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WHAT ARE CONSTITUTIONAL CONDITIONS AND WHAT CAN BE
DONE?**

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THE DILEMMA OF OVERCROWDING IN THE NATION'S PRISONS: WHAT ARE CONSTITUTIONAL CONDITIONS AND WHAT CAN BE DONE?

America's prison system is now in a crisis.¹ The dilemma is the result of overcrowding which has now reached epidemic proportions.² As a result of the rising prison populations, state and federal prisons on average have been operating at well over 120% of capacity.³ The growing prison population in the past two decades has induced a surge in the number of prison overcrowding cases.⁴ However, it was not until recently that the courts began to abandon their "hands-off" policy for dealing with matters of prison administration, reviewing prison conditions,

1. Gottfredson, *Institutional Responses to Prison Overcrowding*, 12 N.Y.U. REV. L. & SOC. CHANGE 259, 259 (1983-84).

2. *Id.* at 260; Austin, *Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy*, 32 CRIME & DELINQ. 404, 404 (1986). "More people, per capita, are in jail in the United States than in any other country on earth . . ." Barr, *US: World's Lock-'Em-Up Leader*, Christian Science Monitor, Mar. 7, 1991, at 12, col. 1.

3. Rossum, *The Problem of Prison Crowding: On the Limits of Prison Capacity and Judicial Capacity*, 1 BENCHMARK 22, 22 (1985). At the end of 1983, the national average capacity was about 110%. *Id.* Today, the state prison population averages 123% capacity while the federal prison population averages 156% capacity. Anderson, *Uncle Sam Gets Serious: A Report From the Front Line*, Feb. 1990 A.B.A. J. 60, 63 [hereinafter *Uncle Sam*]. At present, New Jersey's correctional institutions are filled to an average 118% capacity. Knox, *Prison Overcrowding Complicates Tough Job of a Corrections Officer*, Newark Star-Ledger, Oct. 8, 1989, § 1, at 68, col. 3. California, the state with the nation's largest state prison system, is routinely operating at 175% capacity. Malcolm, *More and More, Prison is America's Answer to Crime*, N.Y. Times, Nov. 26, 1989, § 4, at 1, col. 4. Incidentally, California's prisons are the most overcrowded in the nation and her prison population grows by an average of 250 detainees per week. *Uncle Sam*, *supra* at 63.

A facility's capacity is the function of occupancy (the number of inmate per confinement unit), freedom of movement within the prison, and density, or the square footage of living space available. Bolduc, *Jail Crowding*, 478 ANNALS 47, 50 (1985).

4. See Kessel, *Prisoners' Rights: Unconstitutional Prison Overcrowding*, 1986 ANN. SURV. AM. L. 737, 737-38; Rossum, *supra* note 3, at 22. A big prison case is one where inmates claim that the "basic ambient conditions of confinement — food, clothing, shelter, sanitation, living space, recreation, prison programs, and personal safety — are so inadequate that exposure to them constitutes cruel and unusual punishment . . ." Gottlieb, *The Legacy of Wolfish and Chapman: Some Thoughts About "Big Prison Case" Litigation in the 1980's*, in PRISONERS AND THE LAW § 2, at 3 (I. Robbins ed. 1985).

and responding positively to prisoners' cases.⁵

This Note will discuss the magnitude of the prison overcrowding problem, agency standards for prisons, the consequences of overcrowding, the role and scope of judicial review, the eighth amendment guarantees, and the possible remedies for the prison crisis.

I. BACKGROUND

A. Overcrowding

The rapid growth of prison populations is seen in the 122% increase during the 1970's.⁶ This increase would be less significant if there were a proportional increase in accommodations as well. However, the costs of new prison facilities are phenomenal⁷ and as a result, the rate of construction of new penal institutions lags far behind the rate of admittance of new inmates.⁸ What makes matters worse is that the overuse of existing facilities has hastened their expected life; many prisons are deteriorating so rapidly that they hardly meet modern standards of

5. See Robbins, *The Cry of Wolfish in the Federal Courts: The Future of Federal Judicial Intervention in Prison Administration*, 71 J. CRIM. L. & CRIMINOLOGY 211, 211 (1980); Herman, *Institutional Litigation in the Post-Chapman World*, 12 N.Y.U. REV. L. & SOC. CHANGE 299, 301-02 (1983-84); Rossum, *supra* note 3, at 22. For a discussion of the hands-off doctrine, see *infra* text at 6-9.

6. Rossum, *supra* note 3, at 22; see also Kennedy, *Prison Overcrowding: The Law's Dilemma*, 478 ANNALS 113, 115 (1985); McKay, *Prison Overcrowding: The Threat of the 1980's*, in PRISONERS AND THE LAW § 6, at 6 (I. Robbins ed. 1985). Between 1970 and 1983, the national prison population increased from 196,429 to 438,830. *Id.* As of June 30, 1989, the population in the nation's federal and state prisons reached its highest point in history: 673,565 inmates. This figure represents a six-month increase of 46,004 prisoners (+ 7.3%) since January 1989, a larger population increase in six months than the prison system has ever experienced in an entire year. Malcolm, *supra* note 3, § 4, at 1, col. 3.

7. A proposed 1,600 cell prison in Essex County, New Jersey will cost \$150 million, and the state has not been able to develop a financing scheme yet. *Judge Backs 'Public' Bail in Freeing 200 Essex Inmates to Ease Crowding*, Star-Ledger, Oct. 7, 1989, at 10, col. 4 [hereinafter *Judge Backs*]. A 776-cell facility that Kearny, New Jersey is presently constructing costs \$80 million. James, *8 Years and 3 Judges Later, Jail Still Crowded*, N.Y. Times, Jan. 1, 1990, at B4, col. 2. Philadelphia just cancelled plans to build a courthouse and jail complex because the city's budgeted \$170 million will not cover construction costs. Flicker, *To Jail or Not to Jail?*, Feb. 1990 A.B.A. J. 64, 64.

8. Bolduc, *supra* note 3, at 48.

habitability.⁹

This lag time amounts to excessive overcrowding in the present facilities. While excessive "overcrowding"¹⁰ appears to be a redundant term, it is most commentators' word of choice:

The topic is even more specific: it is "prison overcrowding." The choice of words is deliberate — not "crowding," but "overcrowding." It may seem redundant to add the intensifying prefix, but I do not think so. To describe the current state of many American jails and prisons as "crowded" must strike the affected prison administrators and inmates alike as an understatement. Prison officials customarily describe their units as "overcrowded," and that is surely no exaggeration of the unpleasant fact.¹¹

The immediate deleterious result of overcrowding in the prisons is the sleeping arrangements;¹² beds are set up in corridors,¹³ gymnasiums,¹⁴ and playing fields.¹⁵ Because much of the general public does not spend time in jail, one way to envision an overcrowded local jail is to

[e]nvision your local McDonald's restaurant with every seat at every table occupied, with twisted lines three people deep at every register waiting to order, with both restrooms full and lines of people waiting to use them, with lines at both the exit and entry, and with the regular

9. Kennedy, *supra* note 6, at 114.

10. Gottfredson, *supra* note 1, at 260.

11. McKay, *supra* note 6, at 5 (emphasis in original).

12. Prisoners with beds are often the more fortunate ones. Some jails cannot even provide beds for their inmates. See, e.g., *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 595 F. Supp. 1417 (1984) (numerous inmates sleep on the floor in all areas of the facility).

13. McKay, *supra* note 6, at 6.

14. Bolduc, *supra* note 3, at 48; Turner, *Response to Herman, Institutional Litigation in the Post-Chapman World*, 12 N.Y.U. REV. L. & SOC. CHANGE 329 (1983-84).

15. Kennedy, *supra* note 6, at 115 (San Quentin prison in California converted an old playing field to a complex of tents that house prisoners for whom no cell space is available inside the 100 year old structure); see *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 595 F. Supp. 1417 (1984).

staff working double time.¹⁶

The practices in the nation's prisons deviate from the recommended standards of virtually every agency and expert, and vary greatly.¹⁷ While no agency recommends double-celling inmates, the Supreme Court has refused to find double-celling in and of itself unconstitutional.¹⁸ Some of the recommended standards for inmate jail space include: 80 square feet by the National Advisory Commission on Criminal Justice Standards and Goals; 65 square feet by the United Nations; and 60 square feet by the American Correctional Association.¹⁹ The recommended standards are often not abided by and, because of swelling prison populations, more than two-thirds of the nation's inmates are housed in units that provide them with less than 60 square feet of floor space.²⁰

B. *The Consequences of Overcrowding*

"When jails and prisons are overcrowded, even the most benign administrators have difficulty with sanitation, feeding, recreation schedules, work arrangements, and health services."²¹ Overcrowding causes fire hazards,²² inadequate or delayed medical services,²³

16. Bolduc, *supra* note 3, at 48.

17. Gottfredson, *supra* note 1, at 261.

18. *Rhodes v. Chapman*, 452 U.S. 337 (1981). The Supreme Court found that "double celling made necessary by the unanticipated increase in prison population did not lead to deprivations of essential food, medical care, or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement." *Id.* at 348 (citing *Chapman v. Rhodes*, 434 F. Supp. 1007, 1018 (S.D. Ohio 1977)). The Court also found that the "limited work hours and delay before receiving education," which were both caused by the double-celling, did "not inflict pain, much less unnecessary and unwanted pain; deprivations of this kind simply are not punishments." *Id.* Ultimately, the Court concluded that there was no evidence that double-celling under the circumstances at the prison "either inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of [the] crimes warranting imprisonment." *Id.*

19. Gottfredson, *supra* note 1, at 261.

20. Rossum, *supra* note 3, at 22 n.2.

21. McKay, *supra* note 6, at 10.

22. *Inmates of Allegheny County Jail v. Wecht*, 874 F.2d 147, 149, 154 (3d Cir. 1989).

unsanitary food and kitchen conditions,²⁴ and increased rates of violence.²⁵ As one former inmate has noted, "[a] constant fear is that a fire may break out, and that, because of the crowding, inmates may not be evacuated in time and may get burned up, as happened in a recent jail fire in Mississippi."²⁶

Mental health care becomes more important in facilities with excessive populations.²⁷ The American Medical Association (AMA) has established three mental health care prerequisites for prisons: (1) safety and sanitation; (2) adequate staffing and security to prevent assault and suicide; and (3) trained personnel for treatment and close observation.²⁸ The Third Circuit has found that access to personnel qualified to diagnose and treat mental illness is a constitutional necessity.²⁹ Many prisons have found increased suicide rates when their facility's population

23. *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 595 F. Supp. 1417, 1422 (1984); *French v. Owens*, 777 F.2d 1250, 1254 (7th Cir. 1985); *Hoptowitz v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982).

24. *French*, 777 F.2d at 1255 ("The kitchen, commissary and food storage areas were unsanitary and infested with mice and roaches. . . . Pots and pans were covered with uncleanable grime.").

25. *McMurry v. Phelps*, 533 F. Supp. 742, 753 (W.D. La. 1982); see McKay, *supra* note 6, at 10-11. The Jailer's Daily Security Log at the Ouachita Parish Jail - population averages 140 inmates - reflects an unusually high rate of stabbings, assaults, fights, threats, suicide attempts, and self-mutilation. *McMurry*, 533 F. Supp. at 753 (in one two-day period alone: one inmate was hit with a broom by another inmate and required stitches; one inmate was beaten with a plunger handle, threatened with a knife, and raped; and one inmate swallowed wood splinters, pieces of plastic spoons, and 4 razor blades in a suicide attempt).

The incidence of rape within the prisons appears to increase with the population. In one southern facility, a 19 year old farm boy, who was sentenced for one year for possession of marijuana, was sent to a small cell block upon arriving at the prison. This cell block housed 11 inmates, but only had 4 beds. Upon his arrival in the cell, the 11 other inmates "sexually assaulted the boy for 48 hours, every hour on the hour." Donald P. Lay, *Our Justice System, So-Called*, N.Y. Times, Oct. 22, 1990, at A19, col. 4 (Editorial Desk) (Judge Lay is chief judge of the Eighth Circuit Court of Appeals).

26. Cobb, *Home Truths about Prison Overcrowding*, 478 ANNALS 73, 80 (1985) (Cobb, the author, is a former prisoner and prison activist).

27. See *Allegheny*, 874 F.2d at 153; McKay, *supra* note 6, at 11.

28. *Allegheny*, 874 F.2d at 153.

29. *Id.*

rises.³⁰

In addition to inadequate and delayed medical services, the AMA has found that excessively crowded confinement can cause new health problems.³¹ A study conducted by the AMA and the American Public Health Association found that "long-term crowding causes and accelerates the spread of communicable disease' and promotes heart attacks and high blood pressure."³² The AMA also found that the body's immunity to diseases decreases from the psychological pressures of crowded confinement and the density of germs.³³

The combined lack of adequate medical services, increased mental health problems, increased violence and suicides, fire safety hazards, and intolerable sanitation problems in kitchens amounts to inhumane confinement.³⁴ The unconstitutional conditions found in the Allegheny County Jail are the subject of a 13 year old ongoing battle in the Western District of Pennsylvania and the Third Circuit.³⁵ The conditions were summarized by the trial judge who found: "*The jail is now dangerously overcrowded. Fires and prisoner unrest are an ever-present danger in any penal setting. Here they could result in disaster. The Allegheny County Jail is a catastrophe waiting to happen.*"³⁶

II. THE COURT'S RESPONSE TO PRISON OVERCROWDING CASES

A. *Nonintervention: The Hands-Off Doctrine*

Prior to the mid 1960's, most courts declined jurisdiction over complaints filed by prison inmates and detainees regarding their conditions of confinement.³⁷ Nonintervention, known as the "hands-off"

30. *McMurry v. Phelps*, 533 F. Supp. 742, 753 (W.D. La. 1982). Incidentally, suicide was the leading cause of death in the nation's prisons during 1987, accounting for 43% of prisoners' deaths. U.S. Newswire, Feb. 4, 1990 (Washington D.C.).

31. *McKay*, *supra* note 6, at 11.

32. *Id.*

33. *Id.*

34. *See id.* at 10.

35. *Allegheny County Jail v. Wecht*, 874 F.2d 147 (3rd Cir. 1989).

36. *Inmates of Allegheny County Jail v. Wecht*, 565 F. Supp. 1278, 1281 (W.D. Pa. 1983) (emphasis in original).

37. *Gottlieb*, *supra* note 4, at 4; *see Robbins*, *supra* note 5, at 211. A detainee is a person who is being held in a jail before trial or sentencing, while a prisoner has been sentenced.

doctrine,³⁸ appears to have originated from the old nineteenth century belief that "the convict was no more than a 'slave of the State'" without enforceable rights.³⁹

One of the primary reasons the courts declined jurisdiction over prisoners' complaints was the separation of powers doctrine.⁴⁰ This theory evolved around the traditional argument that control over prisons rests with the legislative branch of the government.⁴¹ As a result, the courts viewed prisons as administrative agencies and utilized a highly deferential standard of review when confronted with a prison conditions case.⁴² Thus, prison officials enjoyed a presumption of validity for their actions and powers.⁴³ Other justifications for the court's hands-off policy were the demands of federalism, judicial inexperience, fear of undermining prisons' disciplinary systems, and the distinction between rights and privileges.⁴⁴

In addition to the policy justifications for nonintervention by the courts, prisoners had no remedy for their claims in the judicial system.⁴⁵ Courts refused writs of habeas corpus from persons legally convicted.⁴⁶ Also, § 1983 of the Civil Rights Act of 1964⁴⁷ was virtually inoperative

38. Robbins, *supra* note 5, at 211 n.10.

39. Gottlieb, *supra* note 4, at 4 (quoting *Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790, 796 (1871)); Robbins, *supra* note 5, at 211 (quoting *Ruffin*, 62 Va. (21 Gratt.) at 796).

40. The separation of powers rationale is comprised of two theories: control over prison management lies solely with the legislative branch of government; and federal and state statutes delegate exclusive responsibility for the administration of prisons to the executive branch of government, which includes broad discretion over general prison matters. Robbins, *supra* note 5, at 212.

41. *Id.*

42. The courts have used the traditional "arbitrary and capricious" standard of review. *Id.*

43. *Id.*

44. *Id.*; Gottlieb, *supra* note 4, at 4. The rights and privileges justification is based on two policies. First, courts denied review because they tended to label all features of prison existence as privileges. Robbins, *supra* note 5, at 213. The second policy revolves around the idea that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Id.* (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948)).

45. Gottlieb, *supra* note 4, at 4.

46. *Id.*; see, e.g., *Ex parte Dorr*, 44 U.S. 103 (1845) (courts cannot issue writs of habeas corpus to bring up a prisoner for any other purpose than to be used as a witness).

47. 42 U.S.C. § 1983 (1982).

for these types of cases because the courts did not believe the Act could apply to the misuse of state-delegated authority.⁴⁸ Thus, the courts refused to "entertain claims by prisoners that their constitutional rights were being violated,"⁴⁹ even if there were, in fact, violations.

B. *The Fall of the Hands-Off Doctrine*

By the early 1960's, a shift away from the hands-off policy was in sight.⁵⁰ The proposition articulated in a 1944 case, *Coffin v. Reichard*,⁵¹ was finally gaining support: "[a] prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law."⁵² The erosion of the hands-off policy was first evident in *Monroe v. Pape*,⁵³ when the Supreme Court held "that abuse of state-delegated authority constituted action under color of state law for purposes of section 1983 jurisdiction" under the Civil Rights Act of 1964.⁵⁴

In cases to follow, the hands-off policy slowly deteriorated. Prisoners are now able to obtain relief by filing a writ of habeas corpus.⁵⁵ More significantly, the Supreme Court applied the federal

48. Gottlieb, *supra* note 4, at 4.

49. Angelos & Jacobs, *Prison Overcrowding and the Law*, 478 ANNALS 100, 102 (1985).

50. Note, *Prisoners' Rights, Institutional Needs, and the Burger Court*, 72 VA. L. REV. 161, 163 (1986) [hereinafter *Burger Court*]; see Robbins, *supra* note 5, at 213; Gottlieb, *supra* note 4, at 5.

51. 143 F.2d 443 (6th Cir. 1944). *Coffin* concerned the sufficiency of a writ of habeas corpus. The Sixth Circuit granted the petitioner's writ and concluded that a petition for a writ of habeas corpus should be liberally construed and not harshly scrutinized. *Id.* at 444.

52. Robbins, *supra* note 5, at 213-14 (quoting *Coffin*, 143 F.2d at 445); see also *Burger Court*, *supra* note 50, at 163.

53. 365 U.S. 167 (1961). In *Monroe*, the Supreme Court determined the applicability of the Civil Rights Act to the City of Chicago and 13 members of its police force. The plaintiff, Mr. Monroe, alleged that members of the Chicago police force deprived him of his rights, privileges, and immunities granted by the Constitution within the meaning of R.S. § 1979 when they invaded his home, searched the house without a warrant, arrested him without a warrant, and detained him without either a warrant or arraignment. *Id.* at 169-70. The Court concluded that "Congress, in enacting § 1979, meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Id.* at 172 (citations omitted).

54. Gottlieb, *supra* note 4, at 5; see also Civil Rights Act 42 U.S.C. § 1983 (1982).

55. See Robbins, *supra* note 5, at 214 n.51.

Constitution's eighth amendment⁵⁶ protection against cruel and unusual punishment to invalidate a state criminal penalty.⁵⁷ The eighth amendment became the main route to relief for prison conditions cases.⁵⁸ Although quite illogical, the eighth amendment provided little sanctity for a prisoner who wished to contest the constitutionality of his confinement prior to the erosion of the hands-off doctrine.⁵⁹

The effects of overcrowding in prisons are now measured against the eighth amendment.⁶⁰ Of all of the tools now available to prisoners to assert their rights, the "[e]ighth amendment protection is one of the very few rights, perhaps the only right, whose meaning expands in the context of prison."⁶¹ However, the eighth amendment's power is actually negative because it limits the state's power to punish prisoners.⁶² One drawback of eighth amendment protection through judicial review is that the scope of the eighth amendment is not well defined.⁶³ Specifically, two critical questions that the Supreme Court has not directly addressed are (1) how is cruel and unusual punishment measured and (2) what minimum standard does the eighth amendment embody.⁶⁴

Even with the erosion of the hands-off policy and the establishment of a forum for prisoners to gain relief, the courts still give deference to the prison administrators when they show that a practice has legitimate purposes or that the prison administrator's judgment would best serve institutional security or the inmate's welfare.⁶⁵ Specifically, a condition which may be punitive in nature "may still be permissible if rationally related to an alternative legitimate penological objective."⁶⁶

56. U.S. CONST. amend. VIII (the eighth amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted").

57. Gottlieb, *supra* note 4, at 5.

58. Kessel, *supra* note 4, at 737.

59. Herman, *supra* note 5, at 306. The eighth amendment was designed to protect the rights of the convicted. *Id.* at 306 n.45.

60. *See, e.g.*, Tillery v. Owens, 719 F. Supp. 1256 (W.D. Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990).

61. Herman, *supra* note 5, at 306.

62. *Id.* "While first amendment or due process cases generally involve discrete, individual claims dependent upon discrete, individual facts, eighth amendment conditions claims tend to be collective and systemic." *Id.*

63. *Id.* at 309.

64. *Id.*

65. Robbins, *supra* note 5, at 215.

66. *Id.* at 217 (footnote omitted).

However, the courts continue to recognize "that a prisoner retains all of the rights of an ordinary citizen except those that are necessarily removed by incarceration."⁶⁷

III. THE COURT'S DETERMINATION OF WHAT PRISON CONDITIONS AMOUNT TO CRUEL AND UNUSUAL PUNISHMENT

Many commentators believe that without the help of the courts "in the area of prison reform it is unlikely that institutional conditions would be recognized as a national problem or that the improvements that have been accomplished throughout the country would have occurred."⁶⁸ The courts have employed various standards against which the eighth amendment has been measured. The Supreme Court addressed overcrowding and prison conditions with respect to the eighth amendment in the landmark case of *Rhodes v. Chapman*,⁶⁹ but did not devise a specific standard for lower courts to use when analyzing the eighth amendment.⁷⁰ As a result, courts look to *Chapman* for help with the standard, but are still free to fashion their own standard in prison conditions cases.⁷¹

A. Before *Rhodes v. Chapman*

The early prison conditions cases were mainly handled by the lower federal courts.⁷² Most courts utilized the eighth amendment as their "constitutional vehicle."⁷³ Cases challenging prison conditions arose in the early 1970's and evolved around the theories that the totality

67. Gottlieb, *supra* note 4, at 5 (footnote omitted) (citing *Moore v. Ciccone*, 459 F.2d 574, 576 (8th Cir. 1972); *Nolan v. Fitzpatrick*, 451 F.2d 545, 547 (1st Cir. 1971)).

68. Collins, *The Defense Perspective on Prison-Conditions Cases*, in *PRISONERS AND THE LAW* § 7, at 4 (I. Robbins ed. 1985); *see also* Herman, *supra* note 5, at 307 ("The need for intervention is indisputable, and the constitutional obligation of the courts to intervene is inescapable.").

69. 452 U.S. 337 (1981).

70. Kessel, *supra* note 4, at 739.

71. *Id.* at 741.

72. Collins, *supra* note 68, at 5; Gottlieb, *supra* note 4, at 5. The majority of the prison conditions caselaw was developing at the district and circuit court levels, since the Supreme Court did not grant *certiorari* until *Bell v. Wolfish*, 441 U.S. 520 (1979). *See* Collins, *supra* note 68, at 5.

73. Gottlieb, *supra* note 4, at 5.

of conditions endured by inmates imposed cruel and unusual punishment.⁷⁴ Faced with a complaint about the entire conditions of a prison, the courts took one of two approaches in reading the eighth amendment: (1) the totality of the condition and (2) the core-conditions.⁷⁵

1. *Totality of the Conditions*. — The totality of the conditions approach afforded the lower courts broad discretion to review all conditions at a prison and consider whether any of the conditions alone would be unconstitutional.⁷⁶ Many judges "unhesitatingly seized this opportunity" to examine prison conditions.⁷⁷ For instance, the courts looked at the quality of food, clothing, ventilation, fire hazards, noise, illumination, sanitation, protection from violence, and medical care as well as the degree of overcrowding, the access to recreation, and the ability to learn or work while in prison.⁷⁸ Virtually every condition, practice and activity at the prison in question was evaluated.

Once a court heard all the facts of a prison conditions case, it applied a test to determine whether the totality of conditions violated the eighth amendment.⁷⁹ The various tests used included "shock the conscience,"⁸⁰ "degeneration,"⁸¹ "compelling necessity,"⁸² and whether the "inadequate conditions amount to punishment."⁸³ The most

74. *Id.*; see, e.g., *Palmigiano v. Garrahy*, 443 F. Supp. 956 (D.R.I. 1977) ("The evidence is overwhelming that the totality of conditions of confinement in Maximum and Minimum [at this prison] do not provide the 'tolerable living environment.'"), *aff'd*, 616 F.2d 598 (1980), *cert. denied*, 449 U.S. 839 (1980); *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971).

75. *Gottlieb*, *supra* note 4, at 17-19. The courts continue to approach the eighth amendment in one of two approaches. The Ninth Circuit employs the core-conditions analysis, while the other circuits continue to use the totality-of-conditions analysis. *Id.* at 19.

76. *Collins*, *supra* note 68, at 5.

77. *Id.*

78. *Gottlieb*, *supra* note 4, at 5; see, e.g., *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), *aff'd in part, vacated and remanded in part*, 777 F.2d 1250 (7th Cir. 1985); *Madyun v. Thompson*, 657 F.2d 868 (7th Cir. 1981); *Palmigiano v. Garrahy*, 443 F. Supp. 956 (D.R.I. 1977), *remanded*, 599 F.2d 17 (1st Cir. 1979).

79. *Collins*, *supra* note 68, at 5.

80. *Id.*; see also *Gottlieb*, *supra* note 4, at 6.

81. *Gottlieb*, *supra* note 4, at 6.

82. *Bell v. Wolfish*, 441 U.S. 520 (1979); *Robbins*, *supra* note 5, at 217; *Rossum*, *supra* note 3, at 22.

83. *Robbins*, *supra* note 5, at 217; *Rossum*, *supra* note 3, at 22.

popular test under eighth amendment scrutiny was the shock the conscience test.⁸⁴ The compelling necessity test grew out of detainee conditions cases⁸⁵ adjudicated under the due process clause of the fourteenth amendment.⁸⁶ The compelling necessity test looked at whether a condition was typically characteristic of confinement. If the conditions in question were not inherent in confinement, they had to be "justified by a 'compelling necessity,' and that the means chosen had to be the 'least restrictive alternative'" in order not to violate the detainee's due process.⁸⁷ The compelling necessity test survived until the Supreme Court denounced it in 1979 and employed the "punishment" test.⁸⁸

2. *Core-Conditions Approach*. — Another method of analyzing whether the conditions in prisons amount to cruel and unusual punishment is the core-conditions approach.⁸⁹ This method continues to be favored by the Ninth Circuit.⁹⁰ Under the core-conditions method, the court narrowed the scope of the eighth amendment and focused on the core of eighth amendment: "adequate food, clothing, shelter, sanitation, medical care, and personal safety."⁹¹ Overcrowding by itself is not considered a core-condition within this approach.⁹²

Under the core-conditions method, several poor conditions that are not unconstitutional by themselves cannot be combined to result in an unconstitutional environment.⁹³ Also, conditions that are not considered

84. See *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970) (Confinement may amount to cruel and unusual punishment when it "is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people . . ."), *aff'd*, 442 F.2d 304, 309 (8th Cir. 1971).

85. A detainee is an arrested suspect awaiting trial while a prisoner is someone who has been convicted and sentenced.

86. *Gottlieb*, *supra* note 4, at 7.

87. *Id.* (footnote omitted).

88. *Id.* at 10; *Bell v. Wolfish*, 441 U.S. 520 (1979).

89. *Gottlieb*, *supra* note 4, at 17-19.

90. *Id.* at 18 (the Ninth Circuit favors the core-conditions approach because it gives a more narrow focus to the eighth amendment).

91. *Id.*

92. *Id.* The Ninth Circuit's specific category of core conditions are adequate food, clothing, shelter, sanitation, medical care, and personal safety. *Id.* The core-conditions analysis is based on the premise that deprivations in non-core areas are not suspect to an eighth amendment violation unless they produce a core-area deficiency. *Id.* Therefore, overcrowding alone will never give rise to unconstitutional conditions unless it causes a deterioration in one of the enumerated core-conditions. *Id.*

93. *Id.*

core to the eighth amendment are not examined unless they are the source of an inadequate core-condition.⁹⁴ The narrower focus of the core-conditions test makes it more difficult to successfully attack the eighth amendment than it is under the totality of the conditions approach.⁹⁵

B. Modern Prison Overcrowding Jurisprudence

1. *Rhodes v. Chapman*. — *Rhodes v. Chapman*⁹⁶ was the "[f]irst case in which the Supreme Court was called upon to discuss the interplay between general prison conditions and the eighth amendment's ban on cruel and unusual punishment."⁹⁷ In *Chapman*, the Supreme Court addressed the constitutionality of double-celling at the Southern Ohio Correctional Facility (SOCF).⁹⁸ The prisoners' complaint alleged that double-celling confined cellmates too closely.⁹⁹ The district court made extensive findings of fact about SOCF; specifically, SOCF had gymnasiums, workshops, schoolrooms, dayrooms, two chapels, a hospital ward, commissary, barbershop, and library.¹⁰⁰ Most of the prisoners at SOCF had the option of spending the majority "of their waking hours outside their cells, in the dayrooms, school, workshops, library, visits, meals, or showers."¹⁰¹ Furthermore, the district court found that SOCF's food and air ventilation system were adequate, the temperature in the cellblocks was well controlled and the cells were relatively clean and odor free.¹⁰²

Although the district court characterized SOCF as "unquestionably a top-flight, first-class facility,"¹⁰³ it still concluded that the double-celling at SOCF was cruel and unusual punishment.¹⁰⁴ The district court based its decision on five factors: (1) the long prison terms SOCF inmates serve; (2) the degree of crowding at SOCF; (3) the

94. *Id.*

95. *Id.*

96. 452 U.S. 337 (1981).

97. Herman, *supra* note 5, at 299.

98. *Chapman*, 452 U.S. at 339.

99. *Id.* at 340.

100. *Id.*

101. *Id.* at 341.

102. *Id.* at 342.

103. *Id.* at 341 (quoting *Chapman v. Rhodes*, 434 F. Supp. 1007, 1009 (S.D. Ohio 1977)).

104. *Id.* at 343.

reduced square footage of living quarters double-celling causes; (4) the amount of time a double-celled inmate spends in his cell with his cellmate; and (5) the permanency of the double-celling practice.¹⁰⁵ The Sixth Circuit Court of Appeals affirmed and read the District Court's conclusion as holding that "double celling is cruel and unusual punishment under the circumstances at SOCF."¹⁰⁶ On appeal, the Supreme Court reversed.¹⁰⁷

The Supreme Court noted that double-celling at SOCF "did not lead to deprivations of essential food, medical care, or sanitation" and did not "increase violence among inmates"¹⁰⁸ The Supreme Court held that double-celling is not *per se* unconstitutional.¹⁰⁹ In reaching its conclusion, the Court applied various principles to determine when conditions of confinement amount to cruel and unusual punishment.¹¹⁰ The Court determined that "[c]onditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment."¹¹¹ The Court said to determine whether conditions are unconstitutional, the inquiry must focus on "contemporary standards."¹¹² Conditions may deprive inmates of the minimal civilized measure of life's necessities and still be constitutional. More importantly, the Court said that "[t]o the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society."¹¹³

The Supreme Court also cautioned lower courts from subjectively determining "how best to operate a detention facility" and to use constitutional requirements that reflect findings of fact.¹¹⁴ However, *Rhodes* reaffirmed that "[c]ourts certainly have a responsibility to scrutinize claims of cruel and unusual confinement"¹¹⁵ By stating that conditions "alone or in combination" may constitute cruel and unusual punishment, the Supreme Court, in *Rhodes*, left open the ability to

105. *Id.* at 343-44.

106. *Id.* at 344.

107. *Id.*

108. *Id.* at 348; *see also* Kessel, *supra* note 4, at 738-39.

109. *Chapman*, 452 U.S. at 344.

110. *Id.* at 346-47.

111. *Id.* at 347.

112. *Id.*

113. *Id.*

114. *Id.* at 351 (quoting *Bell v. Wolfish*, 441 U.S. 520, 539 (1979)).

115. *Id.* at 352.

analyze cases using the totality of the conditions method.¹¹⁶

Rhodes reduced agency standards for cell space to nothing more than interesting information because cell space was not used as a standard under the eighth amendment.¹¹⁷ *Rhodes* also gave very little guidance for the lower courts to follow¹¹⁸ and, at most, sent them conflicting signals.¹¹⁹ As a result, the lower courts have interpreted *Rhodes* differently and arrived at contrasting decisions.¹²⁰ Although the Supreme Court affirmed the need for judicial restraint with prison litigation, "[p]ost-*Rhodes* decisions demonstrate that lower courts have been willing to assert this authority to rectify the more extreme cases of prison overcrowding."¹²¹ Many lower courts have condemned double-celling and overcrowding and easily distinguish *Rhodes* "as being virtually inapplicable to older prison facilities."¹²²

2. *After Rhodes v. Chapman*. — The *Rhodes* holding has clearly not stopped the flow of litigation from prisoners advocating their rights.¹²³ Many of these cases successfully attack the eighth amendment because so many prisons are grossly deficient in numerous ways.¹²⁴ Because overcrowding and double-celling have not been deemed unconstitutional *per se*, the lower courts "must, in each of these cases, determine whether, and to what extent, crowding has caused 'deprivation of basic human needs' before they can order relief from the offending conditions."¹²⁵

In *Delgado v. Cady*,¹²⁶ the District Court for the Eastern District of Wisconsin "proceeded cautiously in addressing the problem of prison overcrowding, coupling a recognition of prisoners' rights with a conservative remedial approach."¹²⁷ *Delgado* involved the Waupun Correctional Institution (WCI) in Wisconsin.¹²⁸ The court held that the 10 to 17 square feet of living space per inmate in most of the doubled cell

116. *Id.* at 347.

117. Collins, *supra* note 68, at 6.

118. Gottlieb, *supra* note 4, at 7.

119. Kessel, *supra* note 4, at 740.

120. Gottlieb, *supra* note 4, at 17.

121. Kessel, *supra* note 4, at 741.

122. Gottlieb, *supra* note 4, at 17.

123. See Angelos & Jacobs, *supra* note 49, at 105.

124. *Id.* at 106.

125. *Id.*

126. 576 F. Supp. 1446 (E.D. Wis. 1983).

127. Kessel, *supra* note 4, at 741.

128. *Delgado*, 576 F. Supp. at 1447.

was constitutionally adequate.¹²⁹ However, WCI had a practice of purposely double-celling some inmates displaying suicidal tendencies with non-suicidal ones.¹³⁰ The court held that coerced double-celling of suicidal prisoners solely to act as a prophylactic agent is cruel and unusual punishment.¹³¹ The court also held that triple-celling inmates as a permanent condition would not be constitutional, but is an adequate temporary response to the situation at hand.¹³²

The Eastern District followed the Seventh Circuit's method of analyzing prison conditions.¹³³ That is, the court used the totality of the conditions of confinement approach to determine whether the conditions amount to cruel and unusual punishment under the eighth amendment in light of contemporary standards of decency.¹³⁴ The court did sustain some of the prisoners' complaints,¹³⁵ and did appear to be sensitive to the prisoners' needs.¹³⁶ However, the court deferred to the prison

129. *Id.* at 1451.

130. *Id.* at 1451-52.

131. *Id.* at 1452.

132. *Id.* at 1456. Prisoners at WCI were tripled celled only after disturbances at the facility which were initiated by the inmates. The Court found that triple celling as a response to a riot or disturbance created by the inmates' own actions is not unconstitutional. *Id.*

133. *Id.*

134. *Id.* at 1457.

135. The case originated from a complaint filed by one prisoner which alleged that the practice of double-celling prisoners at WCI violated the eighth amendment. *Id.* at 1447. The case later evolved into a class action. *Id.* The basis of the class suit was whether the following practices at WCI were constitutional: double-celling; coerced double-celling of inmates with suicidal inmates; WCI's failure to efficiently screen mentally disturbed inmates before double-celling them; triple-celling; indifference of correctional staff to inmates' double-celling complaints; macing of double-celled inmates; staff encouraged violence; and reductions in access to prison programs. *Id.* at 1448-57. The only practices at WCI that the court held unconstitutional were: triple-celling of inmates as more than a temporary remedy to a safety issue at the facility; coerced double-celling of inmates with suicidal tendencies; and the system for identifying prisoners with serious mental problems. *Id.* at 1457.

136. *Delgado*, 576 F. Supp. at 1457. The Court stated that it did "not wish to leave any false impression that it approves of double celling as a matter of penological practice." *Id.*; see also *Kessel*, *supra* note 4, at 742. Furthermore, the Court noted that double-celling

is also among the most debasing and most dehumanizing aspects of present prison life. It rips away the sense of privacy — of dignity — which can make bearable many things which

administration to remedy the situation. "By refusing to order a meaningful remedy, the court's findings of unconstitutionality become hollow."¹³⁷ Thus, the cautious approach used by the district court in *Delgado* is not an effective method of protecting prisoners from intolerable conditions.¹³⁸

A Seventh Circuit case that is much more meaningful for prisoners is *French v. Owens*.¹³⁹ The Seventh Circuit held that overcrowding and double-celling at the Indiana Reformatory at Pendleton (Pendleton) constituted cruel and unusual punishment.¹⁴⁰ At Pendleton, almost half of the prisoners were double-celled and were afforded 24 square feet of gross space per person.¹⁴¹ In many of the double cells, the ceilings were low and inmates on the top bunks could not sit up in bed.¹⁴² The cells were so small and crowded that even a chair could not fit in, and subsequently, some of these inmates developed back problems.¹⁴³ Also, almost half of the double-celled prisoners spent up to 20 to 23 hours a day together in their cell.¹⁴⁴

The severe overcrowding and the deterioration of the facility also caused deplorable conditions that were deemed unconstitutional. The district court found that all cells were inadequately ventilated: no heat in the winter and no air circulation in the summer.¹⁴⁵ Additionally, the cells were dirty and odorous, toilets were "virtually uncleanable," lighting was poor, and cells had no hot running water.¹⁴⁶ The quality of medical

could not otherwise be endured. Each human being needs a spot to which he can retreat periodically. He needs a place which belongs to him, albeit temporarily. With double celling, all shreds of such privacy are gone.

Delgado, 576 F. Supp. at 1448. However, the Court was constrained and did not believe that "under the current state of the law that it is unconstitutional per se." *Id.* at 1457.

137. Kessel, *supra* note 4, at 743.

138. *Id.* at 743.

139. 777 F.2d 1250 (7th Cir. 1985).

140. *Id.* at 1252.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

care was also held to be unconstitutional.¹⁴⁷ Pendleton only employed one full-time physician to attend to almost 200 requests for medical care a day.¹⁴⁸ Finally, the district court found that the food and kitchen facilities violated constitutional standards.¹⁴⁹

The Seventh Circuit upheld the district court's finding that overcrowding, double-celling, medical care, and kitchen services were below constitutional standards.¹⁵⁰ The court felt that because of the intolerable circumstances at Pendleton, a complete ban on double-celling is fully justifiable.¹⁵¹ The Seventh Circuit also easily distinguished Pendleton from the prison in *Rhodes*, since "[t]he institution in *Rhodes* . . . was described as a 'top-flight, first class facility.'"¹⁵² However, the court did follow the *Rhodes* principles of what may lead to cruel and unusual punishment. The Seventh Circuit determines whether "there have been 'serious deprivations of basic human needs' by examining the 'totality of conditions of confinement.'"¹⁵³ The Seventh Circuit also believes that the district courts have broad discretion to fashion remedies to permanently correct unconstitutional conditions.¹⁵⁴

In 1983, the Third Circuit, in *Union County Jail Inmates v. Di Buono*,¹⁵⁵ overturned a district court finding that overcrowding was unconstitutional. The Union County Jail was double-celling inmates and some inmates were sleeping on mattresses on the floor of the cells.¹⁵⁶ The district court's finding was based primarily on the prisoner's space in the facility.¹⁵⁷ The Commissioner had offered remedies to the

147. *Id.* at 1254.

148. *Id.* To add insult to injury, the one physician speaks very little English. *Id.*

149. "The kitchen, commissary and food storage areas were unsanitary and infested with mice and roaches. The floor was found uncleanable due to holes, cracks, crevices, missing tile and gross porosity. Some of the ceiling was missing. Pots and pans were covered with uncleanable grime." *Id.* at 1255.

150. *Id.* at 1258.

151. *Id.* at 1253.

152. *Id.* at 1252 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 341 (1981)) (emphasis added).

153. *Id.* (citations omitted) (quoting *Chapman*, 452 U.S. at 347; *Madyun v. Thompson*, 657 F.2d 868, 874 (7th Cir. 1981)).

154. *Id.* at 1253.

155. 713 F.2d 984 (3d Cir. 1983).

156. *Id.* at 989.

157. *Id.* at 999.

situation which the district court rejected, favoring its own remedy.¹⁵⁸

The Third Circuit reversed because the district court relied too heavily on space considerations, and believed that the prison commissioner's proposals, if fully implemented, would have alleviated the situation.¹⁵⁹ Following *Rhodes*, the court felt that the double-celling at issue was not very different from the "harshness sanctioned by *Rhodes*."¹⁶⁰ The Third Circuit's decision in *Union County Jail* greatly restricts district courts' discretion in adjudicating prison conditions cases by substituting a policy of extraordinary deference to institutional suggestions for improvement.¹⁶¹

A year later, a district court in the Third Circuit held that the severe overcrowding at the Monmouth County Correctional Institute (MCCI) and its resulting conditions were unconstitutional.¹⁶² The district court ordered a population cap on the facility as well as other remedial measures.¹⁶³ Overcrowding at MCCI had a deleterious effect on virtually all aspects of life at the prison. The court found that as a

158. *Id.* 1001-03. The Commissioner proposed that the objectionable conditions at the Union County jail could be alleviated by installing bunk-beds in the cells, providing clean clothes to inmates at least once a week, and initiating a medical screening procedure. The district court ignored the Commissioner's findings and adopted verbatim the findings of the appointed Special Master. *Id.* at 989.

159. *Id.* at 1001-03.

160. Gottlieb, *supra* note 4, at 22-23.

161. *Id.* at 23. The Third Circuit admonished the lower court's exercise of broad discretion in fashioning its remedy. *Union County Jail*, 713 F.2d at 1001-03. The Third Circuit stated that the "Eighth Amendment does not give a federal court 'a roving commission to impose upon the [correctional institutions of New Jersey its] own notions of enlightened policy.'" *Id.* at 1001 (quoting *Rummel v. Estelle*, 445 U.S. 263, 285 (1980) (Stewart, J., concurring)). Furthermore, "the federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs" *Id.* (quoting *Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977)). "What this means in practice is that 'state and local authorities have primary responsibility for curing constitutional violation.'" *Id.* (quoting *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978)).

162. *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 595 F. Supp. 1417 (D.N.J. 1984).

163. *Id.* at 1439-40. The other remedies fashioned by the district court were: renovating the MCCI facility with regard to lighting, ventilation, heating and plumbing fixtures; allowing inmates one hour of meaningful recreation per day except in emergency situations; giving all inmates a bed, mattress, and bedding; initiating a meaningful classification system for inmates; increasing visitation hours; adding an additional nurse; and screening inmates for medical purposes before they are released into the population. *Id.* at 1440.

result of overcrowding, many inmates slept on the floor in all areas of the facility, including dormitories, dayrooms, cell blocks, and anterooms.¹⁶⁴ Some of these inmates had no mattresses and sometimes slept with only a sheet or blanket on the floor.¹⁶⁵ Furthermore, inmates had been sleeping on tables in the dayroom, in the shower areas, and in the corridors of the cell blocks and that some inmates had been sleeping without a mattress for over four months.¹⁶⁶ Sleeping accommodations at MCCI "were the subject of a general free-for-all among inmates;" the bunks and mattresses were allocated to the more powerful and violent inmates, regardless of their seniority at the facility.¹⁶⁷

Inmates housed in the cellblocks and other common areas often had no access to the toilets which were located in the cells because the cells were usually locked.¹⁶⁸ Inmates who were "unable to obtain the attention of a guard to unlock the cells so that they may utilize the toilets or urinals . . . have on occasion been required to urinate into paper cups and pour their urine down drains"169 Many of the existing toilets and sinks at MCCI are often out of order, a condition which intensifies when more inmates use the facilities.¹⁷⁰

Aside from unendurable living arrangements at MCCI, medical services were deficient for numerous reasons, mentally and emotionally ill inmates were housed in tight quarters with the general prison population, and active recreation was often unavailable.¹⁷¹ MCCI was also not properly heated or ventilated and was a fire hazard.¹⁷² The district court looked at the totality of these conditions and to whether they amounted to cruel and unusual punishment in light of evolving standards

164. *Id.* at 1421.

165. *Id.*

166. *Id.* at 1421-22.

167. *Id.* at 1422.

168. *Id.* at 1423.

169. *Id.*

170. *Id.* Both the State and County admitted that "usually one or more of the plumbing fixtures in each dorm is out of order at any one time." *Id.* at 1430 (quoting Plaintiffs' Exhibit Nos. 34 and 35). The State also admitted that "showers, toilets and urinals . . . have been inoperable for considerable periods of time and that inmates must use newspapers to cover toilets which are not in use." *Id.*

171. *Id.* at 1430-31.

172. *Id.* The State admitted that the jail does not have an adequate system of fire protection and the County admitted that the jail is not properly heated or ventilated so that seasonal temperatures result in great discomfort, increased tension, and hostility among inmates and between inmates and officers. *Id.* at 1430.

of decency.¹⁷³ Distinguishing MCCI from the *Union County Jail* case, the court found that the inmates at MCCI were deprived of basic human needs such as "habitable shelter" and were forced to endure conditions which amounted to an unnecessary infliction of pain.¹⁷⁴

In 1990, the Third Circuit again found that the conditions of confinement in a prison in its jurisdiction were in violation of the eighth amendment.¹⁷⁵ *Tillery v. Owens* involves the State Correctional Institution at Pittsburgh (SCIP). SCIP instituted double-celling in 1982, when it first experienced overcrowding.¹⁷⁶ SCIP has since evolved into an overcrowded and understaffed¹⁷⁷ institution which has caused "increased stress, anxiety, depression and 'the opportunity for predatory activities and [has] facilitated the spread of disease, already extant due to the unsanitary conditions.'"¹⁷⁸

The overcrowding at SCIP led to increased violence,¹⁷⁹ a shortage of basic supplies,¹⁸⁰ grossly inadequate ventilation,¹⁸¹ an

173. *Id.* at 1428-29.

174. *Id.* at 1438 (another distinguishing factor was that full double bunking at MCCI for sentenced inmates would not cure the conditions as proposed in Union County jail situation).

175. *Tillery v. Owens*, 907 F.2d 418 (3d Cir. 1990), *aff'g* 719 F. Supp. 1256 (W.D. Pa. 1989).

176. *Tillery*, 907 F.2d at 421 ("At the time of trial, SCIP housed 1,802 inmates, approximately 1,182 of whom were double-celled."). The district court found that the doubled cells were so small that "only one inmate at a time can stand in the cell; the other must lie on the bed." *Tillery*, 719 F. Supp. at 1264 (a judge who toured the prison was unable to turn around in the cell, and had to back out of it to exit).

177. "The lack of adequate corrections staffing at SCIP . . . created a dangerous living environment for SCIP inmates." *Tillery*, 719 F. Supp. at 1274.

178. *Tillery*, 907 F.2d at 428 (quoting *Tillery*, 719 F. Supp. at 1267).

179. Violence is attributable to the availability of weapons at SCIP and is facilitated by inadequate staffing. *Tillery*, 719 F. Supp. at 1274-75. The recreation areas at SCIP are "virtual dens for violence." *Id.* at 1275. Assaults, stabbings, rapes, and gang fights occur frequently in the auditorium and gymnasium. As a result, approximately 25% of SCIP inmates will not go there because of the violence. *Id.*

180. Many inmates never receive underwear, towels, bedding and jackets. "Inmates must often 'borrow' these items from other prisoners, and must pay for them with either usurious interest rates or sexual favors." *Id.* at 1269.

181. The expert who testified for the defendants stated that "the ventilation in the cells is wholly inadequate." *Id.* at 1265. There is a "paucity of air movement" in many of the cells, and a lack of temperature control in all of the cells. *Id.*

infestation of vermin,¹⁸² inadequate and hazardous plumbing,¹⁸³ poor fire safety,¹⁸⁴ and deficient medical care.¹⁸⁵ "It is within this squalid, dangerous and overcrowded environment that double-celling takes place."¹⁸⁶ Analyzing the conditions in light of the district court's findings and the eighth amendment, the Third Circuit did not hesitate to affirm the lower court's findings that double-celling at SCIP violates the eighth amendment.¹⁸⁷

Unlike the other circuits, the Ninth Circuit appears to be the only one which rejects the totality of the conditions approach when analyzing prison conditions. In *Hoptowit v. Ray*,¹⁸⁸ the district court found that the prison in question was unconstitutionally overcrowded and that this caused other deficiencies at the prison.¹⁸⁹ Among the problems the district court found were: high levels of violence among inmates and between inmates and guards; substandard medical care; and deteriorating facilities.¹⁹⁰

In spite of the district court's findings, the Ninth Circuit reversed and held that the lower court improperly applied the totality of the conditions approach.¹⁹¹ Also, the Ninth Circuit reaffirmed the policy

182. Two of the cell blocks in the prison, North and South, are infested with mice. *Id.* at 1265. Also, "endemic bed bugs occupy the institution . . ." *Id.* The mattresses in the North and South blocks are "infested with bed bugs, cannot be cleaned, and in fact, are not sanitized between users." *Id.*

183. The toilets in the cells are made of old, cracked and porous china. "These cracks harbor a buildup of urine sediment, resulting in noxious odors. . . . Rough concrete walls prevent adequate clean-up of urine splashed on the back and side walls. . . . Water puddles on the cell floors . . . provide a living environment conducive to roach and rodent infestations." *Id.* at 1266.

The showers facilities at SCIP are poorly supervised, are encrusted with dirt, bacterial slime and fungus, and are often in disrepair. *Id.*

184. The prison lacks major "fire protection devices, such as stand pipes, fire alarms, sprinkler systems, or automatic fire detection and notification systems . . ." *Id.* at 1277. Also, "[i]f a fire were to occur, evacuation would be difficult." *Tillery*, 907 F.2d at 424. Cells would need to be individually unlocked, and the process would take at least four times longer than the time it would take for smoke to completely fill the cells. *Id.*

185. The medical and psychiatric departments are understaffed. *Id.* at 1284-1309.

186. *Tillery*, 907 F.2d at 424.

187. *Id.* at 428.

188. 682 F.2d 1237 (9th Cir. 1982).

189. *Id.* at 1247-60.

190. *Id.*

191. *Id.* at 1247.

that "[o]vercrowding itself is not a violation of the Eighth Amendment."¹⁹² The district court's greatest failure in analysis was not determining "precisely what the effects of overcrowding are at the penitentiary."¹⁹³ Overcrowding must not solely rely on the square footage per inmate.¹⁹⁴ The district court must determine "at what point the population itself becomes an unnecessary or wanton infliction of pain."¹⁹⁵ The Ninth Circuit rejected the totality of the conditions approach in favor of the core-conditions approach.¹⁹⁶ The result of *Hoptowit* in the Ninth Circuit's decision is that district courts will have to employ a more precise method of factfinding and tie overcrowding to specific core area defects.¹⁹⁷

A year later, the Ninth Circuit again addressed prison conditions in *Toussaint v. Yockey*.¹⁹⁸ In *Toussaint*, the district court found that double-celling at the prison intensified the already existing poor conditions, promoted violence, and led to tension and psychiatric problems among the inmates.¹⁹⁹ The district court decision, distinguishing the prison at issue from the one in *Rhodes*,²⁰⁰ was upheld by the Ninth Circuit.²⁰¹ By carefully analyzing all of the facts individually, the district court concluded that many of the conditions are unconstitutional and thus survived the Ninth Circuit's scrutiny.

As a result of all of the prison conditions litigation in the past decade and the willingness of the courts to exercise their discretion, "[e]ntire systems or individual prisons in more than three dozen states are operating under court orders aimed at limiting overcrowding or mitigating

192. *Id.* at 1249.

193. *Id.*

194. *Id.*

195. *Id.*

196. Collins, *supra* note 68, at 6; Gottlieb, *supra* note 4, at 18.

197. Gottlieb, *supra* note 4, at 18.

198. 722 F.2d 1490 (9th Cir. 1984) (involving a class action suit by 2,000 prisoners in administrative segregation from four different California state prisons; this case involves only the plaintiffs' second claim for relief, based on the eighth amendment).

199. *Id.* at 1492.

200. *Id.* The district court distinguished the case at hand based on the different physical condition of the facilities and the different effects from double-celling. *Id.*

201. *Id.* at 1496 (the Ninth Circuit affirmed all of the district court's order except for the food service portion because the district court failed to enter findings to support that part of the order).

its impact on inmates."²⁰² The federal courts refuse to condone state prison overcrowding, especially when the overcrowding jeopardizes the health, safety, and decency of the inmates.²⁰³

III. REMEDIES FOR PRISON OVERCROWDING CASES

A. Judicial Relief

Prison overcrowding cases engage the federal courts in penal policy and administration.²⁰⁴ When the prisoners successfully prove the conditions at the prison are unconstitutional, the courts must fashion a remedy that will return the facility to a constitutional level.²⁰⁵

A court's main goal when designing a remedy is to have the prison administration agree with the judge that the conditions need to be changed.²⁰⁶ An easy way of achieving harmony is by encouraging prisoners' advocates and penal officials to commit to a remedial plan.²⁰⁷ Many times, these cases are settled out of court and the parties sign a consent decree.²⁰⁸ However, not all litigating parties are amiable and often the court must design its own remedial decree.²⁰⁹ The courts' unwritten policy is to design a remedial order that is the least intrusive on the state and that addresses only those specific conditions that are deemed unconstitutional.²¹⁰

One way that courts relieve overcrowding has been by setting populations caps in the prison.²¹¹ Population caps are popular and have

202. Malcolm, *supra* note 3, at 4, col. 1. In April 1989, 35 jurisdictions, including the District of Columbia, were under court order or were parties to consent decrees to reduce prison overcrowding. *Uncle Sam*, *supra* note 3, at 63.

203. Angelos & Jacobs, *supra* note 49, at 101.

204. *Id.* at 108 (prison conditions suits generally entail extensive investigation of all aspects of prison life and pretrial discovery often takes years to complete).

205. *Id.* (corrections departments often lack the resources, skills, and commitment needed to alleviate the unconstitutional conditions).

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. Gottlieb, *supra* note 4, at 21; *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1970) ("the nature of the [constitutional] violation determines the scope of the remedy"); *Milliken v. Bradley*, 418 U.S. 717 (1974) (the remedy must be related to the condition that offends the Constitution).

211. Angelos & Jacobs, *supra* note 49, at 109; Gottlieb, *supra* note 4, at 23 n.156.

been used in prisons in almost every state.²¹² In addition to general population caps at a prison, the courts have also placed limits on the number of prisoners per cell.²¹³ Or even more simply, courts have proscribed the amount of time an inmate may spend in a double cell, dayroom, or dormitory.²¹⁴ The ultimate relief that a court has issued is an order to close the prison entirely.²¹⁵

The courts alone are generally incapable of enforcing these orders and appoint a special monitor to supervise compliance.²¹⁶ Several options are available to the court when one of their decrees is not followed. One solution is to mandate release orders to reduce prison populations to constitutional maximums.²¹⁷ However, early release is a very controversial method of reducing prison populations²¹⁸ because it is feared that early release may jeopardize public safety, adversely affect general deterrence, and further disenchant the public with the criminal justice system.²¹⁹ Early release does reduce the prison population, but prison administrators, politicians, and the general public are bitterly opposed to the practice.²²⁰

Another enforcement method for the courts, especially with population caps, is to administer good-time programs²²¹ more liberally and to furlough more inmates.²²² Courts have also ordered that sentences for certain inmates be cut in half because of shocking and

212. Angelos & Jacobs, *supra* note 49, at 109 nn.44-47. A population cap is merely the maximum amount of inmates allowed in a particular prison. A population cap is usually determined by "assessing the number of inmates the prison can adequately house without 'seriously affecting the health and safety of inmates.'" *Id.* at 109 (quoting *Jones v. Diamond*, 636 F.2d 1364, 1376 (5th Cir. 1981)).

213. Gottlieb, *supra* note 4, at 23-24. See Angelos & Jacobs, *supra* note 49, at 109.

214. Angelos & Jacobs, *supra* note 49, at 109.

215. *Id.* (entire facilities are only closed if the physical plant is "so grossly deteriorated that it can no longer constitutionally house inmates at all").

216. *Id.* at 110.

217. *Id.*

218. Austin, *supra* note 2, at 405; see also Note, *Releasing Inmates from State and County Correctional Institutions: The Propriety of Federal Court Release Orders*, 64 TEX. L. REV. 1165 (1986).

219. *Id.*

220. Angelos & Jacobs, *supra* note 49, at 110.

221. A good time program is one that reduces an inmate's sentence for good behavior in prison. *Id.*

222. *Id.*

implorable living conditions.²²³ Courts have also told prisons that they may not accept any more "inmates until the population is reduced through attrition."²²⁴ Finally, a prison which does not comply with imposed population caps and limits on sleeping arrangements may face contempt of court charges and substantial fines.²²⁵ The assumption of the courts with respect to prison conditions litigation remains to be: "If one injunction isn't enough, issue a new one."²²⁶

Recently, the prisons have circumvented population caps by shuffling prisoners around to other institutions.²²⁷ Prisons have left newly sentenced offenders in local jails until their prison's population has decreased. Of course local jails are also experiencing tremendous overcrowding problems as a result.²²⁸

Two other types of court orders have been introduced to relieve prison overcrowding: releasing pre-trial detainees by using public funds and forced jail annexes. Releasing suspects from jail who could not post their own bail was recently initiated in Newark, New Jersey.²²⁹ In 1982, the Essex County Jail entered into a consent decree to keep the population of the jail at a specified maximum.²³⁰ However, in July 1989, the district court in Newark found Essex County in contempt of court for refusing to maintain the population cap at its facilities.²³¹ To remedy the situation, Judge Ackerman established a public-bail program.²³² In July, the judge began to fine the jail \$100 a day for every suspect in excess of the maximum population allowed.²³³ The fines collected comprised the money used to pay the bail of the released suspects.²³⁴

Essex County's free-bail program was the only immediate way the

223. *Id.*

224. *Id.*

225. *Id.* at 111.

226. Collins, *supra* note 68, at 12.

227. Angelos & Jacobs, *supra* note 49, at 111.

228. *Id.*

229. *Judge Backs*, *supra* note 7, at 10, col. 1; Hanley, *Judge Orders Crowded Jail to Release 173 Suspects*, N.Y. Times, Oct. 7, 1989, at 26L, col. 1 [hereinafter *Judge Orders*].

230. *Id.* (594 prisoners).

231. *Id.*

232. *Id.*

233. See generally *Judge Orders*, *supra* note 229.

234. *Id.*

district court could reduce the overcrowding in the nineteen year old jail in Newark.²³⁵ The court-ordered release program was endorsed by the Essex County Bar Association's criminal law committee the day before it went into effect.²³⁶ Officials attribute the overcrowding to the "soaring arrests for drug offenses" and that in the last two years, the number of pre-trial detainees held in the jail increased from 8,000 to 15,000.²³⁷ As Essex County executive Nicholas Amato stated "The whole drug menace is holding our country hostage Essex County is not a sponge. We can't keep absorbing these drug arrests."²³⁸

Even though Essex County implemented a free-bail program to alleviate overcrowding in its jail, the conditions at the Essex County Jail did not improve. As of January 1, 1990, the jail was still 50 people over capacity and fines were mounting.²³⁹ The seven-year-old case was finally adjudicated through a consent decree among the presiding judge, Essex County politicians, and the inmates.²⁴⁰ The plan entails consolidating all previous court orders,²⁴¹ hiring a project manager,²⁴² and raising the necessary funds to improve the conditions at the overcrowded Essex County prisons.²⁴³

In addition to publicly funded release programs for detainees who cannot post bail, the courts have forced prisons to construct temporary facilities to accommodate excess prisoners. One such project is a prefabricated building that will cost \$6 million dollars and house 204

235. *Judge Backs*, *supra* note 7, at 10, col. 1.

236. *Id.* at 10, col. 3.

237. *Id.* (90% are drug related cases).

238. *Judge Orders*, *supra* note 229, at 26L, col. 3.

239. In the beginning of December 1990, United States District Judge Harold Ackerman imposed a \$3.4 million fine for the overcrowding at the main Essex County jail in Newark. *Essex Escapes \$3.4M Fine For Jail Mess*, N.J.L.J., Jan. 11, 1990, at 1, col. 4 [hereinafter *Essex Escapes*].

240. *Id.*

241. *Id.* at 4, col. 1. Four separate court orders were combined in this consent decree: the main jail's population must not exceed 594 inmates; the prisoners must be given one hour of recreation a day; fire safety equipment must be installed at the North Caldwell annex; and the annex's population must be no higher than 909 inmates. *Id.*

242. *Id.* The project manager's sole function will be to implement the order. *Id.*

243. The entire plan is expected to cost \$11 million and includes new inmate space, continuation of the pretrial bail program, and an expanded drug and alcohol program for inmates. *Id.* at 1, col. 4.

prisoners.²⁴⁴ Another temporary facility that was ordered by a New Jersey Court was "Tent City,"²⁴⁵ a camp in the Hackensack Meadowlands that was built to divert prisoners from the overcrowded Hudson County Jail.²⁴⁶ While this makeshift prison has fostered an excellent working relationship between prisoners and staff,²⁴⁷ Tent City represents the conflict over how to reduce prison overcrowding.²⁴⁸

B. Institutional Change

"The real overcrowding crisis is political: it challenges society's willingness to maintain minimum standards of human decency in jails and prisons, and its capacity to allocate among governmental units the responsibility for assuring these standards."²⁴⁹ The crisis involves the entire criminal justice system.²⁵⁰ Often correctional administrators ignore the overcrowding problem, continue to stock prisoners in already crowded quarters, and exacerbate the crowding problem.²⁵¹ There are four general steps that commentators have offered to remedy prison

244. *Judge Backs*, *supra* note 7, at 10, col. 4. This prefabricated building is being constructed at the Essex County, New Jersey, jail annex in North Caldwell. *Id.* Another prefabricated modular jail annex is the one in Kearny, New Jersey, which has 320 beds and opened in November, 1989. James, *supra* note 7, at B4, col. 3.

245. *A Model Prison, Even of Only Temporary*, N.Y. Times, Sept. 15, 1989, at B1, col. 3. This temporary facility was ordered by the Hudson County Superior Court in the summer of 1989. *Id.*

246. The minimum-security camp houses 100 prisoners on a 200-by-300-foot compound surrounded by rolls of barbed wire. *Id.* at B1, cols. 3-4. Tent City houses its inmates in a row of 10 brown Army tents with wooden platforms for floors and metal beds inside. *Id.* at B2, col. 2. Additionally, the camp has one recreation tent that has television sets and weight lifting equipment, and a mess tent. *Id.* The inmates also have use of the open space within the compound and often play football. *Id.*

247. Inmates and officials say the positive working relationship is fostered by conditions there that are seldom found in overcrowded jails. Each inmate has a bed and footlocker, three hot meals a day, a daily regimen of work and recreation, and relative freedom of movement inside the fence. *Id.* at B1, col. 5.

248. *Id.*

249. Angelos & Jacobs, *supra* note 49, at 111.

250. Gottfredson, *supra* note 1, at 265. The entire criminal justice system must be actively involved in its resolution. *Id.*

251. *Id.* at 267. There are some exceptions to the norm. One sheriff, disgusted with his severely overcrowded county jail, commandeered a National Guard armory to temporarily house prisoners. *Sheriff with a Crowded Jail Seizes Armory in Massachusetts*, N.Y. Times, Feb. 18, 1990, § 1, at 17, col. 2.

overcrowding:

- (1) reduce the number of persons who are committed to jail or prison;
- (2) impose less rigorous restrictions on the granting of bail for persons who have not been convicted, and shorter sentences for those who are sentenced to confinement;
- (3) shorten the time served, by more lenient parole policies or through other early-release devices; and
- (4) create more space, by new construction or conversion of other facilities into places of confinement.²⁵²

The first technique, reducing the amount of new inmates, is also known as decriminalization.²⁵³ Some crimes, such as victimless crimes, may not merit the full attention of the drained criminal justice system.²⁵⁴ Few of these offenders are sentenced to prison terms, but do they clog up the criminal justice system and local jails as pre-trial detainees.²⁵⁵ Two other ways to reduce admissions to prison are to revise sentencing guidelines and to employ alternatives to traditional incarceration such as restitution and community service.²⁵⁶

The second technique is relaxing bail and reducing prison sentences. This technique has yielded to political pressure, however, as politicians, responding to their constituents, devise sentencing guidelines that prescribe mandatory sentences.²⁵⁷ This acquiescence only adds to the system's already intolerable overcrowding problem. In addition, mandatory sentencing reduces the judge's discretion.²⁵⁸ Many sentencing laws require prison sentences for various non-violent offenses.²⁵⁹ It is estimated that abolishing these types of mandatory sentences "would free up several hundred cells each year."²⁶⁰

Thirdly, prison populations can be reduced by accelerating

252. McKay, *supra* note 6, at 12; see also Gottfredson, *supra* note 1, at 267.

253. McKay, *supra* note 6, at 14; see also Gottfredson, *supra* note 1, at 267.

254. McKay, *supra* note 6, at 14 (these crimes include prostitution, public drunkenness, and possession of marijuana).

255. *Id.*

256. Gottfredson, *supra* note 1, at 267.

257. McKay, *supra* note 6, at 14.

258. *Id.* at 14-15.

259. *Id.*

260. *Id.* at 15.

releases from the prison system.²⁶¹ Prisons have the options of reclassifying offenders, screening for immediate community placement, and increasing the use of administrative good time.²⁶² Using any of these options requires the cooperation of parole boards and parole officers. One method of utilizing parole is "presumptive parole legislation."²⁶³ This system would presume prisoners are eligible for parole after they have served the minimum sentence unless the presumption is rebutted.²⁶⁴ Prisons could also employ an "emergency standby release" program whereby prisoners who are within weeks of release can be released early by the governor in order to reduce the prison population.²⁶⁵

Finally, more facilities could be constructed or old ones converted. The entire criminal justice system remains a growth industry,²⁶⁶ but building new prisons does not remedy the immediate overcrowding problems.²⁶⁷ Also, the costs of building new prisons is reaching new heights. The present prison industry already consumes over \$13 billion dollars a year.²⁶⁸ At the rate the costs are rising, a new cell that costs about \$70,000 today is projected to cost \$200,000 in the year

261. Gottfredson, *supra* note 1, at 267.

262. *Id.* at 268.

263. McKay, *supra* note 6, at 16.

264. *Id.*

265. *Id.* The policy of accelerating releases from the prison system is know as a "back-door" option. Gottfredson, *supra* note 1, at 268. Methods of employing a back-door option include systematic reclassification of offenders, screening for immediate community placement, and increased use of administrative good time. *Id.*

266. Gottfredson, *supra* note 1, at 265. During the 1970's, the number of police officers increased by 21%, the number of prosecutors increased by 70%, and the number of corrections personnel increased by 48%. *Id.* (citing Clear, Harris & Record, *Managing the Costs of Corrections*, 62 PRISON J. 3, 9 (1982)). In 1989, Congress authorized the Justice Department to expand the number of prosecutors by 50%. *New Tactics in the War on Drugs Tilt Scales of Justice off Balance*, N.Y. Times, Dec. 29, 1989, at A14, col. 1 (Nat'l ed.). President Bush proposed an increase in spending for the federal courts to \$250 million for the fiscal year 1990, up from \$209 million during fiscal year 1989. *Id.* Congress then allocated \$340 million for the judicial court system. *Id.*

267. Gottfredson, *supra* note 1, at 268. Building prisons alone as a solution to overcrowding is insufficient because of the immediacy imposed by court orders to reduce prison crowding. *Id.*

268. Malcolm, *supra* note 3, at 1, col. 3. The prison industry has become a \$20 billion per year industry. *Cells for Sale*, Nat'l L.J., Feb. 19, 1990, at 13, col. 1.

2000.²⁶⁹ New prisons do not always cure a crowded existing prison. In some states, the prison population rate grows so quickly that a new jail every year would not solve the problem.²⁷⁰

IV. CONCLUSION

"The reality is that we lock up too many people in this country and keep them locked up for too long a time."²⁷¹ The lock them up and throw away the key attitude has driven this nation's prison system into a crisis that will not disappear without significant change. The newly declared war on drugs by President Bush only means more overcrowding in jails.²⁷²

Since the early 1980's, prisoner have been protected by the eighth amendment's entitlement to basic human needs.²⁷³ However, as one commentator points out, an institution's only "obligation under the eighth amendment is at an end if it furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety."²⁷⁴ This basic human needs standard "approximates the standard the ASPCA and state law frequently use to define cruelty to animals."²⁷⁵

The present prison system is failing. Nonetheless, the nation and legislators' answer to crime continues to be increased prison sentences.²⁷⁶ Increased prison sentences will not solve overcrowding, especially because most experts agree that new prisons alone will not alleviate the unconstitutional conditions that exist in many of the country's existing prisons.²⁷⁷ What may help overcrowding is increased use of alternatives to incarceration and enforced constitutional standards in

269. Turley, *Solving Prison Overcrowding*, N.Y. Times, Oct. 9, 1989, at A17, col. 5.

270. Gottfredson, *supra* note 1, at 268.

271. Bronstein, *Response to Herman, Institutional Litigation in the Post-Chapman World*, 12 N.Y.U. REV. L. & SOC. CHANGE 323, 323 (1983-84).

272. Turley, *supra* note 256, at A17, col. 5.

273. U.S. CONST. amend. VIII.

274. Herman, *supra* note 5, at 312 (quoting *Hoptowit*, 682 F.2d at 1246 (quoting *Wright*, 642 F.2d at 1132-33 (quoting *Wolfish v. Levi*, 573 F.2d 118, 125 (2d Cir. 1978), *rev'd on other grounds sub nom. Bell v. Wolfish*, 441 U.S. 520 (1979)))).

275. *Id.*

276. Malcolm, *supra* note 3.

277. *Id.* § 4, at 1, col. 3.

prisons. Some experimental alternatives to prison include halfway houses, supervised community service, revised sentencing guidelines, and electronic monitors.²⁷⁸

The Japanese prison system, which focuses on offender rehabilitation, is able to handle crowding problems. It uses numerous amounts of non-prison sentences such as supervised probation, restitution, labor camps, and community programs to help offenders rehabilitate. Unfortunately, the climate in America is not warm to rehabilitation. "[R]ehabilitation of inmates is not a popular concept now When you say a third felony conviction gets you into prison for as long as you're breathing, the message is not one of hope for the future. Today's message is incapacitation: Lock 'em up."²⁷⁹

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278. *Id.* § 4, at 1, col. 3-4.

279. *Id.* § 4, at 4, col. 4 (quoting Frank Hartman, Executive Director of the Criminal Justice Program at Harvard's Kennedy School of Government).

ADDENDUM

As this Note goes to print, the United States Supreme Court has decided the case of *Wilson v. Seiter*.¹ In *Rhodes v. Chapman*² the United States Supreme Court focused on the objective component as to whether the prisoners' poor living conditions were sufficiently serious as to constitute "cruel and unusual punishment" under the eighth amendment.³ However, Justice Scalia writing for the majority of the Court in *Wilson* has added that the complaining prisoner must show that officials intentionally acted or failed to act in a manner demonstrating a "wanton" state of mind.⁴ The Court stated that "deliberate indifference" would constitute wantonness.⁵ Scalia wrote that:

The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*. If the pain inflicted is not formally meted out *as punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify.⁶

It is unclear at this time as to what effect this ruling may have on the administration of prison facilities or on the decisions of the lower courts in determining the constitutionality of substandard conditions and in the courts administering remedies.

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1. 59 U.S.L.W. 4671 (June 17, 1991).
 2. See *supra* notes 96-113 and accompanying text.
 3. *Wilson v. Seiter*, 59 U.S.L.W. 4671, 4672 (June 17, 1991); *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981).
 4. *Wilson*, 59 U.S.L.W. at 4673.
 5. *Id.*
 6. *Id.*

