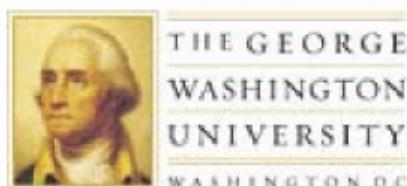


# The Burger Court Opinion Writing Database

*United Transportation Union v. State Bar  
of Michigan*  
401 U.S. 576 (1971)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States

Washington, D.C. 20543

January 21, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

Re: No. 434 - United Transportation Union v. State Bar of Michigan

Dear Hugo:

Dear John:

Can I impose on each of you to present your positions on the  
above case at Conference Friday?

It seems to me the question is whether this is a replaying  
of an "old record" or a variation, and between you we could flush  
out all the issues.

Regards,

Mr. Justice Black

Mr. Justice Harlan ✓

3P  
B  
RM  
  
CHAMBERS OF  
THE CHIEF JUSTICE

Supreme Court of the United States  
Washington, D. C. 20543

February 8, 1971

Re: No. 434 - United Transportation Union v.  
State Bar of Michigan

Dear Hugo:

Although I agree with much of what you say  
in your memo of January 26, my reservations on the  
staleness of this record linger.

I will await other comment.

Regards,

WHD

Mr. Justice Black

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 31, 1971

Re: No. 434 - United Transportation Union v.  
State Bar of Michigan

Dear Hugo:

Please join me in your opinion. I regret the delay but I have not been wholly satisfied with this case; yet I want to avoid writing separately. I have a feeling that the stale record ought to be brought up to date, but I don't feel strongly enough about it to write.

Regards,

W. B.

Mr. Justice Black

cc: The Conference

ST  
R  
J  
2nd DRAFT

Please join the  
League with your  
Memorandum  
case

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

## SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 434.—OCTOBER TERM, 1970

Circulated JAN 26 1971

United Transportation Union, Petitioner, v. The State Bar of Michigan.

On Writ of Certiorari to the Supreme Court of Michigan.

Recirculated:

[February —, 1971]

Memorandum of MR. JUSTICE BLACK against remand of this case.

The Michigan State Bar brought this action in January 1959 to enjoin the members of the Brotherhood of Railroad Trainmen<sup>1</sup> from engaging in activities undertaken for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act.<sup>2</sup> The complaint charged, as factors relevant to the cause of action, that the Union recommended selected attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants. The State Bar's complaint appears to be a plea for court protection of unlimited legal fees. The Union's answers admitted that it had engaged in the practice of protecting members against large fees and incompetent counsel; that since 1930 it had recommended, with respect to FELA claims, that injured member employees, and their families, con-

<sup>1</sup> On January 1, 1969, after the decree was entered in the court below, the Brotherhood of Railroad Trainmen merged into a newly created union, the United Transportation Union. The successor union is the petitioner in this case.

<sup>2</sup> 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60.

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Gandy  
To: The  
Mr. Justice  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black

3rd DRAFT

From: Bl. M. J.

**SUPREME COURT OF THE UNITED STATES**

*Circulated:*

No. 434.—OCTOBER TERM, 1970

*Recirculated FEB 2*

United Transportation Union,  
Petitioner,  
v.  
The State Bar of Michigan. } On Writ of Certiorari to  
the Supreme Court of  
Michigan.

[February —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Michigan State Bar brought this action in January 1959 to enjoin the members of the Brotherhood of Railroad Trainmen<sup>1</sup> from engaging in activities undertaken for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act.<sup>2</sup> The complaint charged, as factors relevant to the cause of action, that the Union recommended selected attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants. The State Bar's complaint appears to be a plea for court protection of unlimited legal fees. The Union's answers admitted that it had engaged in the practice of protecting members against large fees and incompetent counsel; that since 1930 it had recommended, with respect to FELA claims, that injured member employees, and their families, con-

<sup>1</sup> On January 1, 1969, after the decree was entered in the court below, the Brotherhood of Railroad Trainmen merged into a newly created union, the United Transportation Union. The successor union is the petitioner in this case.

<sup>2</sup> 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60.

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

7p 8

4th DRAFT

From: Black, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated:

No. 434.—OCTOBER TERM, 1970

Recirculated: FEB 4 1971

United Transportation Union,  
 Petitioner,  
 v.  
 The State Bar of Michigan. } On Writ of Certiorari to  
 } the Supreme Court of  
 } Michigan.

[February —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Michigan State Bar brought this action in January 1959 to enjoin the members of the Brotherhood of Railroad Trainmen<sup>1</sup> from engaging in activities undertaken for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act.<sup>2</sup> The complaint charged, as factors relevant to the cause of action, that the Union recommended selected attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants. The State Bar's complaint appears to be a plea for court protection of unlimited legal fees. The Union's answers admitted that it had engaged in the practice of protecting members against large fees and incompetent counsel; that since 1930 it had recommended, with respect to FELA claims, that injured member employees, and their families, con-

<sup>1</sup> On January 1, 1969, after the decree was entered in the court below, the Brotherhood of Railroad Trainmen merged into a newly created union, the United Transportation Union. The successor union is the petitioner in this case.

<sup>2</sup> 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60.

WJD

Re: The Case of the  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun

5th DRAFT

From: Black, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

MR 13 1071

No. 434.—OCTOBER TERM, 1970

Recirculated: \_\_\_\_\_

United Transportation Union,  
 Petitioner,  
 v.  
 The State Bar of Michigan. } On Writ of Certiorari to  
 } the Supreme Court of  
 } Michigan.

[March —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court. The Michigan State Bar brought this action in January 1959 to enjoin the members of the Brotherhood of Railroad Trainmen<sup>1</sup> from engaging in activities undertaken for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act.<sup>2</sup> The complaint charged, as factors relevant to the cause of action, that the Union recommended selected attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants. The State Bar's complaint appears to be a plea for court protection of unlimited legal fees. The Union's answers admitted that it had engaged in the practice of protecting members against large fees and incompetent counsel; that since 1930 it had recommended, with respect to FELA claims, that injured member employees, and their families, con-

<sup>1</sup> On January 1, 1969, after the decree was entered in the court below, the Brotherhood of Railroad Trainmen merged into a newly created union, the United Transportation Union. The successor union is the petitioner in this case.

<sup>2</sup> 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60.

610

P  
RJM  
see p 7

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

7th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated:

No. 434.—OCTOBER TERM, 1970

Recirculated: MAR 20 1971

United Transportation Union,  
Petitioner,  
v.  
The State Bar of Michigan. } On Writ of Certiorari to  
the Supreme Court of  
Michigan.

[March —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Michigan State Bar brought this action in January 1959 to enjoin the members of the Brotherhood of Railroad Trainmen<sup>1</sup> from engaging in activities undertaken for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act.<sup>2</sup> The complaint charged, as factors relevant to the cause of action, that the Union recommended selected attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants. The State Bar's complaint appears to be a plea for court protection of unlimited legal fees. The Union's answers admitted that it had engaged in the practice of protecting members against large fees and incompetent counsel; that since 1930 it had recommended, with respect to FELA claims, that injured member employees, and their families, con-

<sup>1</sup> On January 1, 1969, after the decree was entered in the court below, the Brotherhood of Railroad Trainmen merged into a newly created union, the United Transportation Union. The successor union is the petitioner in this case.

<sup>2</sup> 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60.

1,7,8  
B  
S  
13  
To: The Chief  
Mr. Justice  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

3rd DRAFT

From: Black, J.

SUPREME COURT OF THE UNITED STATES

No. 434.—OCTOBER TERM, 1970

Recirculated. FEB 2 1971

United Transportation Union,  
Petitioner,  
v.  
The State Bar of Michigan. } On Writ of Certiorari to  
the Supreme Court of  
Michigan.

[February —, 1971]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Michigan State Bar brought this action in January 1959 to enjoin the members of the Brotherhood of Railroad Trainmen<sup>1</sup> from engaging in activities undertaken for the stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act.<sup>2</sup> The complaint charged, as factors relevant to the cause of action, that the Union recommended selected attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants. The State Bar's complaint appears to be a plea for court protection of unlimited legal fees. The Union's answers admitted that it had engaged in the practice of protecting members against large fees and incompetent counsel; that since 1930 it had recommended, with respect to FELA claims, that injured member employees, and their families, con-

<sup>1</sup> On January 1, 1969, after the decree was entered in the court below, the Brotherhood of Railroad Trainmen merged into a newly created union, the United Transportation Union. The successor union is the petitioner in this case.

<sup>2</sup> 35 Stat. 65, as amended, 45 U. S. C. §§ 51-60.

February 4, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 434 - United Transportation Union v.  
State Bar of Michigan

Dear Brothers:

I thought I should let you know that as soon as I can get at it I plan to circulate a dissent to the proposed opinion for the Court which has been circulated by Brother Black in this case.

Sincerely,

J. M. H.

6 P JH

3  
/

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas ✓  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 434.—OCTOBER TERM, 1970

Circulated MAR 9 1971

United Transportation Union,  
Petitioner, } On Writ of Certiorari to Recirculated:  
v. } the Supreme Court of  
The State Bar of Michigan. Michigan.

[March —, 1971]

MR. JUSTICE HARLAN, concurring in part and dissenting in part.

The Court's conclusions with respect to the issues presented by the case at bar are, in my view, flawed by the absence of any examination of the relationship between this case and the substantially contemporaneous proceedings in Illinois and Virginia against the same union with respect to the same charges of unprofessional conduct in the Brotherhood's "Legal Aid Department."

### I

The history of the establishment of the Legal Aid Department and the early attacks upon it by state and local bar associations, with the assistance and encouragement of the Association of American Railroads, has been fully recounted elsewhere. See Bodle, Group Legal Services: The Case for *BRT*, 12 U. C. L. A. L. Rev. 306, 307–317 (1965); Note, 50 Cornell L. Q. 344 (1965). The most significant point in this history, for present purposes, came in 1958. With disciplinary proceedings pending against its Regional Counsel in Chicago,<sup>1</sup> the Brotherhood counterattacked by moving in the Supreme Court of Illinois for a declaration that the Brotherhood's plan was both legal and compatible with the minimum

<sup>1</sup> The Chicago Regional Counsel had jurisdiction over the lower peninsula of Michigan, where this lawsuit was brought. App. 14.

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 8-9, 13-14

3rd DRAFT

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES  
From: Harlan, J.

No. 434.—OCTOBER TERM, 1970

Circulated:

APR 2 1971

United Transportation Union,  
Petitioner,  
v.  
The State Bar of Michigan.

Recirculated:  
On Writ of Certiorari to  
the Supreme Court of  
Michigan.

[April —, 1971]

MR. JUSTICE HARLAN, concurring in part and dissenting  
in part.

The Court's conclusions with respect to the issues  
presented by the case at bar are, in my view, flawed by  
the absence of any examination of the relationship be-  
tween this case and the substantially contemporaneous  
proceedings in Illinois and Virginia against the same  
union with respect to the same charges of unprofessional  
conduct in the Brotherhood's "Legal Aid Department."

I

The history of the establishment of the Legal Aid De-  
partment and the early attacks upon it by state and  
local bar associations, with the assistance and encourage-  
ment of the Association of American Railroads, have been  
fully recounted elsewhere. See Bodle, Group Legal  
Services: The Case for *BRT*, 12 U. C. L. A. L. Rev. 306,  
307-317 (1965); Note, 50 Cornell L. Q. 344 (1965). The  
most significant point in this history, for present pur-  
poses, came in the late 1950's. With disciplinary proceed-  
ings pending against its Regional Counsel in Chicago,<sup>1</sup> the  
Brotherhood counterattacked by moving in the Supreme  
Court of Illinois for a declaration that the Brotherhood's  
plan was both legal and compatible with the minimum

<sup>1</sup> The Chicago Regional Counsel had jurisdiction over the lower  
peninsula of Michigan, where this lawsuit was brought. App. 14.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 27, 1971

RE: No. 434 - United Transportation Union v.  
State Bar of Michigan

Dear Hugo:

I agree with your Memorandum of January 26 in the above case.

Sincerely,



W. J. B. Jr.

Mr. Justice Black

cc: The Conference

✓  
M has joined

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 3, 1971

RE: No. 434 - United Transportation Union  
v. State Bar of Michigan

Dear Hugo:

I agree.

Sincerely,

*WJB*  
W.J.B. Jr.

Mr. Justice Black

cc: The Conference

*BS*  
*RM*  
*M*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 28, 1971

No. 434, United Transp. Union

Dear Hugo,

Upon the hypothesis that your memorandum will become the opinion of the Court, I should like to ask that you add the following at the foot thereof:

MR. JUSTICE STEWART took no part in the decision of this case.

Sincerely yours,

*P.S.*

Mr. Justice Black

Copies to the Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES <sup>White, J.</sup>

No. 434.—OCTOBER TERM, 1970

3-10-71

United Transportation Union,  
Petitioner,  
v.  
The State Bar of Michigan.

On Writ of Certiorari to  
the Supreme Court of  
Michigan.

[March —, 1971]

MR. JUSTICE WHITE, concurring in part and dissenting  
in part.

The first provision in the decree prohibiting the union  
from giving or furnishing legal advice to its members or  
their families is overbroad in light of *United Mine  
Workers v. Illinois Bar Association*, 389 U. S. 217 (1967),  
and should be narrowed to prohibit only legal advice by  
nonlawyers. Also, I agree with the Court that the por-  
tion of the decree forbidding the setting of fees by  
union-lawyer agreement cannot stand. Otherwise, how-  
ever, I do not read the decree as being inconsistent with  
our prior cases and I would not now extend them to set  
aside this decree in its entirety.

*gj* *SP*  
2  
To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated:

No. 434.—OCTOBER TERM, 1970

Recirculated: 3-18-71

United Transportation Union,  
Petitioner,  
*v.*  
The State Bar of Michigan.

On Writ of Certiorari to  
the Supreme Court of  
Michigan.

[March —, 1971]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN joins, concurring in part and dissenting in part.

The first provision in the decree prohibiting the union from giving or furnishing legal advice to its members or their families is overbroad in light of *United Mine Workers v. Illinois Bar Association*, 389 U. S. 217 (1967), and should be narrowed to prohibit only legal advice by nonlawyers. Also, I agree with the Court that the portion of the decree forbidding the setting of fees by union-lawyer agreement cannot stand. Otherwise, however, I do not read the decree as being inconsistent with our prior cases and I would not now extend them to set aside this decree in its entirety.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 3, 1971

Re: No. 434 - United Transportation v. Michigan Bar

Dear Hugo:

Please join me.

Sincerely,



T.M.

Mr. Justice Black

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 8, 1971

Re: No. 434 - United Transportation Union v.  
State Bar of Michigan

Dear Hugo:

I would like to withhold my vote in this case pending review of the dissent which John has indicated will be forthcoming.

Sincerely,



Mr. Justice Black

March 12, 1971

Re. No. 434 - United Transportation Union  
v. State Bar of Michigan

Dear Byron:

If you do not mind, I shall appreciate your joining  
me in your partial concurrence and partial dissent.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference