After a 30 second greeting. Professor Lawrence looks down at his chart with everyone’s picture and name on it. Each one of our hearts begins to beat fast; our stomachs tighten – Will it be me? Am I going to get called on and grilled for the next 55 minutes while the other 98 kids in this room stare at me?

Lawrence finally picks his victim. “Mister Walsh. Good morning. Please tell us the facts of Golberg v. Kelly.” Walsh, with a nervous but steady tone, begins to tell the facts of the case. His voice cracks several times from nerves, but none of us can tell because we are all trying to recover from the fear of almost being called on. After discussing the facts for about 20 minutes, those who were lost while reading the assignment over the weekend learn that Golberg was a class representative who sued the city of New York on behalf of a group of welfare recipients who had their benefits terminated without a pre-termination hearing. The case was appealed all the way up to the United States Supreme Court. There, Justice Brennan wrote the opinion that decided, once and for all, that terminating people from welfare without having given them an opportunity to argue that they are still deserving of the benefits is a deprivation of Due Process under the 14th Amendment of the United States Constitution. Lawrence, with a respectful and yet, terrifying inquiry, asks, “Mister Walsh, what does Brennan and the rest of the majority hold in this case?”

Walsh, now with both hands visibly shaking, replies “The majority held that terminating welfare benefits without a hearing violates the Due Process clause of the 14th Amendment.” Wow, Walsh did pretty well. He knew his facts cold, the procedural history, and the holding – everything we were told to brief during orientation last week. Walsh takes a deep breath and probably thinks the same thing.

But then, as he rolls up his sleeves, Lawrence continues, “OK, now the hard stuff.” WHAT?! The HARD stuff?! Walsh was just grilled for the last 30 minutes about every little fact of this case. What else is there?

Lawrence asks, “Why does the majority come out this way? Why is this a deprivation of Due Process?”

Walsh is speechless. “Uh. . .Well, the Court said it violated their rights.”

Lawrence frowns. “Yes. But why? What is the Court balancing and why are they coming out this way? What is driving this, Mr. Walsh?”

Walsh just stares at this computer notes, hoping that the answer will appear on his screen and trying to avoid eye contact with Lawrence.

Oh no, is he going to call on someone else? I hope it isn’t me! I don’t know the answer. The case didn’t tell us that, I don’t think it did, anyway.

Lawrence now searches his chart for another victim and with that, the heart beats increase once again. Students looks down at their laptops or notebooks so as not to make eye contact with Lawrence if he looks up before making his selection. Oh no, he is
looking up and in this direction. Please, please don't pick me. We still have 25 minutes left and I don’t know the answer.

Lawrence looks up, about to call on someone in the 3rd row. Then tension in the room is palpable. Please, please not me! Just as Lawrence is about to call on someone, a student raises his hand! What! Someone is volunteering for this?!

Lawrence smiles, “Ah. Mis-terrrrrr Koenigsberg? What is driving this?

Koenigsberg replies, “I think that Brennan is saying that although the state has a legitimate interest in not giving welfare to people who no longer need it, the marginal cost to the state in giving the recipients a pre-termination hearing is far outweighed by the marginal benefit of giving a hearing to people who would otherwise be erroneously deprived of benefits, given their ‘brutal need,’ as Brennan notes.”

Wow, I wouldn’t have thought of that. Good thing he raised his hand.

Lawrence continues, “Correct, but then why does the dissent come out the other way?”

Koenigsberg replies, “The dissent is saying that Brennan’s analysis is faulty because he is not accounting for one of the costs involved with giving someone a pre-termination hearing.”

Lawrence asks, “And what cost is that?”

Koenigsberg says, “The dissent points out that if it is difficult and costly for the state to get someone off welfare, then there will be less money in the program to bring in new and deserving recipients because the money will be getting spent on providing benefits, erroneously, to non-deserving recipients. The dissent is not saying that the majority is wrong in balancing the marginal costs and benefits to the state and recipients; they are just saying that the majority is not taking into account the proper weight of the marginal cost in giving all recipients pre-termination hearings.”

Geez, I didn’t pick that up in the reading. Is he right?

Lawrence smiles, “Correct, Mr. Koenigsberg.”

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