

Circuit Court stated, however, that the Ban does discriminate against transgender people; this was contested by the administration, which insisted that the policy only discriminated against people with gender dysphoria. The court stated that discrimination based on transgender status constitutes sex-based discrimination and is therefore subject to intermediate scrutiny, meaning that policies must be supported by an “exceedingly persuasive justification,” one not “hypothesized or invented” in response to litigation (*Virginia*, pp 532-33). Thus, this test must now be applied in the Ninth Circuit to any law that differentially affects transgender people. It serves to provide increased protections against discrimination in that circuit.

Current Department of Defense policy reflects the 2018 policy, which does not specifically define or provide criteria for determining gender dysphoria or gender transition. There is no reference to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition criteria or requirements for circumstances in which this diagnosis may occur. The policy does not ban transgender individuals (unless they are diagnosed with gender dysphoria), provided they meet all military standards, including the standards associated with their biological sex. Those individuals with gender dysphoria who have undergone medical treatment for transition or are unable or unwilling to meet the standards associated with their biological sex are currently disqualified. Service members who joined in their preferred gender or were diagnosed with gender dysphoria prior to the 2018 policy implementation are exempt from the new policy and may continue to serve in their preferred gender.

Disclosures of financial or other potential conflicts of interest: None.

Shackling Convicted Prisoners During Civil Trial Proceedings

Nhut G. Tran, MD, MPH
Fellow in Forensic Psychiatry

Reena Kapoor, MD
Associate Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

When Dangerousness and Credibility Are Central Issues to a Civil Case, Shackling Without Specific Justification Violates Due Process

DOI:10.29158/JAAPL.003932-20

In *Claiborne v. Blausler*, 928 F.3d 794 (9th Cir. 2019), the Ninth Circuit Court of Appeals reversed a district court’s denial of a California prisoner’s motion for a new trial in a 42 U.S.C. § 1983 lawsuit. The plaintiff argued for a new trial because he was shackled without justification during his three-day trial about two corrections officers’ alleged use of excessive force. The appellate court held that the district court erred in allowing the plaintiff to be shackled based solely on his status as a convicted prisoner, without considering the specific risks that he posed in the courtroom.

Facts of the Case

On May 3, 2010, Dennis Claiborne, a 63-year-old man serving a sentence of 60 years to life at High Desert State Prison in California, was admonished by corrections officers for socializing with other inmates while waiting in line for his medication. When Officers Blausler and Martin ordered Mr. Claiborne to stay in his cell for the remainder of the day, Mr. Claiborne asked to speak with their supervisor to contest his punishment. The officers agreed to transport him to the sergeant’s office.

The parties gave substantially different accounts of what happened next. Mr. Claiborne, who had mobility limitations and had previously undergone a knee replacement, claimed that he was acting respectfully when he was asked to “cuff up.” He immediately complied with the request but asked for waist chains because he would have difficulty using his cane with handcuffs. Instead, the two officers supported Mr. Claiborne by holding him up at his arms and transported him across the prison yard. Because the terrain of the yard was uneven and the officers were moving too quickly, Mr. Claiborne’s leg hyperextended, causing him to become unsteady. At first the officers told Mr. Claiborne not to resist. When this occurred a second time, he was pulled to the ground. He claimed the officers jumped on his right side and knee, pulled his hair, and punched him in his face. In the years following the event, he suffered additional injuries to his knee, including a failed right knee arthroplasty.

According to the officers, Mr. Claiborne became agitated after they counseled him for lingering in line. Officer Blausler told Mr. Claiborne to “cuff up” because she did not feel safe. The officers also claimed that Mr. Claiborne did not make any requests about needing waist chains. Officer Martin took Mr. Claiborne’s cane, and the two officers escorted him across the yard while supporting him at his arms. They opted to take the most direct path across the yard instead of along the paved path. The officers claimed that Mr. Claiborne attempted to break away in the middle of the prison yard. When they asked him not to resist, Mr. Claiborne continued to act aggressively. When he attempted to break away a second time, Officer Blausler said she pulled Mr. Claiborne to the ground but denied pulling his hair or punching him in the face.

Mr. Claiborne sued Officers Blausler and Martin pursuant to 42 U.S.C. § 1983 (2006), along with several other prison staff, for multiple claims including battery and intentional infliction of emotional distress. Many of these claims were eventually dismissed. The case proceeded to trial on two claims: that Officers Blausler and Martin used excessive force against Mr. Claiborne, and that they were deliberately indifferent to his medical needs, violating his Eighth Amendment rights.

Mr. Claiborne’s trial lasted three days, and he appeared in court in foot shackles throughout the proceeding. At no point during his trial did Mr. Claiborne object to the shackles, nor did the court note any particular justification for their use. The jury reached a verdict in favor of the officers on both claims. Subsequently, Mr. Claiborne filed a motion for a new trial, arguing that he should not have been visibly shackled during the trial without a judicial determination that the restraints were necessary. The district court denied his motion, reasoning that it was unlikely the jury ever saw his restraints and that the jury had already been informed he was a prisoner (*Claiborne v. Blausler*, 2016 U.S. Dist. LEXIS 116710 (E.D. Cal. 2016)). In addition, the court noted that shackles would have been ordered even if Mr. Claiborne had objected during the trial because he was a convicted prisoner serving a lengthy sentence, and therefore any error arising from the court’s failure to consider the question contemporaneously was harm-

less. Mr. Claiborne appealed this decision to the Ninth Circuit Court of Appeals.

Ruling and Reasoning

In reaching its decision, the Ninth Circuit relied on previous appellate decisions, which clearly stated that shackles cannot be used routinely in either criminal or civil proceedings. The court cited *Deck v. Missouri*, 544 U.S. 622 (2005), a U.S. Supreme Court case highlighting three fundamental legal principles that are undermined by the use of visible restraints. First, visible restraints undercut the presumption of innocence because they suggest that a defendant needs to be restrained. Second, restraints can interfere with defendants’ ability to communicate with counsel and participate fully in their defense. Third, restraints violate the formal dignity of judicial proceedings, which includes respectful treatment of defendants. The court noted that the prohibition against routine visible shackling applies even when the presumption of innocence does not, including in civil commitment hearings and during the sentencing phase of capital cases. Citing a similar Seventh Circuit case in which a convicted prisoner sued corrections officials, the court stated that the appearance of a civil plaintiff in handcuffs and leg irons “suggested to the jury that the plaintiff was dangerous and violent, so that whatever force the guards had used was probably necessary . . .” (*Claiborne*, p 805, citing *Lemons v. Skidmore*, 985 F.2d 354 (1993)).

The court concluded that visible shackling violates due process unless a case-by-case justification is established, steps are taken to mitigate prejudice, and less restrictive alternatives are considered.

Because Mr. Claiborne’s dangerousness and credibility were key elements at trial, the court concluded that he was denied a fair proceeding when he was allowed to appear in shackles without determining a sufficient need for such restraints. The Ninth Circuit rejected the district court’s opinion that, even if a hearing on the matter had been held, the shackles would have been ordered because of Mr. Claiborne’s status as a convicted prisoner. The court concluded that merely being a convicted prisoner is insufficient to warrant shackling, and “compelling circumstances” such as flight risk or problematic behavior in the courtroom must also be present. The Ninth Circuit found that the district court had plainly erred in allowing Mr. Claiborne to be shackled. The district

court's decision was reversed and remanded, with the advisement that the lower court could impose shackles during Mr. Claiborne's new trial, but only after a full hearing and the consideration of less restrictive alternatives.

Discussion

In this decision, the Ninth Circuit cited cases from multiple jurisdictions over the past three decades that established a trend away from routine shackling during legal proceedings where an individual's credibility and dangerousness are questions the jury must decide, such as in criminal trials, civil commitment proceedings, prisoner lawsuits against corrections officials, and even death penalty cases. More recently, professional organizations and advocacy groups have agreed with this trend, particularly for juveniles. For example, in 2015, both the American Academy of Child and Adolescent Psychiatry and the Child Welfare League of America developed position statements against the shackling of juveniles (Mandatory Shackling in Juvenile Court Settings, available at: https://www.aacap.org/aacap/policy_statements/2015/mandatory_shackling_in_juvenile_court_settings.aspx, accessed September 1, 2019; CWLA Policy Statement: Juvenile Shackling, available at: <https://www.cwla.org/cwla-policy-statement-juvenile-shackling>, accessed September 1, 2019), stating that children should be restrained only in extraordinary circumstances.

It is interesting to note that all of these groups seem to take for granted that visible shackles have the potential to bias jurors against the person who wears them. From a scientific perspective, very little evidence supports this conclusion. To our knowledge, no studies have directly addressed the link between shackles and juror bias. Studies of related questions, such as the effects of a defendant's dress on simulated jurors, have noted that institutional attire has a negative impact on perceptions of the defendant's character (Etemad M: To Shackle or Not to Shackle? The Effect of Shackling on Judicial Decision-Making. *Rev Law Soc Just* 28: 368–70, 2019). These investigations were completed decades ago, however, and it is not clear whether their conclusions still apply in a contemporary context because societal attitudes about attire have shifted significantly. Some may argue that the link between shackles and juror bias is simply common sense, but further investigation could help to clarify this important topic.

Religious Rights in the Criminal Justice System

Merrill Mathew, DO
Fellow in Forensic Psychiatry

Tobias Wasser, MD
Assistant Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

Court Terminates Consent Decree Which Had Allowed Muslim Prisoners to Hold Religious Services Without Direct Staff Supervision in Some Circumstances

DOI:10.29158/JAAPL.3932LI-20

In *Brown v. Collier*, 929 F.3d 218 (5th Cir. 2019), the United States Court of Appeals for the Fifth Circuit reversed a district court decision that had denied a claim from the Texas Department of Criminal Justice (TDCJ) seeking to terminate a 1977 consent decree. The decree had protected Muslim inmates' religious rights by exempting Muslims from a requirement that any religious gatherings of more than four inmates be directly supervised by prison staff or approved outside volunteers. In reversing and vacating the consent decree, the Fifth Circuit's reasoning gave substantial consideration to the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e (2018).

Facts of the Case

Bobby Brown, a Muslim inmate, initiated a class action lawsuit against the executive director of the TDCJ, resulting in a 1977 consent decree. Prior to the consent decree, when more than four inmates attended a religious activity, direct in-room supervision by either TDCJ staff or an outside volunteer was required. The consent decree made a special exception that granted Muslim inmates the right to religious practice under indirect supervision; this meant that a staff employee or volunteer was not required to be in the room, as long as an officer was monitoring the activity. The consent decree also provided that Muslim inmates be allowed equal time for religious practices in relation to other religions.

In 2009, William Scott, a Jehovah's Witness, filed a lawsuit against the director of TDCJ. The lawsuit requested injunctive relief directing prison officials to allow Jehovah's Witnesses to hold regularly sched-