

Message from sender:

Hi David, Here is the article I wrote on the shackling decision. It also appeared in the LA Daily Journal. Thank you, Itir Yakar

Panel Tosses Shackling of L.A. Defendants -- 9th Circuit Might Reconsider if U.S. Offers Justification -- Tramples Dignity

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By Itir Yakar

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SAN FRANCISCO - A federal appeals court on Tuesday threw out the Los Angeles federal courts' policy of shackling defendants making their first appearance in court.

Reversing a trial judge, a divided 9th U.S. Circuit Court of Appeals panel ruled that the policy tramples the dignity and constitutional rights of criminal suspects during a critical stage of prosecution. The appeals court left open the possibility that a shackling policy may be reinstated if the government can adequately justify it. *United States v. Howard*, 2005 DJDAR 13319.

"Due process requires that before there is any districtwide policy affecting all incarcerated defendants whom the government must transport to a first appearance, there must be some justification," Chief Judge Mary M. Schroeder wrote in an opinion joined by Judge Ronald M. Gould.

Pretrial Detainees

The court record in the case does not give justification for the districtwide policy or describe any circumstances that support such restraint of pretrial detainees, Schroeder wrote.

Schroeder said that shackles might cause physical and emotional pain to defendants, confuse and embarrass them and impede their ability to communicate with their attorneys during the proceedings.

In a lengthy dissent, Judge Richard R. Clifton argued that courtroom security concerns outweighed what he saw as a weak showing by the defendants that the shackling policy had any negative effects.

Punitive Effect

"At a time when concern for court security is understandably and properly high, I would accept the judgment of the district court - and the collective judgments of the judicial officers most affected," Clifton wrote.

As part of the policy that the U.S. Marshals Service adopted in 2003, criminal defendants are fully restrained with waist chains, handcuffs and leg shackles while being transported to the courtroom. All restraints except for the leg shackles are taken off during the court appearance.

It is then unlikely that defendants will feel they are being punished, Clifton wrote, responding to an argument by the majority that the shackles have a punitive effect.

At the time of the initial appearance, magistrate judges read defendants their rights, confirm that they have received a copy of the complaint or indictment, appoint counsel to represent the indigent defendants, set dates for preliminary hearings and determine preliminary bond and detention issues, according to the district court.

Clifton wrote that during hearings in some first appearances, lay witnesses or law enforcement

officers may testify, and friends and family members of the defendants are often present. He argued that security risks are higher in these circumstances and justify the restraint policy.

Clifton argued that two tragic episodes this year further support the use of more restrictive security measures. He noted the murder of the husband and mother of a federal judge in Chicago by a disgruntled civil litigant, and the murder of a state court judge and court reporter inside the Fulton County Courthouse in Atlanta.

But the majority was not convinced that the government had shown sufficient justification in this case for a shackling policy.

"The record contains no evidence of safety concerns necessitating this policy in this district," Schroeder wrote. "There is no basis on which we can assume the benefits of the policy outweigh the costs and the disadvantages."

Schroeder noted that the only written support for the policy was a memo from the U.S. Marshals Service describing a 2003 incident in which a defendant was restrained after his jury verdict was announced and he verbally attacked prosecutors and an FBI agent.

U.S. District Judge Audrey B. Collins upheld the policy, citing general safety concerns.

David S. McLane, a former deputy federal public defender who represented Jesse Lee Howard - one of 18 defendants whose cases were consolidated for purposes of the appeal to the 9th Circuit - welcomed Tuesday's outcome in the case, calling the shackling policy "very dehumanizing."

"There is no need for shackling in the first place," said McLane, who argued the case in the lower court. "It is another symptom of the post-9/11 world where people are over-reacting to a nonexistent (threat)."

McLane said the shackling policy contradicts the principal notion of the criminal justice system that individuals are presumed innocent until proven guilty. Treating criminal defendants as if they are guilty on the first day they walk into court psychologically affects them and causes them to lose faith in the justice system, he said.

McLane said his client was arrested in 2003 and was charged with being a felon in unlawful possession of a firearm at his house. The trial court granted bail to Howard - an indication to his attorney that the court did not consider him a threat - yet Howard was shackled during his first court appearance.

McLane said due process and liberty concerns for defendants should be weighed against the need for security, and a more individualized policy should be used to determine whether a defendant must be shackled.

Thom Mrozek, spokesman for the Los Angeles U.S. attorney's office, said his office will review Tuesday's ruling and will consult with the U.S. Marshals Service and magistrate judges. He said U.S. Attorney Deb Yang will probably present additional information to the District Court in Los Angeles and will emphasize that most other districts have similar policies.

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