



**SUPERMAX PRISONS:  
ANOTHER CHAPTER IN THE  
CONSTITUTIONALITY OF THE  
INCARCERATION CONUNDRUM**

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## I. INTRODUCTION

The American prison system has grown and expanded considerably over the past three decades. From 1977-2005, the amount of offenders entering prison increased by approximately 400 percent.<sup>1</sup> Alongside the dramatic increase in the number of inmates came an increase in fiscal expenditures, totaling forty-three billion dollars spent in 2005 to maintain the imprisonment rates per year.<sup>2</sup> What many researchers and policymakers often misunderstand, regarding the recent growth in imprisonment rates, is how and why the United States has incarcerated more offenders despite a relatively stable crime rate preceding the 1980s.<sup>3</sup> This misconception has led to many assertions that the recent increase in incarceration rates occurred primarily because of a single variable, one example being an increase in young adult black males in the criminal justice system.<sup>4</sup> However, these assertions may undermine other causal factors not identified within a particular study.

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<sup>1</sup> John F. Pfaff, *Criminology: The Empirics of Prison Growth: A Critical Review and Path Forward*, 98 J. CRIM. L. & CRIMINOLOGY 547, 547 (2008).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 549.

Additionally, some criminological studies have methodological problems that hinder the reliability and accuracy of their findings.<sup>5</sup> Increasingly, modern punitive laws and penal philosophies have assisted the widespread construction of super-maximum security prisons (“supermax”), because under these principles the amount of “problematic” inmates has increased.<sup>6</sup>

The increased utilization of incarceration over the last century in the United States has placed a great burden on the government to assure that inmates’ constitutional rights are protected while incarcerated. This is particularity true in relation to the Cruel and Unusual Punishment Clause of the Eighth Amendment. This article will provide an overview of the Eighth Amendment, how criminologists and the court system have defined punishment, and an analysis of cases dealing with alleged violations of prisoner mistreatment and intolerable prison conditions. Specifically, this paper will detail the history of supermax prisons and look at the constitutionality of solitary confinement and conditions in supermax prisons. Examining the application of the Eighth Amendment’s Cruel and Unusual Punishment Clause by various state and federal courts to the conditions of confinement within prisons can assist in identifying how institutions such as supermax security prisons have received Constitutional approval.<sup>7</sup>

## II. AN OVERVIEW OF THE EIGHTH AMENDMENT

The Eighth Amendment states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>8</sup> The problem for the judiciary has been to define “cruel and unusual punishment.” This provision of the Eighth Amendment applies only to governmental action

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<sup>5</sup> *Id.* at 548.

<sup>6</sup> Stephen C. Richards, *USP Marion: The First Federal Supermax*, 88 THE PRISON J. 6, 17 (Mar. 2008).

<sup>7</sup> Jesenia M. Pizarro & Raymund E. Narag, *Supermax Prisons: What We Know, What We Do Not Know, and Where We Are Going*, 88 THE PRISON J. 23, 32 (Mar. 2008).

<sup>8</sup> U.S. CONST. amend. VIII.

appropriately defined as “punishment.”<sup>9</sup> Yet, providing a static definition of punishment, in relation to the Eighth Amendment, has not been an easy task for the court system. Punishing criminals and the development of the U.S. prison system has a long history in American jurisprudence. The acceptable forms of sanctions have changed and evolved over time. Therefore, it is critical to define punishment in the context of time and location.

## **B. Defining Punishment**

During the eighteenth century, the writers of the Constitution interpreted the term “punishment” as a sanction imposed upon an individual who engaged in actions that were prohibited by the state.<sup>10</sup> The definition of punishment is important, considering the Eighth Amendment bars governmental agents from sentencing individuals to cruel and unusual sanctions. However, it is crucial to examine the societal context of what punishment is, how it has changed over time, and how the definition has influenced the interpretation of the Eighth Amendment.<sup>11</sup>

### 1. Foucault’s Analysis of Punishment and Its Application to the Modern Prison System

In an examination of punishment and the birth of the prison system, Michel Foucault wrote in vivid detail about the execution of an individual in a public square.<sup>12</sup> The grueling execution of Damiens, the man who attempted to murder King Louis XV, occurred as a public spectacle in the square of Paris, France in 1757.<sup>13</sup> Damiens received one of the most severe punishments for his assassination attempt, which was to be

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<sup>9</sup> Thomas K. Landry, “Punishment” and the Eighth Amendment, 57 OHIO ST. L.J. 1607, 1609 (1996).

<sup>10</sup> *Helling v. McKinney*, 509 U.S. 25, 38 (1993) (Thomas, J., dissenting).

<sup>11</sup> Landry, *supra* note 9, at 1610.

<sup>12</sup> MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON SYSTEM 3 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

<sup>13</sup> *Id.*

drawn and quartered. The torture and death of Damiens lasted over four hours, as it took over four hours for the body itself to burn.<sup>14</sup> He endured the flaying of his flesh with hot pincers, the pouring of boiling wax that melted a knife to his hand, the repeated attempt to quarter his limbs, and ultimately the burning of his remains.<sup>15</sup>

Foucault's discussion of punishment in the public square is influential, because he argued that governmental displays of power began to shift from the individual's body towards the removal of the individual's freedoms.<sup>16</sup> Foucault's framing of punishment attempted to explain why nation-states relied on draconic punishments preceding the 1800s. Foucault argued that the purpose of public displays of corporal punishment was to mark the offender as a target of retaliatory vengeance by the head of state in an effort to deter other citizens from engaging in similar behavior.<sup>17</sup> Yet, the public display of inhumane punishment against offenders soon began to undermine the effectiveness and purpose of punishment for many nation-states, because these entities typically lacked a nationwide police force to enforce the law, which creates civil unrest.<sup>18</sup> Thus, Foucault believed punishment for criminal offenses should be moved from the public sphere to private institutions. In particular, Foucault supported Jeremy Bentham's development of an ideal prison system, the panopticon.<sup>19</sup>

In an article assessing the utility of Foucault's evaluation of discipline and punishment, Alford discussed reasons why Foucault relied so heavily on the panopticon as the ideal tool for punishing and observing offenders in a controlled setting.<sup>20</sup> The

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<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 3-5.

<sup>16</sup> *Id.* at 10-11.

<sup>17</sup> *See id.* at 34.

<sup>18</sup> John Braithwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?*, 46 UCLA L. Rev. 1727, 1730 (1999).

<sup>19</sup> C. Fred Alford, *What Would It Matter If Everything Foucault Said About Prison Were Wrong? "Discipline and Punish" After Twenty Years*, 29 THEORY AND SOC'Y 125, 128 (Feb. 2000).

<sup>20</sup> *Id.*

panopticon, developed by Jeremy Bentham, is a total institution that has an architectural design that allows one individual in a central watchtower to observe all inmates in a circular structure.<sup>21</sup> According to Erving Goffman, “total institution” is defined as an environment that facilitates and limits individual behaviors.<sup>22</sup> The panopticon is notable because it exemplifies the desired punitive relationship between the guard and the inmate. Alford states, “The panopticon is the carceral superego, omnipresent but strangely invisible, so that one never knows for sure when one is being observed, only that there is no moment in which one could not be.”<sup>23</sup> In practice, a panopticon guard should never need to check on an inmate in his or her cell; doing so would concede power and weaken the strength of the panopticon.<sup>24</sup> A panopticon institution allows correctional officials to feel confident in ensuring the discipline of inmates, due to the surveillance it provides and timed work schedules within cells that limit offender actions.<sup>25</sup> When punishing offenders, panopticons utilize both time, by controlling their daily activities, and space, by controlling their physical bodies.<sup>26</sup>

Foucault asserted that early penologists believed the paradigm shift in punishment from bodily torture towards controlling time, freedom, and the idleness of inmates would result in greater discipline.<sup>27</sup> However, Alford argued the majority of elements Foucault believed were necessary for an efficient disciplinary system are absent in American prisons today.<sup>28</sup> Instead, modern American penitentiaries rely on “holding the body” instead of constantly keeping inmates under

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<sup>21</sup> *Id.* at 129.

<sup>22</sup> Erving Goffman, *Characteristics of Total Institutions*, in CORRECTIONAL CONTEXTS: CONTEMPORARY AND CLASSICAL READINGS 96 (J.W. Marquart and J.R. Sorensen eds., 1996).

<sup>23</sup> Alford, *supra* note 19, at 129.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> FOUCAULT, *supra* note 12 at 15.

<sup>28</sup> Alford, *supra* note 19, at 133.

surveillance and working.<sup>29</sup> Alford conducted a personal onsite visit of Patuxent's administrative segregation facility in Maryland.<sup>30</sup> There, he observed that the penitentiary differed starkly from Foucault's utopian interpretation of the ideal method of disciplining criminal offenders.<sup>31</sup> Specifically, Alford found that correctional officers maintained order within the prison by controlling the entrances and exits to the prison, particularly in the administrative segregation unit.<sup>32</sup> In a separate on-site visit of the Illinois prison modeled after the panopticon, Alford found that inmates, in an effort to obtain privacy from the ever-present guards, had placed blankets and other items in front of their cells to limit the correctional officer's view.<sup>33</sup>

## 2. Braithwaite's Analysis of Punishment and Its Application to the Modern U.S. Prison System

In a modern analysis of the evolution of punishment in the United States, Braithwaite observed that the criminal justice system moved punishment out of the public's view and into institutions.<sup>34</sup> He asserted the use of common forms of corporal punishment disappeared from American correctional facilities beginning in 1820 and eventually became a nonexistent practice for all states by 1970.<sup>35</sup> With the abolition of corporal punishment in America, the need for controlling offender behavior shifted to the penitentiary.<sup>36</sup> This shift emphasized controlling the body in a different manner than simply inflicting

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 126.

<sup>31</sup> *Id.* at 126-28.

<sup>32</sup> *Id.* at 131.

<sup>33</sup> *Id.*

<sup>34</sup> Braithwaite, *supra* note 18, at 1733.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 1732-35.

pain upon the individual's physical state.<sup>37</sup> Instead, the body was controlled by restricting the criminal's freedom.

In a critique of modern punishment and the penitentiary, Braithwaite argued that reliance on imprisonment as the primary method of sanctioning individuals has had negative repercussions for both inmates and the public at large.<sup>38</sup> Prisons can serve as a teaching ground for criminal behavior and can worsen the attitudes of inmates, which impedes their ability to return to society successfully.<sup>39</sup> Therefore, Braithwaite suggests modern criminologists' opinions on discipline and punishment are only theoretical and unlikely to be applicable to actual penitentiaries.<sup>40</sup> However, Braithwaite argues the analysis of the evolution of punishment and discipline successfully illustrated the allure of penitentiaries and has offered insight into the reasoning behind American prison officials' increasing reliance on prisons to punish offenders.<sup>41</sup> In conclusion, Braithwaite stated, in reference to America's endorsement of prisons, "There were some good historical reasons why Americans took pride in their prisons, while other nations were embarrassed by theirs."<sup>42</sup>

### 3. Landry's Governmentalist Definition of Punishment

In his analysis of the various interpretations of the Eighth Amendment, Landry argues three incomplete definitions of punishment have inhibited the creation of a concise interpretation of the Eighth Amendment.<sup>43</sup> The first unsound definition of punishment is the structural definition, which removes references to conditions and events in prison while

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<sup>37</sup> FOUCAULT, *supra* note 12, at 15-16.

<sup>38</sup> Braithwaite, *supra* note 18, at 1742.

<sup>39</sup> *Id.* at 1738.

<sup>40</sup> *Id.* at 1739-40.

<sup>41</sup> *Id.* at 1736-1737.

<sup>42</sup> *Id.* at 1732.

<sup>43</sup> Landry, *supra* note 9, at 1610.



limiting sanctions to those defined in the penal code.<sup>44</sup> The second imperfect definition is the experiential definition, which considers all events and conditions within the prison system in spite of governmental intentions.<sup>45</sup> The third and final flawed definition of punishment is the subjectivist definition, which includes both the sanctions outlined in the penal code and the events and conditions in the prison system “attributable to the subjective intent of any government agent.”<sup>46</sup>

In response to these three problematic definitions of punishment, in relation to the Eighth Amendment, Landry proposes his own definition. He advances a governmentalist definition, which would include the sanctions outlined in the penal code and the conditions and events in prison attributable to governmental action “in its role as monopolist over the machinery of punishment.”<sup>47</sup> Landry’s governmentalist definition is therefore composed of three elements: “(1) a penalty, (2) inflicted for criminal conduct, (3) pursuant to regular processes of governmental administration and thus attributable to the government in its role as monopolist over punishment.”<sup>48</sup> This definition places the burden on the government to explain any “accidental, exigent, random, or illegal injuries, whether inflicted by prison guards, fellow prisoners, or chance” that are not outlined in the legal code as the expected sanction for a particular criminal offense.<sup>49</sup> However, it is important to recognize that no matter which definition is used, a cruel and unusual punishment violation under the Eighth Amendment must be attributable to some type of governmental action.

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 1610-1611.

<sup>49</sup> Landry, *supra* note 9, at 1611.

## B. “Evolving Standards of Decency”

Constitutional issues involving the Eighth Amendment often invoke discussion regarding the role of the government in relation to the punishment or sanction offenders receive. In *Trop v. Dulles*, the Court examined a statute that authorized expatriation of individuals in the military who are convicted of desertion during wartime.<sup>50</sup> In an analysis of the Cruel and Unusual Punishment Clause applying the sanction of expatriation to the specific crime of military desertion during wartime, Chief Justice Warren stated, “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.”<sup>51</sup> Chief Justice Warren further argued that punishments should not outweigh the severity of the crime committed.<sup>52</sup>

Further, the Court employed the phrase “evolving standards of decency” as a guide to lower courts when determining whether a punishment resulted in a violation of the Cruel and Unusual Punishment Clause.<sup>53</sup> Specifically, the Court found in *Weems v. United States* that the words in the Eighth Amendment are not precise and their scope is not static, therefore, “the Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”<sup>54</sup>

In a later decision, the Eighth Circuit further clarified “evolving standards of decency” by stating the community’s “broad and idealistic concepts of dignity, civilized standards, humanity, and decency are useful and useable.”<sup>55</sup> The concept of “evolving standards of decency” has since been used in cases examining the severity of specific punishments under the Eighth Amendment, in particular, the death penalty.

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<sup>50</sup> *Trop v. Dulles*, 356 U.S. 86, 87-88 (1958).

<sup>51</sup> *Id.* at 100.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 100-101.

<sup>54</sup> *Id.* (citing *Weems v. United States*, 217 U.S. 349 (1910)).

<sup>55</sup> *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968).

### III. EIGHTH AMENDMENT'S APPLICATION TO MODERN INCARCERATION: PRISON CONDITIONS AND PRISONER MISTREATMENT

Many Eighth Amendment cases focus on the controversial topic of capital punishment, yet equally relevant are cases examining the Cruel and Unusual Punishment Clause in relation to prison conditions and prisoner mistreatment under the same Amendment. Examining cases involving inmates and corporal punishment can also help establish a timeline of the government's intervention to ensure constitutional compliance. For example, inmates at the Mississippi State Penitentiary at Parchman filed a class action lawsuit against the administrators of the prison.<sup>56</sup> Inmates alleged the maintenance, operation, and administration of the penitentiary were unconstitutional under the Eighth Amendment.<sup>57</sup> Specifically, the inmates argued overcrowding in the barracks, assignment to cells without regard for inmate classification, lack of protection from the correctional officers against assaults from other inmates, and assigning correctional officer duties to incompetent inmates, amounted to a violation of the Cruel and Unusual Punishment Clause.<sup>58</sup> The court ruled that the Mississippi State Penitentiary was in violation of the Eighth Amendment.<sup>59</sup>

The federal district court in Northern Mississippi noted, "The prohibition of the Eighth Amendment is not limited to specific acts directed at selected individuals but is equally applicable to general conditions of confinement that may prevail at prison."<sup>60</sup> The court further stated that hard labor without compensation may not be a violation of the Eighth Amendment as long as it is not "so bad as to be shocking to the conscience" of a prudent and reasonable member of the community, even when the prisoner is not individually subject to specific disciplinary

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<sup>56</sup> *Gates v. Collier*, 349 F. Supp. 881, 885 (N.D. Miss. 1972).

<sup>57</sup> *Id.* at 885-86.

<sup>58</sup> *Id.* at 885-86, 888.

<sup>59</sup> *Id.* at 898.

<sup>60</sup> *Id.* at 893.

action.<sup>61</sup> Ultimately, the court found the barracks in Parchman were intolerable for human habitation and created serious threats to inmate health and safety due to the inadequacy of equipment and medical facilities.<sup>62</sup> The court concluded, “The deprivation of basic human needs for housing, food and medical care is not merely unnecessarily cruel and unusual, but is calculated to retard, if not prevent, the process of a prisoner’s rehabilitation.”<sup>63</sup>

The federal court in the Eastern District of Arkansas has held that inmates are protected against excessive corporal punishment by finding inmates should not engage in intensive labor that is beyond their physical capabilities.<sup>64</sup> In *Talley v. Stephens*, three inmates at an Arkansas State Penitentiary filed a cease and desist injunction alleging they were asked to participate in excruciating manual labor and suffered corporal punishment that amounted to cruel and unusual punishment.<sup>65</sup> Correctional guards had forced two of the inmates, who had serious medical concerns, to engage in manual labor that exceeded their physical capabilities.<sup>66</sup> The complainants were forced to pick cotton despite their medical conditions, and when unable to continue to work, they would receive severe bodily punishment at the hands of the correctional officers.<sup>67</sup> The United States District Court of the Eastern District of Arkansas ruled that forcing inmates to engage in intensive manual labor that is beyond their physical capabilities does constitute cruel and unusual punishment.<sup>68</sup>

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<sup>61</sup> *Id.* (citing *Holt v. Sarver*, 309 F. Supp. 362, 373 (E.D. Ark. 1970), *aff’d* 442 F.2d 304 (8th Cir. 1971)).

<sup>62</sup> *Gates*, 349 F. Supp. at 894.

<sup>63</sup> *Id.*

<sup>64</sup> *Talley v. Stephens*, 247 F. Supp. 683, 687-89 (E.D. Ark. 1965).

<sup>65</sup> *Id.* at 685.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 687.

<sup>68</sup> *Id.*

The court examined the issue of whether the alleged corporal punishment suffered by the inmates when they refused to pick cotton constituted a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause.<sup>69</sup> According to the prisoners, Arkansas State Penitentiary correctional guards would whip inmates on the buttocks with a leather strap when they were not compliant.<sup>70</sup> The court ruled corporal punishment is allowed under clearly identified and outlined institutional policies that ensure the safety of the inmates.<sup>71</sup> Chief Judge Henley discussed the constitutionality of corporal punishment, stating:

It must not be excessive; it must be inflicted as dispassionately as possible and by responsible people; and it must be applied in reference to recognizable standards whereby a convict may know what conduct on his part will cause him to be whipped and how much punishment given conduct may produce.<sup>72</sup>

However, the Arkansas State Penitentiary lacked procedural safeguards dictating the permissible use of corporal punishment, which influenced the court's decision to rule in favor of the petitioners and bar the practice of whipping inmates.<sup>73</sup> In addition to problems associated with corporal punishment, Chief Judge Henley held that ignorance to the infliction of bodily harm to inmates is not a valid defense, regardless of whether the culprit was a correctional officer, or a "trustee".<sup>74</sup> This decision was important for clarifying the substantive standard that required complainants to establish negligence on the part of correctional administrators under the

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<sup>69</sup> *Id.* at 687-688.

<sup>70</sup> *Talley*, 247 F. Supp. at 687.

<sup>71</sup> *Id.* at 689.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 692.

Arkansas standards for “excessive punishment” as found in Act of Mar. 21, 1893, No. 76, §62, Ark.Stats., 1947, § 46-158.<sup>75</sup>

Five years following the decision in *Talley*, Chief Judge Henley wrote the majority opinion in another influential case involving eight inmates alleging violations of their Eighth Amendment constitutional rights due to cruel and unusual prison practices.<sup>76</sup> Yet in this case, *Holt v. Sarver*, the court examined whether the following conditions violated the Eighth Amendment: the practice of appointing “trusties” (inmates who are given correctional officer responsibilities), conditions within open dormitories, use of isolation cells, lack of rehabilitation programs, and other allegedly intolerable prison conditions.<sup>77</sup> Chief Judge Henley ruled in these types of cases it is important to frame and define the Eighth Amendment. He stated, “Generally speaking, a punishment that amounts to torture, or that is grossly excessive in proportion to the offense for which it is imposed, or that is inherently unfair, or that is unnecessarily degrading, or that is shocking or disgusting to people of reasonable sensitivity is a ‘cruel and unusual’ punishment.”<sup>78</sup> The court held the Arkansas State Penitentiary inmates were victims of numerous Eighth Amendment violations, one of which included the use of uncontrollable trustees and open dormitory conditions, creating a hostile environment within the prison setting that endangered the lives of other inmates.<sup>79</sup>

The Eighth Amendment’s Cruel and Unusual Punishment Clause offers protection against governmental sanctions that are not proportionate to the crime.<sup>80</sup> Applying the Eighth Amendment to the field of corrections, specifically imprisonment, involves not only an examination of prisoner mistreatment, but also of the conditions of confinement. For example, over the past forty years courts have decided whether

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<sup>75</sup> *Id.* at 687.

<sup>76</sup> *Holt v. Sarver*, 309 F. Supp. 362, 365 (E.D. Ark. 1970).

<sup>77</sup> *Id.* at 373.

<sup>78</sup> *Id.* at 380.

<sup>79</sup> *Id.* at 381-83.

<sup>80</sup> Stephen T. Parr, *Symmetric Proportionality: A New Perspective on the Cruel and Unusual Punishment Clause*, 68 TENN. L. REV. 41, 41 (2000).

the Eighth Amendment safeguards inmates' right to medical treatment, individual cell occupancy, exercise opportunities, and use of punitive segregation cells, among other conditions.<sup>81</sup> While the United States Supreme Court has addressed whether prison administrators possess a culpable state of mind in determining constitutional violations, they have failed to define when prison conditions violate the Eighth Amendment. Some legal experts believe the current carceral burden created by the United States Supreme Court is both unrealistic and detrimental to ensuring constitutional compliance.<sup>82</sup> Specifically, the state has the power to control and sequentially house inmates to certain living areas, which leaves administrators responsible for the wellbeing of inmates.<sup>83</sup> It is necessary to investigate the reasoning behind influential federal and state Eighth Amendment cases regarding inmate conditions of confinement.

In *Buszka v. Johnson*, the complainant attempted to file a pro se civil suit under 42 U.S.C. § 1983 for the condition of his maximum-security confinement.<sup>84</sup> The inmate argued correctional officials attempted to harass him by restricting his exercise, which amounted to gross mistreatment.<sup>85</sup> The District Court held that mere claims of harassment under the Civil Rights Act do not constitute a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause.<sup>86</sup> As of the *Buszka* case, a specific test to prove that violations of constitutional rights are ongoing or have occurred did not exist for individuals alleging violations of the Cruel and Unusual Punishment Clause in the prison system.<sup>87</sup> However, a

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<sup>81</sup> See, e.g., *Buszka v. Johnson*, 351 F. Supp. 771 (E.D. Pa. 1972); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Wilson v. Seiter*, 501 U.S. 294 (1991); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

<sup>82</sup> See Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881 (2009).

<sup>83</sup> *Id.* at 891.

<sup>84</sup> *Buszka*, 351 F. Supp. at 772.

<sup>85</sup> *Id.* at 773.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

landmark case in 1976 helped establish “deliberate indifference” claims against state operatives.<sup>88</sup>

One of the most influential cases in assessing whether an inmate is suffering from inhumane or cruel treatment is *Estelle v. Gamble*, wherein the Supreme Court held that withdrawing or failing to offer medical services to inmates is unconstitutional.<sup>89</sup> Justice Marshall stated, “An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.”<sup>90</sup> The Court utilized precedent provided in *Gregg v. Georgia* to suggest that deliberately ignoring an inmate’s need for medical treatment would constitute an “unnecessary and wanton infliction of pain.”<sup>91</sup> Additionally, in *Estelle* the Court ruled both doctors and correctional officers are capable of violating an inmate’s Eighth Amendment right against cruel and unusual punishment.<sup>92</sup> As the Court succinctly ruled, the lack of medical treatment can procure a cruel and prolonged experience of pain, which can amount to torture.<sup>93</sup>

Another issue addressed by the Supreme Court in *Estelle* is whether the inmate properly established that the prison administrators purposefully and maliciously neglected his medical requests.<sup>94</sup> Specifically, the Court asserted, “In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.”<sup>95</sup> The petitioner, Gamble, argued his back injury prevented him from engaging in work duties, and the prison physician grossly mistreated him.<sup>96</sup>

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<sup>88</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976).

<sup>89</sup> *Id.* at 104-05.

<sup>90</sup> *Id.* at 103.

<sup>91</sup> *Id.* at 104 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)).

<sup>92</sup> *Estelle*, 429 U.S. at 104-05.

<sup>93</sup> *Id.* at 103.

<sup>94</sup> *Id.* at 107.

<sup>95</sup> *Id.* at 106.

<sup>96</sup> *Id.* at 99-101.



However, the Court found Gamble's pro se 42 U.S.C. § 1983 civil claim failed to establish deliberate indifference since he received medical attention while in prison seventeen times for his work-related back injury.<sup>97</sup> The Court remanded the case and stated further examination of allegations against other prison officials, such as the warden and Director of the state's Department of Corrections, was required by the lower court; even though one complaint was unfounded, that did not automatically result in the dismissal of the other allegations.<sup>98</sup>

After establishing the need for complainants to identify and provide evidence of deliberate indifference or the wanton infliction of pain, the United States Supreme Court further clarified the types of conditions that amount to constitutional violations of the Eighth Amendment. In *Rhodes v. Chapman*, the Supreme Court examined the living conditions within an Ohio prison and identified the appropriate requirements to establish a violation constituting cruel and unusual punishment or wanton infliction of pain.<sup>99</sup> Inmates of a facility filed suit against Ohio prison administrators, maintaining that double bunking two inmates within one single-occupancy cell constitutes cruel and unusual punishment.<sup>100</sup> Justice Powell delivered the opinion of the Court and ruled the use of double bunking in single-occupancy cells did not violate the Eighth Amendment.<sup>101</sup> Examining the totality of the circumstances, the Court concluded that institutional violence had not increased among inmates, and further surmised the combined factors present in the prison environment did not amount to a constitutional violation.<sup>102</sup> Additionally, Justice Powell stated, in reference to the double bunking of inmates, "But the Constitution does not mandate comfortable prisons . . . ."<sup>103</sup>

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<sup>97</sup> *Id.* at 107.

<sup>98</sup> *Estelle*, 429 U.S. at 108.

<sup>99</sup> *Rhodes v. Chapman*, 452 U.S. 337, 339 (1981).

<sup>100</sup> *Id.* at 339-40.

<sup>101</sup> *Id.* at 339, 352.

<sup>102</sup> *Id.* at 348.

<sup>103</sup> *Id.* at 349.

Justice Powell concluded that slightly unfavorable living conditions do not establish a viable claim for cruel and unusual punishment under the Eighth Amendment.<sup>104</sup>

Reinforcing the *Rhodes* decision, the Court in *Wilson v. Seiter* clarified the rule requiring that individuals filing an injunction against the State, claiming cruel and unusual punishment, must prove that corrections administrators acted deliberately and indifferently.<sup>105</sup> Here, Wilson filed civil suit under 42 U.S.C. § 1983 alleging the State had failed to promptly and adequately correct unfavorable conditions that, according to Wilson, amounted to cruel and unusual punishment.<sup>106</sup> Wilson asserted numerous unsuitable conditions in the prison and offered evidence to advance his argument, such as overcrowding, loud noises, and lack of adequate airflow, among others.<sup>107</sup> Justice Scalia delivered the majority opinion of the Court, which ruled that attempting to establish a claim against the State requires the complainant to prove that prison administrators possessed a culpable state of mind.<sup>108</sup> Petitioners requested the Court distinguish cruel and unusual punishment events according to when a “state of mind” inquiry would be relevant.<sup>109</sup> However, the Court denied this request on the basis that the State or official’s intent is always crucial when determining violations of cruel and unusual punishment.<sup>110</sup> Further, the Court noted that incorporating the additional element of intent to the defendant’s burden of proof in establishing a case against the State for violations of the Eighth Amendment might assist lower courts in determining whether State administrators acted in a culpable manner.<sup>111</sup>

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<sup>104</sup> *Id.*

<sup>105</sup> *Wilson v. Seiter*, 501 U.S. 294, 303-05 (1991).

<sup>106</sup> *Id.* at 296.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 299-302.

<sup>109</sup> *Id.* at 300.

<sup>110</sup> *Id.* at 300-02.

<sup>111</sup> *Wilson*, 501 U.S. at 305-06.

Additionally, Justice Scalia opined that a static definition of intent might result in the problem of determining how much time a particular condition should exist before it rises to the level of cruel and unusual punishment.<sup>112</sup>

The Court in *Wilson* also addressed the occurrence of unpleasant or traumatic events inside prisons for which the prison administrators were not culpable. Justice Scalia stated in an examination of related precedent, "These cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment."<sup>113</sup> To illustrate this point, Justice Scalia described a heating unit inside a prison that malfunctioned during the night and pointed out that this would create a chilling living condition for the inmates.<sup>114</sup> The administrators did not intentionally stop the boiler, but the cold air throughout the night would certainly be unpleasant for the prisoners. Thus, the inmates were suffering, but the administrators did not intentionally generate the unbearable condition. The primary point of Justice Scalia's example was to acknowledge that the intent to punish is a necessary element to establish a constitutional violation has occurred. Justice Scalia stated, "An intent requirement is either implicit in the word 'punishment' or is not; it cannot be alternately required and ignored as policy considerations might dictate."<sup>115</sup>

In another issue addressed in *Wilson*, the Court held that the wanton behavior requirement remains an integral part in establishing whether prison administrators violated an inmate's rights.<sup>116</sup> However, "wanton" behavior is not a clearly defined action, as discussed in *Whitley v. Albers*, a case in which correctional officers shot an inmate in the leg during a riot.<sup>117</sup> In *Whitley*, the inmate filed a civil suit against the State, alleging a

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<sup>112</sup> *Id.* at 301.

<sup>113</sup> *Id.* at 299.

<sup>114</sup> *Id.* at 300.

<sup>115</sup> *Id.* at 301-02.

<sup>116</sup> *Id.* at 302.

<sup>117</sup> *Whitley v. Albers*, 475 U.S. 312, 316 (1986).

violation of the Eighth Amendment's Cruel and Unusual Punishment Clause.<sup>118</sup> However, the Court held a violation of an inmate's Eighth Amendment rights could not occur during times of riots or threats to institutional safety if the correctional officers did not act maliciously towards an inmate.<sup>119</sup> Therefore, determining whether a violation of the Cruel and Unusual Punishment Clause has occurred requires an examination of the mindset of the officer and the context of the situation.<sup>120</sup> The Court rejected *Estelle's* "deliberate indifference" test for prison riot circumstances.<sup>121</sup> The Court further held the medical treatment of inmates is included in the conditions of confinement. However, in a different case, *Wilson v. Seiter* (1991), the Court specifically addressed the medical treatment of inmates, and in that case the Court upheld the use of *Estelle's* deliberate indifference test to determine the culpability of prison administrators.<sup>122</sup>

In the concurring opinion of *Wilson*, Justice White requested that the Court create an "objective test" to determine whether administrators violated inmates' rights.<sup>123</sup> Justice White suggested the "deliberate indifference" rule might provide too much discretion to the government in Eighth Amendment cases.<sup>124</sup> For example, State administrators could argue that a lack of funding or resources is the cause of intolerable conditions enumerated in an appellant's allegations, which may mask the administrator's malicious or indifferent treatment of inmates.<sup>125</sup> Additionally, Justice White warned that an increased reliance on "deliberate indifference" can undermine the intent and purpose of the Eighth Amendment, considering

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<sup>118</sup> *Id.* at 317.

<sup>119</sup> *Id.* at 320-21.

<sup>120</sup> *Id.* at 321-22.

<sup>121</sup> *Id.* at 320.

<sup>122</sup> *Wilson*, 501 U.S. at 302-03.

<sup>123</sup> *Id.* at 307-09 (White, J. concurring).

<sup>124</sup> *Id.* at 311 (White, J. concurring).

<sup>125</sup> *Id.*

inmates would most likely have an increasingly difficult time establishing a *per se* case.<sup>126</sup> In his critique of Justice Scalia's majority opinion, Justice White stated that the dependence on intent to establish a prison condition as cruel and unusual devalues the protection offered by the Eighth Amendment.<sup>127</sup>

Three years following the ruling in *Wilson*, the United States Supreme Court reviewed the case of *Farmer v. Brennan*.<sup>128</sup> Farmer, a transsexual inmate at a federal prison, had been raped and was a victim of a vicious beating in his cell.<sup>129</sup> Following his brutal victimization, correctional staff placed Farmer in a protective custody cell to determine if he had contracted AIDS.<sup>130</sup> As a result, he filed a civil suit requesting financial compensation and an injunction from being confined to any penitentiary (although there are other types of facilities that he could still be housed within).<sup>131</sup> In response, the Court further developed the use of the "deliberate indifference" test.<sup>132</sup> The Court pointed out that in order for Farmer to establish a legitimate claim, he would have to prove that the prison administrators knew of his vulnerability and purposefully neglected or ignored his need for protection.<sup>133</sup> To remedy this issue, the Court established it is enough to show a prison official acted or failed to act despite knowledge of a substantial risk of serious harm.<sup>134</sup>

In the majority opinion, Justice Souter discussed the factors that may result in prison staff violating the Eighth Amendment rights of inmates.<sup>135</sup> Specifically, in *Farmer* the

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> 511 U.S. 825 (1994).

<sup>129</sup> *Id.* at 829-30.

<sup>130</sup> *Id.* at 830.

<sup>131</sup> *Id.* at 831.

<sup>132</sup> *Id.* at 837.

<sup>133</sup> *Id.*

<sup>134</sup> *Farmer*, 511 U.S. at 842.

<sup>135</sup> *Id.* at 834.

Court acknowledged the precedent set forth in *Wilson* that a petitioner must establish a “sufficiently serious” violation occurred.<sup>136</sup> Additionally, the Court confirmed the decision in *Rhodes*, which found that the act must negate even the most “minimal civilized measure of life's necessities.”<sup>137</sup> Another factor necessary to establish the culpability of prison administrators is to prove that the punishment was “unnecessary and wanton,” as cited in *Wilson*.<sup>138</sup> Justice Souter stated, “It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety.”<sup>139</sup> This statement delineated the Court's acceptance that not everything inside prison walls is controllable, and prison administrators are not required to resolve every conflict among inmates.

The petitioner, Farmer, requested that the Court utilize Justice White's “objective test” for deliberate indifference proposed in the concurring opinion of *Wilson* as an alternative to *Estelle's* deliberate indifference test.<sup>140</sup> However, the Court rejected this request, ruling that a two-pronged test would provide a better solution for the issue.<sup>141</sup> In the first prong of the test, the appellant must show prison administrators understood a possible threat existed on the petitioner's life or safety.<sup>142</sup> In the second prong, the claimant must demonstrate that the prison official draws the inference from the facts he or she knows of under prong one to determine the action jeopardizes the inmate's life or safety.<sup>143</sup> Justice Souter stated, “The Eighth Amendment does not outlaw cruel and unusual ‘conditions’; it

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Farmer*, 511 U.S. at 837.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

outlaws cruel and unusual ‘punishments.’”<sup>144</sup> In addition to Farmer’s request to alter the *Estelle* test of deliberate indifference, he further requested that the Court adopt a manner of the test similar to that applied in *Canton v. Harris*.<sup>145</sup> Once again, the Supreme Court was called upon to address the issue of why a change was necessary in defining and proving deliberate indifference. Justice Souter stated the Court’s conclusion succinctly:

Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.<sup>146</sup>

In a concurring opinion, Justice Stevens asserted that an inmate’s constitutional rights could be violated regardless of the intent of the prison administrators.<sup>147</sup> In a second concurring opinion, Justice Thomas asserted that the Eighth Amendment only protects sentences resulting from judges and juries, not what occurs within the confines of prison.<sup>148</sup> Justice Thomas believed the majority moved in the right direction by developing a more stringent definition of deliberate indifference.<sup>149</sup> However, he still argued *Estelle* should be overruled, because the Constitution does not protect non-governmental sanctions unrelated to the sentence, such as conditions within a prison.<sup>150</sup>

Applying the U.S. Supreme Court decisions interpreting cruel and unusual prison conditions, a Connecticut court noted the deliberate indifference test assisted their decision to discard

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<sup>144</sup> *Id.* at 837.

<sup>145</sup> *Id.* at 840 (discussing *Canton v. Harris*, 489 U.S. 378 (1989)).

<sup>146</sup> *Farmer*, 511 U.S. at 842.

<sup>147</sup> *Id.* at 858 (Stevens, J., concurring).

<sup>148</sup> *Id.* at 861 (Thomas, J., concurring).

<sup>149</sup> *Id.* at 861.

<sup>150</sup> *Id.*

a petitioner's motion for habeas corpus. In *Fuller v. Commissioner of Correction*, the Connecticut appellate court ruled that an inmate had failed to meet her burden of proof in a case alleging the warden treated her with deliberate indifference.<sup>151</sup> The court further found that double bunking two individuals per cell does not constitute a violation of the Eighth Amendment.<sup>152</sup> This case illustrates the use of U.S. Supreme Court precedent on the deliberative indifference test applied to facts present in a state court case. In this Connecticut case, the petitioner claimed the conditions of confinement within the prison were intolerable, citing several factors: threats against her, unsanitary living conditions, and close quarters living with violent cellmates.<sup>153</sup> Citing *Farmer* and *Rhodes*, the Connecticut court concluded that the appellant failed to prove deliberate indifference.<sup>154</sup> The court noted the petitioner failed to assert that the prison administration knew and intentionally placed her in a situation where she would be injured, as discussed under *Farmer*.<sup>155</sup> They further noted the petitioner's complaint only highlighted the facts of her assault, but neglected to prove that she was in any serious harm.<sup>156</sup>

It is clear, after examining the numerous cases above, that the standard of the Cruel and Unusual Punishment Clause of the Eighth Amendment, as applied to conditions of prison confinement, has slowly evolved.<sup>157</sup> This is illustrated by the continued increase in examining the intent and culpability of state correctional employees, as opposed to the ostensibly "cruel" conditions applied to inmates, when determining whether a constitutional violation has occurred.<sup>158</sup> Additionally,

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<sup>151</sup> *Fuller v. Comm'r of Corr.*, 815 A.2d 208, 210 (Conn. App. Ct. 2003).

<sup>152</sup> *Id.* at 213.

<sup>153</sup> *Id.* at 210.

<sup>154</sup> *Id.* at 212-13.

<sup>155</sup> *Id.* at 212.

<sup>156</sup> *Id.* at 211-12.

<sup>157</sup> See e.g., *Estelle*, 429 U.S. 97; *Wilson*, 501 U.S. 294; *Madrid*, 889 F. Supp. 1146.

<sup>158</sup> *Farmer*, 511 U.S. at 844-45.



the United States Supreme Court has refused to create a static rule to determine “deliberate indifference” when attempting to evaluate Eighth Amendment claims.<sup>159</sup> The United States Supreme Court has held that “deliberate indifference” is more severe than negligence, but less detrimental than an act of omission.<sup>160</sup> After identifying the requirements needed to prove an Eighth Amendment Cruel and Unusual Punishment violation in relation to prison conditions, it is necessary to examine more narrowly whether solitary confinement, particularly in supermax security prisons, violates Eighth Amendment constitutional rights.<sup>161</sup>

#### IV. THE RISE AND CONSTITUTIONALITY OF SUPERMAX UNITS AND PRISONS

##### A. History of Supermax Prisons

The first permanent supermax lockdown status occurred in Marion, Illinois, at a federal penitentiary in 1983.<sup>162</sup> Marion housed some of the most problematic inmates throughout the federal prison system. An isolation wing of Marion erupted into violence when an inmate managed to procure a weapon and kill a correctional officer.<sup>163</sup> After regaining control of the prison, correctional administrators forced inmates to remain in their single sized cells for twenty-three hours a day.<sup>164</sup> Additionally, some inmates served years within the facility without having any physical contact with other individuals.<sup>165</sup> Inmates were also required to eat meals inside their cells, and were subjected to strict security measures.<sup>166</sup>

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<sup>159</sup> *Id.* at 844-47.

<sup>160</sup> *Id.* at 836.

<sup>161</sup> *See Madrid*, 889 F. Supp. at 1156.

<sup>162</sup> Richards, *supra* note 6, at 9-10.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 10.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

Supermax inmates were often only able to speak to mental health professionals and their attorneys through a small opening in their cell's steel doors.<sup>167</sup> Haney argues these security protocols counteract the capabilities of many mental health professionals and other individuals to assist inmates, because the inmate has to speak loudly for the mental health professional to understand them.<sup>168</sup> This would potentially allow other inmates to overhear conversations between medical professionals and the inmate, which would undermine the credibility and effectiveness of the treatment.<sup>169</sup>

Supermax prisons appealed to both policymakers and correctional administrators throughout the 1980s because they appeared to solve institutional problems by indefinitely isolating problematic inmates.<sup>170</sup> The use of myths helped perpetuate the belief that supermax facilities effectively and efficiently manage the inmate population throughout a prison. One example given by Pizarro, Stenius, and Pratt is that supermax facilities have a deterrent effect on the remaining inmate population.<sup>171</sup> However, only a small portion of inmates will enter supermax facilities, which lessens its deterrent effect.<sup>172</sup> Inmates understand the likelihood of being placed in solitary confinement for misconduct is far less likely than simply receiving a minor sanction<sup>173</sup> Pizarro et al. asserted, "Supermax prisons emerged within a social, political, and correctional culture focused on punitive responses to crime and the need to manage large numbers of individuals."<sup>174</sup>

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<sup>167</sup> Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 143 (Jan. 2003).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Jesenia M. Pizarro, Vanja M. K. Stenius, & Travis C. Pratt, *Supermax Prisons: Myths, Realities, and the Politics of Punishment in American Society*, 17 CRIM. JUST. POL'Y REV. 6, 13 (Mar. 2006).

<sup>171</sup> *Id.* at 15.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 17.

In one of the earliest and most expansive studies of supermax facilities, King found approximately two percent of the inmate population in the United States served time in supermax units.<sup>175</sup> As of 1999, thirty-four states had a supermax facility or were in the process of building one.<sup>176</sup> Among the states that had a supermax unit or facility, Mississippi appropriated the highest percentage of beds to such facilities, which constituted approximately twelve percent of their bed space.<sup>177</sup> The majority of states responded to a National Institute of Corrections survey that focused primarily on supermax prisons and facilities.<sup>178</sup> One of the questions on the survey asked state correctional administrators to identify why they had constructed supermax facilities.<sup>179</sup> The majority of state correctional administrators reported they believed supermax facilities would alleviate the amount of institutional problems that occur within their jurisdictions.<sup>180</sup>

In a national survey of prison wardens, the majority believed supermax facilities increased institutional safety, order, and control throughout their jurisdictions.<sup>181</sup> A study by Mears and Castro coincided with earlier findings by King concluding the majority of policymakers wanted to invest in an institution that could result in better inmate management options.<sup>182</sup> However, the desirability of supermax facilities is limited by other problems. The wardens surveyed in the Mears and Castro study reported that funding, correctional officer retention, and ensuring ethical staff behavior are major concerns that may

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<sup>175</sup> Roy D. King, *The Rise and Rise of Supermax: An American Solution in Search of a Problem?*, 1 PUNISHMENT & SOC'Y 163, 163 (1999).

<sup>176</sup> *Id.* at 175.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 176.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Daniel P. Mears & Jennifer L. Castro, *Wardens' Views on the Wisdom of Supermax Prisons*, 52 CRIME & DELINQ. 398, 408 (July 2006).

<sup>182</sup> King, *supra* note 175, at 176.

inhibit the operation of many facilities.<sup>183</sup> Although the majority of wardens supported the construction and rationale behind supermax prisons, they also acknowledged alternative methods of handling problematic inmates. Such alternatives to supermax prisons included: focusing the training of correctional officers; offering more rehabilitation services; and dispersing violent inmates throughout the correctional system.<sup>184</sup> The authors found wardens believe supermax facilities offer an increased sense of control over their correctional facilities.<sup>185</sup> The primary concern of the wardens' responses was the influence that certain geographic areas had on the rest of the nation.<sup>186</sup> The adoption of supermax institutions by the South inevitably influenced other parts of the country, which helped sway the decision for many other states to construct supermax facilities.<sup>187</sup>

Supermax prisons have an uncertain future due to the wariness of many academics, mental health professionals, and legal experts regarding the short and long-term effects such imprisonment has on an inmate.<sup>188</sup> Several studies exist detailing the psychological and emotional damage to inmates resulting from the conditions of solitary confinement in supermax prisons. These include: "appetite and sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, and self-mutilations."<sup>189</sup> It has also been shown that suicide rates are higher for inmates placed in solitary confinement.<sup>190</sup> Haney points out,

there is not a single published study of solitary or supermax-like confinement in which nonvoluntary

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<sup>183</sup> Mears & Castro, *supra* note 181, at 418.

<sup>184</sup> *Id.* at 419.

<sup>185</sup> *Id.* at 408.

<sup>186</sup> *Id.* at 421.

<sup>187</sup> *Id.*

<sup>188</sup> Haney, *supra* note 167, at 145.

<sup>189</sup> *Id.* at 130.

<sup>190</sup> *Id.* at 131.

confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects. The damaging effects ranged in severity and included such clinically significant symptoms as hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior.<sup>191</sup>

Although numerous courts have ruled in favor of the use of supermax cells and other isolation units, the environment of such facilities in conjunction with solitary confinement may violate the Eighth Amendment.<sup>192</sup> Inmate complaints about the conditions inside supermax housing have led some state correctional agencies to close their supermax units, such as Mississippi's Parchman prison's Unit 32.<sup>193</sup> Yet primarily, the recent trend in court rulings has attempted to decrease the amount of inmates with mental illnesses entering supermax custody.<sup>194</sup>

## **B. Judicial Response to Conditions in Supermax Prisons**

In *Ford v. Board of Managers of New Jersey State Prison* the United States Court of Appeals of the Third Circuit held that solitary confinement does not constitute cruel and unusual punishment under the Eighth Amendment.<sup>195</sup> In the aforementioned case, a class action suit was filed against the State of New Jersey requesting injunctive relief due to alleged cruel and unusual conditions within a solitary confinement

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<sup>191</sup> *Id.* at 132.

<sup>192</sup> *Madrid*, 889 F. Supp at 1267; *Ford v. Bd. of Managers of N.J. State Prison*, 407 F.2d 937, 940 (3d Cir. 1969).

<sup>193</sup> *ACLU Strikes Deal To Shutter Notorious Unit 32 At Mississippi State Penitentiary*, ACLU (June 4, 2010), <http://www.aclu.org/prisoners-rights/aclu-strikes-deal-shutter-notorious-unit-32-mississippi-state-penitentiary>.

<sup>194</sup> *Madrid*, 889 F. Supp at 1236-37.

<sup>195</sup> *Ford*, 407 F.2d at 940.

cell.<sup>196</sup> Ford, the complainant, alleged that solitary confinement cells did not offer running water or any other sanitary means to keep oneself clean.<sup>197</sup> Additionally, the inmate stated the amount of food offered to inmates within solitary confinement was starkly different from those in the general population. Inmates in solitary were allowed to have four pieces of bread and three pints of water daily.<sup>198</sup> The court ruled, “Solitary confinement in and of itself does not violate Eighth Amendment prohibitions, and the temporary inconveniences and discomforts incident thereto cannot be regarded as a basis for judicial relief.”<sup>199</sup> Although courts have started to intervene in the practices and constitutionality of supermax facilities, this court emphasized that isolation cells are sometimes necessary to maintain order within an institution.

One of the most influential cases regarding the constitutionality of supermax prisons is *Madrid v. Gomez*.<sup>200</sup> *Madrid* was a class action lawsuit by inmates at Pelican Bay State Prison in California.<sup>201</sup> These prisoners complained that the conditions, practices, and offering of mental health services violated the Eighth Amendment’s Cruel and Unusual Punishment Clause.<sup>202</sup> Specifically, inmates claimed the California Department of Corrections: condoned the use of excessive force, failed to provide adequate medical and mental health care, created inhumane living conditions inside the Security Housing Unit (SHU), and knowingly allowed inmates to be vulnerable to other inmates.<sup>203</sup> In an examination of the excessive use of force, the United States District Court of the Northern District of California held the complainants

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<sup>196</sup> *Id.* at 938-39.

<sup>197</sup> *Id.* at 939.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 940.

<sup>200</sup> 889 F. Supp. 1146.

<sup>201</sup> *Id.* at 1155.

<sup>202</sup> *Id.* at 1156.

<sup>203</sup> *Id.*

successfully established numerous instances of cruel and unusual punishment.<sup>204</sup> One example of excessive force within the SHU, pointed out by the court, was when an inmate refused to return his food tray after eating.<sup>205</sup> In this instance, the correctional officer warned the inmate conditions would become unpleasant if he failed to return his food tray, but the inmate still refused.<sup>206</sup> A few minutes later, two tear gas canisters entered the small cell, and then correctional officers entered the cell and shot the inmate with a taser.<sup>207</sup> The inmate was brutally beaten and taken to the prison's infirmary.<sup>208</sup> As a result, the Court ruled that the use of force inside Pelican Bay State Prison was excessive and violated the Eighth Amendment.<sup>209</sup>

The Court in *Madrid* also examined the mental health status of inmates in supermax confinement. The appellants, California Department of Corrections administrators, acknowledged many of the inmates inside Pelican Bay had serious mental illnesses and the court ruled the lack of treatment for many of these inmates constituted a violation of the Eighth Amendment.<sup>210</sup> The court believed correctional administrators knowingly acted indifferently in the handling of inmates with mental illnesses, either through negligence or by offering less than adequate health care programs for inmates.<sup>211</sup> The court cited *Farmer* in that it is necessary to establish the prison administrator knowingly and willingly neglected the needs of the inmate, which resulted in cruel and unusual punishment.<sup>212</sup> The complainants in *Madrid* successfully met their burden in establishing the State's intent under the

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<sup>204</sup> *Id.* at 1255.

<sup>205</sup> *Id.* at 1162.

<sup>206</sup> *Madrid*, 889 F. Supp. at 1162.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 1255.

<sup>210</sup> *Id.* at 1256.

<sup>211</sup> *Id.*

<sup>212</sup> *Madrid*, 889 F. Supp. at 1246 (citing *Farmer*, 511 U.S. at 837).

deliberate indifference test. Despite the influx of inmates inside Pelican Bay State Prison with mental illnesses, the court held this particular type of imprisonment does not violate the Eighth Amendment *per se*.<sup>213</sup> However, the conditions and other factors associated with the prison created violations of the Eighth Amendment.<sup>214</sup> The court acknowledged that certain groups of inmates are more likely to experience cruel and unusual punishments than others.<sup>215</sup> The court stated, “We do find, however, that conditions in the SHU violate such standards when imposed on certain subgroups of the inmate population, and that defendants have been deliberately indifferent to the serious risks posed by subjecting such inmates to the SHU over extended periods of time.”<sup>216</sup>

In the concluding statements of *Madrid*, the court asserted, “The anguish of descending into serious mental illness, the pain of physical abuse, or the torment of having serious medical needs that simply go unmet is profoundly difficult, if not impossible, to fully fathom, no matter how long or detailed the trial record may be.”<sup>217</sup> It is worth mentioning that not all of the inmates’ complaints equated to violations of the Eighth Amendment. Specifically, the court held the basic conditions of the SHU remain on the border regarding the constitutionality of their long-term effects.<sup>218</sup> Additionally, the court concluded that placing gang members in the SHU did not violate the Eighth Amendment, because these individuals posed a unique threat to the security of an institution.<sup>219</sup>

Another case involving the constitutionality of supermax facilities is *Ruiz v. Johnson*, where the Court addressed the lack of administrative control in the Texas prison system.<sup>220</sup> Federal

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<sup>213</sup> *Id.* at 1261.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 1280.

<sup>218</sup> *Madrid*, 889 F. Supp. at 1279-80.

<sup>219</sup> *Id.* at 1271, 1274.

<sup>220</sup> *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 861 (S.D. Tex. 1999).



courts had removed Texas's supervisory powers over its entire correctional system in the landmark case of *Ruiz v. Estelle*, due to gross constitutional violations.<sup>221</sup> In *Ruiz v. Johnson*, the United States District Court for the Southern District of Texas examined numerous facets of the Texas Department of Corrections. One of the facets of Texas's Department of Corrections being examined was the use of administrative segregation cells (supermax) and whether these cells violated the Eighth Amendment.<sup>222</sup> The court found the use of administrative segregation units deprived inmates of the most basic needs of life.<sup>223</sup> In regard to the severity of punishment being inflicted upon inmates in administrative segregation, the court stated:

As the pain and suffering caused by a cat-o'-nine-tails lashing an inmate's back are cruel and unusual punishment by today's standards of humanity and decency, the pain and suffering caused by extreme levels of psychological deprivation are equally, if not more, cruel and unusual. The wounds and resulting scars, while less tangible, are no less painful and permanent when they are inflicted on the human psyche.<sup>224</sup>

Although the court viewed administrative segregation as a severe threat to the mental state of an inmate, they acknowledged the usefulness of such confinement. Segregation units allow correctional officers to maintain control and to punish problematic inmates.<sup>225</sup> However, the court stated the current conditions within administrative segregation units in Texas violated the Eighth Amendment.<sup>226</sup> As argued earlier in *Madrid*, the court in *Johnson* believed targeting inmates with

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<sup>221</sup> *Ruiz v. Estelle*, 503 F. Supp. 1265, 1389-90 (S.D. Tex. 1980).

<sup>222</sup> *Johnson*, 37 F. Supp. 2d at 861.

<sup>223</sup> *Id.* at 913.

<sup>224</sup> *Id.* at 914.

<sup>225</sup> *Id.* at 915 (citing *Young v. Quinlan*, 960 F.2d 351, 364 (3d Cir. 1992)).

<sup>226</sup> *Johnson*, 37 F. Supp. 2d at 914-15.

mental illness for administrative segregation is unconstitutional.<sup>227</sup> Additionally, the court found that the Texas Department of Corrections had been acting in deliberate indifference towards inmates with mental illnesses.<sup>228</sup>

The *Johnson* Court relied on expert testimony from two renowned psychologists and criminologists to establish that Texas had acted in deliberate indifference. Specifically, the testimony revealed the widespread use of Texas's supermax units to house individuals with severe mental illnesses, and correctional administrators had a plethora of opportunities to assist inmates in supermax conditions.<sup>229</sup> The court concluded the use of administrative segregation in its current iteration violated the "evolving and maturing standards of decency" that the Eighth Amendment relies on.<sup>230</sup>

Despite concern from both legal and criminological scholars regarding the spread of inhumane supermax practices, some jurisdictions are beginning to reform their supermax facilities. For example, in *Presley v. Epps* the American Civil Liberties Union (ACLU) filed suit against the Mississippi Department of Corrections for violating the Eighth Amendment rights granted to inmates at Parchman's Unit 32 (supermax unit).<sup>231</sup> The ACLU alleged conditions inside Unit 32 intensified the mental deterioration of inmates, and filed a class action civil suit on behalf of the mistreated inmates.<sup>232</sup> Mississippi reached an agreement with the ACLU to close down Unit 32 and to transfer inmates with mental illnesses to the appropriate facilities.<sup>233</sup> In addition to closing the supermax unit, the Mississippi Department of Corrections entered into a consent

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<sup>227</sup> *Id.* at 915.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* at 912-13.

<sup>230</sup> *Id.* at 913-15.

<sup>231</sup> ACLU, *supra* note 193 (discussing Agreement of the Parties to Seek Order of Dismissal Without Prejudice, *Presley v. Epps*, No. 4:05CV148-JAD (N.D. Miss. 2010)).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

decree with the ACLU to reform their supermax unit in 2006.<sup>234</sup> Administrators at Parchman managed to reduce the amount of supermax inmates from approximately 1,000 to 150 inmates.<sup>235</sup> The legal pressure from the ACLU led Mississippi to enact changes that will help reduce future litigation and increase responsibility regarding the admission of inmates to its supermax unit.

## V. CONCLUSION

The interpretation and application of the Eighth Amendment has slowly become more refined through the use of case precedent.<sup>236</sup> This is seen in the evolution of the definition of “punishment” in the Cruel and Unusual Punishment Clause. In addition, the evolving standards of decency, objective and subjective tests, and the use of deliberate indifference are a few of the ways courts have attempted to apply the Eighth Amendment to prison conditions.<sup>237</sup> Applying this concept to the use of supermax prisons has led the courts to rule that such institutions barely pass constitutional requirements, and that these institutions may be violating the Cruel and Unusual Punishment Clause of the Eighth Amendment.<sup>238</sup>

Despite the courts’ attempts to determine when conditions inside supermax facilities comprise constitutional violations, a considerable gap exists when having to identify whether non-physical characteristics can solely constitute a violation of the Eighth Amendment. Furthermore, the courts have yet to identify what severity of psychological trauma is acceptable in the use of solitary confinement. This is because the courts rely on the assumption that the inmate needs to prove that future harm or foreseeable permanent damage to an

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<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> Melvin Gutterman, *The Contours of Eighth Amendment Prison Jurisprudence: Conditions of Confinement*, 48 SMU L. REV. 373, 374 (1995).

<sup>237</sup> See *Farmer*, 511 U.S. 825; *Rhodes*, 452 U.S. 337; *Madrid*, 889 F. Supp. 1146.

<sup>238</sup> *Johnson*, 37 F. Supp. 2d at 914-15.

inmate's psyche will occur while incarcerated in solitary confinement.<sup>239</sup>

Rebman states, "The Eighth Amendment prohibits conditions-of-confinement that amount to cruel and unusual punishment if the condition causes a sufficiently serious injury or risk and prison officials were aware of the risk and disregarded it."<sup>240</sup> However, the courts and the prison system have a long way to go in assuring the conditions in supermax security prisons are not in violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment.

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<sup>239</sup> Christine Rebman, *The Eighth Amendment and Solitary Confinement: The Gap in Protection from Psychological Consequences*, 49 DEPAUL L. REV. 567, 619 (1999)

<sup>240</sup> *Id.*