

✓
No. 77-1829

Bell v. Wolfish

MR. JUSTICE MARSHALL, dissenting.

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." Ante, at 7. As if this standard were not sufficiently ineffectual, the Court dilutes it further by according 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

HA
To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: 20 APR 1979

Recirculated: _____

given that all of these detainees are presumptively innocent and many are confined solely because they cannot afford bail.1/

*But + anyone
bail is really
important*

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 is not whether a particular restraint can be labelled "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.

I

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),

quoted ante, at 15-16 (footnotes omitted):

in why quote again?

"Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on 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 purpose assigned are all relevant to the inquiry, and may often point in differing directions."

A number of the 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 after quoting Mendoza-Martinez, the Court restates the standard as whether there is an expressed 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. Ante, at 16. Absent from the reformulation is any appraisal of whether the sanction constitutes an affirmative disability or restraint and 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. See ante, at 20 n. 25, 21 n.27, 32. By this process of elimination, the Court contracts a broad standard, sensitive to the deprivations imposed on detainees, into an extremely limited one that seeks merely to sanitize official motives and prohibit irrational behavior. As thus reformulated, the test lacks any real content.

A

To make detention officials' intent the critical factor in assessing the constitutionality of impositions on detainees is unrealistic in the extreme. The cases on which the Court relies to justify this narrow focus all involve legislative acts, not day-to-day administrative

decisions. See Kennedy v. Mendoza-Martinez, supra (Nationality Act of 1940 and Immigration and Nationality Act of 1952); Flemming v. Nestor, 363 U.S. 603 (1960) (Social Security Act); DeVeau v. Braisted, 363 U.S. 144 (1960) (New York Waterfront Commission Act). In discerning the intent behind a statutory enactment, courts engage in a familiar judicial function, usually with the benefit of a legislative history which preceded passage of the statute. The motivation for policies in detention facilities, however, will frequently not be a matter of public record. Detainees challenging these policies will therefore bear the substantial burden of establishing punitive intent on the basis of circumstantial evidence or retrospective explanations by detention officials, which frequently may be self-serving. Particularly since the Court seems unwilling to look behind any justification based on security,^{2/} that burden will usually prove insurmountable.

more on the other side? abuses → let's

In any event, it will often be the case that officials believe, erroneously but in good faith, that a specific restriction is necessary for institutional security. As the District Court noted, "zeal for security is among the most common varieties of official excess," 439 F. Supp., at 141, and the litigation in this area corroborates that conclusion.^{3/} A standard that focuses on punitive intent cannot effectively eliminate this excess. Indeed, the Court does not even attempt to "detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention." Ante, at 18. Rather, it is content merely to recognize that "the effective management of the detention facility ... is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment." Ibid.

Moreover, even if the inquiry the Court pursues were

more productive, it simply is not the one the Constitution mandates. By its terms, the Due Process Clause is concerned with the nature of deprivations, not with the persons inflicting them. If this concern is to be vindicated, it is the effect of conditions of confinement, not the intent behind them, that must be the focus of constitutional analysis.

B

Although the Court professes to go beyond the direct inquiry regarding intent and to determine whether a particular imposition is rationally related to a non-punitive purpose, this exercise is at best a formality. Almost any restriction on detainees, including, as the Court concedes, chains and shackles, ante, at 17 n.20, can be found to have some rational relation to institutional security, or more broadly, to "the effective management of the detention facility." Id., at 18. See Feeley v. Sampson, 570 F.2d 364, 380 (CA1

1977) (Coffin, C.J., dissenting). Yet this toothless standard applies irrespective of the excessiveness of the restraint or the nature of the rights infringed.^{4/}

Moreover, the Court has not in fact reviewed the rationality of detention officials' decisions, as Mendoza-Martinez requires. Instead, the majority affords "wide-ranging" deference to those officials "in the adoption of practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Ante, at 25.^{5/} Reasoning that security considerations in jails are little different than in prisons, the Court concludes that cases requiring substantial deference to prison administrators' determinations on security-related issues are equally applicable in the present context. Ante, at 24-25 nn. 28, 29.

Yet as the Court implicitly acknowledges, ante, at 23, the rights of detainees, who have not been adjudicated

guilty of a crime, are necessarily more extensive than those of prisoners "who have been found to have violated one or more of the criminal laws established by society for its orderly governance." Jones v. North Carolina Prisoners' Union, 433 U.S., at 119. See Campbell v. McGruder, 580 F.2d 521, 527 n.9 (CA DC 1978). Judicial tolerance of substantial impositions on detainees must be concomitantly less. However, by blindly deferring to administrative judgments on the rational basis for particular restrictions, the Court effectively delegates to detention officials the decision whether pretrial detainees have been subjected to punishment. This, in my view, is an abdication of a unquestionably judicial function.

II

Even had the Court properly applied the punishment test, I could not agree to its use in this context. It simply does not advance analysis to determine whether a

has proven

? given deprivation imposed on detainees constitutes
"punishment." For in terms of the nature of the
imposition and the impact on detainees, pretrial
incarceration, although necessary to secure defendants'
presence at trial, is essentially indistinguishable from
punishment.⁶/ The detainee is involuntarily confined
and deprived of the freedom "to be with his family and
friends and to form the other enduring attachments of
normal life," Morrissey v. Brewer, 408 U.S. 471, 482
(1972). Indeed, this Court has previously recognized that
incarceration is an "infamous punishment." Flemming v.
Nestor, 363 U.S. 603, 617 (1960); see also Wong Wing v.
United States, 163 U.S. 228, 233-234 (1896); Ingraham v.
Wright, 430 U.S. 651, 669 (1977). And if the effect of
incarceration itself is inevitably punitive, so too must
be the cumulative impact of those restraints incident to
it.

A test that balances the deprivations involved against

the state interests assertedly served,^{7/} would be more consistent with the import of the Due Process Clause. Such an approach would be sensitive to the tangible physical and psychological harm that a particular disability inflicts on detainees and to the nature of the less tangible, but significant individual interests at stake. The greater the imposition on detainees, the heavier the burden of justification the Government would bear. See Bates v. City of Little Rock, 361 U.S. 516, 524 (1960); Shapiro v. Thompson, 394 U.S. 618, 634 (1969); Kusper v. Pontikes, 414 U.S. 51, 58-59 (1973).

When assessing the restrictions on detainees, we must consider the cumulative impact of restraints imposed during confinement. Incarceration of itself clearly represents a profound infringement of liberty, and each additional imposition increases the severity of that initial deprivation. Since any restraint thus has a serious effect on detainees, I believe the Government must

bear a more rigorous burden of justification than the rational basis standard mandates. See p. supra. At a minimum, I would require a showing that a restriction is substantially necessary to jail administration. Where the imposition is of particular gravity, that is, where it implicates interests of fundamental importance^{8/} or inflicts significant harms, the Government should demonstrate that the restriction serves a compelling necessity of jail administration.^{9/}

In presenting its justifications, the Government could adduce evidence of the security and administrative needs of the institution as well as the fiscal constraints under which it operates. And, of course, considerations of competence and comity require some measure of deference to the judgments of detention officials. Their estimation of institutional needs and the administrative consequences of particular acts is entitled to weight. But as the Court has repeatedly held in the prison context, judicial

restraint "cannot encompass any failure to take cognizance of valid constitutional claims." Procunier v. Martinez, 416 U.S. 397, 405 (1974); Bounds v. Smith, 430 U.S. 817, 832 (1977). Even more so here, with the rights of presumptively innocent individuals at stake, we cannot abdicate our judicial responsibility to evaluate independently the Government's asserted justifications for particular deprivations. In undertaking this evaluation, courts should thus examine evidence of practices in other detention and penal facilities. To be sure, conditions of detention should not survive constitutional challenge merely because they are no worse than circumstances in prisons. But this evidence can assist courts in evaluating justifications based on security, administrative convenience, and fiscal constraint.

Simply stated, the approach I advocate here weighs the detainees interests implicated by a particular restriction

against the governmental interests the restriction serves. As the substantiality of the intrusion on detainees' rights increases, so must the significance of the countervailing governmental objectives.

III

A

Applying this standard to the facts of this case, I believe a remand is necessary on the issue of double-bunking at the MCC. The courts below determined only whether double-bunking was justified by a compelling necessity, excluding fiscal and administrative considerations. Since it was readily ascertainable that the Government could not prevail under that test, detailed inquiry was unnecessary. Thus, the District Court granted summary judgment, without a full record on the psychological and physical harms caused by overcrowding.¹⁰ To conclude, as the court does here, that double-bunking has not inflicted "genuine hardships

and privation over an extended period of time," ante, at 20, is inappropriate where respondents have not had an adequate opportunity to produce evidence suggesting otherwise. Moreover, that the District Court discerned no disputed issues of material fact, see id., at 19 n.24, is no justification for avoiding a remand, since what is material necessarily varies with the standard applied. Rather than pronouncing overbroad aphorisms about the principles "lurking in the Due Process Clause," id., at 20, I would leave to the District Court in the first instance the sensitive balancing inquiry that the Due Process Clause dictates.

B

Although the District Court did conduct a trial on the constitutionality of the MCC package rule and room search practices, I believe a remand is necessary with respect to these issues as well.11/ The District Court did not resolve conflicts in testimony with respect to

psychological harms from these restrictions. Nor is it apparent whether the District Court or the Court of Appeals weighed considerations of cost and administrative convenience in striking down the MCC practices.

Resolution of the constitutional issues requires a careful evaluation of all relevant factors. However, since the Court decides these issues, I think it appropriate to address what accommodation is supportable on the facts presented below.

Denial of the right to possess property is surely of heightened concern when viewed with the other indignities of detainment. See App. 73. As the District Court observed, it is a severe discomfort to do without personal items such as a watch or cosmetics, and things to eat, smoke, or chew. Indeed, the court noted, "[t]he strong dependence upon material things ... gives rise to one of the deepest miseries of incarceration--the deprivation of familiar possessions." 439 F. Supp., at

150. Given this impact on detainees, the appropriate inquiry is whether the package restriction is substantially necessary to prison administration.

It is unclear that the Government's justification for such a broad rule can meet this burden. The asserted interest in ameliorating sanitation and storage problems and avoiding thefts, gambling, and inmate conflicts over personal property is belied, as the Court seems to recognize, ante, at 31, by the policy of permitting inmate purchases of up to \$15 a week from the prison commissary. Detention officials doubtless have a legitimate interest in preventing introduction of drugs or weapons into the facility. But as both the District Court and the Court of Appeals observed, other detention institutions have adopted much less restrictive regulations than the MCC's governing receipt of packages. See, e.g., Miller v. Carson, 401 F. Supp. 835, 885 (MD Fla. 1975), aff'd, 563 F.2d 741 (CA5 1977); Giampetruzzi v. Malcolm, 406 F. Supp.

any possible question?

836, 842 (SDNY 1975). Inmates in New York state institutions, for example, may receive a 35 pound package each month, in addition to clothing and magazines. See 439 F.Supp., at 152.12/

To be sure, practices in other institutions do not necessarily demarcate the constitutional minimum. See ante, at 32. But such evidence does cast doubt upon the Government's justifications based on institutional security and administrative convenience. The District Court held that the Government was obligated to dispel these doubts. The court thus required a reasoned showing why "there must be deprivations at the MCC so much harsher than deemed necessary in other institutions." 439 F. Supp., at 152. Absent such a showing, the court concluded that the MCC's rule swept too broadly and ordered detention officials to formulate a suitable alternative at least with respect to items available from the commissary. Id., at 153. As the record now stands, this

holding seems an appropriate accommodation of the competing values and a minimal intrusion on administrative prerogatives.

The ruling of the courts below that inmates must be permitted to observe searches of their cells presents a more difficult question. Routine searches such as those at issue here may be an unavoidable incident of incarceration. Nonetheless, the protections of the Fourth Amendment do not lapse at the jailhouse door, Bonner v. Coughlin, 517 F.2d 1311, 1316-1317 (CA7 1975) (Stevens, J.); United States v. Lilly, 576 F.2d 1240, 1244-1245 (CA5 1978). Detention officials must therefore conduct such searches in a reasonable manner, avoiding needless intrusions on inmates' privacy.

Unobserved searches, respondents argue, are inherently unreasonable. They invite official disrespect for inmates' few possessions and generate fears that guards will steal personal property or plant contraband. See 439

F. Supp., at 148-149.¹³/ But allayed against these concerns are governmental interests of some substance.

The MCC warden stated:

"(a) to be effective, searches must be carried out at random times, when inmates may not be in their residential units; (b) to permit inmates to be present would enable them to discover where particular correctional officers most often conduct their searches; (c) inmates' presence pose the risk of violent confrontation between inmates and correctoinal officers when the inmate is seeking to conceal contraband; (d) an inmate's presence would also enable him to move contraband while the officer is conducting the search." App. 26.

This justification appears reasonable, and need not be validated by a pattern of violent or obstructive behavior, cf. 439 F. Supp., at 149, before it will be recognized by a federal court. Moreover, this record fails to demonstrate that allowing detainees to observe searches will dissipate, rather than exacerbate, the tensions and anxieties inherent in these intrusions. Absent evidence on remand of feasible alternative means of conducting searches, the Government's showing would presumably be adequate.

However, with respect to the rule limiting the sources of hardback books, I believe a remand is unnecessary.

That individuals have a fundamental First Amendment right to receive information and ideas is beyond dispute. See Martin v. Struthers, 319 U.S. 141, 143 (1943); Stanley v. Georgia, 394 U.S. 557, 565 (1969); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969); see also Brandenburg v. Ohio, 395 U.S. 444, 448 (1969). Under the balancing test elaborated above, the Government must therefore demonstrate that its rule infringing on that interest serves a compelling necessity. As the courts below found, the Government failed to make such a showing.^{14/}

In support of its restriction, the Government presented the affidavit of the MCC warden, who averred without elaboration that a proper and thorough search of incoming hardback books might require removal of the covers. Further, the warden asserted, "in the case of all books and magazines," it would be necessary to leaf

through every page to ascertain that there was no contraband." App. 24. The warden offered no reasons why the institution could not place reasonable limitations on the number of books inmates could receive or use electronic devices and fluoroscopes to detect contraband rather than requiring inmates to purchase hardback books directly from publishers or stores.^{15/} As the Court of Appeals noted, "other institutions have not recorded untoward experiences with far less restrictive rules." 573 F.2d, at 130.

The limitation on receipt of hardback books may well be one rational response to the legitimate security concerns of the institution, concerns which I in no way intend to deprecate. But our precedents, as the courts below apparently recognized, 428 F. Supp., at 341; 573 F.2d, at 130, require some consideration of less restrictive alternatives, see, e.g., Shelton v. Tucker, 364 U.S. 479, 488-490 (1970); Keyishian v. Board of

Regents, 385 U.S. 589, 602-604 (1967). There is no basis for relaxing this requirement when the rights of presumptively innocent detainees are implicated.

D

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. App. 77.

The District Court found that the stripping was "unpleasant, embarrassing, and humiliating." 439 F.

Supp., at 146. A psychiatrist testified that the practice placed inmates in the most degrading position possible, App. 48, a conclusion amply corroborated by the testimony of the inmates themselves. App. 36-37, 41.16/ There was evidence, moreover, that these searches engendered among detainees fears of sexual assault, App. 49, were the occasion for actual threats of physical abuse by guards, and caused some inmates to forego personal visits. 439 F. Supp., at 147.

Not surprisingly, the Government asserts a security justification for such inspections. These searches are necessary, it argues, to prevent inmates from smuggling contraband into the facility. In crediting this justification despite the contrary findings of the two courts below, the Court overlooks the critical facts. As respondents point out, inmates are required to wear one-piece jumpsuits with zippers in the front. To insert an object into the vaginal or anal cavity, an inmate would

have to remove the jumpsuit, at least from the upper torso. App. 45; Joint App. 925. Since contact visits occur in a glass enclosed room and are continuously monitored by corrections officers, see 439 F. Supp., at 140, 147; Joint App. 144, 1208-1209, 17/ such a feat would seem extraordinarily difficult. There was medical testimony, moreover, that inserting an object into the rectum is painful and "would require time and opportunity which is not available in the visiting areas," App. 49-50, and that visual inspection would probably not detect an object once inserted. Id., at 50. Additionally, before entering the visiting room, visitors and their packages are searched thoroughly by a metal detector, fluoroscope, and by hand. App. 93, Joint App. 601, 1077. Correction officers may require that visitors leave packages or handbags with guards until the visit is over. Joint App. 1077-1078. Only by blinding itself to the facts presented on this record can the Court accept the Government's

security rationale.

Without question, these searches are an imposition of sufficient gravity to invoke the compelling necessity standard. It is equally indisputable that they cannot meet that standard. Indeed, the procedure is so unnecessarily degrading that it "shocks the conscience."

Rochin v. California, 342 U.S. 165 (1952). Even in Rochin, the police had reason to believe that the petitioner had swallowed contraband. Here, the searches are employed absent any suspicion of wrongdoing. It was this aspect of the MCC practice that the Court of Appeals redressed, requiring that searches be conducted only when there is probable cause to believe that the inmate is concealing contraband. The Due Process Clause, on any principled reading, dictates no less.

That the Court can uphold these indiscriminate searches highlights the bankruptcy of its basic analysis. Under the test adopted today, the rights of detainees

apparently extend only so far as detention officials decide that cost and security will permit. Such unthinking deference to administrative convenience cannot be justified where the interests at stake are those of presumptively innocent individuals, many of whose only proven offense is the inability to afford bail. I dissent.

1/ The Bail Reform Act, 18 U.S.C. § 3146, to which the Court adverts ante, at 2, provides that bail be set in an amount that will "reasonably assure" the defendant's presence at trial. In fact, studies indicate that bail determinations frequently do not focus on the individual defendant but only on the nature of the crime charged and that, as administered, the system penalizes indigent defendants. See, e.g., American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release 1-2 (1968); W. Thomas, Bail Reform in America 11-19 (1976). See also National Advisory Commission on Criminal Justice Standards and Goals, Corrections 102-103 (1973); National Association of Pretrial Service Agencies, Performance Standards and Goals for Pretrial Release and Diversion 1-3 (1978).

2/ Indeed, the Court glosses over the Government's statement in its post-trial memorandum that for inmates serving sentences, "the restrictions on the possession of

personal property also served the legitimate purpose of punishment." 439 F. Supp., at 153; Post-trial Memorandum 212 n. **, quoted ante, at 38 n.43. This statement provides at least some indication that a similar motive may underlie application of the same rules to detainees. The Court's treatment of this point illustrates the indifference with which the Court pursues the intent inquiry.

3/ Thus, for example, lower courts have held a variety of security restrictions unconstitutional. E.g., Collins v. Schoonfield, 344 F. Supp. 257, 283 (D Md. 1972) (warden censored newspaper articles critical of his administration of jail); id., at 278 (mentally disturbed detainees shackled in jail infirmary); Inmates of Milwaukee County Jail v. Petersen, 353 F. Supp. 1157, 1164 (ED Wisc. 1973) (detainees limited to two pages per letter; notice to relatives and friends of the time and place of detainee's

next court appearance deleted on security grounds);

Mancione v. Corso, 365 F. Supp. 576 (EDNY 1973)

(newspapers banned because they might disrupt prisoners and create a fire hazard); Miller v. Carson, 401 F. Supp. 835, 878 (MD Fla. 1975), aff'd, 563 F.2d 741 (CA5 1977)

(detainees taken to hospital kept continuously chained to bed); O'Bryan v. County of Saginaw, 437 F. Supp. 582 (ED Mich. 1977) (detainees with bail of more than \$5000

prevented from attending religious services); Vest v.

Lubbock County Commissioners, 444 F. Supp. 824 (ND Tex.

1977) (detainees limited to three pages per letter and six incoming and outgoing letters per week to facilitate censorship; guards authorized to refuse to mail or deliver letters containing "abusive" language).

4/ The Court does concede that "loading a detainee with chains and shackles and throwing him in a dungeon," ante, at 17 n.20, would create an inference of punitive intent

and hence would be impermissible. I am indeed heartened by this concession, but I do not think it sufficient to give force to the Court's standard.

5/ Indeed, lest the point escape the reader, the majority reiterates it 12 times in the course of the opinion.

Ante, at 9, 18 n.23, 22, 23, 25 and n. 29, 26 and n. 30, 29, 32, 35 n.38, 40.

6/ As Chief Judge Coffin has stated, "[i]t would be impossible, without playing fast and loose with the English language, for a court to examine the conditions of confinement under which detainees are incarcerated . . . and conclude that their custody was not punitive in effect if not in intent." Feeley v. Sampson, 570 F.2d, at 380 (Coffin, C.J., dissenting). Accord, Campbell v. McGruder, 580 F.2d 521, 530 (CADC 1978).

7/ See New Motor Vehicle Board v. Orrin W. Fox Co., ____
U.S. ____, ____ (1978) (MARSHALL, J., concurring); Poe v.
Ullman, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting);
Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977);
✓ Roe v. Wade, 410 U.S. 113, 155 (1973),

8/ See, e.g., Brandenburg v. Ohio, 395 U.S. 444, 448
(1969) (free speech); Bounds v. Smith, 430 U.S. 817 (1977)
(access to the courts).

9/ Blackstone observed over 200 years ago:

Upon the whole, if the offense be not bailable, or the party cannot find bail, he is to be committed to the county gaol by the mittimus of the justice. . . : there to abide till delivered by due course of law. . . . But this imprisonment, as has been said, is only for safe custody, and not for punishment: therefore, in his dubious interval between the commitment and trial, a prisoner ought to be used with the utmost humanity; and neither be loaded with needless fetters, or subjected to other hardships than such as are absolutely requisite for the purpose of confinement only. . . . 4 W. Blackstone, Commentaries 299 (15th ed. 1809).

10/ Other courts have found that in the circumstances

before them overcrowding inflicted mental and physical damage on inmates. See, e.g., Detainees of Brooklyn House of Detention v. Malcolm, 520 F.2d 392, 396 and n. 4 (CA2 1975) (testimony of correctional experts that

double-bunking is "psychologically destructive and increases homosexual impulses, tensions and aggressive tendencies"); Battle v. Anderson, 564 F.2d 388, 398 (CA10 1977); Campbell v. McGruder, 580 F.2d 521, 536 (CA DC 1978) (overcrowding likely "to impair the mental and physical health" of detainees); Chapman v. Rhodes, 434 F. Supp. 1007, 1020 (SD Ohio 1977).

11/ The Court of Appeals' rulings on what this Court broadly designates "security restrictions" applied both to detainees and convicted prisoners. I believe impositions on these groups must be measured under different constitutional standards. See pp. supra. But since prisoners are but a small portion of the facility's

population, officials may find it inexpedient to adopt different rules for them, particularly if, as the Court suggests, these inmates constitute less of a security risk than the detainees. See ante, at 24 n.28.

12/ In addition, the Justice Department's Draft Federal Standards for Corrections discourage limitations on the volume or content of inmate mail, including packages. Department of Justice, Task Force on Federal Corrections Standards, Draft Federal Standards for Correction 63 (1978).

13/ Whether the intrusion here causes psychological harm was not resolved by the District Court.

14/ Nor can the Court's attempt to denominate the publisher only rule as a reasonable "time, place and manner regulation[]," ante, at 30, substitute for such a

showing. In each of the cases cited by the Court for this proposition, the private individuals had the ability to alter the time, place or manner of exercising their First Amendment rights. Grayned v. City of Rockford, 408 U.S. 104 (1972) (ordinance prohibiting demonstration within 150 feet of a school at certain times of the day); Cox v. New Hampshire, 312 U.S. 569 (1941) (permissible to require license for parade); Cox v. Louisiana, 379 U.S. 536, 554-555 (1965) (city could prohibit parades during rush hour); Adderley v. Florida, 385 U.S. 39 (1966) (public demonstration on premises of county jail). It is not clear that the detainees here possess the same freedom to alter the "time, place or manner" of exercising their First Amendment rights. Indeed, as the Government acknowledges, Tr. of Oral Arg. 18, an unspecified number of detainees at the MCC are incarcerated because they cannot afford bail. For these persons, the option of purchasing hardback books from publishers or bookstores

will frequently be unavailable. And it is hardly consistent with established First Amendment precepts to restrict inmates to library selections made by detention officials.

15/ The MCC already uses such electronic equipment to search packages carried by visitors. See p. , infra.

16/ While the Government presented psychiatric testimony that the procedures were not likely to create lasting emotional trauma, the District Court intimated some doubt as to the credibility of this testimony, and found that the injury was of constitutional dimension even if it did not require psychiatric treatment or leave permanent psychological scars. 439 F. Supp., at 150.

17/ To facilitate this monitoring, MCC officials limited to 25 the number of people in the visiting room at one

time. Joint App. 1208. Inmates were forbidden to use the locked lavatories, and visitors could use them only by requesting a key from a correctional officer. A. 93; see 573 F.2d, at 125. The lavatories, as well, contain a built-in window for observation. Br. for Respondents 57.

✓
REVISIONS THROUGHOUT.

HAB
To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 12 MAR 1979

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1829

Griffin B. Bell et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Louis Wolfish et al. } Appeals for the Second
Circuit.

[March —, 1979]

Memorandum of Mr. JUSTICE REHNQUIST.

Over the past five Terms, this Court has in several decisions considered constitutional challenges to prison conditions or practices by convicted prisoners.¹ This case requires us to examine the constitutional rights of pretrial detainees—those persons who have been charged with a crime but who have not yet been tried on the charge. The parties concede that to ensure their presence at trial, these persons legitimately may be incarcerated by the Government prior to a determination of their guilt or innocence, see *infra*, at 12-13 and n. 15, and it is the scope of their rights during this period of confinement prior to trial that is the primary focus of this case.

This lawsuit was brought as a class action in the United States District Court for the Southern District of New York to challenge numerous conditions of confinement and practices at the Metropolitan Correctional Center (MCC), a federally operated short term custodial facility in New York City designed primarily to house pretrial detainees. The

¹ See, e. g., *Hutto v. Finney*, 437 U. S. 678 (1978); *Jones v. North Carolina Prisoners' Labor Union*, 433 U. S. 119 (1977); *Bounds v. Smith*, 430 U. S. 817 (1977); *Meachum v. Fano*, 427 U. S. 215 (1976); *Wolff v. McDonnell*, 418 U. S. 539 (1974); *Pell v. Procunier*, 417 U. S. 817 (1974); *Procunier v. Martinez*, 416 U. S. 396 (1974).

District Court, in the words of the Court of Appeals for the Second Circuit, “intervened broadly into almost every facet of the institution” and enjoined no fewer than 20 MCC practices on constitutional and statutory grounds. The Court of Appeals largely affirmed the District Court’s constitutional rulings and in the process held that under the Due Process Clause of the Fifth Amendment, pretrial detainees may “be subjected to only those ‘restrictions and privations’ which ‘inhere in their confinement itself or which are justified by compelling necessities of jail administration.’” *Wolfish v. Levi*, 573 F. 2d 118, 124 (1978), quoting *Rhem v. Malcolm*, 507 F. 2d 333, 336 (CA2 1974). We granted certiorari to consider the important constitutional questions raised by these decisions and to resolve an apparent conflict among the circuits.² — U. S. — (1978). We now reverse.

I

The MCC was constructed in 1975 to replace the converted waterfront garage on West Street that had served as New York City’s federal jail since 1928. It is located adjacent to the Foley Square federal courthouse and has as its primary objective the housing of persons who are being detained in custody prior to trial for federal criminal offenses in the United States District Courts for the Southern and Eastern Districts of New York and for the District of New Jersey. In addition to pretrial detainees, the MCC also houses some convicted inmates who are awaiting sentencing or transportation to federal prison or who are serving generally relatively

² See, e. g., *Norris v. Frame*, — F. 2d — (CA3, filed Oct. 31, 1978) (No. 78-1090); *Campbell v. Magruder*, — U. S. App. D. C. —, 580 F. 2d 521 (1978); *Wolfish v. Levi*, 573 F. 2d 118 (CA2 1978); *Feeley v. Sampson*, 570 F. 2d 364 (CA1 1978); *Main Road v. Aytch*, 565 F. 2d 54 (CA3 1977); *Patterson v. Morrisette*, 564 F. 2d 1109 (CA4 1977); *Miller v. Carson*, 563 F. 2d 741 (CA5 1977); *Duran v. Elrod*, 542 F. 2d 998 (CA7 1976).

short sentences in a service capacity at the MCC, convicted prisoners who have been lodged at the facility under writs of habeas corpus *ad prosequendum* or *ad testificandum* issued to ensure their presence at upcoming trials, witnesses in protective custody and persons incarcerated for contempt.³

The MCC differs markedly from the familiar image of a jail; there are no barred cells, dank, colorless corridors, or clanging steel gates. It was intended to include the most advanced and innovative features of modern correctional design. As the Court of Appeals stated: “[I]t represented the architectural embodiment of the best and most progressive penological planning.” 573 F. 2d, at 121. The key design element of the 12-story structure is the “modular” or “unit” concept, whereby each floor designed to house inmates has one or two largely self-contained residential units that replace the traditional cellblock jail construction. Each unit in turn has several clusters or corridors of private rooms or dormitories radiating from a central 2-story “multipurpose” or common room, to which each inmate has free access approximately 16 hours a day. (See Appendix.) Because our analysis does not turn on the particulars of the MCC concept or design, we need not discuss them further.

When the MCC opened in August 1975, the planned capacity was 449 inmates, an increase of 50% over the former West Street facility. *Id.*, at 122. Despite some dormitory accommodations, the MCC was designed primarily to house these inmates in 389 rooms, which originally were intended for single

³ This group of nondetainees may comprise, on a daily basis, between 40 and 60% of the MCC population. *United States ex rel. Wolfish v. United States*, 428 F. Supp. 333, 335 (SDNY 1977). Prior to the District Court's order, 50% of *all* MCC inmates spent less than 30 days at the facility and 73% less than 60 days. *United States ex rel. Wolfish v. Levi*, 439 F. Supp. 114, 127 (SDNY 1977). However, of the unsentenced detainees, over half spent less than 10 days at the MCC, three-quarters were released within a month and more than 85% were released within 60 days. *Wolfish v. Levi*, *supra*, at 129 n. 25. ✓

occupancy. While the MCC was under construction, however, the number of persons committed to pretrial detention began to rise at an "unprecedented rate." *Ibid.* The Bureau of Prisons took several steps to accommodate this unexpected flow of persons assigned to the facility, but despite these efforts, the inmate population at the MCC rose above its planned capacity within a short time after its opening. To provide sleeping space for this increased population, the MCC replaced the single bunks in many of the individual rooms and dormitories with double bunks.⁴ Also, each week some newly arrived inmates had to sleep on cots in the common areas until they could be transferred to residential rooms as space became available. See 573 F. 2d, at 127-128.

On November 28, 1975, less than four months after the MCC had opened, the named respondents initiated this action by filing in the District Court a petition for a writ of habeas corpus.⁵ The District Court certified the case as a class

⁴ Of the 389 residential rooms at the MCC, 121 had been "designated" for double-bunking at the time of the District Court's order. 428 F. Supp., at 336. The number of rooms actually housing two inmates, however, never exceeded 73 and, of these, only 35 were rooms in units that housed pretrial detainees. Brief for Petitioners 7 n. 6, Brief for Respondents 11-12; App. 33-35 (Affidavit of Larry Taylor, MCC Warden, dated Dec. 29, 1976).

⁵ It appears that the named respondents may now have been transferred or released from the MCC. See *United States ex rel. Wolfish v. Levi*, 439 F. Supp., at 119. "This case belongs, however, to that narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Gerstein v. Pugh*, 420 U. S. 103, 110 n. 11 (1975); see *Sosna v. Iowa*, 419 U. S. 393 (1975). The named respondents had a case or controversy at the time the complaint was filed and at the time the class action was certified by the District Court pursuant to Fed. Rule Civ. Proc. 23, and there remains a live controversy between petitioners and the members of the class represented by the named respondents. See *Sosna v. Iowa*, 419 U. S., at 402. Finally, because of the temporary nature of confinement at the MCC, the issues presented are, as in *Sosna* and *Gerstein*, "capable of repetition, yet evading review." 420 U. S., at 110 n. 11; 419 U. S., at 400-401; see

action on behalf of all persons confined at the MCC, pretrial detainees and sentenced prisoners alike.⁶ The petition served up a veritable potpourri of complaints that implicated virtually every facet of the institution's conditions and practices. Respondents charged, *inter alia*, that they had been deprived of their statutory and constitutional rights because of overcrowded conditions, undue length of confinement, improper searches, inadequate recreational, educational and employment opportunities, insufficient staff and objectionable restrictions on the purchase and receipt of personal items and books.⁷

Kremens v. Bartley, 431 U. S. 119, 133 (1977). Accordingly, the requirements of Art. III are met and the case is not moot.

⁶ Petitioners apparently never contested the propriety of respondents' use of a writ of habeas corpus to challenge the conditions of their confinement and petitioners do not raise that question in this Court. However, respondents did plead an alternative basis for jurisdiction in their "Amended Petition" in the District Court—namely, 28 U. S. C. § 1361—that arguably provides jurisdiction. And, at the time of the relevant orders of the District Court in this case, jurisdiction would have been provided by 28 U. S. C. § 1331 (a), as amended, 90 Stat. 2721. Thus, we leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself. See *Preiser v. Rodriguez*, 411 U. S. 475, 499–500 (1973). See generally *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, — U. S. — (1979).

Similarly, petitioners do not contest the District Court's certification of this case as a class action. For much the same reasons as identified above, there is no need in this case to reach the question whether Fed. Rule Civ. Proc. 23, providing for class actions, is applicable to petitions for habeas corpus relief. Accordingly, we express no opinion as to the correctness of the District Court's action in this regard. See *Middendorf v. Henry*, 425 U. S. 25, 30 (1976).

⁷ The Court of Appeals described the breadth of this action as follows: "As an indication of the scope of this action, the amended petition also decried the inadequate phone service; 'strip' searches; room searches outside the inmate's presence; a prohibition against the receipt of packages or the use of personal typewriters; interference with, and monitoring of, personal mail; inadequate and arbitrary disciplinary and grievance procedures;

In two opinions and a series of orders, the District Court enjoined numerous MCC practices and conditions. With respect to pretrial detainees, the court held that because they are "presumed to be innocent and held only to ensure their presence at trial, 'any deprivation or restriction of . . . rights beyond those which are necessary for confinement alone, must be justified by a compelling necessity.'" 439 F. Supp., at 124, quoting *Detainees of Brooklyn House of Detention v. Malcolm*, 520 F. 2d 392, 397 (CA2 1975). And while acknowledging that the rights of sentenced inmates are to be measured by the different standard of the Eighth Amendment, the court declared that to house "an inferior minority of persons . . . in ways found unconstitutional for the rest" would amount to cruel and unusual punishment. 428 F. Supp., at 339.⁸ ✓ ?

Applying these standards on cross-motions for partial summary judgment, the District Court enjoined the practice of housing two inmates in the individual rooms and prohibited enforcement of the so-called "publisher-only" rule, which at the time of the court's ruling prohibited the receipt of all books and magazines mailed from outside the MCC except those sent directly from a publisher or a book club.⁹ After a trial on the remaining issues, the District Court enjoined, *inter alia*, the doubling of capacity in the dormitory areas, the use

inadequate classification of prisoners; improper treatment of non-English speaking inmates; unsanitary conditions; poor ventilation; inadequate and unsanitary food; the denial of furloughs, unannounced transfers; improper restrictions on religious freedom; and an insufficiently trained staff." 573 F. 2d, at 123 n. 7.

⁸ While most of the District Court's rulings were based on constitutional grounds, the court also held that some of the actions of the Bureau of Prisons were subject to review under the Administrative Procedure Act (APA) and were "arbitrary and capricious" within the meaning of the APA. 439 F. 2d, at 122-123, 141; see n. 11, *infra*.

⁹ The District Court also enjoined confiscation of inmate property by prison officials without supplying a receipt and, except under specified circumstances, the reading and inspection of inmates' outgoing and incoming mail. 428 F. Supp., at 341-344. Petitioners do not challenge these rulings. ✓

of the common rooms to provide temporary sleeping accommodations, the prohibition against inmates' receipt of packages containing food and items of personal property, and the practice of requiring inmates to expose their body cavities for visual inspection following contact visits. The court also granted relief in favor of pretrial detainees, but not convicted inmates, with respect to the requirement that detainees remain outside their rooms during routine inspections by MCC officials.¹⁰

The Court of Appeals largely affirmed the District Court's rulings, although it rejected that court's Eighth Amendment analysis of conditions of confinement for convicted prisoners because the "parameters of judicial intervention into . . . conditions . . . for sentenced prisoners are more restrictive than in the case of pretrial detainees." 573 F. 2d, at 125.¹¹ Ac-

¹⁰ The District Court also granted respondents relief on the following issues: classification of inmates and movement between units; length of confinement; law library facilities; the commissary; use of personal typewriters; social and attorney visits; telephone service; inspection of inmates' mail; inmate uniforms; availability of exercise for inmates in administrative detention; food service; access to the bathroom in the visiting area; special diets for Muslim inmates; and women's "lock-in." 439 F. Supp., at 125-165. None of these rulings are before this Court.

¹¹ The Court of Appeals held that "[a]n institution's obligation under the eighth amendment is at an end if it furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety." 573 F. 2d, at 125.

The Court of Appeals also held that the District Court's reliance on the APA was erroneous. See n. 8, *supra*. The Court of Appeals concluded that because the Bureau of Prisons' enabling legislation vests broad discretionary powers in the Attorney General, the administration of federal prisons constitutes "agency action . . . committed to agency discretion by law" that is exempt from judicial review under the APA, at least in the absence of a breach of a specific statutory mandate. 573 F. 2d, at 125; see 5 U. S. C. § 701 (a) (2). Because of its holding that the APA was inapplicable to this case, the Court of Appeals reversed the District Court's rulings that the bathroom in the visiting area must be kept unlocked, that prison officials must make a certain level of local and long-

cordingly, the court remanded the matter to the District Court for it to determine whether the housing for sentenced inmates at the MCC was constitutionally "adequate." But the Court of Appeals approved the due process standard employed by the District Court in enjoining the conditions of pretrial confinement. It therefore held that the MCC had failed to make a showing of "compelling necessity" sufficient to justify housing two pretrial detainees in the individual rooms. 573 F. 2d, at 126-127. And for purposes of our review (since petitioners challenge only some of the Court of Appeals' rulings), the court affirmed the District Court's granting of relief against the "publisher-only" rule, the practice of conducting body cavity searches after contact visits, the prohibition against receipt of packages of food and personal items from outside the institution, and the requirement that detainees remain outside their rooms during routine searches of the rooms by MCC officials. *Id.*, at 129-132.¹²

II

As a first step in our decision, we shall address "double-

distance telephone service available to MCC inmates, that the MCC must maintain unchanged its present schedule for social visits, and that the MCC must take commissary requests every other day. 573 F. 2d, at 125-126, and n. 16. Respondents have not cross-petitioned from the Court of Appeals' disposition of the District Court's Eighth Amendment and APA rulings.

¹² Although the Court of Appeals held that doubling the capacity of the dormitories was unlawful, it remanded for the District Court to determine "whether any number of inmates in excess of rated capacity could be suitably quartered within the dormitories." 573 F. 2d, at 128. In view of the changed conditions resulting from this litigation, the court also remanded to the District Court for reconsideration of its order limiting incarceration of detainees at the MCC to a period less than 60 days. *Id.*, at 129. The court reversed the District Court's rulings that inmates be permitted to possess typewriters for their personal use in their rooms and that inmates not be required to wear uniforms. *Id.*, at 132-133. None of these rulings is before this Court.

bunking" as it is referred to by the parties, since it is a condition of confinement that is alleged only to deprive pretrial detainees of their liberty without due process of law in contravention of the Fifth Amendment. We will treat in order the Court of Appeals' standard of review, the analysis which we believe the Court of Appeals should have employed, and the conclusions to which our analysis leads us in the case of double-bunking.

A

The Court of Appeals did not dispute that the Government may permissibly incarcerate a person charged with a crime but not yet convicted to ensure his presence at trial. However, reasoning from the "premise that an individual is to be treated as innocent until proven guilty," the court concluded that pretrial detainees retain the "rights afforded unincarcerated individuals," and that therefore it is not sufficient that the conditions of confinement for pretrial detainees "merely comport with contemporary standards of decency prescribed by the cruel and unusual punishment clause of the eighth amendment." 573 F. 2d, at 124. Rather, the court held, the Due Process Clause requires that pretrial detainees "be subjected to only those 'restrictions and privations' which 'inhere in their confinement itself or which are justified by compelling necessities of jail administration.'" *Ibid.*, quoting *Rhem v. Malcolm*, 507 F. 2d, at 336. Under the Court of Appeals' "compelling necessity" standard, "deprivation of the rights of detainees cannot be justified by the cries of fiscal necessity, . . . administrative convenience, . . . or by the cold comfort that conditions in other jails are worse." 573 F. 2d, at 124 (citations omitted). The court acknowledged, however, that it could not "ignore" our admonition in *Procunier v. Martinez*, 416 U. S. 396, 405 (1974), that "courts are ill-equipped to deal with the increasingly urgent problems of prison administration," and concluded that it would "not [be] wise for [it]

to second-guess the expert administrators on matters on which they are better informed.” 573 F. 2d, at 124.¹³

Our fundamental disagreement with the Court of Appeals is that we fail to find a source in the Constitution for its compelling necessity standard.¹⁴ Both the Court of Appeals and the District Court seem to have relied on the “presumption of innocence” as the source of the detainee’s substantive right to be free from conditions of confinement that are not justified by compelling necessity. 573 F. 2d, at 124; 439 F. Supp., at 124; accord, *Campbell v. Magruder*, — U. S. App. D. C. —,

¹³ The NAACP Legal Defense and Educational Fund, Inc., as *amicus curiae*, argues that federal courts have inherent authority to correct conditions of pretrial confinement and that the practices at issue in this case violate the Attorney General’s alleged duty to provide inmates with “suitable quarters” under 18 U. S. C. § 4042 (2). Brief for the NAACP Legal Defense and Educational Fund, Inc., at *Amicus Curiae* 22-46. Neither argument was presented to or passed on by the lower courts; nor have they been urged by either party in this Court. Accordingly, we have no occasion to reach them in this case. *Knetsch v. United States*, 364 U. S. 361, 370 (1960).

¹⁴ As authority for its compelling necessity test, the court cited three of its prior decisions, *Rhem v. Malcolm*, 507 F. 2d 333 (CA2 1974) (*Rhem I*); *Detainees of Brooklyn House of Detention v. Malcolm*, 520 F. 2d 392 (CA2 1975), and *Rhem v. Malcolm*, 527 F. 2d 1041 (CA2 1975) (*Rhem II*). *Rhem I*’s support for the compelling necessity test came from *Brenneman v. Madigan*, 343 F. Supp. 128, 142 (ND Cal. 1972), which in turn cited no cases in support of its statement of the relevant test. *Detainees* found support for the compelling necessity standard in *Shapiro v. Thompson*, 394 U. S. 618 (1969), *Tate v. Short*, 401 U. S. 395 (1971), *Williams v. Illinois*, 399 U. S. 235 (1970), and *Shelton v. Tucker*, 364 U. S. 479 (1960). But *Tate* and *Williams* dealt with equal protection challenges to imprisonment based on inability to pay fines or costs. Similarly, *Shapiro* concerned equal protection challenges to state welfare eligibility requirements found to violate the constitutional right to travel. In *Shelton*, the Court held that a school board policy requiring disclosure of personal associations violated the First and Fourteenth Amendment rights of a teacher. None of these cases support the court’s compelling necessity test. Finally, *Rhem II* merely relied on *Rhem I* and *Detainees*.

580 F. 2d 521, 529 (1978); *Detainees of Brooklyn House of Detention v. Malcolm*, 520 F. 2d 392, 397 (CA2 1975); *Rhem v. Malcolm*, 507 F. 2d 333, 336 (CA2 1974). But see *Feeley v. Sampson*, 570 F. 2d 364, 369 n. 4 (CA1 1978); *Hampton v. Holmesburg Prison Officials*, 546 F. 2d 1077, 1080 n. 1 (CA3 1976). But the presumption of innocence provides no support for such a rule.

The presumption of innocence is doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment or custody or from other matters not introduced as proof at trial. *Taylor v. Kentucky*, 436 U. S. 478, 485 (1978); see *Estelle v. Williams*, 425 U. S. 501 (1976); *In re Winship*, 397 U. S. 358 (1970); 9 J. Wigmore, *Evidence* § 2511 (3d ed. 1940). It is "an inaccurate, shorthand description of the right of the accused to 'remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion . . . ' [; an] 'assumption' that is indulged in the absence of contrary evidence." *Taylor v. Kentucky*, *supra*, at 483-484, n. 12. Without question, the presumption of innocence plays an important role in our criminal justice system. "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U. S. 432, 453 (1895). But it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun. *mission*

The Court of Appeals also relied on what it termed the "indisputable rudiments of due process" in fashioning its compelling necessity test. We do not doubt that the Due Process Clause protects a detainee from certain conditions and restrictions of pretrial detainment. See *infra*, at 13-19. Nonetheless,

that clause provides no basis for application of a compelling necessity standard to conditions of pretrial confinement that are not alleged to infringe any other, more specific guarantee of the Constitution.

It is important to focus on what is at issue here. We are not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails. See *Gerstein v. Pugh*, 420 U. S. 103, 114 (1975); *United States v. Marion*, 404 U. S. 307, 320 (1971). Neither respondents nor the courts below question that the Government may permissibly detain a person suspected of committing a crime prior to a formal adjudication of guilt. See *Gerstein v. Pugh*, *supra*, at 111-114. Nor do they doubt that the Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, or that confinement of such persons pending trial is a legitimate means of furthering that interest. Tr. of Oral Arg. 27; see *Stack v. Boyle*, 342 U. S. 1, 4 (1951).¹⁵ Instead, what is at issue when an aspect of pretrial detention that is not alleged to violate any express guarantee of the Constitution is challenged, is the detainee's right to be free from punishment, see *infra*, at 13-14, and his desire to live as comfortably as possible during his confinement, both of which may conceivably coalesce at some point.

¹⁵ In order to imprison a person prior to trial, the Government must comply with constitutional requirements, *Gerstein v. Pugh*, 420 U. S., at 114; *Stack v. Boyle*, 342 U. S. 1, 5 (1951), and any applicable statutory provisions, *e. g.*, 18 U. S. C. §§ 3146, 3148. Respondents do not allege that the Government failed to comply with the constitutional or statutory requisites to pretrial detention.

The only justification for pretrial detention asserted by the Government is to ensure the detainees' presence at trial. Brief for Petitioners 43. Respondents do not question the legitimacy of this goal. Brief for Respondents 33; Tr. of Oral Arg. 27. We, therefore, have no occasion to consider whether any other governmental objectives may constitutionally justify pretrial detention.

It seems clear that the Court of Appeals did not rely on the detainee's right to be free from punishment, but even if it had, that right does not warrant adoption of that court's compelling necessity test. See *infra*, at 13-19. And to the extent the court relied on the detainee's desire to live comfortably, it suffices to say that this desire simply does not rise to the level of those fundamental liberty interests delineated in cases such as *Roe v. Wade*, 410 U. S. 113 (1973); *Eisenstadt v. Baird*, 405 U. S. 438 (1972); *Stanley v. Illinois*, 405 U. S. 645 (1972); *Griswold v. Connecticut*, 381 U. S. 479 (1965); *Meyer v. Nebraska*, 262 U. S. 390 (1923).

B

In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee.¹⁶ For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.¹⁷

¹⁶ The Court of Appeals properly relied on the Due Process Clause rather than Eighth Amendment in considering the claims of pretrial detainees. Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be "cruel and unusual" under the Eighth Amendment. The Court recognized this distinction in *Ingraham v. Wright*, 430 U. S. 651, 671-672, n. 40 (1977):

"Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. See *United States v. Lovett*, 328 U. S. 303, 317-318 (1946) [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment."

¹⁷ We, of course, do not mean by this discussion of the rights of pretrial

See *Ingraham v. Wright*, 430 U. S. 651, 671-672 n. 40, 674 (1977); *Kennedy v. Mendoza-Martinez*, 372 U. S. 144, 165-167, 186 (1963); *Wong Wing v. United States*, 163 U. S. 228, 237 (1896). A person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest." *Gerstein v. Pugh*, 420 U. S., at 114; see *Virginia v. Paul*, 148 U. S. 107, 119 (1893). And, if he is detained for a suspected violation of a federal law, he also has had a bail hearing. See 18 U. S. C. §§ 3146, 3148.¹⁸ Under such circumstances, the Government concededly may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution.

Not every disability imposed during pretrial detention amounts to "punishment" in the constitutional sense, however. Once the Government has exercised its conceded authority to detain a person pending trial, it obviously is

detainees to cast doubt on any historical exceptions to the general principle that punishment can only follow a determination of guilt after trial or plea—exceptions such as the power summarily to punish for contempt of court. See, e. g., *Bloom v. Illinois*, 391 U. S. 194 (1968); *United States v. Barnett*, 376 U. S. 681 (1964); *Cooke v. United States*, 267 U. S. 517 (1925); *Ex parte Terry*, 128 U. S. 289 (1888); Fed. Rule Crim. Proc. 42.

¹⁸ The Bail Reform Act of 1966 establishes a liberal policy in favor of pretrial release. 18 U. S. C. §§ 3146, 3148. Section 3146 provides in pertinent part:

"Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required."

entitled to employ devices that are calculated to effectuate this detention. Traditionally, this has meant confinement in a facility which, no matter how modern or how antiquated, results in restricting the movement of a detainee in a manner in which he would not be restricted if he simply were free to walk the streets pending trial. Whether it be called a jail, a prison, a correctional institution or custodial center, the purpose of the facility is to detain. Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. And the fact that such detention interferes with the detainee's understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into "punishment."

This Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may. See, e. g., *Kennedy v. Mendoza-Martinez*, *supra*, at 168; *Fleming v. Nestor*, 363 U. S. 603, 613-614 (1960); cf. *DeVeau v. Braisted*, 363 U. S. 144, 160 (1960). In *Kennedy v. Mendoza-Martinez*, *supra*, the Court examined the automatic forfeiture of citizenship provisions of the immigration laws to determine whether that sanction amounted to punishment or a mere regulatory restraint. While it is all but impossible to compress the distinction into a sentence or a paragraph, the Court there described the tests traditionally applied to determine whether a governmental act is punitive in nature:

"Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on 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 purpose assigned are all relevant to the inquiry, and may often point in differing directions." 372 U. S., at 168-169 (footnotes omitted).

Because forfeiture of citizenship traditionally had been considered punishment and the legislative history of the forfeiture provisions "conclusively" showed that the measure was intended to be punitive, the Court held that forfeiture of citizenship in such circumstances constituted punishment that could not constitutionally be imposed without due process of law. *Id.*, at 167-170, 186.

The factors identified in *Mendoza-Martinez* provide useful guideposts in determining whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense of that word. A court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. See *Flemming v. Nestor*, *supra*, at 613-617.¹⁹ Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on "[w]hether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]." *Kennedy v. Mendoza-Martinez*, *supra*, at 168-169; see *Flemming v. Nestor*, *supra*, at 617. Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate govern-

¹⁹ As Mr. Justice Frankfurter stated in *United States v. Lovett*, 328 U. S. 303, 324 (1946) (concurring opinion): "The fact that harm is inflicted by governmental authority does not make it punishment. Figuratively speaking all discomforting action may be deemed punishment because it deprives of what otherwise would be enjoyed. But there may be reasons other than punitive for such deprivation."

See also 27

mental objective, it does not, without more, amount to "punishment."²⁰ Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees. See *Flemming v. Nestor*, *supra*, at 617.²¹ Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility. Cf. *United States v. Lovasco*, 431 U. S. 783, 790 (1977); *United States v. Russell*, 411 U. S. 423, 435 (1973).

One further point requires discussion. The Government asserts, and respondents concede, that the "essential objective of pretrial confinement is to insure the detainees' presence at trial." Brief for Petitioners 43; see Brief for Respondents 33. While this interest undoubtedly justifies the original decision to confine an individual in some manner, we do not accept respondent's argument that the Government's interest in ensuring a detainee's presence at trial is the *only* objective

²⁰ This is not to say that the officials of a detention facility can justify punishment. They cannot. It is simply to say that in the absence of a showing of intent to punish, a court must look to see if a particular restriction or condition, which may on its face appear to be punishment, is instead but an incident of a legitimate nonpunitive governmental objective. See *Kennedy v. Mendoza-Martinez*, *supra*, at 168; *Flemming v. Nestor*, *supra*, at 617. Conversely, loading a detainee with chains and shackles and throwing him in a dungeon may ensure his presence at trial and preserve the security of the institution. But it would be difficult to conceive of a situation where conditions so harsh, employed to achieve objectives that could be accomplished in so many alternative and less harsh methods, would not support a conclusion that the purpose for which they were imposed was to punish.

²¹ "There is, of course, a *de minimis* level of imposition with which the Constitution is not concerned." *Ingraham v. Wright*, *supra*, at 674.

that may justify restraints and conditions once the decision is lawfully made to confine a person. "If the government could confine or otherwise infringe the liberty of detainees only to the extent necessary to ensure their presence at trial, house arrest would in the end be the only constitutionally justified form of detention." *Campbell v. Magruder, supra*, at 529. The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution.²² Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment.²³

²² In fact, security measures may directly serve the Government's interest in ensuring the detainee's presence at trial. See *Feeley v. Sampson*, 570 F. 2d, at 369.

²³ In determining whether restrictions or conditions are reasonably related to the government's interest in maintaining security and order and operating the institution in a manageable fashion, courts must heed our warning that "[s]uch considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exag-

C

Judged by this analysis, respondents' claim that double-bunking violated their due process rights fails. Neither the District Court nor the Court of Appeals intimated that it considered double-bunking to constitute punishment; instead, they found that it contravened the compelling necessity test, which today we reject. On this record, we are convinced as a matter of law that double-bunking as practiced at the MCC did not amount to punishment and did not, therefore, violate respondents' rights under the Due Process Clause of the Fifth Amendment.²⁴

The rooms at the MCC that house pretrial detainees have a total floor space of approximately 75 square feet. Each of them designated for double-bunking, see n. 4, *supra*, contains a double bunkbed, certain other items of furniture, a wash basin and an uncovered toilet. (See Appendix.) Inmates generally are locked into their rooms from 11 p. m. to 6:30 a. m. and for brief periods during the afternoon and evening head counts. During the rest of the day, they may move about freely between their rooms and the common areas.

Based on affidavits and a personal visit to the facility, the District Court concluded that the practice of double-bunking was unconstitutional. The court relied on two factors for its conclusion: (1) the fact that the rooms were designed to house only one inmate, 428 F. Supp., at 336-337; and (2) its judgment that confining two persons in one room or cell of this size constituted a "fundamental denial[] of decency, privacy, personal security, and, simply, civilized humanity. . . ." *Id.*,

gerated their response to those considerations, courts should ordinarily defer to their expert judgment in such matters." *Pell v. Procunier*, 417 U. S., at 827; see *Jones v. North Carolina Prisoners' Labor Union*, *supra*; *Meachum v. Fano*, *supra*; *Procunier v. Martinez*, *supra*.

²⁴ The District Court found that there were no disputed issues of material fact with respect to respondents' challenge to double-bunking. 428 F. Supp., at 335. We agree with the District Court in this determination.

omission

at 339. The Court of Appeals agreed with the District Court. In response to petitioners' arguments that the rooms at the MCC were larger and more pleasant than the cells involved in the cases relied on by the District Court, the Court of Appeals stated:

"[W]e find the lack of privacy inherent in double-celling in rooms intended for one individual a far more compelling consideration than a comparison of square footage or the substitution of doors for bars, carpet for concrete, or windows for walls. The Government has simply failed to show any substantial justification for double-celling." 573 F. 2d, at 127.

We disagree with both the District Court and the Court of Appeals that there is some sort of "one man, one cell" principle lurking in the Due Process Clause of the Fifth Amendment. While confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment, nothing even approaching such hardship is shown by this record.²⁵ ✓ X

²⁵ Respondents seem to argue that double-bunking was unreasonable because petitioners were able to comply with the District Court's order forbidding double-bunking and still accommodate the increased numbers of detainees simply by transferring all but a handful of sentenced inmates who had been assigned to the MCC for the purpose of performing certain services and committing those tasks to detainees. Brief for Respondents 50. That petitioners were able to comply with the District Court's order in this fashion does not mean that petitioner's chosen method of coping with the increased inmate population—double-bunking—was unreasonable. Governmental action does not have to be the only alternative or even the best alternative for it to be reasonable, to say nothing of constitutional. ✓

? — See *Vance v. Bradley*, — U. S. — (1979); *Dandridge v. Williams*, 397 U. S. 471, 485 (1970).

That petitioners were able to comply with the District Court order also does not make this case moot, because petitioners still dispute the legality

Detainees are required to spend only seven or eight hours each day in their rooms, during most or all of which they presumably are sleeping. The rooms provide more than adequate space for sleeping.²⁶ During the remainder of the time, the detainees are free to move between their rooms and the common area. While double-bunking may have taxed some of the equipment or particular facilities in certain of the common areas, *United States ex rel. Wolfish v. United States*, 428 F. Supp., at 337, this does not mean that the conditions at the MCC failed to meet the standards required by the Constitution. Our conclusion in this regard is further buttressed by the detainees' length of stay at the MCC. See *Hutto v. Finney*, 437 U. S. 678, 686-687 (1978). Nearly all of the detainees are released within 60 days. See n. 3, *supra*. We simply do not believe that requiring a detainee to share toilet facilities and this admittedly rather small sleeping place with another person for generally a maximum period of 60 days violates the Constitution.²⁷

can better about

of the court's order and they have informed the Court that there is a reasonable expectation that they may be required to double-bunk again. Reply Brief of Petitioners 6; Tr. of Oral Arg. 33-35, 56-57; see *United States v. W. T. Grant Co.*, 345 U. S. 629, 632-633 (1953).

²⁶ We thus fail to understand the emphasis of the Court of Appeals and the District Court on the amount of walking space in the double-bunked rooms. See 573 F. 2d, at 127; 428 F. Supp., at 337.

²⁷ Respondents' reliance on other lower court decisions concerning minimum space requirements for different institutions and on correctional standards issued by various groups is misplaced. Brief for Respondents 41, and nn. 40 and 41; see, e. g., *Campbell v. Magruder*, *supra*; *Battle v. Anderson*, 564 F. 2d 388 (CA10 1977); *Chapman v. Rhodes*, 434 F. Supp. 1007 (SD Ohio 1977); *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676 (Mass. 1973); American Public Health Association, Standards for Health Services in Correctional Institutions 62 (1976); American Correctional Association, Manual of Standards for Adult Correctional Institutions 4142 (1977); National Sheriff's Association, A Handbook on Jail Architecture 63 (1975). The cases cited by respondents concerned facilities markedly different from the MCC. They involved traditional jails and cells in which inmates were locked during most of the day. Given

III

Respondents also challenged certain MCC restrictions and practices that were designed to promote security and order at the facility on the ground that these restrictions violated the Due Process Clause of the Fifth Amendment, and certain other constitutional guarantees, such as the First and Fourth Amendments. The Court of Appeals seemed to approach the challenges to security restrictions in a different fashion than the other contested conditions and restrictions. It stated that "once it has been determined that the mere fact of confinement of the detainee justifies the restrictions, the institution must be permitted to use reasonable means to insure that its legitimate interests in security are safeguarded." 573 F. 2d, at 124. The court might disagree with the choice of means to effectuate those interests, but it should not "second-guess the expert administrators on matters on which they are better informed Concern with minutiae of prison administration can only distract the court from detached consideration of the one overriding question presented to it: does the practice or condition violate the Constitution?" *Id.*, at 124-125. Nonetheless, the court affirmed the District Court's injunction against several security restrictions. The Court rejected the arguments of petitioners that these practices served the MCC's interest in security and order and held that the practices were unjustified interferences with the retained constitutional rights

this factual disparity, they have little or no application to the case at hand. Thus, we need not and do not decide whether we agree with the reasoning and conclusions of these cases. And while the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question. For this same reason, the draft recommendations of the Federal Corrections Policy Task Force of the Department of Justice regarding conditions of confinement for pre-trial detainees are not determinative of the requirements of the Constitution. See Dept. of Justice, Federal Corrections Policy Task Force, Draft Federal Standards for Corrections (June 1978).

of *both* detainees and convicted inmates. *Id.*, at 129–132. In our view, the Court of Appeals failed to heed its own admonition not to “second-guess” prison administrators. ✓

Our cases have established several general principles that inform our evaluation of the constitutionality of the restrictions at issue. First, we have held that convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison. See *Jones v. North Carolina Prisoners' Labor Union*, 433 U. S. 119, 129 (1977); *Meachum v. Fano*, 427 U. S. 215, 225 (1976); *Wolff v. McDonnell*, 418 U. S. 539, 555–556 (1974); *Pell v. Procunier*, 417 U. S. 817, 822 (1974). “There is no iron curtain drawn between the Constitution and the prisons of this country.” *Wolff v. McDonnell*, *supra*, at 555–556. So, for example, our cases have held that sentenced prisoners enjoy freedom of speech and religion under the First and Fourteenth Amendments, see *Pell v. Procunier*, *supra*; *Cruz v. Beto*, 405 U. S. 319 (1972); *Cooper v. Pate*, 378 U. S. 546 (1964), that they are protected against invidious discrimination on the basis of race under the Equal Protection Clause of the Fourteenth Amendment, see *Lee v. Washington*, 390 U. S. 333 (1968), and that they may claim the protection of the Due Process Clause to prevent additional deprivation of life, liberty or property without due process of law, see *Meachum v. Fano*, *supra*; *Wolff v. McDonnell*, *supra*. *A fortiori*, pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners.

But our cases also have insisted on a second proposition: simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations. “Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” *Price v. Johnston*, 334 U. S. 266, 285 (1948); see *Jones v. North Carolina Prisoners' Labor*

Union, supra, at 125; *Wolff v. McDonnell, supra*, at 555; *Pell v. Procunier, supra*, at 822. The fact of confinement as well as the legitimate goals and policies of the penal institution limit these retained constitutional rights. *Jones v. North Carolina Prisoners' Labor Union, supra*, at 125; *Pell v. Procunier, supra*, at 822. There must be a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." *Wolff v. McDonnell, supra*, at 556. This principle applies equally to pretrial detainees and convicted prisoners. A detainee simply does not possess the full range of freedoms of an unincarcerated individual.

Third, maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.²⁸ "Central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves." *Pell v. Procunier, supra*, at 823; see *Jones v. North Carolina Prisoners' Labor Union, supra*, at 129; *Procunier v. Martinez*, 416 U. S. 396, 412 (1974). Prison

²⁸ Neither the Court of Appeals nor the District Court distinguished between pretrial detainees and convicted inmates in reviewing the challenged security practices, and we see no reason to do so. There is no basis for concluding that pretrial detainees pose any lesser security risk than convicted inmates. Indeed, it may be that in certain circumstances they present a greater risk to jail security and order. See, e. g., *Main Road v. Aytch*, 565 F. 2d 54, 57 (CA3 1977). In the federal system, a detainee is committed to the detention facility only because no other less drastic means can reasonably assure his presence at trial. See 18 U. S. C. § 3146. As a result, those who are detained prior to trial may in many cases be individuals who are charged with serious crimes or who have prior records. They also may pose a greater risk of escape than convicted inmates. See Joint App. (No. 77-2035, CA2) 1393-1398, 1531-1532. This may be particularly true at facilities like the MCC, where the resident convicted inmates have been sentenced to only short terms of incarceration and many of the detainees face the possibility of lengthy imprisonment if convicted.

officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry. Accordingly, we have held that even when an institutional restriction infringes a specific constitutional guarantee, such as the First Amendment, the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security. *Jones v. North Carolina Prisoners' Labor Union*, *supra*, at 129; *Pell v. Procunier*, *supra*, at 822, 826; *Procunier v. Martinez*, *supra*, at 412-414.

Finally, as the Court of Appeals correctly acknowledged, the problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Jones v. North Carolina Prisoners' Labor Union*, *supra*, at 128; *Procunier v. Martinez*, *supra*, at 404-405; *Cruz v. Beto*, 405 U. S., at 321; see *Meachum v. Fano*, 427 U. S., at 228-229.²⁹ "Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these consid-

²⁹ Respondents argue that this Court's cases holding that substantial deference should be accorded prison officials are not applicable to this case because those decisions concerned convicted inmates, not pretrial detainees. Brief for Respondents 52. We disagree. Those decisions held that courts should defer to the informed discretion of prison administrators because the realities of running a corrections institution are complex and difficult, courts are ill-equipped to deal with these problems, and the management of these facilities is confided to the Executive and Legislative Branches, not to the Judicial Branch. See *Jones v. North Carolina Prisoners' Labor Union*, 433 U. S., at 126; *Pell v. Procunier*, 417 U. S., at 827; *Procunier v. Martinez*, 416 U. S., at 404-405. While those cases each concerned restrictions governing convicted inmates, the principle of deference enunciated in them is not dependent on that happenstance.

BELL v. WOLFISH

erations, courts should ordinarily defer to their expert judgment in such matters." *Pell v. Procunier*, *supra*, at 827.³⁰ We further observe that on occasion, prison administrators may be "experts" only by Act of Congress or of a state legislature. But judicial deference is accorded not merely because the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial. *Procunier v. Martinez*, *supra*, at 405; cf. *Meachum v. Fano*, *supra*, at 229. With these teachings of our cases in mind, we turn to an examination of the MCC security practices that are alleged to violate the Constitution.

A

At the time of the lower courts' decisions, the Bureau of Prisons' "publisher-only" rule, which applies to all Bureau facilities, permitted inmates to receive books and magazines from outside the institution only if the materials were mailed directly from the publisher or a book club. 573 F. 2d, at 129-130. The warden of the MCC stated in an affidavit that

³⁰ What the Court said in *Procunier v. Martinez*, *supra*, bears repeating here:

"Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge to these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism." 416 U. S., at 404-405.

repet n 28

"serious" security and administrative problems were caused when bound items were received by inmates from unidentified sources outside the facility. App. 24. He noted that in order to make a "proper and thorough" inspection of such items, prison officials would have to remove the covers of hardback books and to leaf through every page of all books and magazines to ensure that drugs, money, weapons or other contraband were not secreted in the material. "This search process would take a substantial and inordinate amount of available staff time." *Ibid.* However, "there is relatively little risk that material received directly from the publisher or book club would contain contraband, and therefore, the security problems are significantly reduced without a drastic drain on staff resources." *Ibid.*

The Court of Appeals rejected these security and administrative justifications and affirmed the District Court's order enjoining enforcement of the "publisher-only" rule at the MCC. The Court of Appeals held that the rule "severely and impermissibly restricts the reading material available to inmates" and therefore violates their First Amendment and due process rights. 573 F. 2d, at 130.

It is desirable at this point to place in focus the precise question that now is before this Court. Subsequent to the decision of the Court of Appeals, the Bureau of Prisons amended its "publisher-only" rule to permit the receipt of books and magazines from bookstores as well as publishers and book clubs. 43 Fed. Reg. 30576 (July 17, 1978). In addition, petitioners have informed the Court that the Bureau proposes to amend the rule further to allow receipt of paperback books, magazines and other soft-covered materials from any source. Brief for Petitioners 66 n. 49, 69, and n. 51. The Bureau regards hardback books as the "more dangerous source of risk to institutional security," however, and intends to retain the prohibition against receipt of hardback books unless they are mailed directly from publishers, book clubs or bookstores. *Id.*, at 69 n. 51. Accordingly, petitioners request this

BELL v. WOLFISH

Court to review the District Court's injunction only to the extent it enjoins petitioners from prohibiting receipt of hard-cover books that are not mailed directly from publishers, book clubs, or bookstores. *Id.*, at 69; Tr. of Oral Arg. 59-60.³¹

We conclude that a prohibition against receipt of hardback books unless mailed directly from publishers, book clubs or bookstores does not violate the First Amendment rights of MCC inmates. That limited restriction is a rational response by prison officials to an obvious security problem. It hardly needs to be emphasized that hardback books are especially serviceable for smuggling contraband into an institution; money, drugs, and weapons easily may be secreted in the bindings. *E. g., Woods v. Daggett*, 541 F. 2d 237 (CA10

³¹ Because of the changes in the "publisher-only" rule, some of which apparently occurred after we granted certiorari, respondents, citing *Sanks v. Georgia*, 401 U. S. 144 (1971), urge the Court to dismiss the writ of certiorari as improvidently granted with respect to the validity of the rule, as modified. Brief for Respondents 68. *Sanks*, however, is quite different from the instant case. In *Sanks* the events that transpired after probable jurisdiction was noted "had so drastically undermined the premises on which we originally set [the] case for plenary consideration as to lead us to conclude that, with due regard for the proper functioning of this Court, we should not . . . adjudicate it." *Id.*, at 145. The focus of that case had been "completely blurred, if not altogether obliterated," and a judgment on the issues involved had become "potentially immaterial." *Id.*, at 152. This is not true here. Unlike the situation in *Sanks*, the Government has not substituted an entirely different regulatory scheme and wholly abandoned the restrictions that were invalidated below. There is still a dispute, which is not "blurred" or "obliterated," on which a judgment will not be "immaterial." Petitioners merely have chosen to limit their disagreement with the lower courts' rulings. Also, the question that is now posed is fairly comprised within the questions presented in the Petition for Certiorari. See Pet. for Cert. 2 ("Whether the governmental interest in maintaining jail security and order justifies rules that . . . (b) prohibit receipt at the jail of books and magazines that are not mailed directly from publishers"). We, of course, express no view as to the validity of those portions of the lower courts' rulings that concern magazines or soft-cover books.

1976).³² They also are difficult to search effectively. There is simply no evidence in the record to indicate that MCC officials have exaggerated their response to this security problem and to the administrative difficulties posed by the necessity of carefully inspecting each book mailed from unidentified sources. Therefore, the considered judgment of these experts must control in the absence of prohibitions far more sweeping than those involved here. See *Jones v. North Carolina Prisoners' Labor Union*, *supra*, at 128; *Pell v. Procunier*, *supra*, at 827.

Our conclusion that this limited restriction on receipt of hardback books does not infringe the First Amendment rights of MCC inmates is influenced by several other factors. The rule operates in a neutral fashion, without regard to the content of the expression. *Pell v. Procunier*, *supra*, at 828. And there are alternative means of obtaining reading material that have not been shown to be burdensome or insufficient. "We regard the available 'alternative means of [communication as] a relevant factor' in a case such as this where 'we [are] called upon to balance First Amendment rights against [legitimate] governmental . . . interests.'" *Id.*, at 824, quoting *Kliendienst v. Mandel*, 408 U. S. 753, 765 (1972); see

³² The District Court stated, "With no record of untoward experience at places like the MCC, and with no history of resort to less restrictive measures, [petitioners'] invocation of security cannot avail with respect to the high constitutional interests here at stake." 428 F. Supp., at 340. We rejected this line of reasoning in *Jones v. North Carolina Prisoners' Labor Union*, *supra*, at 132-133, where we stated, "Responsible prison officials must be permitted to take reasonable steps to forestall . . . threat[s to security], and they must be permitted to act before the time when they can compile a dossier on the eve of a riot." We reject it again, now. In *Jones*, we also emphasized that the "informed discretion of prison officials that there is *potential* danger may be sufficient for limiting rights even though this showing might be 'unimpressive if . . . submitted as justification for governmental restriction of personal communication among members of the general public.'" (Emphasis added.) *Id.*, at 133 n. 9, quoting *Pell v. Procunier*, *supra*, at 825, see *Procunier v. Martinez*, 416 U. S., at 414.

BELL v. WOLFISH

Cruz v. Beto, 405 U. S., at 321, 322 n. 2. The restriction, as it is now before us, allows soft bound books and magazines to be received from any source and hardback books to be received from publishers, bookstores and book clubs. In addition, the MCC has a "relatively large" library for use by inmates. *United States ex rel. Wolfish v. United States*, 428 F. Supp., at 340.³³ To the limited extent the rule might possibly increase the cost of obtaining published materials, this Court has held that where "other avenues" remain available for the receipt of materials by inmates, the loss of "cost advantages does not fundamentally implicate *free speech* values." See *Jones v. North Carolina Prisoners' Labor Union*, *supra*, at 130-131. We are also influenced in our decision by the fact that the rule's impact on pretrial detainees is limited to a maximum period of approximately 60 days. See n. 3, *supra*. In sum, considering all the circumstances, we view the rule, as we now find it, to be a "reasonable 'time, place and manner' regulation[] . . . [that is] necessary to further significant governmental interests. . . ." *Grayned v. City of Rockford*, 408 U. S. 104, 115 (1972); see *Cox v. New Hampshire*, 312 U. S. 569, 575-576 (1941); *Cox v. Louisiana*, 379 U. S. 536, 554-555 (1965); *Adderley v. Florida*, 385 U. S. 39, 46-48 (1966).

B

Inmates at the MCC were not permitted to receive packages from outside the facility containing items of food or personal property, except for one package of food at Christmas. This

³³ The general library consists of more than 3,000 hardback books, which include general reference texts and fiction and nonfiction works, and more than 5,000 assorted paperbacks, including fiction and nonfiction. The MCC offers for sale to inmates four daily newspapers and certain magazines. Joint App. (No. 77-2035, CA2) 102-103 (Affidavit of Robert Harris, MCC Education Specialist, dated Oct. 19, 1976). Other paperback books and magazines are donated periodically and distributed among the units for inmate use. *United States ex rel. Wolfish v. Levi*, 439 F. Supp., at 131.

rule was justified by MCC officials on three grounds. First, officials testified to "serious" security problems that arise from the introduction of such packages into the institution, the "traditional file in the cake kind of situation" as well as the concealment of drugs "in heels of shoes [and] seams of clothing." App. 80; see *id.*, at 24, 84-85. As in the case of the "publisher-only" rule, the warden testified that if such packages were allowed, the inspection process necessary to ensure the security of the institution would require a "substantial and inordinate amount of available staff time." *Id.*, at 24. Second, officials were concerned that the introduction of personal property into the facility would increase the risk of thefts, gambling and inmate conflicts, the "age-old problem of you have it and I don't." *Id.*, at 80; see *id.*, at 85. Finally, they noted storage and sanitary problems that would result from inmates' receipt of food packages. *Id.*, at 67, 80. Inmates are permitted, however, to purchase certain items of food and personal property from the MCC commissary.³⁴

The District Court dismissed these justifications as "dire predictions." It was unconvinced by the asserted security problems because other institutions allow greater ownership of personal property and receipt of packages than does the MCC. And because the MCC permitted inmates to purchase items in the commissary, the court could not accept official fears of increased theft, gambling or conflicts if packages were allowed. Finally, it believed that sanitation could be assured by proper housekeeping regulations. Accordingly, it ordered the MCC to promulgate regulations to permit receipt of at least items of the kind that are available in the commissary. 439 F. Supp., at 152-153. The Court of Appeals accepted the District Court's analysis and affirmed, although it noted that the MCC could place a ceiling on the permissible dollar

³⁴ Inmates are permitted to spend a total of \$15 per week or up to \$50 per month at the commissary. *United States ex rel. Wolfish v. Levi*, 439 F. Supp., at 132.

BELL v. WOLFISH

value of goods received and restrict the number of packages. 573 F. 2d, at 132.

Neither the District Court nor the Court of Appeals identified which provision of the Constitution was violated by this MCC restriction. We assume, for present purposes, that their decisions were based on the Due Process Clause of the Fifth Amendment, which provides protection for convicted prisoners and pretrial detainees alike against the deprivation of their property without due process of law. See *supra*, at 23. But as we have stated, these due process rights of prisoners and pretrial detainees are not absolute; they are subject to reasonable limitation or retraction in light of the legitimate security concerns of the institution. ✓ / *Teal*

We think the District Court and the Court of Appeals have trenched too cavalierly into areas that are properly the concern of MCC officials. It is plain from their opinions, that the lower courts simply disagreed with the judgment of MCC officials about the extent of the security interests affected and the means required to further those interests. But our decisions have time and again emphasized that this sort of unguided substitution of judicial judgment for that of the expert prison administrators on matters such as this is inappropriate. See *Jones v. North Carolina Prisoners' Labor Union, supra*; *Pell v. Procunier, supra*; *Procunier v. Martinez, supra*. We do not doubt that the rule devised by the District Court and modified by the Court of Appeals may be a reasonable way of coping with the problems of security, order and sanitation. It simply is not, however, the only constitutionally permissible approach to these problems. Certainly, the Due Process Clause does not mandate a "lowest common denominator" security standard, whereby a practice permitted at one penal institution must be permitted at all institutions. ✓

Corrections officials concluded that permitting the introduction of packages of personal property and food would increase the risks of gambling, theft and inmate fights over that which the institution already experienced by permitting certain items ✓

to be purchased from its commissary. "It is enough to say that they have not been conclusively shown to be wrong in this view." *Jones v. North Carolina Prisoners' Labor Union, supra*, at 132. It is also all too obvious that such packages are handy devices for the smuggling of contraband. There simply is no basis in this record for concluding that MCC officials have exaggerated their response to these serious problems or that this restriction is irrational. It does not therefore deprive the convicted inmates or pretrial detainees³⁵ of the MCC of their property without due process of law in contravention of the Fifth Amendment.

C

The MCC staff conducts unannounced searches of inmate living areas at irregular intervals. These searches generally are formal unit "shakedowns" during which all inmates are cleared of the residential units, and a team of guards searches each room. Prior to the District Courts' order, inmates were not permitted to watch the searches. Officials testified that permitting inmates to observe room inspections would lead to friction between the inmates and security guards and would allow the inmates to attempt to frustrate the search by distracting personnel and moving contraband from one room to another ahead of the search team.³⁶

³⁵ With regard to pretrial detainees, we again note that this restriction affects them for generally a maximum of 60 days. See n. 3, *supra*.

³⁶ One of the correctional experts testified as follows:

"... the requirement that prisoners not be in the immediate area obviously has its basis again in the requirements of security.

"It is quite obvious that if a group of officers start a searching process of a housing area at the MCC, if it be a corridor or an area of rooms or in a typical jail if it were a cell block, unless all prisoners are removed from that immediate area, there are a wide variety of opportunities for the confiscation of contraband by prisoners who may have such in their possession and cells.

"It can go down the toilet or out the window, swallowed, a wide variety of methods of confiscation of contraband." App. 78.

BELL v. WOLFISH

The District Court held that this procedure could not stand as applied to pretrial detainees because MCC officials had not shown that the restriction was justified by "compelling necessity."³⁷ The court stated that "[a]t least until or unless [petitioners] can show a pattern of violence or other disruptions taxing the powers of control—a kind of showing not remotely approached by the Warden's expressions—the security argument for banishing inmates while their rooms are searched must be rejected." 439 F. Supp., at 149. It also noted that in many instances inmates suspected guards of thievery. *Id.*, at 148–149. The Court of Appeals agreed with the District Court. It saw "no reason whatsoever not to permit a detainee to observe the search of his room and belongings from a reasonable distance," although the court permitted the removal of any detainee who became "obstructive." 573 F. 2d, at 132.

The Court of Appeals did not identify the constitutional provision on which it relied in invalidating the room search rule. The District Court stated that the rule infringed the detainee's interest in privacy and indicated that this interest in privacy was founded on the Fourth Amendment. 439 F. Supp., at 149–150. It may well be argued that a person confined in a detention facility has no reasonable expectation of privacy with respect to his room or cell and that therefore the Fourth Amendment provides no protection for such a person. Cf. *Lanza v. New York*, 370 U. S. 139, 143–144 (1962). In any case, given the realities of institutional confinement, any reasonable expectation of privacy that a detainee retained necessarily would be of a diminished scope. *Id.*, at 143. Assuming, *arguendo*, that a pretrial detainee retains such a diminished expectation of privacy after commitment to a

³⁷ The District Court did not extend its ruling to convicted inmates because, for them, "the asserted necessities need not be 'compelling,'" and since the warden's explanation of the problems posed was "certainly not weightless," the practice passed the constitutional test for sentenced inmates. 439 F. Supp., at 150.

custodial facility, we nonetheless find that the room search rule does not violate the Fourth Amendment.

It is difficult to see how the detainee's interest in privacy is infringed by the room search rule. No one doubts that room searches represent an appropriate security measure and neither the District Court nor the Court of Appeals prohibited such searches. And even the most zealous advocate of prisoners' rights would not suggest that a warrant is required to conduct such a search. Detainees' drawers and beds and personal items may be searched, even after the lower courts' rulings. Permitting detainees to observe the searches does not lessen the invasion of their privacy; its only conceivable beneficial effect would be to prevent theft or misuse by those conducting the search. The room search rule simply facilitates the safe and effective performance of the search which all concede may be conducted. The rule itself, then, does not render the searches "unreasonable" within the meaning of the Fourth Amendment.³⁸

D

Inmates at all Bureau of Prisons facilities, including the MCC, are required to expose their body cavities for visual inspection as a part of a strip search conducted after every contact visit with a person from outside the institution.³⁹

³⁸ It may be that some guards have abused the trust reposed in them by failing to treat the personal possessions of inmates with ~~appropriate~~ respect. But, even assuming that in some instances these abuses of trust reached the level of constitutional violations, this is not an action to recover ~~damages for damage~~ to or destruction of particular items of property. This is a challenge to the room search rule in its entirety, and the lower courts have enjoined enforcement of the practice itself. When analyzed in this context, proper deference to the informed discretion of prison authorities demands that they, and not the courts, make the difficult judgments which reconcile conflicting claims affecting the security of the institution, the welfare of the prison staff, and the property rights of the detainees. *Jones v. North Carolina Prisoners' Labor Union, supra*, at 128.

³⁹ If the inmate is a male, he must lift his genitals and bend over to spread his buttocks for visual inspection. The vaginal and anal cavities

BELL v. WOLFISH

Corrections officials testified that visual cavity searches were necessary not only to discover but also to deter the smuggling of weapons, drugs and other contraband into the institution. App. 70-72, 83-84. The District Court upheld the strip search procedure but prohibited the body cavity searches, absent probable cause to believe that the inmate is concealing contraband. 439 F. Supp., at 147-148. Because petitioners proved only one instance in the MCC's short history where contraband was found during a body cavity search, the Court of Appeals affirmed. In its view, the "gross violation of personal privacy inherent in such a search cannot be outweighed by the government's security interest in maintaining a practice of so little actual utility." 573 F. 2d, at 131. ✓

Admittedly, this practice instinctively gives us the most pause. However, assuming for present purposes that inmates, both convicted prisoners and pretrial detainees, retain some Fourth Amendment rights upon commitment to a corrections facility, see *Lanza v. New York*, *supra*; *Stroud v. United States*, 251 U. S. 15, 21 (1919), we nonetheless conclude that these searches do not violate that Amendment. The Fourth Amendment prohibits only unreasonable searches, *Carroll v. United States*, 267 U. S. 132, 147 (1925), and under the circumstances, we do not believe that these searches are unreasonable. ✓

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *E. g.*, *United States v. Ramsey*, 431 U. S. 606

of female inmates also are visually inspected. The inmate is not touched by security personnel at any time during the *visual* search procedure. 573 F. 2d, at 131; Brief of Petitioners 70, 74 n. 56.

BELL v. WOLFISH

37

(1977); *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976); *United States v. Brignoni-Ponce*, 422 U. S. 873 (1975); *Terry v. Ohio*, 392 U. S. 1 (1968); *Katz v. United States*, 389 U. S. 347 (1967); *Schmerber v. California*, 384 U. S. 757 (1966). A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record, App. 71-76, and in other cases. *E. g.*, *Ferraro v. United States*, — F. 2d — (CA6, filed Dec. 15, 1978) (No. 78-5250); *United States v. Park*, 521 F. 2d 1381, 1382 (CA9 1975). That there has been only one instance where an MCC inmate was discovered attempting to smuggle contraband into the institution on his person may be more a testament to the effectiveness of this search technique as a deterrent than to any lack of interest on the part of the inmates to secrete and import such items when the opportunity arises.⁴⁰ ✓

⁴⁰ The District Court indicated that in its view the use of metal detection equipment represented a less intrusive and equally effective alternative to cavity inspections. We noted in *United States v. Martinez-Fuerte*, 428 U. S. 543, 556-557, n. 12 (1976), that "[t]he logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers." However, assuming that the existence of less intrusive alternatives is relevant to the determination of the reasonableness of the particular search method at issue, the alternative suggested by the District Court simply would not be as effective as the visual inspection procedure. Money, drugs, and other non-metallic contraband still could easily be smuggled into the institution. Another possible alternative, not mentioned by the lower courts, would be to closely observe inmate visits. See Dept. of Justice, Federal Corrections Policy Task Force, Draft Federal Standards for Corrections (June 1978). But MCC officials have adopted the visual inspection procedure as an alternative to close and constant monitoring of contact visits to avoid the obvious disruption of the confidentiality and intimacy that these visits are intended to afford. That choice has not been shown to be irrational or unreasonable. ✓

BELL v. WOLFISH

We do not underestimate the degree to which these searches may invade the personal privacy of inmates. Nor do we doubt, as the District Court noted, that on occasion a security guard may conduct the search in an abusive fashion. 439 F. Supp., at 147. Such abuse cannot be condoned. The searches must be conducted in a reasonable manner. *Schmerber v. California*, *supra*, at 771-772. But we deal here with the question whether visual body cavity inspections as contemplated by the MCC rules can *ever* be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can.⁴¹

IV

Nor do we think that the four MCC security restrictions and practices described in Part III, *supra*, constitute "punishment" in violation of the rights of pretrial detainees under the Due Process Clause of the Fifth Amendment.⁴² Neither the District Court nor the Court of Appeals suggested that these restrictions and practices were employed by MCC officials with an intent to punish the pretrial detainees housed there.⁴³

⁴¹ We note that several lower courts have upheld such visual body cavity inspections against constitutional challenge. See, e. g., *Daugherty v. Harris*, 476 F. 2d 292 (CA10), cert. denied, 414 U. S. 872 (1973); *Hodges v. Klein*, 412 F. Supp. 896 (NJ 1976); *Bijeol v. Benson*, 404 F. Supp. 595 (SD Ind. 1975); *Penn El v. Riddle*, 399 F. Supp. 1059 (ED Va. 1975).

⁴² In determining whether the "publisher-only" rule constitutes punishment, we consider the rule in its present form and in light of the concessions made by petitioners. See *supra*, at 27-28.

⁴³ The District Court noted that in their post-trial memorandum petitioners stated that "[w]ith respect to sentenced inmates, . . . the restrictions on the possession of personal property also serve the legitimate purpose of punishment." 439 F. Supp., at 153; see Post-trial Memorandum 212 n. **. However, below and this Court petitioners have relied on the three reasons discussed *supra*, at 30-31, to justify this restriction. In our view, this passing reference in a brief to sentenced inmates, which

Respondents do not even make such a suggestion; they simply argue that the restrictions were greater than necessary to satisfy petitioners' legitimate interest in maintaining security. Brief for Respondents 51-53. Absent a showing of an expressed intent to punish on the part of detention facility officials, the determination whether a particular restriction constitutes punishment in the constitutional sense ordinarily depends on whether that restriction is reasonably related to a legitimate nonpunitive governmental objective. See *supra*, at 16-17. Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both. *Supra*, at 18; see *id.*, at 24-25, and n. 28. For the reasons set forth in Part III, *supra*, we think that these particular restrictions and practices were reasonable responses by MCC officials to legitimate security concerns. Respondents simply have not met their heavy burden of showing that these officials have exaggerated their response to the genuine security considerations that actuated these restrictions and practices. See n. 23, *supra*. And as might be expected of restrictions applicable to pretrial detainees, these restrictions were of only limited duration so far as the MCC pretrial detainees were concerned. See n. 3, *supra*.

V

There was a time not too long ago when the federal judiciary took a completely "hands-off" approach to the problem of prison administration. In recent years, however, these courts largely have discarded this "hands-off" attitude and have waded into this complex arena. The deplorable conditions and draconian restrictions of some of our Nation's prisons are too well known to require recounting here, and the federal

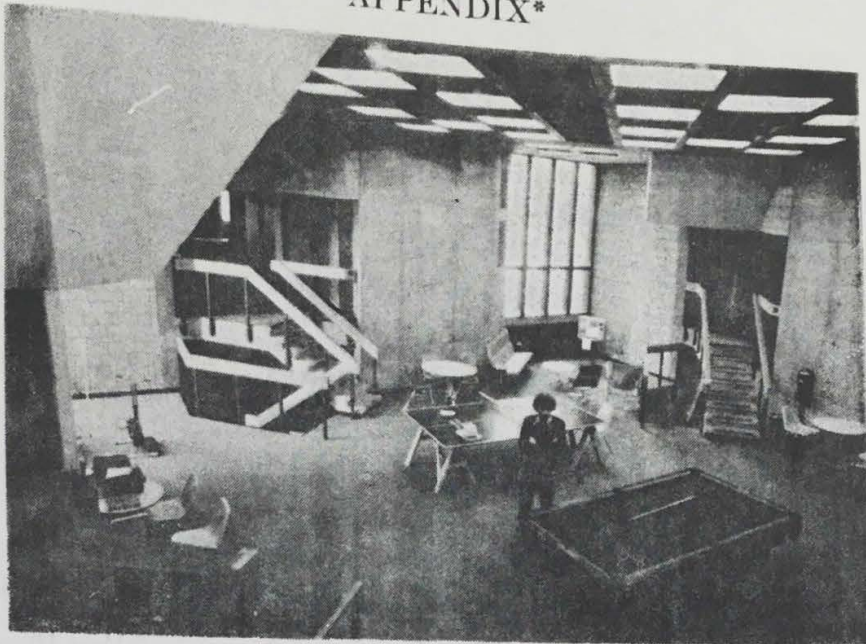
was not supported by citation to the record, hardly amounts to the "substantial confession of error" with respect to pretrial detainees referred to by the District Court. 439 F. Supp., at 153.

BELL v. WOLFISH

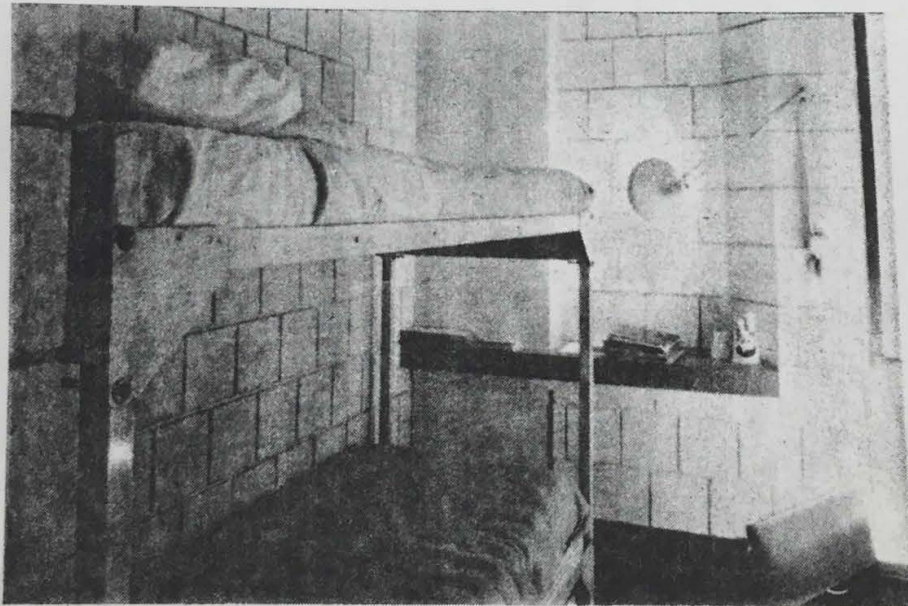
courts rightly have condemned these sordid aspects of our prison systems. But many of these same courts have, in the name of the Constitution, become increasingly enmeshed in the minutiae of prison operations. Judges, after all, are human. They, no less than others in our society, have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable than those of the persons who are actually charged with and trained in the running of the particular institution under examination. But under the Constitution, the first question to be answered is not whose plan is best, but in what branch of the Government is lodged the authority to initially devise the plan. This does not mean that constitutional rights are not to be scrupulously observed. It does mean, however, that the inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution, or in the case of a federal prison, a statute. The wide range of "judgment calls" that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government.

The judgment of the Court of Appeals is, accordingly, reversed and the case is remanded for proceedings consistent with this opinion.

It is so ordered.



MCC multipurpose room.



Double-bunked room housing pretrial detainees.

*Photographs appended to Affidavit of David Hirsch, dated Oct. 18, 1976, filed in No. 75 Civ. 6000, SDNY.