St. Mary's Law Journal

Volume 3 | Number 2 Article 10

12-1-1971

# San Quentin Prison Officials Are Permanently Enjoined from Enforcing or Using Disciplinary Proceedings Which Deprive Prisoners of Their Constitutional Rights for the Reason That They Violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

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of the school district (or other political entity) which may conduct a bond election. What of the hardcore poor? What of the welfare mother living in a public assistance project? What of the newly enfranchised teen-agers? The very fact that a dual election procedure was set up indicates a recognition by the state that some otherwise qualified electors were excluded by the property taxpayer qualification. Significantly, the relator in this case was not a disenfranchised voter, but a school district trying to swing a controversial bond issue.

Even assuming that no otherwise qualified voter is excluded by the provisions, the paying of a tax as a precondition to voting has been denounced as invidiously discriminatory against the poor.[35] While it is true that the right to vote is not lost for failure to pay the tax, the owner must still subject himself to tax liability as a prerequisite to voting. It is established law that a state violates the equal protection clause whenever it makes the affluence of the voter or payment of any fee an electoral standard. "Voter qualifications have no relation to wealth nor to paying or not paying [any tax] . . . ."[36]

*Allen Cazier*

CIVIL RIGHTS—DUE PROCESS AND EQUAL PROTECTION CLAUSES PERTAIN TO PRISONERS—SAN QUENTIN PRISON OFFICIALS ARE PERMANENTLY ENJOINED FROM ENFORCING OR USING DISCIPLINARY PROCEEDINGS WHICH DEPRIVE PRISONERS OF THEIR CONSTITUTIONAL RIGHTS FOR THE REASON THAT THEY VIOLATE THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT. *Clutchette v. Procunier*, 328 F. Supp. 767 (N.D. Cal. 1971).

Plaintiffs, inmates of San Quentin State Prison, brought a civil action pursuant to 42 U.S.C. 1983 to seek relief for state prisoners from alleged deprivation of their constitutional rights secured by the due process and equal protection clauses of the fourteenth amendment. Plaintiffs seek a declaratory judgment, preliminary and permanent injunctive relief and damages.[1] The purpose of this particular complaint is to test the constitutionality of the San Quentin Prison Institution Plan for the Administration of Inmate Discipline. This plan enables a prison employee to report what he believes is a violation of some prison rule by filing a written report.[2] Once this report has been filed the

35 Harper v. Virginia Bd. of Elections, 383 U.S. 633, 666, 86 S. Ct. 1079, 1081, 16 L. Ed. 2d 169, 172 (1966).
36 *Id.*

1 Clutchette v. Procunier, 328 F. Supp. 767, 769 (N.D. Cal. 1971).
2 *Id.* at 773.

accused inmate is not permitted to look at the written accusations. In cases involving more serious offenses the prison officials have the authority to place an inmate in an isolation cell ". . . immediately after the alleged infraction and may be held there for up to seven days before adjudication by a disciplinary committee."[3] The inmate is then brought before the committee for a hearing in which he is denied the right to present witnesses, the right to be confronted by the guard who made the original report, the right to be defended by any type of counsel, the right to a hearing before an impartial tribunal, and the right to be informed of any appeal process. Finally, there are no regulations as to what punishment should be imposed for particular offenses.

On the same day the complaint was originally filed the court issued an order requiring the defendant to show cause why an injunction should not be granted enjoining these disciplinary proceedings and punishments. Held—*Injunction granted.* San Quentin prison officials are permanently enjoined from enforcing or using disciplinary proceedings which deprive prisoners of their constitutional rights for the reason that they violate the due process and equal protection clauses of the fourteenth amendment. Defendants were also ordered by the district court to establish a new set of proceedings and disciplinary hearings that will comply with the opinion of this court. The defendants were given 100 days for approval by the district court and ten days prior to this date of submission, defendants must serve a copy of their new plan to the plaintiffs' attorneys.[4]

The fundamental principle that our federal courts have followed concerning prisoners' rights, administration of state prisons, and the disciplinary measures taken against prisoners, has been a "hands off" policy absent unusual circumstances.[5] During the 1800's this policy of non-intervention was strictly adhered to and as a result prisoners' rights were virtually nonexistent. The court in *Ruffin v. Commonwealth*, a case often relied upon, held that the prisoner is not entitled to any constitutional rights. In their decision the court interpreted the Constitution as not being applicable to the prisoner:

[3] *Id.* at 773. The usual procedure is that: "Within a day after placement in isolation, the inmate will be seen by an officer of the 'Unit Disciplinary Hearing Court.' This officer is supposed to 'inform the inmate of the charges placed against him, receive his plea of guilty or not guilty, and . . . carefully weigh the evidence against him.' As a result of this adjudication, the officer may himself impose a penalty, but 'serious' cases must be referred to the Unit Disciplinary Subcommittee. If such a referral is made, the officer is required to serve the inmate with a CDC Form 263 Notice of Complaint. These notices are required to state simply the charge number and title (*e.g.*, 'Inmate Behavior D1201') but need not describe the particular act of misbehavior which may be charged in the Form 115."

[4] *Id.* at 785.

[5] Snow v. Gladden, 338 F.2d 999 (9th Cir. 1964); Sewell v. Pegelow, 291 F.2d 196 (4th Cir. 1961). *See also* Banning v. Looney, 213 F.2d 771 (10th Cir. 1954). In this case the court ruled: "Courts are without power to supervise prison administration or to interfere with the ordinary prison rules or regulations. Neither have we power to inquire with respect to the prison detention in the Lewisburg Prison."

> The bill of rights is a declaration of general principles to govern a society of freemen, and not of convicted felons and men civilly dead. Such men have some rights it is true, such as the law in its benignity accords to them, but not the rights of freemen. They are the slaves of the State undergoing punishment for heinous crimes committed agaist the laws of the land.[6]

Prior to recent litigation the courts preferred to continue this "hands off" policy with the exception of protecting the prisoner from cruel and unusual punishment.[7] This restrictive policy appears to be based upon the premise that it is necessary for our society to take away the rights of a prisoner that are enjoyed by a freeman.[8]

The decision of the court in *Price v. Johnston*,[9] a precedent often used when restricting prisoners' rights, continued this "hands off" doctrine:

> [L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the consideration underlying our penal system.[10]

In support of this decision, our judicial system has in most instances decided to circumvent prison supervisory matters even if the result is deprivation of prisoners' rights. In other words, the courts have agreed that they will not interfere with the supervisory powers of prison administrations.[11]

While the *Price* decision reinforced the policy of the withdrawal of prisoners' rights coupled with non-intervention, the United States Court of Appeals for the Sixth Circuit four years earlier had been the first to recognize that a prisoner should not lose all of his rights. In *Coffin v. Reichard*[12] the court repudiated the premise that prisoners'

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6 Ruffin v. Virginia, 62 Va. (21 Gratt.) 790, 796 (1871).

7 *In re* Birdsong, 39 F. 599 (S.D. Ga. 1889). In this case the prisoner had been found guilty of disorderly conduct in the jail and as a result he was chained by the neck to the grating of the cell. The court's answer to this kind of punishment was:

> The arbitrary power in a prison-keeper to iron a prisoner, or indeed, to select at his pleasure a penalty which he thinks adequate as a disciplinary measure for real or fancied misconduct, is intolerable among a free and enlightened people. It has no place among English speaking nations.

*Id.* at 600.

8 Gittlemacker v. Prasse, 428 F.2d 1, 3 (3d Cir. 1970).

9 334 U.S. 266, 68 S. Ct. 1049, 92 L. Ed. 1356 (1948).

10 *Id.* at 285, 68 S. Ct. at 1060, 92 L. Ed. at 1369.

11 Stroud v. Swope, 187 F.2d 850 (9th Cir. 1951): "We think that it is well settled that it is not the function of the courts to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who are illegally confined." *Id.* at 851.

12 143 F.2d 443 (6th Cir. 1944). This important decision stated:

> A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law. While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and

privileges were exceptional. This decision marked the beginning of a trend in which prisoners were no longer treated as slaves but instead were granted some of their necessary constitutional rights.[13] However, this was not the prevailing view at that time and even now the position is not always recognized.[14] As late as 1965 a federal district court of Pennsylvania seemed to revert back and follow the archaic decision of the *Ruffin* case.[15]

For some time after the *Coffin v. Reichard* and *Price v. Johnston* decisions there were instances in which the courts recognized various prisoners' rights.[16] However, for the most part they seemed apprehensive about meddling with the administrative supervision of prisons. Now it appears that the courts are beginning to acknowledge that not only incarceration of the individual is subject to constitutional limitations, but that supervisory powers should also be examined.[17]

Despite this recognition, courts have preferred to limit their intervention to the application of the due process and equal protection clauses of the fourteenth amendment in order to protect the prisoner from any unconstitutional *actions* by prison authorities.[18] In other words, this constitutional protection will follow them behind prison walls but does not include judicial examination of an entire disciplinary *system* as in the instant case.

As can be ascertained from these diverse decisions there is a great amount of confusion as to the extent of a prisoner's constitutional rights

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that of other prisoners, it does not deny his right to personal security against unlawful invasion.

*Id.* at 445.

13 The Supreme Court has invalidated prison regulations requiring a prisoner's legal documents to be approved by officials before they are forwarded to the courts. *Ex parte* Hull, 312 U.S. 546, 61 S. Ct. 640, 85 L. Ed. 1034 (1941). The Supreme Court has ruled that a prisoner is denied equal protection of the laws if officials prevent him from taking a timely appeal. Cochran v. Kansas, 316 U.S. 255, 62 S. Ct. 1068, 86 L. Ed. 1453 (1942). A state parole board regulation assessing an additional year of incarceration prior to consideration for parole upon any state prisoner who filed for writ of habeas corpus which was denied was held to be a denial of constitutional rights. Smartt v. Avery, 370 F.2d 788 (6th Cir. 1967). It is impermissible for prison officials and regulations to deny a prisoner access to the courts, unless that prisoner has managed to obtain counsel. White v. Ragan, 324 U.S. 760, 65 S. Ct. 978, 89 L. Ed. 1348 (1945). A district court held that censorship of prisoners' mail which smothers information to the public about prisons and prison life is unconstitutional. Palmigiano v. Travisono, 317 F. Supp. 776 (D.R.I. 1970).

14 Royal v. Clark, 447 F.2d 501 (5th Cir. 1971): "Federal courts will not interfere in the administration of prisons absent an abuse of the wide discretion allowed prison officials in maintaining order and discipline." This is an obvious continuation of the "hands off" doctrine.

15 The court in United States *ex rel.* Robert Henson v. Myers, 244 F. Supp. 826, 827 (E.D. Pa. 1965) stated: "Prison officials must have wide discretion in the promulgation of rules to govern the inmates, even to the point of denying basic constitutional rights."

16 Johnson v. Dye, 175 F.2d 250 (3d Cir. 1949).

17 Jackson v. Godwin, 400 F.2d 529, 535 (5th Cir. 1968): "[I]f a prisoner is serving time to 'pay his debts to society,' any further restraints or deprivations in excess of that inherent in the sentence and in the normal structure of prison life should be subject to judicial scrutiny."

18 *In re* Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed.2d 527 (1967).

and how deeply the courts should interfere with prison administrations. In some instances the courts have determined that constitutional safeguards are for convicts as well as citizens. In others these safeguards are subject to exceptional circumstances.[19] In most jurisdictions the courts have been adamant in refusing to intervene with the supervision of internal prison matters, while a distinct minority have decided to assert their authority when confronted with questions of prison discipline.

Thus, the impact of *Clutchette* becomes important because the court has chosen not only to intervene with the prison administration, but has also laid out definite guidelines which the prison authorities must follow.[20] Furthermore, the court's decision will help to eliminate some of the confusion as to what remedies are available to the aggrieved prisoner.

The confusion which has arisen over prison litigation is the result of several cases which have examined and ruled unconstitutional

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[19] Miller v. Purtell, 289 F. Supp. 733, 734 (E.D. Wis. 1968). In this case the prisoner alleged:

> . . . that he is placed in punishment tier . . . without cause, that he had been denied adequate medical treatment; that he was not allowed to clean his cell . . . , that he is under constant threat of punishment in form of physical attack; that he had been denied all privileges afforded other inmates . . . ; and that there had been censorship and interference with his mailing privileges.

The court replied that even if true, his allegations did not reveal exceptional circumstances that would justify federal court intervention.

[20] Clutchette v. Procunier, 328 F. Supp. 767, 784 (N.D. Cal. 1971). These guidelines include:

> 2. [T]his opinion and order declare that the disciplinary procedures employed at San Quentin Prison violate the due process and equal protection clauses of the 14th amendment by failing to provide for adequate notice of charges, the calling of favorable witnesses and cross-examination of accusing witnesses, counsel or counsel-substitute, a decision by a factfinder uninvolved with the alleged incident, a written finding of facts, or uniform notice of any rights to appeal the decision, when such a disciplinary hearing may result in grievous loss to the prisoner; and that certain disciplinary punishment, including but not necessarily limited to (a) indefinite confinement in the adjustment center or segregation; (b) possible increase in a prisoner's sentence by reason of referral of the disciplinary action to the Adult Authority; (c) a fine or forfeiture of accumulated or future earnings; (d) isolation confinement longer than 10 days; or (e) referral to the district attorney for criminal prosecution, constitute such a grievous loss to the prisoner;
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> 3. Defendants are hereby preliminarily and permanently enjoined from conducting any further disciplinary hearings at San Quentin Prison so long as the procedures employed are constitutionally infirm as set out above;
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> 4. The decisions of the disciplinary committee in the disciplinary hearings of the named plaintiffs, Clutchette and Jackson, are set aside, and said plaintiffs shall be restored to the status of confinement they enjoyed prior to the institution of such proceedings, and such decisions shall be expunged from all their records, and shall not be referred to the Adult Authority;
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> 5. Defendants are ordered to submit a plan for the conduct of disciplinary committee hearings, consistent with the opinion this day entered, to this court within 100 days for approval by this court; 10 days prior to this date of submission, defendants shall serve a copy of said plan to attorneys for plaintiffs;
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> 6. Execution of this order is stayed, insofar as it enjoins any further disciplinary hearings . . . already held, for 30 days to allow the Attorney General of the State of California to file a notice of appeal, should he so desire. In the event that such a notice is filed, the above-described portion of this order is stayed until further order of this court.

certain prison penal systems. In *Jordan v. Fitzharris*,[21] the court enjoined defendant Soledad Prison from subjecting plaintiff to strip cell[22] isolation.[23] However, the significant difference between *Fitzharris* and *Clutchette* can be noted in the court's opinion:

> While the court will not undertake to specify the precise procedures which the officials must adopt if they are to meet the demands of the Constitution, the practices set out in the manuals relied upon by defendants would, if adopted and followed, meet the minimum standards required by the Eighth Amendment.[24]

Here the court has stated that prison rules must meet the minimum requirements of the Constitution while in *Clutchette* the district court instructed the prison administration exactly how to proceed in meeting the requirements of the Constitution. Secondly, the *Clutchette* court has ruled upon more than one aspect of due process by dissecting an entire prison penal code so that it will satisfy the Constitution. As was the case in *Fitzharris*, the courts are usually presented with a single constitutional deprivation involving the violation of a prisoner's right, but they are not normally required to examine an entire disciplinary code to insure that it contains sufficient due process safeguards.

In a parallel decision, *Morris v. Travisono*,[25] the district court received a civil rights suit pursuant to 42 U.S.C. § 1983 regarding constitutionality of certain prison rules. In this case the court retained jurisdiction from the date of decision in order to oversee administration of new regulations for possible revision after practical application in the prison.[26] However, the court acted cautiously in more of an examiner's role instead of forcing the prison officials to follow a set procedure as in *Clutchette*. Also, the *Morris* court gave the prison officials and inmates the authority to resolve the difficulties in the regulations instead of performing this duty on their own accord.

The difficulty in rationalizing the *Clutchette* decision is that it does not conform with the many decisions which have indicated that the courts should not interfere with prison disciplinary matters. In some

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21 257 F. Supp. 674 (N.D. Cal. 1966).

22 *Id.* at 676: "The strip cells . . . form part of the isolation section of the prison's maximum security Adjustment Center. Each strip cell measures approximately 6'-0"—8'-4". The side and rear walls are solid concrete as is the floor." This appears to be a typical strip cell found in most prisons used for the purpose of isolation and solitary confinement. A complete description can be found in Jordan v. Fitzharris, 257 F. Supp. 674, 676 (N.D. Cal. 1966), accompanied by photographs at 685-87.

23 *Id.* at 679. The complaint is similar to that of the plaintiffs' in *Clutchette* plus: "It may be noted that this is the first occasion that the United States District Court in this Circuit has undertaken to inquire into the procedures and practices of a State penal institution in a proceeding of this kind."

24 *Id.* at 683.

25 310 F. Supp. 857 (D.R.I. 1970).

26 *Id.* at 862.

circuits[27] the courts will interfere if the treatment of prisoners amounts to deprivation of constitutional rights; but it is the interference with the prison rules and regulations by applying due process that the court is considering in the instant case. In making their decision the *Clutchette* court has rejected a previous holding of the Ninth Circuit[28] and a ruling of the Second Circuit.[29] A later New York decision also agreed with this adamant position of non-interference but stipulated that they will examine the taking away of constitutional rights.[30]

Adding further confusion, the Southern District of New York[31] has refuted the above New York decisions and followed the dissenting opinion of Judge Keating in *Brabson v. Wilkins*.[32] This dissenting opinion which was recognized by the *Clutchette* court read:

> The right of an individual to seek relief from illegal treatment or to complain about unlawful conduct does not end when the doors of a prison close behind him. True it is that a person sentenced to a period of confinement in a penal institution is necessarily deprived of many personal liberties. Yet there are certain rights so necessary and essential to prevent the abuse of power and illegal conduct that not even a prison sentence can annul them.[33]

Several New York courts have handled cases within recent years that have been filed on the basis of 42 U.S.C. § 1983.[34] Their decisions have

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27 River v. Toyster, 360 F.2d 593 (4th Cir. 1966); Fortune Society v. McGinnis, 319 F. Supp. 901 (S.D.N.Y. 1970); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D.N.Y. 1970).

28 Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961).

29 Sostre v. McGinnis, 334 F.2d 906 (2d Cir. 1964). The court ruled on this disciplinary complaint: "No romantic or sentimental view of constitutional rights or of religion should induce a court to interfere with the necessary disciplinary regime established by the prison officials. A prisoner has only such rights as can be exercised without impairing the requirements of prison discipline."

30 Carter v. McGinnis, 320 F. Supp. 1092, 1096 (W.D.N.Y. 1970). The court stated as follows:

> [T]his court has repeatedly stated in numerous other decisions that it will interfere in prison affairs only in the most exceptional circumstances. The court remains firm in its earlier expressed conviction that the management and discipline of prisons is primarily the business of the State Department of Correction. Only where legal rights reach the magnitude of constitutional rights will this court vary from its normal cause.

31 Sostre v. Rockefeller, 312 F. Supp. 863 (S.D.N.Y. 1970). It should be noted that the decision in *Sostre* came as a result of complaints by the plaintiff that he was being deprived of his due process rights as guaranteed by the fifth and fourteenth amendments to the Federal Constitution. The particulars of these complaints are virtually the same as those alleged by the plaintiffs in *Clutchette*. The decision also corresponds with *Clutchette* in that jurisdiction was retained by the court in order to allow prison officials the opportunity to submit a new set of disciplinary procedures for approval.

32 227 N.E.2d 383 (N.Y. 1967).

33 *Id.* at 386.

34 42 U.S.C. § 1983 (1964):

*Civil Action for Deprivation of Rights:*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

indicated the holding, in the same manner as *Clutchette,* that unconstitutional prison rules should be carefully examined. In a widely publicized case, the Court of Appeals for the Second Circuit confirmed the obligation of federal courts to intervene and decide claims stemming from prison rules and regulations.[35] This decision came on appeal and resulted in a reversal of an opinion by the late Judge Brennan that complied with the "hands off" doctrine.[36]

In another important and recent decision a federal district court in New York recognized the inequities of the prison rules and regulations of the Clinton Prison of New York.[37] However, by agreeing with the decision in *Sostre v. Rockefeller,*[38] Judge Foley commented that any revisions of prison regulations should be made cautiously.[39] Judge Foley adds that, "[T]he basis for any intrusion here at all is restricted to the power of federal courts to intrude when civil rights are violated by federal constitutional deprivations or violations."[40] Again we see the apprehension which the *Clutchette* court did not possess when asked to examine and intervene with prison disciplinary matters.

In the past the courts have circumvented the majority of prison complaints by simply declaring that the federal courts have no obligation or authority over state prisons.[41] In the instant case the court has followed recent litigation by stating that ". . . it is now well settled that federal courts have jurisdiction under 42 U.S.C. § 1983 to examine into conditions at state prisons when allegations of unconstitutional deprivations are made."[42] However, as argued by the defendants in the instant case, it has usually been the practice of federal courts to reject a prisoner's complaint unless he has exhausted all of his state remedies.[43] But in *McNeese v. Board of Education* the United States Supreme Court

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35 Wright v. McMann, 387 F.2d 519 (2d Cir. 1967).
36 Wright v. McMann, 257 F. Supp. 739 (N.D.N.Y. 1966).
37 Wright v. McMann, 321 F. Supp. 127 (N.D.N.Y. 1970).
38 312 F. Supp. 863 (S.D.N.Y. 1970).
39 Wright v. McMann, 321 F. Supp. 127, 142 (N.D.N.Y. 1970).
40 *Id.* at 143.
41 *See generally* Lee v. Crouse, 284 F. Supp. 541 (D. Kan. 1967), *aff'd,* Lee v. Crouse, 396 F.2d 952 (10th Cir. 1968); Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961). In granting relief to a prisoner for his fourteenth amendment right to have reasonable access to the courts, the court ruled that apart from due process consideration, the federal courts have no power to control or supervise state prison regulations and practices.
42 Clutchette v. Procunier, 328 F. Supp. 767, 770 (N.D. Cal. 1970). In making this declaration the court followed such other court decisions as: Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D.N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D.N.Y. 1970); Rodrigues v. McGinnis, 307 F. Supp. 627 (N.D.N.Y. 1969).
43 Wakeley v. Pennsylvania, 247 F. Supp. 7 (E.D. Pa. 1965). With regard to questions of civil rights it has long been established that the ordinary requirements of exhaustion do not apply. Lane v. Wilson, 307 U.S. 268, 274, 59 S. Ct. 872, 875, 83 L. Ed. 1281, 1287 (1939). However, in Wakeley v. Pennsylvania the court answered: "This court therefore concludes that inmates of state correctional institutions must, before invoking the aid of the Civil Rights Act, first exhaust their administrative remedies or make a satisfactory showing that they were in fact unable to do so." 247 F. Supp. 7, 11 (E.D. Pa. 1965), *followed by,* Wright v. McMann, 257 F. Supp. 739 (N.D.N.Y. 1966).

held that this "exhaustion" doctrine is no longer applicable thus laying to rest any doubt that might have remained regarding the vitality of the exhaustion doctrine in actions brought under the Civil Rights Act.[44]

Applying procedural due process to the case at hand, the court relied substantially upon the United States Supreme Court's decision of *Goldberg v. Kelly*.[45] In *Goldberg* the Supreme Court rejected the theory that procedural due process should only apply when some "vested right" was being impaired.[46] The basis of the *Clutchette* court's reliance on *Goldberg* is that:

> Procedural due process must obtain whenever the individual is subject to "grievous loss" at the hands of the state or its instrumentalities.[47]

The court utilized this holding to demonstrate that due process is violated when prison officials impose penalties that are excessive in relation to the crimes committed. Their reasoning is that:

> While prisoners may have no vested right to a certain type of confinement or certain privileges, it is unrealistic to argue that the withdrawal of those privileges they do have, or the substitution of more burdensome conditions of confinement would not, under their "set of circumstances," constitute a "grievous loss."[48]

This reasoning is in agreement with and also relies upon the Fifth Circuit decision in *Jackson v. Godwin*.[49] Here, the court recognized that a prisoner deserves more than the protection from cruel and unusual punishment guaranteed by the eighth amendment. In their opinion the court stated:

> Acceptance of the fact that incarceration, because of inherent administrative problems, may necessitate the withdrawal of many

[44] Clutchette v. Procunier, 328 F. Supp. 767, 771 (N.D. Cal. 1970). They based this holding upon the following statement:

> We yet like to believe that wherever the Federal Courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.

McNeese v. Board of Education, 373 U.S. 668, 674 (1963), quoting from Judge Murrah's decision in Stapleton v. Mitchell, 60 F. Supp. 51, 55 (D. Kan. 1945).

[45] 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed.2d 287 (1969).

[46] *Id.* at 270, 90 S. Ct. at 1021, 25 L. Ed.2d at 300. The *Clutchette* court added to this decision stating: "Whatever the state of the law regarding procedural due process prior to 1969, the Supreme Court's decision that year in *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed.2d 287 (1969), delineated its perimeters clearly for future proceedings." The *Goldberg* court held that ". . . before welfare benefits may be terminated, the agency must conduct an adversary proceeding with all the elements of due process incident thereto . . . ." Clutchette v. Procunier, 328 F. Supp. 767, 779 (N.D. Cal. 1970).

[47] Clutchette v. Procunier, 328 F. Supp. 767, 781 (N.D. Cal. 1970).

[48] *Id.* at 780.

[49] 400 F.2d 529 (5th Cir. 1968).

> rights and privileges does not preclude the recognition by the courts of a duty to protect the prisoner from unlawful and onerous treatment of a nature that, of itself, adds punitive measures to those legally meted out by the court.[50]

In other words, the court has declared that it is unconstitutional for San Quentin's Disciplinary Committee to mete out arbitrary punishments.

The court has declared in the *Clutchette* opinion, as defined by *Goldberg*, that the requirements of procedural due process must obtain in all disciplinary committee or hearing officer proceedings.[51] Additionally, these requirements will insure that the prisoner is adequately informed of what he is accused of having done, a statement of the facts of the charge, and the particular rule upon which the charge is based. Absent these, an accused prisoner is without sufficient time or information to prepare any defense on the merits.

*Goldberg* also applies in the instant case to the right for a prisoner to call his own witnesses and cross-examine those against him. This right is impossible under the present rules because the prisoner is not allowed to present witnesses. It is also evident that the authors of the written reports are not present at the disciplinary hearings.

According to these same prison rules a prisoner is also denied the right to the assistance of counsel. This right has been recognized specifically in *Goldberg* and generally in the landmark decision of *Gideon v. Wainwright*.[52] Again, the court has made certain that the due process clause of the fourteenth amendment will follow the prisoner behind prison walls.

The last procedural right which the court in *Clutchette* declares is not properly administered is the right to appeal the decisions of the disciplinary committee. At San Quentin the prisoners are apparently notified orally in some instances of the right to appeal but in others this notification is not given. The court's answer to this inconsistency is that, "[N]or can they notify some prisoners at the conclusion of disci-

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50 *Id.* at 532.

51 Clutchette v. Procunier, 328 F. Supp. 767, 781 (N.D. Cal. 1971). The court has delineated the following situations which are offered as instances in which the loss to the prisoner is sufficiently serious so as to require the imposition of procedural due process:

a) Violations punishable by indefinite confinement in the adjustment center or segregation;

b) Violations, the punishment for which may tend to increase a prison sentence; i.e., those which may be referred to the Adult Authority;

c) Violations which may result in a fine or forefeiture;

d) Violations which may result in any types of isolation longer than ten days;

e) Violations which may be referred to the district attorney for criminal prosecution.

The court says that if prison officials choose to adopt this or some similar schedule rather than afford all prisoners charged with any violation the due process safeguards set out below, they would expect to review this schedule.

52 Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed.2d 799 (1963).