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Eight Days Without Rights

MAYBE YOU THOUGHT the Constitution protects a person from being held in jail by mistake. It doesn't, the Supreme Court said this week. If the police think you are somebody else and arrest you on a warrant issued for that somebody else, well, tough. Your rights aren't violated, the court said, because you will get a chance at the trial—weeks or months later—to show that you were the wrong person.

This strange ruling came in the case of a man in Texas who was arrested for jumping bond. The police had his name on the arrest warrant because that was the name his brother had used when he was picked up months earlier on a narcotics charge. For the next eight days, the man in custody kept insisting the officers had the wrong person. When the sheriff finally got around to comparing him with the picture taken of the narcotics violator, it became plain the man was right.

No one (except maybe the man involved) would criticize the police for their original error. They had been deceived and had no reason at the time of the arrest to doubt the correctness of what they were doing. But to let a man sit in jail for eight days when a routine check of the files or his fingerprints would

have established his innocence is something else—especially in an era when radio and computer checks of identification data—names, Social Security numbers and so on—make errors like this one easier to catch.

But to a majority of the Supreme Court, eight days is not enough to worry about. The innocent man's constitutional rights might have been violated, Justice William H. Rehnquist said, if he had still been in jail "after the lapse of a certain amount of time," but not a mere eight days.

What is troubling in this decision beyond the shoddy police practice it sanctions is the threat that Justice Rehnquist's logic poses to the writ of *habeas corpus*. That writ has been used by judges for centuries to release from jail the people who shouldn't be there. But federal judges can use it when someone is in a state jail only if his constitutional rights have been violated. This apparent curtailing—at least for eight days and probably much longer—of the strongest weapon in the hands of federal judges to protect individual liberties is yet another illustration of how the court's current majority feels about the Bill of Rights.