APPENDIX

FEDERAL
DEFENDERS
OF
SAN DIEGO,
INC.

The Federal Community
Defender Organization
for the Southern
District of California

NBC Building
225 Broadway
Suite 900
San Diego,
California
92101-5030
(619) 234-8467
FAX (619) 687-2666

May 3, 2013

Hon. Barry Ted Moskowitz
U.S. District Court for the So. Dist. of California
Courtroom 15B (Annex)
333 West Broadway
San Diego, CA 92101

Dear Chief Judge:

We write at your request to express our position upon the United States Marshals Services' ("USMS") proposal to commence arm, leg, and belly shackling of every arrestee brought into every magistrate and district court in the Southern District of California.[1] The USMS apparently relies upon its own internal policies requiring more deputies than it wishes to allot per arrestee if individuals are not shackled to each other and *United States v. Howard*, 480 F.3d 1005 (9th Cir. 2007), a case where shackling at initial appearances was necessary due to the "large courtroom on the third floor of the Roybal Courthouse, in the presence of multiple defendants, where the risks of conflict, violence, or escape are heightened." *Id.* at 1013. Federal Defenders of San Diego, Inc. strongly opposes the routine use of extreme shackling measures at many more hearings than initial appearances absent any individualized showing of danger and absent any historical showing of the need for these measures. Our reasons follow:

- **A successful history of no shackling should not be lightly abandoned.** - For well over forty years, this Court has not routinely shackled criminal defendants. This "no-shackling" policy has never threatened courtroom or public safety. There is no new evidence or information necessitating or even suggesting that our present system, which has worked for the Court, the public, and criminal defendants, need be changed;

- **Unlike the Central District of California, this District's courtrooms do not necessitate shackling.** - In contrast to *Howard*, 480 F.3d at 1013, where routine shackling only occurs at initial appearances after a showing was made that it was necessary due to the "large courtroom on the third floor of the Roybal Courthouse, in the presence of multiple defendants, where the risks of conflict, violence, or escape are heightened," this District primarily continues to use the same physical facilities it has since the 1970's without

[1] We understand the USMS plans to make an exception for defendants brought out at their jury trials.

incident. Additionally, the USMS here proposes a far more degrading and intrusive shackling procedure than that used in the Central District and in far more instances than just initial appearances. Finally, the Central District sees many cases involving allegations of serious violence and gang activity and has many more arrestees with allegations of violent gang-related activities than we see in this District;

- **Shackling undermines the decorum of this Court's proceedings.** - The Ninth Circuit has acknowledged that "[t]he conditions of [a criminal defendant's initial] appearance establish for him the foundation for his future relationship with the court system, and inform him of the kind of treatment he may anticipate, as well as the level of dignity and fairness that he may expect." *United States v. Brandau*, 578 F.3d 1064, 1065 (9th Cir. 2009). This Court is considering the routine use of shackles not only at initial appearances -- as discussed in *Howard* and *Brandau* -- but at all Court proceedings outside the presence of a jury. The routine use of shackling in this District would unconditionally signal to criminal defendants -- and to the public -- that while they may be presumed innocent, they are nevertheless uniformly dangerous and in need of restraint. It would diminish the dignity -- not only of those charged -- but of all participants in the Southern District's criminal justice system; and

- **A failure to make particularized determinations signals that criminal defendants will not be treated as individuals.** - Criminal defendants brought before this Court are entitled to individualized determinations of the necessity of heightened security measures. A blanket shackling policy would deny criminal defendants their right to be treated as individuals.

I. The Southern District of California Has Never Required Criminal Defendants to Appear Before the Court in Shackles and Has Never Suffered Adverse Consequences as a Result of this Policy.

For well over forty years, this District has not shackled criminal defendants during proceedings before the Court. This policy has worked successfully since the creation of this District.[2] It has never infringed upon the safety of the Court or of the public. On the contrary, the administration of justice in this District has proceeded efficiently and tranquilly without the use of restraints. The absence of a "problem" to be solved here weighs strongly in favor of keeping the current practice of allowing criminal defendants to appear before the Court without any restraints.

---

[2] The USMS Policy Directive 9.18.E.3.b regarding Restraining Devices (effective April 26, 2011) would allow this Court to continue its present practice of not restraining any individuals absent a showing of individualized necessity. *Id.* ("Courtroom: All prisoners produced for court, with the exception of a jury trial, are to be fully restrained *unless otherwise directed by a United States District Judge or United States Magistrate Judge.*") (emphasis added).

II. This District Continues Primarily to Use the Same Physical Facilities it Has Used since 1974 Without Incident.

In *Howard*, 480 F.3d 1005,[3] the Ninth Circuit considered a new policy in the Central District of California to place leg shackles upon criminal defendants at their initial appearances. The Court upheld the Central District's policy noting that: (1) the physical facilities of the third floor courtroom in the Roybal Courthouse used for initial appearances in that district necessitated the use of leg restraints (*id.* at 1013); and that (2) the policy of the use of leg restraints was actually *less restrictive* than the previous policy requiring the use of full restraints (*id.* at 1014). Neither of these circumstances is present here.

The vast majority of judicial proceedings in this District occur in the Edward J. Schwartz Courthouse as they have since 1974. The Schwartz Courthouse has never presented the problems of the courtroom in the Roybal Courthouse where criminal defendants are presented en masse. So long as this District continues to afford its criminal defendants the individualized hearings and considerations to which they are entitled, the routine use of shackling is unnecessary.

Additionally, in contrast to the situation presented in *Howard*, the use of any shackles in this District would be a dramatic *increase* in the restraints experienced by criminal defendants here. This increase in the use of restraints -- in the absence of any new concern regarding the facilities used for pretrial proceedings or preexisting policies regarding the use of restraints -- would be unjustifiable.

III. "[J]udges must seek to maintain a judicial process that is a dignified process." *Deck v. Missouri*, 544 U.S. 622, 631 (2005).

The Supreme Court has addressed the constitutional issues surrounding use of restraints at a jury trial. But the fundamental legal principles the Court identified as being implicated by shackling exist here: the need to respect the dignity of the criminal defendant and maintain the decorum of the judicial process. *Deck*, 544 U.S. at 631.

In *Brandau*, the Ninth Circuit criticized shackling at initial appearances:

> A criminal defendant's first and sometimes only exposure to a court of law occurs at his initial appearance. The conditions of that appearance establish for him the foundation for his future relationship with the court system, and inform him of the kind of treatment he may anticipate, as well as the level of dignity and fairness that he may expect. We have recognized that shackling defendants at such time

---

[3] *Howard* is not a blank check allowing courts to place full shackling restraints upon criminal defendants at any and all non-jury proceedings. In *Brandau*, issued two years after *Howard*, the Ninth Circuit stated that it had not "fully defined the parameters of a pretrial detainee's liberty interest in being free from shackles at his initial appearance, or the precise circumstances under which courts may legitimately infringe upon that interest in order to achieve other aims, such as courtroom safety." *United States v. Brandau*, 578 F.3d 1064, 1065 (9th Cir. 2009). This area of the law -- absent the extenuating circumstances present in *Howard* -- remains unsettled.

> kind of treatment he may anticipate, as well as the level of dignity and fairness that he may expect. We have recognized that shackling defendants at such time "effectuates some diminution of the liberty of pretrial detainees and detracts to some extent from the dignity and the decorum of a critical stage of a criminal prosecution." *United States v. Howard*, 480 F.3d 1005, 1008 (9th Cir. 2007).

578 F.3d at 1065. Shackling at all court proceedings short of jury trials would signal to criminal defendants and the public that the criminal justice system is inherently skeptical of their ability to control themselves in court. It would inform them from the moment that they first see the judge, that they will be treated as dangerous criminals -- not based on any individualized characteristics or showing -- but by virtue of being charged.

While the Court may tell criminal defendants that they are presumed innocent and have the right to have the Government prove its case against them, the shackles would emphatically send the opposite message. To members of the public and to families present in court, they may be informed the charges are only accusations and that all persons are presumed innocent but the shackling would send an entirely different and contrary message. To enact such a drastic "solution" to an inchoate problem is unnecessary.

IV. Criminal Defendants Are Entitled to Be Treated as Individuals -- Shackling Should Continue to Be an Individualized Determination as it Has Been in the Past.

The USMS' proposal is a serious and unnecessary infringement on personal liberty and dignity. It denigrates courtroom decorum. It creates the risk of public misperception about individuals purportedly presumed innocent. This is why shackling -- especially full restraints at all court appearances -- should be an individualized inquiry as it has been in the past not a blanket policy applicable to all criminal defendants in all non-jury proceedings. Even in districts where shackling is permitted at non-jury proceedings, the determination is individualized. *See* E.D. Cal. Crim. R. 401.

In *Brandau*, the Court ultimately did not pass on the merits of the Eastern District's policy on shackling but instead remanded to an out-of-district judge for an evidentiary hearing to determine the constitutionality of any policy of shackling. *Brandau*, 578 F.3d at 1070. The Court required that three issues be considered: (1) whether there was an on-going policy of shackling; (2) whether it was full shackling without individualized determinations; and (3) whether the shackling would apply to in-custody and out-of-custody defendants. *Id.* This Court should be extremely wary -- for all of the reasons set forth above -- of instituting a blanket policy applicable to on all criminal defendants in all non-jury proceedings with no individualized determinations made whatsoever.

Federal Defenders of San Diego, Inc. urges this Court to not abandon its current policy of not shackling criminal defendants at all non-jury proceedings. This District's long, successful history of holding criminal proceedings without shackling criminal defendants should not be lightly discarded. The dignity of all criminal defendants, all of us participating in the Southern District's

administration of justice, and the public who have the right to and do attend these proceedings lies in the balance.

Sincerely,

Reuben Camper Cahn
Executive Director

Enclosures: *United States v. Brandau*, 578 F.3d 1064, 1065 (9th Cir. 2009).
E.D. Cal. Crim. R. 401

May 5, 2013

Via E-Mail

Hon. Barry Ted Moskowitz, Chief Judge
U.S. District Court, S.D. California
Courtroom 15B (Annex)
333 West Broadway
San Diego, California 92101

Re: View of the Criminal Justice Act Panel for the U.S. District Court, Southern District of California ("CJA Panel") on Shackling Our Clients

Dear Chief Judge Moskowitz:

I am writing you as the representative of the CJA Panel to address the concerns of the CJA Panel related to the proposed policy of shackling our clients by the U.S. Marshal Service.

I first join in the well put together letter of Reuben Cahn related to these issues. However, I wish to add some observations to Mr. Chan's letter and to emphasize certain facts of particular concern to the CJA Panel.[1]

I am sure that this Court recognizes that the shackling proposed by the U.S. Marshal Service (belly chains along with hand and wrist restraints at every hearing) will have a profound effect on the inmates as well as their families. As Mr. Cahn noted in his letter, such shackling will have a deleterious effect on inmates who have not been convicted of the crime for which they have been charged.

I would add that shackling each defendant without cause will chill every defendant's right to a public hearing, in that s/he might ask family and community to stay away rather than to see them shackled. This would in turn impact sentencing decisions, since family and community support is often a factor considered by sentencing judges. Certainly nobody with children would want their children present to see them chained like a wild animal. Those defendants will, therefore, be prejudiced at sentencing merely because of the proposed U.S. Marshal policy.

Likewise, at bail hearings a potential surety, whether friend or family member, would probably be less likely to post bond after seeing that this Court believes that the defendant cannot be controlled without being chained. Presumably that is among the reasons why the Ninth Circuit noted, "[T]he use of [shackling and restraints] is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold." *United States v. Howard,* 463 F.3d 999 (9th Cir. 2006), citing *Illinois v. Allen,* 397 U.S. 337, 344 (1970); see also *Deck v. Missouri,* 544 U.S. 622, 631 (2005).

Federal courts have recognized the concerns of the CJA Panel to the proposed shackling policy. That recognition may be found in the recitation of a defendant's Sixth

[1] I am a lawyer, of course, and I suppose that is why I cannot stand to not have the last word. However, I do not intend to in any way contradict Mr. Cahn's letter to the Court on this issue.

Amendment right to effectively communicate with counsel. The imposition of physical restraints can impair a defendant's mental faculties by confusing or embarrassing him, or by causing him physical and emotional pain. *United States v. Howard*, 463 F.3d 999; see also *Illinois v. Allen*, 397 U.S. 337; *Duckett v. Godinez*, 67 F.3d 734 (9th Cir. 1995); *Spain v. Rushen*, 883 F.2d at 720-721; *Rhoden v. Rowland*, 172 F.3d 633 (9th Cir. 1999). A defendant who is in pain or who is humiliated is likely to communicate less effectively with counsel, directly impacting the defendant's Sixth Amendment rights.

In *Spain*, the court effectively summarized a list of problems that should be considered in any decision to impose physical restraints:

1. Physical restraints can cause jury prejudice, reversing the presumption of innocence;
2. Physical restraints can impair a defendant's mental faculties;
3. Physical restraints can impede communication between the defendant and counsel;
4. Physical restraints can detract from the dignity and decorum of the judicial proceedings, and;
5. Physical restraints can be painful to the defendant. *Spain*, 883 F.2d at 721.

It is precisely for these reasons that before a court may order the use of physical restraints on a defendant the court must be persuaded by "compelling circumstances" that such restraint is needed to maintain the security of the courtroom, and that "the court must pursue less restrictive alternatives before imposing physical restraints." *Gonzalez v. Pliler*, 341 F.3d 897 (9th Cir. 2003), citing *Morgan v. Bunnell*, 24 F.3d 49, 51 (9th Cir. 1994) (citations and internal quotation marks omitted).

Finally, restraining a criminal defendant in the courtroom should be undertaken only as a last resort, after the court has been persuaded by compelling circumstances that some measures [are] needed to maintain security. *Illinois v. Allen*, 397 U.S. 337, 344; *Castillo v. Stainer*, 983 F.2d 145, 147 (9th Cir. 1992), as amended in 997 F.2d 669 (9th Cir. 1993).

I would like to add to this recitation of the harms of blanket shackling. I have discussed this issue with inmates who have suffered the type of shackling proposed by the U.S. Marshal. They have confirmed the above and also advised me that the incidence of falling and being hurt (sometimes badly) is very high for shackled prisoners. A defendant who is in fear of being hurt by transport to and from court is also a defendant whose Sixth Amendment rights have been violated.

As Mr. Cahn put so well and as I have discussed above, the decision about whether or not to implement the proposed U.S. Marshal policy is up to this Court, not the U.S. Marshal. This Court should, and undoubtedly will, consider the view of the U.S. Marshal on shackling. *United States v. Howard*, 480 F.3d 1005, 1013 (9th Cir. 2007); see also *United States v. Baker*, 10 F.3d 1374, 1401 (9th Cir. 1993) (noting the trial court

"agreed with the Marshall that all nine incustody defendants should be shackled during trial")

As the *Howard* court noted, however, the "general rule is that a court may not order a defendant to be physically restrained unless the court is persuaded by compelling circumstances that some measure is needed to maintain security of the courtroom, and the court must pursue less restrictive alternatives before imposing physical restraints." *Howard*, 480 F.3d at 1012 (internal quotation marks omitted). A blanket policy that in all cases prisoners are shackled by waist, hands, and feet at all court proceedings would violate that rule.

As Mr. Cahn said, this Court has kept defendant's shackle free (except in unusual cases) for over forty years. Undoubtedly, that policy has kept the Court running more effectively over the years. I cannot speak for the U.S. Marshal, but it seems apparent that the proposed policy will require more Deputy Marshals, more time in court to shackle and unshackle each defendant, and slower movement of shackled inmates. All that for a policy, as Mr. Cahn notes, that expressly notes that this Court may override it. Anecdotally, the CJA Panel is unaware of rising escape attempts in this district that might justify a new policy. It is, therefore, the hope of the CJA Panel that this Court will continue to require an individualized assessment in all cases before allowing the U.S. Marshal to shackle prisoners as they propose to do.

Sincerely,

/s/ Knut S. Johnson
Knut S. Johnson

Copies to: CJA Panel
Marshal Steven Stafford
Federal Defenders of San Diego, Inc.

THE NEW YORK HERALD.

WHOLE NO. 11,135. NEW YORK, SUNDAY, FEBRUARY 24, 1867. PRICE FIVE CENTS.

Arraignment of John H. Surratt—The Case of Sanford Conover.

John H. Surratt was arraigned to-day before the Criminal Court of the District of Columbia, presided over by Judge Lynch. The court room was densely thronged. Members of the legal profession and many of the leading citizens of Washington, including the Mayor, occupied the entire front portion of the room, while outside the common enclosure there was a compact mass of persons of almost every class.

The court was opened shortly after twelve o'clock, and the case of Sanford Conover was proceeded with. In this case, the particulars of which have already been reported, a motion for a new trial was argued before Judge Lynch yesterday by counsel on behalf of the prisoners, Judge Lander and Mr. Gooding. The motion was overruled, and then a further motion in arrest of judgment was submitted and argued, upon which Judge Lynch gave a decision this morning, overruling that also. Judge Lander then applied to the court to suspend sentence in the case until the motions for a new trial and arrest of judgment be argued before the Court in Banco Judge Lynch remarked that he understood the rule of the old court to be, in cases of this sort, where a motion for arrest of judgment was made and overruled that the sentence should be pronounced, but that after the sentence was pronounced it could then be suspended. He then ordered that the prisoner, Sanford Conover, should be brought into court to receive sentence.

At this juncture John H. Surratt was brought into court in irons and placed in the dock, or on the bench reserved for prisoners. There was considerable excitement in the court from the moment of his arrival, and the murmuring of the spectators almost completely drowned the Crier's repeated calls for silence, together with the usual "Stand back" of the policemen. Surratt walked with a slow but steady step, and sat down apparently with little or no emotion upon the seat to which he was led by two officials. A few moments more and Sanford Conover arrived and was placed upon the same bench by the side of Surratt. All eyes were rivited upon the prisoners, whose past histories had been so strangely connected, and it was thought they might possibly recognize each other, but neither exchanged the slightest look of recognition. It was considered strange indeed that both these men, formerly well known to each other, whose histories are so different and yet connected, and whose names are associated with the darkest events in the history of the United States, should meet to-day upon the prisoner's bench, linked in the same fatal chain of circumstances, one to to be arraigned and the other to be sentenced. After a few moments consultation between the judges and counsel for Conover the passing of sentence was deferred.

The District Attorney, Mr. Carrington, then called the attention of the Court to the indictment of John H. Surratt by the Grand Jury, and thought that it was proper that he should be arraigned so as to give him an opportunity of selecting his counsel and for the Court to appoint a time for his trial.

Mr. Merrick, of counsel for the prisoner, said—I would suggest to the Court that it would be scarcely consistent with the authority and dignity of this tribunal that the prisoner should be arraigned in manacles, and therefore ask that your Honor will have the manacles removed.

Judge Lynch—Certainly. Let the manacles be removed, and let the prisoner come forward and hear the indictment.

The manacles were then removed, and the prisoner rose, and, accompanied by his counsel, the Messrs Bradley, Senior and Junior, and Mr. Merrick, walked to the front of the clerk's desk, and stood while the indictment was being read. During the reading of the indictment, which has been already published, ample opportunity was afforded for a close inspection of Surratt. He is a man of about five feet nine inches in height, and of a slim figure. His hair is very light and his eyes blue. The lines of his profile are regular and well defined, and although the general expression of his face is sad and almost sickly, his rather bold forehead and prominent nose, slightly inclined to be aquiline, together with a firmly set mouth and prominent, round chin, speak plainly of a degree of determination and intelligence in his character which one might fail to detect without a somewhat close inspection. He was dressed in an elegantly made black frock coat, with something of a foreign cut, and dark tweed pants. Altogether his appearance was genteel and gentlemanlike.

At the conclusion of the reading of the indictment the usual question was propounded by the clerk, "Are you guilty or not guilty?" To which he replied, in a firm voice "Not guilty."

Judge Lynch—Do you wish to set a day for the trial, Mr. Carrington?

Mr. Carrington—I would not wish to do it now, your Honor.

Judge Lynch—The next term of the court begins on Monday week.

Mr. Bradley, Sr.—It would be impossible to make any arrangement now, your Honor. Counsel up to this time have had no opportunity to confer with the prisoner. If we could make an arrangement for the trial we would be exceedingly anxious to do so, and have it disposed of. I think it would be well to have some time to arrange it, so that at the next meeting of the court we will be able to fix some day for the hearing of the case. Nothing can be done till then, sir.

Mr. Carrington—I would ask your Honor to remand the prisoner.

Judge Lynch—Well, let the prisoner be remanded.

Surratt was then taken from the court room and conveyed in a carriage back to the jail.

The case of Sanford Conover was then resumed, and after a little further discussion it was finally decided to suspend sentence in the case until the motions for a new trial and arrest of judgment were argued before the Court *in banco*, and consequently the prisoner was not sentenced.

The Chicago Daily Tribune.

VOLUME 27. CHICAGO, WEDNESDAY, DECEMBER 17, 1873. NUMBER 118.

CAPT. E. B. WARD.

How One of the Swindlers of This Gentleman Escaped from Captivity in Chicago.

Last Saturday Sergt. A. H. Britton, of Detroit, was before Justice C. B. Daggett, in this city, on the charge of kidnapping John M. Whitney, one of the Eureka Mine swindlers, at Salt Lake City. It appears that Sergt. Britton was sent to Salt Lake City to arrest Whitney by Capt. E. B. Ward, of Detroit, who was one of the heaviest losers by this swindle, which has been mentioned in THE TRIBUNE. Britton arrived in Salt Lake Sunday morning, the 7th instant, and got the proper papers from the Governor of the Territory during the day. Monday evening he received a dispatch from Capt. Ward directing him to make the arrest, and, there being no train out of Salt Lake until 6 o'clock Tuesday morning, he laid his plans so as to take Whitney as quietly as possible Monday. He got the help of Deputy United States Marshal A. K. Smith for the purposes of serving the warrant and making the arrest, and the two officers easily secured their man about half-past 11 o'clock Monday night. The officers and their prisoner left Salt Lake at 6 o'clock the next morning, Whitney being handcuffed.

It was the duty of Deputy-Marshal Smith to go with the prisoner to the limits of Utah Territory, and this he did. Sergt. Britton got him to go still further and watch the prisoner Wednesday night, so as to allow Britton to get some sleep. Thursday Smith left them about five or six miles west of Cheyenne, where the trains meet. Before they separated Britton asked Smith for the papers, but Smith refused to give them up, on the ground that he must return them as served. The Sergeant saw that he was liable to get into trouble if he did not have them, and used his best efforts get them, but Smith refused. Just as Smith was about to leave the train he whispered something to Whitney, and soon after the latter asked Britton if he had any papers to hold him. After leaving Cheyenne, Britton consulted with a Mr. Packard, who is interested with Mr. Ward, and suggested that they stop at some small station on the plains and telegraph for the papers. Mr. Packard thought they would be able to get through all right. When they arrived at Burlington, they decided to take a route home by which they would avoid Chicago, where they feared trouble. By an accident their plans were frustrated, and they were compelled to take a train to Chicago.

At Galesburg, Friday, a Chicago lawyer met the party on the train, and asked Britton if he had any papers, and the Sergeant gave the same answer he had previously given Whitney. When about 10 miles from this city Britton handcuffed Whitney to himself, whereat the prisoner and the lawyer objected. The lawyer by his blustering talk attracted the attention of everybody in the car, and made a great commotion there.

Police Constable George A. Hartman had been ordered by some of Whitney's friends to board the train and arrest Britton. When the train was about three miles from this city, last Friday evening, Hartman, with about a dozen of the prisoner's friends, entered the car and arrested Britton on a warrant charging him with kidnapping Whitney.

Soon after the party arrived in this city, Britton and Whitney, still handcuffed together, were taken to the office of Justice Charles B. Daggett. A swarm of lawyers appeared for Whitney, and demanded that Britton should take off the handcuffs that linked him to the prisoner, some suggesting that they be filed off. Justice Daggett ordered the handcuffs taken off, as he could not allow a man to be arraigned before him with shackles on. Britton demanded that his prisoner be held under heavy bonds to appear against him as a witness, but the Justice said he had no authority over Whitney, and ordered the Sergeant to take off the handcuffs. He consented, when Whitney was held under bonds of $1,000 to appear as a witness, while Britton was held to appear last Saturday, and give bail in $5,000. Whitney's friends gave bail, and he was discharged. He took the 9 o'clock train on the Michigan Central Road for Toronto that evening (Friday), and is now supposed to be in Windsor, Ontario.

Last Saturday afternoon Britton appeared before Justice Daggett with counsel, and demanded an immediate examination. The case was adjourned, however, until Thursday, Britton furnishing the required bail.

The Detroit people interested in Whitney's arrest are exceedingly irritated by this specimen of Chicago law, and charge in the Detroit papers that the Justice, when Whitney and Britton were brought before him, was in no condition to administer the law understandingly.

The Evening Star.

Vol. 58—No. 8,901. WASHINGTON, D. C., FRIDAY, OCTOBER 14, 1881. TWO CENTS.

THE NATION'S GUESTS. | ntry Corps, battalion of four companies,officered | GUITEAU IN COURT | THE STARS | THE STAR ROUTE CASES

GUITEAU IN COURT.

ARRAIGNMENT OF THE PRISONER.

HE PLEADS "NOT GUILTY."

HIS TRIAL FIXED FOR NOV. 7TH

After the proceedings in the star route case in the Criminal Court room this morning were over Judge Cox retained his seat, and as a number of members of the bar and others remained in the room it was thought by those present that other proceedings of no ordinary character were to follow. It was soon known that Deputy Marshal Williams was absent from the building and then there was a whisper around the room that Guiteau would be called in for arraignment. This was made certain to outsiders by the posting of policemen at the doors of the court room. At a few minutes past 11 o'clock Mr. Scoville, Guiteau's attorney, came into the room, and passing through the witness' room, proceeded to a room up stairs, where the prisoner had been taken. Rev. Dr. J. P. Newman, of New York, Rev. George V. Leech and Rev. Mr. Hartsock were among the spectators.

Captain Vernon, Lieut. Eckloff and others of the police were stationed about the room. While waiting for the appearance of the prisoner a number of spectators entered the room, among others a colored man of herculean frame and not prepossessing countenance, who was thought to be a "Jersey avenger."

APPEARANCE OF THE PRISONER.

At 11:15 o'clock, preceded by Marshal Henry and Deputy Williams, and flanked by Bailiff Tall and a detective, the prisoner came into court and was shown to a seat in front of the clerk's desk. He walked with a quite nervous step, and his restless eyes seemed to indicate that he was somewhat frightened. He was attired in a black suit with striped calico shirt. He was handcuffed when brought in. Guiteau looked broken in health and uncared for in person. His hair is closely cropped, but his cheek and chin whiskers are worn thick but not long. His dark clothes were rusty and shabby, and his whole person presented a remarkably neglected appearance. He stood nervously before the bar, with his left wrist tightly clasped by his right hand, and with eyes nearly closed, the lids trembling constantly.

Col. Corkhill remarked: "May it please the court, the grand jury have indicted Chas. J. Guiteau for the murder of James A. Garfield, and the prisoner being in court, I ask his arraignment."

THE ARRAIGNMENT.

The court acquiesced, and the prisoner was directed to stand. His handcuffs had in the meantime been removed.

Mr. Frank Williams, the clerk, rising, said:—"Is your name Charles J. Guiteau?"

The prisoner.—"It is."

Mr. Williams proceeded to read the indictment, the prisoner standing up, with his head most of the time inclined to the right shoulder, his eyes half closed or wholly so, his hands crossed over his stomach as if they still wore the handcuffs, and his general air that of sickly indifference. The reading occupied nearly half an hour, and during all that time Guiteau hardly once changed his attitude or bearing, and rarely opened his eyes. He did not manifest the slightest degree of interest in the scene in which he was the chief actor; and but for an occasional slight movement, might be supposed to be asleep in a standing attitude.

GUITEAU PLEADS "NOT GUILTY" AND WANTS TO MAKE A STATEMENT.

Mr. Williams concluded reading the indictment (during which there was almost perfect silence) in about twenty-five minutes, and asked: "What say you to this indictment? Are you guilty or not guilty?"

The prisoner took from his pocket a paper.

Col. Corkhill.—Enter your plea of guilty or not guilty.

The prisoner.—Well, your honor, I enter a plea of guilty, and desire to make a statement.

Judge Cox.—You can make it some other time.

The prisoner took his seat.

COL. CORKHILL ASKS TO GO TO TRIAL NEXT MONDAY.

Col. Corkhill.—I now desire this case to be set for trial Monday morning next, peremptorily.

STATEMENTS OF GUITEAU AND HIS COUNSEL.

Mr. Scoville asked to read a statement, and proceeded to read one by the defendant, to the effect that he has no money or means, and that in his defense it is necessary for him to have witnesses from a distance. Also, one made by himself, to the effect that he was not ready for trial, having been in the case only about ten days; that the defense would be the insanity of the prisoner, and that the wound was not necessarily mortal, and was not the cause of the President's death. Also, that he has failed to get the names of certain witnesses from the prisoner, and that he expects to show by witnesses in New York and Chicago hereditary insanity in the family; that L. W. Guiteau, the father of the accussed, was a monomaniac on the subject of religion. He also expected to show that death was the result of malpractice on the part of the principal physician. He asked an order for the witnesses, 44 in number.

Mr. Scoville said, acting under the instructions of his client, he had endeavored to get him suitable counsel—being himself not familiar with criminal practice—and had applied to Mr. Emory Storrs, of Chicago, who had declined; also to Mr. R. T. Merrick, who feared that he could not attend. He had written to Gen. Butler, but had not yet heard from him. It was important that the prisoner should be properly defended, and he asked, if Gen. Butler should decline, that the prisoner be allowed to select counsel.

MR. SCOVILLE PLEADS FOR TIME.

Mr. Scoville said that, as he understood it, under the statute the prisoner was entitled to as many counsel as should be necessary in the discretion of the court, to be paid by the United States. As far as he was concerned there is no desire to delay the trial a single day, but the witnesses could not be procured in a day or a week. He desired the court to aid him to procure these witnesses and to give him a little time to prepare, while he was willing to have it disposed of as soon as possible, with the view of giving the prisoner a fair and impartial trial.

THE DISTRICT ATTORNEY AGAINST DELAY.

Col. Corkhill said that the government was ready, and he opposed a postponement to any length of time. While it was true that Mr. S. had been in the case but ten days he was conversant with the case, for he visited the prisoner shortly after the shooting. He occupied the position also of a relative, and he probably knew months ago the witnesses who would be required. There were three points—jurisdiction, insanity and malpractice—in the defence, but the law does not go as far as the gentleman thinks, to pay for any witnesses, but the law restricts it to those within 100 miles. If the court thought proper to give time to take testimony by deposition he had no objection. The question of jurisdiction he asked to be set for trial at once and be disposed of.

JUDGE COX FIXES THE 30TH INST. FOR THE QUESTION FOR JURISDICTION AND NOVEMBER 7TH THE TRIAL.

Judge Cox said: "It is important to the interest of public justice that all cases of the gravity of this should be tried as speedily as is consistent, with a fair opportunity to defendant to prepare for trial. I appreciate the necessity for time when evidence is to be brought from a distance, and the diligence already employed by counsel is an evidence to me that there are witnesses at a distance that are necessary to be summoned, and whose testimony will be important. I must consult somewhat, however, the other engagements of this court in fixing a day for the trial of this case, and I think the most convenient time for the court, and the time which will sufficiently accommodate the prisoner, will be the 7th of November, which is Monday—three weeks from next Monday.

I cannot ignore the additional fact that there is a preliminary question that will be raised—the question as to the jurisdiction of this court over the case and which rises on the face of the record. Until that question is decided there will be no trial, nor could there be a trial. If this question must be discussed, I want it discussed at once, or anyhow by the 30th of the present month, in order that it may be out of the way. In regard to the application to allow the costs of witnesses, their attendance fees and mileage, I will examine the statutes and make such an order as I may be authorized to make. I have no disposition not to exercise the full power with which I may be clothed to secure the attendance of all witnesses whose evidence may be material, and therefore whatever the laws allow me to do, I will do in that regard. As to counsel for the accused, if counsel cannot be gotten elsewhere, I will see that competent counsel is had from this bar. At present I will fix the day for the trial, the 7th day of next month.

Col. Corkhill.—And the question of jurisdiction the 30th of this month.

Mr. Scoville.—That is a mattter, if the court please, that I do not feel inclined, at this time, to say anything about.

The Court.—That is a question that is anticipated. You will have to withdraw the plea of not guilty to the indictment in whole or in part, or interpose another plea or demurrer. You will have time to go into that question and make such arrangements as the District Attorney and the counsel who may come in the case may see fit to make.

Col. Corkhill.—Mr. Scoville informs me Mr. Merrick is ready to argue that question at the convenience of the court.

Mr. Scoville.—That is so. Mr. M. did indicate his willingness to deliver an argument, but if Gen. Butler should come into the case, or the court should assign some one in case Gen. Butler did not come in, either one of these gentlemen might say that they did not want Mr. Merrick.

Col. Corkhill.—I did not think of that.

THE WITNESSES

referred to in the affidavits are as follows: John M. Guiteau, N. Y.; Guiteau, A. Parker, Chicago; W. J. Maynard, Chicago; F. M. Brawley, Chicago; Orson W. Golt, Chicago; F. M. Scoville, Chicago, as to hereditary insanity; that a brother of the prisoner was in an insane asylum; that some relatives were confined in an insane asylum, &c. George T. Burroughs, Chicago; John H. Noyes, Niagara Falls; John H. Rice, of Merton, Wis., and James B. Brodwell, as to the actual insanity of the defendant. E. O. Foss, of Dover, N. H., who saw the shooting; that the acts of the prisoner were those of an insane man. A. E. McDonald and Allen Fitch, of Ward's Island, the insanity of prisoner at the time of shooting. N. Roe Brandner, of Pennsylvania Hospital, and J. C. Spray, of Cook county, Illinois; Dr. W. A. Hammond, of New York; Moses Gunn, of Chicago, and Edmund Andrews, of Chicago, that the wound was not necessarily fatal and was not the cause of death, but that death was the result of malpractice of the principal physician in charge of the wounded man.

GUITEAU TAKEN BACK TO JAIL.

After leaving the court room Guiteau was taken up stairs, and a large crowd gathered about the east portico. The prison van being drawn to the east door of the building, the crowd made a rush to that point, but about 12½ o'clock the prisoner was quietly walked through the basement and through the center of the new building, where a carriage was in waiting, and accompanied by Williams and Tall he was taken back to jail.

COUNSEL FROM CHICAGO.

Mr. Wm. Stevenson Johnson, of Chicago, law partner of Emory Storrs, has arrived in the city for the purpose of taking part in the defence of Guiteau.

A MAN WHO INTENDED TO SHOOT GUITEAU BUT COULD NOT GET A PISTOL.

While Guiteau was being arraigned a large sized middle-aged white man approached several men and asked for the loan of a pistol. He approached Perry Carson, one of the bailiffs, and said to him that he noticed he had a mason's badge on and asked him as a brother mason to confer a favor on him. Mr. Carson told him that he was an officer of the court, and had no time to talk to him. He then approached Detective Coomes—not knowing that he was a detective—and pointing to his Masonic badge on his watch chain said: "As a brother Mason, I would like you to loan me a little music," (Meaning a pistol) Mr. Coomes hereupon said: "Just walk this way and I will furnish you with some 'music;'" and led him down 4½ street to police headquarters, and when they were about to enter the stranger said, "I guess we cant get any pistol here," and started to leave, but Mr. Coomes insisted on his going in, and he was given a seat in the reception room and watched, and the physicians who usually examine "cranks" were summoned to appear at headquarters. Mr. Coomes introduced THE STAR man to him as a friend of his. The prisoner said his name was Geo. H. Bethard; that he was a lawyer and he showed a diploma which was issued to him on the 23d day of June, in Columbus, Ohio. He said that he fought in Gen. Garfield's regiment, and showed two gun-shot wounds in his legs and a bayonet wound on the side of his head, which he said he received at the battle of Shiloh. He said that he is 35 years old, and studied and practiced law in Ohio and Illinois, and came here last May and has been doing law and clerical work for a lawyer in this city. He heard from Col. Ford at the Le Droit building that Guiteau was to be arraigned at 4 o'clock this afternoon, and intended to get a "bull-dog" and go down to the City Hall and shoot him while he was being arraigned, but thought he would go down first and see if there was any certainty of his being arraigned before he purchased his pistol. On getting to the City Hall, he found that Guiteau was there. He said he took his diploma with him, so as to be sure of getting in as a member of the bar. He also stated that if he only had been fortunate to get a pistol, he intended to walk around beside Guiteau's counsel, and pretend to be taking a chew of tobacco out of his pocket, and instead pull out the pistol and blow him into eternity. The only thing he regretted was that he made a miserable failure of it, but if he had known enough not to speak to the detective he could have gotten a pistol, but the detective took him in, thinking he was a crank or drunk. He had evidently been drinking.

Later.—Dr. McKim, one of the police surgeons, told the STAR reporter late this afternoon that he had viewed Bethard, and from his examination, came to the conclusion that he was inebriated and drank a great deal of whiskey to give him nerve to do the shooting, although he may be a little off on the subject.

THE MEMPHIS DAILY APPEAL.

ESTABLISHED 1840. MEMPHIS, TENN., SUNDAY, MAY 1, 1881. VOL. XL—NO. 110

BLACK WHITE,

The Murderer of Sheriff Beattie, of Crittenden County, Safely Lodged in Crittenden County Jail.

The People Determined that He Shall Have a Fair but Speedy Trial—No Doubt of His Doom.

At 6:45 o'clock yesterday morning Hays White, the murderer of Sheriff Beattie, of Crittenden county, escorted by the officers bringing him from Little Rock and Deputy-Sheriff Dreyfus, of this county, was conveyed in a hack to the ferry landing for transportation to the courthouse at Marion, where his trial will take place for the criminal deeds charged against him. On arrival at the ferry in our city a large crowd, composed of negroes, soon formed, and until his departure he was the attraction of the hour —many to get sight of and others to sympathize with the prisoner. The prisoner as described is five feet ten inches high, about thirty-two years old, of dark-brown color, quick gray eyes, weighs about 150 pounds, muscular build and quick in speech. Awaiting the arrival of the John Overton he alighted from the carriage and was conducted to the platform and given a seat there, in order to avoid the crowd then pressing on him and to prevent any attempt, if there should be any, of rescue. White while seated gave answers to all questions put to him, and seemed pleased to be allowed to speak to all acquaintances that recognized him in his troubles.

What He Had to Say.

One of the darkies, who approached nearer than the rest, not being able to shake hands in a "good-bye," said: "Hays, I am mighty sorry to see you in this fix. You ain't got but one thing to do, and that is pray to God and ask Him to forgive you." The Overton (a few minutes after 7 o'clock) arriving, the officers took White on board and into the cabin, where here he was again seated until his arrival at Marion. The crowd on the banks then dispersed, but a few rushed into the cabin and remained until the last stroke of the boat-bell warned them off. Just as the boat was casting off lines Captain Jackson, in whose employ the prisoner had been in the past, came forward and shook hands, saying: "Hays, you are in a bad fix. How came you here? Did whisky do it?" To which the prisoner replied, "Yes, sir," to the first question. "Accusing me of what I did not do (referring to the breaking open of store). I was not drunk; haven't touched liquor for two months; the last was when I had a quarrel with my father-in-law and my wife, and I declared then that I would not drink no more." The captain then bade him good-bye. The officers in charge then gave him his morning toddy, breakfast and cigar, which he seemed to relish greatly, having had nothing, as he said, since Sunday 12 o'clock. While smoking he engaged in conversation with all who desired, and each time repeated his statement as published in the APPEAL of yesterday, laying particular stress on the killing of the sheriff and his experience after leaving Forrest City. In talking he would repeat his willingness to suffer the penalty of the law, as he felt there was no future for him, but the idea of being lynched filled his very being with horror, and at times the thought would create the nervous twitching that accompanies fear. Also he would ask of the officers if they felt they were strong enough to resist any attempt at Marion of

LYNCHING,

and when assured that he would be safe, he would again become free in speech and almost act as if his crimes were not real. At Mound City a number of persons came on board to look at the prisoner, but soon retired. At Marion a large crowd of both sexes and colors had assembled, and as the boat approached the crowd swelled, and presented the appearance that the prediction of lynch-law would prevail. But on landing, and on the order of the leading officer of the *posse* to "clear away," the crowd gave way coolly and peaceably, and instead of curses, threats and jeers, the wildest curiosity took place. In fact, there was not the first inkling of a riot mob. The prisoner landed, the officers of the law on the boat joined the squad on land, and formed a circle of ten or twelve men well armed around White, who, no doubt, felt greatly relieved on seeing no attempt to break his neck, and marched him through the streets to the courthouse, followed by the crowd that met him at the landing. The guard was met at the door by the acting sheriff and conducted to the court-room, the court being in session. It was but a few seconds before the room was filled to overflowing, all anxious to hear the preliminaries. The prisoner was introduced, or rather surrendered, and his shackles and cuffs taken off, and a chair given him. On being arraigned before the bar

THE PRISONER

said he had no defense to make. Colonels Lyle and George Phelan were appointed attorneys to conduct the case in the prisoner's defense. On it being suggested by the attorneys that violence would take place, the court reminded them that the community in which the prisoner would be tried was a civilized one, and that it did not believe that there were present in the court or its surroundings any citizen who would so far forget his obligations as to wink at, much less engage in acts of violence to the prisoner. A fair trial was asked, and the court felt the prisoner would receive it. An attorney suggested that the "character" of the community should be taken, and he was interrupted by the court, which said it did not know the "character," but it knew this to be a civilized community. Special officers were appointed to guard the interests of the prisoner, and a preliminary trial set for Tuesday morning next. The prisoner was then taken to the jail, still followed by a large part of the crowd, where he was given the stoutest cell, shackled and chained, and no doubt White heaved a long sigh when he felt the iron bars closed in on him, only to be opened at his trial and the day of death. The crowd had dispersed into groups, and the subject for the day was the delivery of White and the statement in the APPEAL. The indications when our reporter left were that White will be given a trial, and that, while there are no hopes for his escape from the law, although tardy, yet fear is entertained that he may make his escape from jail. It is pleasing to write that the spirit of mob-law did not hold sway over the people of Marion on arrival of the boat, and if such were the case there were enough officers determined to do their duties in maintaining peace and order and the dignity of the law.

Notes.

Mr. Williams, the gentleman who attacked White near Augusta, and Mr. Beattie, brother of the deceased sheriff, were on board the boat and also in the court-room.

Mr. Beattie seemed much distressed at the manner of death of his brother, and expressed himself as perfectly willing to let the law take its course with the prisoner.

Every man, woman and child turned out to see the murderer White.

The stores were closed and court adjourned for the time being in order that this curiosity might be gratified.

The jail in which White is incarcerated is the prettiest house in Marion, the courthouse with its defaced walls not excepted.

To the right of the court-room entrance was written on a scroll "A Merry Christmas," and above the judge's bench "Peace on earth and good-will to mankind." Wonder what White thought when he read these inscriptions.

The colored parson, Winn, who harbored White at Forrest City, is in jail at Marion. He went over the river on the early ferryboat at the same time with the prisoner, having an appointment to preach there to-day to his colored brethren. He was arraigned before the court yesterday, indicted and sent to jail, for complicity in harboring White.

HELENA WEEKLY HERALD

Volume XX2 Helena, Montana, Thursday, October 18, 1888. No. 47

THE DAY IN COURT.

Judge McConnell Dissolves the Injunction Against the Motor Line.

Bryson and the Other Indicted Prisoners Brought in for Arraignment.

To-day was an interesting one in the District Court, and when the hour for opening, at 10 o'clock this morning, came around the court room was well filled by members of the bar, parties litigant, representatives of the press and spectators. Judge McConnell opened proceedings by giving his decision in the matter of the motor line injunction, which he delivered orally. He sustained the motion to dissolve the injunction, and held that if the plaintiffs felt themselves aggrieved by the construction and operation of the motor railroad they had recourse against the company; but until the road had been built and the injury to the plaintiffs demonstrated, the court could see no cause for continuing the injunction. The Judge thought the defendants ought to go ahead and build their line, and then, if the plaintiffs sustained any injury, they could seek redress. The claim of the complainant that because private parties had donated ground for Sixth avenue, they had a right to dictate whether a road should be built thereon, was pronounced groundless. The only rights citizens had on streets were to properly carry on business, and unless it could be shown that the building of a street railroad would obstruct traffic or endanger life, no objection against such an enterprise could stand. Lawyer Toole, counsel for the plaintiff, at the conclusion of the decision, asked leave to amend the complaint. The court granted him ten days in which to file the amendment.

CRIMINALS ARRAIGNED

About 11 o'clock Sheriff Hathaway entered the court room with the prisoners under indictment by the grand jury. The first batch of jail birds included some of the lighter offenders and were quickly disposed of. The second installment was headed by George Bryson, the man under indictment for the murder of Anna Lundstrom. He marched at the head of the shackled column, with gyves joining him to his companion in the ranks. In this solemn procession the criminals went from the jail to the court house, guarded on all sides by armed officers. In the ante-room of the district court chamber the shackles were removed, and they were marshaled into the presence of the Court. A murmur of curiosity went up from the spectators as Bryson, with hat in hand and unflinching bearing, walked into the jury box and took his seat in the far end, near the Judge. His carriage was erect, and his attire that of a gentleman. He was perfectly composed, and sat with one leg crossed over the other, eyeing alternately the Judge and the lobby. His bright eyes gleamed with an unusual lustre, and their incessant twinkling and uncertain, darted glances were the only things in his whole demeanor that betrayed any nervousness or trepidity. When the prisoners were seated Judge McConnell addressed Bryson as follows:

"Is your true name George Duncan Bryson?"

The prisoner, without rising or speaking, simply nodded assent.

"You are charged with murder in the first degree," went on the Judge. "Have you a lawyer?"

Bryson again nodded. "Who is he?" asked the Judge.

"Mr. Balliet," responded Bryson in tones scarcely audible.

Mr. Balliet then arose and waived pleading for Bryson until to-morrow, when he will enter a plea for the prisoner. The arraignment of the others was then gone through with and Bryson and his fellows were shackled and marched back to jail again by the Sheriff.

An amusing feature of the grave proceedings was when the three boys, charged with forgery, were called upon. One of them is a saucy looking colored lad not more than 12 or 13 years of age, who grinned incessantly at the Judge, who indulged in a little levity by asking him how he liked his lawyer, etc.

The names of the prisoners and the crimes for which they were arraigned are:

George Duncan Bryson, murder in first degree; to plead to-morrow, S. A. Balliet, attorney.

John Carrier, burglary and grand larceny; plead to-morrow; S. A. Balliet, attorney.

George Johnson, colored, grand larceny and forgery; D. F. Carpenter assigned to defend; to plead to-morrow.

Lewis Johnson, forgery; to plead to-morrow; W. F. Shelton, attorney.

Edward Irving, forgery; plead to-morrow; D. F. Carpenter assigned to defend.

Michael Finnegan, grand larceny; plead to-morrow; J. J. Williams assigned to defend.

John Sterling, murder in second degree; pleads not guilty per attorney F. N. McIntire.

Leon Cohen, forgery; plead to-morrow; J. J. Williams assigned to defend.

J. W. Iliff (two cases), forgery; plead to-morrow; Edward F. Crosby assigned to defend.

Edward Riley (two cases), forgery; plead to-morrow; J. W. Kinsley assigned to defend.

John L. Bonds, assault with intent to rob; E. F. Crosby assigned to defend; pleads to-morrow.

Walter Smith, burglary in night time and petit larceny; pleads to-morrow; F. N. McIntire assigned to defend.

Martin Brown, burglary; pleads to-morrow; had no lawyer, but wanted Mr. Casey; said if he could not get Casey he would defend his own case, whereupon the Judge told him to make his own plea.

John McCarthy and John Murphy; assault with intent to commit robbery; plead to-morrow; J. J. Williams assigned to defend.

THE TELEGRAM-HERALD.

VOL. VII—NO. 252. GRAND RAPIDS, MICH., TUESDAY MORNING, SEPTEMBER 9, 1890. PRICE FIVE CENTS.

A YEAR IN JACKSON

A Minister Confesses to Stealing His Sweetheart's Jewels

HE WAS SHACKLED TO A MURDERER

Arraignment Day in the Superior Court—John DeMann Pleads Not Guilty to the Killing of Chris. Rickling—A Wife Weakens.

A murderer and a thief manacled together, were brought into Superior Court yesterday afternoon. The former was John DeMann, charged with killing Chris Rickling, and the other was Adolph Doelling, a clergyman by profession, who was charged with stealing a watch and chain from his sweetheart, Mamie Phelps, of St. Louis, Mich. He brought the jewelry to this city and disposed of it. The young woman's father, who is also a preacher, notified the Grand Rapids authorities and the Rev. Doelling was in consequence taken into custody.

DeMann and Doelling were two out of a dozen or more who were brought before the tribunal for arraignment. DeMann when asked to plead, muttered an incoherent sentence and attempted to find a smile, but his efforts to appear self composed were a failure. His attorney said not guilty for him and the young man was again shackled and led from the court between two deputies.

The preacher was very pale and worried when the court asked for his plea. He said guilty in an almost inaudible voice and asked for a private examination. After hearing his story Judge Burlingame told him that the extreme penalty for his crime was five years. He was a man of education and should know better than to lower himself to the paine of a common thief. There were no extenuating circumstances in the case further than the fact that he had pleaded guilty, thus saving the expense of a long trial. He was, therefore, sentenced to one year at hard labor in the Jackson State prison.

The case against Lewis S. Chapman, charged with adultery, was dismissed on a motion of the respondent, his wife, Laura A. Chapman. She stated, in an affidavit presented to the court, that she would not have made the complaint if she had not been over persuaded and that it was against her own feelings and wishes. She also stated that for the sake of her child, a girl of 5 years, and her own peace and happiness it would be better if he was discharged.

Mattie Gleason, alias the Midget, pleaded not guilty to being a common prostitute. The court appointed Elizabeth Eggleshield as her attorney, but the lady declined, saying that business obligations prevented her from accepting. J. W. Robbins was substituted.

John Crslivitz, who was convicted and fined $50 and costs in the police court for throwing eggs at a street car during the recent strike and who appealed the case, pleaded guilty. He will be sentenced this morning at 9 o'clock.

Charles Johnson and Charles A. Kelley, charged with Sunday saloonism, pleaded not guilty. Louis Engleman, charged with the same offense, did not appear when his name was called. A bench warrant was issued for his arrest, and his bail estreated. He afterward appeared, however, and stated that his attorney, W. F. McKnight, who was now engaged in a political struggle with another limb of the law for the office of prosecuting attorney, had failed to notify him. His Honor set aside the bench warrant and estreat.

Michael Dreher pleaded guilty to not paying the State liquor tax, and sentence was deferred for one week.

James Kehoe, James Arnold and Martin Vander Clois, charged with breaking and entering, pleaded not guilty, as did also John Murphy, who will have to answer to the crime of felonious assault.

The Livingston Enterprise.

VOL. 9. NO. 10. LIVINGSTON, MONTANA, SATURDAY, AUGUST 8, 1891. PRICE 10 CENTS.

MONTANA NEWS.

At Butte Saturday Deeney, Kelly and Hickey were arraigned before Judge McMurphy, charged with the murder of Editor Penrose. The arraignment was kept quiet to avoid the curious crowd. The prisoners were taken to the court by Sheriff Lloyd and two deputies. They were free from handcuffs or irons and each man's face wore a cheerful expression on entering the court room, and before taking seats behind the railing they shook hands and passed a few words with friends in the corridor. Thompson Campbell appeared for the defendants and entered a plea of not guilty, and to the question, "What's your plea, gentlemen?" Hickey promptly replied, "That's my plea," and Deeney and Kelly both said, "Not guilty." By consent of the counsel on both sides the preliminary hearing was fixed for next Monday morning, August 10th, in Judge Pemberton's court room. The preliminaries over, the prisoners were escorted back to jail. It is understood the line of defense will be to prove an alibi, while the prosecution claims to be prepared to dis prove an alibi.

The Great Percentage of the Prosperous Farmers, Ranchers, Stockmen of the West See No Other Paper Than the Semi-Weekly News. Advertisers, Make a Note of It.

DESERET EVENING NEWS.

The Saturday and Semi-Weekly News Reach 150,000 Readers. Special Rates Accorded Advertisers in These Two Issues.

TRUTH AND LIBERTY

26 PAGES—LAST EDITION. SATURDAY, JANUARY 16, 1904. SALT LAKE CITY, UTAH. FIFTY-FOURTH YEAR.

JAMES M. SHOCKLEY ARRAIGNED TODAY.

Self-Confessed Murderer of Gleason And Brighton Took Statutory Time to Plead.

WAS IN VERY JOVIAL MOOD.

He Laughed and Cracked Jokes with The Officers and the Newspaper-Men in the Courtroom.

There were about 20 spectators present in Judge Morse's court room in the district court this morning when James M. Shockley was formally arraigned upon two charges of murder in the first degree for the killing of Amasa L. Gleason and Thomas B. Brighton, two street car men, on the night of Jan. 6, 1904.

BROUGHT IN A CARRIAGE.

Shockley was brought to the building in a carriage by Sheriff Emery and Deputy Sheriffs Steels and Butler and arrived in the courtroom about 9:45 o'clock. He seemed to be in a jovial mood and laughed and chatted with the deputies and newspaper men until court was convened. While waiting he took ocasion to roll and smoke a cigarette and seemed to enjoy it very much.

JOKED ABOUT RUBBERS.

When he left the city court yesterday afternoon after his arraignment there he forgot his rubbers and left them in the court room. Two newspaper men afterwards took the rubbers into the sheriff's office and left them. This morning in Judge Morse's courtroom Shockley jokingly charged the reporters with having stolen his rubbers and stated that he would have to swear out a complaint against them. Later Sheriff Emery brought the rubbers into the room so the joke was ended.

DID NOT ENTER PLEA.

Shockley did not enter his plea this morning but took the statutory time to plead. Judge Morse fixed next Tuesday morning at 10 o'clock as the time for defendant to enter his plea to both informations. When court was convened, District Attorney Eichnor stated that two informations had been filed by him charging Shockley with murder in the first degree and he asked that defendant be arraigned. Judge Morse then instructed Shockley to stand up and listen to the reading of the informations. Shockley rose and stood very erect and gazed into the face of Deputy Clerk Buckwalter while both informations were read to him.

BEFORE THE COURT.

"James M. Shockley, is that your true name?" inquired the clerk.

"It is," answered Shockley.

The information charging him with the murder of Amasa L. Gleason was read first, and then the one charging him with the murder of Thomas B. Brighton.

"Are you ready to enter your plea to the informations?" asked Judge Morse.

"No, sir."

WILL PLEAD TUESDAY.

Attorney H. A. Smith then addressed the court and asked for time for defendant to plead to both informations. The request was granted and Tuesday, Jan. 19, was set as the date for entering the pleas. Shockley then resumed his seat by the side of his attorney, where he remained until court adjourned. He was then handcuffed and led out by Sheriff Emery and Deputies Steele and Butler. What few spectators there were in the court room followed him closely to the elevator where they were left behind while the prisoner was taken down to the sheriff's office. Shortly afterwards he was taken out the east entrance through the crowd waiting to get another look at him, and then placed in a carriage and driven back to the county jail.

The Semi-Weekly Messenger.

VOL XL NO. 29 | WILMINGTON, N. C., MARCH 29, 1907 | $1.00 PER YEAR

ARRAINGED FOR THE MURDER OF POLICEMEN

Trial of Walker Begins in Fayetteville--Details of the Crime--Delay In Securing Counsel For Prisoner --Protest of Bar Causes Sensation.

On the night of Saturday, March [illegible]

(Special to The Messenger.)

Fayetteville, N. C. March 25.—Superior court convened this morning, Judge Webb on the bench, N. A. Sinclair Solicitor. The judge's charge on lynch law was very forcible and able. At 11.15 the grand jury came into court with a true bill against Tom Walker for the murder of Chief of Police Chason and Lockamy. It was generally believed all over the city that Walker had been brought here late Saturday night. He came on the Raleigh and Southport railroad at noon, in charge of Sheriff Watson and deputies. The train was run up to a point opposite the court house and Walker was carried straight into the court room and arraigned at the bar. The court room, only half filled before, became almost instantly crowded, about half whites and half colored. Walker's shackles were removed and a guard placed over him. Judge Webb assigned to his defense ex-Judge Thomas H. Sutton and Mr. J. W. Bolton. The prisoner answered to the bill of indictment through Judge Sutton, not guilty of murder but of manslaughter. "Are you ready to proceed" asked Judge Webb. The state was ready. Counsel for the defense asked for consultation with the prisoner, whose irons were again put on and he was led into a side room, the sheriff guarding the door and an armed force on the ground beneath the window. After an hour's conference caunsel and prisoner returned to the court hoom, when Judge Sutton stated that counsel ought to have time in a matter of life and death to a client and that he did not think that in the present state of the public mind this case ought to be tried at this term of court. Finally he asked that counsed be not required to plead or answer until 2.30 o'clock at the afternoon session. The judge granted that delay, but intimated strongly that there would be no continuance of this case to another court. Judge Webb ruled out ex-Judge Sutton's plea of not guilty of murder but of manslaughter, deciding that he must plead not guilty.

Court reconvened at 2.30 o'clock the crowd, having largely increased until there was no seating room. A small case intervened to save time, when ex-Judge Sutton arose, saying that he desired to make a statement entirely personal to himself, speaking of knowing the prisoner at the bar for years and had always had kindly feelings for him on account of this feeling the prisoner expected him to defend him; that not before yesterday had he seen the wife of this prisoner and an offeer of a fee, a very inadequate compensation in a case of this magnitude, and he had asked to be assigned as counsel. In consideration of a paper which he learned had been circulated among members of the bar he asked to withdraw from the case. The associate counsel, Mr. J. W. Bolton, arose and declared that he had not received a cent in this case and knew nothing of being employed except an oral message. He declared that if the court insisted on it he would go through with the case, doing all his duty by Tom Walker, but under the circumstances he asked the judge to excuse him. Hon. G. M. Rose, the oldest member of the bar, present, spoke in explanation of the paper. Judge Sutton spoke further feelingly in defense on his position, which threw no blot on his credit as a lawyer. He again asked to be relieved and also asked that the paper assigning him officially as counsel be destroysd; that it was an attack on him, that it was a charge that he was acting under false pretense.

Maj. McKethan, clerk of the superior court, made a statement as to money in his hands $36, belonging to the prisoner. Mr. H. L. Cook addressed the court speaking in the highest terms of Judge Sutton and Mr. Bolton. Hon. J. G. Shaw stated that he was informed by Solicitor Sinclair that the latter while at Southport, had received a letter from Judge Sutton asking that the case of Walker be not tried at this term of the court.

Judge Webb spoke of the high duty of a lawyer to obey the order of the court when assigned. He refused to excuse Mr. Bolton and urgently requested Judge Sutton to remain and after further remarks Judge Webb again directed Judge Sutton and Mr. Bolton to proceed in the case. Judge Sutton then asked that time be allowed to prepare an affidavit asking for removal of the case to another county. The affidavit being presented Judge granted the solicitor time to reply. Mr. Sutton then sprung a surprise on the court when, instead of reading the affidavit, he stated that in consequence of what had happened in the morning and at the dinner recess he and Mr. Bolton asked to be excused from serving on the case. Judge Webb, without further words, excused them and assigned Messrs C. G. Rose and J. Sprunt Newton as the prisoners counsel. Mr. Rose then laid the unread affidavit aside, stating that the prisoner could get a fair trial in this county. Judge Webb ordered the sheriff to summons a special venire of 100 men by 11 o'clock to-morrow morning.

Following is the bar protest which created the sensation this morning when Mr. Sutton first asked to be excused.

To Honorable James S. Webb, Judge

"We the undersigned members of the Bar of Cumberland county, hereby respectfully protest against the appearing of record that Thomas H. Sutton, Esq., was assigned as counsel in the case of State against Thomas Walker, as we are informed by the solicitor that he had been previously employed as counsel for said Walker, and had requested the solicitor not to try the case at this term of the court.

"Respectfully,
"J. G. Shaw,
"Rose & Rose,
"A. S. Hall,
"V. C. Bullard,
"H. S. Autritt,
"D. J. Cashwell,
"R. H. Dye,
"H. L. Brothers,
"H. L. Cook,
"H. McD. Robinson."

This morning Governor Glenn telegraphed to Maj. C. C. Vann, commanding the Independent Light Infantry battalion to hold his commend in readiness for any possible trouble. There is no danger of any trouble.

Order It Today
Does The Tribune visit you every morning, or is it only an occasional visitor? You lose much when you miss an issue. It is making history. Get on the rolls.

The Salt Lake Tribune.

Advertising Quality
A first-class hotel is a better place to live than at a cheap boarding house. Quality in newspapers is everything to an advertiser. The Tribune is pre-eminently a newspaper of quality.

VOL. LXXVI., NO. 105. WEATHER TODAY—Fair. SALT LAKE CITY, UTAH, MONDAY MORNING, JANUARY 27, 1908. 8 PAGES—FIVE CENTS

SULLIVAN ARRAIGNED IN DISTRICT COURT

Heavily Ironed and Guarded by Four Deputy Sheriffs; Takes Time to Plead.

Joe Sullivan, the alleged murderer of Police Officer C. S. Ford, was arraigend before Judge Armstrong, in the criminal division of the third district court, shortly after 9 o'clock, Saturday morning, on an information charging him with murder in the first degree.

Sullivan was heavily ironed. In addition to a pair of handcuffs, he also had on leg irons, and his elbows were drawn back by a strap until he could not clasp his hands together. He also was very carefully looked after by four heavily-armed deputy sheriffs. As the law does not permit a defendant to be arraigned while in irons, Sullivan was freed by the officers before being ordered to enter his plea. After the irons had been removed, Sullivan was ordered to stand up and Deputy Sheriff Howard A. King read the information charging him with murder in the first degree.

At the conclusion of the reading, Judge Armstrong asked Sullivan if he was ready to enter his plea. Sullivan replied that he wished further time, and the court then granted him until next Monday morning.

District Attorney Loofbourow then asked the court to set the case for trial beginning next Monday. This was strenuously objected to by Attorney Vickery, whose firm represent Sullivan, upon the ground that the case was a most important one and that Sullivan and his attorneys should be given ample time to prepare for trial. Judge Armstrong then remarked that he had a number of cases already set down for trial and that he would pass upon the matter next Monday, when Sullivan is expected to enter his plea.

At that time, District Attorney Loofbourow will ask that the trial be set for hearing on Monday, March 2.

THE OMAHA BEE
Is the most powerful business getter in the west, because it goes to the homes of poor and rich.

THE OMAHA DAILY BEE

WEATHER FORECAST.
For Nebraska—Fair and cool.
For Iowa—Fair and cool.
For weather report see page 5.

VOL. XXXIX—NO. 101. OMAHA, TUESDAY MORNING, OCTOBER 12, 1909—TEN PAGES. SINGLE COPY TWO CENTS.

ALLEGED BANDITS IN IRONS ARRAIGNED ON NEW BILL

Five Men Accused of Robbing Overland Limited Plead Not Guilty to Reindictment.

The five alleged Overland Limited train robbers were taken into federal court Monday morning to plead to the new indictment returned against them last week. The prisoners were handcuffed to their guards, D. W. Woods to Deputy United States Marshal John Sides; Grigware, to Special Deputy Marshal Baird; Shelton, to Special Officer Deverees; Torgenson, to Deputy Marshal George McCallum and Bill Matthews to Deputy Marshal J. A. Proctor.

The handcuffs were removed when the prisoners stood up for pleading. The indictment of three counts was read to them and each pleaded not guilty to each count.

Bill Matthews is still carrying his arm in a sling from his recent encounter in the patrol wagon with Officer Walker.

The attorneys for the accused men gave notice of a motion to quash the indictment against their clients. This motion will be heard before Judge T. C. Munger, Wednesday morning.

The trial of the alleged bandits has been set for Monday, October 25, by mutual agreement between the attorneys for the government and attorneys for the accused.

ADVERTISING is the one link that connects with success.

The Salt Lake Tribune.

THE more you advertise the better you will understand how to advertise.

VOL. LXXXII., No. 170. ESTABLISHED APRIL 15, 1871. SALT LAKE CITY, UTAH, SUNDAY MORNING, APRIL 2, 1911. WEATHER TODAY—Fair. 48 PAGES—FIVE CENTS.

TRY CONVICT AS MURDERER

Frank Conners Accused of Killing Provo Policeman Twelve Years Ago.

Repeated Attempts to Break Out of Prison Make Officers Careful.

Special to The Tribune.

PROVO, April 1.—Frank Conners was brought to Provo from the state prison this morning and arraigned in the district court on an indictment, dated June 12, 1902, charging murder in the first degree for the killing of William Strong, a police officer of this city, June 27, 1899. After the reading of the indictment the defendant stated to the court that he had not had an opportunity to consult with his attorney, J. H. Parks of Salt Lake, and he was given until next Saturday at 10 o'clock a. m. to plead.

Conners, in charge of Guard W. D. Davis of the state prison and Sheriff George Judd of Utah county was brought down on Denver & Rio Grande train No. 6, which arrived here at 9:35, and was at once taken to the court room, where a large crowd of people had congregated in anticipation of seeing the prisoner. The same officers took Conners back to Salt Lake at noon.

Conner's term of imprisonment will expire in October, 1912, he having lost all credits by repeated attempts at escape and assisting other prisoners to escape from the state prison. The officers at the state prison say Conners has had a bad record while he has been there, and on his trip from the prison to Provo and return today he was closely guarded, with his hands securely shackled to his side; the shackles being removed only while the prisoner was being arraigned and while he was eating his dinner.

A. D. Lisonbee entered a plea of not guilty to an information charging him with polygamy by his marriage to Mary Jensen of this city, September 6, 1910, while he already had a wife living and undivorced. The defendant stated that the published reports of his having two children by his first wife were erroneous, as they have no children.

J. E. Mackey, the young man who is alleged to have signed Uncle Jesse Knight's name to a $500 check and cashing the same at the Provo Commercial and Savings bank in this city August 30, 1910, appeared before Judge Booth in the district court here today and entered a plea of guilty to "swindling," and was sentenced to pay a fine of $150. The fine was paid and the young man released.

Sports Items in Yesterday's
Call 63
Chronicle 56
Examiner 46

THE CALL

THE WEATHER
YESTERDAY—Highest temperature, 56; lowest Sunday night, 50.
FORECAST FOR TODAY—Rain; high southwest wind.
For Details of the Weather See Page 13.

VOLUME CXI.—NO. 96. SAN FRANCISCO, TUESDAY, MARCH 5, 1912. PRICE FIVE CENTS.

MURDERER WARBLES RAGTIME MELODIES

"Black Demon" of San Quentin Is Inspired by Oakland Man's Banjo Solo

[*Special Dispatch to The Call*]

SAN RAFAEL, March 4.—Shackled hand and foot and heavily guarded, Edward Delhantie, the murderous negro demon of San Quentin prison, and Charles F. Murphy, who stabbed Captain of the Yard Samuel Randolph, were brought from the penitentiary this morning and into the superior court for arraignment. Both will plead tomorrow morning at 10:30 o'clock.

On the way from San Quentin, in the custody of Sheriff J. J. Keating, Under Sheriff Charles Redding and Deputy Oscar Emerald, both prisoners were silent when questioned concerning their crimes. Once in court the negro's manner changed and he assumed the attitude of a well trained actor.

Before court opened Superior Judge Zook instructed Sheriff Keating to remove the handcuffs from the prisoners' wrists. Delhantie's ankle chains also were removed. In a clear, deep voice he said:

"Your honor, I don't intend to take up your valuable time with this case. Your honor, you are at liberty to dispose of this case as you deem necessary. I realize the seriousness of the offense which I am charged with. I am not represented by a counsel. I will leave it to your honor's disgression as to what sentence to impose on me in this case. Thank you."

The court appointed Assemblyman George Harlan to defend the negro and his plea will be received tomorrow morning.

Charles F. Murphy was indicted for stabbing Captain Randolph in the prison yard on Washington's birthday, 1911. He is charged with assault with atempt to commit murder. Since the attack he has been in solitary confinement at San Quentin. He was sent to the penitentiary from Shasta county for five years for burglary. Judge Zook postponed his case until tomorrow morning and appointed Attorney Edward I. Butler to defend the prisoner. Both men were shackled and returned to the county jail.

Delhantie is confined in the same "tank" occupied by Jacob Oppenheimer last year. An extra guard has been posted, because he is believed to be more vicious than Oppenheimer, the "hyena."

The negro will have opportunity to exercise his vocal talent, for which he has gained a reputation in the vaudeville and minstrel performances at San Quentin.

In a nearby cell is Edward Newlands, an Oakland hotelman who was recently sentenced to six months. When not cleaning the county jail with other prisoners, or applying liniment to his limbs, which are sore from his unusual task, Newlands and his favorite banjo entertain the inmates of Sheriff Keating's "hotel."

Ragtime melodies from Newlands' banjo already have reached the negro's musical ears and tonight his deep toned voice resounds in the coon song, "Constantly," and "Alexander's Ragtime Band."

This kind of amusement keeps the "black demon" in a jovial mood.

MEMORANDUM

TO: All Court Personnel, United States District Court – District of Arizona

Federal Defender, District of Arizona

United States Attorney, District of Arizona

United States Marshal, District of Arizona

FROM: Hon. Raner C. Collins, Chief Judge – District of Arizona

DATE: August 4, 2017

RE: District-Wide Procedure for Determining Restraint Status for All In-Custody Criminal Defendants

As a result of the Ninth Circuit *en banc* decision in *United States v. Sanchez-Gomez*, 859 F.3d 649 (9th Cir. 2017), this Court was required to revise its process for deciding whether in-custody defendants appear for criminal proceedings unrestrained or restrained, and if restrained, at what level. The Court created an *ad hoc* committee with representation of all stakeholders in the issue to study it and make recommendations to the Court on a policy or procedure that would comply with the requirement of *Sanchez-Gomez:* that before an in-custody criminal defendant enters a federal courtroom for a criminal proceeding, the Court must make an individualized determination based on the information before it 1) whether or not any restraint is necessary, and 2) if so, what level is the minimal amount required to address the risks or dangers found to exist for that defendant. Based on the recommendations of that committee, which were made over the course eighteen months[1], as well as direct input from stakeholders, the Court adopts the following procedures, effective August 4, 2017:

1. The judge presiding over the hearing at which an in-custody criminal defendant will make his or her first appearance in the district will make an individualized determination as to 1) whether that defendant shall be restrained in the courtroom or not, and 2) if so, what level of restraint is necessary based on the information before the court (if the defendant has already made her or his first appearance before the effective date of this policy and has had no such determination made, the determination shall be

[1] The Committee began meeting in September of 2015 after the original panel decision issued in *Sanchez-Gomez*, 798 F.3d 1204 (9th Cir. 2015). It issued its first detailed study of and recommendations on the issue in March 2016, and continued to meet intermittently thereafter as necessary, and particularly after issuance of the *en banc* opinion.

made at the defendant's first appearance thereafter). The default determination, absent information showing a need for restraint, is no restraint. The judge may review and consider all information about the individual defendant available to that judge at the time, including but not limited to affidavits in support of complaint, charging documents, Pre-Trial Services reports, Rule 5 documentation, criminal history and notations from the USMS detainee database known as JDIS. The judge may initiate this review either in response to a request for restraint from a party or *sua sponte*, in light of the Court's inherent responsibility to manage its proceedings.

2. The judge shall review the available information as set forth above and make an individualized determination as to each defendant to be produced, in advance of the hearing at which the defendant will first appear. Chambers staff or the courtroom deputy shall convey the judge's determination of restraint status and restraint level for each scheduled defendant to the USMS in advance of the hearing as well.

3. USMS personnel will input the judge's determination of restraint level for the defendant (no restraint, 2-point legs, 2-point arms, 5-point, etc.) into JDIS in the "comments" section of that defendant's data file. USMS will produce the defendant to court for the appointed hearing in the restraint status and level ordered by the court. The restraint level ordered by the court applies only while the defendant is in the courtroom. This procedure does not impact in-custody defendant security practices and processes of the USMS in the cellblock, in defendant transport elevators, in other secure areas outside of the courtroom or in transport.

4. At the beginning of the first hearing occurring after the judge has made an initial determination of restraint status and level, the judge shall note on the record what determination the judge has made, i.e., no restraint, 2-point legs, etc. Either party may request review of the decision at that point in the hearing. The judge may address the request to revisit the determination at that point or may order the defendant removed and re-presented at a later time in the calendar for reconsideration of the restraint issue, at that judge's discretion to efficiently manage the calendar. At no time will restrained and unrestrained defendants be produced in any court proceeding simultaneously. For matters where multiple defendants are present at a hearing (e.g., § 1326 changes of plea or IA hearings), the magistrate judge may consider conducting the multiple defendant non-objector hearing first to clear as many defendants out of the assigned deputy United States Marshal's zone of responsibility as expeditiously as possible.

5. If the judge upon reconsideration modifies the decision on restraint status or level, the USMS will adjust restraint levels accordingly and shall note the new restraint status and level in JDIS.

6. The minute entry from the hearing shall reflect the decision the judge ultimately makes at the defendant's first appearance regarding restraint status and level for that defendant. The Clerk of Court has developed a system to capture the determined restraint level and automatically populate that information to the docket sheet for the defendant at all subsequent hearings. To ensure common reference across the District of Arizona, and to ensure judicial determinations on the restraint status and level of each defendant are accurately and clearly recorded and tracked in the docketing system, each judge's restraint decisions will be noted in minute entries and communicated to USMS as follows:

Judicial Determination	Notation in Minute entry
No restraint	"Restraint Level 0"
Ankle restraint only	"Restraint Level 2L"
Arm restraint only	"Restraint Level 2A"
One arm free	"Restraint Level 3"
Full restraint	"Restraint Level 5"

7. At all subsequent hearings for that defendant, USMS will produce the defendant to court according to the restraint status and level previously determined at the defendant's first hearing. To determine that individualized restraint status and level, USMS shall consult the JDIS entry for that defendant in the comments section or the docket sheet. If necessary, USMS shall review the minute entries from the defendant's case docket to confirm. If counsel for either party believes circumstances have changed in a way that merits reconsideration of the restraint level previously determined for a defendant, counsel may raise the issue at any subsequent hearing, at which time the judge presiding at the hearing, whether the same or a different judge than the judge who made the initial determination, may review the individualized determination in light of the new information and alter it if appropriate. If the judge alters the restraint level, the clerk shall note the change in the minute entry for the hearing using the notation scheme in Paragraph 6 above. That status update will flow through to populate the defendant's docket sheets for subsequent hearings. The USMS shall also note the new restraint level in the JDIS comments section for the defendant.

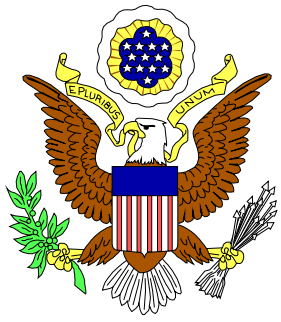
8. Courtroom interpreters shall utilize the courtroom headsets for all defendants who are in less than 5-point restraints. When the headsets are in use, the interpreter shall remain no closer to the defendant than the nearest Deputy United States Marshal.

9. For multi-defendant hearings of any type, USMS personnel shall produce only as many defendants at one time as can be safely produced under USMS guidelines and staffing formulas.

The above process depends on each judge making a determination of restraint status or level—whether it is the initial determination for a defendant or a subsequent revisiting of the issue—to place on the record, at a minimum, the restraint level the judge has determined appropriate. This includes when the decision is "Restraint Level 0" – no restraint. Without this information, tracking of prior decisions will be hampered, making it difficult for the Marshal Service to produce defendants at the appropriate restraint level, and for the Court to confirm that no defendants are being brought to court over-restrained or under-restrained. Such failures will result in a needless expenditure of time conducting additional restraint level reviews that have not been requested by a party at subsequent hearings.

Local Rules of the United States District Court

EASTERN DISTRICT OF CALIFORNIA



Effective April 1, 2017

RULE 401 (Fed. R. Crim. P. 43)

SHACKLING OF IN-CUSTODY DEFENDANTS

(a) Applicability. This Rule is applicable to the shackling, when advisable, of in custody defendants during criminal court proceedings convened in the Sacramento and the Fresno Courthouses.

(b) Definitions.

(1) "Crime of Violence" means:

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(2) "Fully Shackled" means leg restraints (including waist chains), and handcuffs.

(3) "Long Cause Proceeding" means a proceeding that is expected to last at least 30 minutes, such as an evidentiary hearing.

(c) Shackling at Initial Appearance.

(1) Single Defendant Actions.

(A) Prior to the commencement of initial appearances, the Marshal shall make an individualized shackling recommendation for each prisoner. In connection with this recommendation, the Marshal shall complete a written form (Prisoner Restraint Level Form) giving the recommendation regarding the level of restraint necessary, if any.

(B) Once the Prisoner Restraint Level Form is completed by the Marshal, and as soon as practicable, it shall be given to the Judge or Magistrate Judge presiding over the initial proceeding. The Court may review the information on the Form, a Pre-Trial Service report, and any other information pertinent to shackling. The Court shall then annotate on the form its determination regarding the appropriate restraint level. Unless it is not feasible, the Form shall be distributed to the defendant's attorney and the Assistant United States Attorney prior to hearing.

(C) The attorney for either party may request that the Court modify its restraint level determination for the initial proceeding. At the end of the initial proceeding, the deputy courtroom clerk shall annotate the Court's final restraint level determination in the minutes.

(D) When making a determination on restraints, the Court shall, where information is reasonably available, consider the following as it may weigh in favor of, or against, imposition of restraints:

(i) The nature and circumstances of the offense charged, including whether the offense is a crime of violence, a federal crime of terrorism, or involves a firearm, explosive, or destructive device;

(ii) The weight of the evidence against the in custody defendant;

(iii) The history and characteristics of the in custody defendant, including: the in custody defendant's character, physical and mental condition, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and whether, at the time of the current offense or arrest, the in custody defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law;

(iv) Circumstances of the defendant's arrest, including but not limited to, voluntary surrender, or flight to avoid apprehension, resistance upon arrest, other indicia of possible flight.

(2) Multiple Defendant Actions. In an action where multiple defendants are charged, and it is likely that the action will require an appearance by multiple defendants at any proceeding, the Court shall consider the following in determining restraint levels:

(A) Those factors described in (c)(1)(D) above;

(B) The number of defendants in the action;

(C) The Marshal staffing actually available to counteract any disruption or other untoward behavior;

(D) The logistical disruption which might entail in having numerous defendants with varied restraint levels.

The Prisoner Restraint Form procedure set forth in (c)(1)(A)-(C) above shall be employed in a multiple defendant action. A determination shall be made for each defendant.

(d) Subsequent Proceedings. The Court's determination of shackling status made at the initial appearance shall continue in effect unless changed circumstances warrant a different restraint level, or a Judge determines on de novo review that a different restraint level is appropriate, giving the affected parties an opportunity to be heard. Any party may request that the court change the restraint level. Nothing herein alters the inherent power of the Judge to order up to full and immediate shackling if such an order is necessary, in the discretion of the Judge, to ensure the safety of all people in the courtroom. After the implementation of such an order, the affected parties will be afforded the opportunity to be heard within a time reasonably proximate to the shackling.

(e) Multiple Actions Proceedings. Notwithstanding any other provision of this Rule, in a proceeding in which multiple defendants in different actions are present in the courtroom at the same time, a Judge may direct, prior to the commencement of the proceeding, that all in custody defendants be restrained at the level the Judge believes appropriate. Any party may be heard to argue a different restraint level at the time that party's case is heard.

(f) Unshackling of Writing Hand. When an in custody defendant is fully shackled:

(1) At Rule 11 proceedings, the in custody defendant shall be permitted the unshackled use of the defendant's writing hand, unless the Marshal recommends full shackling for particularized reasons, and the Court adopts the recommendation.

(2) In long cause proceedings, the in custody defendant shall be permitted the unshackled use of the defendant's writing hand, unless the Marshal recommends full shackling for particularized reasons, and the Court adopts the recommendation. The in custody defendant shall remain seated at the defense table, except when giving testimony.

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TO: Federal Public Defender, U.S. Attorney, CJA Panel, U.S. Pretrial Services, and U.S. Probation

FROM: Chief Judge Gloria M. Navarro
Debra Kempi, Clerk of Court

DATE: June 14, 2017

RE: *United States v. Sanchez-Gomez*

The Ninth Circuit *en banc* opinion in *Sanchez-Gomez* recently held that a defendant has a presumptive right pursuant to the Fifth Amendment to be free of restraints during a court proceeding to ensure the "dignity and decorum" of the "judicial process and courtroom." The opinion explained that both the defendant and the public have a right to a dignified court process. The opinion determined that a court cannot have a policy that shackles everyone, nor can a judge simply defer to the U.S. Marshal to determine when shackles are necessary. This presumption expressly applies "whether the proceeding is pretrial, trial, and sentencing, with a jury or without." However, the presumption does not appear to apply to probation revocation or supervised release revocation hearings, as the Ninth Circuit clearly specified only "pretrial, trial, and sentencing."

The purpose of this memo is to clarify that there is no district-wide plan to automatically schedule routine hearings before a judge issues a Restraint Order, nor to automatically bring defendants into the courtroom without shackles for the purpose of discussing whether shackling is necessary. *Sanchez-Gomez* does not require that an adversarial hearing must occur prior to a defendant appearing in restraints before the judge and the public. Furthermore, the opinion creates no requirement that an adversarial hearing must occur with a defendant appearing in court, without shackles, before the judge makes a decision whether a defendant should be restrained in a courtroom. The appellate court merely held that the decision must be made by a judge applying the appropriate legal standard and the decision cannot be delegated to the U.S. Marshal Furthermore, such automatically routine hearings could create extremely dangerous and unreasonable risks to the public and courtroom professionals. Therefore, each presiding judge will exercise his or her discretion in determining whether to schedule hearings.

The presiding judge will first make an individualized decision/specific determination using the applicable standard - whether a "compelling government purpose" such as danger of escape or injury - exists that justifies shackling the defendant. In doing so, the presiding judge will review all information provided by the U.S. Marshal, Pretrial Services, the U.S. Attorney, and any other sources. If the judge decides restraints are necessary, the judge will then choose the "least restrictive means" between full restraints or leg shackles and will issue a Restraint Order. This Restraint Order may be issued as a written signed order, a docket text minute order, or an oral pronouncement.

The defendant will be brought into the courtroom for a hearing only AFTER the judge has made his or her individualized decision/specific determination regarding the need for restraints. The presiding judge must allow the defendant an opportunity to place objections on the record; however, the circuit opinion does not require the court to endanger the public or courtroom professionals by bringing a potentially dangerous defendant into a courtroom without shackles before the judge makes its decision.

Further, the current practice of using the courtroom as a meeting room for defendants and attorneys will not be affected. If the courtroom is used as a meeting room - as opposed to a hearing room - then defendants can be in restraints, so long as neither the judge nor the public is present. This will preserve the right of the defendant and the public to a dignified court process.

The first Restraint Order issued in a case will apply to all other hearings in that case unless a different presiding judge enters a different order. Indeed, the appellate court decision held that a judge may never simply defer to the U.S. Marshal; however, it appears that courts may defer to and rely on other judges' orders because "courts have the inherent authority to manage their . . . courtrooms," *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016). Accordingly, if there are conflicting orders, the restraint required will be governed by the presiding judge. This means it is possible that a defendant may appear in restraints for some hearings and without restraints in other hearings.

If you have any questions, please contact Deb Kempi at [redacted] or by email at [redacted]