22 just because something need not be done it is not
23 reasonable to do it and therefore compensable.

24 And as a matter of policy, to essentially
25 penalize someone for attempting to enforce his rights

1 before going to federal court would simply mean an
2 increase in cases filed in federal courts and a much
3 longer time spent in federal court than if this type of
4 time were compensated for.

5 I'd like, if there are no further questions,
6 I'd like to reserve the remainder of my time.

7 CHIEF JUSTICE BURGER: Mr. Headrick.

8 ORAL ARGUMENT OF S. RUSSELL HEADRICK, ESQ.,

9 ON BEHALF OF RESPONDENTS

10 MR. HEADRICK: Mr. Chief Justice and may it
11 please the Court:

12 The Respondents would contend, in opposition
13 to Petitioner's assertion, that the issue in this case
14 is not whether the time spent in the administrative
15 proceeding can be excluded, but whether Congress
16 intended to include within the purview of Section 1988,
17 intended to sanction an award of fees for optional state
18 administrative proceedings.

19 And we contend that when the language of the
20 statute and the legislative history and the purposes
21 behind Section 1988, as well as the substantive civil
22 rights statutes for which fees are properly awardable,
23 are considered, that this Court should affirm the
24 judgment of the Court of Appeals.

25 In this case, as we understand it, Petitioner

1 has essentially advanced two arguments in support of his
2 proposition that fees are properly awardable for
3 optional state administrative proceedings under Section
4 1988. First, the Petitioner contends -- and this is
5 what I call his reasonableness argument -- that he filed
6 an action in the federal court, he prevailed in
7 settlement of the action, and therefore the only
8 question left for resolution by the courts is whether
9 time was reasonably spent. If so, Petitioner contends
10 Hensley versus Eckerhart compels an award of fees in the
11 instant case.

12 We say that this argument basically fails for
13 two different reasons. In effect, what the Petitioner
14 is requesting this Court to do is to view the state
15 administrative proceedings and the federal district
16 court proceedings as one unit of litigation, when in
17 reality there are two independent legal procedures.

18 QUESTION: What would have been the situation
19 under Tennessee law if he'd gone into the state courts
20 and prevailed there? Collect fees or not?

21 MR. HEADRICK: No, sir. No, Your Honor. And
22 as a matter of fact, since the issue was just raised in
23 the reply brief of the Respondents, I've taken a look at
24 Tennessee law, and the Tennessee Supreme Court has
25 reaffirmed, most recently in 1979, Tennessee's adherence

1 to the American rule. And there is no statute that I'm
2 aware of that would authorize an award of attorneys'
3 fees had the Petitioner in this case followed the state
4 judicial route and had appealed and won his case and won
5 reinstatement and back pay.

6 QUESTION: Well, but is that true if he filed
7 a 1983 action in the state court? Could he not have
8 filed the same action, based on federal law, but filed
9 it in the state court

10 MR. HEADRICK: No, sir, not in the courts of
11 the State of Tennessee.

12 QUESTION: They don't accept 1983 litigation?

13 MR. HEADRICK: No, sir, not in the courts of
14 the State of Tennessee. It's been held by the Tennessee
15 Supreme Court in a case that arose about 15, 20 years
16 ago that the courts of the State of Tennessee do not
17 entertain Section 1983 actions. That case has not been
18 overruled to this day.

19 QUESTION: Is that cited in the briefs? I
20 missed it, I guess.

21 MR. HEADRICK: No, it is not, Your Honor. And
22 unfortunately I do not have the citation of that case
23 with me, and I'd be happy to supply that to the Court.

24 QUESTION: Do you have any question about
25 whether that's good law today or not?

1 MR. HEADRICK: Well, I understand that there
2 is some question under a footnote, I believe in the
3 Martinez case, as to whether or not state courts are
4 obligated to entertain Section 1983 actions. But that's
5 still the law.

6 QUESTION: They're not -- I see.

7 MR. HEADRICK: Yes, sir.

8 And we think that the fact that the
9 administrative action is separate from the federal civil
10 rights action was recently noted and supported by this
11 Court's opinion in Burnett versus Grattan, where this
12 Court noted that the causes of action which Congress
13 created in the federal civil rights acts are independent
14 of other legal or administrative relief which may be
15 otherwise available under state or federal law.

16 So therefore, we think that the Petitioner's
17 argument which seeks to view this as one unit of
18 litigation ignores this fundamental distinction of
19 federal law.

20 Second and probably more importantly,
21 Petitioner's argument jumps over the very statutory
22 threshold issue which we view as presented by this case,
23 and that statutory threshold issue is whether the
24 optional state administrative proceedings were actions
25 or proceedings, if you will, as that term is used in

1 Section 1988.

2 And we think that this Court's decision in
3 Hensley versus Eckerhart, read together with this
4 Court's decision in Carey, established that you have --
5 that a prevailing party has to overcome the statutory
6 threshold before you ever get to the question of
7 reasonableness. And we contend that New York Gaslight
8 Club against Carey, where the issue is can you get fee
9 for state administrative proceedings, establishes that
10 the issue for determination before anything else is
11 determined by the Court is whether those proceedings are
12 actions or proceedings within the purview of the federal
13 civil rights attorneys' fee act.

14 And we think that Petitioner's argument that
15 seeks to jump over to the question of reasonableness
16 ignores this very statutory threshold question which
17 this Court established in New York Gaslight Club against
18 Carey.

19 QUESTION: Mr. Headrick, in a case in which a
20 claimant files a state administrative proceeding and
21 does urge the same grounds as he later urges in a
22 federal civil rights action, and spends time preparing
23 for that administrative hearing and doing what amounts
24 to discovery for purposes of dealing with the hearing,
25 and later in the federal civil rights action relies on

1 some of that time and effort as part of his preparation
2 for the federal claim in the federal court, is any of
3 that time recoverable in your view?

4 MR. HEADRICK: No, we do not think so, because
5 the prevailing plaintiff, the applicant, has not made it
6 over the statutory threshold. And the reason why that
7 is so is because the applicant, the applicant has chosen
8 to pursue an administrative remedy which Congress has
9 not seen fit to encourage resort to through Section
10 1983.

11 QUESTION: Though certainly time spent for
12 ordinary civil discovery would be recoverable, would it
13 not, under Section 1988 for preparation time for the
14 1983 or 1981 claim?

15 MR. HEADRICK: We have no problem with that.

16 QUESTION: And if the work done is essentially
17 the equivalent of discovery in the administrative
18 proceeding, why should it not be recoverable?

19 MR. HEADRICK: Well, as a general proposition
20 it may should be discoverable. But the question is did
21 Congress intend by Section 1988 to authorize an award of
22 attorneys' fees for what I think stretches the point of
23 being an action or proceeding to enforce the enumerated
24 federal civil rights statutes.

25 And that's our contention, that the Petitioner

1 in this case has simply not made it over the statutory
2 threshold of demonstrating that these proceedings are in
3 fact an action or proceeding within the purview of
4 Section 1988.

5 QUESTION: But certainly Congress indicated
6 that they wanted 1988 to be broadly read.

7 MR. HEADRICK: I don't have any problem with
8 that, with that as a general proposition, Justice.

9 QUESTION: As just a general proposition?

10 MR. HEADRICK: Well, yes, and I think there's
11 other references in the legislative history --

12 QUESTION: Your view certainly provides a
13 disincentive to pursue administrative remedies and to
14 force everything right into federal court.

15 MR. HEADRICK: Well, of course, one of the
16 problems that is incurred in this type of situation is
17 that I don't think you can equate the relief sought in
18 the federal court with what the County Board of
19 Education of Dyer County, Tennessee, was empowered to do
20 with this plaintiff's civil rights claim.

21 The only thing I think that the Dyer County
22 Board of Education was empowered to do under Tennessee
23 statute is merely to reinstate Mr. Webb and to give him
24 back pay. And the only thing that the County Board of
25 Education would do would be to judge the validity of the

1 charges leveled against Mr. Webb.

2 But in Mr. Webb's or Petitioner's federal
3 civil rights complaint, he not only seeks a claim of
4 race discrimination, he presents a claim of a million
5 dollars in damages to his reputation which he says was
6 incurred as part of this dismissal.

7 QUESTION: Well, is there any Tennessee law on
8 whether or not administrative agencies or County Boards
9 will entertain federal constitutional claims?

10 MR. HEADRICK: Justice White, I certainly know
11 of none. I would tend to think that if Tennessee courts
12 say that Tennessee courts should not --

13 QUESTION: Entertain 1983 --

14 MR. HEADRICK: -- entertain 1983 actions, then
15 the fair inference would be that, no, that
16 administrative bodies would not.

17 QUESTION: Let me ask you this. Let me ask
18 you this. Isn't there some law in Tennessee as to
19 whether administrative agencies will entertain state
20 constitutional claims, as well as the claims under the
21 specific statutes that regulate -- that set out the
22 substantive standards for their work?

23 MR. HEADRICK: I can't address that as a
24 general proposition, whether there is enabling
25 legislation that says statewide all boards can.

1 QUESTION: Are there any kinds of decisions in
2 your courts?

3 MR. HEADRICK: No, sir, I'm not aware of
4 those.

5 QUESTION: Or any custom of your
6 administrative agencies?

7 MR. HEADRICK: Well, I certainly know that in
8 this particular case, from a review of the record even,
9 although those points were made, I don't think they were
10 seriously considered.

11 QUESTION: Did you represent the Board?

12 MR. HEADRICK: No, I did not. The Board was
13 represented by other counsel.

14 QUESTION: Well, was there any objection by
15 counsel to entertaining these claims or to the
16 introduction of evidence to support them?

17 MR. HEADRICK: I don't think there was
18 specific objection to the argument of counsel concerning
19 constitutional claim, and I'm not sure that there is a
20 way to divide the evidence that Petitioner submitted.
21 But in any event, you do run into this problem, I think,
22 of the fact that the relief sought in the federal court
23 simply could not have been granted by the Dyer County
24 Board of Education.

25 I don't think Petitioner would contend that

1 there's any way that the County Board of Education could
2 render a million dollar damage verdict, nor could it
3 certify a class action which was sought in the instant
4 case to vindicate the rights of all black children, all
5 black educators within the Dyer County Board of
6 Education, within that school system.

7 So we think the Petitioner has simply not
8 crossed that statutory threshold. Petitioner's argument
9 in the alternative appears to be that the word
10 "proceeding," which we view as the scope or threshold
11 issue, can be construed to mean an optional state
12 administrative proceeding. And Petitioner relies on
13 this Court's decision in New York Gaslight Club against
14 Carey for that proposition.

15 We think that if you consider -- that if the
16 Court considers the way it analyzed the problem in
17 Carey, that the opposite result should obtain in this
18 case. In Respondents' view, we contend that the
19 underlying rationale of New York Club against Carey was
20 that the statute which created the right to attorneys'
21 fees also required the Petitioner in that case -- or the
22 Respondent in that case -- to exhaust the state
23 administrative remedies. And the underlying thought
24 behind that was, if you do not award fees for these
25 proceedings which the statute requires the party to

1 undergo, then the party may decide, if he has to pay his
2 own attorney, he might not advance what would ultimately
3 be a meritorious civil rights claim.

4 In this case those considerations simply are
5 not present. As I think the Petitioner has conceded,
6 there is simply no exhaustion requirement. There is
7 simply no part of the costs that federal law requires
8 Petitioner to undergo in this case in order to vindicate
9 his rights that was done in the Dyer County Board of
10 Education hearings.

11 We would also contend that this Court's
12 observation in footnote 14 of Smith versus Robinson,
13 recently decided by this Court, supports this
14 application of Carey in the instant case. In that case
15 the Court -- and this was cited in our supplemental
16 brief -- this Court drew that very distinction of Carey
17 and Title VII on the one hand and Section 1988 and a
18 1983 claim which was not required to be exhausted. And
19 the Court's conclusion in that case was that, since
20 there was nothing in federal law that required the
21 plaintiff in that case to pursue the administrative
22 remedies, then he could have, just as Petitioner could
23 have in this case, gone straight to court.

24 And we contend that the New York Gaslight Club
25 against Carey case, as most recently applied in Smith

1 versus Robinson, supports the Respondents' argument that
2 Congress did not intend fees to be awarded under Section
3 1988 for optional state administrative proceedings.

4 Further, as to the legislative history, this
5 Court observed in Hensley versus Ekerhart, the very case
6 upon which the Petitioner relies, that the very purpose
7 of Section 1988 is to ensure effective access to the
8 judicial process. And we contend that this evidences
9 this Court's recognition that the civil rights that are
10 set forth in Section 1988 are to be enforced primarily
11 in court.

12 Patsy has held that Congress has not
13 encouraged the use of state administrative remedies for
14 the enforcement of these rights, and therefore this
15 Court should deny fees for optional state administrative
16 proceedings.

17 We would also emphasize that to leave lower
18 courts with no better guidance than what is reasonable
19 to do in situations such as these will further spawn
20 litigation, because these courts will be making
21 judgments concerning proceedings that do not occur
22 before them, as to the amount of hours, the monetary
23 service -- the monetary value of the services, and the
24 impact of those proceedings on federal court
25 litigation.

1 And the courts may have very familiarity with
2 these procedures and the procedures do not occur under
3 the auspices or the control of the courts, and in our
4 view we think that this will spawn further litigation as
5 to what is reasonable in these particular cases, and it
6 will take up already crowded trial and appellate docket
7 time to litigate questions that are only peripherally
8 related to the vindication of the underlying civil
9 rights act.

10 QUESTION: On the other hand, as Justice
11 Blackmun points out, the costs of not at least
12 permitting the courts to consider the preparation time
13 is to provide a disincentive to follow alternative
14 remedies and stay out of court altogether.

15 MR. HEADRICK: Now, of course, there's no --
16 and there may be some of that disincentive. But there's
17 no clear indication, at least from the Court's opinion
18 in *Fatsy*, that administrative remedies provide the
19 swiftest or most accurate way to resolve these
20 disputes.

21 And as I've also pointed out, the relief
22 that's granted at the administrative level may not be
23 coextensive with the rights that are sought to be
24 protected by the Petitioner, as in this case. So that
25 even had Petitioner prevailed in this case, he still

1 might have wound up in federal court on his damage to
2 reputation claims and damage claims, as well as
3 injunctive class relief.

4 So we think that that opposition cuts both
5 ways in this case in particular. And in view of the
6 increased litigation over this question of
7 reasonableness, we think the balance should be struck
8 the other way.

9 And on balance, we would assert in the
10 Respondents' view that denial of fees for optional state
11 administrative proceedings in this case would indeed
12 provide lower courts and counsel with a clear line of
13 demarcation and a bright line of demarcation to
14 determine what services are compensable under Section
15 1988 and what services, if the Petitioner chooses to
16 pursue those remedies, for which he must bear his own
17 counsel fees.

18 If there are no further questions, I'd like to
19 thank the Court for its attention. That concludes my
20 remarks.

21 CHIEF JUSTICE BURGER: Mr. Headrick.

22 Do you have anything further?

23 REBUTTAL ARGUMENT OF
24 CHARLES STEPHEN RALSTON, ESQ.,
25 ON BEHALF OF PETITIONER

1 MR. RALSTON: May it please the Court:

2 I have a very few responses. With regard to
3 what went on in the administrative process and what was
4 sought in district court, it is true that broader relief
5 was initially sought in district court, but the case was
6 actually settled based on exactly what the school board
7 could have granted. That is, the back pay plus in this
8 case, since Mr. Webb had gotten another job, not
9 reinstatement but the wiping out, expungement of his
10 record and allowing to change a dismissal to a
11 resignation.

12 Indeed, if one looks at the transcript of the
13 hearings before the school board, it reads remarkably
14 like a proceeding to vindicate a racial discrimination
15 claim, a claim of racial discrimination in employment in
16 an individual discrimination claim brought under Section
17 1981. For that reason, the work that was done clearly
18 was relevant to the federal claims, and clearly we
19 believe aided in the ultimate resolution of this case
20 through settlement.

21 With regard to whether our rule that we
22 request would open up further litigation over what is
23 reasonable, again, the district courts on a daily basis,
24 dealing with counsel fee applications, deal with whether
25 some particular time spent was reasonable, with regard

1 to whether it was necessary to spend so much time taking
2 depositions, which are not done before the court,
3 whether discovery was reasonable, whether other
4 activities.

5 If the defendant objects to time as being too
6 much, being unreasonable, then the district courts have
7 found themselves perfectly capable of dealing with
8 that. And frankly, I don't see anything inherently more
9 difficult in dealing with looking at an administrative
10 proceeding such as was gone through here and deciding
11 whether or not what was done was reasonable in terms of
12 attempting to enforce federal civil rights.

13 QUESTION: Mr. Ralston, let me ask you a
14 question on that point. Supposing there is one day of
15 work in the state proceeding that clearly did not
16 facilitate anything in the federal proceeding. Just,
17 you had to go in and get a continuance or some
18 stipulation about state procedure, but you spent six or
19 seven hours doing it. But you would not have had to do
20 that in order to bring out your federal case.

21 Are you entitled to pay for that time?

22 MR. RALSTON: Your Honor, in that particular
23 instance the district court could very well look at that
24 and say, that was not time reasonably spent in
25 vindication of federal civil rights, that's not

1 compensable here.

2 QUESTION: So you're not claiming that you're
3 entitled to be compensated for all the time spent in the
4 administrative proceeding, all time necessary to that
5 proceeding?

6 MR. RALSTON: Not necessarily. I mean, it
7 depends on the circumstances, just as if the case had
8 gone straight into federal court the district court
9 might decide that someone spent 20 hours researching a
10 memo and they could have done it in two hours or it
11 wasn't necessary really to do it at all.

12 QUESTION: It's hard to get the flavor of it,
13 but as I read the district court opinion I thought he
14 was treating the claim as though the lawyer who was then
15 representing the plaintiff sought he was entitled as a
16 matter of law to be compensated for the time in that
17 proceeding more or less as he is in the federal
18 proceeding.

19 MR. RALSTON: Well, the counsel for plaintiff
20 was arguing that all the time was reasonably spent and
21 therefore he should be compensated for it fully. Now,
22 if the district court had reached that issue he may have
23 well disagreed and said: Well, no, I'm only going to
24 give you for 50 hours or 60 hours.

25 QUESTION: But see, I got the impression the

1 parties didn't fight about the allocation, that there
2 was kind of an agreement that 58 hours was on the
3 federal case and 82 hours was on the state proceeding,
4 and you either got the 82 hours or you didn't. And I
5 think you're making a little different argument now.

6 MR. RALSTON: Well, the defendants objected to
7 any of the time as a matter of law, and that's the issue
8 that we're focusing on.

9 QUESTION: And you in effect argue you're
10 entitled to all of it.

11 MR. RALSTON: We said, yes, we're entitled to
12 all of it unless you can convince the court that some of
13 it --

14 QUESTION: That's what I don't find, is the
15 "unless you can convince" part.

16 MR. RALSTON: Well, I guess that issue was
17 never reached, Your Honor, because it all got focused in
18 on whether any of it could be compensated at all and
19 that's the way it was decided. Now, the defendants did
20 also object to certain -- they said 14 hours going to
21 and from a hearing was too much.

22 I imagine plaintiff's counsel are wont to say
23 that was necessary. You know, plaintiffs' counsel don't
24 like to lose hours that they're going to get paid for.
25 But the court, district court, never grappled with that

1 issue at all. It just ruled as a matter of law.

2 QUESTION: Mr. Ralston, suppose there's a case
3 where everything you do to enforce your state rights,
4 state statutory or state constitutional rights, are
5 absolutely the same as what you would be doing to
6 enforce the federal right, and in the state proceeding
7 you just -- you have a federal constitutional claim, but
8 you also have these state claims, and you just go
9 forward.

10 MR. RALSTON: Your Honor, in that case it
11 would be the same issue that was grappled with, I think,
12 in Hensley. If the claims are so intertwined as to be
13 not divisible and if the party prevails, then they'd be
14 entitled to be compensated for that time, assuming that
15 it was a substantial federal claim.

16 QUESTION: Even though if he hadn't joined his
17 claim, his federal claim, he would have done exactly the
18 same thing?

19 MR. RALSTON: Yes. If he has presented a
20 substantial federal claim and hasn't just thrown it in
21 there to try to get fees -- and in this case these facts
22 do not present that circumstance, because here was a
23 substantial federal claim, particularly the claim of
24 racial discrimination which was the heart of Mr. Webb's
25 claim all along -- then he should be compensated for it

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under Hensley.

Thank you.

CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 2:35 p.m., the argument in the
above-entitled case was submitted.)

* * *

CERTIFICATION

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

#83-1360 - LEONARD WEBB, Petitioner v. COUNTY BOARD OF EDUCATION OF DYER
COUNTY, TENNESSEE, ET AL.

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

BY Paul A. Richardson

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