The Burger Court Opinion Writing Database

Block v. Rutherford

468 U.S. 576 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justic**

Circulated: MAY 25 1984

Recirculated: _____

C J
In due course I hope to circulate a dissent in this case

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-317

SHERMAN BLOCK, SHERIFF OF THE COUNTY OF LOS ANGELES, ET AL., PETITIONERS *v.* DENNIS RUTHERFORD ET. AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether pretrial detainees have a right guaranteed by the United States Constitution (a) to contact visits; and (b) to observe shakedown searches of their cells by prison officials.

I

Los Angeles County Central Jail is one of seven principal facilities operated by the Sheriff of Los Angeles County. The three-story jail complex, located in downtown Los Angeles, is the largest jail in the country, with a capacity of over 5000 inmates. It is the primary facility in Los Angeles County for male pretrial detainees, the vast majority of whom remain at the facility at most a few days or weeks while they await trial.

In 1975, respondents, pretrial detainees at Central Jail, brought a class action under 42 U. S. C. §§1983, 1985, against the County Sheriff, certain administrators of Central Jail, and the County Board of Supervisors, challenging various policies and practices of the Jail and conditions of their confinement. Only respondents' challenges to the policy of the Jail denying pretrial detainees contact visits with their spouses, relatives, children and friends, and to the Jail's

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1984

Re: 83-317 Block v. Rutherford, et al.

Dear Lewis:

Your problem with this case baffles me. Of course if every jail used metal detectors, it would catch metal but it could not catch "drugs or other contraband."

I cannot conceivably understand how this statement "weakens" the opinion which is far, far from a "broad generalization."

If I am forced to remove this, I will remove "guns, knives," much against my better judgment-and personal first-hand observation of the problem.

As to the cavity concealmment, I will get you some documentation but I'd prefer not to put it in the opinion. Drugs, of course, have been "flushed out." If you insist, I could drop the "weapons" from this.

You should visit a few jails or prisons! Or talk to some administrators!

Regards,

WEB

Justice Powell

P.S. On Ford v Wainwright - you have my proxy at any time I'm not available

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1984

Re: 83-317 Block v. Rutherford

MEMORANDUM TO THE CONFERENCE:

In his separate concurrence, Harry says that the Court has "misconstrued" respondents' claim with respect to the cell search, and that "[i]t is quite clear ... respondents are challenging the cell-search policy on procedural due process grounds," not substantive due process grounds. He does not indicate that it makes any difference and, of course, in this setting, it does not.

Respondents' complaint alleged that petitioners were imposing upon them "conditions, restrictions and constraints which individually and in the aggregate constitute summary punishment without even a semblance of due process of law ...." J. A. 22-23 (emphasis added). In the same complaint, respondents prayed for a declaration that, through the challenged practices, petitioners had and were subjecting them to "summary punishment without due process of law." Thus, both the complaint and the prayer plainly raise a substantive due process claim.

The District Court's memorandum opinion makes no mention of any particular constitutional provision, but it certainly does not suggest that respondents were pressing a procedural claim. App. to Pet. for Cert. 41. If anything, because of its express reliance on language from United States ex rel Wolfish v. Levi, 439 F. Supp. 114, 149 (S.D. N.Y. 1977), to the effect that denying respondents the right to view the searches constituted "blunt oppression," the District Court apparently was addressing the substantive due process claim that respondents presented in their complaint. App. to Pet. for Cert. 60-61. This comports with the District Court's overview of the applicable law at the beginning of its opinion where it noted that pretrial detainees are "not to receive punishment for their misdeeds." Id., at 45. (At that stage, of course, there are no "misdeeds.")

The District Court also failed to specify in its Supplemental Memorandum whether it was examining a substantive or a procedural due process claim. Id., at 29. However, even in that supplement the court noted that, with respect to the challenged conditions, it "sought to apply the test of whether the challenged conditions or restrictions are reasonably necessary to the maintenance of security, order and safety in the institution, or whether they constitute an exaggerated response by custodial officials to these considerations." Id., at 30. This, too, would suggest that the District Court still believed that respondents had raised, as their complaint stated, a substantive due process claim.

On the original appeal, the Ninth Circuit remanded for consideration in light of Bell v. Wolfish, 441 U.S. 520 (1979). In its brief memorandum opinion, the Court of Appeals did not parse the particular claims in detail. But that court did point out that on remand the District Court should review respondents' claims in light of the directive of Wolfish that pretrial detainees not be subjected to punishment. App. to Pet. for Cert. 19-20. I take this to indicate that that court, too, thought that respondents raised a substantive due process claim.

There is a sentence in the District Court's opinion on remand that can be read to imply that the court was addressing itself to a procedural claim, but that court's ultimate conclusions as to the challenged practices suggest that such a reading might be inappropriate:

> "This court does not conclude that the Sheriff or his subordinates were consciously motivated by a desire to punish in creating the situations that my orders sought to remedy. However, in each instance, the conclusion is believed to be inescapable that the action was, in the words of the Supreme Court, '... excessive in relation to the alternative purpose assigned to it.' ... I conclude from the opinion in Bell v. Wolfish that under such circumstances an intent to punish may be inferred, irrespective of the actual motivation of the authorities." Id., at 25.

That the District Court intended to resolve a substantive due process claim is further supported by its emphasis in the first portion of the opinion that its inquiry under Wolfish was whether the challenged conditions and practices amounted to punishment. Id., at 24.

The Court of Appeals opinion under review here does not specify whether that court's decision rested on substantive or procedural due process grounds. But in the conclusion of the opinion, that court states it had determined "whether the standards set forth by the Supreme Court in Wolfish properly were followed." Id., at 14-15. It had earlier defined the appropriate legal standard as whether the challenged practices amounted to punishment. Id., at 2-5. Additionally, had the court believed that respondents were challenging the room search rule on procedural due process grounds, it surely would have noted that Wolfish was not controlling on that score. Presumably it would have detailed the governing standard for review of a procedural due process claim. (In fact, the Court of Appeals did not as much as recognize that we addressed a substantive due process claim in Wolfish.) The Court of Appeals dissent did not suggest that a procedural claim was at issue. Id., at 15.

Finally, I agree with Harry that, in their brief in this Court, respondents appear to argue that the room search rule deprives them of procedural due process. However, I am reluctant to place much reliance on this, given the substantial evidence recited above that respondents did not argue this point previously and that respondents, with the Court of Appeals, do not seem to realize that we addressed a due process challenge to the identical rule in Wolfish.

I have read the record to mean that respondents have asserted throughout the proceedings a substantive rather than a procedural due process claim with respect to the room search rule. If they are in fact asserting a procedural due process claim, it would appear that they have done so in this Court for the first time. Given this, I see no need to change the opinion in any substantial way, except that, since Harry raises the issue, I might add a footnote saying something to the effect that "to the extent that respondents brief in this Court can be read to raise a procedural due process challenge to the cell search rule, the claim is meritless."

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 26, 1984

Re: 83-317 - Block v. Rutherford

MEMORANDUM TO THE CONFERENCE:

I am adding as note 12, page 15, the following:

> "To the extent that respondents' brief in this Court can be read to raise a procedural rather than a substantive due process challenge to petitioners' cell-search procedure - a claim not made in Wolfish - we reject the challenge. The governmental interests in conducting the search in the absence of the detainees, see e.g. Wolfish, supra, at 555-556 and note 36 - a complex undertaking under optimal conditions in a 5,000 inmate institution - exceeds whatever possessory interests of the detainees that are implicated by the search. Moreover, we believe that the risks of erroneous deprivations of property under petitioners' procedure are minimal."

Regards,

WEB

CHANGES AS MARKED: 15

STYLISTIC CHANGES

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justi

Circulated: _____

Recirculated: JUN 27 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–317

SHERMAN BLOCK, SHERIFF OF THE COUNTY OF LOS ANGELES, ET AL., PETITIONERS *v.* DENNIS RUTHERFORD ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether pretrial detainees have a right guaranteed by the United States Constitution (a) to contact visits; and (b) to observe shakedown searches of their cells by prison officials.

I

Los Angeles County Central Jail is one of seven principal facilities operated by the Sheriff of Los Angeles County. The three-story jail complex, located in downtown Los Angeles, is the largest jail in the country, with a capacity of over 5,000 inmates. It is the primary facility in Los Angeles County for male pretrial detainees, the vast majority of whom remain at the facility at most a few days or weeks while they await trial.

In 1975, respondents, pretrial detainees at Central Jail, brought a class action under 42 U. S. C. §§ 1983, 1985, against the County Sheriff, certain administrators of Central Jail, and the County Board of Supervisors, challenging various policies and practices of the Jail and conditions of their confinement. Only respondents' challenges to the policy of the Jail denying pretrial detainees contact visits with their spouses, relatives, children, and friends, and to the Jail's

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1984

No. 83-317

Block v. Rutherford, et al.

Dear Thurgood:

On the issue of contact visits, John, you and I are in dissent. On the issue of the cell search, only you and I are in dissent. Would you be willing to try the dissent on both points?

Sincerely,

Bill

Justice Marshall

Copy to Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1984

No. 83-317

Block v. Rutherford, et al.

Dear Chief,

I'll await the dissent in the above.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 25, 1984

No. 83-317

Block v. Rutherford, et al

Dear Thurgood,

Please join me

Sincerely,

Bill

Justice Marshall

Copies to the Conference

4

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL
'84 JUN -4 A9:52

June 4, 1984

Re: 83-317 - Block v. Rutherford

Dear Chief,

I agree.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1984

Re: No. 83-317-Block v. Rutherford

Dear Chief:

In due course I hope to circulate a dissent in this one.

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: JUN 22 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–317

SHERMAN BLOCK, SHERIFF OF THE COUNTY OF LOS ANGELES, ET AL., PETITIONERS *v.* DENNIS RUTHERFORD ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June ——, 1984]

JUSTICE MARSHALL, dissenting.

This case marks the third time in recent years that the Court has turned a deaf ear to inmates' claims that the conditions of their confinement violate the Federal Constitution. See *Rhodes* v. *Chapman*, 452 U. S. 337 (1981); *Bell* v. *Wolfish*, 441 U. S. 520 (1979). Relying on an unwonted deference to choices made by "expert" prison administrators and a pinched conception of the meaning of the Due Process Clauses and the Eighth Amendment, a majority of the Court increasingly appears willing to sanction any prison condition for which they can imagine a colorable rationale, no matter how oppressive or ill justified that condition is in fact. So, here, the Court upholds two policies in force at the Los Angeles County Central Jail. Under one, a pretrial detainee is not permitted any physical contact with members of his family, regardless of how long he is incarcerated pending his trial or how slight is the risk that he will abuse a visitation privilege. Under the other, detainees are not allowed to observe searches of their cells, despite the fact that such searches frequently result in arbitrary destruction or confiscation of the prisoners' property. In my view, neither of these polices comports with the Constitution.

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: JUL 2 1984

2nd
~~1st~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-317

SHERMAN BLOCK, SHERIFF OF THE COUNTY OF LOS ANGELES, ET AL., PETITIONERS *v.* DENNIS RUTHERFORD ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July 3, 1984]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE STEVENS join, dissenting.

This case marks the third time in recent years that the Court has turned a deaf ear to inmates' claims that the conditions of their confinement violate the Federal Constitution. See *Rhodes* v. *Chapman*, 452 U. S. 337 (1981); *Bell* v. *Wolfish*, 441 U. S. 520 (1979). Guided by an unwarranted confidence in the good faith and "expertise" of prison administrators and by a pinched conception of the meaning of the Due Process Clauses and the Eighth Amendment, a majority of the Court increasingly appears willing to sanction any prison condition for which they can imagine a colorable rationale, no matter how oppressive or ill justified that condition is in fact. So, here, the Court upholds two policies in force at the Los Angeles County Central Jail. Under one, a pretrial detainee is not permitted any physical contact with members of his family, regardless of how long he is incarcerated pending his trial or how slight is the risk that he will abuse a visitation privilege. Under the other, detainees are not allowed to observe searches of their cells, despite the fact that such searches frequently result in arbitrary destruction or confiscation of the detainees' property. In my view, neither of these policies comports with the Constitution.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–317

SHERMAN BLOCK, SHERIFF OF THE COUNTY OF LOS ANGELES, ET AL., PETITIONERS *v.* DENNIS RUTHERFORD ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June ——, 1984]

JUSTICE BLACKMUN, concurring in the judgment.

I agree with the Court that neither the contact-visitation policy nor the cell-search policy at issue in this case violates respondents' due process rights under the Fourteenth Amendment. I write separately, however, because I do not believe that the Court adequately has addressed the gravamen of respondents' constitutional claims.

1. I disagree with the Court's treatment of the contact-visitation issue chiefly because, in my view, the Court has invoked principles of judicial deference to administrative judgment that have no place in the present litigation. As the Court made clear in *Bell* v. *Wolfish*, 441 U. S. 520 (1979), and as it reaffirms here, a pretrial detainee who challenges conditions of confinement on the ground that they amount to punishment in violation of the Due Process Clause must show that the conditions are the product of punitive intent. See *id.*, at 538–539 and nn. 19 and 20, and *ante*, at 7–8. When a detainee attempts to demonstrate the existence of punitive intent, either through direct proof of motive or through a demonstration that the challenged conditions are not "reasonably related to a legitimate governmental objective," *id.*, at 539, he necessarily is calling into question the good faith of prison administrators. Under those circumstances, it seems to me to be somewhat perverse to insist that a court assess-

May 29, 1984

83-317 Block v. Rutherford, etal.

Dear Chief:

Over the weekend I read the first draft of your opinion in this case, and - subject to a more careful reading - I expect to join it.

On p. 10, the opinion states:

> "Visitors can easily conceal guns, knives, drugs, or other contraband in countless ways and pass them to an inmate unnoticed..."

This is unpersuasive as a broad generalization. Metal detectors are used at airports, public buildings including our own, and at other sensitive places as effective ways of preventing guns and knives being undetected. Rarely do we hear about a gun or knife escaping these detectors.

It seems to me, therefore, that this sentence weakens the force of an otherwise strong summary of the risks of contact visits. Your case is strong, there is no need to reach out to identify reasonably debatable points. As you say on p. 12, narcotics is the principle problem that plagues penal institutions.

On p. 11, there also is a reference to "weapons" being found in "cavity searches". There is much about anatomy that I do not understand, but it had never occurred to me that a knife or gun could be so concealed.

Sincerely,

The Chief Justice

LFP/vde

June 1, 1984

83-317 Block v. Rutherford

Dear Chief:

Since this is your opinion, I certainly do not insist that you make the minor changes I suggested.

If it were my opinion I would at least make clear that many jails and prisons are not equipped with metal detectors, and even where they exist a decision allowing body contacts would probably invite far more family visitations than otherwise.

I defer to your superior knowledge as to body cavity capabilities.

I have written a separate join note.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1984

83-317 Block v. Rutherford

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Supreme Court of the United States
Washington, D. C. 20543

May 29, 1984

Re: No. 83-317 Block v. Rutherford

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1984

Re: 83-317 - Block v. Rutherford

Dear Chief:

I shall await Thurgood's dissent.

Respectfully,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 22, 1984

Re: 83-317 - Block v. Rutherford

Dear Thurgood:

Please join me in your dissent.

Respectfully,

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 30, 1984

No. 83-317 Block v. Rutherford

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference