"[T]he presumption of innocence ... has no application to a determination of the rights of a pretrial detainee during his confinement before his trial has even begun."

BELL v. WOLFISH

441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

"Pre-trial detainees," who are typically people accused of crimes but unable to post bail, being held at the federal government's Metropolitan Correction Center (MCC) in New York City, which also houses convicted prisoners, brought a class action seeking to enjoin certain policies of the institution as depriving them of their liberty without due process and of violating the "cruel and unusual punishments" clause of the Eighth Amendment. The U.S. district court– >upheld by the Court of Appeals for the Second Circuit solely on grounds of due process– enjoined the MCC from (1) "double bunking"– placing two detainees in a cell designed for one; (2) not allowing detainees to receive books unless sent directly from a publisher or book club; (3) blocking packages containing food or personal items; (4) requiring detainees to leave their cells when guards conducted their unannounced searches of those cells; and (5) subjecting detainees to a "strip search" that included visual examination of "body cavities" after they had met with visitors, even under closely supervised conditions. The Court of Appeals ruled that the MCC failed to show a "compelling necessity" for such repressive measures. The federal government obtained certiorari.

Mr. Justice **REHNQUIST** delivered the opinion of the Court....

II ...

A

The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, or from other matters not introduced as proof at trial. Taylor v. Kentucky (1978); see Estelle v. Williams (1976); In re Winship (1970); 9 J. Wigmore, Evidence § 2511 (3d ed. 1940).... Without question, the presumption of innocence plays an important role in our criminal justice system.... But it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.

... We do not doubt that the Due Process Clause protects a detainee from certain conditions and restrictions of pretrial detainment. Nonetheless, that Clause provides no basis for application of a compelling-necessity standard to conditions of pretrial confinement that are not alleged to infringe any other, more specific guarantee of the Constitution.

... [W]hat is at issue when an aspect of pretrial detention that is not alleged to violate any

express guarantee of the Constitution is challenged, is the detainee's right to be free from punishment and his understandable desire to be as comfortable as possible during his confinement, both of which may conceivably coalesce at some point.... [T]his desire simply does not rise to the level of those fundamental liberty interests delineated in cases such as Roe v. Wade (1973); Eisenstadt v. Baird (1972); Stanley v. Illinois (1972); Griswold v. Connecticut (1965); Meyer v. Nebraska (1923).

B

In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law....

... Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on "whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]." Kennedy v. Mendoza-Martinez [1963]. Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal– if it is arbitrary or purposeless– a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees. Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility.

One further point requires discussion. The petitioners assert, and respondents concede, that the "essential objective of pretrial confinement is to insure the detainees' presence at trial." While this interest undoubtedly justifies the original decision to confine an individual in some manner, we do not accept respondents' argument that the Government's interest in ensuring the detainee's presence at trial is the *only* objective that may justify restraints and conditions once the decision is lawfully made to confine a person.... The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees. Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial....

C

... [W]e are convinced as a matter of law that "double-bunking" as practiced at the MCC

did not amount to punishment and did not, therefore, violate respondents' rights under the Due Process Clause of the Fifth Amendment....

... We disagree with both the District Court and the Court of Appeals that there is some sort of "one man, one cell" principle lurking in the Due Process Clause of the Fifth Amendment. While confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment, nothing even approaching such hardship is shown by this record....

[The Court went on to hold rational: (1) the ban on receiving books unless sent by a publisher or book club because of the risks of drugs, weapons, or other contraband being hidden in the covers (moreover, MCC had its own library, and the ban was nondiscriminatory– that is, it was not related to the content of books, only to sources of shipment); (2) the ban on packages for similar reasons; and (3) the requirement that detainees remain outside their rooms during unannounced searches.]

D

Inmates at all Bureau of Prisons facilities, including the MCC, are required to expose their body cavities for visual inspection as a part of a strip search conducted after every contact visit with a person from outside the institution.1 Corrections officials testified that visual cavity searches were necessary not only to discover but also to deter the smuggling of weapons, drugs, and other contraband into the institution....

If the inmate is a male, he must lift his genitals and bend over to spread his buttocks for visual inspection. The vaginal and anal cavities of female inmates also are visually inspected. The inmate is not touched by security personnel at any time during the *visual* search procedure. [Footnote by the Court.]

Admittedly, this practice instinctively gives us the most pause. However, assuming for present purposes that inmates, both convicted prisoners and pretrial detainees, retain some Fourth Amendment rights upon commitment to a corrections facility, we nonetheless conclude that these searches do not violate that Amendment. The Fourth Amendment prohibits only unreasonable searches, and under the circumstances, we do not believe that these searches are unreasonable.

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record and in other cases. That there has been only one instance where an MCC inmate was discovered attempting

to smuggle contraband into the institution on his person may be more a testament to the effectiveness of this search technique as a deterrent than to any lack of interest on the part of the inmates to secrete and import such items when the opportunity arises.

We do not underestimate the degree to which these searches may invade the personal privacy of inmates. Nor do we doubt ... that on occasion a security guard may conduct the search in an abusive fashion. Such abuse cannot be condoned. The searches must be conducted in a reasonable manner. But we deal here with the question whether visual body-cavity inspections as contemplated by the MCC rules can *ever* be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can....

[*Reversed*.]

Mr. Justice **POWELL,** concurring in part and dissenting in part.

I join the opinion of the Court except the discussion and holding with respect to body-cavity searches. In view of the serious intrusion on one's privacy occasioned by such a search, I think at least some level of cause, such as a reasonable suspicion, should be required to justify the anal and genital searches described in this case. I therefore dissent on this issue.

Mr. Justice **MARSHALL,** dissenting.

The Court holds that the Government may burden pretrial detainees with almost any restriction, provided detention officials do not proclaim a punitive intent or impose conditions that are "arbitrary or purposeless." As if this standard were not sufficiently ineffectual, the Court dilutes it further by according virtually unlimited deference to detention officials' justifications for particular impositions. Conspicuously lacking from this analysis is any meaningful consideration of the most relevant factor, the impact that restrictions may have on inmates. Such an approach is unsupportable given that all of these detainees are presumptively innocent and many are confined solely because they cannot afford bail.

In my view, the Court's holding ... precludes effective judicial review of the conditions of pretrial confinement. More fundamentally, I believe the proper inquiry in this context is not whether a particular restraint can be labeled "punishment." Rather, as with other due process challenges, the inquiry should be whether the governmental interests served by any given restriction outweigh the individual deprivations suffered.

I ...

B

Although the Court professes to go beyond the direct inquiry regarding intent and to determine whether a particular imposition is rationally related to a nonpunitive purpose, this exercise is at best a formality. Almost any restriction on detainees, including, as the Court concedes, chains and shackles, can be found to have some rational relation to institutional

security, or more broadly, to "the effective management of the detention facility." Yet this toothless standard applies irrespective of the excessiveness of the restraint or the nature of the rights infringed.

Moreover, the Court has not in fact reviewed the rationality of detention officials' decisions.... Instead, the majority affords "wide-ranging" deference to those officials "in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Reasoning that security considerations in pretrial detention facilities are little different than in prisons, the Court concludes that cases requiring substantial deference to prison administrators' determinations on security-related issues are equally applicable in the present context.

Yet as the Court implicitly acknowledges, the rights of detainees, who have not been adjudicated guilty of a crime, are necessarily more extensive than those of prisoners "who have been found to have violated one or more of the criminal laws established by society for its orderly governance." Jones v. North Carolina Prisoners' Union (1977). Judicial tolerance of substantial impositions on detainees must be concomitantly less. However, by blindly deferring to administrative judgments on the rational basis for particular restrictions, the Court effectively delegates to detention officials the decision whether pretrial detainees have been punished. This, in my view, is an abdication of an unquestionably judicial function.

II

Even had the Court properly applied the punishment test, I could not agree to its use in this context. It simply does not advance analysis to determine whether a given deprivation imposed on detainees constitutes "punishment." For in terms of the nature of the imposition and the impact on detainees, pretrial incarceration, although necessary to secure defendants' presence at trial, is essentially indistinguishable from punishment. The detainee is involuntarily confined and deprived of the freedom "to be with his family and friends and to form the other enduring attachments of normal life," Morrissey v. Brewer (1972). Indeed, this Court has previously recognized that incarceration is an "infamous punishment." Flemming v. Nestor [1960]; see also Wong Wing v. United States (1896); Ingraham v. Wright (1977)....

A test that balances the deprivations involved against the state interests assertedly served would be more consistent with the import of the Due Process Clause. Such an approach would be sensitive to the tangible physical and psychological harm that a particular disability inflicts on detainees and to the nature of the less tangible, but significant, individual interests at stake. The greater the imposition on detainees, the heavier the burden of justification the Government would bear. See Bates v. Little Rock [1960].

When assessing the restrictions on detainees, we must consider the cumulative impact of restraints imposed during confinement. Incarceration of itself clearly represents a profound infringement of liberty, and each additional imposition increases the severity of that initial deprivation. Since any restraint thus has a serious effect on detainees, I believe the Government must bear a more rigorous burden of justification than the rational-basis standard mandates. At a minimum, I would require a showing that a restriction is substantially necessary to jail

administration. Where the imposition is of particular gravity, that is, where it implicates interests of fundamental importance or inflicts significant harms, the Government should demonstrate that the restriction serves a compelling necessity of jail administration.

[Marshall argued that the trial court should conduct further hearings on double bunking but that the restrictions on receiving books and

packages as well as the way in which searches of cells were conducted all failed the proper constitutional test.]

III ...

D

In my view, the body-cavity searches of MCC inmates represent one of the most grievous offenses against personal dignity and common decency. After every contact visit with someone from outside the facility, including defense attorneys, an inmate must remove all of his or her clothing, bend over, spread the buttocks, and display the anal cavity for inspection by a correctional officer. Women inmates must assume a suitable posture for vaginal inspection, while men must raise their genitals. And, as the Court neglects to note, because of time pressures, this humiliating spectacle is frequently conducted in the presence of other inmates.

The District Court found that the stripping was "unpleasant, embarrassing, and humiliating." A psychiatrist testified that the practice placed inmates in the most degrading position possible, a conclusion amply corroborated by the testimony of the inmates themselves. There was evidence, moreover, that these searches engendered among detainees fears of sexual assault, were the occasion for actual threats of physical abuse by guards, and caused some inmates to forgo personal visits.

Not surprisingly, the Government asserts a security justification for such inspections. These searches are necessary, it argues, to prevent inmates from smuggling contraband into the facility. In crediting this justification despite the contrary findings of the two courts below, the Court overlooks the critical facts. As respondents point out, inmates are required to wear one-piece jumpsuits with zippers in the front. To insert an object into the vaginal or anal cavity, an inmate would have to remove the jumpsuit, at least from the upper torso. Since contact visits occur in a glass enclosed room and are continuously monitored by corrections officers, such a feat would seem extraordinarily difficult. There was medical testimony, moreover, that inserting an object into the rectum is painful and "would require time and opportunity which is not available in the visiting areas," and that visual inspection would probably not detect an object once inserted. Additionally, before entering the visiting room, visitors and their packages are searched thoroughly by a metal detector and fluoroscope, and by hand. Correction officers may require that visitors leave packages or handbags with guards until the visit is over. Only by blinding itself to the facts presented on this record can the Court accept the Government's security rationale.

Without question, these searches are an imposition of sufficient gravity to invoke the

compelling-necessity standard. It is equally indisputable that they cannot meet that standard. Indeed, the procedure is so unnecessarily degrading that it "shocks the conscience." Rochin v. California (1952). Even in *Rochin,* the police had reason to believe that the petitioner had swallowed contraband. Here, the searches are employed absent any suspicion of wrongdoing....

Mr. Justice **STEVENS,** with whom Mr. Justice **BRENNAN** joins, dissenting.

This is not an equal protection case. An empirical judgment that most persons formally accused of criminal conduct are probably guilty would provide a rational basis for a set of rules that treat them like convicts until they establish their innocence. No matter how rational such an approach might be ... it is obnoxious to the concept of individual freedom protected by the Due Process Clause. If ever accepted in this country, it would work a fundamental change in the character of our free society.

Nor is this an Eighth Amendment case. That provision of the Constitution protects individuals convicted of crimes from punishment that is cruel and unusual. The pretrial detainees whose rights are at stake in this case, however, are innocent men and women who have been convicted of no crimes. Their claim is not that they have been subjected to cruel and unusual punishment in violation of the Eighth Amendment, but that to subject them to any form of punishment at all is an unconstitutional deprivation of their liberty.

This is a due process case. The most significant– and I venture to suggest the most enduring– part of the Court's opinion today is its recognition of this initial constitutional premise. The Court squarely holds that "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."

This right to be free of punishment is not expressly embodied in any provision in the Bill of Rights. Nor is the source of this right found in any statute. The source of this fundamental freedom is the word "liberty" itself as used in the Due Process Clause, and as informed by "history, reason, the past course of decisions," and the judgment and experience of "those whom the Constitution entrusted" with interpreting that word. Anti-Fascist Committee v. McGrath (Frankfurter, J., concurring) [1952]. See Leis v. Flynt (Stevens, J., dissenting) [1979].

In my opinion, this latter proposition is obvious and indisputable. Nonetheless, it is worthy of emphasis because the Court has now accepted it in principle. In recent years, the Court has mistakenly implied that the concept of liberty encompasses only those rights that are either created by statute or regulation or are protected by an express provision of the Bill of Rights. Today, however, without the help of any statute, regulation, or express provision of the Constitution, the Court has derived the innocent person's right not to be punished from the Due Process Clause itself. It has accordingly abandoned its parsimonious definition of the "liberty" protected by the majestic words of the Clause. I concur in that abandonment. It is with regard to the scope of this fundamental right that we part company....

I ...

[A] careful reading of the Court's opinion reveals that it has attenuated the detainee's

constitutional protection against punishment into nothing more than a prohibition against irrational classifications or barbaric treatment. Having recognized in theory that the source of that protection is the Due Process Clause, the Court has in practice defined its scope in the far more permissive terms of equal protection and Eighth Amendment analysis....

II

When measured against an objective standard, it is clear that the four rules discussed in ... the Court's opinion are punitive in character. All of these rules were designed to forestall the potential harm that might result from smuggling money, drugs, or weapons into the institution. Such items, it is feared, might be secreted in hardcover books, packages of food or clothing, or body cavities....

There is no question that jail administrators have a legitimate interest in preventing smuggling. But it is equally clear that that interest is being served here in a way that punishes many if not all of the detainees.

The challenged practices concededly deprive detainees of fundamental rights and privileges of citizenship beyond simply the right to leave. The Court recognizes this premise, but it dismisses its significance by asserting that detainees may be subjected to the " 'withdrawal or limitation' " of fundamental rights. I disagree. The withdrawal of rights is itself among the most basic punishments that society can exact, for such a withdrawal qualifies the subject's citizenship and violates his dignity. Without question that kind of harm is an "affirmative disability" that "has historically been regarded as a punishment." ...

In contrast to these severe harms to the individual, the interests served by these rules appear insubstantial....

The body-cavity search– clearly the greatest personal indignity– may be the least justifiable measure of all. After every contact visit a body-cavity search is mandated by the rule. The District Court's finding that these searches have failed in practice to produce any demonstrable improvement in security is hardly surprising. Detainees and their visitors are in full view during all visits, and are fully clad. To insert contraband in one's private body cavities during such a visit would indeed be "an imposing challenge to nerves and agility." ... Moreover, as the District Court explicitly found, less severe alternatives are available to ensure that contraband is not transferred during visits. Weapons and other dangerous instruments, the items of greatest legitimate concern, may be discovered by the use of metal detecting devices or other equipment commonly used for airline security. In addition, inmates are required, even apart from the body-cavity searches, to disrobe, to have their clothing inspected, and to present open hands and arms to reveal the absence of any concealed objects. These alternative

procedures, the District Court found, "amply satisf[y]" the demands of security. In my judgment, there is no basis in this record to disagree.

It may well be, as the Court finds, that the rules at issue here were not adopted by administrators eager to punish those detained at MCC. The rules can all be explained as the

easiest way for administrators to ensure security in the jail. But the easiest course for jail officials is not always one that our Constitution allows them to take. If fundamental rights are withdrawn and severe harms are indiscriminately inflicted on detainees merely to secure minimal savings in time and effort for administrators, the guarantee of due process is violated.

In my judgment, each of the rules at issue here is unconstitutional. The four rules do indiscriminately inflict harm on all pretrial detainees in MCC. They are all either unnecessary or excessively harmful, particularly when judged against our historic respect for the dignity of the free citizen.... Absent probable cause to believe that a specific individual detainee poses a special security risk, none of these practices would be considered necessary, or even arguably reasonable, if the pretrial detainees were confined in a facility separate and apart from convicted prisoners....

Editors' Notes

(1) **Query:** Both Rehnquist and Marshall claimed to use the *technique* of balancing. How do their tests differ? How does each differ from that used by Stevens? How does Marshall's differ, if at all, from that which he tried to persuade the Court to apply when faced with questions of legislative classifications affecting fundamental rights?

(2) **Query:** Would an argument from plain words by either the Court or the dissenters be persuasive in this case? To what extent did Stevens directly, and Rehnquist and Marshall indirectly, address the WHAT interrogative?

(3) **Query:** Was Marshall correct when he argued that Rehnquist's opinion abdicates to prison administrators the authority to interpret the Constitution for prisoners and detainees? How does Rehnquist's implicit view in *Wolfish* about WHO should interpret compare with the views he expressed in his article "The Notion of a Living Constitution" (reprinted above, p. 163)?

(4) Hudson v. Palmer (1984) held, 54, that "privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions."