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**Comment: Technology and the Eighth Amendment: The
Problem of Supermax Prisons**

*Charles A. Pettigrew*¹

“I worry that anytime something as serious as a Supermax prison is hidden from view, it will become an incubator for bad, perhaps even cruel, practices.”²

I. Introduction

The Bureau of Justice Statistics reports that in the United States, at the end of 2000, 6.5 million people were either on probation, parole, or in jail or prison.³ This figure represents 3.5 percent of the population.⁴ Of these 6.5 million people, nearly 1.4 million resided in prison.⁵ The United States, one of the world’s largest incarcerators, also leads the way in the development of state of the art prisons, known by several names⁶ but frequently called Supermaxes. One figure puts the number of Supermax prisoners

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² Walter Dickey, *Changes Can Be Made To Salvage Supermax*, CAP. TIMES, Sept. 11, 2001, available at 2001 WL 25524954 (on file with the North Carolina Journal of Law & Technology).

³ Generally, the distinction between prison and jail is that prisons contain convicted persons while jails may contain convicted persons as well as those awaiting trial but not yet convicted.

⁴ U.S. DEP’T OF JUSTICE, BUREAU OF JUST. STAT., BUREAU OF JUSTICE STATISTICS 2002 AT A GLANCE 16, available at <http://www.ojp.gov/bjs/pub/pdf/bjsg02.pdf> (Aug. 2002) (on file with the North Carolina Journal of Law & Technology).

⁵ D.O.J. STATISTICS, *supra* note 4, at 16.

⁶ See, e.g., U.S. DEP’T OF JUSTICE, NAT’L INST. OF CORR., SUPERMAX PRISONS: OVERVIEW AND GENERAL CONSIDERATIONS 5 [hereinafter D.O.J. OVERVIEW] (“Special housing unit, maxi-maxi, maximum control facility, secured housing unit, intensive housing unit, intensive management unit, and administrative maximum penitentiary are but a few of the names used.”), available at <http://www.nicic.org/pubs/1999/014937.pdf> (Jan. 1999) (on file with the North Carolina Journal of Law & Technology).

between 25,000 and 100,000.⁷ Undoubtedly, these technologically advanced Supermax prisons represent one of the newest approaches to incarceration.⁸ However, they also may represent a violation of the Eighth Amendment's prohibition against cruel and unusual punishment⁹ and foretell of an impending constitutional crisis behind prison walls. According to the United States Supreme Court, "[i]t is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment."¹⁰ Correspondingly, technologically advanced Supermax prisons, and the unique conditions they create, must be subjected to a rigorous Eighth Amendment examination, an examination they will likely fail if courts faithfully apply the current test for Eighth Amendment violations.

II. Supermax Prisons Defined

The exact nature and characteristics of a Supermax prison remain unclear.¹¹ Because no standard definition exists, the Federal Department of Corrections and the individual state departments of correction have defined Supermax prisons in their

⁷ Claire Schaeffer-Duffy, *Long Term Lockdowns: Psychological Effects of Solitary Confinement and Stun Devices*, NAT'L CATHOLIC REP., Dec. 8, 2000, available at LEXIS, News Group File (on file with the North Carolina Journal of Law & Technology).

⁸ Craig Haney & Mona Lynch Haney, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477, 479 (1997) ("Despite the dramatic shift in correctional philosophy that this trend represents and the extraordinary public expense that it has incurred, there has been surprisingly little public discussion or political debate about the wisdom of this new approach to prison punishment.").

⁹ U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

¹⁰ *Helling v. McKinney*, 509 U.S. 25, 31 (1993).

¹¹ D.O.J. OVERVIEW, *supra* note 6, at 3-6 ** (discussing the problem of varying definitions of Supermax prisons among jurisdictions which is further complicated by the lack of a formal standard promulgated by the American Correctional Association or the American Bar Association for correctional facilities) (on file with the North Carolina Journal of Law & Technology).

own ways.¹² The U.S. Department of Justice's National Institute of Corrections provides the following definition of a Supermax facility:

a highly restrictive, high-custody housing unit within a secure facility, or an entire secure facility, that isolates inmates from the general prison population and from each other due to grievous crimes, repetitive assaultive or violent institutional behavior, the threat of escape or actual escape from high-custody facility(s), or inciting or threatening to incite disturbances in a correctional institution.¹³

This definition is not perfect. It fails to address the alarming trend in which Supermax prisons, designed to house the "worst of the worst," also house inmates who have not committed grievous crimes, often because of a lack of space in other facilities or other non-punitive reasons.¹⁴ A Supermax prison for the purposes of this writing, however, is *any highly restrictive, close custody facility employing the latest corrections technology*. Examples of this type of Supermax prison are found in Wisconsin and many other states.¹⁵ Because these technologically advanced prisons represent a new approach to incarceration, there is a corresponding need for a new approach when interpreting the Eighth Amendment to ensure that prisoners in these facilities remain free from cruel and unusual punishment.

The National Institute of Corrections surveyed the fifty states, the Federal Department of Corrections, the Department of Corrections of Canada, and several major U.S. cities concerning

¹² D.O.J. OVERVIEW, *supra* note 6, at 3.

¹³ D.O.J. OVERVIEW, *supra* note 6, at 6.

¹⁴ HUMAN RIGHTS WATCH, OUT OF SIGHT: HUMAN RIGHTS WATCH BRIEFING PAPER ON SUPERMAXIMUM PRISONS ("Many correctional authorities use overly broad and vague criteria for determining supermax eligibility and fail to exercise appropriate control over placement and decisions."), *available at* http://www.hrw.org/reports/2000/supermax/Sprm002.htm#P40_391 (last visited Sept. 12, 2002) (on file with the North Carolina Journal of Law & Technology).

¹⁵ Haney & Haney, *supra* note 8, at 480 (noting that as of 1991, 36 states maintained some type of Supermax unit).

their use of Supermax facilities.¹⁶ This 1996 survey defined a Supermax facility differently than the Institute's later definition, cited above.¹⁷ Fifty-five departments of corrections responded to the survey, and thirty-four of these indicated that they either operate a Supermax facility as defined by the survey or planned to begin operation of a Supermax facility within two years, that is, by 1999.¹⁸ Further, the survey indicated that, in 1997, fifty-seven Supermax facilities were in operation, maintaining 13,500 beds.¹⁹ The Supermax phenomenon, a relatively new one, is poised to become a reality for many of America's prisoners.

III. Supermax Technology

Advanced technology distinguishes Supermax prisons from their conventional counterparts and allows for the isolation of prisoners through technology that was previously impossible.²⁰ The comments of Craig Haney, an expert in prisoner psychology, underscore technology's role in the new incarceration regime: "Solitary confinement has been around for a long time' . . .

¹⁶ U.S. DEP'T JUSTICE, NAT'L INST. OF CORR., SUPERMAX HOUSING: A SURVEY OF CURRENT PRACTICE 1 (Mar. 1997), *available at* <http://www.nicic.org/pubs/1997/013722.pdf> (on file with the North Carolina Journal of Law & Technology).

¹⁷ *Id.* According to this survey, a Supermax is defined as:

[A] free-standing facility, or a distinct unit within a facility that provides for the management and secure control of inmates who have been officially designated as exhibiting violent or serious and disruptive behavior while incarcerated. Such inmates have been determined to be a threat to safety and security in traditional high-security facilities, and their behavior can be controlled only by separation, restricted movement, and limited direct access to staff and other inmates.

Id.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME & JUST. 385, 390 (2001) ("Supermaxes have been described as prisons that 'represent the application of sophisticated, modern technology dedicated entirely to the task of social control, and they isolate, regulate, and surveil more effectively than anything that has preceded them.'").

‘What’s different about these Supermax units is that the technology of the modern correctional institution allows for a separation, almost a technological separation, of inmates from the social world around them in ways that weren’t really possible in the past.’²¹ Consequently, incarceration in a Supermax facility is, technologically speaking, unlike other prison experiences.²² One analysis of Supermax prisons notes “[a] principal goal of architectural and technological design is limiting the need for correctional staff to interact with inmates.”²³ Certainly, many benefits may result from the new technology associated with Supermax prisons, including safer prisons for guards and some inmates;²⁴ however, with this new technology comes unintended consequences, which threaten the Eighth Amendment rights of many Supermax inhabitants.

Supermax Correctional Institution in Boscobel, Wisconsin, typifies the new, technologically advanced Supermax prison.²⁵ This award winning facility²⁶ is indicative of Supermax construction and philosophy. Unlike traditional prisons, it is keyless in areas accessible by prisoners and laden with security cameras.²⁷ Each cell measures six feet by twelve feet,²⁸ and audio

²¹ *Inside, No One Can Hear You Scream*, TUCSON WKLY., (May 3, 1999), available at http://weeklywire.com/ww/05-03-99/tw_feat.html (on file with the North Carolina Journal of Law & Technology).

²² Kurki & Morris, *supra* note 20, at 391 (noting the differences between modern Supermax prisons and maximum-security prisons built relatively recently).

²³ *Id.* at 389.

²⁴ Jerry R. DeMaio, *If You Build It, They Will Come: The Threat of Overclassification in Wisconsin’s Supermax Prison*, 2001 WIS. L. REV. 207, 207 (2001) (“Ostensibly, the purpose of a supermax prison is two fold: to help maintain order within the prison population as a whole and to ensure the safety of inmates and staff.”).

²⁵ *Id.* (“Prisoners at SMCI are subjected to the most intense and restrictive confinement available in the Wisconsin corrections system.”).

²⁶ Barbara Horwitz, *Behind Bars; Engineers Integrated 165 Security Cameras, Biometrics, Customized Controls, Smoke Control and a Heat-Recovery System to Produce Wisconsin’s New Cutting-Edge Maximum-Security Prison* CONSULTING-SPECIFYING ENGINEER, Dec. 1, 2001 (awarding the Consulting-Specifying Engineer Integrator Award in Institutional Construction to the builders of Wisconsin’s Supermax).

²⁷ *Id.*

²⁸ DeMaio, *supra* note 24, at 207.

and video technology permits the cells and the inmates to be monitored at all times.²⁹ In fact, all movement by a prisoner can be, and frequently is, conducted in isolation.³⁰ Wisconsin's *Capital Times* notes:

[I]nmates are kept in solitary confinement without windows to the outside for at least 23 hours a day, with prison officials monitoring them via cameras in the cells. They may spend up to four hours a week in an exercise area, a windowless concrete cell with little or no exercise equipment. . . . Many inmates can have phone calls lasting only 6 minutes a week; face-to-face visits with family members and friends are prohibited, but some are allowed contact via closed circuit TV.³¹

Supermax prison technology has changed the typical means of respite from isolation associated with traditional prison settings, such as visits, meals, and programming.³² Many Supermaxes conduct inmate visits exclusively via electronic audio/video technology, where a closed-circuit television replaces direct contact visits or even face-to-face visits behind bars and glass.³³

²⁹ *Id.* at 208 “They can be monitored at all times through cameras and audio hookups in their cells, and a high technology security system can control and track inmate movement throughout the facility.” *Id.*

³⁰ D.O.J. OVERVIEW, *supra* note 6, at 19–20 (“Most extended control facility designs incorporate single cells; a relatively small number of cells in each pod; and a remote central control booth that electronically operates cell doors, shower doors, unit doors and any number of other functions in several pods.”). *See also supra* note 21.

³¹ David Callender, *Suit Calls Supermax Incubator of Psychosis*, CAP. TIMES, June 30, 2001, available at 2001 WL 5893368 (on file with the North Carolina Journal of Law & Technology).

³² D.O.J. OVERVIEW, *supra* note 6, at 9–10. Programming is defined, in the Overview, as “education, work opportunities, exercise, and various other programs aimed at improving inmates behavior, knowledge, or skills.” *Id.*

³³ *See, e.g., Jones ‘El v. Berge*, 164 F. Supp. 2d 1096, 1098 (W.D. Wis. 2001) (“Visits other than with lawyers are conducted through video screens.”); DeMaio, *supra* note 24, at 207 (“Nearly all of an inmate’s contact with the outside world—visitors, education, and even religious services—comes through a video. . . .”); Kurki & Morris, *supra* note 20, at 390 (“Law library, religious, and educational materials are typically delivered to cells and if any substance abuse treatment, vocational training, or the like is available, it is provided

This technology is so effective that in Boscobel an inmate need not even leave his cell to “receive” a visitor.³⁴

The technological isolation imposed in Supermaxes does not stop at visits. Before the advent of the Supermax, a prison’s programming opportunities allowed inmates to leave their cells for vocational, educational, or spiritual training, or to receive medical and psychological evaluations.³⁵ When these programs and services are available, programming options are often conducted like visits, via closed circuit television in inmates’ cells.³⁶ Supermax technology even controls an inmate’s meals. Meals must be eaten in the cell, depriving inmates socializing opportunities during a shared meal. In addition, inmates may be fed Nutri-loaf, a tasteless but nutritious food that requires no utensils to eat.³⁷ The use of Nutri-loaf prompted one observer to note that “[t]he Supermax has thus improved on bread and water.”³⁸

Undeniably, Supermax prisons employ the latest technology available. While prison technology has developed at a rapid pace, our Eighth Amendment jurisprudence has not. As a result, our courts’ methods of interpreting what constitutes cruel and unusual punishment are outdated given technology’s significant impact on corrections facilities.

IV. Traditional Eighth Amendment Jurisprudence

Placing the Eighth Amendment in an historical perspective is necessary to predict future Eighth Amendment application in light of ever-changing prison technology. The Eighth Amendment of the U.S. Constitution states that “[e]xcessive bail shall not be

through television, correspondence, or written materials.”); TUCSON WKLY., *supra* note 21 (describing prisoners’ isolation and lack of variation in daily routines due to computerized cell control. The only human contact occurs when an officer slides three meals through a food trap in the cell door to the prisoner.)

³⁴ *Jones ‘El*, 164 F. Supp. 2d at 1101.

³⁵ D.O.J. OVERVIEW, *supra* note 6, at 9–10.

³⁶ *Jones ‘El*, 164 F. Supp. 2d at 1101.

³⁷ *Id.* at 1104 (recognizing that Nutri-loaf is not used for more than seven days and is used as a method of punishment).

³⁸ Kurki & Morris, *supra* note 20, at 400.

required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”³⁹ Naturally, what constitutes cruel and unusual punishment has been the subject of much debate. In one of its earliest considerations of the “cruel and unusual” clause, *Weems v. United States*,⁴⁰ the Supreme Court noted the relative lack of information regarding the Framers’ intent⁴¹ and suggested a flexible standard to interpret the phrase.⁴² According to the *Weems* Court, “[t]he clause of the Constitution, in the opinion of the learned commentators may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice.”⁴³

Weems provided an early framework for Eighth Amendment jurisprudence to be responsive to “humane justice.”⁴⁴ After *Weems*, the Court considered the case of *Trop v. Dulles*.⁴⁵ *Trop* placed the Eighth Amendment squarely within the consideration of contemporary standards of right and wrong and provided the starting point for modern-day Eighth Amendment analysis.⁴⁶ Chief Justice Warren, speaking for the majority, noted that “[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man,”⁴⁷ and further, “[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”⁴⁸ By creating a standard governed by moral and ethical considerations of the day, the Court created additional gray areas in an already ambiguous amendment.

³⁹ U.S. CONST. amend. VIII.

⁴⁰ *Weems v. United States*, 217 U.S. 349, 368–69 (1910) (holding that a sentence of 12 years imprisonment with hard labor was cruel and unusual punishment for the crime of falsification of records, and noting that “[w]hat constitutes cruel and unusual punishments has not exactly been decided. . . . The provision received very little debate in Congress.”).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 378.

⁴⁴ *Id.*

⁴⁵ *Trop v. Dulles*, 356 U.S. 86 (1958) (holding that revocation of citizenship for the crime of being a military deserter was cruel and unusual).

⁴⁶ *Id.* at 101.

⁴⁷ *Id.* at 100.

⁴⁸ *Id.* at 101.

The death penalty, society's most final and absolute punishment, provides a good illustration of this fluctuating standard. In the 1972 case *Furman v. Georgia*,⁴⁹ the Supreme Court determined that the death penalty as previously applied was unconstitutional.⁵⁰ Justice Douglas, in support of the judgment, reasoned that "[i]t would seem to be incontestable that the death penalty inflicted on one defendant is 'unusual' if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices."⁵¹

Roughly four years later, the Court considered another Georgia case, *Gregg v. Georgia*.⁵² In *Gregg*, the Court held that the death penalty was a constitutionally permissible punishment for a defendant sentenced to death under a new capital punishment framework.⁵³ Writing for the Court, Justice Stewart reiterated the evolving standard analysis:

It is clear . . . that the Eighth Amendment has not been regarded as a static concept. . . . Thus, an assessment of contemporary values concerning the infliction of a challenged sanction is relevant to the application of the Eighth Amendment. . . . [T]his assessment does not call for a subjective judgment. It requires, rather, that we look to objective indicia that reflect the public attitude toward a given sanction.⁵⁴

The court has considered the Eighth Amendment, however, in contexts broader than the death penalty.

In *Estelle v. Gamble*,⁵⁵ for example, the Court stated that an Eighth Amendment violation existed where there was "deliberate

⁴⁹ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁵⁰ *Id.*

⁵¹ *Id.* at 242.

⁵² *Gregg v. Georgia*, 428 U.S. 153 (1976) (holding the revised death penalty constitutional).

⁵³ *Id.* at 154.

⁵⁴ *Id.* at 172-73.

⁵⁵ *Estelle v. Gamble*, 429 U.S. 97 (1976) (holding that "the Amendment proscribes more than physically barbarous punishments" and finding an Eighth

indifference to serious medical needs of prisoners.”⁵⁶ *Estelle* definitively placed the Eighth Amendment in a broader context, a context beyond the physical torture and pain solely required for prior Eighth Amendment violations. A few years after *Estelle*, the Court heard *Hutto v. Finney*,⁵⁷ an especially important case given its consideration of prison conditions. The Supreme Court noted the District Court found the following conditions existing in the Arkansas prisons:

Confinement in punitive isolation was for an indeterminate period of time. An average of 4, and sometimes as many as 10 or 11, prisoners were crowded into windowless 8'x10' cells containing no furniture other than a source of water and a toilet that could only be flushed from outside the cell. At night the prisoners were given mattresses to spread on the floor. Although some prisoners suffered from infectious diseases such as hepatitis and venereal disease, mattresses were removed and jumbled together each morning, then returned to the cells at random in the evening. Prisoners in isolation received fewer than 1,000 calories a day; their meals consisted primarily of four inch squares of “grue,” a substance created by mashing meat, potatoes, oleo, syrup, vegetables, eggs and seasoning into a paste and baking the mixture in a pan.⁵⁸

The Court added that “[c]onfinement in a prison or in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards.”⁵⁹ The Supreme Court upheld the District Court’s ruling that the conditions in the Arkansas prison in question violated the cruel and unusual punishment provision of

Amendment violation where an inmate in a Texas prison was denied medical care).

⁵⁶ *Id.* at 104.

⁵⁷ *Hutto v. Finney*, 437 U.S. 678 (1978).

⁵⁸ *Id.* at 682–83.

⁵⁹ *Id.* at 683–85.

the Eighth Amendment.⁶⁰ However, the Court did not go so far as to say that punitive isolation was a “per se” violation of the Eighth Amendment.⁶¹

The Seventh Circuit considered punitive or administrative isolation in *Bono v. Saxbe*⁶² and found no Eighth Amendment violation existed.⁶³ In *Bono*, prisoners filed a class-action lawsuit on behalf of all present and future inmates of the Marion Penitentiary Control Unit, alleging that the prison conditions violated the Eighth Amendment.⁶⁴ Marion may be considered the first Supermax, creating a special unit in the early 1980s for disruptive prisoners and putting them on permanent lockdown.⁶⁵ Judge Wood described the conditions of confinement based on the appellants’ brief:

[E]ach inmate in the Control Unit is confined to a cell measuring 78 by 96 inches (length and breadth) and 100 inches high and may not participate in group activities available to the general prison population. Inmates are handcuffed upon leaving their cells (except for showering or recreation), and their access to the library is restricted. Personal property is limited and there are few opportunities to earn money. Prison officials exercise some discretion over what reading materials inmates may receive from outside the prison. “Contact” visits with family and friends are not permitted. Thus prisoners are separated from their visitors by a

⁶⁰ *Id.* at 681–82. “The routine conditions that the ordinary Arkansas convict had to endure were characterized by the District Court as ‘a dark and evil world completely alien to the free world.’ That characterization was amply supported by the evidence. The punishments for misconduct not serious enough to result in punitive isolation were cruel, unusual, and unpredictable.” *Id.*

⁶¹ *Id.*

⁶² 620 F.2d 609 (7th Cir. 1980).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ D.O.J. OVERVIEW, *supra* note 6, at 9–10. “Then in 1978, the level of assaults and violence directed toward staff and prison unrest prompted the development of a special high-security control unit at the U.S. Penitentiary in Marion, Illinois. In 1983, the deaths of two officers and an inmate resulted in this prison’s conversion to indefinite administrative segregation, or lockdown.” *Id.*

plexiglass partition and must communicate over telephones. Prisoners are 'strip searched' before and after such visits.⁶⁶

The Seventh Circuit ultimately determined that the conditions of confinement at Marion did not rise to the level of constitutional violations and distinguished them from the conditions in *Hutto*.⁶⁷ Other Circuits resolved cases similarly, noting that the Eighth Amendment governs prison conditions but rarely finding that the conditions in question rose to the level of a constitutional violation.⁶⁸

*Rhodes v. Chapman*⁶⁹ provided the Supreme Court with an opportunity to further develop Eighth Amendment jurisprudence. In *Rhodes*, the Court considered "double celling," or placing two inmates in one cell, as a potential violation of the Eighth Amendment.⁷⁰ Finding that the facts in *Rhodes* did not warrant a finding of cruel and unusual punishment, the Court set forth a test by which to consider what conditions violate the Eighth Amendment.⁷¹ This test allowed for prison conditions to be considered in the aggregate: "[c]onditions . . . alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual . . ."⁷² This test for evaluating prison conditions, subsequently termed a "totality of the circumstances" test,⁷³ would

⁶⁶ *Bono*, 620 F.2d at 611.

⁶⁷ *Id.* at 614 ("The conditions at Marion and the conduct of defendants in the instant case do not 'mirror' those in *Hutto*, and therefore, we see no reason to limit the use of administrative segregation in the instant case. . .").

⁶⁸ See *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986) (holding that complaints about medical care and denials of contact visits did not constitute Eighth Amendment violations); *Gibson v. Lynch*, 652 F.2d 348 (3d Cir. 1981) (holding that confinement to solitary conditions did not violate Eighth Amendment rights).

⁶⁹ *Rhodes v. Chapman*, 452 U.S. 337 (1981).

⁷⁰ *Id.* at 340-41.

⁷¹ *Id.* at 347.

⁷² *Id.*

⁷³ Russell W. Gray, Note: *Wilson v. Seiter: Defining the Components of and Proposing a Direction of Eighth Amendment Prison Condition Law*, 41 AM. U. L. REV. 1339, 1362 (1992).

face the Court's scrutiny in *Wilson v. Seiter*,⁷⁴ a case that unified previous jurisprudence concerning prison conditions and the Eighth Amendment.⁷⁵

Wilson represents the Supreme Court's most successful attempt to create a definite test with which to consider potential Eighth Amendment violations concerning prison conditions. *Wilson* articulated two requirements when determining whether a prison's conditions constitute an Eighth Amendment violation. First, prison officials must have a culpable state of mind, termed "deliberate indifference."⁷⁶ Justice Scalia noted that this requirement is implicit from earlier jurisprudence.⁷⁷ Scalia relies on the Court's holding in *Estelle v. Gamble* for the first part of the *Wilson* test mandating "deliberate indifference."⁷⁸ Second, there must be a showing of actual unconstitutional conditions denying a single human need.⁷⁹

In *Wilson*, the Court attempted to move away from previous Eighth Amendment tests by noting that "[n]othing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment."⁸⁰ The Court acknowledged the *Rhodes v. Chapman*⁸¹ test,⁸² which allowed for an aggregation of prison conditions, but interpreted it to mean that the aggregated conditions must combine to deprive inmates of a basic human need.⁸³ Thus, *Wilson* put the focus not so much on prison

⁷⁴ *Wilson v. Seiter*, 501 U.S. 294 (1991).

⁷⁵ Gray, *supra* note 73, at 1341 ("Thus the proper analysis of Eighth Amendment challenges to prison conditions under *Wilson* involves an objective and a subjective component: the conditions must be objectively severe, and the officials responsible for the conditions must be subjectively culpable.").

⁷⁶ *Wilson*, 501 U.S. at 299.

⁷⁷ *Id.*

⁷⁸ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) ("We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain.").

⁷⁹ *Wilson*, 501 U.S. at 305.

⁸⁰ *Id.*

⁸¹ *Rhodes v. Chapman*, 452 U.S. 337 (1981).

⁸² *Id.* at 347. "Conditions other than those in *Gamble* and *Hutto*, alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities." *Id.*

⁸³ *Wilson*, 501 U.S. at 304.

conditions but on what effect the conditions have on inmates. In *Wilson*, the Court refined the Eighth Amendment test to allow for a more consistent application, but in so doing it articulated a high culpability requirement on the part of prison officials coupled with the deprivation of basic human needs.⁸⁴

V. *Wilson* Applied Generally

In *Helling v. McKinney*,⁸⁵ the Court considered whether the effects of environmental tobacco smoke on an inmate in a confined cell could rise to the level of an Eighth Amendment violation.⁸⁶ Using *Wilson's* objective standard to consider the seriousness of harm⁸⁷ and a subjective standard by which to measure prison officials' culpability,⁸⁸ the Court determined that the objective component could be applied anticipatorily; that is, the harm need not have occurred to warrant an Eighth amendment violation.⁸⁹ The Court concluded that the Eighth Amendment requires "reasonable safety,"⁹⁰ which means that prison officials cannot "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year."⁹¹

Some conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise--for example, a low cell temperature at night combined with a failure to issue blankets.

Id.

⁸⁴ Gray, *supra* note 73, at 1389.

⁸⁵ *Helling v. McKinney*, 509 U.S. 25 (1993).

⁸⁶ *Id.* at 27-28 (noting that plaintiff Helling's cellmate "smoked five packs a day").

⁸⁷ *Wilson*, 501 U.S. at 298. See also Gray, *supra* note 73, at 1341.

⁸⁸ Gray, *supra* note 73, at 1341.

⁸⁹ *Helling*, 509 U.S. at 33.

⁹⁰ *Id.* at 33 (quoting *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 200 (1989)).

⁹¹ *Id.*

While *Helling* allowed the Court to expound upon the objective nature of the *Wilson* standard, *Farmer v. Brennan*⁹² provided the Court with an opportunity to expound upon the subjective component governing prison officials' state of mind. Justice Souter, writing for the Court in *Farmer*, places the deliberate indifference of prison officials required for an Eighth Amendment violation somewhere between "mere negligence" and "acts or omissions for the very purpose of causing harm or with knowledge that harm will result."⁹³ The result is a high standard for prison official culpability.⁹⁴ While the standard for culpability is high, the Court points out that knowledge of a serious risk of injury is sufficient to constitute deliberate indifference and a belief that serious injury will result from prison officials' action (or inaction) is not required.⁹⁵ Ultimately, both the objective conditions test and the subjective state of mind test must be satisfied for prison conditions to constitute an Eighth Amendment violation.⁹⁶

⁹² *Farmer v. Brennan*, 511 U.S. 825 (1994).

⁹³ *Id.* at 835.

⁹⁴ *Id.* at 837.

We hold . . . that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Id.

⁹⁵ *Id.* at 842 ("Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.").

⁹⁶ *Wilson v. Seiter*, 501 U.S. 294, 299 (1991). See also *Madrid v. Gomez*, 889 F. Supp. 1146, 1246 (N.D. Cal. 1995) (reiterating and applying the *Wilson* standard).

VI. Supermaxes and the Eighth Amendment Under the Wilson Standard

Wilson requires that allegations of Eighth Amendment violations for prison conditions meet a two-part test showing a culpable state of mind and a deprivation of a human need.⁹⁷ It is in this context that Supermax prisons must be examined. While the Eighth Amendment is no longer applied as arbitrarily as before *Wilson*, it still must be considered in light of the “evolving standards of decency” first pronounced by Chief Justice Warren in *Trop*⁹⁸ and reiterated in *Gregg v. Georgia*.⁹⁹ At least two district courts have scrutinized the conditions created by Supermax prisons in light of the Eighth Amendment and have found that in some circumstances the conditions created by technological isolation constituted cruel and unusual punishment.¹⁰⁰

*Madrid v. Gomez*¹⁰¹ was one of the first cases to subject a Supermax prison, California’s Pelican Bay State Prison’s Security Housing Unit (“SHU”), to Eighth Amendment scrutiny. In *Madrid*, the plaintiffs alleged that, among other things, the California Department of Corrections “impose[d] inhumane conditions in the Security Housing Unit.”¹⁰² Chief Judge Thelton Henderson of the District Court for the Northern District of California described the conditions in the SHU:

⁹⁷ Gray, *supra* note 73, at 1389.

⁹⁸ *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

⁹⁹ *Gregg v. Georgia*, 428 U.S. 153, 182 (1976) (“As we have seen, however, the Eighth Amendment demands more than that a challenged punishment be acceptable to contemporary society. The Court also must ask whether it comports with the basic concept of human dignity at the core of the Amendment.”).

¹⁰⁰ See, e.g., *Jones ‘El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001) (granting injunctive relief to petitioners claiming that Wisconsin’s Supermax Prison in Boscobel, Wisconsin, violated their Eighth Amendment right to be free from cruel and unusual punishment); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (finding an Eighth Amendment violation where mentally ill inmates in California were confined to Pelican Bay Penitentiary’s Security Housing Unit).

¹⁰¹ *Madrid*, 889 F. Supp. at 1146.

¹⁰² *Id.* at 1156.

Each cell is 80 square feet and comes equipped with two built-in bunks and a toilet-sink unit. Cell doors are made of heavy gauge perforated metal; this design prevents objects from being thrown through the door but also significantly blocks vision and light. A skylight in each pod does allow some natural light to enter the tier area adjacent to the cells; however, cells are primarily lit with a fluorescent light that can be operated by the inmate. . . . The overall effect of the SHU is one of stark sterility and unremitting monotony. Inmates can spend years without ever seeing any aspect of the outside world except for a small patch of sky. One inmate fairly described the SHU as being “like a space capsule where one is shot into space and left in isolation.”¹⁰³

Judge Thelton concluded, “those incarcerated in the SHU for any length of time are severely deprived of normal human contact regardless of whether they are single or double celled. As former Warden Fenton testified, conditions in SHU amount to a ‘virtual total deprivation, including, insofar as possible, deprivation of human contact.’”¹⁰⁴ The Court in *Madrid* determined that the ramifications of these technologically advanced prisons rise to a level of cruelty that violates mentally ill inmates’ Eighth Amendment rights.¹⁰⁵ The Court determined that Pelican Bay Prison officials manifested the deliberate indifference articulated in *Wilson* and later defined in *Farmer* necessary for an Eighth Amendment violation.¹⁰⁶ The Court found sufficient harm resulting from the conditions of confinement required to meet the second part of the *Wilson* test.¹⁰⁷

¹⁰³ *Id.* at 1228–29.

¹⁰⁴ *Id.* at 1230.

¹⁰⁵ *Id.* at 1278.

¹⁰⁶ *Id.* at 1255 (“Not only have plaintiffs established a pattern of excessive force at Pelican Bay that has caused sufficient harm to demonstrate the ‘infliction of pain’ on a classwide [sic] basis, but they have also shown that this pattern is attributable, not to inadvertence or mistake, but to defendants’ deliberate indifference and knowing willingness that harm occur.”).

¹⁰⁷ *Id.* at 1260.

The conditions of confinement in *Madrid* resulted in the severe isolation of inmates, and the court considered the effects of this isolation on inmates' mental health as it related to the Eighth Amendment.¹⁰⁸ The *Madrid* court concluded that conditions that inflict serious mental pain or injury implicate the Eighth Amendment¹⁰⁹ but found not all inmates in the SHU were sufficiently at risk of developing serious mental health problems as a result of their confinement.¹¹⁰ However, inmates who demonstrated a "particularly high risk for suffering very serious or severe injury to their mental health"¹¹¹ were removed from incarceration in the SHU.¹¹² Although not a total victory for the plaintiffs, *Madrid* represented an acknowledgement that conditions created by the SHU could be tantamount to constitutional violations.¹¹³

More recently, the Western District of Wisconsin considered Supermax prisons in *Jones 'El v. Berge*.¹¹⁴ In *Jones 'El*, inmates sought an injunction to terminate the practice of housing mentally ill inmates in Wisconsin's Supermax Correctional Institution in Boscobel.¹¹⁵ The court granted the injunction based upon its finding of the conditions created by the technologically advanced prison.¹¹⁶ According to the court:

Inmates on Level One at the State of Wisconsin's Supermax Correctional Institution in Boscobel, Wisconsin spend all but four hours per week confined to a cell. The 'boxcar' style door on the cell is solid except for a shutter and a trap door that opens into the dead space of a vestibule through which a guard may transfer items to the inmate

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 1265.

¹¹¹ *Id.*

¹¹² *Id.* at 1266.

¹¹³ *Madrid*, 889 F. Supp. at 1267.

¹¹⁴ *Jones 'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001).

¹¹⁵ *Id.* at 1098 (noting that the injunction also sought to compel independent psychiatric evaluation for all inmates not already evaluated to determine fitness to remain in the Supermax).

¹¹⁶ *Id.* at 1098–99.

without interacting with him. The cells are illuminated 24 hours a day. Inmates receive no outdoor exercise. Their personal possessions are severely restricted: one religious text, one box of legal materials and 25 personal letters. They are permitted no clocks, radios, watches, cassette players or televisions. The temperature fluctuates wildly, reaching extremely high and low temperatures depending on the season.¹¹⁷

Given these conditions, the district judge reached a conclusion similar to the one reached in *Madrid*: the extreme isolation and solitary nature of Supermax prisons inflicts unconstitutional hardship on mentally ill inmates.¹¹⁸ In granting its injunction prohibiting mentally ill inmates from being housed in Wisconsin's Supermax facility, the Court determined that there was sufficient evidence to warrant a finding under the *Wilson* standard that both the objective and subjective components of the Supreme Court's Eighth Amendment analysis were met.¹¹⁹ The Court notes that the Wisconsin Supermax's own procedures of screening inmates for mental illness when transferred to the unit support a finding of deliberate indifference.¹²⁰ Further, the serious risk of harm to

¹¹⁷ *Id.* at 1098.

¹¹⁸ *Id.* at 1117–18.

The almost complete isolation and sensory deprivation that constitute conditions of confinement in Levels One and Two at Supermax are not in dispute. What is in dispute is the extent to which these conditions constitute sufficiently serious conditions of confinement to implicate the protection of the Eighth Amendment for seriously mentally ill inmates confined there. Credible evidence indicates that Supermax is not appropriate for seriously mentally ill inmates because of the isolation resulting from the physical layout, the inadequate level of staffing and the customs and policies.

Id.

¹¹⁹ *Id.* at 1117.

¹²⁰ *Id.* at 1121. The defendants did not and could not argue that they were not aware of the risks of placing mentally ill inmates at Supermax because the presence of a Mental Health Screening Tool was a clear admission of understanding that such harsh conditions were inappropriate for that particular population. *Id.*

mentally ill inmates rises to a level of constitutional prohibition,¹²¹ thus completing the two-step *Wilson* analysis.

Coupled with *Madrid*, the *Jones 'El* decision to exclude mentally ill inmates from Supermax confinement provides needed support for future Eighth Amendment challenges. While these decisions granted relief only to mentally ill inmates, they laid the foundation for Eighth Amendment attacks on Supermax prison conditions by all inmates confined within their walls. Failure to build upon this foundation ignores the possibility that many American prisoners are being subjected to cruel and unusual punishment. Though still limited in number, arguments that Supermax prisons constitute cruel and unusual punishment find support not only in the courts¹²² but also among mental health professionals.¹²³

VII. Towards An Evolving Standard

Mental health professionals expressed concern about the effects of solitary confinement long before the advent of the modern Supermax.¹²⁴ With the new levels of isolation possible through Supermax technology, investigation into the mental health effects of such prisons is more essential than ever. If the Eighth Amendment is to retain its foundation in preserving the "dignity of man,"¹²⁵ adjudication of Eighth Amendment claims must occur in light of contemporary standards of decency, as articulated not by the general public but by mental health professionals who are

¹²¹ *Id.*

¹²² See, e.g., *id.* at 1096 (W.D. Wisc. 2001); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

¹²³ See Craig Haney, *Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law*, 3 PSYCHOL. PUB. POL'Y & L. 499 (1997) (analyzing the Eighth Amendment in a psychological context); Haney & Haney, *supra* note 8 (commenting on the relationship between the modern Supermax and traditional concerns among the mental health profession regarding solitary confinement).

¹²⁴ See, e.g., Haney & Haney, *supra* note 8, at 496–98 (discussing the history of psychological analysis of solitary confinement).

¹²⁵ *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

uniquely qualified to lead this debate.¹²⁶ Mere examination into the general public's opinion of Supermax prisons is insufficient, as this public opinion is in fact part of the reason why America's Supermax inmates are now in a precarious constitutional situation.¹²⁷

According to Craig Haney, a psychologist who has studied Supermax prisons extensively,¹²⁸ America's debate over the relationship between secure prisons and humane imprisonment is "lopsided;" it all but ignores the rights of prisoners to be free from the damage created by the severe isolation encountered in some prisons.¹²⁹ As Haney suggests, the psychological community must demand that potential Eighth Amendment violations be evaluated in light of psychologists' increasing awareness of the effects of isolation.¹³⁰ Despite the difficulty in replicating the actual effects of long-term Supermax isolation and confinement, several studies examine the effects of extreme isolation on inmates housed in Supermax and other maximum-security prison environments.¹³¹

¹²⁶ See *id.* at 501 ("[C]ontemporary psychological theory has the capacity to both rekindle a debate about humane limits to pain and provide a blueprint for creating an intelligent policy of crime control that does not sacrifice correctional justice.").

¹²⁷ See, e.g., Haney, *supra* note 123, at 529 ("Yet, the combination of these two broad trends—the overwhelming and still rising tide of prisoners and the dramatic shift in public opinion—seems to have dampened the enthusiasm of the courts for any further systematic and effective intervention into the cruelty of prison life.").

¹²⁸ See generally *id.* (examining the Eighth Amendment in light of contemporary prison psychology); Haney & Haney, *supra* note 8 (exploring modern prisons and their effect on inmates' mental health).

¹²⁹ Haney, *supra* note 123, at 500. "[T]he debate has been virtually suspended. The political mandate for social control has become so absolute that no countervailing values or interest are interposed to balance or leaven the pain that may be inflicted in the pursuit of civil order." *Id.*

¹³⁰ *Id.* at 501. "It is time for the discipline of psychology both to assume responsibility for its historical connection to the shape and direction of past correctional policies and to play a more significant role in developing pathways out of the current crisis." *Id.*

¹³¹ Haney & Haney, *supra* note 8, at 515–16. Although some isolation studies have been conducted in actual prison settings, these studies are significantly limited by the fact that the typical 4–10 day research period is much less than the isolation periods actually experienced by prisoners. *Id.*

These studies, despite their limitations, paint the picture of a stark environment with severe effects on their inhabitants' mental health.¹³² Some studies place the effects of isolation within the rubric of post-traumatic stress disorder ("PTSD").¹³³ Termed "complex PTSD," the effects of isolation can result in "protracted depression, apathy, and the development of a profound sense of hopelessness as the long-term psychological costs of adapting to an oppressive situation."¹³⁴ Prisoners subjected to the extreme isolation of Supermax prisons will face a test of their psychological health. Some prisoners will fail and be deemed unsuitable for confinement, while other successful candidates for Supermax-type confinement will develop clinical depression, paranoia, and psychosis to cope with the stress of their Supermax experience.¹³⁵

Mental health professionals are not the only members of society concerned about the advent and increased usage of Supermax prisons.¹³⁶ Walter Dickey, former Secretary of the Wisconsin Department to Corrections, has voiced his concerns

¹³² *Id.* at 517–18. Despite the limitations on isolation research, some valuable clinical data has emerged. In one study involving 21 isolated prisoners, three typical response patterns of the prisoners were noted: verbal aggression, physical destruction, and development of a fantasy world that included paranoid psychosis. These were accompanied by a reaction of uncontrolled rage and an increase in homicidal and suicidal tendencies. *Id.*

¹³³ Haney, *supra* note 123, at 538. Haney notes that the effects of extreme isolation were first identified as suggesting transient situational disturbance, a DSM-IV diagnosis. *Id.* However, given the long term effects which manifested themselves even after imprisonment ended, the more appropriate diagnosis was a type of post-traumatic stress disorder or PTSD. *Id.*

¹³⁴ *Id.* at 539.

¹³⁵ *Id.* at 540 ("Prison stress is an extreme test of the strength and resiliency of a prisoner's psychological makeup. Some fail the test. Thus, another group of prisoners adapt to the pains of imprisonment by developing classically diagnosable psychological disorders—clinical depression, paranoia, and psychosis.").

¹³⁶ See Schaeffer-Duffy, *supra* note 7 ("Human rights advocates and even some corrections officials say the policy [of increasing reliance on supermax security] has led to cruel and capricious confinements, an increase in prisoner abuse and even torture."). See also Haney, *supra* note 123, at 505 ("Many commentators have acknowledged what is now referred to as the 'national scandal of living conditions in American prisons.'").

about Wisconsin's Supermax prison in Boscobel.¹³⁷ According to Mr. Dickey, technology's role in Supermax prisons is not to be underestimated:

The desire for control coupled with advances in technology leads often to undue reliance on cameras, locks and isolation cells for security, when the best security is the product of human interaction. . . . When we are awash in the technology of inmate control, it is easy to forget that it is hard to harm someone who treats you decently, respectfully and firmly.¹³⁸

Mr. Dickey suggests that Wisconsin's Supermax should be converted into a traditional maximum-security prison, or alternatively, inmates should be rotated through the Supermax to share the burden equally.¹³⁹ Ultimately, Mr. Dickey concludes that Wisconsin's Supermax was a mistake and that any benefit gained is outweighed by the harm caused.¹⁴⁰

Perhaps most disturbing is the realization that Supermax prisons provide the positive features of safety and security, yet their inhabitants may be slowly going mad. As one psychologist points out, "studies have confirmed the value of psychological screening and training to prepare military personnel for assignment in Antarctica and other isolated and confined environments. These precautions appear necessary to minimize the negative effects of the environment on those who will live there."¹⁴¹ The military further strives to insulate individuals from the debilitating effects of sensory deprivation:

[A] special emphasis on "environmental design" is needed to minimize the effects of such isolation stress on human behavior. For example, research focused on maximizing the habitability of this kind

¹³⁷ Dickey, *supra* note 2.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* ("If we were really honest with ourselves, we'd admit that Supermax is wrong – a moral and practical mistake. We don't need it. It damages more than it helps.")

¹⁴¹ Haney & Haney, *supra* note 8, at 506–07.

of confinement and isolation indicates that “windows are a critical design feature” because they allow the entry of natural light, make it possible to communicate with the outside world, and reduce feelings of being cramped.¹⁴²

Contrast this to the description of conditions in Wisconsin’s Supermax prison found by the court in *Jones ‘El*:

A five-inch strip of opaque glass runs along the top edge of one wall of each cell. By standing on the bed and craning his neck, an inmate can glimpse the sky through a small sealed skylight. In general, seriously mentally ill inmates do not have the presence of mind to perform this maneuver. Inmates are not allowed to wear watches or have clocks and it is not easy for them to gauge time from the restricted view they have of the sky. . . . The constant illumination [artificial] disrupts their diurnal rhythm and adds to the sense of disorientation, especially when they do not know the time of day.¹⁴³

Supermax prisons intentionally impose enormous environmental challenges on prisoners that require strenuous Eighth Amendment scrutiny. Subjecting Supermaxes to the *Wilson* standard yields disturbing results. Supermax prisons are constructed with isolation in mind, and they employ the latest technology to ensure that extreme isolation is achieved.¹⁴⁴ Prison officials cannot deny knowledge of these intended effects of Supermax prisons.¹⁴⁵ Further, scholarship regarding the effects of isolation reveals a devastating effect on all inmates, especially those with mental illness.¹⁴⁶

The Supreme Court in *Farmer* makes clear that “an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it

¹⁴² *Id.* at 506–07.

¹⁴³ *Jones ‘El v. Berge*, 164 F. Supp. 2d 1096, 1099–100 (W.D. Wis. 2001).

¹⁴⁴ See *supra* notes 20–38 and accompanying text.

¹⁴⁵ See *supra* notes 124–143 and accompanying text.

¹⁴⁶ See *supra* notes 97–123 and accompanying text.

is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.”¹⁴⁷ A documented substantial risk of serious harm exists within the walls of Supermax prisons. Given the *Helling* Court’s conclusion that harm need not be presently manifested to warrant an Eighth Amendment violation, one can conclude that Supermax prisons currently represent an Eighth Amendment violation for all of their residents, not just the mentally ill.

VIII. Conclusion

Technological advancements of Supermax prisons allow for a level of isolation of inmates unrivaled in the history of corrections, yet technology unchecked can lead to undesired and unintended consequences. Supermaxes, designed and constructed with the noble goals of protecting staff and inmates, instead result in a level of isolation for Supermax inmates that may be a violation of the Eighth Amendment. Because these prisons are designed with isolation in mind, prison officials are not unaware of the reality or the consequences that these prisons impose. Further, mental health professionals conclude that the effects of such isolation can be devastating to inmates’ mental health. Supermaxes, while technologically advanced, require a corresponding commitment to protection of inmates’ mental health. Absent this commitment, Supermax prisons will continue to deprive their residents of their Eighth Amendment right to be free from cruel and unusual punishment. As one commentator notes, “[i]ronically, absent more meaningful, psychologically-informed legal restraints, intervention, and oversight, these ‘prisons of the future’ promise to return us to some of the worst norms of the nineteenth century.”¹⁴⁸

¹⁴⁷ *Farmer v. Brennan*, 511 U.S. 825, 842 (1994).

¹⁴⁸ *Haney & Haney*, *supra* note 8, at 570.

