No. 24-6403

IN THE

# Supreme Court of the United States

BRIAN DALE NIXON,

*Petitioner,*

v.

THE STATE OF TEXAS,

*Respondents.*

**On Petition for a Writ of Certiorari from the Court of Criminal Appeals of Texas**

## AMICUS CURIAE BRIEF OF THE TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF THE PETITIONER


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## INTEREST OF AMICUS CURIAE[1]

The Texas Criminal Defense Lawyers Association (TCDLA) is a non-profit voluntary membership organization dedicated to the protection of those individual rights guaranteed by the state and federal constitutions and to the constant improvement of the administration of criminal justice in the State of Texas.

Founded in 1971, TCDLA currently has a membership of over 3,400 and offers a statewide forum for criminal defense counsel, provides a voice in the state legislative process in support of procedural fairness in criminal defense and forfeiture cases, and assists the courts by acting as amicus curiae.

Neither TCDLA nor any of the attorneys representing TCDLA have received any fee or other compensation for preparing this brief, which complies with all applicable provisions of the Supreme Court Rules, and copies have been served on all parties.

## SUMMARY OF THE ARGUMENT

A jail is a place where society places people prejudged to have committed a crime sufficient to require their confinement. Centuries of common law and precedent declare it improper for a court to permit a juror to perceive a criminal defendant as a prisoner. It is stated as a given that doing so impairs the presumption of innocence in an indelible and unprovable way. Amicus writes to expand upon what has always

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[1] TCDLA timely notified counsel for the petitioner of its intent to file a brief at least ten days prior to its due date. Rule 37. Lead counsel for TCDLA authored this brief in part. No counsel for a party to this matter participated in drafting. Rule 37.6. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. *Id.*

been assumed. Our society simply perceives prisoners as deserving of their status and undeserving of empathy or even the benefits of our social contract.

It is unclear whether the Texas Court of Criminal Appeals (TCCA) agrees with this sentiment because the TCCA rejects the notion that members of the public would perceive a building at issue in this case—one with a sign that says "JAIL"—as a jail fulfilling the purposes of a jail. For this reason, Amicus also writes to share the observations of criminal defense lawyers in the unique features that distinguish a jail from typical government buildings.

## ARGUMENT

For over a century, this Court has recognized the presumption of innocence as an undoubted principle of criminal law. *Coffin v. United States,* 156 U.S. 432, 453 (1895). The presumption "serve[s] as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, *or from other matters not introduced as proof at trial*." *Taylor v. Kentucky,* 436 U.S. 478, 485 (1978) (emphasis added); see *Estelle v. Williams,* 425 U.S. 501 (1976); *In re Winship,* 397 U.S. 358 (1970); 9 J. Wigmore, Evidence § 2511 (3d ed. 1940). It is "an inaccurate, shorthand description of the right of the accused to 'remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion; . . .' an 'assumption' that is indulged in the absence of contrary evidence." *Taylor,* 436 U.S. at 484.

This Court's opinion in *Deck v. Missiouri* followed accordingly by holding that the Constitution forbids trial courts from shackling a defendant in front of the

jury unless justified by an essential state interest. *Deck v. Missiouri*, 544 U.S. 622, 630 (2005). Nevertheless, the TCCA's opinion below ignored *Deck* and allowed Nixon's jailhouse trial to stand. Amicus offers guidance to the Court through historical and anecdotal data supporting its position that the TCCA wrongly decided Nixon's case.

## I. Callous indifference permeates the ethos of a correctional facility.

### A. It is a truism that people perceive prisoners as deserving of their status.

> The prisoner is to be called to the bar by his name; and it is laid down in our ancient books, that, though under an indictment of the highest nature, he must be brought to bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape, and then he may be secured with irons.

4 W. Blackstone, Commentaries on the Laws of England 317 (1769). But the "why?" seems only ever answered by the assumptions of legal scholars, undoubtedly studied in the philosophy of human nature. The plainly stated and consistent sentiment is steeped in an assumed understanding of sociology and philosophy. Prisoners and the facilities that house them embody the state of nature from which we have organized to escape. *See* Thomas Hobbes, *Leviathan* 89 (Richard Tuck ed., 1991) (among other things, a place of perpetual suspicion of one another).[2] Only the best

[2] Hobbes wrote:

> Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own

of us can resist the impulse to perceive a prisoner as a fellow citizen undeserving of the continued benefits of *our* social contract who lives in a place to ensure this expectation. With this, the backdrop of the instant case becomes not only the jail in which the defendant was tried but also the most un-"natural" of agreements in our social contract: an agreement to presume one another innocent upon accusation. If Blackstone's maxim (or the development thereof) is a recognition that shackles and the like are conspicuous reminders that the person to whom the presumption is owed has already been cast among the others less deserving, then the rule must exist to avoid the undue burden on

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> invention shall furnish them withall. In such condition, there is no place for Industry; because the fruit thereof is uncertain; and consequently no Culture of the Earth; . . . no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.
>
> It may seem strange to some man, that has not well weighed these things; that Nature should thus dissociate, and render men apt to invade, and destroy one another: and he may therefore, not trusting to this Inference, made from the Passions, desire perhaps to have the same confirmed by Experience. Let him therefore consider with himselfe, when taking a journey, he armes himselfe, and seeks to go well accompanied; when going to sleep, he locks his dores; when even in his house he locks his chests; and this when he knows there bee Lawes, and publike Officers, armed, to revenge all injuries shall bee done him; what opinion he has of his fellow subjects, when he rides armed; of his fellow Citizens, when he locks his dores; and of his children, and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words?

Hobbes, *supra*.

a juror's already difficult task of assuming nothing whatsoever in the State's favor.

In *Deck*, this Court tracked the development of Blackstone's rule and the diverging justifications for avoiding the perception of the defendant as a prisoner. *Deck*, 544 U.S. at 630. Initially, courts endeavored to ensure the defendant's dignity and facilities so that he could assist in his case.[3] Quite literally, physical restraints impaired the defendant's ability to participate. But parallel justifications developed almost at once. Courts recognized an obligation to preserve the dignity of the tribunal itself and then eventually the need to avoid such a practice because it would "undermine[] the presumption of innocence and the related fairness of the factfinding process." *Deck*, 544 U.S. at 631. To avoid the "Mark of Ignominy and Reproach" became the primary justification that a

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[3] This sentiment developed through the English common law and became part of the early American concept of a fair trial.

> "every defendant is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man, except as the necessary safety and decorum of the court may otherwise require."

*Rex. v. Layer*, 16 How. St. Tr. 94 (1722).

> In my opinion any order or action of the Court which, without evident necessity, imposes physical burdens, pains, and restraints upon a prisoner during the progress of his trial, inevitably tends to confuse and embarrass his mental faculties, and thereby materially to abridge and prejudicially affect his constitutional rights of defense and especially would such physical bonds and restraints in like manner materially impair and prejudicially affect his statutory privilege of becoming a competent witness and testifying in his own behalf.

*People v. Harrington*, 42 Cal. 165, 168 (1871).

defendant not present as a prisoner before a jury under American constitutional law. *Id*. (quoting 2 W. Hawkins, Please of the Crown, ch. 28, § 1, p. 308 (1716-1721). But whether stated in Early Modern English or common parlance, it has rarely deviated from a simple truism that jurors think prisoners are guilty. While we think this generalization is as correct as it is engrained in the law, there is more to be said than an insistence that courts genuflect to centuries of legal precedent.

### B. Experiences bear out the truism.

#### 1. The Stanford Prison Experiment

The Stanford prison experiment famously pitted average college students against one another as guards and prisoners in a controversial psychological study.

> According to the lore that's grown up around the experiment, the guards, with little to no instruction, began humiliating and psychologically abusing the prisoners within twenty-four hours of the study's start. The prisoners, in turn, became submissive and depersonalized, taking the abuse and saying little in protest. The behavior of all involved was so extreme that the experiment, which was meant to last two weeks, was terminated after six days.

Maria Konnikova, *The Real Lesson of the Stanford Prison Experiment* (June 12, 2015), https://www.newyorker.com/science/maria-konnikova/the-real-lesson-of-the-stanford-prison-experiment.

> We wanted to see just what were the behavioral and psychological consequences of becoming a prisoner or prison guard. To do

> this, we decided to set up our own prison, to create or to simulate a prison environment and then to carefully note the effects of this total institution on the behavior of all those within its walls
>
> * * *
>
> As a consequence of the time we spent in our simulated prison, we could understand how prison, indeed how any total institution, could dehumanize people, could turn them into objects and make them feel helpless and hopeless, and we realized how people could do this to each other.

Phillip G. Zimbardo, *Stanford Prison Experiment slideshow narration*, 5 Phillip G. Zimbardo papers at SC0750 (1971), https://purl.stanford.edu/gn204mr8406.

The thrust of lessons publicized in the wake of the experiment focused on the cruelty and outright torture that ensues based merely on the role assignment of guard and prisoner. But other lessons are derived. The assumed deservedness of a prisoner's mistreatment and the failure to speak out against it are psychological responses that existed not merely because of an artificial power dynamic. Zimbardo remarked that the mere act of assigning the label of prisoner to people elicited a pathological behavior. *The Stanford Prison Experiment, Selected Lectures and Presentations: Hearing Before the S. Comm. of the Comm. on the Judiciary* 114 (Oct. 1971).

Presumably, the experiment would not have produced the same result if it had been titled the Stanford Courtroom Experiment, and the roles were prison guard and "man sitting at table." Undeniably,

the role of "prisoner" is inextricably linked to the treatment they received.

### 2. Data and anecdotal evidence

The Marshall Project promotes itself as a "nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system." *About Us*, The Marshall Project (Feb. 25, 2025), themarshallproject.org/about. Among a list of recurring topics is the plight of prisoner life. One journalist writes about "Breaking the Unwritten Rule of Prison" with the alternate title "Or, what happens when guards and prison staff interact as just human beings." The article drives a prevailing theme of human decency and kindness existing as a rarity in a correctional institution.

> Some other staff members have gone out of their way to be kind, patient, respectful and compassionate. Ms. Johnson always gave us extra time for outside rec, waiting until a sergeant radioed her.
>
> Mr. Sutherland liked talking about fishing — with anyone. If you could discuss the difference between saltwater and freshwater fly-fishing, he'd turn a blind eye in the chow line if you wanted another tray.
>
> These were the simple courtesies that made our time and their job easier. TVs allowed to stay on after curfew, cell doors left open a bit longer than usual, maybe even a movie that a unit manager would bring us from home.
>
> * * *
>
> But for most, the unwritten rule on death row has remained: disinterest, allegiance to policy,

> frequent staff turnover to reduce familiarity, and above all a belief in the status quo. Flouting the idea that inmates are "less than" is not to be accepted.

Lyle May, *Breaking the Unwritten Rule of Prison*, The Marshall Project (Aug. 30, 2018), https://www.themarshallproject.org/2018/08/30/breaking-the-unwritten-rules-of-prison.

The TCCA's opinion below supports Nixon's jailhouse with a suggestion that "average jurors may have more likely understood that the government and the courts use whatever facilities they have available to get their work done, and that the facility where a trial is held ordinarily does not reflect inherently on the guilt or dangerousness of an accused." *Nixon v. State*, No. PD-0556-23, 2024 WL 4829786 *6 (Tex. Crim. App. Nov. 20, 2024). This is inconsistent with actual experiences in the criminal justice system. Jails are where society houses people who have been prejudged to have done something wrong, prejudged to be dangerous, and prejudged to be a risk to society. If this weren't true, we would not have bars on the windows, guards at the doors, and all of the accoutrements and trappings of involuntary confinement. Examples of the impact such a facility has on human behavior abound.

From the lack of medical care to the physical and mental abuse inmates sustain, jails promote or accept an ethos of callousness toward human suffering. Jails also create an environment for long-term illnesses and related deaths. In Louisianna, a judge ruled that the Louisiana State Penitentiary violated Farrell Sampier's Eighth Amendment rights after Sampier died in custody from a lack of medical attention. Louis Ratcliff, *A Filthy New Orleans Jail Made My Son Sick. The 'Cruel and Unusual' Medical Treatment at Angola Prison*

*Killed Him*, The Marshall Project (July 2021), https://www.themarshallproject.org/2021/07/29/a-filthy-new-orleans-jail-made-my-son-sick-the-cruel-and-unusual-medical-treatment-at-angola-prison-killed-him. Sampier developed an infection in a New Orleans jail while awaiting to be transferred to prison. *Id*. By the time he was transferred, Sampier was confined to a wheelchair from the disease—which was likely the result of unsanitary jail conditions. *Id*. The medical care in the Louisiana State Prison was no different, and Sampier later died while shackled to a hospital bed. *Id*.

During the COVID-19 pandemic, which the TCCA references, inmates were more vulnerable to contracting the virus because of the unsanitary living conditions. *See* Nicole Lewis, *How We Survived COVID-19 In Prison*, The Marshall Project (Apr. 2021), https://www.themarshallproject.org/2021/04/23/how-we-survived-covid-19-in-prison (discussing the lack of medical care and protective measures taken by prison officials during the pandemic). Contrary to the TCCA's hypothesis, most people were afraid to go to any sort of correctional facility during the pandemic. Their fears were not derived from refreshing the Marshall Project homepage but rather from an understanding of the minimal resources our government dedicates to the conditions of its jails and prisons. And whether the public's fear was well-founded, it is at least a commentary on the societal belief and tacit agreement that those forced to live in correctional facilities are deserving of their plight (or undeserving of efforts to implement change).

Studies and investigations support these anecdotes. "Negligent health care," "chronic rates of infectious disease," "unsanitary living conditions," and "a prevalence of avoidable jail-base deaths" are all observations

made by the National Institute of Health when combing data relating to the health and safety inside of detention facilities. Jessica Adler & Weiwei Chen, *Jail Conditions and Mortality: Death Rates Associated With Turnover, Jail Size, and Population Characteristics,* 42 Health Aff. 6 (2023), https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.01229. Less than a year ago, the U.S. Justice Department found such conditions existed in a jail operated by a well-known county seeking to incarcerate the president failed to even satisfy the minimal standards of the Eighth and Fourteenth Amendments. Press Release, *Justice Department Finds Conditions at Fulton County Jail in Georgia Violate the Constitution and Federal Law* (Nov. 14, 2024), https://www.justice.gov/archives/opa/pr/justice-department-finds-conditions-fulton-county-jail-georgia-violate-constitution-and.

Not surprisingly, experiences like these are not remote and have often led to federal responses, such as the Prison Litigation Reform Act passed to empower prisoners to file lawsuits challenging prison and jail conditions, or the Civil Rights of Institutionalized Persons Act that gave rise to the more widespread Justice Department investigations and federal consent decrees regarding the conditions in state detention facilities. Pub. L. No. 104-134, tit. VIII, 110 Stat. 1321 (1996); Pub. L. No. 96-247, § 7, 94 Stat. 349, 352 (1980).

Finally, the daily experiences of the members of this Organization reassure Amicus that these data points are not cherry-picked support in the promotion of a hasty generalization. One of the authors of this brief can recount an instance where a client suffered a medical emergency in a locked room during a Zoom visitation. He watched as his client suffered a seizure and begged jail personnel to respond, begged the

Sheriff's office to respond, and begged the fire department to respond against their protocols requiring a request by jail officials themselves. After 24 minutes, the priority of the first person to respond to the room was to shut down the video feed while his client convulsed on the floor. Counsel has witnessed masses of people sleeping on the floor of the jail lobby, each waiting to be booked in on their voluntary surrender. Counsel can recall countless stories of clients being sat in a plastic chair for 72 hours in the booking area because of the inconvenience or inefficiency of housing people who would likely post bail within that same period. And Counsel can recall thinking of this plastic chair dilemma when believing those sleeping on a dirty floor were likely better off. Experiences like these are shared among members of this bar, but there are even subtle examples of callousness that members of the public and the Court alike could experience for themselves. One way to do so is by calling a jail and suffering the torture of listening to Opus No. 1 (also known as the Cisco Unity Hold Music) loop for hours while waiting to speak to anyone about an important issue.

Amicus shares this information not to suggest that correctional facilities employ the worst among us. Indeed, we think the opposite. But behind the cinder-block walls permeates a haunted human psychology. Shadenfreude is not quite the right word to describe it. That term suggests a feeling of pleasure that comes from witnessing another person's suffering. That another person deserves nothing more than the suffering they experience and is not worthy of your efforts to prevent it is the variation of Shadenfreude we wish there were a term for. It is the notion that underlies this court's jurisprudence when it states plainly that viewing a defendant as a prisoner impairs the presumption of innocence. But importantly, it is an

ethos that emanates within this type of facility—a type of facility the members of this Organization have become well and personally acquainted.

## II. A sign that says "Jail" is but one of many sensory details.

There is a certain odor that exists in a jail that is generously described as a mix between Clorox Bleach and microwaved chicken nuggets.

The TCCA notes in its opinion the observations that an average juror could have made regarding the facility where they were summoned to adjudicate Mr. Nixon's guilt.

> The photos show that a sign posted above the entrance to the building read "Medina County Jail[.]" After entering the building through a glass door and passing through an outer vestibule that provides access to restrooms and vending machines, visitors enter a main lobby either through another glass door or a metal detector. The main lobby includes: (1) a reception window for, and entrance to, the Sheriff's Department; (2) doors to two visitation rooms and a multi-purpose room; (3) a jail information window; (4) a door stating "Authorized Personnel Only[,]" which the witness identified as the entrance to the jail; and (5) a pair of double doors leading into the auxiliary courtroom where Appellant's trial was held. A placard on the entrance to the courtroom reads: "District Court in Session[.]" Along the way, visitors encounter multiple signs advising that cell phones, cameras, recording devices, food or drink,

> purses, packages, and openly carried handguns are prohibited.

*Nixon*, 2024 WL 4829786, at *4–5. Amicus believes the TCCA's own citation to the record shows sufficiently why the TCCA was wrong to describe the Medina County Jail as some generalized government building or multi-purpose facility that would evoke nothing whatsoever in the mind of a juror. However, Amicus would be remiss if it did not share its own general experiences regarding what distinguishes a jail from the county tax office, the DMV, or the parks and wildlife department.

Justice Potter Stewart famously described his ability to identify hard-core pornography with the phrase, "I know it when I see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Surely, he never envisioned criminal defense lawyers referencing it as a segue into their expertise in knowing the difference between jails and non-jails, but it is far too appropriate. There is most certainly a je ne sais quoi to a jail's atmosphere that is difficult to describe, but you unquestionably "know you're in one when you're in one." Heavy metal doors send chills not only because they are cold in temperature but also because of the distinct sound of their slamming followed by the electric whirring of a bolt locking it shut. Sometimes, doors are not the only noise of slamming. Inmates left in visitation rooms, solitary confinement, or whatever room they prefer not to be in can be heard banging on walls and windows in hopes that an end to their ruckus might be preferential to whatever end is achieved by keeping them where they are. As one roams the halls, there are encounters with jailers and staff conspicuously avoiding eye contact or even more conspicuously sprinting somewhere to

manage an incident. But these aren't the only people working in the jail; people wearing orange or striped jumpsuits typically perform difficult tasks like cleaning toilets or picking up the dead bugs that have fallen from the fiberglass ceiling tiles after being sprayed with the chemicals that vaguely mask the aforementioned chicken nugget smell. The furniture is distinct as well. Chairs are often affixed either to the floor or the wall in front of impact-resistant windows. Other times, they appear as though they are designed to be hosed down. This serves as a reminder of how those responsible for choosing furniture think of visitors and inmates. Interspersed among those sitting in chairs who came as visitors are those who were recently converted to visitors. They typically hold a clear plastic bag of their belongings as they await the ride they summoned using the only public payphone in a 50-mile radius.

Jails are unique places, indeed. The aura of such a facility is, in many ways, commensurate with the ethos described in the preceding section. They are both sterile and still gross, safe and still scary, unwelcoming and still accommodating. The pictures in this case speak for themselves, but were they not to, we lend our expertise in what the differences between a jail and innocuous government buildings.

## PRAYER

The Court should grant the petition and set the case for argument.

Respectfully submitted,

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