Detention Practices Are Upheld

By Morton Mintz
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The Supreme Court ruled yesterday that certain detention practices, including putting two persons in a room intended for one, aren't punishment that deny the due process of law guaranteed by the Constitution.

"No" 'one man, one cell' principle [is] lurking in the due process clause," Justice William H. Rehnquist wrote in the opinion for the court.

The 6-to-3 decision reversed the 2nd U.S. Circuit Court of Appeals in a case involving a nearly new federal short-term custodial facility designed to embody the most progressive penological planning.

The facility is the Metropolitian Correctional Center (MCC) in New York City. The Justice Department opened it in 1975 to house persons awaiting trial on criminal charges.

Inmates filed a class action charging that in addition to so-called "double-bunking," certain other practices deprived them of their liberty without due process, including:

- A ban on receipt of hardcover books from anyone but the publisher, a book club, or a book store.
- A ban on receipt of packages of food and personal items from persons outside the MCC.
- Body-cavity searches made after every "contact visit" with an outsider.
- A requirement that inmates remain outside their rooms during routine inspections of the rooms by officials.

In the majority opinion, Rehnquist noted that the MCC has "no barred cells, dank, colorless corridors, or clanging steel gates," even if it quickly fell victim to overcrowding.

But, he wrote, "not every disability imposed during pretrial detention amounts to 'punishment' in the constitutional sense . . ."

The appellate court held that to justify double-bunking, the MCC was required but failed to show a "compelling necessity" for the practice. Rehnquist said, however, that "we fail to find a source in the Constitution" for a showing of compelling necessity.

As for the other practices at issue, Rehnquist said they were intended to protect security interests and were in the proper province of MCC officials, not the courts.

Justice Lewis F. Powell Jr. dissented only as to anal and genital searches, saying they should be justified by a "reasonable suspicion" that drugs or other contrabrand are being concealed.

In a dissenting opinion, Justice John Paul Stevens, joined by Justice William J. Brennan Jr., wrote that the majority has reduced the presumably innocent detainee's constitutional protection against punishment into "nothing more than a prohibition against irrational classifications or barbaric treatment."

Terming each of the rules unconstitutional, Stevens said, "They are all either unnecessary or excessively harmful, particularly when judged against our historic respect for the dignity of the free citizen." He added:

"I think it is unquestionably a form of punishment to deny an innocent person the right to read a book loaned to him by a friend or relative while he is temporarily confined, to deny him the right to receive gifts or packages, to search his private possessions out of his presence, or to compel him to exhibit his private body cavities to the visual inspection of a guard."

As to double-bunking, Stevens re-

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jected Rehnquist's conclusion that overcrowding in the MCC does not give rise even to an inference of punitive qualities.

In a separate dissent, Justice Thurgood Marshall said the majority holding was "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 and purposeless.'"

The court took other actions.

BORDER SEARCHES

With Stevens and Justice Harry A. Blackmun dissenting, the court declined a plea by the Church of Scientology of California to review a decision in which the 9th U.S. Circuit Court of Appeals upheld a search by Customs agents of materials shipped by the church's affiliate in Britain.

Last night, a church spokesman said that under the decision, "anything arriving in the United States by air freight can now be opened and searched, and documents and papers read in their entirety by Customs agents without a search warrant. Even though no law is violated, Customs can read and detain any mail they wish."

An agent made the search of the church's materials under a law allowing Customs to bar importation of matter "advocating or urging treason. . ." The materials were detained for three days in July 1976 after the agent, scanning the materials, saw words such as "CIA," "Interpol," "decoding machine" and "sabotage." The documents then were released.

On the day of release, the church filed a suit charging that the law is unconstitutional.

The 9th Circuit ruling applies only in Arizona, California, Idaho, Montana, Nevada, Oregon, Washington state, Alaska, Hawaii and Guam.

The Supreme Court previously has upheld border searches of mail suspected to contain narcotics.