Washington and Lee Law Review

Volume 25 | Issue 2 Article 11

Fall 9-1-1986

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pense involved in defending a union suit against him. Although *Allis-Chalmers* has determined that the court enforcement of a union fine does not "coerce" the worker within the Court's strained interpretation of the Taft-Hartley Act, the worker's freedom of choice is nonetheless restricted much more than before.

The significance of *Natzke* is not in its references to a contract of union membership, but in the labor policy of putting the weak union in a better bargaining position. A recent trend in Supreme Court decisions has been toward accomplishing this objective by a sacrifice of the employee's rights guaranteed under the Labor-Management Relations Act.[45] Under the union security provision coupled with the new union right to enforce its fines in court, the employee is required to join the union and has little choice but to obey its commands.[46] While the approach toward internal strengthening of the union is not without merit, well defined regulations set up by Congress would seem appropriate rather than Court-made law based on "legal fabrications" and anomalous interpretations of existing labor law.

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THE REGULATED PRACTICE OF THE JAILHOUSE LAWYER

The regulations of the Atlanta Penitentiary provide that an inmate is not to receive assistance from another in the preparation of any legal documents.[1] Four federal penitentiary prisoners attacked

[45]In addition to *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967), the Supreme Court in *Vaca v. Sipes*, 386 U.S. 171 (1967) drastically limited the employees' use of the § 301 action which allows an employee to sue his employer for breach of contract. In the dissenting opinion Justice Black states: "[F]inally, the Court suggests that its decision 'furthers the interest of the union as statutory agent.' I think this is the real reason for today's decision which entirely overlooks the interests of the injured employee, the only one who has anything to lose." *Id.* at 209.

[46]The Court of Appeals for the 7th Circuit in *Allis-Chalmers* refused to allow the union the benefit of a court enforced fine feeling this would frustrate "our natural desire to maintain the historical liberty of the American working man to remain free and to work without coercion from employers *or* from unions...." 358 F.2d at 658. In allowing the union this advantage, the Supreme Court in *Allis-Chalmers* did, however, limit its decision to "full union members," possibly implying that one who restricted his activity to mere payment of dues would not be subject to this new form of union discipline. This restriction would seemingly base the member's capacity to be fined on whether he has actually taken advantage of the membership for which he has been required to pay and thus becomes a "voluntary" union member.

[1]White v. Blackwell, 277 F. Supp. 211, 219 (N.D. Ga. 1967). This regulation

this regulation by a petition for declaratory and injunctive relief in *White v. Blackwell.*[2] The prisoners alleged that the rules prohibiting the legal assistance of other inmates hindered them in exercising their constitutional right of free access to the courts. However, the prison administration contended that the purpose of the rules was to maintain prison discipline and that to permit jailhouse lawyers would create an undesirable "power structure" within the prison. *White* held that these rules would be invalid if literally interpreted and enforced. The court stated that an amendment to the rules which would reasonably regulate, but not prohibit, the practice of the jailhouse lawyer would be acceptable.

Narrowly viewed, *White* may be interpreted as a decision resting entirely upon administrative practice. The prison administration allowed White, a jailhouse lawyer, to consult with the other prisoners on legal matters even though this practice was contrary to the regulations.[3] Thus *White* may be merely indicating that the prison administration must be consistent in its drafting and enforcement of the rules.

However, *White* may be a much broader decision resting on the constitutional provisions of the right to counsel under the sixth amendment, the reasonable access to the courts under the due process clause of the fifth amendment, and freedom of speech under the first amendment.[4] This broader interpretation stems from *White*'s apparent approval of the use of lay-attorneys. The court went beyond the facts and said that even if the regulations were enforced strictly as written so as to apply equally to all prisoners, then the rules would still not be valid. The court stated that the prison officials could regulate the giving of assistance but could not totally prohibit it.

The Supreme Court of the United States has repeatedly held that a prison administration must not violate a prisoner's reasonable ac-

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was adopted by the Warden in accordance with the guidelines of the United States Bureau of Prisons.

[2]277 F. Supp. 211 (N.D. Ga. 1967).

[3]*Id.* at 215.

[4]The first amendment rights of prisoners have received extensive consideration in cases involving the prisoner's right to practice his religion. Generally these cases indicate that although a prisoner has a right to practice his religion, he may not do so to the detriment of prison discipline. *See* 45 U.N.C. L. REV. 535, 536-37 n.9 (1967); Note, *Constitutional Rights of Prisoners: The Developing Law,* 110 U. PA. L. REV. 985, 997 (1962). Generally, any form of prisoner expression is regulated to conform with the requirements of prison discipline. 40 S. CAL. L. REV. 407 (1967). Thus, it appears that the jailhouse lawyer should be permitted to speak with other inmates, provided that his actual communication does not interrupt the normal course of prison life and the substance of the communication does not encourage discontent or incite inmates to riot.

cess to the courts.[5] But the Supreme Court has defined reasonable access as being the actual presentation of a petition in court.[6] By permitting the assistance of a jailhouse lawyer *White* has essentially extended access to include effective access, the right of a prisoner to present a more intelligible and therefore understandable petition to the court.

This principle is a departure from previous access cases, each dealing with the right of a prisoner to use or even to be provided with legal facilities such as libraries, books, and general legal materials. These cases have been primarily concerned with the actual presentation of the appeal to the court.[7] *Roberts v. Peppersack*[8] noted that where a prisoner is seeking the use of legal materials to " 'effect his remedy' ",[9] a constitutional issue is not presented because the prisoner has not been denied *actual* access to the courts. *In re Allison*[10] noted that the primary function of the right to access is only to insure that a prisoner receives a full and timely judicial review. Consequently, the prison is under no constitutional duty to provide legal facilities for prisoner research so long as access to the courts is not unreasonably affected. Thus, courts have refused to interpret reasonable access to mean effective access to the courts. *White* suggests that effective access is the appropriate interpretation of reasonable access and offers a means of implementing this theory through the use of jailhouse lawyers.

As for the right to counsel, the Supreme Court has yet to hold that a prisoner has a constitutional right to counsel for the filing of post-conviction appeals.[11] The theory has been that the habeas corpus

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[5]Dowd v. United States *ex rel.* Cook, 340 U.S. 206 (1951); Cochran v. Kansas, 316 U.S. 255 (1942); *Ex parte* Hull, 312 U.S. 546 (1941); *accord,* DeWitt v. Pail, 366 F.2d 682 (9th Cir. 1966); Stiltner v. Rhay, 322 F.2d 314 (9th Cir. 1963); United States *ex rel.* Wakeley v. Pennsylvania, 247 F. Supp. 7 (E.D. Pa. 1965); *see* Mayberry v. Prasse, 225 F. Supp. 752 (E.D. Pa. 1963).

[6]*See* Dowd v. United States *ex rel.* Cook, 340 U.S. 206 (1951); Cochran v. Kansas, 316 U.S. 255 (1942); *Ex parte* Hull, 312 U.S. 546 (1941).

[7]Lee v. Tahash, 352 F.2d 970 (8th Cir. 1965); Williams v. Wilkens, 315 F.2d 396 (2d Cir. 1963), *cert. denied,* 375 U.S. 852 (1963); Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961), *cert. denied,* 368 U.S. 862 (1961); Roberts v. Peppersack, 256 F. Supp. 415 (D. Md. 1966); United States *ex rel.* Wakeley v. Pennsylvania, 247 F. Supp. 7 (E.D. Pa. 1965); Barber v. Page, 239 F. Supp. 265 (E.D. Okla. 1965); *In re* Allison, 57 Cal. Rptr. 593, 425 P.2d 193 (1967); *In re* Chessman, 44 Cal. 2d 1, 279 P.2d 24 (1955).

[8]256 F. Supp. 415 (D. Md. 1966).

[9]*Id.* at 433.

[10]57 Cal. Rptr. 593, 425 P.2d 193 (1967).

[11]"[I]t is important to recognize that the Supreme Court has not yet held that it [representation by counsel for post-conviction remedies] is an indispensable element of due process under the Constitution." Johnson v. Avery, 382 F.2d 353, 356 (6th Cir. 1967). It is interesting to note that the Supreme Court has recently held that an indigent prisoner must be provided counsel in post-conviction proba-

petition is a civil proceeding while the right to counsel under the sixth amendment refers to criminal proceedings.[12] However, it should be noted that federal courts may and do appoint counsel to aid an indigent prisoner in articulating his appeal, when the court deems it appropriate.[13]

Thus it appears that while not guaranteeing the right to counsel for post-conviction appeals, the courts have recognized its importance. As *White* noted, prisoners may receive legal assistance from voluntary organizations such as law schools, bar associations, and legal aid societies.[14] *White* further indicates, and receives Fourth Circuit support for, the proposition that the prison administration could regulate the practice of a jailhouse lawyer in accordance with the availability of other forms of legal assistance and the existence of a qualified inmate.[15] By permitting the practice of a jailhouse lawyer where no other assistance is available, *White* has recognized the merit in counsel for post-conviction appeals and may be holding that to deny the prisoner the right to consult with a qualified inmate may be a denial of the right to counsel.

Freedom of speech under the first amendment, in the context of this case, is intertwined with the problem of unauthorized practice of law.[16] In *White* the prisoners raised the first amendment issue; the court dismissed this contention by a footnote observation that there was no first amendment restriction on speech except for "prohibitions against unauthorized practice of law."[17] However, if the petitioner's activity is not protected speech because it is "unauthorized practice," then is not the activity prohibited on the separate grounds of being "unauthorized practice"?

The question as to whether the jailhouse lawyer has a right to

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tion proceedings. Mempa v. Rhay, 389 U.S. 128 (1967). This recent step indicates that the Supreme Court may be prepared to extend the right to counsel to other post-conviction stages. Further, several federal courts have noted the desirability of appointing counsel for post-conviction appeals. Taylor v. Pegelow, 335 F.2d 147 (4th Cir. 1964); Dillon v. United States, 307 F.2d 445 (9th Cir. 1962); United States *ex rel.* Wissenfield v. Wilkins, 281 F.2d 707 (2d Cir. 1960).

[12]*See, e.g.*, Flowers v. Oklahoma, 356 F.2d 916 (10th Cir. 1966); Barker v. Ohio, 330 F.2d 594 (6th Cir. 1964); Miller v. Gladden, 228 F. Supp. 802 (D. Ore. 1964); see 46 TEXAS L. REV. 566, 570 (1968) for a discussion of the right to counsel in relation to the jailhouse lawyer.

[13]*See, e.g.*, Coleman v. Peyton, 362 F.2d 905 (4th Cir. 1966); *see also* 28 U.S.C.A. § 1915(d) (1966).

[14]*See,* 19 STAN. L. REV. 887 (1967) and 1967 WIS. L. REV. 514 (1967) for a discussion of various legal assistance program for prisoners.

[15]Arey v. Peyton, 378 F.2d 930 (4th Cir. 1967).

[16]*Cf.*, Brotherhood of Railroad Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U.S. 1 (1963); NAACP v. Button, 371 U.S. 415 (1963).

[17]White v. Blackwell, 277 F. Supp. 211, 218 n.4 (N.D. Ga. 1967).

practice law has arisen within both state and federal jurisdictions. It is accepted that states either through the auspices of their bars or by legislative action have the right to determine the qualifications for entrance to their bars and to regulate the practice of law[18] within their jurisdiction.[19] Consequently, in *Siegel v. Ragen*[20] when a state penitentiary confiscated material used by an inmate in his "law department," the issue of whether the inmate was practicing law illegally was summarily dismissed because "[O]nly the Supreme Court of Illinois has the power to license persons to practice law within the limits of that State."[21]

The federal government has the power to determine who will practice within its courts, and in the absence of special federal legislation,[22] the state has the power to determine who may practice within its boundaries.[23] Presently, there is no federal statute which authorizes the practice of a jailhouse lawyer. The argument that 28 U.S.C.A. § 2242[24] is such a statute was dismissed by *Johnson v. Avery*.[25] The statute provides that a habeas corpus petition may be signed and verified by the person for whose relief it is intended or by someone acting in his behalf. *Johnson* indicated that the section covers situations where the appellant was unable to sign or verify his petition due to a mental or physical handicap rather than due to a lack of intelligence or legal training which would keep him from drafting his own papers. Thus, the weight of authority would not permit the

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[18]The practice of law includes both advising another as to his legal problem and the preparation of legal papers, pleadings or documents. GA. CODE ANN. § 9-401 (Supp. 1967); TENN. CODE ANN. § 29-302 (1955). *See, Annot.*, 151 A.L.R. 781 pt. 2 (1944).

[19]Konigsberg v. State Bar of Calif., 266 U.S. 36 (1961); *In re* Anastaplo, 366 U.S. 82 (1961); Emmons v. Smitt, 149 F.2d 869 (6th Cir. 1945); Niklaus v. Simmons, 196 F. Supp. 691 (D. Neb. 1961). It should be noted that the interests of states are sometimes deemed less significant when a constitutional issue has been raised, but this has only arisen in solicitation cases involving trained attorneys. Brotherhood of Railroad Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U.S. 1 (1963); NAACP v. Button, 371 U.S. 415 (1963).

[20]180 F.2d 785 (7th Cir. 1950).

[21]*Id. at* 788. *Accord,* United States *ex rel.* Wakeley v. Pennsylvania, 247 F. Supp. 7 (E.D. Pa. 1965); Edmundson v. Harris, 239 F. Supp. 359 (W.D. Mo. 1965); Brabson v. Wilkins, 19 N.Y.2d 433, 227 N.E.2d 384, 280 N.Y.S.2d 561 (1967).

[22]*E.g.*, Sperry v. Florida *ex rel.* The Florida Bar, 373 U.S. 379 (1963).

[23]Sperry v. Florida *ex rel.* The Florida Bar, 373 U.S. 379 (1963); Spanos v. Skouras Theatres Corp., 364 F.2d 161 (2d Cir. 1966); Grace v. Allen, 407 S.W.2d 321 (Tex. Civ. App. 1966).

[24]28 U.S.C.A. § 2242 (1959) states, "Applications for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf."

[25]382 F.2d 353 (6th Cir. 1967), *rev'g* 252 F. Supp. 783 (M.D. Tenn. 1966).

legal assistance of a jailhouse lawyer since it would be an illegal practice of law.

The rationale for imposing limitations on the practice is to protect the general public from unlearned and unskilled legal advisors.[26] However, such a policy consideration may not be applicable to the jailhouse lawyer situation as the practice would have no direct detrimental effect upon the general public. Within a prison population any legal advice may be more beneficial to a prisoner than no assistance at all.[27] Furthermore, the court in *White* appears to have been influenced by the fact that there were no voluntary organizations such as law schools, bar associations, or legal aid societies that could advise prisoners on their post-conviction remedies.[28]

White, then, may be purely an administrative decision suggesting that the prison administration should regulate the practice of the jailhouse lawyer in accordance with *White*'s legal assistance requirement for post-conviction appeals. However, by permitting the regulated practice of jailhouse lawyers *White* has implied various constitutional mandates: reasonable access to the courts may now include effective access; prisoners have a right to either trained or untrained legal assistance in filing their post-conviction appeals; such a practice will not be precluded by the possibility that the activity could be construed as an unauthorized practice of law. Although these constitutional issues remain unanswered, *White* appears to offer a reasonable solution to the predicament of the less educated and indigent inmate who is truly incapable of formulating his own appeal.

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[26]Cape May County Bar Ass'n v. Ludlam, 45 N.J. 121, 211 A.2d 780 (1965); Auerbacher v. Wood, 142 N.J. Eq. 484, 59 A.2d 863 (1948); *In re* Wysell, 10 App. Div. 2d 199, 198 N.Y.S.2d 456 (1960); West Virginia State Bar v. Earley, 144 W. Va. 504, 109 S.E.2d 420 (1959). *See In re* Holovachlea, 245 Ind. 483, 198 N.E.2d 381 (1964); Menz v. Coyle, 117 N.W.2d 290 (N.D. 1962); *In re* Jacobson, 240 S.C. 436. 126 S.E.2d 346 (1959).

[27]"There may be . . . inmates who are qualified to assist . . . a prisoner, and who are . . . capable of advising them objectively, of encouraging their appeal to the courts when authorized, and discouraging the same when no good cause of action exists." White v. Blackwell, 277 F. Supp. 211, 219 (N.D. Ga. 1967).

[28]*Id.* at 219-20.