THE #1 DUMB-ASS U.S. SUPREME COURT OPINION OF THE LAST 40 YEARS - Bell v Wolfish, 441 U.S. 520 (1979)

By Evan Gutman CPA, JD (2013)

And the Winner is. . . .

It is undeniable that since the inception of this nation the U.S. Supreme Court has occasionally issued some really Dumb-Ass Judicial opinions. They've also written some good ones. For the most part, overall, I'd say they've done a relatively decent job. Concededly, the fact that they started the Civil War with the Dred Scott decision, which was the most bloody and vicious conflict this nation has ever been engaged in, arguably militates against that conclusion, but nevertheless such is my opinion.

The focus of this essay is limited to the U.S. Supreme Court for the last forty years. During that timeframe it is my opinion that the stupidest, most irrational, most illogical and baseless opinion the Court has written was Bell v Wolfish, 441 U.S. 520 (1979). It is still considered as "good" law today, with the term "good" subject to such liberal construction that it actually means "Crap."

The case stands for the legal premise that the infliction of vicious, cruel and unusual prison conditions of virtually any nature, imposed upon a pretrial detainee do not constitute prohibited "Punishment," so long as the prison employees decline to express an "intent to punish." The impact of the opinion has been to substantively repeal the Eighth Amendment without permission of Congress or the States. While the Eighth Amendment continues to exist as a matter of form, for the most part it was substantively repealed by the five Justices who signed the Majority opinion. The facts of the case are as follows.

Several individuals (hereinafter "Respondents") who were charged with crimes, but not yet tried or found guilty, were incarcerated. They challenged the prison conditions of their pretrial incarceration. The reason for their incarceration pending trial was to ensure their presence at trial (i.e. to make sure they wouldn't flee before trial). That was not a disputed issue. Both the government and the Respondents agreed that persons may be incarcerated prior to being found guilty. The issue before the Court was the scope of their constitutional rights during pretrial confinement.

The Respondents alleged that during their pretrial confinement they were deprived of their constitutional rights because of overcrowded conditions, undue length of confinement, improper "searches" (including those of the anal cavity and genitals), insufficient staff and a wide host of other points. The Federal

District Court ruled in favor of the Respondents regarding some of the allegations. The Federal Court of Appeals Affirmed most of the District Court's rulings, but the U.S. Supreme Court, Reversed.

Both the Court of Appeals and District Court relied on the "presumption of innocence" as the source of a pretrial detainee's right to be free from conditions of confinement that are not justified by a "compelling necessity of jail administration." However, the Majority opinion of the U.S. Supreme Court rejects that analysis. Instead, it determines that the proper analysis is whether the prison conditions amounted to "Punishment" of the detainee. The definition of "Punishment" adopted by the Majority is what is known in technical legal terms as a "Dumb-Ass" definition.

The Majority defines "Punishment" by a manipulative process of exclusion. It concludes Punishment does not include every condition imposed upon a pretrial detainee. It points out that the fact a detention interferes with the detainee's desire to live as comfortably as possible and with as little restraint as possible, does not convert the condition into Punishment.

Now, here's where the Majority really drops the ball. The crux of the opinion, which essentially demolished the Eighth Amendment is the following statement (emphasis added):

> "Thus, if a particular condition or restriction of pretrial detention is **reasonably related** to a **legitimate** governmental objective, it **does not**, without more, **amount to** "**punishment**." [274]

The foregoing sentence effectively removes a wide realm of cruel and unusual prison conditions from Eighth Amendment analysis. The manner in which it accomplishes such is as follows. It removes most prison conditions from any inquiry into whether they are prohibited as cruel and unusual punishment. This is because as expressly stated above, the conditions are no longer classified as "Punishment" at all. As the sentence indicates, once the government shows that a particular condition is reasonably related to a legitimate government objective, that condition no longer constitutes Punishment. The impact is that the condition is no longer subject to Eighth Amendment scrutiny against "cruel and unusual punishment."

Under the theory of the Majority, cruel and unusual prison conditions are not necessarily included within the definition of the term "Punishment." It is absolutely diabolically brilliant logic, notwithstanding the fact that it also falls squarely into the realm of "Dumb-Ass" logic. The Majority removed a wide realm of cruel and unusual "conditions" from Eighth Amendment protection, on

the ground that those conditions are not Punishment and the Eighth only covers Punishment.

The Dumb-Ass, diabolically brilliant logic of the Majority is exemplified by the Dissenting opinions of Justices Marshall, Steven and Brennan. Justice Marshall writes as follows, quoted at length (emphasis added):

> "The Court holds 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 or purposeless." **As if this standard were not sufficiently ineffectual, the Court dilutes it further by affording virtually unlimited deference to detention officials' justifications for particular impositions. Conspicuously lacking from this analysis is any meaningful consideration of the most relevant factor, the impact that restrictions may have on inmates**. Such an approach is unsupportable, given that all of these detainees are presumptively innocent and many are confined solely because they cannot afford bail.
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> In my view, the Court's holding departs from the precedent it purports to follow and precludes effective judicial review of the conditions of pretrial confinement. More fundamentally, **I believe the proper inquiry in this context is not whether a particular restraint can be labeled "punishment." Rather**, as with other due process challenges, **the inquiry should be whether the governmental interests served by any given restriction outweigh the individual deprivations suffered.**
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> The premise of the Court's analysis is that detainees, unlike prisoners, may not be "punished." To determine when a particular disability imposed during pretrial detention is punishment, the Court invokes the factors enunciated in Kennedy v Mendoza-Martinez, 372 U.S. 144, 168-169 (1963). . . . :
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> > "Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only a finding of scienter, whether its operation will promote the traditional aims of punishment -- retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purposes assigned are all relevant to the inquiry, and may often point in differing directions."
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> A number of factors enunciated above focus on the nature and severity of the impositions at issue. Thus, if weight were given to all its elements, I believe the Mendoza-Martinez inquiry could be responsive to the impact of the deprivations imposed on detainees. However, within a few lines of quoting Mendoza-Martinez, the Court restates the standard as to whether there is an express punitive intent on the part of detention officials, and if not, whether the restriction is rationally related to some nonpunitive purpose or appears excessive in relation to that purpose. . . Absent from the reformulation is any appraisal of whether the sanction constitutes an

affirmative disability or restraint or whether it has historically been regarded as punishment. Moreover, when the Court applies this standard, it loses interest in the inquiry concerning excessiveness, and indeed, eschews consideration of less restrictive alternatives, practices in other detention facilities, and the recommendations of the Justice Department and professional organizations. . . By this process of elimination, the Court contracts a broad standard, sensitive to the deprivations imposed on detainees, into one that seeks merely to sanitize official motives and prohibit irrational behavior. As thus reformulated the test lacks any real content.

To make detention officials' intent the critical factor in assessing the constitutionality of impositions on detainees is unrealistic in the extreme. . . .

. . . As the District Court noted, "zeal for security is among the most common varieties of official excess. . . . Indeed, the Court does not even attempt to "detail the precise extent of the legitimate governmental interests that may justify conditions. . . . Rather, it is content merely to recognize that "the effective management of the detention facility . . . is a valid objective that may . . . dispel any inference that such restrictions are intended as punishment." [275]

Justice Marshall continues as follows:

"Although the Court professes to go beyond the direct inquiry regarding intent and to determine whether a particular imposition is rationally related to a nonpunitive purpose, this exercise is, at best, a formality. **Almost any restriction on detainees, including, as the Court concedes, chains and shackles can be found to have some rational relation to institutional security, or more broadly to "the effective management of the detention facility." . . . Yet this toothless standard applies irrespective of the excessiveness of the restraint or the nature of the rights infringed.**

Moreover, the Court has not, in fact, reviewed the rationality of detention officials' decision, as Mendoza-Martinez requires. Instead, the majority affords "wide-ranging" deference to those officials "in the adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline."

. . .

A test that balances the deprivations involved against the state interests assertedly served would be more consistent with the import of the Due Process Clause. . . .

. . .

In my view, the body cavity searches of MCC inmates represent one of the most grievous offenses against personal dignity and common decency. After every contact visit with someone from outside the facility, including defense attorneys, an inmate must remove all of his or her clothing, bend over, spread the buttocks, and display the anal cavity for inspection by a correctional officer. Women inmates must assume a suitable posture for vaginal inspection, while men must

raise their genitals. And as the Court neglects to note, because of time pressures, this humiliating spectacle is frequently conducted in the presence of other inmates.

. . . There was evidence, moreover, that these searches, engendered among detainees fears of sexual assault, were the occasion for actual threats of physical abuse by guards, and caused some inmates to forgo personal visits." [276]

Justices Stevens and Brennan wrote as follows in their Dissent:

"It is not always easy to determine whether a particular restraint serves the legitimate, regulatory goal of ensuring a detainee's presence at trial and his safety and security in the meantime, or the unlawful end of punishment. But the courts have performed that task in the past, and can and should continue to perform it in the future. **Having recognized the constitutional right to be free of punishment, the Court may not point to the difficulty of the task as a justification for confining the scope of the punishment concept so narrowly that it effectively abdicates to correction officials the judicial responsibility to enforce the guarantees of due process.**

. . . **the Court seems to say that, as long as the correction officers are not motivated by "an expressed intent to punish"** their wards and as long as their rules are not "arbitrary or purposeless" **these rules are an acceptable form of regulation**, and not punishment. Lest that test be too exacting, the Court abjectly defers to the prison administrator unless his conclusions are "conclusively shown to be wrong." . . .

Applying this test, **the Court concludes that enforcement of the challenged restrictions does not constitute punishment, because there is no showing of a subjective intent to punish** and there is a rational basis for each of the challenged rules. In my view, the Court has reached an untenable conclusion because its test for punishment is unduly permissive.

The requirement that restraints have a rational basis provides an individual with virtually no protection against punishment. Any restriction that may reduce the cost of the facility's warehousing function could not be characterized as "arbitrary and purposeless" . . . . This is true even of a restraint so severe that it might be cruel and unusual.

Nor does the Court's intent test ensure the individual the protection that the Constitution guarantees. **For the Court seems to use the term "intent" to mean the subjective intent of the jail administrator. This emphasis can only "encourage hypocrisy and unconscious self-deception**. . . ." [277]

I do not see the need to render commentary beyond that presented by Justices Marshall, Stevens and Brennan. They state quite adeptly in detail the reasons why the Majority opinion in this case meets the simplistic and quite correct characterization of the U.S. Supreme Court's Majority opinion as falling squarely into the category of "DUMB-ASS." The Number One Dumb-Ass opinion in fact.

Being #1, perhaps they'll try harder.