that the "and for other purposes" portion of the caption was employed to show an intention of the legislature to enact any legislation appropriate as an amendment to the charter of Macon. The court further said that "the fact that some matters of amendment were more specifically referred to in the caption did not serve to restrict the contemplated legislation to those matters of amendment particularly specified.

If it is conceded that the section of the act dealing with the prohibition is unconstitutional, it appears to be mere speculation as to the intent of the legislature in either striking the whole act or leaving the rest.[18] This writer believes that the two sections are inseparable and therefore incapable of being severed from each other.[19]

Perhaps other arguments for plaintiff-Merritt would have been upon the grounds of violation of the fourteenth amendment of the United States Constitution[20] or upon grounds such as the arbitrary direction of a statute against a single person.[21] However, these are not within the scope of this casenote.

GUS H. SMALL, JR.

CONSTITUTIONAL LAW—PRISONER'S RIGHTS—PRISON RULES PERTAINING TO RECEIVING LEGAL ASSISTANCE

Four inmates in the Atlanta Penitentiary brought an action, *White v. Blackwell*,[1] in the United States District Court for the Northern District of Georgia, Atlanta Division, to have certain penitentiary rules declared invalid. The rules in question were promulgated by the penitentiary warden, defendant Blackwell. The rules state:[2] All prisoners must do their own legal work; no inmate may give to or receive assistance from any other inmate in this work; all legal documents found on an inmate not pertaining to his case wll be confiscated and destroyed; and failure to uphold these rules may result in solitary confinement or loss of extra earned good time. Three of the four plaintiffs claim that their convictions under these rules were illegal. They claim the right to receive assistance from the fourth plaintiff in preparing petitions to the court and not to have their legal documents confiscated when they received such aid. There was no evidence that the inmates whose documents were taken were given a hear-

18. *See* Chief Justice Duckworth's dissent in Griffith v. Merritt, 223 Ga. 562, 157 S.E.2d (1967).
19. *See* Hancock v. State, 114 Ga. 439, 40 S E. 317 (1901); Whittendale v. Dixon & Bro., 70 Ga. 721 (1883); Prothro v. Orr, 12 Ga. 36 (1852).
20. This was in fact argued, but was not discussed by the court in the principal case.
21. GA. CONST. art. 1, §4, para. 1 (1945); GA. CODE ANN. §2-401 (1948 Rev.).
1 277 F. Supp. 211 (N.D. Ga. 1967).
2. *Id.* at 213.

ing before their documents were destroyed.[3] The primary question the court faced in the instant case was: Had the inmates' constitutional rights been violated? The court found that the inmates were entitled to a hearing before any documents could be confiscated otherwise their rights would be violated.[4] The court also found that prison officials would not violate a prisoner's rights if they regulated the receiving of assistance rather than prohibiting all instances of assistance from others in the preparation of petitions to the courts.[5]

There have been a number of cases dealing with the question of prisoners' rights in recent years. Most of these cases have concerned petitions of habeas corpus prepared for one prisoner by another prisoner. The courts have held that in the face of 28 U.S.C. section 2242, which states: "Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf," prison rules forbidding one prisoner from assisting another in preparing his petition are invalid.[6] Prison rules that are used to deny access of the courts to a prisoner for whatever reason have been struck down.[7] A number of courts have made an attempt to differentiate between rules of regulation and rules of prohibition, as was done in *White v. Blackwell.* Most courts have upheld regulations of prisoners' rights in regard to preparation of petitions.[8]

Courts have allowed rules of regulations because they fear they will be inundated by time consuming petitions that are without merit and undecipherable. This appears to be a valid fear. As long as an inmate is allowed access to the courts and is not denied help from a legitimate source there seems to be no reason why prison rules cannot define legitimate sources. If certain prisoners are known by prison officials to have some facility and familiarity with the law, there appears no reason they should not be allowed to help their fellow inmates. As long as the prison rules are reasonable in their extent and application they are not invalid. From the cases studied there seems to be a wide variance as to what is reasonable but a general theme may be noted. If a prisoner is given a hearing before any documents are taken from him and if unable to prepare his

3. *Id.* at 214.
4. *Id.* at 220.
5. *Id.* at 219.
6. Prisoners have "[a] federal statutory right to have this remedy [habeas corpus] made effective by authorizing some third party to proceed in their behalf." Johnson v. Avery, 252 F. Supp. 783, 785 (M.D. Tenn. 1966). In habeas corpus cases it has long been settled that another party can draw up the petition for the principal. *See* United States *ex rel.* Funaro v. Watchorn, 164 F. 152 (C.C.S.D. N.Y. 1908); Collins v. Traeger, 27 F.2d 842 (9th Cir. 1928).
7. *See Ex parte* Hull, 312 U. S. 546 (1941); Dewitt v. Pail, 366 F.2d 682 (9th Cir. 1966); Haines v. Castle, 226 F.2d 591 (7th Cir. 1955).
8. *See* Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961); Auten v. Harris, 226 F. Supp. 304 (W.D. Mo. 1964); concerning "jailhouse" lawyers, *see* Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950).

own petitions he has access to other individuals who can assist him, he will have no standing to claim violation of his constitutonal right of access to the courts. If these rights are observed when prison rules are formulated they will not be struck down.[9]

JEFFREY D. DUNN

CONSTITUTIONAL LAW—RIGHT TO COUNSEL—THE INDIGENT MISDEMEANANT

The defendant, having been charged with a misdemeanor, alleged indigency and requested that the court appoint counsel for him. This request was denied and when the defendant refused to plead to the charge, the court entered a plea of not guilty in his behalf. Upon rendition of judgment against him, the defendant filed notice of appeal and application for appointment of counsel to the district court, which was denied. The Supreme Court of Minnesota on petition for alternative writ of mandamus to compel appointment of counsel held that counsel should be provided to an indigent accused in any case, whether it be a misdemeanor or not, which may lead to incarceration in a penal institution.[1]

Oddly enough the Supreme Court of the United States has never rendered a definitive decision binding on state courts when confronted with the situation presented in the instant case. In *Gideon v. Wainwright*[2] the indigent defendant had been accused of a felony. Consequently, the court's holding that he was entitled to have counsel appointed left unsettled the question of whether this right extends to non-felony cases in state courts. Immediately after this decision, the Supreme Court gave some indication that the court-appointed counsel doctrine encompassed misdemeanors. When a decision of the Court of Appeals of Maryland[3] upholding the trial court's refusal to appoint counsel for a misdemeanant reached the Supreme Court on grant of certiorari, it vacated the decision and remanded the case for further consideration in the light of *Gideon*.[4] However, on three more

9. Other articles dealing with this question may be found in the following: Gelhaus, *Prisoner Assistance On Federal Habeas Corpus Petitions*, 19 STAN. L. REV. 887 (1967); *Constitutional Rights Of Prisoners: The Developing Law*, 110 U. PITT. L. REV. 985 (1962); *Habeas Corpus—Punishment Of Criminals—Prison Management*, 18 W. REV. L. REV. 681 (1967); O'Brien, *Legal Services for Prison Inmates*, 1967 WIS. L. REV. 514.

1. State v. Borst, ___ Minn. ___, 154 N.W.2d 888 (1967).

2. Gideon v. Wainwright, 372 U.S. 335 (1963). In *Gideon*, the indigent defendant had charged with breaking and entering a poolrom with intent to commit a misdemeanor. The Court held that the due process clause of the fourteenth amendment to the Federal Constitution made it obligatory upon the states to provide the sixth amendment guarantee of the right to counsel for the accured in criminal prosecutions.

3. Patterson v. State, 227 Md. 194, 175 A.2d 746 (1961). This case was decided prior to the rendition of *Gideon v. Wainwright* and was on appeal at the time of that decision.

4. Patterson v. Warden, 372 U.S. 776 (1963).