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Constitutional Law - Civil Rights - Restrictions on the Use of Legal Materials by Prisoner

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RECENT DECISIONS

CONSTITUTIONAL LAW—CIVIL RIGHTS—RESTRICTIONS ON THE USE OF LEGAL MATERIALS BY PRISONERS—Plaintiff prisoners brought separate actions against the warden of the Oregon State Penitentiary, alleging that the enforcement by prison officials of restrictions on the availability, use and purchase of law books resulted in a denial of full access to the courts. It was further alleged that each of them must do by himself all or part of the legal preparation necessary to contest his detention or to defend criminal charges pending against him in a state or federal court. In proceedings brought in the federal district court under the Civil Rights Act[1] to enjoin further enforcement of these restrictions, *held,* for plaintiffs. Denial of access to courts constitutes a deprivation of civil rights of prisoners, and the study of law cannot be restricted where this is necessary to the utilization of a basic right. *Bailleaux v. Holmes,* (D.C. Ore. 1959) 177 F. Supp. 361.

It is recognized that lawful imprisonment brings about the necessary withdrawal or limitation of many privileges and rights.[2] Thus, in the interest of prison discipline, it has been held that prison officials have broad powers to censor both incoming and outgoing mail, even when this mail consists of legal documents or correspondence between prisoners and their attorneys,[3] and that the officials have power to supervise and curtail the business affairs of prisoners.[4] Likewise, prisoners have no absolute right to plead and manage their own cases personally on appeal[5] and no unrestricted right to file civil actions.[6] Beyond limitations on privileges necessary for prison discipline, however, conviction and incarceration deprive a prisoner of only those liberties which the law demands he should lose as the penalty for his crime.[7] The fact that a person is in prison, therefore, does not deprive him of the right to invoke the provisions of the Civil Rights Act for the protection of rights guaranteed by the federal government.[8]

1 Action was brought under 17 Stat. 13 (1871), 42 U.S.C. (1958) §1983, which provides a civil remedy for the deprivation of rights by persons acting under color of law, and under 28 U.S.C. (1958) §1343, which vests jurisdiction in the federal district courts over civil actions commenced by any persons for the redress of rights given under the Constitution or Acts of Congress. See comment, 56 MICH. L. REV. 619 (1958) and note, 58 MICH. L. REV. 786 (1960) for general discussions of the Civil Rights Act.

2 Price v. Johnston, 334 U.S. 266 (1948).

3 E.g., Adams v. Ellis, (5th Cir. 1952) 197 F. (2d) 483; Dayton v. Hunter, (10th Cir. 1949) 176 F. (2d) 108; Green v. State of Maine, (S.D. Me. 1953) 113 F. Supp. 253 (correspondence with attorney); Commonwealth ex rel. Langley v. Myers, (Pa. Com. Pl. 1956) 73 Montg. 159 (legal documents).

4 United States ex rel. Wagner v. Ragen, (7th Cir. 1954) 213 F. (2d) 294; Stroud v. Swope, (9th Cir. 1951) 187 F. (2d) 850.

5 Price v. Johnston, note 2 supra.

6 Tabor v. Hardwick, (5th Cir. 1955) 224 F. (2d) 526.

7 Coffin v. Reichard, (6th Cir. 1944) 143 F. (2d) 443.

8 Siegel v. Ragen, (7th Cir. 1950) 180 F. (2d) 785; McCollum v. Mayfield, (N.D. Calif. 1955) 130 F. Supp. 112. State prison officials, enforcing prison discipline, clearly act under color of state law and their actions therefore fall within the scope of the Civil Rights Act.

In the principal case the guaranteed right sought to be protected is that of access to the courts, a right which has been previously recognized by the United States Supreme Court.[9] Two leading cases in which the right has received protection hold that the right is violated by denying prisoners access to the courts, unless such prisoners procured counsel to represent them,[10] and by prison regulations which restricted the right to apply to a federal court for a writ of habeas corpus.[11] In holding that the right is violated by restrictions on the study of law and use of legal materials in a state prison, the court in the principal case has gone one step further in the protection of this right. The restrictions struck down in the principal case, however, are much more closely connected with prison administration and discipline than those in the earlier cases, and to this extent the decision represents a reversal of the traditional reluctance of federal courts to interfere with the administration of state prisons. It is frequently said that it is not the function of the courts to supervise the treatment and discipline of prisoners and therefore relief against enforcement of prison rules and regulations must be denied.[12] This position is undoubtedly taken because discipline is one of the great problems of prison administration. But balanced against discipline problems is the care that must be taken to insure the right of a prisoner to be able effectively to contest the validity of his confinement and to safeguard against abuses of this right by prison officials. In this regard, access to courts might be as effectively denied by unreasonably preventing the preparation of legal documents as by preventing their filing. However, the competing considerations of the need for prison discipline as opposed to the protection of the basic rights of prisoners would seem to call for a closer analysis of the facts and actual operation of the restrictions

Gordon v. Garrson, (E.D. Ill. 1948) 77 F. Supp. 477. Protection of these rights might also be secured by the writ of habeas corpus, but several limitations have been placed upon its use for after-trial deprivations of rights. See comment, 33 NEB. L. REV. 434 (1954).

[9] See CORWIN, CONSTITUTION OF THE UNITED STATES OF AMERICA 1137 (1953); Ex parte Hull, 312 U.S. 546 (1941); White v. Ragen, 324 U.S. 760 (1945).

[10] White v. Ragen, note 9 supra. It has also been held that suppression of the papers necessary for an appeal until the time for filing an appeal has passed is a denial of equal protection under the laws. Dowd v. United States ex rel. Cook, 340 U.S. 206 (1951); Cochran v. Kansas, 316 U.S. 255 (1942). However, no rights are violated by the failure to take affirmative action to aid in the filing of an appeal. Hill v. United States, (6th Cir. 1959) 268 F. (2d) 203.

[11] Ex parte Hull, note 9 supra. But see Commonwealth ex rel. Sharp v. Day, 89 Pa. D. & C. 605 (1954).

[12] E.g., Eaton v. Bibb, (7th Cir. 1954) 217 F. (2d) 446; Curtis v. Jacques, (W.D. Mich. 1954) 130 F. Supp. 920. Thus, courts have denied relief from restrictions on the purchase of law books, Grove v. Smyth, (E.D. Va. 1958) 169 F. Supp. 852; the preparation of habeas corpus petitions for other prisoners, Siegel v. Ragen, note 8 supra; the application for correspondence courses, Numer v. Miller, (9th Cir. 1948) 165 F. (2d) 986; and the freedom from racial segregation in prison, Nichols v. McGee, (N.D. Calif. 1959) 169 F. Supp. 721. In other cases the courts have refused to enjoin the enforcement of restrictions on the study of law and the use of law books by prisoners. Piccoli v. Board of Trustees and Warden of State Prison, (D.C. N.H. 1949) 87 F. Supp. 672; Wilson v. Dixon, (9th Cir. 1958) 251 F. (2d) 338.

in each individual case than has heretofore been given by the courts in cases assessing the reasonableness of restrictions. In addition to considering the necessity of the restrictions for effective discipline, courts might give consideration to several related factors in making this analysis. First, if the prisoner requests greater freedom in the use of legal materials for the purpose of preparing a defense to charges pending against him, a stronger case for an injunction against enforcement of restrictions is presented than if he wishes only to appeal his conviction[13] or contest his current sentence or treatment. In matters relating directly to his liability for a crime, no person should be deprived of the best possible opportunity to vindicate himself, and the necessity for legal preparation is urgent in this situation. Second, restrictions which discriminate against the use of legal materials, solely for the reason that they are legal materials, would seem to be clearly unreasonable. Third, if the state makes provision for free legal assistance to indigent prisoners, this would be a strong factor in support of sustaining the prison restrictions.[14] Finally, if the prisoner is able to afford outside legal counsel, restrictions on his use of legal materials are not likely to deprive him of full access to the courts.

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[13] A state does not have to provide appeal procedure, but if it does so it must do so indiscriminately and prisoners are denied equal protection under the laws if they are denied the right to appeal. Ortega v. Ragen, (7th Cir. 1954) 216 F. (2d) 561; Boykin v. Huff, (D.C. Cir. 1941) 121 F. (2d) 865. If a state provides for appeal as a matter of right, it cannot limit the right by requiring that appellant incur expenses beyond his means. Thus it is a denial of equal protection to refuse to furnish a transcript to indigents. Griffin v. Illinois, 351 U.S. 12 (1956). The question whether counsel for appeals must be furnished indigents is unsettled. See State v. Delaney, (Ore. 1958) 332 P. (2d) 71, note, 58 MICH. L. REV. 131 (1959).

[14] A recent statute enacted in Oregon provides for the appointment of free legal counsel to handle appeals and certain other post-conviction legal matters in Oregon courts for indigent prisoners. Ore. Laws (1959) c. 636. This type statute would have to be extended to encompass all types of post-conviction remedies and to relate to proceedings in federal courts and other state courts to provide complete relief.