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Prisoner Restraint and Court Appearances

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❖ **Introduction**

Jails and prisons regularly must transport detainees and prisoners to various courthouses to appear in judicial proceedings as criminal defendants, as litigants in civil lawsuits (or civil proceedings related to family or property law issues), or as non-party witnesses in various types of proceedings. The question of the extent to restrain such persons is a frequent issue.

In a number of decisions courts have rejected the notion of a blanket policy of placing all detainees or prisoners appearing in court in visible shackles or other restraints and instead called for a case by case individualized determination of the extent to which restraints are necessary for security purposes. A big concern has been the impact that a person appearing in court in restraints may have on negatively influencing fact finders, particularly jurors, in assessing the guilt or innocence of a defendant in a criminal proceeding, the merits of a litigant's claim in a civil lawsuit, or the credibility of the individual as a witness.

This article begins by examining a major U.S. Supreme Court decision examining this issue and then looks at how lower courts have addressed the question in the

context of criminal or civil proceedings. Finally, there is a brief note about the significance of this issue for jail and prison management. At the conclusion of the article, there is a list of relevant and useful resources and references.

❖ U.S. Supreme Court Ruling

In the major decision to date on this subject, [*Deck v. Missouri*](#), #04-5293, 544 U.S. 622 (2005), the U.S. Supreme Court ruled that the use of visible shackles, whether during the guilt phase of a criminal trial or the penalty phase of a capital case, is a violation of constitutional due process unless it is justified by specific findings concerning the need for such restraint of the particular defendant based on “essential” interests like courtroom security.

The case involved a Missouri man on trial for the robbery and murder of an elderly couple. He was required, during trial, to wear leg braces that were not visible to the jury, and was convicted and sentenced to death, but subsequently granted a new sentencing proceeding. During that new proceeding, from the first day, he was shackled with leg irons, handcuffs, and a belly chain, which his lawyer objected to. The trial court overruled these repeated objections, reasoning that the prisoner should stay in the restraints since he had been convicted. The trial judge also reasoned that the fact that the prisoner was “being shackled” took “any fear” of him out of the minds of the jury. A death sentence was again imposed.

The U.S. Supreme Court noted that it has long been forbidden to make routine use of visible shackles during the guilt phase of such trials, and such restraints are only permitted in the presence of a “special need,” such as those concerning the safe custody of the prisoner and danger to others in the courtroom.

Courts and commentators share close to a consensus that, during the guilt phase of a trial, a criminal defendant has a right to remain free of physical restraints that are visible to the jury; that the right has a constitutional dimension; but that the right may be overcome in a particular instance by essential state interests such as physical security, escape prevention, or courtroom decorum. Lower courts have disagreed about the specific procedural steps a trial court must take prior to shackling, about the amount and type of evidence needed to justify restraints, and about what forms of

prejudice might warrant a new trial, but they have not questioned the basic principle.

We now conclude that those statements identify a basic element of the “due process of law” protected by the Federal Constitution. Thus, the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial. Such a determination may of course take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial.

The Supreme Court’s majority concluded that the same principles apply during the penalty phase of a capital case, despite the fact that the defendant has already been found guilty. While the presumption of innocence no longer applies, there is still concern about “securing a meaningful defense and maintaining dignified proceedings.” Additionally, while the jury is no longer making a decision between guilt and innocence, the Court noted, “it is deciding between life and death,” a decision that, given the “severity” and “finality” of the sanction, is no less important than the decision about guilt.

Given the importance of these interests, the Court concluded that defendants cannot routinely be placed in shackles or other physical restraints visible to the jury during the penalty phase of a capital case. A judge may, however, exercise his or her discretion to take account of special circumstances, including security concerns that may call for shackling in a particular case to protect the courtroom and its occupants.

In the immediate case, the Court found that the record contained no formal or informal findings indicating that the trial judge even saw the matter as one “calling for discretion.” When a judge without adequate justification orders the defendant to wear shackles that will be seen by the jury, “the defendant need not demonstrate actual prejudice to make out a due process violation.” Rather, the State must prove “beyond a reasonable doubt” that the shackling did not contribute to the verdict obtained.

A strong dissent by Justice Thomas, joined by Justice Scalia, pointed to the fact that the defendant in this case had been convicted of being a double murderer and robber. He argued that the Court’s holding “defies common sense and all but ignores the

serious security issues facing our courts.” He asserted that the Court’s decision “risks the lives of courtroom personnel, with little corresponding benefit to defendants,” a “risk that due process does not require.”

Another method sometimes used to provide security in a courtroom setting for potentially dangerous criminal defendants, which has also been controversial, is stun belts. Given that the focus of the above decision on the use of restraints seems to be their visibility, rather than the confinement they impose, it seems likely that the Supreme Court would engage in a similar analysis concerning the use of stun belts or stun guns in this context, focusing on whether the devices would be visible to a jury.

Cases involving stun belts in this setting have included [*Hawkins v. Comparet-Cassani*](#), #99-55187, 251 F.3d 1230 (9th Cir. 2001) (Injunction that prohibited the use of stun belts to control unruly prisoners in court was overbroad to the extent that it prevented their use for controlling court security, such as to prevent escape or violence; appeals court orders injunction modified and rules that plaintiff prisoner, who was convicted, could not represent the interests of unconvicted detainees, so that case was improperly certified as a class action.); and [*Sinclair v. State of Louisiana*](#), #469,519 Louisiana trial court, (19th JDC Div. N. La.), reported in *The National Law Journal*, p. 1 (Feb. 19, 2001) (Louisiana trial court denies summary judgment in prisoner’s lawsuit over his being required to wear a stun belt for nine hours on a day when he went to court; lawsuit claims that wearing the belt for that period of time was cruel and unusual punishment despite it not having been activated).

❖ Lower Court Decisions

Lower courts, both federal and state, have applied these principles in both criminal and civil proceedings.

--Criminal Cases

A federal appeals court held in [*U.S. v. Sanchez-Gomez*](#), #13-50561, 859 F.3d 649 (9th Cir. 2017) that a federal trial court’s district-wide policy of routinely shackling all pretrial detainees in the courtroom violated the Fifth Amendment’s due process clause. Before a government entity seeks to shackle a criminal defendant, it must first justify the infringement with specific security needs as to that particular

defendant. Before a presumptively innocent defendant may be shackled, the court must make an individualized decision that a compelling government purpose would be served and that shackles are the least restrictive means for maintaining security and order in the courtroom.

The en banc court held that there was still a live controversy over the shackling policy and the case was not moot, despite the policy having been changed, because of the capable-of-repetition-yet-evading-review exception to mootness. The en banc court clarified the right to be free from shackles and held that it applies whether the proceeding is pretrial, trial, or sentencing, with a jury or without. Although the court held that the policy was unconstitutional, it withheld the issuance of a formal writ of mandamus because the policy was no longer in effect.

Violations of these principles can be the basis for overturning convictions. In [*Maus v. Baker*](#), #13-2420, 747 F.3d 926 (7th Cir. 2014), a prisoner who was convicted at a trial after being forced to wear visible shackles during the proceeding was entitled to a new trial. The appeals court said that the “sight of a shackled litigant is apt to make jurors think they’re dealing with a mad dog.” There was nothing to show that other security measures or methods of concealing the restraints would not have been feasible, or that the prisoner was so violent as to require being manacled at all. There was no incident when his handcuffs were removed while he testified. The proposed “curative instruction” that the trial judge declined to give to the jury would not have been adequate to overcome the prejudice arising from the combination of the guards’ uniforms, the prison uniform, and the visible manacles.

The specifics of the case may mitigate the issue. In [*Tamez v. Thaler*](#), #08-40615, 344 Fed. Appx. 897, 2009 U.S. App. Lexis 20231 (Unpub. 5th Cir.), *cert. denied*, #09-7998, 130 S. Ct. 1523 (2010), a prisoner claimed that he had been denied a fair trial because he was tried in leg restraints. In light of the fact that the prisoner was an already convicted person being tried for a murder committed in prison, and that a number of other convicted prisoners testified at his trial, any error in having him shackled during the trial was harmless. Further, evidence of his guilt was “overwhelming,” including evidence that he beat the victim in front of numerous witnesses and continued to beat him after he fell. The prisoner himself did not deny the beating, and the victim was handcuffed at the time. Since the jury clearly knew that he was a prisoner, viewing him in leg restraints did not prejudice him.

--Civil Cases

These same principles have been applied in civil cases. In [*Tiffany A. v. The Superior Court of Los Angeles County*](#), #B193134, 150 Cal. App. 4th 1344, 2007 Cal. App. Lexis 783 (Cal. App. 2nd Dist.), a California intermediate court issued an order setting aside a juvenile court policy of having a sheriff's department shackle all minors during court proceedings without a case-by-case determination of the need for such restraints. In making such a determination, factors to be considered included the type of proceeding (criminal/delinquency, abuse or neglect, etc.), courtroom or security considerations, and the behavior and conduct of the juvenile.

When a specific showing of the need for restraints for security has been made, courts are willing to order them. In [*Sides v. Cherry*](#), #08-1982, 609 F.3d 576 (3rd Cir. 2010), a prisoner filed suit, claiming that a correctional officer attacked him in his cell, and that he was then denied adequate medical treatment. A jury returned a verdict for the defendants, and the prisoner appealed, arguing that he had been denied a fair trial on his claims because he had been required to appear in court in shackles (both handcuffs and leg irons).

A federal appeals court stated that requiring a party in a civil trial to appear in shackles can, indeed, constitute a denial of due process if the restraints are not necessary. In this case, however, any error in ordering that the prisoner remain shackled throughout the trial was harmless, in light of indications from the Department of Corrections that the prisoner was considered "very high risk," and was a "very assaultive inmate."

Damages have sometimes been awarded to detainees for distress they suffered while in restraints during a trip to the courthouse.

In [*Davis v. Wessel*](#), #13-3416, 792 F.3d 793 (7th Cir. 2015), a sexually violent person civil detainee claimed that security guards accompanying him to a courthouse refused to remove his hand restraints while he attempted to use a restroom there, and laughed as he struggled to unzip his pants and urinate. He was secured with leg shackles, a wrist chain, handcuffs, and a black-box restraint that fit over the chain between handcuffs and a portion of the cuffs themselves, largely immobilizing the hands in front of the body approximately two inches apart. A jury awarded him \$1,000 in compensatory damages.

A federal appeals court found that the trial judge improperly failed to instruct the jury that the plaintiff had to prove that the guards had a purposeful, knowing, or possibly reckless state of mind with respect to their actions or inaction toward him. At the same time, the court noted that a security directive allowed the guards to call their supervisor for permission to remove the restraints, and a reasonable jury could find that they chose not to do so for the purpose of humiliating him. He had no means of escape from the windowless restroom other than by force through the two younger, bigger, and healthier guards, and he would still be wearing leg shackles if the hand restraints were removed. The guards were therefore not entitled to qualified immunity on a due process claim as it was clearly established that the unreasonable use of body restraints in a manner that served to punish a civilly committed person was unlawful. Further proceedings were ordered.

❖ **Significance**

Because the decision to place or keep visible restraints on detainees and prisoners during courtroom proceedings depends on an individualized assessment of the security requirements and the behavior of the individual, the need for good considered information about the past conduct of the individual and the risk they may pose is essential. Management of jails and prisons should consider this issue and develop policies and procedures to systematically gather and transmit such information about detainees and prisoners to courts.

❖ **Resources**

The following are some useful resources related to the subject of this article.

- [Deck v. Missouri](#). Wikipedia article.
- [Physical Restraint](#). Wikipedia article.
- [Prisoner Restraint](#), AELE Case Summaries.

❖ **Prior Relevant Monthly Law Journal Articles**

- [Shackling of Pregnant Prisoners](#), 2009 (12) AELE Mo. L. J. 301.

- [Restraint and Asphyxia: Part One – Restraint Ties](#), 2008 (12) AELE Mo. L.J. 101.
- [Restraint and Asphyxia: Part Two – Compressional Asphyxia](#), 2009 (1) AELE Mo. L.J. 101.
- [The Use of Electronic Control Weapons Against Handcuffed or Restrained Persons - Part 2](#), 2012 (10) AELE Mo. L. J. 101.

❖ **References:** (*Chronological*)

1. Editorial: An [end to shackling prisoners in federal court](#), Los Angeles Times, (Aug. 22, 2015).

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Bernard J. Farber

Jail & Prisoner Law Editor

P.O. Box 75401

Chicago, IL 60675-5401 USA

E-mail: bernfarber@aele.org

Tel. 1-800-763-2802

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