

Court struggles with interrogation limits

Shannon McCaffrey

Knight Ridder Newspapers (KRT)

WASHINGTON — Supreme Court justices sounded conflicted Wednesday as they wrestled with the question of whether aggressive police interrogations violate the Constitution.

The case before them involved a California farm worker who was shot five times by a police officer and then aggressively questioned in an emergency room by the officer's supervisor, without being read his rights.

The shooting left Oliverio Martinez blind and paralyzed below the waist.

As the justices contemplated whether the police abused their author-

ity in questioning a seriously wounded man, some also were thinking about how their ruling might affect counterterrorism investigations.

"Suppose this is someone you believe is going to blow up the World Trade," Justice Antonin Scalia asked, hypothetically.

"You could beat him with a rubber hose?"

Justice Stephen Breyer wondered why questioning a wounded man in serious pain isn't "the equivalent of beating someone up."

"What worries me is not so much this case but what we're going to write and the implications," Breyer said.

Justice Ruth Bader Ginsburg asked whether police questioning someone suspected of kidnapping a child who cannot live without receiving medication are entitled to use coercive questioning to find the child.

The case came before the justices as federal law enforcement agents seek for new ways to gather intelligence from terrorism suspects and associates whom they may have no intention of prosecuting. The court's ruling, expected by June, would apply to questioning of U.S. citizens, not foreign "combatants" like those held at Guantanamo Bay, Cuba.

In the case at hand, two Oxnard, Calif., police officers investigating

drug activity stopped Martinez in November 1997. Police say a struggle ensued and Martinez grabbed the gun of one of the officers. The other officer opened fire, shooting Martinez in the head, torso and legs.

Oxnard police patrol supervisor Sgt. Ben Chavez hopped in the ambulance with Martinez and persisted in questioning him even after medical personnel ordered him to leave the emergency room.

"I am dying. ... What are you doing to me?" Martinez is heard screaming on a tape Chavez made of the interrogation.

"If you are going to die, tell me what happened," Chavez replied.

Martinez never was informed of

his Miranda rights to remain silent during the 45-minute interrogation and twice asked Chavez to leave him alone.

Martinez, now 34, never was charged and sued Chavez under the Civil Rights Act, saying his Fifth Amendment right against self-incrimination and his 14th Amendment right to due process had been violated. Chavez argued that as a public official he was immune to such lawsuits.

But the U.S. District Court for Central California, and later the 9th U.S. Circuit Court of Appeals, sided with Martinez.

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Judge rules suspected terrorist can see lawyers

Frank Davies

Knight Ridder Newspapers (KRT)

WASHINGTON — A federal judge ruled Wednesday that Jose Padilla, accused of plotting with terrorists to detonate a radioactive "dirty bomb" on U.S. soil, can meet with his lawyers and challenge his detention in federal court.

The judge said he eventually will decide whether the government is properly holding Padilla as an enemy combatant with no legal rights.

The ruling by U.S. District Judge Michael Mukasey in New York was a legal setback for the Bush administration, which argued that Padilla, though a U.S. citizen, had no right to challenge his status in court and

could be held indefinitely in military detention.

The Justice Department, citing the Sept. 11 attacks, had asserted the broad authority of the executive branch in time of war to hold enemy combatants, including U.S. citizens, without charges or access to an attorney.

In addition, Bush officials argued that courts had extremely limited authority to review how the executive branch handled enemy combatants.

Mukasey's thorough, 102-page ruling also contained an important victory for the government. He said the president and military have the authority to detain enemy combat-

ants and that Padilla's detention "is not per se unlawful," despite his citizenship.

The judge said he will eventually decide the fundamental question of whether the government properly shifted Padilla from the criminal justice system, with a wide array of rights, to the military — where he has none.

"This ruling shows that federal district judges with lifetime tenure provide a serious line of defense for civil liberties," said Eugene Fidell, president of the nonpartisan National Institute of Military Justice.

"This is an important victory for Padilla, but it may be a Pyrrhic vic-

tory, because the judge is saying in the end he will be very deferential to executive branch authority," Fidell said.

Lucas Guttentag, an ACLU attorney who filed a brief on behalf of Padilla, said, "This ruling is a crucial rejection of the Bush administration's claim of almost unbridled power to unilaterally detain U.S. citizens and hold them indefinitely and incommunicado."

White House and Justice Department officials said they were studying the ruling, and had not decided whether to seek a stay to block Padilla from meeting with his lawyers, Donna Newman and Andrew Patel.

"I do note the court did uphold the president's constitutional authority to direct the military to detain unlawful enemy combatants in order to protect the American people in this war on terrorism," said Ari Fleischer, White House spokesman.

Padilla, a former Chicago gang member, was arrested at Chicago's O'Hare Airport on May 8 and was held for a month in New York under a material witness warrant as part of a massive anti-terrorism investigation.

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Passengers on another cruise ship get stomach illness

Ina Paiva Cordle

Knight Ridder Newspapers (KRT)

MIAMI — Another cruise ship that sailed from Fort Lauderdale to the Caribbean has reported 117 cases of gastrointestinal illness.

The Centers for Disease Control said Wednesday that 114 of 1,859 passengers and three of 868 crew members on board P&O Cruises U.K.'s Oceana, which departed from Port Everglades on Nov. 29, have contracted a stomach virus.

All of the passengers on the 14-day cruise originated in the United Kingdom and flew on chartered aircraft to Fort Lauderdale, CDC spokeswoman Bernadette Burden

said. Most of the ill passengers were reported to be from one chartered flight originating in Manchester, U.K., but Burden said no information was available regarding the airline.

A spokesperson for the London-based cruise line could not be reached late Wednesday. The ship is scheduled to return to Fort Lauderdale on Dec. 13.

CDC staff is expected to board the vessel this week to conduct interviews with the ill passengers and crew, do an environmental assessment and collect specimens to determine the virus.

It is too early to know whether the illness is a Norwalk-like virus, which

has stricken passengers on board several cruise ships in recent weeks. Symptoms include nausea, vomiting, diarrhea and abdominal pain. The illness usually develops within 12 to 48 hours of exposure and lasts from one to three days. It can be dangerous for the elderly and those with health problems.

Meanwhile, Holland America's Amsterdam, which departed Fort Lauderdale on Sunday, reported two passengers and one crew member with gastrointestinal illness by Wednesday afternoon, the CDC said. The ship had been taken out of service for 10 days to be thoroughly cleaned and disinfected, af-

ter 524 passengers and crew on four sailings were stricken with a Norwalk-like virus.

So far, the CDC has not determined whether the gastrointestinal illness that struck 189 passengers and 13 crew members on the Carnival Fascination, which arrived in Miami on Monday, was the Norwalk-like virus, said David Forney, chief of CDC's vessel sanitation program. The cruise line did not collect stool specimens, which are used to make the determination, he said. CDC staff collected food and ice samples, however, and laboratory tests are pending.

Another ship, the Radisson Sev-

en Seas Mariner, reported that five passengers and 16 crew members experienced a gastrointestinal illness shortly after leaving Tenerife, in the Canary Islands, on a 15-day cruise that ended in Port Everglades Monday.

Initial laboratory results have identified salmonella as the cause, with shelled eggs as the suspected source, the CDC said. Samples of the eggs are being tested and lab results are pending.

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