

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

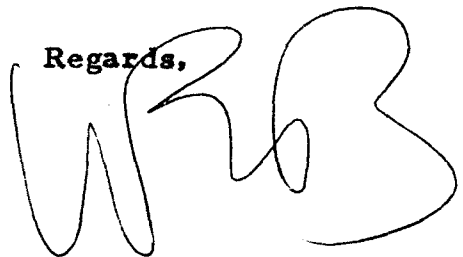
Dear Hugo:

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,

A large, stylized handwritten signature, likely of Warren E. Burger, written in dark ink. The signature is fluid and cursive, with a large 'W' and 'B' being the most prominent features.

Mr. Justice Black

Mr. Justice Harlan ✓

35
L
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,

WJP

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,

WJ

Mr. Justice Black

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

BP
R
J
14

*Please join the
League with your
insurance
in this 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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 434.—OCTOBER TERM, 1970

From: Black, J.

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 Trainmen¹ 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.² 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-

¹ 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.

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

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

3rd DRAFT

From: Black, 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 Trainmen¹ 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.² 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-

¹ 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.

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

WSB

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 434.—OCTOBER TERM, 1970

From: Black, J.

Circulated: _____

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 Trainmen¹ 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.² 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-

¹ 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.

² 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

5th DRAFT

From: Black, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 434.—OCTOBER TERM, 1970

Recirculated: 128 18 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 Trainmen¹ 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.² 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-

¹ 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.

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

THE ADVANCE OF CONCEPTS

see p 7

Circulated:

Recirculated: MAR 20 1971

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

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

Circulated:

Recirculated: FEB 2 1971

No. 434.—OCTOBER TERM, 1970

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 Trainmen¹ 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.² 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-

¹ 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.

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

See (G) 6/9
Paper
W

February 4, 1971

MEMORANDUM TO THE CONFERENCE

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

Dear Brethren:

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.

62
R
✓
H

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,
v.
The State Bar of Michigan.

On Writ of Certiorari to
the Supreme Court of
Michigan.

Recirculated: _____

[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,¹ 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

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

52
L
R
W

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,

Bill

W. J. B. Jr.

Mr. Justice Black

cc: The Conference

TM 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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSSFCNOC OF ADV DVID 1 IN

SS
2/ RM M

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

CHAMBERS OF
JUDGE 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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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 White, J.

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 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.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

WD

DS
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 BLACK-
MUN 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.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT MANUSCRIPTS

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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