PRISON CONDITIONS AND THE DELIBERATE INDIFFERENCE STANDARD UNDER THE EIGHTH AMENDMENT: *WILSON V. SEITER* 111 S. Ct. 2321 (1991)

The Eighth Amendment of the United States' Constitution forbids the infliction of cruel and unusual punishment.[1] The purpose behind the Eighth Amendment is to limit the power of those responsible for criminal enforcement[2] and to protect persons convicted of crimes.[3] Historically, claims protected by the Eighth Amendment involved physical punishment and the infliction of pain.[4] Courts have recently

1. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII.

Only conduct classified as punishment is actionable under the Eighth Amendment; therefore, the definition of punishment is important to Eighth Amendment analysis. Wilson v. Seiter, 111 S. Ct. 2321, 2325 (1991). The definition of punishment is "[a]ny fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him." BLACK'S LAW DICTIONARY 1234 (6th ed. 1990).

2. Robert A. West, Comment, *Constitutional Law: Quelling a Prison Riot: Cruel and Unusual Punishment or a Necessary Infliction of Pain?* [Whitley v. Albers, 106 S. Ct. 1078 (1986)], 26 WASHBURN L.J. 208, 209 (1986).

3. Ingraham v. Wright, 430 U.S. 651, 664 (1977). The Supreme Court determined that the framers of the Constitution designed the Eighth Amendment to protect only those convicted of crimes. *Id. See, e.g.*, Rhodes v. Chapman, 452 U.S. 337, 344-45 (1981) (finding that the conditions of a criminal's confinement in a prison are subject to Eighth Amendment scrutiny); Estelle v. Gamble, 429 U.S. 97, 104 (1976) (declaring that substandard medical care for imprisoned criminals is subject to Eighth Amendment scrutiny). "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." *Ingraham*, 430 U.S. at 671 n.40. *See also* Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979) (holding that due process mandates that a pretrial detainee is free from punishment; therefore, the Eighth Amendment is not the proper vehicle to seek redress before sentencing).

4. *See, e.g.*, Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459, 464 (1947) (finding that the second attempt to execute a prisoner, after the first attempt failed because of mechanical problems, did not amount to cruel and unusual punishment); Weems v. United States, 217 U.S. 349, 381-82 (1910) (holding that hard and painful labor performed in chains amounted to cruel and unusual punishment).

expanded the application of the Eighth Amendment beyond its traditional bounds.[5] Prisoners have utilized the modern expansion of the Eighth Amendment to challenge the conditions of their confinement.[6] As a result, prisoners bringing a successful Eighth Amendment claim can obtain healthier and safer conditions during the course of their incarceration.[7] In *Wilson v. Seiter*,[8] the Supreme Court articulated the standard under which a prisoner may bring a successful Eighth Amendment claim, holding that prisoners arguing that the conditions of their confinement constitute cruel and unusual punishment have the burden of showing that prison officials were "deliberately indifferent"[9]

---

5. Stephen J. Durkin, Comment, Rhodes v. Chapman: *Prison Overcrowding — Evolving Standards Evading an Increasing Problem*, 8 NEW ENG. J. ON PRISON L. 249, 252-57 (1982) (outlining the development of the cruel and unusual punishment clause to demonstrate its expansion from a protection only against physical punishment to a protection against a wider array of subtle punishments).

6. Ellen K. Lawson, Comment, *Extending Deference to Prison Officials Under the Eighth Amendment:* Whitley v. Albers, 32 WASH. U. J. URB. & CONTEMP. L. 231, 231 n.3 (1987) (stating that federal courts now apply the Eighth Amendment equally to the acts of punishment inflicted upon specific individuals and the general conditions of prison confinement). *See* Deborah A. Montick, Comment, *Challenging Cruel and Unusual Conditions of Prison Confinement: Refining the Totality of Approach*, 26 HOW. L.J. 227, 229 (1983) (stating that the prohibition against cruel and unusual punishment applies to general conditions of confinement in state prisons).

In Rhodes v. Chapman, 452 U.S. 337 (1981), the Supreme Court first addressed the limitation that the Eighth Amendment imposes upon the conditions under which a state may imprison those convicted of crimes. *Id.* at 344-45. The *Rhodes* Court considered the combined impact of the conditions of confinement to determine whether those conditions were cruel and unusual punishment within the meaning of the Eighth Amendment. *Id.* at 346. The Court concluded that conditions of confinement amount to cruel and unusual punishment only if the conditions inflicted unnecessary and wanton pain or were grossly disproportionate to the severity of the crimes warranting imprisonment. *Id.*

7. Lawson, *supra* note 6, at 231.

8. 111 S. Ct. 2321 (1991).

9. *Id.* at 2327. The Court stated that the Eighth Amendment contains an intent requirement. *Id.* at 2325. "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" as an Eighth Amendment violation. *Id.*

The United States, in its *amicus curiae* brief in support of the petitioner, opposed the intent requirement. *Id.* at 2526. The government contended that prison officials will claim that, despite their efforts to provide humane conditions, budgetary constraints render the achievement of ideal conditions impossible. *Id.* However, the Court concluded that budgetary constraints do not affect the finding of cruel and unusual conditions, reasoning that whether or not the conditions are unconstitutional is a separate issue from whether the prison systems can afford to rectify them. *Id.* A detailed discussion of the components of the "deliberate indifference" standard is beyond the scope of this Comment; however, see *infra* notes 17, 43, 44, and 70 for a brief description of

to those conditions.[10]

In *Wilson*, petitioner alleged that the conditions of his incarceration amounted to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.[11] He filed suit pursuant to 42 U.S.C. § 1983 against the respondents, the Director of the Ohio Department of Rehabilitation and Correction and the warden of the prison in which Wilson was incarcerated.[12] The United States District Court for the Southern District of Ohio granted summary judgment for the respondents.[13] The Court of Appeals for the Sixth Circuit affirmed on the ground that the prisoners failed to raise a reasonable inference of the prison officials' "obduracy and wantonness,"[14] the state of mind necessary to prove an Eighth Amendment violation.[15] The United States

---

some of the "deliberate indifference" components. *See also Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) (holding that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment").

10. 111 S. Ct. at 2326. The Court, as well as all parties involved, agreed that the high standard employed in *Whitley v. Albers* was inapplicable to prison condition cases. *Id.* In *Whitley v. Albers*, 475 U.S. 312 (1986), (the Court held that guards reacting to a prison disturbance must act "maliciously and sadistically for the very purpose of causing harm" to violate the cruel and unusual punishment clause. *Id.* at 320-21. Instead of applying the *Whitley* standard the *Wilson* Court first determined whether the challenged conduct was sufficiently harmful to satisfy the objective component of an Eighth Amendment claim. 111 S. Ct. at 2326. Second, the Court focused on the constraints facing the prison official in considering whether the conduct was wanton. *Id.* at 2326.

11. 111 S. Ct. at 2322-23. "The complaint alleged overcrowding, excessive noise, insufficient locker storage space, inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms, unsanitary dining facilities and food preparation, and housing with mentally and physically ill inmates." *Id.* at 2323.

12. *Id.* Section 1983 provides in pertinent part:

> Every person who, under the color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . for redress.

42 U.S.C. § 1983 (1988).

For a more detailed discussion of the procedure involved in filing a § 1983 claim to challenge confinement conditions, see Lawson, *supra* note 6, at 234-35.

13. Wilson v. Seiter, 893 F.2d 861, 863 (6th Cir. 1990). The petitioner alleged that the prison officials took no remedial action after notification of the challenged conditions. *Id.* at 862.

The district court applied the "obduracy and wantonness" standard. *Id.* at 863 (relying on Whitley v. Albers, 475 U.S. 312, 319 (1986)). Viewing the affidavits in light of that standard, the district court concluded that the petitioners' failure to demonstrate wantonness indicated the absence of any issue of material fact. 893 F.2d at 863.

14. *Id.* at 867.

15. *Id.* The Court of Appeals affirmed the lower court's dismissal of a number of

Supreme Court vacated the judgment and remanded the case for reconsideration under the appropriate standard.[16]

The Supreme Court agreed with the lower court that a petitioner challenging the conditions of confinement must show a culpable state of mind on the part of prison officials to prevail on an Eighth Amendment claim.[17] The Court articulated a more lenient standard, however, and required that the prisoner show that the prison officials acted with "deliberate indifference" toward the challenged conditions.[18]

Theoretically, the term "cruel and unusual punishment"[19] prohibited the infliction of excessive or disproportionate punishment or pain on criminals.[20] More recently, courts have expanded Eighth Amend-

---

claims on the ground that, even if proven, the claims did not involve the serious constitutional deprivation mandated by Rhodes v. Chapman, 452 U.S. 337 (1981). *Id.* at 864-65. *See infra* notes 51-57 and accompanying text for a discussion of *Rhodes*. The Court of Appeals then affirmed the district court on the remaining claims because the petitioner failed to prove the level of culpability established by the Court in Whitley v. Albers, 475 U.S. 312 (1986). 893 F.2d at 866-67. See *infra* notes 58-66 and accompanying text for a discussion of *Whitley*.

On certiorari before the Supreme Court, the petitioner argued that a court may not dismiss any challenged condition as long as other alleged conditions continue to be in dispute because each condition contributes to the totality of the challenged conditions. 111 S. Ct. at 2327. The Court stated that the petitioner's position reflected a misapplication of the holding in *Rhodes*. *Id.* The *Wilson* Court interpreted *Rhodes* as providing that Eighth Amendment violations may combine to have a mutually enforcing effect only if they produce the deprivation of a single, identifiable human need. *Id.* In *Wilson*, the petitioner failed to identify any single human need. *Id.* The Court stated that "[n]othing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." *Id.* at 2327. *Compare* Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979) (holding that a denial of outdoor exercise and fresh air is unconstitutional if prisoners are confined to small cells) *with* Clay v. Miller, 626 F.2d 345, 347 (4th Cir. 1980) (holding that a deprivation of outdoor exercise for prisoners was constitutional because the prisoners had access to various indoor activities during a substantial portion of each day).

16. 111 S. Ct. at 2328.

17. *Id.* at 2326.

18. *Id.* at 2326-27. The Court applied the same "deliberate indifference" standard articulated in an earlier prison case, Estelle v. Gamble, 429 U.S. 97 (1976). *Id. See infra* notes 41-50 and accompanying text for a discussion of *Estelle*. *See also* LaFaut v. Smith, 834 F.2d 389, 391-92 (4th Cir. 1987) (holding that *Estelle's* "deliberate indifference" standard is the level of scrutiny applicable for an Eighth Amendment inquiry).

19. *See* Solem v. Helm, 463 U.S. 277, 285 (1983) (quoting the English Bill of Rights, which provided, "excessive Baile ought not to be required nor excessive fines imposed nor cruell and unusuall Punishments inflicted"), 1 Wm. & Mary, 2d Sess., ch.2 (1689).

20. *See* Trop v. Dulles, 356 U.S. 86, 100 (1958) (stating that the Eighth Amendment's "cruel and unusual" clause was taken directly from the English Declaration of

ment protection to encompass infliction of pain that is not specifically part of the sentence, but rather is a consequence of confinement.[21]

Louisiana ex rel. Francis v. Resweber[22] was an early case which required that prisoners claiming a violation of their Eighth Amendment rights establish a certain level of intent on the part of prison officials who administered the punishment.[23] In *Resweber*, prison officials sought to electrocute a convicted prisoner a second time, after the first attempt failed because of a mechanical error.[24] The prisoner applied to the Louisiana Supreme Court for writs of certiorari, mandamus, prohibition, and habeas corpus, claiming a violation of his Fourteenth Amendment rights.[25] The Louisiana Supreme Court denied relief.[26] The United States Supreme Court granted certiorari[27] and concluded that the language of the Eighth Amendment specifically prohibits the wanton infliction of pain.[28] However, the Court required that the prison officials possess a culpable mental state to support a claim of cruel and unusual punishment, regardless of the actual suffering inflicted.[29] The Supreme Court reasoned that because the failure of the

---

Rights of 1688 to assure that the power to punish be exercised within civilized boundaries).

21. *See, e.g.*, Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (stating that the denial of medical care was a condition of confinement subject to Eighth Amendment scrutiny); Hoptowit v. Spellman, 753 F.2d 779, 783-84 (9th Cir. 1985) (holding that vermin infestation, poor plumbing, unclean air, inadequate lighting, and safety hazards which were conditions of confinement constituted cruel and unusual punishment); Kirby v. Blackledge, 530 F.2d 583, 587 (4th Cir. 1976) (holding that a cell which contained no light, bedding, or toilet facilities cumulatively resulted in constitutional deprivation under the Eighth Amendment and Due Process Clause); Battle v. Anderson, 447 F. Supp. 516, 525 (E.D. Okla. 1977) (stating that overcrowding in prison may amount to an unconstitutional deprivation of health, safety, and security), *aff'd*, 564 F.2d 388 (10th Cir. 1977).

22. 329 U.S. 459 (1947).

23. *Id.* at 464.

24. *Id.* at 460-61.

25. *Id.* at 461. The prisoner alleged that the second attempt to execute him amounted to both double jeopardy violative of the Fifth Amendment, and cruel and unusual punishment, violative of the Eighth Amendment. *Id.* at 461.

26. 329 U.S. at 461. The state court concluded that no law had been violated in attempting to execute the prisoner a second time because no punishment sufficient to cause death had been inflicted upon the prisoner. *Id.*

27. 328 U.S. 833 (1946).

28. 329 U.S. at 463. Petitioner asserted that the mental anguish resulting from the preparation for more than one electrocution subjected him to lingering cruel and unusual punishment. *Id.* at 464.

29. *Id.* The Court found that the second electrocution was not motivated by the

first attempt was not the fault of the prison officials,[30] the officials lacked the culpable mental state necessary to constitute a cruel method of punishment.[31] Therefore, the Court held that the punishment inflicted upon the prisoner did not warrant Eighth Amendment protection.[32]

Gregg v. Georgia[33] is the precedential case prescribing the "unnecessary and wanton infliction of pain" standard.[34] In *Gregg*, the Court held that the imposition of the death penalty did not violate the Eighth Amendment under all circumstances.[35] The Court promulgated a two-prong inquiry to establish "excessiveness" constituting "cruel and unusual punishment"[36]: 1) whether prison officials inflicted "unnecessary and wanton" pain for the purpose of punishment;[37] and 2) whether the punishment inflicted is proportional to the crime committed.[38] Apply-

---

desire of state prison officials to cause unnecessary pain. *Id* . Rather, the Court viewed the prisoner to be the "unfortunate victim of this accident." *Id.* The prisoner suffered the same mental anguish and physical pain that he might have suffered had a fire occurred in his cell block. *Id.* Absent a clear intent to inflict unnecessary pain upon the prisoner, the Court found no violation of the prisoner's due process rights based on cruel and unusual punishment. *Id.*

30. *Id.*

31. *Id.*

32. 329 U.S. at 464.

33. 428 U.S. 153 (1976).

34. *Id.* at 173. Gregg v. Georgia is generally cited as the source for the unnecessary and wanton infliction of pain standard. West, *supra* note 2, at 213 n.31.

35. 428 U.S. at 187. The Court considered such factors as federalism, legislative freedom, and moral consensus in finding that the Georgia death penalty did not violate the United States Constitution. *Id.* at 186-87. The Court noted that the Georgia sentencing procedures protected defendants by requiring specific jury findings regarding the defendant's character or the circumstances of the crime. *Id.* at 198. Moreover, the "Supreme Court of Georgia compares each death sentence with the sentences imposed on similarly situated defendants." *Id.* Therefore, Georgia prisoners sentenced to death are ensured that their punishment is not disproportionate. *Id.*

36. *Id.* at 173.

37. *Id.* The Court has historically defined "unnecessary" in light of existing alternatives and the desired penalogical objectives. *See, e.g.*, Furman v. Georgia, 408 U.S. 238, 392-93 (1972) (per curiam)(Burger, C.J., dissenting) (finding that punishment may reach prohibitively cruel levels but that the Eighth Amendment explicitly prohibits punishment reaching torturous levels); *Furman*, 408 U.S. at 279 (Brennan, J., concurring) (asserting that "[a] punishment is excessive under [the excessive punishment] principle if it is unnecessary: The infliction of a severe punishment by the State cannot comport with human dignity when it is nothing more than the pointless infliction of suffering").

38. 428 U.S. at 173. *See* Solem v. Helm, 463 U.S. 277 (1983). In *Solem*, the Court set forth three factors to aid in determining the constitutionality of a given sentence: (1)

ing this standard, the Court held that the death penalty is not cruel and unusual[39] and that the punishment of death is not disproportionate to the crime of murder.[40]

In *Estelle v. Gamble*,[41] the Supreme Court relied upon the *Resweber* and *Gregg* decisions in holding that the failure to provide proper medical care to inmates which caused unnecessary pain or suffering violated the Eighth Amendment.[42] In *Estelle*, doctors at the prison hospital treated an inmate several times for complaints of serious back pain, high blood pressure, and heart irregularities.[43] Despite using drug therapy, the doctors elected not to X-ray the prisoner.[44] The Court found that the inadvertent failure to X-ray the prisoner did not rise to the level of "deliberate indifference" to the prisoner's medical needs.[45] Therefore, the prisoner's claim failed to meet the constitutional requi-

---

the seriousness of the crime and the severity of the penalty that accompanies it; (2) a comparison of sentences imposed within the same jurisdiction for similar crimes; and (3) a comparison of sentences in other jurisdictions for similar crimes. *Id.* at 290-92.

39. 428 U.S. at 178.

40. *Id.* at 187.

41. 429 U.S. 97 (1976).

42. *Id.* at 103-04. The Supreme Court reasoned that while incarcerated, prisoners rely and depend upon prison officials for proper medical care. *Id.* at 103. If the government chooses incarceration as a means of punishment, then the government has an obligation to care for those prisoners. *Id.* Societal demands that prisoners not suffer a deprivation of necessary medical care stems from the notion that the failure to provide medical services serves no penological purposes. *Id. See In re* Kemmler, 136 U.S. 436, 447 (1890) (classifying punishment as cruel when involving torture or lingering death); *cf.* Gregg, 428 U.S. at 182 (asserting that the Court must inquire whether the punishment conforms to human dignity). The Eighth Amendment derives its meaning from the "evolving standards of decency" which are inherent in a "maturing society." Trop v. Dulles, 356 U.S. 86, 101 (1958) (plurality opinion).

43. 429 U.S. at 99-101.

44. *Id.* at 107. Gamble refused to work due to excruciating pain. *Id.* at 100. As a result, prison officials warned the prisoner that if he did not return to work, he would be sent to a solitary confinement area. *Id.* at 99-100. Upon further refusal, the prison officials followed through on their threat. *Id.* at 100. The prisoner filed a § 1983 complaint alleging that the prison officials' negligent medical care amounted to cruel and unusual punishment. *Id.* at 101.

45. *Id.* at 105-07. The deliberate indifference standard allows prisoners to present evidence of a series of closely related incidents in order to demonstrate "deliberate indifference" in violation of the Eighth Amendment. *See, e.g.*, Bass *ex rel.* Lewis v. Wallenstein, 769 F.2d 1173, 1186 (7th Cir. 1985) (holding prison officials liable for deficient sick call procedures and inadequate staff); Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977) (finding that the cumulative effect of poor medical care by prison officials may amount to deliberate indifference).

site of cruel and unusual punishment.[46]

The *Estelle* Court required that the conduct of the prison officials reach a level so "repugnant to the conscience of mankind" or constitute the unnecessary and wanton infliction of pain in order to violate the Eighth Amendment.[47] In addition, the Court required that the prisoner allege acts or omissions sufficiently harmful to offend "evolving standards of decency" as evidence of deliberate indifference.[48] The Court implied that prison officials need not intend indifference toward a prisoner's serious injury in order to violate a prisoner's Eighth Amendment rights.[49] The *Estelle* Court concluded, however, that the inadvertent failure to supply ample medical attention does not constitute unnecessary and wanton infliction of pain.[50]

In 1981, the Court applied and further developed the *Gregg* standard in *Rhodes v. Chapman*,[51] holding that prison conditions were subject to scrutiny under the Eighth Amendment.[52] The *Rhodes* Court rejected several prisoners' contentions that housing two inmates in one cell

46. 429 U.S. at 107. At most, the doctor's failure to X-ray the prisoner's back amounted to medical malpractice. *Id.* However, the Court reasoned that medical malpractice does not sanction a constitutional violation simply because the victim is an inmate. *Id.* at 106.

47. *Id.* at 105-06.

48. *Id.* at 106. The Courts of Appeals essentially agree that mere allegations of medical malpractice do not state a claim consistent with the deliberate indifference standard. *Id.* at 106 n.14. However, the Courts of Appeals use varied terminology when describing the conduct sufficient to state a claim. *Id. See, e.g.*, Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974) (using "deliberate indifference" to describe a physician's conduct which amounted to cruel and unusual punishment).

49. 429 U.S. at 104-05. The Court presented several alternative methods for determining if prison officials were deliberately indifferent toward the prisoner's medical needs: (1) the prison medical staff's responsiveness to prisoner health needs; (2) the accessibility of the medical staff to the prisoners; and (3) the failure to provide prisoners with the treatment prescribed by the medical staff. *Id.*

50. *Id.* at 105. The Court held that allegations of medical malpractice stemming from the doctor's negligence did not state a valid Eighth Amendment claim. *Id.* at 107. *See* Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985) (stating that the negligent failure to provide medical care, evidenced by inattention or inadvertence, did not state an Eighth Amendment claim); Hendrix v. Faulkner, 525 F. Supp. 435, 454 (N.D. Ind. 1981) (finding that a prisoner must demonstrate that the defendant showed a callous indifference to medical needs, that those needs were serious, and that the lack of treatment resulted in injury), *aff'd in part, vacated in part sub nom.* Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983).

51. 452 U.S. 337 (1981).

52. *Id.* at 344-46. The Supreme Court first considered the Eighth Amendment requirements for prison conditions in *Rhodes*. *Id.* at 344-45. "Today the Eighth Amendment prohibits punishments which, although not physically barbarous, 'involve the

comprised a condition of confinement evidencing cruel and unusual punishment.[53] The Court stated that "double celling" may constitute an infliction of pain, but reasoned that, in this instance, the pain was neither inflicted in an unnecessary or wanton fashion nor grossly disproportionate to the severity of the crime.[54] The Court relied on the fact that the Constitution does not mandate comfortable prisons.[55] Furthermore, overcrowding did not result in deprivations of necessities of life such as food or medical care.[56] The Court based its opinion on objective criteria regarding the seriousness of the prisoners' deprivation and concluded that double celling was not sufficiently harmful to violate the Eighth Amendment.[57]

In *Whitley v. Albers*,[58] the Supreme Court reaffirmed that a subjective standard still applies when adjudicating prisoners' Eighth Amend-

---

unnecessary and wanton infliction of pain,' or are grossly disproportionate to the severity of the crime . . . " *Id.* at 346 (citation omitted).

The Court further stated that "[i]t is unquestioned that '[c]onfinement in a prison . . . is a form of punishment subject to scrutiny under the Eighth Amendment standards.' " *Id.* at 345 (quoting Hutto v. Finney, 437 U.S. 678, 685 (1978)). *See* Bell v. Wolfish, 441 U.S. 520, 547 (1979) (stating that a federal court's inquiry into prison management is limited to whether the conduct violates the Constitution); Coker v. Georgia, 433 U.S. 584, 597 (1977) ("[f]inding that [t]he Constitution contemplates that in the end [a court's] own judgment will be brought to bear on the question of the acceptability" of a given punishment). *See also supra* note 6 and accompanying text discussing Eighth Amendment challenges to the conditions of confinement.

53. 452 U.S. at 348-49.

54. *Id.* at 348. The Court found "double celling" a necessary response to the large number of inmates at the facility. *Id.* In light of alleged overcrowding, prisoners were not deprived of essential necessities, prison violence did not increase as a result of double celling, and prison life did not become intolerable. *Id.* "To 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." *Id.* at 347.

55. *Id.* at 349. *See also supra* note 6 discussing the standards and scope of discretion that courts have in determining the constitutionally-required level of comfort that prisons must provide.

56. 452 U.S. at 348.

57. *Id.* at 346-47. The *Rhodes* Court looked to the objective findings of the district court to determine whether prison officials violated the prisoners' Eighth Amendment rights. *Id.* at 346-48. The objective question is whether the conditions of confinement rise to the level of a "serious deprivation," while the subjective question is whether the deprivation results from the conduct of prison officials. Martin A. Schwartz, *The Decision on Prison Conditions*, N.Y.L.J., July 16, 1991, at 3. Because the prisoners' claims did not meet the objective standard of sufficiently serious deprivation, the *Rhodes* Court did not address the subjective issue. *See* Wilson v. Seiter, 111 S. Ct. 2321, 2324 (1991).

58. 475 U.S. 312 (1986).

ment claims.[59] In *Whitley*, prison guards shot a prison inmate while attempting to quell a disturbance.[60] The prisoner alleged that such treatment deprived the prisoner of his Eighth Amendment rights.[61] The Supreme Court emphasized that only the unnecessary and wanton infliction of physical pain constituted cruel and unusual punishment.[62] Further, the Court required that the conduct involve more than ordinary lack of due care in order to qualify as cruel and unusual punishment.[63] The court reasoned that a higher standard applies when prison officials take security measures to insure the safety of themselves and the inmates.[64] The Court articulated the standard in such instances as "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."[65] In light of this standard, the *Whitley* Court held that the shooting was a good faith attempt to restore security and therefore did not violate the prisoner's Eighth Amendment rights.[66]

---

59. *Id.* at 319-21. *See* Wilson v. Seiter, 111 S. Ct. 2321, 2324 (1991) (stating that *Whitley* clarified that *Rhodes* did not eliminate a subjective component).

60. 475 U.S. at 316. The disturbance began when an inmate assaulted one guard and took a second guard hostage. *Id.* at 314-15. While guards executed a plan to free the hostage, another prisoner, respondent Albers, interfered. *Id.* at 316. Despite a warning shot, Albers continued to interfere and the guard shot Albers in the knee. *Id.*

61. *Id.* at 317. The prisoner sued under 42 U.S.C. § 1983. *See supra* note 12 for the relevant language in 42 U.S.C. § 1983.

62. 475 U.S. at 319. *See* Lawson, *supra* note 6, at 241 (noting that the *Whitley* Court delegated wide deference to prison officials and reaffirmed the "unnecessary and wanton" standard).

63. 475 U.S. at 319. The Court reasoned that Eighth Amendment scrutiny does not apply to all governmental actions affecting a prisoner's well-being. *Id.* Relying on *Estelle*, the Court found that the infliction of pain through mere negligence did not amount to a constitutional violation. *Id. See* Estelle v. Gamble, 429 U.S. 97, 105-06 (1976) (holding that physician's alleged malpractice did not amount to cruel and unusual punishment).

64. 475 U.S. at 320. The court specifically found that the deliberate indifference standard set forth in *Estelle* did not "adequately capture the importance of such competing obligations, or convey the appropriate hesitancy to critique in hind-sight decisions necessarily made in haste." *Id.*

65. *Id.* at 320-21 (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.), *cert. denied sub nom.*, John v. Johnson, 414 U.S. 1033 (1973). The Supreme Court found relevant factors such as the need of force, the nexus between the need and the amount of force used, the extent of the injury, and the potential safety threats to prison staff and inmates. 475 U.S. at 321.

66. *Id.* at 326.

Wilson v. Seiter[67] presented the United States Supreme Court with an opportunity to review the minimum culpable mental state which constitutes cruel and unusual punishment.[68] Justice Scalia, writing for the majority, stated that the cruel and unusual punishment prohibited by the Eighth Amendment encompasses both deprivations resulting specifically from the sentence and those suffered as a condition of confinement.[69] The Court defined punishment as a deliberate effort to chastise or deter[70] and upheld the settled principal that the Eighth Amendment applies specifically to cases of unnecessary and wanton infliction of punishment.[71] The Court reasoned the well-founded principle that formal punishment[72] is subject to Eighth Amendment scrutiny irrespective of intent.[73] However, the court reasoned that pain inflicted which does not result from formal punishment is subject to inquiry into the prison official's mental state.[74]

The majority acknowledged that the offending conduct must be wan-

67. 111 S. Ct. 2321 (1991). *See supra* notes 11-16 and accompanying text for a detailed discussion of *Wilson's* case history.

68. 111 S. Ct. at 2326. *See supra* notes 47-50 and accompanying text which consider the level of culpability prison officials must possess to violate the Eighth Amendment prohibition of cruel and unusual punishment.

69. 111 S. Ct. at 2323. Justice Scalia delivered the opinion of the Court, with which Chief Justice Rehnquist and Justices O'Conner, Kennedy, and Souter joined.

70. *Id.* at 2325 (quoting Duckworth v. Franzen, 780 F.2d 645, 652 (7th Cir. 1985), *cert. denied*, 479 U.S. 816 (1986)). *See also supra* note 1 for the definition of punishment.

71. 111 S. Ct. at 2323. The Court based its conclusion on the language of the Eighth Amendment and prior Supreme Court decisions. *Id.* at 2323-24. *See supra* note 1 for text of the Eighth Amendment.

72. The Court defined formal punishment as punishment by statute or the sentencing judge. 111 S. Ct. at 2325.

73. *Id.* at 2323.

74. *Id.* Both the petitioner and the United States, as *amicus curiae* in support of the petitioner, suggested that the Court distinguish between "short-term" conditions (where the intent requirement should apply) and "continuing" or "long-term" conditions (where intent is irrelevant). *Id.* The Court declined the petitioner's argument, however, reasoning that such a distinction was significant only to the extent that it may show knowledge and therefore intent on the part of prison officials. *Id. Cf.* Canton v. Harris, 489 U.S. 378, 390 n.10 (1989) (stating that the failure to "train officers in the constitutional limitations on the use of deadly force" may be characterized as a "deliberate indifference" to constitutional rights). Moreover, the Court recognized the difficulty in drawing a line between "short-term" and "long-term." 111 S. Ct. at 2325. *Cf.* McCarthy v. Bronson, 111 S. Ct. 1737, 1740-41 (1991) (providing that isolated or widespread incidents of alleged unconstitutional conduct support an allegation of unconstitutional treatment).

ton.[75] However, once the prisoner proves that the conduct is harmful enough to satisfy the objective component of an Eighth Amendment claim, the court reasoned that the "wantonness" of the conduct depends on the constraints facing the prison officials.[76] Justice Scalia distinguished challenges lodged against prison officials' specific acts under pressure from challenges to the general conditions of confinement.[77] The Court stated that prisoners challenging conditions of confinement must prove deliberate indifference[78] on behalf of the prison officials to meet the requisite "wantonness."[79]

After establishing the applicability of the deliberate indifference standard, Justice Scalia concluded that the lower courts erred in applying the higher malicious and sadistic standard prescribed by *Whitley*.[80] In order to confirm that the lower courts would reach the same decision based upon the Court's deliberate indifference standard, the Court vacated the prior judgment and remanded the case.[81]

---

75. 111 S. Ct. at 2326.

76. *Id.* Rhodes v. Chapman, 452 U.S. 337 (1981) is the case setting forth objective criteria in Eighth Amendment cases. *See supra* notes 51-57 for a discussion of *Rhodes*. Once the objective standard is met, the prisoner must then prove the requisite subjective component when challenging conditions of confinement. 111 S. Ct. at 2326.

77. *Id.* Classifying conduct as cruel and unusual depends upon the totality of the circumstances. *See* West, *supra* note 2, at 215 n.44 (citing Rhodes v. Chapman, 452 U.S. 337, 346-47 (1981)). Conduct classified as cruel and unusual punishment under normal conditions may not be cruel and unusual under conditions of a prison riot. *Id.* at 220-21.

78. The "deliberate indifference" standard was first established in Estelle v. Gamble, 429 U.S. 97 (1976). *See supra* notes 41-50 and accompanying text for a discussion of *Estelle*. The standard established in *Estelle* for adjudicating claims of insufficient medical care is equally applicable to claims challenging prison conditions. 111 S. Ct. at 2326-27. The Court reasoned that medical treatment is as much a "condition of confinement" as the quality of food an inmate is fed, the clothes he is given, the temperature of his cell, and the protection against harm from other inmates. *Id.*

79. 111 S. Ct. at 2326. In "emergency" situations, the Court stated that "wantonness consisted of acting 'maliciously and sadistically for the very purpose of causing harm.' " *Id.* (citing Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). In *Wilson*, both parties agreed that the higher standard established in *Whitley* was not applicable to a claim challenging confinement conditions. 111 S. Ct. at 2326.

80. *Id.* at 2327-28. The Court expressed no opinion on the relative merits of the various individual claims. *Id.* at 2327. However, the Court did reject the petitioner's contention that a challenge may not be dismissed while other disputed challenges remain unresolved. *Id.* "Nothing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." *Id.*

81. *Id.* at 2328. Referring to the lower court's finding that petitioner's claims were " '[a]t best . . . negligence,' " the Court determined that the misapplication of the stan-

Justice White, concurring in judgment only,[82] rejected the majority's position that prisoners must show deliberate indifference on the part of the responsible officials to prevail on an Eighth Amendment claim challenging the conditions of confinement.[83] Justice White agreed with the majority's view that any pain inflicted pursuant to a specific court order or statute was subject to Eighth Amendment scrutiny regardless of intent.[84] However, the concurrence disagreed with the majority's assertion that pain inflicted by virtue of prison conditions violated the Eighth Amendment only upon a showing of intent.[85] The concurrence reasoned that prior decisions of the Court have held that prison conditions are encompassed within the punishment imposed by a judge or through a statute.[86] Justice White concluded that an intent require-

---

dard was most likely harmless. *Id.* (quoting Wilson v. Seiter, 893 F.2d 861, 867 (6th Cir. 1990)). However, the Court reasoned that if the lower court had applied the correct deliberate indifference standard, it may have reconsidered its finding of mere negligence because the determination was essential to the judgment. 111 S. Ct. at 2328.

82. Justice White was joined by Justices Marshall, Blackmun and Stevens, concurring in judgment only. *Id.*

83. *Id.* (White, J., concurring).

84. *Id.*

85. 111 S. Ct. at 2330. Justice White argued that intent would be difficult to prove in situations involving an institution. *Id.* White expressed concern that the intent requirement could be avoided by prison officials simply by alleging inadequate funding. *Id.* However, the majority observed that there was no indication that prison officials sought to use a "[cost] defense to avoid the holding of Estelle v. Gamble, 429 U.S. 97 (1976)." 111 S. Ct. at 2326. *See supra* note 8 explaining the distinction between issues of funding and those of prison conditions. *See also* McCord v. Maggio, 927 F.2d 844 (5th Cir. 1991) (prison administrators asserting that insufficient funding was sufficient justification for forcing prisoner to live in backed up sewage). Further, White suggested that states, having chosen imprisonment as a punishment should comply with the " 'contemporary standard of decency' required by the Eighth Amendment." *Id.* at 2330-31.

86. 111 S. Ct. at 2330. The concurrence referred specifically to Rhodes v. Chapman, 452 U.S. 337 (1981) and Hutto v. Finney, 437 U.S. 678 (1978), *reh'g denied*, 439 U.S. 1122 (1979) in suggesting that prior case law clearly indicated that the punishment inflicted upon the prisoner encompassed *all* of the conditions of confinement. *Id.* at 2328-30.

In *Hutto*, the Court only considered whether "punitive isolation" amounted to cruel and unusual punishment. 437 U.S. at 685. The *Wilson* concurrence interpreted *Hutto* as a clear cut rule defining conditions of confinement as punishment. 111 S. Ct. at 2328. However, the majority stated that *Hutto* did not address whether the conditions of confinement remedied by the lower court constituted cruel and unusual punishment. *Id.* at 2325 n.2.

In *Rhodes*, the Court addressed whether the alleged conditions of confinement were serious enough to reach constitutional deprivation. 452 U.S. at 346-47. According to the *Wilson* concurrence, *Rhodes* clearly articulated that conditions of confinement are

ment was unnecessary to sustain an Eighth Amendment challenge to conditions of confinement.[87] Moreover, the concurring justices believed that the intent requirement was unwise and impossible to apply.[88]

The majority's holding that the petitioner must show that prison officials were deliberately indifferent to the conditions of his incarceration was correct for three reasons. First, the Eighth Amendment, which expressly protects prisoners from cruel and unusual punishment, mandates an intent requirement.[89] By definition, punishment is a deliberate act inflicted for some penalogical purpose, such as chastising or deterring a prisoner.[90] A prison official's acts constitute cruel and unusual

---

to be treated like formal punishment for purposes of Eighth Amendment challenges. *Wilson*, 111 S. Ct. at 2329-30. Conversely, the *Wilson* majority found no support for the concurring view. *Id.* at 2325 n.2.

The *Wilson* concurrence found it important that the lower courts, consistent with the concurring opinion, often examined only the objective conditions and not the subjective intent of prison officials when assessing Eighth Amendment challenges. *Id.* at 2330 n.1 (citing Tillery v. Owens, 907 F.2d 418, 426 (3d Cir. 1990) (looking at the totality of the conditions to determine cruel and unusual punishment); Foulds v. Corley, 833 F.2d 52, 54-55 (5th Cir. 1987) (stating that the treatment of a prisoner while in confinement embodies punishment and is subject to Eighth Amendment scrutiny); French v. Owens, 777 F.2d 1250, 1252 (7th Cir. 1985) (examining the totality of conditions of confinement), *cert. denied*, 479 U.S. 817 (1986); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985) (stating that prisoners have a constitutional right to safe conditions of confinement and, if dangerous, those conditions create cruel and unusual punishment).

87. 111 S. Ct. at 2330. The concurrence criticized the majority's reliance on *Resweber*, *Estelle*, and *Whitley*, stating that they were not cases challenging the conditions of confinement but rather challenges to specific acts aimed at individual prisoners. *Id.*

The majority discounted this criticism and found "no basis whatever for saying that [deprivation inflicted upon all prisoners] is a 'condition of confinement' and [deprivation inflicted upon a specific prisoner] is not - much less that the one constitutes 'punishment' and the other does not." *Wilson*, 111 S. Ct. at 2324 n.1. For example, in *Estelle*, if an individual was deprived of adequate medical care, that deprivation was a condition of his confinement. Estelle v. Gamble, 429 U.S. 97, 104 (1976).

88. 111 S. Ct. at 2330. The concurrence found that the majority opinion departed from case law and created a requirement impossible to administer. *Id.* The concurrence reasoned that most constitutional deprivations result from the culmination of various acts over an extended period of time. *Id.* Furthermore, because these cumulative actions were committed by numerous people, the concurrence argued that it would be difficult to determine whose intent to measure. *Id.*

89. *Id.* at 2325. "If the pain inflicted is not formally meted out *as punishment* by the statute or sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify [as an Eighth Amendment violation]." *Id.* *See supra* note 1 for the text of the Eighth Amendment.

90. *See* BLACK'S LAW DICTIONARY 1234 (6th ed. 1990); *See also* Wilson v. Seiter,

punishment only when the prison official intended the acts as punishment for a penal or disciplinary purpose.[91] Therefore, a mental element must attach to conditions of confinement in order for the treatment to constitute punishment.

Second, the "deliberate indifference" standard is both a practical and logical extension of the standard established in *Estelle*.[92] The extension is practical because it requires a lesser degree of culpability than cases of physical infliction of pain.[93] An inmate satisfies the Eighth Amendment's intent requirement merely by showing a series of events which, viewed in their totality, amount to a pattern of deliberate indifference which deprives the inmate of a single human need.[94] Furthermore, the extension of the deliberate indifference standard from the cases of inadequate medical care to cases challenging confinement conditions presents a logical progression. For example, the medical care a prisoner receives is as much a condition of his confinement as is the food he is fed and the protection he receives against other inmates.[95]

Third, the circumstances facing prison officials vary and their conduct in maintaining the safety and security of their facilities varies in response.[96] The competing institutional concerns at issue when officials allegedly inflict cruel and unusual punishment determine the wantonness of that conduct.[97] The inefficacy of applying the same standard to a claim arising from actions taken to quell a riot and to a claim arising from poor medical care mandates the application of a

111 S. Ct. 2321, 2325 (1991) (defining punishment as "a deliberate act intended to chastise or deter").

91. 111 S. Ct. at 2325. *See* Duckworth v. Franzen, 780 F.2d 645, 652 (7th Cir. 1985) ("[I]f the guard accidentally stepped on the prisoner's toe and broke it, this would not be punishment in anything remotely like the accepted meaning of the word. . ."), *cert. denied*, 479 U.S. 816 (1986).

92. *See supra* notes 41-50 and accompanying text for a discussion of *Estelle*.

93. 111 S. Ct. at 2326 (finding that the higher state of mind required in prison riot cases does not apply to prison condition cases).

94. *Id.* at 2327 (finding that a long duration of cruel prison conditions may make it easier to establish the requisite intent). *See* Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977) (stating that the cumulative effect of poor medical care amounted to deliberate indifference); *accord* Fisher v. Koehler, 692 F. Supp. 1519, 1561-62 (S.D.N.Y. 1988) (holding that the totality of the incidents of violence against a prisoner amounted to deliberate indifference), *aff'd*, 902 F.2d 2 (2d Cir. 1990).

95. 111 S. Ct. at 2326.

96. Whitley v. Albers, 475 U.S. 312, 320 (1986).

97. *Id. See also Wilson*, 111 S. Ct. at 2326.

varying standard of culpability.[98] As competing institutional concerns dissipate, the standard for wantonness drops from "malicious and sadistic" to the level of "deliberate indifference."[99]

Wilson correctly recognizes the importance of establishing a variable standard of culpability. However, the Court fails to provide lower courts with the necessary guidelines to use in balancing the competing concerns against the conduct of prison officials.[100] The Court makes no attempt to articulate the requirements for *per se* "deliberate indifference."[101] Although the deliberate indifference standard is more lenient than the malicious and sadistic standard[102] and affords greater protection from unconstitutional conditions,[103] the Supreme Court failed to provide the lower courts with criteria for determining the appropriate level of culpability in a given set of circumstances.[104] As a result, courts lack the tools necessary to control the number of prisoner rights claims and to render consistent results.

The *Wilson* court takes an additional step toward broadening Eighth Amendment application.[105] Establishment of an intention to chastise or deter is a necessary predicate to a finding that the actions of a prison

98. 111 S. Ct. at 2326.

99. *See* Lawson, *supra* note 6, at 243 (agreeing that prison officials must possess the freedom to quickly respond to riots in order to effectively control prisoners and prevent further mishaps). *See also*, Estelle v. Gamble, 429 U.S. 97, 104-05 (discussing various situations that would constitute deliberate indifference).

100. *See Wilson*, 111 S. Ct. at 2330 (White, J., concurring) (stating that the majority's intent requirement will prove impossible to apply).

101. Schwartz, *supra* note 57, at 3.

102. 111 S. Ct. at 2326. *But see* Schwartz, *supra* note 57, at 3 (it may be unclear whose intent must be shown, and thus it will be more difficult for a prisoner to make his claim).

103. *See Wilson*, 111 S. Ct. at 2326-27. A prisoner does not have to show a physical injury to prove deliberate indifference; therefore, it is easier to demonstrate an Eighth Amendment claim. *Id.*

104. *Id.* at 2331. Some commentators argue that Justice Scalia, writing for the majority, omitted a definition of "deliberate indifference" in order to secure a majority decision. *See* Schwartz, *supra* note 57, at 3.

105. *See* West, *supra* note 2, at 209-12 (stating that the phrase "cruel and unusual punishment" found within the Eighth Amendment defies precise definition). "A principle to be vital must be capable of wider application than the mischief which gave it birth." *Id.* (citing Weems v. United States, 217 U.S. 349 (1910)). *See also* Durkin, *supra* note 5, at 251 (stating that the "Eighth Amendment has evolved to an extent where it may accommodate more subtle notions of what constitutes cruel and unusual punishment").

official constitute cruel and unusual punishment.[106] By allowing relief to a prisoner who shows that prison officials were deliberately indifferent to the conditions of his confinement, the Supreme Court properly gives prisoners additional means to protect themselves from unconstitutional deprivations arising outside of formal punishment. However, despite the Court's good intentions, the *Wilson* standard is vague and offers no guidelines for lower courts to follow, thus adding to the confusion and accumulation of Eighth Amendment claims.

*Richard H. Kuhlman**

106. *Wilson*, 111 S. Ct. at 2325. The requirement of intent is based on the language of the Eighth Amendment and on the definition of the word "punishment."

* J.D. 1993, Washington University.

RECENT DEVELOPMENTS