UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

IN RE:	)	
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IMMEDIATE ADOPTION OF LOCAL RULE CRIM 43-401 SHACKLING OF PRISONERS DURING COURT PROCEEDINGS; NOTICE AND REQUEST FOR COMMENT	)	**GENERAL ORDER NO. 449**

Good cause appearing.

IT IS HEREBY ORDERED that the judges of the Eastern District find that there is an immediate need to adopt a Local Rule regarding shackling procedures for courts convened in the Sacramento and Fresno Courthouses. Pursuant to 28 U.S.C. §2071(e), this court adopts Local Rule CRIM 43-401, to be effective immediately (L.R. CRIM 43-401 and Findings Attached).

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. §2071(e) and Federal Rule of Criminal Procedure 57, the Clerk of the Court is directed to provide public notice and the opportunity to comment on Local Rule CRIM 43-401 to the bar and public of the Eastern District. Thereafter, the bar and public will have forty-five (45) days to provide comment.

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Comments regarding Local Rule CRIM 43-401 shall be sent to:

United States District Court
Eastern District of California
Office of the Clerk
Attention: Local Rule Comments
501 I Street
Room 4-200
Sacramento, CA 95184

or, e-mailed to lrcomments@caed.uscourts.gov.

DATED: September 11, 2006.

FOR THE COURT:

DAVID F. LEVI
Chief United States District Judge

Attachments

RULE CRIM 43-401

SHACKLING OF PRISONERS DURING COURT PROCEEDINGS

(a) Applicability. This rule is applicable to the shackling of prisoners during court proceedings convened in the Sacramento and Fresno Courthouses.

(b) Definition. The term **"fully shackled"** means leg shackles, waist chains, and handcuffs.

The term **"long cause proceeding"** means a proceeding that is expected to last at least 30 minutes, such as an evidentiary hearing, and where the defendant will be seated at the defense table except when testifying.

(c) Shackling. Unless the judge presiding at the proceeding determines otherwise;

(1) At initial appearances, all defendants will be fully shackled.

(2) At all subsequent hearings, with the exception of a Rule 11 guilty plea or a long cause proceeding, detained defendants will be fully shackled.

(3) At Rule 11 proceedings, in which only a single defendant is appearing, a detained defendant shall be fully shackled except that the defendant shall be permitted the unshackled use of one hand, unless the Marshal recommends full shackling for particularized reasons, and the presiding judge agrees.

(4) In long cause proceedings, in which only a single defendant is appearing, a detained defendant shall be fully shackled except that the defendant shall be permitted the unshackled use of the defendant's writing hand – unless the Marshal recommends full shackling for particularized reasons, and the presiding judge agrees – and shall remain seated at the defense table except when giving testimony.

(d) Jury Proceedings. This rule does not apply to trial proceedings at which a jury is being chosen or has been impaneled.

FINDINGS [1]

1. The United States Marshal for the Eastern District of California, who is responsible for the security of the courtroom, recommends full shackling of all detained defendants at all proceedings in order to assure the safety of all persons in the courtroom, including the judge, lawyers, interpreters, court personnel, defendants, and the public. The Marshal's reasons are provided in the attached memorandum. The court has considered the factual recitations of the U.S. Marshal and accepts the recommendation with the exception of Rule 11 proceedings and long cause proceedings. At Rule 11 proceedings, with a single defendant, the court considers that the safety considerations are outweighed by the need of defendant to examine the plea agreement, communicate with counsel by pointing to sections of a plea agreement, sign documents, and take an oath. At long cause proceedings, with a single defendant who is seated, the court considers that the safety considerations are outweighed by the defendant's need to take notes, examine exhibits, and communicate with counsel. In addition, a seated defendant presents less of a security threat. In Rule 11 and long cause matters the court will permit a single detained defendant to have one hand and arm unshackled. This permits considerable freedom of movement.

   As to sentencings, the court accepts the recommendation of the Marshal that defendants be fully shackled. At this stage of the proceedings, the defendant stands convicted. There is also the risk of outbursts by defendants or family members during sentencings.

2. The Eastern District of California has a heavy criminal caseload. Criminal calendars frequently are lengthy and require the movement of many detained prisoners in and out of the courtroom.

3. Most criminal proceedings are brief such that the time in which a defendant is before the court fully shackled is minimal.

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[1] These findings are provided only as support for the court's adoption of Local Rule CRIM 43-401. These findings are not to be included in the Local Rules.

4. The alternatives to full shackling are not practical or would merely substitute the presence of much greater numbers of deputy marshals for physical restraints, with no significant increase in decorum or dignity for the defendant. The resources of the Marshal service in this district are finite. Unshackling all defendants for all proceedings would cause very considerable delays and would disrupt the operation not just of the calendar court but potentially of all other courtrooms due to the necessity to draw deputy marshal's from other courtrooms to provide the additional deputies necessary to assure security when defendants are unshackled.

U.S. Department of Justice

United States Marshals Service

Eastern District of California

Sacramento, CA 95814-2322

December 8, 2005

Open Letter to the Courts
Eastern District of California
501 I Street
Sacramento, California 95814

Re: Restraint Issues concern prisoners in U.S. Courts

Dear Judges:

The United States Marshals Service (USMS) is charged with the protection of the judiciary, members of the court family, and its participants during court proceedings. In these times of heightened concerns of court and judicial security we believe it is in the best interest to maintain the highest level of detainee security: such as, the uniform use of full restraints during all pretrial proceedings. Restraints are only temporary devices used to provide for, not guarantee, security of the defendants. We view restraints merely as an extension of the defendant's detention who were determined to be a flight risk and/or a danger to the community.

We understand the concerns of the court regarding fully restrained defendants and the appearance to the public. However, we believe safety and security should have priority over esthetics. [1] A properly restrained defendant is uninhibited from fully participating in their due process, such as communicating with their attorney, signing documents, or swearing an oath. Restraints are not used to punish, cause physical or emotional pain. All in-custody defendants are treated equally concerning the application of restraints during pretrial proceedings. We view restraints as no more likely to create prejudice toward the defendant than their bright orange jail jumpsuit.

Initial Appearances:

We contend the danger of an incident for prisoner violence or disturbance is especially acute at initial appearances before Magistrate Judges given the length of the calendars, the tight quarters, courtroom design, and the proximity to the public and the court family. Initial appearances are the first opportunity our office has extended interaction with the defendants.[2]

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[1] In mid 1990 (Sacramento), defense attorney Robert Holley was attacked by his client, who proceeded to beat Holley's head against the jury box until deputies could restrain the defendant.

[2] December 2004 (Fresno), a razor blade was discovered in the pocket of an arrestee just prior to their initial appearance.

We have almost no information about newly arrested defendants to determine their histories, propensities to violence, [3] or demeanor while in court. In addition, experience and common sense recognizes initial appearances are particularly unpredictable because of elevated stress resulting from the traumatic event of arrest and newness of custody, combined with the high emotional state of any family members [4] in the gallery.

Our understanding of United States v. Howard, C.A. No. 03-50524 (9th Cir. 2005), is a district-wide policy could be adopted when justified on the basis of present circumstances or past experience.

Present Circumstances:

The prisoner population has increased by 40 percent in the Sacramento and Fresno offices, respectively since 2001. The district's resources and budget have remained flat over the same period. As of January 2006 our staffing will be 11 percent under our current authorized level. The budget is important because it enables us to hire additional independent contract guards to augment our work force. However, this funding has become limited because of the cost of other services. As the prisoner count and judicial caseload increase, our responsibilities for service of process and fugitive enforcement increases, drawing on our already limited manpower. This begins to create a safety issue for our deputies in court and in the detention area.

The courtroom design, particularly the Magistrates' courtrooms, is not conducive to safely securing detainees without additional restraints. Federal courts in the Central District of California and some local courts have hold areas or barriers in the courts to restrain detainees with limited use of individual restraints. [5] We do not have such facilities.

Restraining prisoners is also for their safety, though not an assurance. [6] As the number of defendants increase and the length of court calendars increases defendants remain in holding cells longer. [7] We believe boredom and extended interaction between prisoners is a huge factor

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[3] In February 2004 (Fresno), prior to initial appearance a USMS guard was assaulted in the cellblock booking area when a detainees restraints were removed.

[4] In 2002 (Sacramento), two spectators/family members were removed from court following a disturbance during a D'Angelo Davis proceeding.

[5] In 1993 (Sacramento), an summoned individual attempted to flee by running from Magistrate court when he was unexpectedly remanded. He was subdued by a deputy and Court Security Officer (CSO).

[6] In February 2004 (Sacramento), Vincent Jackson was able to remove his waist chain while handcuffed to it and beat another prisoner in the holding cell behind Judge Levi's courtroom.

[7] In August 2005 (Fresno), a prisoner in a holding cell had his handcuffs and waist chain removed to use the toilet. The prisoner then assaulted another prisoner who had slipped one hand out of his handcuff. They were physically restrained and separated.

for incidences in the holding cells. [8] This may not specifically affect the court proceedings but it does contribute to the prisoners' overall demeanor.

A less tangible but real impact is the reduced efficiencies of the courts and our staff by the removal and replacement of restraints. The task of restraining and un-restraining defendants will slowly eat away at court schedules, bench hours, and attorney-client time, not to mention the safety to the deputies.

Past Experiences:

Restraints in court have been a common practice in the Fresno office since 1997 and in Sacramento since 2001. We have learned thorough training and experience the use of restraints has greatly reduced, not eliminated, prisoner violence and incidents. [9] However, measuring what may have occurred is difficult because of the prevention. [10]

Even restrained detainees can be a danger to each other, the court family, and deputies. They make or have access to homemade weapons while in county jails. [11] Or, even more conveniently, the weapons they have access to in the courtrooms. Such as, the pens and pencils on the podium or attorney's table, electrical cords or wires, binders, clothes hangers, furniture, or even paper clips can be used to attack someone.

Conclusion:

The lynchpin is we cannot predict human behavior. This inability leaves us at a disadvantage in fulfilling are roles in safeguarding the Judiciary and the judicial process. A defendant with a long rap sheet may, unbeknownst to us, intend to cooperate with the

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[8] In mid 1990 (Sacramento), an argument broke out among ten prisoners in the holding cell behind Judge Burrell's courtroom. Prisoner Gallant was pepper sprayed by deputies because he continued to attack and head butt other prisoners.

[9] In 2003, Dawane Mallett spit on his attorney, Kevin Clymo, in court and stood before the jury and told the members he would kill them.

[10] In October 2005 (Sacramento), Charles White was removed from Judge Damrell's courtroom after verbally threatening the judge and a testifying witness. White violently pulled on his restraints and indicated he would fight the deputies if he did not have the restraints on.

In 2005 (Sacramento), Charles White reportedly took a swing with his elbow at his attorney as he was being taken out of the courtroom, and told a deputy in the cellblock that he would get the judge if he were not restrained.

[11] In September 2003, Antelmo Ontiveros, was found to have a shank in his shoe while being transferred to court from the county jail.

In January 2005 (Fresno), two co-defendants were found with shanks in their possession at the county jail. One was a pencil with a sharp metal object affixed to the end, wrapped with plastic. The other was made from a disposable razor.

In October 2005 (Fresno), a detainee was found in possession of a shank made from the blade of a pencil sharpener attached to a spoon handle with a string.

government so that he will be docile and cooperative. Another defendant, with little or no record, may be under great stress because of personal shame, family or employment concerns, or the prospect of a lengthy prison sentence, and decide to act out. No one can predict with unerring accuracy when that may happen, and we do not want to assume that responsibility. The risk of an incident outweighs the return of removing restraints.

We understand the Federal Defender's Office has expressed concerns regarding the appearance of the defendant in restraints to their loved ones during sentencing and plea proceedings. [12] We contend the defendant has been in custody for months or more at this point and visits may have occurred at the county jail. We take the position the use of restraints at this juncture would not create an overriding emotional impact.

Sincerely,

Antonio C. Amador
United States Marshal

cc: Office of General Counsel, United States Marshals Service (USMS)
Witness Security and Prisoner Operations Division, USMS

[12] In December 2003 (Fresno), a handcuff key was found in the waist band of a defendant's jail jumpsuit prior to transportation to federal court. One of the co-defendants told a deputy, "what does he have to lose, he's going to get 25 to 30 years away."