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A Misinterpretation of Facts: Wyman v. James

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COMMENT

A MISINTERPRETATION OF FACTS: *Wyman v. James*

INTRODUCTION

IN January of 1971, the United States Supreme Court handed down *Wyman v. James*,[1] a now infamous decision. Quite simply, *James* held that a benficiary of Aid to Families with Dependent Children (AFDC) may not refuse a home visit by a caseworker without risking the termination of program benefits.

The decision has already been criticized in many journals for its failure to follow precedent or to defend a welfare client's constitutional right to privacy.[2] In contrast to these articles, this note attempts to prove the Court's decision erroneous by illustrating the opinion's faulty analysis of the facts involved. Regardless of the validity of the legal arguments, it is evident from the opinion that the Court had little actual knowledge of the caseworker-client relationship or the coercive nature of the visit with which the case was concerned. In a complex socio-legal problem such as this case presented, legal precedent must be complemented with informed sociological opinion. Such material will be the basis for this short note and will illustrate that the Court's refusal to consider this information strongly contributed to the faulty legal reasoning found in *James*.

THE MISINTERPRETATION

A. *The Holding*

Justice Blackmun in writing for the Court held that: (1) the visit requested was not properly a "search;" (2) that even if it were, it was not unreasonable and therefore not violative of the fourth amendment; (3) and that Mrs. James' loss was due to a "choice . . . entirely hers, and nothing of constitutional magnitude [was] involved."[3]

This opinion minimized the investigative aspects of the visit and emphasized the government's contention that the pur-

[1] 400 U.S. 309 (1971).

[2] *See generally* Burt, *Forcing Protection on Children and Their Parents: The Impact of Wyman v. James*, 69 MICH. L. REV. 1259 (1971); Note, *The Implications of Wyman v. James: The Burger Court, The Fourth Amendment and the Privacy of the Home*, 48 DENVER L.J. 87 (1971); Note, *Wyman v. James: Is a Man's Home Still His Castle?*, 10 J. FAM. L. 460 (1971); Comment, *Constitutional Law — Fourth Amendment — New York State Mandated Home Visit is Not an Unreasonable Search — Public Assistance Recipients Must Submit — Wyman v. James*, 35 ALBANY L. REV. 809 (1971); *The Supreme Court, 1970 Term*, 85 HARV. L. REV. 258 (1971).

[3] 400 U.S. at 324.

pose was primarily a beneficent one. The decision was predicated upon the premise that since there was no criminal investigation or prosecution involved, there was no true search; and, if the visit was not a "search," it was not an intrusion coming within the prohibition of the fourth amendment. This premise illustrates a misunderstanding of the subject before the Court.

B. *The Caseworker-Client Relationship*

Justice Blackmun, in holding the home visit in question not to be a search in the traditional criminal law context, noted it is "not one by police or uniformed authority."[4] The primary objective of the visit, according to the majority, is the welfare of the child and the rehabilitation of the client. In other words, "[t]he caseworker is not a sleuth but rather, we trust, is a friend . . . in need."[5]

Justice Blackmun and his concurring Justices have glossed too glibly over the investigative aspects of the caseworker-recipient relationship and have vastly overemphasized the beneficence and amicability of that same relationship. It is unfortunate that the Court's decision depends on conclusions drawn as a result of this overemphasis, since careful research would have revealed that the average caseworker-recipient relationship is a far more adversary one than envisioned in the opinion.

First, the welfare regulation upon which the rationale for the visit was originally grounded places an apparently higher priority on fraud control than on the extension of services which Blackmun lauds.

> [The visit is] for the purpose of determining if there are any changes in her situation that might affect her eligibility to continue to receive Public Assistance, or that might affect the amount of such assistance, and to see if there are any social services which the Department of Social Services can provide to the family.[6]

Even a casual reading of this statement leads to the conclusion that the drafters' concern for social services occupied a lower rung on the legislative ladder than did the possibility of paring the undeserving from the welfare rolls. This emphasis reappears at the lower administrative levels, where many caseworkers "enter the department as 'guardians of the public purse.' They are adversaries of the people on relief"[7] and are

[4] *Id.* at 322.
[5] *Id.* at 323.
[6] *Id.* at 314.
[7] E. MAY, THE WASTED AMERICANS 106 (1964).

more interested in keeping public expenditures to a minimum than in achieving a maximization of benefits of their clients.

Combined with the adversary nature of the eligibility determination visit is the basic feeling of distrust between the worker and client which creates a competitive climate:

> [A]gency personnel are sometimes inadequate because their commitment is to a narrow psychoanalytic framework, one that leads them to condemn and censor the client for his presumed personal faults. The poor, Irving Kristol reminds us, are "entitled to have every possible opportunity to move upward on our socio-economic scale, if they wish to. But they are also entitled not to be hectored, badgered, sermonized, psychoanalyzed, fingerprinted, Rorschached, and generally bossed around by a self-appointed body of self-anointed redeemers . . . ."[8]

In fact, neither Mrs. James, nor the National Welfare Rights Organization[9] placed much credence in the friendly intentions of the welfare department in the instant case.

C. *Effectiveness of the Service Function*

Even disregarding the adversary approach which many caseworkers apparently bring to the job, it is hard to find much of an effective rehabilitative or service function in the available statistics. This may be true because "caseworkers, whatever their theoretical framework, seldom have adequate time and energy to spend with all their clients. A social worker in New York state . . . must fill out 24 separate pieces of paper before a client gets his first welfare check. . . . Little individual attention is possible; little real aid is given."[10] Furthermore, case loads are commonly well over practical limits, the result being that "casework becomes a fiction and public welfare becomes a function of the check-writing and adding machine."[11]

An analysis of this failing relationship appeared in 1969 when the Institute for Research on Poverty released an exhaustive study on the extension of social services within the public welfare scheme and the reaction of AFDC recipients to those "services."[12] The study's results point strongly to the conclusion that very little of a tangible and specific nature is offered to the welfare client in general.

> What emerges from the data is that, in the main, social service activity is little more than a relatively infrequent, pleasant

[8] Shostak, *The Poverty of Welfare in America*, in NEW PERSPECTIVES ON POVERTY 97 (W. Gromberg & A. Shostak eds. 1965).
[9] N.W.R.O. filed an amicus curiae brief on Mrs. James' behalf.
[10] Shostak, *supra* note 8, at 97.
[11] E. MAY, *supra* note 7, at 112.
[12] Handler & Hollingsworth, *The Administration of Social Services and the Structure of Dependency: The Views of AFDC Recipients*, 43 SOCIAL SERV. REV. 406 (1969).

> chat. It is somewhat supportive. It is rarely threatening but also not too meaningful in the sense of either helping poor people get things they need or of changing their lives, and it *seems to bear little resemblance to the legislative goals of the Social Security Act amendments.*[13]

Some critics, particularly the National Welfare Rights Organization, might quarrel with the conclusion that such activity is "rarely threatening," but the other findings have been widely supported. The joint study went on to recommend specifically, among other things, that there be no caseworker visits in the home, unless the client has requested the service.

Oddly enough, this view is evidently shared by many of the caseworkers whose duty is to provide in-home service and conduct eligibility checks. Shortly after the district court's decision, and before the Supreme Court had heard arguments, the *Social Service Review* commented in this regard:

> In the *James* case one wonders what the experience of the client had been during the two years which she received AFDC. Obviously, she had not found the previous home visits of much value, financially or otherwise. Certainly there was little feeling of trust between client and agency. Under such circumstances what could be achieved by another visit?[14]

This view was supported in an amicus curiae brief on behalf of Mrs. James filed by the New York Social Service Employees Union. Lack of training, lack of time, ineffectiveness of visits, and hostility which the visits created were all cited by the Union to favor the proposition that the caseworker be spared such administrative responsibility. Let them go to the homes where their aid was requested, and let investigative functions be carred out separately on the basis of warrant and probable cause, not under the umbrella of service extension. Service effectiveness would be enhanced from the time gained thereby, and the chilling effect of such visits would be avoided. The Court, in ignoring this plea, chose to grant the Union's members even broader discretionary powers, the exact opposite of what they requested.

It is clear that the jargon used by New York in pleading its case, and by Justice Blackmun in finding for them, is designed to downplay the real purpose of the visit: to find welfare cheats. It is unfortunate again, that neither had looked more closely into the effectiveness of such eligibility investigations. Most of the studies on the problem have indicated that such efforts turn up only negligible amounts of fraud in

[13] *Id.* at 413-14 (emphasis added).

[14] Comment, *Is the Home Visit Obsolete?*, 43 SOCIAL SERV. REV. 463 (1969).

relation to the total case load[15] and cost more than the amounts trimmed by finding ineligible recipients.[16] Indeed, this was a crucial point emphasized in the arguments:

> The Social Service Employees Union, which represents the caseworkers, told the Supreme Court in a friend-of-court brief that home visits are ineffective to discover fraud, and the children are usually at home and aren't even seen.[17]

However, the Court again chose to overlook the facts.

In sum, the "welfare of the child" plus the assistance and rehabilitative functions which Justice Blackmun uses to rationalize entrance to the James home turn out to be paper justifications only. In point of fact, they serve more often than not as a cloak for the real purpose of the visit: investigation. That the investigation is not one by "uniformed authority" affords the client little comfort. If, as Justice Blackmun says, the fedral emphasis is upon "maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection,"[18] it is hard to imagine how that sense of independence and pride is helped by official intrusions into the home under the threat of benefit termination. Rehabilitation implies, among other things, a sense of dignity and pride in oneself — a willingness to face the world on its own terms. Even the mere acceptance of welfare benefits is, to many individuals, a blow to this pride and self-respect, an acknowledgement of defeat. In itself, "[w]elfare assistance in its present form tends to encourage dependence, withdrawal, diffused hostility, indifference, ennui."[19] It concurrently supplies support only while undermining self-reliance.[20]

D. *The Nature of In-Home Visits: Coercive v. Voluntary*

The Court also held that, since the home visit is not a criminal investigation, and no criminal penalty is the result of refusal to allow the visit, the visitation "in itself is not forced or compelled."[21] Without that necessary force or compulsion, the Court felt that there was no sufficient official intrusion upon the James family's privacy.

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[15] E. MAY, *supra* note 7, at 38-39.

[16] NEWSWEEK, Feb. 8, 1971, at 24-25.

[17] N.Y. Times, Jan. 17, 1971, at 8E, col. 1.

[18] 400 U.S. at 319, Justice Blackmun quoting from 42 U.S.C. § 601 (1970).

[19] Miller, *Some Thoughts on Reform*, in BLUE-COLLAR WORLD 302 (W. Gromberg & A. Shostak eds. 1964).

[20] R. O'NEILL, THE PRICE OF DEPENDENCY: CIVIL LIBERTIES IN THE WELFARE STATE 292 (1970).

[21] 400 U.S. at 317.

To say, as Justice Blackmun does, that the visit is not forced or compelled is specious reasoning. Submission to coercion is not "consent" in either the legal or the lay sense of the term. If forcing a dependent client to choose between assistance termination and opening the door is not coercion, it is hard to imagine what might qualify. Justice Blackmun insists that the choice is entirely Mrs. James'. This ignores one of the basic facts of welfare: most people are recipients not by choice, but because of the lack of an alternative choice.[22] "For most such individuals, access to the benefit is as essential as the monthly paycheck of an employee in private industry."[23] The choice for Mrs. James is to feed and clothe her children, or not to do so. Basic subsistence is hardly a mere option.

On this point of freedom of choice, Robert O'Neill's study on conditioned benefits in the welfare state concludes that the general benefactor-recipient relationship can be considered voluntary only in the most technical sense; and that the unique relationship between welfare client and caseworker in particular is by nature subtly coercive.[24] Justice Blackmun and the majority, however, in recognizing no coercion, found no deprivation of a magnitude sufficient to warrant protection under the Constitution. Actually, the crucial importance of welfare payments to the recipients "would seem . . . to point to the conclusion that welfare is entitled to special protection under the equal protection clause.'[25] Unfortunately, however,

> [W]hile many such benefits are as substantial and important in the life of the beneficiary as, for example, freedom from criminal conviction, they are granted or withheld on conditions and through procedures that offer far less protection for individual rights and liberties.[26]

Despite the pains to which Justice Blackmun goes to distinguish the visitation in *James* from those considered by the Court in prior cases, the facts simply do not lend themselves to his conclusions. His interpretation of the background and actions in the instant case is sound only if one accepts some initially faulty presumptions about caseworker-recipient relationships, the effectiveness of the service function, and the voluntary nature of welfare benefit receipt. Having shown

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[22] COMMITTEE FOR ECONOMIC DEVELOPMENT, IMPROVING THE PUBLIC WELFARE SYSTEM 31 (1970).

[23] Pemberton, Book Review, 84 HARV. L. REV. 1961 (1971).

[24] R. O'NEILL, *supra* note 20, at 276.

[25] *The Supreme Court, 1969 Term,* 84 HARV. L. REV. 32, 68 (1970).

[26] Pemberton, *supra* note 23, at 1961.

those assumptions to be based on less than solid evidence, we have shown part of the fault with the decision as a whole.

CONCLUSION

One must conclude that Justice Blackmun has not adequately done his research in *James*, at least at the factual level. Since service functions on the part of welfare departments are clearly ineffective, there is no rational point in intruding on an individual's privacy to enforce them. In the case at bar, as in so many thousands of everyday similar situations, an appointment outside the home would do far more to preserve the dignity and pride necessary for eventual self-support without sacrificing any of the benefits which the present system realistically accomplishes.

Recent surveys indicate a general resentment among welfare recipients towards both the system and those who administer it.[27] If the welfare system itself gives rise to such self-defeating effects, how much will the type of administrative behavior countenanced in *James* aggravate the problem? In *Brinegar v. United States*,[28] Justice Jackson eloquently stated:

> Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that *the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure* by the police.[29]

Although Jackson's dissent was directed to warrantless searches by uniformed officers, his observance of the psychological effects on the human spirit is equally applicable to cases such as *James*.

There will undoubtedly be mixed reactions from the membership of the welfare community itself to this opinion. The impact of the decision on the individual recipient must clearly be negative in terms of self-image, pride, and self-reliance. As several attorneys were quick to note, the decision has unmistakably relegated public welfare recipients to the status of "second-class citizens." In so doing, it reinforces the self-defeating aspects of welfare noted earlier and contributes to the cyclical aspects of dependency which have created second and

[27] R. O'NEILL, *supra* note 20, at 253.
[28] 338 U.S. 160 (1949).
[29] *Id.* at 180 (dissenting opinion) (emphasis added).

third generations of public aid dependents. Thus, while the Court purports to be looking out for the interests of the public in the distribution of its largesse, the ultimate effect is to ensure that those expenditures are largely wasted.

Finally, the greatest damage may well have been to the keepers of the system. Worker morale has long been a problem in the field of public welfare.[30] High caseloads and mountains of paper work which combine to abort the effective service function have done nothing to attract qualified persons to the social services: "It is still unusual for a social worker employed in a direct service position in either private or public welfare to have had graduate education in social work, but it is more unusual in the public assistance field than anywhere else."[31] Indeed, it has had the opposite effect:

> In 1968, more than 110,000 persons were employed in the nation's public welfare programs; a little over 80,000 of these worked in the federally-aided programs. The annual turnover averaged close to 30 per cent; some states had as high as 40 per cent, while one or two went as high as 60 per cent. Less than 2,000 of the 110,000 had a degree in social work or the equivalent. This professional group had a job turnover in excess of 20 per cent a year.[32]

Turnover rates have subsequently climbed even higher.[33] One of the causes has been the nature of the investigative procedures for recipient qualification, which are "repressive and demeaning to the recipients of welfare, as well as being one of the chief sources of the very widespread inefficiency and waste of manpower that afflicts the entire system."[34] Frustration at that inefficiency was one of the motives which impelled the social worker's union in New York to file its brief on behalf of Mrs. James. If, as we noted earlier, the states are increasingly resorting again to investigations and spot-checks to pare the burgeoning rolls, this caseworker frustration must similarly increase. The result must be an even higher exodus of the dedicated to occupations where they can exercise their training instead of playing at form-filling and police work. The Court's failure to restrict the permissible types of administrative behavior may thus indirectly be a blow at those whose responsibility it is to see that the system functions.

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[30] E. MAY, *supra* note 7, at 118.
[31] G. STEINER, SOCIAL INSECURITY: THE POLITICS OF WELFARE 183 (1966).
[32] COMMITTEE, *supra* note 22, at 51.
[33] NEWSWEEK, Feb. 8, 1971, at 26.
[34] COMMITTEE, *supra* note 22, at 11.