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Supreme Court Standards for Pretrial Detention: Bell v. Wolfish

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Those familiar with the criminal law have generally assumed that defendants who are being held for trial are entitled to more freedom while in custody than are convicted prisoners.[1] English common law had accepted this principle by the eighteenth century. In the United States as well, several federal courts of appeals (including the one that serves North Carolina) have recognized the greater rights of detainees.[2] But the United States Supreme Court had never said anything about the matter until last month, when it decided Bell v. Wolfish (47 U.S.L.W. 4507, 25 Crim. L. Rptr. 3053 May 14, 1979). The Court also recognized a difference between the two categories of inmates, but it made it clear that the constitutional rights of both convicts and pretrial detainees can be much more restricted than the constitutional rights of free persons.

The case arose as a class action when inmates of the Metropolitan Correctional Center (MCC) in New York City (a federal facility) sued to challenge the constitutionality of numerous practices applied to pretrial detainees. The trial court held that these practices[3] must be stopped, and when the case was appealed, the appeals court in general agreed with the trial court.[4] Both courts based their decisions on the theory that a detainee's liberty may be restricted unless the restriction is an unavoidable part of confinement itself or is required by a "compelling necessity" of jail administration. Therefore this idea of compelling necessity as well as the Metropolitan Correctional Center's specific regulations was before the Supreme Court for review.

The inmates challenged five practices: (1) double-bunking, which slept two men in a room originally constructed for one; (2) a "publishers only" rule, which said that the only hard-cover books that inmates could receive were books mailed directly from publishers or bookstores; (3) a rule forbidding receipt of packages of food or personal property; (4) removal of inmates to other quarters while their rooms were searched; and (5) a body-cavity search of each inmate after a contact visit. Arguing that the rules were not strictly

necessary for confinement or jail administration, the inmates claimed that they had been deprived of liberty without the due process of law that the Fourteenth and Fifth amendments guarantee.

In a 6-3 split, the Supreme Court reversed, upholding each of the questioned rules and rejecting the appeals court's "compelling necessity" standard. Justice Rehnquist, writing for the majority, said that any regulation is permissible if it is reasonably related to a legitimate governmental objective that is not intended to punish. Punishment is the key to the Court's distinction between persons awaiting trial and convicts: Convicts may be punished, detainees may not--otherwise their treatment can be identical. The Court found that none of the practices at MCC were punishment.

In its decision the appeals court had said that because a person is presumed to be innocent until he is found to be guilty, only essential restrictions could be placed on defendants being held for trial. The Supreme Court replied that the presumption-of-innocence doctrine is to be used only to show what the state must prove in order to convict a defendant in a criminal trial--it has, said the Court, no application to pretrial confinement. The Court also said that the due process clause gives detainees only the right to be free from punishment. It noted that detainees have an "understandable desire to be as comfortable as possible during . . . confinement," but it said that that desire is not the same as a fundamental liberty and is outweighed by administrative needs.

On the question of who will decide whether a rule is needed or is in fact a form of punishment, the Court said that it would accept the judgment of corrections officials in every instance where "they have not been conclusively shown to be wrong." That is, unless there is an obvious intent to punish (the Court said that it would find such an intent if, for example, jailers shackled and chained inmates for "administrative convenience"), the Court will support a regulation or practice with any reasonable basis whatsoever.

The willingness of the Court's majority to defer to jailers was evident in the Court's treatment of the specific rules before it. The appeals court found it intolerable (1) to confine two persons in a 75-square-foot cell furnished with double bunks, one chair, and an exposed toilet; (2) to put 120 men in a dormitory designed for 60; and (3) to keep new inmates sleeping on sofas in the day room under glaring lights for periods up to a week. The Supreme Court, on the other hand, pointed out that the original intention was to make MCC a handsome, comfortable facility; that the crowded arrangements were unfortunately necessary for the present; and that the bad night-time conditions were relieved by the inmates' access to the day room for 16 hours a day.

On the book issue, Justice Rehnquist noted that inmates could still receive papers, magazines, and paperbacks from any source and also had access to television and MCC's library. The appeals court had emphasized that a detainee might need particular books that might not be available under the "publishers only" rule, and it pointed out that other institutions had more lenient regulations.[5] The trial and appeals courts had also held that the prohibition on packages was unnecessary. The Supreme Court, however, deferred to administrators' protests that packages presented serious security problems, burdened the staff with a constant search for contraband, and caused storage and sanitation difficulties.

In regard to room searches in the occupants' absence, the Court agreed with jail administrators that to permit the occupants to stay would give them more opportunity to conceal contraband, would make guards more timid in conducting searches, and would increase tension between staff and inmates.

The six justices that made up the Court's majority in this case were unanimous about every challenged regulation except one--search of body cavities after each visit. Justice Powell disagreed with the majority on this point. Because these searches were extreme intrusions, because there was evidence that some inmates refused visits in order to avoid the searches, and because the searches had produced only one item of contraband in MCC's (admittedly brief) history, the trial and appeals courts and the three Supreme Court justices who agreed with the lower courts would have banned the body-cavity searches. Justice Powell would have required at least a reasonable suspicion before such a search could be made. Even so, five justices bowed to jailers' claims that the searches were necessary. (On the legality of searches involving persons in custody, see Michael Crowell's Administration of Justice Memorandum 79/05.

Justice Marshall, one of the three justices who agreed with the trial and appeals courts, argued that any pretrial detention practice should be considered carefully to determine "whether the governmental interest served by any restriction outweigh the individual deprivations suffered." He also strongly objected to the Supreme Court's emphasis on what jailers said they intended to do and its willingness to accept their judgment of what is necessary. He rejected the whole idea of viewing some restrictions as punishment and others not. On the other hand, Justice Stevens and Justice Brennan, who also dissented from the Court majority, nevertheless applauded the Court's holding that the due process clause prevents punishment. Justice Stevens said that the holding was a retreat from the Court's insistence in recent years that "liberty includes only rights that are created by statute or regulation or are specifically named in the Constitution's Bill of Rights. However, he objected to the Court's emphasis on whether jailers mean to punish. Instead, he would judge whether a regulation is constitutional on the basis of its harshness and the danger presented by the group of individuals being regulated. Thus the average defendant awaiting trial should be entitled to a less restrictive confinement than convicts or detainees who present a particular threat to security.

On the whole, the Supreme Court's decision in Bell v. Wolfish is good news for sheriffs and jailers. Apparently it need not trouble jailers and their legal advisers that unconvicted detainees and convicts are treated alike, so long as no confinement practice that applies to all inmates is imposed for the purpose of punishment.

Still, a few cautions are in order. The most solid aspect of this case is the Supreme Court's holding that jail regulations need not arise from "compelling necessity" in order to be valid. It is less clear what importance should be given to the Court's upholding of particular practices. To begin with, the Court emphasized that its decisions on specific conditions depended on the fact that almost no one remains at MCC longer than 60 days. North Carolina jails, on the contrary, contain a few detainees (and a substantial number of convicts) who have a longer stay. Many physical conditions or regulations that are bearable for a short time may become intolerable (or indeed unconstitutional)

if applied for a longer time, making jailers and sheriffs vulnerable to inmate actions based on the Eighth Amendment (which prohibits cruel and unusual punishment) or the due process clause. One appeals court, for example, recently held that while double-celling is not unconstitutional in itself, the overcrowding in two Maryland prisons violated the constitutional prohibition against cruel and unusual punishment.[6] In my opinion, the Supreme Court's approval of double-bunking in Bell v. Wolfish does not overrule that appeals court holding or prevent future holdings of like nature.

A similar warning should be taken from the Supreme Court's discussion of the "publishers only" rule. The Court saw this rule as a minor restriction because inmates had many other sources of contact with the outside world. Jail administrators should therefore not interpret the Court's decision as supporting anything close to a total prohibition of reading material and other means of free-world contact.

On searches of body cavities, the Court applied a "reasonableness" test in upholding the searches at MCC. This standard leaves open the possibility that other courts would find such searches unreasonable in a different situation--for example, where inmates are already under close surveillance and have no time to conceal evidence.

Finally, attention should be paid to the Court's majority opinion (footnote 20) that at some point deference to administrators must come to an end. The Court agreed that chains and shackles would be too far to go despite the savings and administrative convenience. Presumably, other oppressive practices would also be too much, though certainly Wolfish indicates that jail officials will enjoy the benefit of the doubt from this Supreme Court majority.

Notes

1. Blackstone's Commentaries state that pretrial detention "is only for safe custody, and not for punishment: therefore, in this dubious interval between the commitment and the trial, a prisoner ought to be used with the utmost humanity, and neither be loaded with needless fetters or subjected to other hardships than such as are absolutely requisite for the purpose of confinement only." 4 Blackstone, Commentaries 300.

2. Patterson v. Morrisette, 564 F.2d 1109 (CA4 1977); Rhem v. Malcolm, 507 F.2d 333 (CA2 1974); Miller v. Carson, 563 F.2d 741 (CA5 1977); Duran v. Elrod, 542 F. 2d 998 (CA7 1976); Cambell v. Magruder, 580 F.2d 521 (CA DC 1978).

3. United States ex rel. Wolfish v. United States, 428 F. Supp. 333, 439 F. Supp. 114 (S.D.N.Y. 1977).

4. Wolfish v. Levi, 573 F.2d 118 (CA2 1978).

5. 573 F.2d 118, 130.

6. Johnson v. Levine, 588 F.2d (CA4 1978). See also Sweet v. South Carolina Department of Corrections, 529 F.2d 854, 866 (CA4 1975), in which the court said

> While a restriction of two exercise periods of one hour each during a week, as allowed the plaintiff, may not ordinarily transgress the constitutional standard as fixed by the Eighth Amendment if applied to a relatively short period of maximum confinement, the rule may be quite different when, as here, the restriction has extended already over a period of years and is likely to extend indefinitely for the balance of plaintiff's confinement. Such indefinite limitation on exercise may be harmful to a prisoner's health and, if so, would amount to "cruel and unusual punishment."