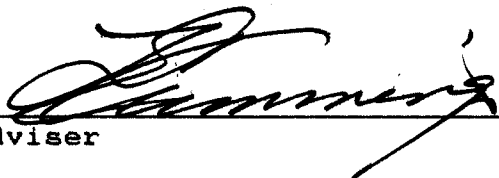



TOTALITY OF CONDITIONS:
AN EMERGING LEGAL PRINCIPLE

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ABSTRACT

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Totality of circumstances is an emerging legal concept which permits the courts to consider the cumulative effects of prison conditions and practices in determining violations of the Eighth Amendment's prohibition against cruel and unusual punishment as extended to the states by the Fourteenth Amendment. This study examines the totality approach as a developing legal concept which has broadened the standards for determination of cruel and unusual punishments, extended Constitutional rights of prisoners, and increased the judicial role in prison reform.

Twenty-eight totality cases, involving thirteen states are examined. An analysis of each case is presented to determine the specific conditions and practices challenged, the judicial definition and application of the totality approach, and the resulting outcome or remedial order of each case. The study concludes that increased guidance and standards are needed

from the Supreme Court to aid lower courts in maintaining consistency and uniformity in prison condition cases.

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CHAPTER I

INTRODUCTION

Totality of conditions is the legal concept which states that the courts may consider the cumulative effects of prison conditions and practices in determining violation of the Eighth Amendment's proscription against cruel and unusual punishment. This approach permits the courts to find the combination of prison conditions and practices to be in violation of the Constitution, even though the individual condition or practice may not, per se, be unconstitutional. This study will examine the totality approach as a developing legal concept which has broadened the standards of cruel and unusual punishment, extended the constitutional rights of prisoners, and increased the judicial role in prison reform.

Initiated in Holt v Server 309 F. Supp 382 (1970) aff'd 442 F2d 304 (8th Cir 1971) the court asserted that:

confinement itself within a given institution amounts to cruel and unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonable civilized people even though a particular inmate may never personally be subject to any disciplinary action (at 372-3).

After reviewing the specific conditions presented in the case the court concluded:

One cannot consider separately (the conditions and practices). . . All of those things exist in combination, each affects the other and taken together they have a cumulative impact on the inmates regardless of their status (at 373).

This approach has become known as the concept of totality of conditions.

The principle of totality of conditions was later summarized in Laaman v Helgemoe 437 F. Supp 269 (1977):

Even though no single condition of incarceration rises to the level of a constitutional violation exposure to the cumulative effects of prison conditions may subject inmates to cruel and unusual punishment e.g. Williams supra 547 F. 2d 1206; Finney supra 505 F. 2d 194; Gates supra 501 2d 1291, Pugh supra 406 F. Supp 318, Holt, supra 302 F. Supp 362. Where the cumulative impact of the conditions of incarceration threatens the physical, mental, and emotional health and well being of the inmates and/or creates a probability of recidivism and future incarceration, a federal court must conclude that imprisonment under such conditions does violence to our societal notions of the intrinsic worth and dignity of human beings and, therefore, contravenes the 8th Amendment's proscription against cruel and unusual punishment (at 322-23).

Since first initiated, the concept of totality has been increasingly used as both a basis of bringing suit against a penal institution and by the courts in determining violation of the Eighth Amendment's protections. The National Prison Project (NPP) of the American Civil Liberties Union reports forty-three states,

the District of Columbia, Puerto Rico and the Virgin Islands under court order or pending litigation due to totality of conditions and/or overcrowding (NPP 12/1/83). The litigation in each of these cases involves either the entire state prison system or the major institution in the state.

The principle has provided prisoners with a greater access to the courts by which they may challenge the conditions of their confinement. Court adoption of the principle has broadened the meaning and standards of cruel and unusual punishment and facilitated increased court involvement in prison reform. As a result, the totality principle has been considered to be "one of the more dramatic developments in recent 8th Amendment litigation" (Wood 1972: 1115) which may "offer the hope of significant reform of prison living conditions" (Feldburg 1977: 376) in the future.

The principle of totality has been reviewed as applied in individual court cases (Note 84 Harv L. Rev. 1970, Madrid 1979, Myers 1978, Bamonte 1981), its effect on the prisoners' rights movement (Robbins 1980, Smoot 1972, Bronstein 1980), and its impact on the role of the Court in prison reform (Bureau of National Affairs 1978, Feldburg 1977, Fiss 1979, Pillsbury 1982). However, studies have not yet been conducted regarding the specific conditions challenged in major totality cases or the

methods by which the courts have found the conditions to constitute cruel and unusual punishment.

In Laaman v Helgemoe 437 F. Supp 269 (1977) the court did recognize certain themes in totality cases (See Appendix A). However, they did not present the specific conditions in the cited cases nor the court's rationale for finding them to be in violation of the Eighth Amendment. Michael S. Feldburg (1977) found the courts to have determined violation of the Eighth Amendment when living conditions deprived inmates of all or some of six basic rights (See Appendix B). This analysis did not concentrate on the issue of totality as an approach in the determination of the deprivation of constitutional rights. Bamonte (1981) identified variation in court interpretation/application of the totality principle between Laaman v Helgemoe 437 F. Supp 269 (1977) (in which the court based totality on the long term effects of institutional conditions and practices) and Rhodes v Chapman 452 US 337 (1981) (in which the court limited totality to actual present harm). Further analysis of court determination of the totality concept was not presented.

Focus of Study

This study will identify the prison conditions and practices presented in major totality cases through the

comparison and identification of common denominators. Additionally, the study will review the 'tests' and rationale utilized by the courts when applying the totality principle. In this manner, the study will clarify and further define the totality of conditions principle as applied by the federal courts.

Through the identification of the specific conditions and practices challenged in totality litigation, the circumstances under which the courts have applied the principle may be determined. Comparison of the specific conditions may yield common factors and prevailing themes of totality cases. Such data may serve to further clarify the circumstances by which the courts have found the principle of totality to be applicable.

Analysis of the court opinions will determine the 'test' utilized by the courts in their determining violation of the Eighth Amendment. Comparison of opinions will be made to assess court interpretations, definitions, and applications of the principle of totality. This analysis may sharpen the definition of the concept.

The remedial orders of each case will be presented to determine the direction which the courts have taken to rectify the unconstitutional conditions and practices. This information will indicate the degree and extent of judicial intervention into penal reform once the totality

concept has been accepted by the court as a basis for determination of cruel and unusual punishment.

Organization of Study

The paper is divided into five sections. This chapter has introduced the totality principle, what it means, its significance, and the purpose and need for this particular study.

Chapter II presents the design of the study. The sample, measurement, and evaluation methods are described. A content method of research has been used to conduct this study.

Chapter III reviews the impact of the totality principle on the legal interpretations of cruel and unusual punishment, the prisoner's rights movement, and judicial intervention in penal reform. Historical perspectives and the influence of the totality principle on the development in each of these areas is presented.

Chapter IV gives an analysis of the findings. It presents the specific conditions challenged in each case of the sample, with a comparison and classification. The court opinions are reviewed to determine judicial interpretation and application of the concept. The remedial orders of each case are reviewed to present the extent of judicial intervention once a violation of the

constitution has been found to exist. The implications and significance of the findings are reviewed.

Chapter V summarizes the results of the study. It presents conclusions based on the findings, implications, and significance. It also presents areas in which additional study would be beneficial to further understand the impact and future direction of the totality principle.

CHAPTER II

DESIGN OF STUDY

The National Institute of Justice, *American Prisons and Jails* (1980) cites over 8,000 cases that have been filed by inmates challenging the conditions of their confinement. Rhodes v Chapman, 452 US 337 (1981) affirms that "courts certainly have a responsibility to scrutinize claims of cruel and unusual punishment" (at 352) and "a court considering an Eighth Amendment challenge to conditions of confinement must examine the totality of the circumstances" (at 362). As observed by Cianflone, the totality of conditions concept has become "the prevailing standard for lower federal courts when deciding Eighth Amendment prison challenges" (Cianflone 1982: 363). In this study data will be provided which will contribute to the understanding of the emerging legal principle of totality of conditions, as applied by the federal courts.

In examining specific totality cases, an analysis of the totality concept in major condition cases is presented. This includes an assessment of the standards and conditions by which the courts have found the principle to be applicable, with the goal to identify

common denominators. To this end, this study focuses upon the specific conditions and court opinions of each case, with comparison, analysis, and critical inquiry.

The Sample

The sample is primarily drawn from the cases cited in the American Civil Liberties Union Foundation, The National Prison Status Report-The Courts and Prisons, December 1, 1983 (Appendix C). This source represents

states in which there are existing court decrees, or pending litigation, involving the entire state prison system or the major institutions in the state and which deal with overcrowding and/or the total conditions of confinement, also included are states which have been relieved from prior court orders (Status Report: 1).

From this report, twenty states involving thirty-two cases are identified as totality of condition cases. Included in this study are twenty-eight of these cases involving thirteen states. This number reflects all of the cases which have been reported in the Supreme Court Reporter, Federal Supplement or Federal Reporter excluding Glover v Johnson 478 F. Supp 1075 (E.D. Mich 1979), aff'd 510 F. Supp 1019 (1981).¹

¹This case was primarily based on the finding that the totality of conditions of confinement, including opportunities for education, vocational programs, access to the courts and state's use of the county jail as a temporary overflow facility, were substantially inferior to the conditions and opportunities available to the state's male prisoners. Although the case used the

In addition, Holt I 300 F. Supp 825 (1969), Holt II 309 F. Supp 302 (1970), and Holt III 442 F. Rep 2d 305 (1971) will be reviewed as the initial cases in which the court embraced the totality of circumstances concept. Hutto v Finney 437 US 678 (1978) will also be reviewed as the first totality case that reached the Supreme Court. Appendix C lists all cases included in the study.

This sample is large enough so as to offer a representation of the major issues involved in totality cases. It also represents a wide range of states and district court circuits so as to present the prevailing court application of the totality principle in lower federal courts. The two cases, Rhodes v Chapman 452 US 337 (1981) and Hutto v Finney 437 US 678 (1978), which reached the Supreme Court are included in the sample. Cases that involve jail conditions or are outside of the United States, i.e., Puerto Rico and the Virgin Islands, are not included in the study.

totality concept in reaching its decision, it was based primarily on violations of the Equal Protection mandate of the Fourteenth Amendment rather than violation of the prohibition against cruel and unusual punishment, mandated by the Eighth Amendment. It is agreed that this is an important issue/decision for the protection of equal rights and treatment of female prisoners. However, in substance it does not pertain to this particular inquiry.

Method and Process of Analysis

A general content analysis approach with specific guidelines for legal research is employed in the conduct of this study. As described by Bailey (1973) the basic goal of content analysis is to take a nonquantitative document and transform it into quantitative data (Bailey 1978: 276). Utilizing the basic guidelines for legal research as described by Jacobesteyn and Mersky (1981), this study attempts to take the nonquantitative information derived from the specific court cases, and transform it into quantitative data relating to the totality principle.

The basic data collecting instrument is an objective analysis of each case in the sample. Each case is reviewed to determine (1) the major condition challenged, (2) additional challenged conditions, (3) the conditions determined to collectively constitute cruel and unusual punishment, (4) court reference/application of totality, and (5) specific remedial orders resulting from the court decision. Appendix D outlines the basic data collecting instrument. The information derived from this analysis provides the basic data utilized in this study. As Rhodes is the only case which the Supreme Court has reviewed on the substance of challenged prison conditions, it is reviewed separately.

From this data comparison of the challenged and founded conditions is conducted to determine common denominators or similarities. The conditions are evaluated to determine the extent they fall within the themes of totality cases recognized in Laaman v Helgemoe (Appendix A). Michael S. Feldburg's (1977) identification of six court determined basic inmate rights, (Appendix B), serves as an additional basis for discrimination.

The second process of the study is to identify the court definition and rationale for the applicability of the principle of totality. Each court opinion is reviewed to determine how each court interpreted, defined, and applied the totality concept. The information is then compared, with the goal to present prevailing court definition and applicability of the totality concept.

Identification of the remedial orders from the specific totality cases is the third process of this study. The data derived from this process demonstrates and identifies the extent of judicial involvement into the administration and operation of penal systems as a result of violations of the Eighth Amendment based on totality.

In addition to the data derived from the basic data collecting instrument, this study will present judicial rationale for intervention into penal systems. This information is particularly significant as the courts must

weigh the factors of federalism and separation of powers prior to judicial intervention. Therefore, references made in the cases to judicial intervention are analyzed to determine the circumstances under which the courts justify the intervention.

Finally, the study analyzes the legal development of the totality of conditions principle and projects its future as a means to adjudicate unconstitutional prison conditions. Bamonte (1981) contends that

"Rhodes probably marks the beginning of the end of the judiciary's current role as a 'critical force' in ameliorating conditions at state prisons (Bamonte 1981: 1373).

This study carefully reviews Rhodes to determine the Supreme Court's ruling on the definition, applicability, and use of the totality concept. Cases post Rhodes are particularly significant in determining the future trend of this legal concept.

In summary, this study provides data on the following areas of the totality principle:

1. The specific conditions challenged and determined to be unconstitutional
2. The judicial interpretation/application of the totality principle
3. The specific remedial orders resulting from totality cases
4. Extent and justifications for judicial intervention in totality cases
5. Development and future trends of the principle of totality

CHAPTER III

HISTORICAL BACKGROUND

Cruel and Unusual Punishment

The Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." It is within this Amendment's proscription against cruel and unusual punishment, as extended to the states by the Fourteenth Amendment, that the totality of conditions principle is applied.

The prohibition against cruel and unusual punishment is ambiguous, subjective, and embodies a wide variety of meanings, some of which are in conflict. The courts have not established objective standards by which to determine the operational extent of the legal meaning of cruel and unusual punishment (Fiss 1979). Rather, the courts have ruled that the meaning is "not tied to a particular theory or point in time" (Weems v US 217 US 349 (1910)), but reflects "the evolving standards and attitudes in defining the Constitutional prohibition against cruel and unusual punishment." Through the totality principle, a broader range of penal conditions and practices may be found to be in violation of the

Eighth Amendment. This broadened meaning of cruel and unusual punishment is in contrast to its original constitutional connotation. The principle of totality dramatically reflects the changes in American philosophy and standards of decency that have occurred since its conception.

Colonial American philosophy equated crime with sin and the need for the criminal to be punished quickly and harshly. The harsh and severe punishments frequently included barbarous tortures such as disemboweling and decapitation, both common in Colonial America and England.² It is generally believed that the framers of the Constitution sought protection against such barbarous tortures when they included the prohibition against cruel and unusual punishment in the Constitution (Bronstein 1980).

In Colonial America it was recognized that the term "cruel and unusual punishments" was ambiguous and would require court determination.

Mr. Smith of South Carolina, objected to the words 'nor cruel and unusual punishments' the import of them being too indefinite. . . Mr. Lovenmore (of NH) It lies with the court to determine (cruel and unusual punishment) (Annals of Congress Vol II pp 781-82 (Aug. 17, 1789) in Smoot 1972 313-14).

²For a historic review of cruel and unusual punishment, see Smoot, Warren K. 1972 and Bronstein, Alvin J. 1980. Granucci presents argument that the framers of the Constitution misinterpreted the concept of cruel and unusual punishment when they incorporated it into the constitution. Granucci; 1979

As the country moved into the Jacksonian Era the philosophy regarding deviants changed. Crime was no longer equated with sin, but rather was believed to be externally rooted in the family and corrupt society. As such, emphasis was placed on separating the criminal from society with the goal to rehabilitate. At this time, society invented the penitentiary as the practical, humane response to address and reform the criminal element (Rothman 1971). The terms 'cruel and unusual punishment' were thought to be obsolete. The prisoner, as seen in Ruffin v Commonwealth 62 Va. (21 Grat) 796 (1891) was ruled to be a 'slave of the state' who "forfeits not only liberty but also a substantial portion of his or her personal rights" (Cummings 1980: 203).

The development of the application of cruel and unusual punishment to include conditions of imprisonment occurred during the next century through case law rulings. The Supreme Court referred to cruel and unusual punishments in Parvan v Commonwealth 72 US 475 (1866) but did not define its scope. The first attempt to interpret cruel and unusual punishment by the Supreme Court occurred in Wilkerson v Utah 99 US 130 (1879). In this case:

the court stated in dicta that punishments of tortures and all others in the same line of unnecessary cruelty are forbidden by the Eighth Amendment (Comment. . . Minn L.R. 1982: 1216).

However, the same court found execution by a firing squad

was not, per se, unconstitutional. The court concurred in In Re Kemmler 136 US 436 (1890) by ruling that tortures and lingering death are unconstitutional but that the death penalty is permitted

because the Eighth Amendment prohibits only inhumane and barbarous punishments, something more than the mere extinguishment of life (Comment. . . Minn L.R. 1982: 1216).

Rudovsky points out that Logan v US 144 US 263 (1892) provided

the touchstone for the Amendment's application to conditions in prisons. In this Supreme Court decision the Court held that the government is . . . bound to protect against lawless violence all persons in their service or custody in the course of the administration of Justice (Rudovsky 1973: 30).

The Court for the first time in Weems v US 217 US 349 (1910) invalidated a penalty prescribed by the legislature. In this case the Supreme Court ruled that the Eighth Amendment was "not tied to a particular theory or point in time" thereby permitting application of the once thought obsolete amendment to present day punishments. Coffin v Richard 143 F2d 443 (6th Cir 1944) extended prisoner rights by ruling that the prisoner maintained "all rights of an ordinary citizen, except those expressly, or by necessary implication, taken him by law."

In 1947, Louisiana ex rel Francis v Resweber 329 US 459 the

court assumed without expressly deciding that the Eighth Amendment's cruel and unusual provision is properly included within the Fourteenth Amendment's due process clause (Spear 1982: 733).

In Johnson v Dye 175 F2d 250 (3rd Cir 1949) the Federal Court declared the environment of an incarcerated prisoner (conditions of a chain gang) to inflict cruel and unusual punishment. This case was appealed to the Supreme Court which granted certiorari but reversed the decision in a brief per curiam opinion. The Court did not reach the substantial issues of the case, but dismissed the case because Johnson had not exhausted his state remedies. The Court did permit an appeal to the Supreme Court of Pennsylvania and later the same year the conditions of a New Jersey chain gang were found to constitute cruel and unusual punishment in Harper v Wall 85 F. Supp 783 (1949) within the scope of Johnson v Dye. The prisoner, Harper, was ordered released (Berkson 1975).

Rochin v California 342 US 165 (1952) provided an early attempt by the court to define cruel and unusual punishment. According to Robbins (1980), the court ruled that a punishment is cruel and unusual when

it shocks or disgusts people of reasonable sensitivity and offends more than the mere fastidious squeamishness or private sentimentalism (Robbins 1980: 127).

Further, in Trop v Dulles 356 US 86 (1958) the court found the meaning of cruel and unusual punishment to reflect "the evolving standards of decency that mark the

progress of a maturing society." In this case, non-physical punishment was incorporated into the prohibitions of the Eighth Amendment proscription against cruel and unusual punishment. Robbins (1980:127) contends that

The term 'punishments' was held to embrace conditions of incarceration that affect an entire prison population simply as a consequence of confinement (Robbins 1980: 127).

The United States Supreme Court revived the Civil Rights Act of 1871 in Monroe v Pape US 167 (1961). This Act permits prisoners to bypass the state and bring their complaints directly to the federal court, when challenging a constitutional right or protection. Through the use of this Act, prisoners gained greater access to the federal court by which to challenge conditions of confinement.

In 1962 the Supreme Court ruled that the prohibition against cruel and unusual punishment is applicable to the states through the due process clause of the Fourteenth Amendment (Robinson v California 370 US 660 (1962) Comment. . . Minn L.R. 1982: 1215). This case also added the 'cry of horror' standard in determining Eighth Amendment violations.

Later, the U.S. federal court found violation of the Eighth Amendment when the conditions are "so foul, so inhumane and so violative of basic concepts of decency" in Wright v McMann 387 F2d 519 (2d Cir 1967) (Robbins 1980: 127).

Cumulative effects of prison conditions were considered to contribute to the unconstitutionality of an entire penal system for the first time in Holt v Saver 309 F. Supp 362 (1970). After reviewing the specific conditions (trusty system, open barracks, absence of rehabilitation programs and isolation cells) the court stated

all of those things exist in combination; each affect the other; and taken together they have a cumulative impact on the inmates regardless of their status (Holt v Sarver at 373).

The court then concluded that

confinement itself within a given institution may amount to a cruel and unusual punishment prohibited by the constitution where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people (Holt v Sarver at 372-373).

The "totality approach" initiated by this case states that although the specific conditions alone may not be per se unconstitutional, when viewed together they may have a cumulative effect that is in violation of the Eighth Amendment's proscription against cruel and unusual punishment. Cianflone (1982) contends that this approach has since become the primary standard used by the lower federal courts when deciding Eighth Amendment challenges

In Wolff v McDonnell 418 US 539 (1974), the court ruled that there is "no iron curtain between the constitution and prisoners." This ruling reaffirmed the court's position that prisoners are not stripped of their constitutional protections merely as a result of

incarceration. Prisoners retain all those rights enjoyed by free citizens except those necessarily lost as a necessary implication of confinement (Pell v Procunier 417 US 94; Pugh v Locke 406 F. Supp 318 (1976)).

Although the court now recognizes the constitutional rights of prisoners, the determination of cruel and unusual punishment remains ambiguous. As Smoot (1972) contends, the Eighth Amendment lacks definite standards which has resulted in an inconsistent case by case approach to prisoner's claims. From this individual case approach, however, the court has come to rely upon three general standards by which to determine unconstitutional cruel and unusual punishment. First, punishment that shocks the general conscience of a civilized society is prohibited (Rochin v California 342 US 165 (1951)). Second, punishment that is unnecessarily cruel is prohibited (Trop v Dulles 356 US 86 (1958)). Third, punishment which goes beyond legitimate penal aims or is greatly disproportionate to the offense for which it is imposed, is prohibited (Weems v US US 217 US 349 (1910)).

From these general standards, Fair (1979) has identified five 'tests' the District courts rely upon to determine the constitutionality of prison conditions. Fair identifies these as (1) shock the conscience test; (2) balancing test; (3) evolving standards of decency

test; (4) least restrictive means test; and since Holt, (5) the totality of circumstance test.

Dunn (1976: 950) maintains that the Eighth Amendment's proscription against cruel and unusual punishment is perhaps the most dramatic constitutional reflection of the changing societal standards. The concept of "cruel and unusual punishment" has expanded "from a protection against physical punishment only, to a concept capable of wider application" (Durkin 1982: 257). The totality approach has impacted on this expansion by permitting the courts to consider the prison environment as a whole when determining violation of the Eighth Amendment. Through totality the

courts have been able to include several previously ignored elements in their consideration to the constitutionality of imprisonment (Wood 1972).

Although in most cases the conditions challenged by totality suits have been in existence in previous decades, it was not until the development of the totality of conditions principle that these conditions have been challenged successfully. Through the application of totality of conditions approach, those conditions that in the past were not per se in violation of the Eighth Amendment, may now contribute to a cumulative effect that may be found to be unconstitutional. With this, the principle of totality has broadened the parameters of the legal meaning of cruel and unusual punishment and thus has had a positive impact upon the prison reform movement.

Prisoner Rights

Initially prisoners were permitted few rights within the penal institution. As discussed earlier in this study, incarcerated prisoners were viewed as 'slaves of the state' who forfeited all constitutional rights and protections. The conditions and practices within the institution, no matter how inhumane or dismal, were viewed to be necessary to achieve the goals of punishment and rehabilitation. As Sommers (1976: 159) observes "America's jails and prisons (became) the dumping ground of people who offended public morality."

The court eventually moved to the position that prisoners have "all rights of the ordinary citizen except those expressly, or by necessary implication, taken from him by law" (Coffin v Richard 143 F.2d 443 (6th Cir 1944)). Inmates began to use writs of habeas corpus under the Civil Rights Act and tort cases against prison officials or the state to present their complaints to the courts. However, court acceptance of the hands-off doctrine

for the most part represented a denial of jurisdiction from state prisoners who petitioned the courts alleging some form of mistreatment or deprivation undergone during incarceration (McKeown and Midyette (1976).

Although not a point of law, the hands-off doctrine was accepted by the courts and implied judicial abstention

into the management of penal institutions (Gogel 1979: 127). As Spear (1982: 734) contends

the application of this doctrine represented a refusal to assume jurisdiction over inmate complaints alleging an infringement of some constitutional right. The federal courts typically handled the complaints by stating that the judiciary was 'without the power to supervise prison administration or to interfere with the ordinary prison rules or regulations.'

Thus, the interpretation of statutes and the review of a narrow range of administrative actions was the traditional role of the judiciary in correctional matters (The University of Chicago L.R. 1971: 654). This role, as observed by Fogel (1979: 127) consequently placed "the prison officials in a position of virtual invulnerability and absolute power."

The justifications for the hands-off doctrine were generally based on three arguments: separation of powers, lack of expertise in matters of penology, and fear of subversion of prison authority. Acceptance of this doctrine, for all practical purposes, prevented inmates from gaining rights through the refusal of the judiciary to intervene in prison matters.

However, since the late 1950s and gaining momentum in the 1960s, prisoners have increasingly been able to gain relief and constitutional rights through the use of litigation. Orland (1975) notes, the precise origins of inmate litigation as a movement for prison reform are difficult to trace; however, several factors have been identified. These include an increase in prisoner

political awareness, sociological/societal factors and increased legal emphasis on personal and civil rights. The ideology of Black power, passive resistance and militancy emerged within the penal institutions, prompting inmates to question the system of justice and seek increased constitutional protections and privileges. The number of incarcerated Black Muslims grew and by their demands for religious freedoms challenged the restrictions placed on all prisoners. Prisoners began to make known to the public the conditions under which they were forced to live. In response to the increased public awareness of prison conditions and scholarly criticism of the lack of judicial intervention, the courts began to reconsider the hands-off approach to prison condition cases.

At the same time, the Supreme Court began to make numerous decisions that emphasized and increased the rights of the individuals. These decisions included highly sensitive areas such as racial segregation, guaranteed equal voting rights, the rights of criminal suspects being interrogated by the police, and the right of the inmates to use a jailhouse lawyer unless free counsel had been provided by which he could pursue his claims (Orland 1975).

In Monroe v Pape 365 US 167 (1961) the Supreme Court reenacted the Civil Rights Act of 1871 which permits prisoners to bypass the state, and bring their complaints directly to the federal court when "claiming violation of

their rights, privileges or immunities granted by the Constitution" (Cummings 1980: 204). Through revival of this Act, prisoners gained direct access to the federal courts and a means by which to challenge conditions of their confinement.

With the revival of the Civil Rights Act of 1871 and the Supreme Court ruling in Robinson v California 370 US 660 (1967) which provided the protections of the Eighth Amendment to the states through the Fourteenth Amendment, prisoners gained access to the federal courts by which to challenge the conditions of confinement. The increase in the number of cases expanded the court's awareness of the conditions and practices within the confines of the penal institution. The awareness prompted the courts to recognize that minimal standards of treatment are required by the cruel and unusual clause of the Eighth Amendment. Judicial intervention was then justified as a means to protect the constitutional rights of the imprisoned.

Jackson v Bishop 404 F2d 571 (8th Cir 1968) was one of the initial cases in which the hands-off doctrine was abandoned by the courts. Jackson

in signalling the end of the hands-off doctrine. . . extended the purview of the 8th Amendment's proscription to include not only statutory punishments created by state legislatures, but also ad hoc disciplinary punishments imposed by state prison officials and employees on convicted defendants actually serving their sentences. (Ware 1982: 934)

Thus, this ruling permitted prisoners to challenge the constitutionality of the conditions and practices within a penal institution based on violation of the due process clause of the Fourteenth Amendment and the Eighth Amendment's proscription against cruel and unusual punishment.

The Supreme Court again rejected the hands-off approach to state prison administration in Procunier v Martinez 416 US 396 (1974). In this case the court stated that

when a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights (Procunier v Martinez at 405-06 in Comment . . . Minn. L.R. 1982: 1219).

This position was reaffirmed in Woff v McDonnell 413 US 539 (1974) when the court ruled that there is no iron curtain between the constitution and prisoners precluding that prisoners are not stripped of their constitutional protections merely as a consequence of incarceration.

As identified by Sturc (1975: 45)

among the rights which have received protection in the federal courts are the inmate's right to free exercise of religion, correspondence, access to counsel and the courts, adequate health and housing, freedom from inmate and guard assault, participation in decisions which affect the life of the inmate and freedom from cruel and unusual punishments.

The movement towards litigation as a means to secure prisoner rights has been termed by Fogel as the "Pariah-Patient-Prisoner-Patient-Plaintiff-Continuum"

(Fogel 1979). Orland has described the prison reform movement as "nothing less than the achievement of a legal revolution with a decade" . . . that is . . . "unprecedented in the annals of Anglo-American penal history." (Orland 1975: 11)

The suits that have led to significant prison reform have resulted from legal developments which have broadened the scope of the Eighth Amendment (Fogel 1975). As discussed earlier, the totality principle has broadened the meaning and application of cruel and unusual punishment, as prohibited by the Constitution and extended to the states by the Fourteenth Amendment. Totality has increased prisoner access to the courts and has permitted the courts to prohibit conditions and practices that in the past could not have been successfully challenged.

Remedial Orders

In addition to providing greater access to the courts by broadening the meaning of cruel and unusual punishment, the totality principle has had a practical impact on improving prison conditions. The totality of conditions approach bases the right to relief on a synergistic multiplicity of considerations, and forces the court to adopt a remedy that responds to each of them (Robbins 1980: 131).

The Supreme Court sustained the right of the court to make remedial orders in Hutto v Finney 437 US 678

(1978). This opinion according to Ralph Knowles, associate director of the National Prison Project

makes clear that once a federal judge determines that the totality of conditions in prisons are unconstitutional, he can order any relief he deems necessary to eliminate the conditions even though the individual actions ordered to be taken may not, when viewed by themselves, be required by the Constitution (PLM Vol 1, No. 2 7/78, p. 26).

Remedial orders resulting from totality cases have covered a wide spectrum of prison conditions and practices.

Spear (1982) credits the federal judicial intervention as making improvements in physical facility, medical care, personal security, classification systems, remedial vocational and educational programs, sanitation, overcrowding and staff inadequacies within penal institutions. Studies of the specific remedial orders have indicated

that judicial intervention in totality of condition cases, while not producing model prison systems, has greatly improved prison living conditions and has raised inmate morale without undermining staff authority and control (Feldburg 1977: 389).

Specific remedial orders have included appointment of special citizen groups, court-ordered monitors, special masters, ombudsmen, and on occasion, placement of the institution or state system into receivership.

The courts have consistently rejected the lack of funds argument as a defense for penal reform. Although

the courts cannot order appropriation of funds to a prison, they can, and have, ordered improvements that can only be made through increased funding. The court has held that when a constitutional right is at stake

vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them (Watson v City of Memphis 373 US 526 at 537 (1963)).

Specifically in the area of penal institutions, the courts have stated

that if the state chooses to run a prison it must do so without depriving inmates of the rights guaranteed to them by the federal constitution. (Holt v. Sarver 501 F2d 1291 (5th Cir 1974)).

Totality cases or the threat of suit has also acted as a stimulus to other branches of government in making prison reforms. The magnitude and publicity associated with many totality cases has increased government and public awareness, sensitivity, and reception to prison improvements. Legislatures have often been forced to allocate more funds to bring the prisons up to constitutional standards and the executive branch has been required to operate the penal institution without infringing on the prisoners' constitutional rights or protections. The judicial branch has been forced to increase its knowledge about prisons and prison conditions and practices in order to determine totality cases and formulate the relief. In this manner totality of condition cases have provided hope for significant reform of prison living conditions. (Feldburg 1977).

Justification for Judicial Intervention

The increased judicial intervention into the administration and operation of penal institutions is not without criticism. As Feldburg (1977: 371) notes,

This extensive judicial intervention. . . is controversial. The need to remedy constitutional violations stand against the notion that judicial interference in prison administration endangers legitimate concerns of federalism, the separation of powers and deference to the expertise of state administrators.

The courts are not in the position to supervise prison operations, but rather, only to ensure provision of constitutional rights to all persons, including prisoners. Therefore, intervention into the penal system must be made cautiously. However, when a constitutional issue is at stake for any citizen, it is not only the right but the duty of the courts to intervene. As asserted by Feldburg (1977: 386) the duty of the judiciary

to protect personal liberties is greatest when the people whose rights are threatened lack the political power to achieve redress through normal legislative process

such as the prisoner class.

The legislative reapportionment and school desegregation cases provided the precedent for judicial interference into state action.

In both situations the Supreme Court held that fundamental constitutional rights had been violated, but recognized that arbitrary judicial implementation of a decree would involve active federal intervention in a function traditionally reserved to the states (McKeown and Midyette 1976: 37).

Through these cases the court adopted the remedial abstention doctrine. This theory permits federal courts to announce appropriate constitutional standards in a given case and then remand it to the trial court for compliance with the appellate court's standards (Spear 1982: 738).

The court viewed these cases as structural suits in which a judge, confronting a state bureaucracy over values of constitutional dimension, undertakes to restructure the organization to eliminate a threat to those values posed by the present institutional arrangements (Fiss 1978: 2).

The structural reform of the institution is premised on the notions that the quality of life is affected in important ways by the operation of large scale organizations and that constitutional values cannot be fully secured without affectuating basic changes in the structure of those organizations (Fiss 1978).

Totality of condition cases are based on the same premises. The courts have accepted the idea that the combination of conditions and practices within a penal institution affect the inmate's quality of life, often in unconstitutional dimensions. When finding the totality of circumstances to be unconstitutional, the courts have held that basic changes in the structure, administration, and operation of the penal institution are necessary in order to secure constitutional standards.

Supreme Court Rulings

The concept of totality and the remedial orders consequential to unconstitutional findings have been upheld by the Supreme Court. In Hutto v Finney 437 US 678 (1978) the lower court found the conditions of the Arkansas prison system, particularly those in the isolation cells, to be unconstitutional based on the totality principle. The case was appealed to the Supreme Court which affirmed the lower court's ruling. This case marked the first time the Supreme Court sanctioned the totality concept of litigation. It also clarified

that once a federal judge determines that the totality of conditions in prisons are unconstitutional, he can order any relief he deems necessary to eliminate the conditions even though the individual actions ordered to be taken may not, when viewed by themselves, be required by the Constitution (PLM Vol. 1, No. 2, July 1978: 26).

The only time the substantial issues of totality were addressed by the Supreme Court was in Rhodes v Chapman 452 US 337 (1981). In this case the Supreme Court addressed the Eighth Amendment's applicability to prison confinement and provided insight into the proper standards for assessing Eighth Amendment prison challenges (Cianflone 1982). This case involved the prison conditions of the Southern Ohio Correctional Facility (SOCF) migrated by double celling. The lower court had ruled that the conditions due to double-celling, were unconstitutional under the totality principle.

On appeal, the Supreme Court held that the claim that double celling at this institution constituted cruel and unusual punishment was insupportable and thereby reversed the lower court's decision. The decision was based on the specific conditions and the actual present harm they posed to prisoners incarcerated within this facility. This decision differed from previous lower courts decisions which had permitted the long term effect of institutional conditions and practices to be taken into consideration when determining violation of the Eighth Amendment (Laaman v Helegemo 437 F. Supp 269 (1977)). Critics (Bamonte, Cianflone, Spear) of the Rhodes decision fear that Rhodes may mark the beginning of the end of the judiciary's current role as a 'critical force' in ameliorating conditions at state prisons (Bamonte 1981: 1373).

Although the Court did not find unconstitutional conditions in Rhodes, it was made clear that the court does accept the totality of the circumstance test for determination of Eighth Amendment violation.

A court considering the Eighth Amendment challenge to conditions of confinement must examine the totality of the circumstances (Rhodes v Chapman at 362).

Further, the court projected caution in finding Eighth Amendment violations.

This court must proceed cautiously in making an Eighth Amendment judgement because, unless we reverse it, a decision that a given punishment is impermissible under the Eighth Amendment cannot be reversed short of a constitutional amendment (Rhodes v Chapman at 351).

In concurring opinions, Justices Brennan, Blackman and Stevens clarify that

courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement (2402). . . the federal courts must continue to be available to those state inmates who sincerely claim that the conditions to which they are subjected are violative of the Amendment's (and that) incarceration is not an open door for unconstitutional cruelty or neglect. Against that kind of penal condition, the Constitution and the federal courts, it is to be hoped, together remain as an available bastion (Rhodes v Chapman at 352).

CHAPTER IV

FINDINGS OF THE STUDY

The Conditions

There are no objective standards by which to measure the constitutionality of prison conditions and practices. However, the courts have adopted several tests by which to scrutinize claims of cruel and unusual punishment as prohibited by the Eighth Amendment. Totality of Circumstance, as one of the court adopted tests, permits the courts to view the conditions and practices within a penal institution as a whole, when determining violation of the constitutional mandate prohibiting cruel and unusual punishment. Examination of the specific conditions and practices in totality cases, that when viewed together were found by the courts to be unconstitutional, offers insight into the circumstances under which the totality concept has been applied.

This study examined twenty-eight cases in which the court applied the totality of circumstances approach in reaching its decision. Excluding appeal cases (in which new conditions were not presented) and Rhodes v Chapman (which was granted certiorari, and therefore will be reviewed separately) fourteen cases were reviewed to determine the specific conditions and practices found

in totality to violate protections of the Eighth Amendment. Appendix F presents each case and the specific condition/practice that contributed to the unconstitutional finding.

From this data, thirty separate conditions/practices were found in one or more cases. Chart 1 outlines the most and least common conditions/practices found.

CHART 1 LEAST/MOST COMMON CONDITIONS/PRACTICES

MOST COMMON CONDITION/PRACTICE

lacking or inadequate medical care	12 cases 86%
lacking or inadequate protection from violence	10 cases 71%
inadequate segregation or isolation calls	7 cases 50%
inadequate sanitation	7 cases 50%

LEAST COMMON CONDITION/PRACTICE

inadequate working conditions	1 case 7%
inadequate living space	1 case 7%
inadequate electricity	1 case 7%
inadequate plumbing	1 case 7%

The number of separate conditions/practices ranged from a low of only two (Holt v Sarver 300 F. Supp 825) to a high of thirteen (Ramos v Lamm 485 F. Supp 122).

Chart 2 relates the number of separate conditions/practices to the number of cases. From this information it can be seen that in the majority of cases

(71%) eight or more conditions were found by the courts to contribute to the totality of circumstances amounting to cruel and unusual punishment.

CHART 2 COMPARISON OF NUMBER OF CONDITIONS TO NUMBER OF CASES

<u>Number of Separate conditions/practices</u>	<u>Number of Cases</u>
2	1
3	1
4	1
5	1
7	2
8	1
10	2
11	3
12	1
13	1

Appendix G compares the conditions/practices to the themes identified in Laaman v Helgemoe 437 F. Supp 269 (1977) as common in totality cases. Chart 3 summarizes the comparison.

CHART 3 FREQUENCY OF LAAMAN V HELGEMOE THEMES IN
CASES STUDIED

<u>Theme</u>	<u>Number of Cases</u>	<u>Percentage</u>
Physical Plant	9	64
Sanitation	9	64
Minimal Safe Environment	11	79
Minimal Provisions	12	86
Space	7	50
Rehabilitation	8	57
Staff	5	36

Thus, the most common theme was inadequate minimal provisions (86%) while inadequate number of trained staff was the least common (36%).

Chart 4 indicates the number of themes that were prevalent in the cases studied.

CHART 4 VARIANT NUMBER OF LAAMAN V HELGEMOE THEMES
IN CASES STUDIED

<u>Number of Themes</u>	<u>Number of Cases</u>
1	1
3	1
4	4
5	6
6	1
7	1

Through this comparison it is revealed that six cases (43%) fell under five of the themes, four cases (29%) under four themes, and the rest varied from one to all seven themes. Thus, the majority of the cases (71%) concurred with four or five of the common themes identified in Laaman v Helgemoe 437 F. Supp 269 (1977).

Michael Feldberg (1977) identified six basic rights that when violated, the courts have found violation of the Eighth Amendment. Appendix H compares the conditions/practices found in the totality cases to those six basic rights. Comparison of the number of cases to each right is indicated by Chart 5.

CHART 5 FREQUENCY OF FELDBERG'S RIGHTS IN CASES STUDIED

<u>RIGHT</u>	<u>NUMBER OF CASES</u>	<u>PERCENTAGE</u>
Healthy Life	12	86
Free From Physical Abuse	11	79
Communication with the outside world	7	50
Participate in Vocational Recreational, Educational or Rehabilitation Program	8	57
Due Process Before Disciplinary Sanctions	3	21
Free From Severe Overcrowding	6	43

Chart 5 indicates that the conditions/practices found in the totality cases predominantly violated the right to a healthy life (86%) and the right to be free from physical abuse (79%) while the right to due process before disciplinary sanctions was found in only three (21%) of the examined cases. The number of rights violations ranged from one (3 cases), three (5 cases), four (3 cases), five (1 case), to all six (2 cases).

Comparison of the specific conditions/practices with the themes presented in Laaman and the rights asserted by Feldberg indicate that neither encompasses all of the findings. For instance, neither specifically addressed the issues of inadequate conditions in segregation or isolation cells that fifty percent of the cases studied showed contributed to an unconstitutional finding. Chart 6 lists the conditions/practices that were omitted by either Laaman and/or Feldberg, with the number/percentage of cases in which the condition was found by this study.

CHART 6 FREQUENCY OF OMISSIONS OF SPECIFIC
CONDITION/PRACTICE BY LAAMAN AND/OR FELDBERG
IN CASES STUDIED

<u>CONDITION/PRACTICE</u>	<u>LAAMAN</u>	<u>FELDBURG</u>	<u>#OF CASES</u>	<u>%</u>
Segregation/Isolation Cells	Omitted	Omitted	7	50
Classification System	Omitted	Omitted	5	36
Housing/Physical Plant		Omitted	3	21
Staff		Omitted	4	29
Working Conditions	Omitted	Omitted	1	7
Disciplinary Procedures	Omitted		3	21
Racial Discrimination	Omitted	Omitted	2	14
Degeneration Probable		Omitted	4	29
Living Space		Omitted	1	7
Access to Courts	Omitted		2	14
TOTAL	10	5	8	

It may be argued that the various conditions/practices could fall within the Laaman themes and/or Feldberg's rights if increased discretion were used in the categorized system used in this study. For example, segregation and isolation cells may be placed under physical plant or space in Laaman or healthy life in Feldberg. However, neither of these possible classifications would seem to appropriately emphasize the court's specific concern for the conditions in the segregation and isolation cells. A combination and

elaboration of these categorical methods appears to be a more extensive method to classify the rights, that when violated, may constitute a violation of the Eighth Amendment protected rights. Chart 7 illustrates a proposed classification of rights with the condition/practice it would encompass.

CHART 7 PROPOSED THIRTEEN CLASSIFICATION OF RIGHTS
WITH THE CONDITION/PRACTICE IT WOULD ENCOMPASS

<u>RIGHT</u>	<u>CONDITION/PRACTICE</u>
1. The right to be free from severe overcrowding and to be provided adequate amount of living space.	over crowding living space
2. The right for inmate confined in segregation and isolation cells to be ensured the basic minimal necessities and provisions as the general population, including sanitation space, food service, and personal hygiene.	segregation & isolation cells
3. The right to live and work in a physical plant that is reasonably structurally sound and does not present a compelling threat to the physical safety of those confined.	housing/physical facility working conditions ventilation lighting heating noise control fire safety electric plumbing living conditions
4. The right to some measure of classification that would separate inmates based on severity of crime, potential violence, and mental/physical disability.	classification system
5. The right to minimally adequate medical and mental health care.	medical/mental health care
6. The right to a safe environment, that would	protection from environment

CHART 7 Continued

minimize the threat of physical abuse by other inmates or staff.	staff trusty system open barrack system
7. The right to minimal provisions of the basic necessities of life.	food and clothing
8. The right to minimal sanitation.	food service
9. The right to communicate with the outside world, including access to the legal system.	correspondence & visitation access to court
10. The right to participate in some vocational, educational, recreational and/or rehabilitation program and to be free from excessive idleness.	ed, voc, work, rec opportunity rehabilitation program idleness
11. The right to be free from discrimination based on race, gender, religion, color, creed or mental/physical disability.	racial discrimination
12. The right to due process before disciplinary sanctions.	disciplinary procedures
13. The right to be free from any condition or practice that would reduce the likelihood of rehabilitation and increase the likelihood of degeneration.	degeneration probable

The above rights present the basic elements, that when violated, the courts, specifically in totality cases, have concluded constituted cruel and unusual punishment. This categorization has encompassed each of the specific conditions and/or practices identified by this study to have contributed to the totality of circumstances in violation of the Eighth Amendment. Although not alone are

the rights guaranteed by the Constitution, they do present the basic guidelines by which the courts have scrutinized claims of cruel and unusual punishment in conditions of confinement cases.

Court Interpretation, Definition and Applications

Review of the cases did not yield significant variance in the manner the courts interpreted, defined, or applied the concept of totality of circumstances. The courts consistently held that the cumulative impact of conditions and practices of confinement could constitute cruel and unusual punishment in violation of the Eighth Amendment. Listed below is an outline of the totality concept as defined by the studied cases.

One cannot consider separately (the conditions and practices). . . All of those things exist in combination; Each affects the other; And taken together they have a cumulative impact on the inmates regardless of their states (Holt v Sarver 309 F. Supp 302).

Conditions . . . constituted cruel and unusual punishment where they bore no reasonable relationship to legitimate institutional goals, and as a whole, created an atmosphere in which inmates were compelled to live in constant fear of violence in imminent danger to their physical well being, and without opportunity to see a more promising future (Pugh v Locke 406 F. Supp 318).

Each factor separately . . . may not rise to constitutional dimensions, however the effect of the totality of these circumstances is the infliction of punishment on inmates violative of the Eighth Amendment (Gates v Collier 501 F2d 1291).

Where cumulative impact of the conditions of incarceration threatens the physical, mental and emotional health and well being of the inmates and/or creates a probability of recidivism and future incarceration the imprisonment does violence to societal notions of the intrinsic worth and dignity of human beings and therefore contravenes the Eighth Amendment's proscription against cruel and unusual punishment (Laaman v Helgemoe 437 F. Supp 269).

The Eighth Amendment is intended to protect and safeguard a prison inmate from an environment where degeneration is probable and self-improvement unlikely because of the conditions existing which inflict needless suffering, whether physical or mental (Battle v Anderson 564 F2d 388).

(The conditions found unconstitutional because) they create a total environment where debilitation is inevitable and which is unfit for human habitation and shocking to the conscience of a reasonably civilized person (Palmigiano v Garrahy F. Supp 956).

(In prison condition cases). . . The question is constantly stated as one of ascertaining the totality of the circumstances of the particular cases and then inquiring into whether the totality as determined is intolerant or shocking to the conscience or barbaric or totally unreasonable in the light of the even changing modern conscience. Since the totality of the circumstance differ from case to case, it is difficult to find a controlling authority (Chapman v Rhodes 434 F. Supp 1007).

Various deficiencies in prison conditions must be considered together. The individual conditions exist in combination; each affects the other, and taken together they may have a cumulative impact on the inmates. Thus a court considering an 8th Amendment challenge to conditions of confinement must examine the totality of the circumstances. Even if no single condition of confinement would be unconstitutional in itself exposure to the cumulative effect or prison conditions may subject inmates to cruel and unusual punishment (Rhodes v Chapman 452 US 337).

In determining whether conditions are cruel and unusual each factor cannot be viewed separately. Rather it is necessary to look at totality of conditions in evaluating claims based on the 8th Amendment (French v Owens 538 F. Supp 910).

The totality test does require courts to consider challenged conditions in the context of the entire prison environment and pay particular attention to the conditions that are closely related.

It cannot be used to expand substantially the scope of the 8th Amendment protections.

Absent a finding of some specific constitutional violation, a court may not rest upon a 'vague conclusion' that the total prison environment is unconstitutionally oppressive.

An unconstitutional finding based on totality test cannot be used to justify a remedy that is broader than necessary to correct specific constitutional deficiencies (Grubbs v Bradley 552 F. Supp 1052).

In reviewing claims by prison inmates of cruel and unusual punishment, test to be applied is that of totality of circumstances.

Test does not authorize federal courts to reform all deficient prison conditions.

Remedy must be confined to the elimination of those conditions that together violate the constitution (Ruiz v Estelle 679 F2d 1115).

In reviewing this outline the following can be concluded:

1. The totality of circumstances approach requires the courts to consider the cumulative impact of the conditions and unusual punishment in violation of the Eighth Amendment
2. Although each factor separately may not rise to constitutional dimension, the cumulative impact may constitute cruel and unusual punishment

3. The cumulative impact is weighed against Eighth Amendment tests to determine if it 'shocking the conscience of reasonably civilized person', 'incompatible with the evolving standards of decency', 'involve unnecessary and wanton infliction of pain', or 'grossly disproportionate to the severity of the crime' and thus unconstitutional
4. The totality approach cannot be used to substantially expand the scope of the Eighth and Fourteenth Amendments
5. The remedy must be confined to the elimination of only those conditions that together violate the constitution
6. The court must find specific constitutional violations; it cannot rely on a vague conclusion that the prison environment is unconstitutionally oppressive

As stated, the totality of circumstances approach must be used in conjunction with other Eighth Amendment 'tests' to determine if the cumulative impact of the conditions and practices violate the constitution. It is in this process that the courts varied in their determination of what does and does not constitute an Eighth Amendment violation. Appendix F reviews each case as to the major condition/issue challenged, with the Eighth Amendment application and the resulting order/outcome. From this information it is clear that "even in a prison setting there are no rigid standards as to what does or does not amount to cruel and unusual punishment" (Blake v Hall 668 F2d 52 at 55).

For example Newman v Alabama 559 F2d 283

contends that

If a state furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety. . . that ends its obligation under the 8th Amendment (at 2185).

Similarly, Ramos v Lamm 639 F2d 559 states that

the core areas of any 8th Amendment claim are shelter, sanitation, food, personal safety, medical care and adequate clothing (at 566).

Both Laaman v Helgemoe 437 F. Supp 269 and Battle v Anderson 564 F2d 388 used, among other tests, a degeneration probable concept in reaching their decision. Laaman v Helgemoe held that

where the cumulative impact of the conditions of incarceration threatens the physical, mental and emotional health and well being of the inmates and/or creates a probability of recidivism and future incarceration the imprisonment does violence to societal notions of the intrinsic worth and dignity of human beings and therefore contravenes the 8th Amendment's proscription against cruel and unusual punishment (at 272).

Further, that the

totality of conditions of confinement . . . made degeneration probable and reform of prisoners unlikely and thus did not meet constitutional requirement (at 274).

Reaching a similar conclusion Battle v Anderson held that the Eighth Amendment, inter alia is

intended to protect and safeguard a prison inmate from an environment where degeneration is probable and self-improvement unlikely because of the conditions existing which inflict needless suffering, whether physical or mental (at 393).

Addressing the issue of probable degeneration, the court in Newman v State of Alabama 559 F2d 283 contended that

the mental, physical and emotional status of individuals, whether in or out of custody, do deteriorate and there is no power on earth to prevent it. We think that what the government must have meant is that states may not inflict cruel and unusual punishment that would likely lead to such results (at 291).

Ramos v Lamm 639 F2d 559 discussed the possible conflict between Battle and Newman. The court stated

we see no conflict between our decision in Battle and the Fifth circuit decision in Newman. The standard announced in Battle concerned degeneration in relation to the entire penal environment--the conditions of confinement (at 566).

However, the same court had set aside part of the lower court's ruling in Ramos v Lamm 485 F. Supp 122. The lower court had found, among other issues, the concepts of motility, classification and idleness, in totality, to create an environment where degeneration was probable and self-improvement unlikely, therefore unconstitutional under the Eighth Amendment's prohibition against cruel and unusual punishment. On appeal, Ramos v Lamm 639 F2d 559 10th Circuit, held that those concepts did not meet the constitutional standard for the Eighth Amendment violation and thus did not warrant the court's broad remedial order intruding into those areas of prison administration.

Conflict arises because "there is no precise definition of cruel and unusual punishment nor are there any mechanical standards to apply." (French v Owens 538 F. Supp 910) Rather, the courts rely on the 'tests' for the Eighth Amendment that have emerged from previous court decisions. The Supreme Court has warned that

Eighth Amendment judgements should neither be nor appear to be merely the subjective views of judges . . . But such judgements should be informed by objective factors to the maximum possible extent (Rhodes v Chapman 452 US 337 AT 346).

It is projected that through application of the totality approach to prison condition cases, the courts will develop further guidelines by which to evaluate Eighth Amendment violation claims. The emerging guidelines will reduce conflicts between the courts and facilitate a wider consensus as to the constitutional standards of confinement and objective factors to be ensured.

Remedial Orders

Once a court finds that the totality of the conditions and practices of a penal institution violate the Eighth Amendment, it has ordered broad remedial orders

to correct the unconstitutional violations.

The 'totality of conditions' approach bases the right to relief on a synergistic multiplicity of considerations, and forces the court to adopt a remedy that responds to each of them. . . . (Robbins 1978: 561-62).

Montick (1983) observes, in creating a remedy the courts have imposed such orders as the closing of correctional facility, or portions of it, mandating population redirections, prohibiting or limiting admittance to the facility, appointing special masters to oversee compliance, and issuing contempt citations or imposing fines. As stated previously, the remedy must address only those conditions and practices which together have a cumulative impact that is in violation of the Constitution. The court cannot order a remedy for other conditions, no matter how oppressive, if they have not contributed to the unconstitutional finding. In addition, the federal court may order a remedy of the violation only to the extent of minimum constitutional compliance (Ware 1982).

Although the court cannot order appropriations to a penal institution, it has consistently rejected "the lack of funds" argument for noncompliance to the rights and protections set forth by the Constitution. The courts have held that a shortage of funds is not a justification for continuing to deny citizens their constitutional rights (Gates v Collier 501 F2d 1291; Holt v Sarver 309 F. Supp 302; Palmigiano v Garrahy 443

F. Supp 956). Explicitly the courts have asserted that "a state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget." (Pugh v Locke 406 F. Supp 318)

Chart 8 outlines the remedial orders specific to the cases reviewed in this study. In Holt v Sarver 300 F. Supp 825, the court would not specify the specific steps to be taken to remedy the unconstitutional situation. Rather, the court relied on the State Commissioner of Corrections to develop the plan needed to correct the unconstitutional deficiencies. However, as the original complaint progressed through the judicial system on appeals, the court increased its level of intervention. Holt v Sarver 309 F. Supp (1970) ordered the defendants to develop a specific plan to eliminate the unconstitutional conditions. Four years later, Finney v Ark Board of Corrections 505 F2d 194 (1974) directed certain corrective actions in respect to the unconstitutional finding and held that the District Court should retain jurisdiction. Finney v Mabry 458 F. Supp 720 (1978) found the Arkansas penitentiary system still unconstitutional, and appointed a special master to oversee compliance of the injunction orders. Alabama followed a similar progression from minimal intrusion to further intervention as the violations were not brought up to constitutional standards. Pugh v Locke 406 F. Supp 318 (1976) set forth detailed minimum standards to correct the unconstitutional findings. In addition, the court

CHART 8 OUTLINE OF REMEDIAL CASES IN CASES STUDIED

<u>REMEDIAL ORDERS</u>	<u>CASE</u>	<u>STATE</u>
Court set forth in order minimal standard to correct the unconstitutional findings	<u>Pugh v Locke</u> 406 F.Supp 318	Alabama
	<u>Finney v Ark Brd of Corrections</u> 505 F2d 194	Arkansas
	<u>Finney v Mabry</u> 458 F.Supp 720	Arkansas
	<u>Ramos v Lamm</u> 485 F.Supp 122	Colorado
	<u>Ramos v Lamm</u> 520 F.Supp 1059	Colorado
	<u>French v Owens</u> 538 F.Supp 9102	Indiana
	<u>Gates v Collier</u> 501 F2d 1291	Mississippi
	<u>Laaman v Helgemoe</u> 437 F.Supp 269	New Hampshire
	<u>Palmigiano v Garrahy</u> 443 F.Supp 956	Rhode Island
	<u>Ruiz v Estelle</u> 503 F.Supp 1265	Texas
Human Rights Comm. appointed to monitor implementation of court order	<u>Pugh v Locke</u> 406 F.Supp 318	Alabama
Governor appointed receiver of entire state penal system	<u>Newman v Alabama</u> 466 F.Supp 628	Alabama
Defendants ordered to develop, submit to court, and implement plan to eliminate the unconstitutional findings	<u>Holt v Sarver</u> 300 F.Supp 825	Arkansas
	<u>Holt v Sarver</u> 309 D.Supp 302	Arkansas
	<u>Lightfoot v Walker</u> 486 F.Supp 1052	Illinois
	<u>Grubbs v Bradley</u> 552 F.Supp 1052	Tennessee

 CHART 8 - Continued

<u>REMEDIAL ORDER</u>	<u>CASE</u>	<u>STATE</u>
Master appointed to oversee implementation of plan	<u>Finney v Mabry</u> 458 F.Supp 720	Arkansas
	<u>Lightfoot v Walker</u> 486 F.Supp 504	Illinois
	<u>Palmigiano v Grubbs</u> 443 F.Supp 956	Rhode Island
	<u>Grubbs v Bradley</u> 552 F.Supp 1052	Tennessee
	<u>Ruiz v Estelle</u> 503 F.Supp 1265	Texas
Closure of facility threatened unless brought up to the minimal constitutional standards	<u>Ramos v Lamm</u> 485 F.Supp 122	Colorado
	Upheld in <u>Ramos v Lamm</u> 520 F.Supp 1059	Colorado
Redirection in prison population	<u>Battle v Anderson</u> 564 F2d 388	Oklahoma

established a Human Rights Committee to monitor the implementation of the standards set forth in the order. The next year in Newman v Alabama 559 F2d 283, the court dismissed the Human Rights Committee as too intrusive yet still found some conditions and practices to be in violation of the Eighth Amendment. Three years later, Newman v Alabama 466 F. Supp 628, the court found the state still in noncompliance with the injunctive orders resulting from Pugh, and appointed the Governor of the State as receiver for the entire Alabama prison system. Other states, Colorado and Texas, modified the original remedial orders, while maintaining that the penal institutions were, in some aspects, still unconstitutional. The modified orders were seen as a less intrusive measure, whereby only those conditions and practices found to be in violation of the constitution could be ordered corrected.

As indicated by Chart 8, a detailed plan outlining the minimal standards that need to be implemented to correct the unconstitutional findings has been the most widely used remedial order in the cases reviewed. This method permits the courts to state exactly how the conditions and practices need to be modified, eliminated, or improved in order to be constitutionally valid. It eliminates "guess work" on the part of the penal

institution, as to how the institution may comply with the Constitution.

The appointment of a state governor as receiver of the penal system was used in only one state (Alabama) and then only after years of prior litigation.

Appointment of a Human Rights Committee to monitor the implementation of the court order occurred in Pugh v Locke, but was later dismissed in Newman v Alabama, as a too intrusive measure. Redirection of the penal population was ordered in one case (Battle v Anderson). Threat to close the penal facility unless it was brought up to constitutional standards was ordered and later upheld by the district and appeal courts in Colorado (Ramos v Lamm). All of these orders are highly intrusive into the operation and administration of penal institutions, and thus used only when a less restrictive means does not appear to be effective.

The remaining remedial orders (defendants to submit a plan to the court for the elimination of the founded unconstitutional conditions/practices and the appointment of a master) were widely used as viable methods to protect the inmates' constitutional rights, while keeping intrusion into the penal institution at a minimum.

Rationale for Judicial Intervention

The judicial system traditionally adopted a "hands-off" position towards intervention into the operation and administration of penal institutions. The hands-off doctrine justified judicial reluctance to act upon inmates' petitions based upon the court's view of prisoners as 'slaves', judicial reservations about its correctional expertise, and constitutional consideration of separation of powers and federalism (Boatright 1980: 549). In the 1960s the courts began to make decisions which rejected the hands-off doctrine which increased the ability of inmates to use litigation as a means of gaining relief from unconstitutional conditions of confinement. As courts embraced the totality concept, judges began to look at the overall conditions of confinement, holding that the cumulative impact could constitute cruel and unusual punishment. Using the totality of circumstances approach, the courts have examined prisons in great detail, fashioned remedies that have touched on nearly every aspect of prison life, and ordered comprehensive penal institutional reform (Feldburg 1977). Thus, use of the totality approach had significantly increased judicial intervention into the administration and operation of penal institutions and reduced the adherence to the "hands-off doctrine."

Concerns of separation of powers and federalism arise as the courts increase their level of intervention.

Separation of powers denotes the specific duties and responsibilities of each branch of government. The operation and administration of penal institutions is designated to the executive (direct administrative) and legislative (legal mandates and appropriations) branches of government. Issues of federalism arise when a federal court intervenes into a state penal institution, thus crossing the line between federal and state areas of concern.

However, when the conditions and practices of a penal institution violate the constitutional rights of those confined, the courts have consistently held it is not only their right, but their duty to intervene.

. . . courts are under a duty to, and will, intervene to protect incarcerated citizens from such wholesale infringements of their constitutional rights (Pugh v Locke 406 F. Supp 318 at 319).

There can be no doubt that the paramount duty of the federal judiciary is to uphold the law. That is why, when a state fails to comply with the constitution, the federal courts are compelled to enforce it (Newman v State of Ala. 466 F. Supp 628 at 635).

The court has the authority and duty to insure that the constitution does not stop at the prison gate, but rather insures to the benefit of all, even those citizens behind prison walls (Battle v Anderson 564 F2d 388 at 394).

Rhodes v Chapman 452 US 337 was the first case to reach the Supreme Court regarding the disputed contention that the conditions of confinement constituted cruel and unusual punishment. In this case the court upheld the judicial responsibility to intervene into penal

institutions when constitutional issues are at stake. Although the Supreme Court reversed the lower court's decision that the cumulative impact of double celling in an Ohio prison constituted cruel and unusual punishment, the court held that

courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement. . . when conditions of confinement amount to cruel and unusual punishment federal courts will discharge their duty to protect constitutional rights (at 352)

In part "to emphasize that (the) decision should in no way be construed as a retreat from careful judicial scrutiny of prison conditions," Justice Brennan, joined by Justice Blackman and Justice Stevens all wrote concurring opinions. Justice Brennan emphasizes

that judicial intervention is indispensable if constitutional dictates not to mention considerations of basic humanity . . . are to be observed in the prisons (at 354).

Justice Brennan maintains

that the federal courts must continue to be available to those state inmates who sincerely claim that the conditions to which they are subjected are violative of the Amendment. . . incarceration is not an open door for unconstitutional cruelty or neglect. Against that kind of penal condition, the constitution and the federal courts, it is to be hoped, together remain as an available bastion (at 369).

Although maintaining the duty and right of courts to protect the constitutional rights of inmates, the Supreme Court held that

courts cannot assume that state legislatures and prison officials are insensitive to the requirements of the constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . . (at 352)

Further, the court warned that

courts must proceed cautiously in making an Eighth Amendment judgment because, unless we reverse it, a decision that a given punishment is impermissible under the Eighth Amendment cannot be reversed short of a constitutional amendment (at 351).

Therefore, courts are charged with abstaining from interfering into penal operations and administration, unless constitutional rights are at stake. It is never the responsibility of the court

to decide what a good prison should be or how it ought to be operated. That's for the correction experts and the policy making officers of the states (Ruiz v Estelle 650 F2d 555 at 559).

The courts must exercise discretion in intervening into state prison systems. However, ". . . the need for discretion does not mean no judicial oversight." (French v Owens 538 F. Supp 910 at 912). Rather, ". . . where institutional violations of federal constitutional rights are concerned, federal courts must act to hear those claims." (Grubbs v Bradley 552 F. Supp 1952 at 1057) and

when the remedial powers of a federal court are invoked to protect the constitutional rights of inmates, the courts may not take a 'hands-off approach.' (Ruiz v Estelle 679 F2d 1115 at 1126)

CHAPTER V

CONCLUSION

The status of prisoners in United States has evolved from 'slaves of the state' to the view that 'prisoners retain all of their constitutional rights, except those that are forfeited by necessary implication of confinement.' McKeown and Midyette (1976) contend that the principal catalyst for state prison reform has been the recognition that the prohibition of cruel and unusual punishment by the Eighth Amendment and extended to the states by the Fourteenth Amendment, requires minimal standards of treatment. Prisoner litigation challenging the constitutionality of the conditions and practices imposed by penal institutions has been a major factor in forcing the judiciary to establish minimal standards of treatment and to intervene when these standards are denied or circumvented.

The "totality of circumstances approach" has aided prisoners in their ability to bring suit against penal facilities by permitting the combination of prison conditions and practices to be in violation of the Constitution, even though the individual condition or practice may not, per se, be unconstitutional. This approach has become the prevailing standard for lower

federal courts when deciding Eighth Amendment challenges (Cianflone 1982).

Through the use of the totality approach, the courts have ruled that basic necessities of human life, including clothing, shelter, food, personal security and medical care, are required by the Constitution. Other conditions, such as lack of rehabilitation opportunities, restrictions on visitation, and racial discrimination, have been found to contribute to a cumulative impact that under the totality approach, was determined to be unconstitutional. This study found thirty separate conditions/practices that contributed to an unconstitutional finding under the totality of circumstance approach. "Still, no ideal combination of conditions automatically constitutes an Eighth Amendment violation." (Montick 1983: 253) Rather, the standards for constitutional rights and protections for inmates remains ambiguous. The standards continue to be determined through individual case law.

As presented by Fiss (1978: 1)

The values. . . in our Constitution. . . are ambiguous. They are capable of a great number of different meanings. They often conflict. There is a need--a Constitutional need--to give them specific meaning, to give them operational context, and, where there is a conflict, to set priorities.

Totality has expanded the legal meaning of the Constitutional proscription against cruel and unusual punishment by permitting conditions that may not be per se unconstitutional, to be considered when determining the

cumulative impact of the prison environment. Thus, the courts have expanded the Constitutional standards of penal institutions to include the total environment which they create.

However,

while the formulation of totality alerts us to the fact that the totality of circumstances may constitute a constitutional violation, it says nothing about how one can determine when such an infraction exists. (Fair 1979: 126)

The courts have not identified the elements that must exist to create a cumulative affect that is unconstitutional. The ambiguity of the elements needed to meet the minimal standards of the Constitution create a situation on which state legislators and prison officials cannot anticipate when the conditions of a prison system will become constitutionally deficient. (Montick 1983)

Rhodes v Chapman 452 U S 337 (1981) marked the first time that the United States Supreme Court looked at the substantial issues of a prison conditions case. However, this case dealt primarily with the issue of double-celling and the resultant conditions. In this case the court ruled that the double-celling and the conditions that it created were not unconstitutional. But this was a narrow decision, limited only to the impact of double celling on the inmates of a specific facility (Levy 1981). It did not address the issue of minimal penal standards that are required by the Constitution.

It did however conclude that the conditions of a penal institution must be evaluated as to their present harm, not the future, and that anticipated effects cannot be considered.

This decision is in many aspects a retreat from the proactivism seen by the lower federal courts in attempting to alleviate conditions that violate 'the evolving standards of decency.' Bamonte (1981) criticizes the decision as a

restrictive interpretation of Eight Amendment. . . that. . . confined its analysis to whether these conditions involve the 'wanton and unnecessary infliction of pain' or are 'grossly disproportionate to the severity of the crime warranting imprisonment'

Bamonte further contends that

Rhodes reiterated the Court's strong admonition in Bell v Wolfish that federal courts should not take an active role in effectuating improvements in state prisons. Thus, with Rhodes, the Court effectively undermined federal court leadership in pressing for improvements in state prisons across the country (Bamont 1981: 1345-6)

In Rhodes, the Court concluded that there were no deprivations in medical care, essential food, sanitation plumbing, ventilation, lighting, medical services, law library, access to the court, classroom facilities and that violence had not increased as a result of the overcrowding. The physical plant in itself was considered to be a "top flight institution" that with the exception of overcrowding the conditions were satisfactory. These conditions alone differ greatly from those of the cases

studied, in which at least one or more of these deficient conditions were present. Thus, Rhodes does not appear to be a true representation of the majority of totality cases.

Because the court did not need to examine a wide variety of deficient conditions and practices, it failed to provide the needed guidelines and standards by which to evaluate penal conditions. Although the Court did conclude that the cruel and unusual punishment clause of the Eighth Amendment prohibits conditions which 'involve the wanton and unnecessary infliction of pain' or which are 'grossly disproportionate to the severity of the crime'. It failed to provide guidance as to what constitutes pain for the purpose of this analysis nor when the infliction of pain is constitutionally impermissible (Durkin 1982; Comment. . . Minnesota L.R. 1982).

Thus, the lack of standards by which to scrutinize claims of unconstitutional prison conditions continues. Lower courts did not receive the guidance from the Supreme Court that they need to ensure uniform and consistent adjudication.

A standard test by which to evaluate claims of unconstitutional penal conditions needs to be developed.

Dunn (1976) has suggested

that prison punishment be viewed in a manner analogous to potential violations of the 1st Amendment i.e. the state must show a compelling interest for imposition of the punishment and also demonstrate that the punishment is the least drastic method of achieving that interest. (Dunn 1976: 966)

To adopt this, or any other viable test, would provide the lower courts with consistent standards and guidelines by which they could adjudicate prison condition cases. As Montick (1983) contends "the constitutional requirements of the Eighth Amendment cannot vacillate on a spectrum of semantic distinctions." (Montick 1983: 266) Rather, the Supreme Court must give guidance to the definition and application of the terms "wanton infliction of pain," "shocking the conscience," and "grossly disproportionate to the severity of the crime." Only with such guidelines can the lower courts be expected to uniformly and consistently protect prisoners constitutional rights.

APPENDIX A

Themes of Totality Cases as Identified in
Laaman v. Helgemoe 437 F. Supp 269 (1977) at 232

1. The PHYSICAL PLANT must be minimally adequate: lighting, heating, plumbing, ventilation, cell size and recreation space are all examined.
2. The SANITATION: the institution, and especially the food preparation and medical facilities, must be sanitary, and inmates must be provided with clean places to eat, sleep, work and play and the wherewithal to keep themselves and their cells clean.
3. Their environment must be MINIMALLY SAFE: dangers are presented by the presence of the mentally deranged, the violent and the diseased; by the presence of rats, insects and other vermin; by the absence of fire fighting equipment and adequate emergency exits and plans.
4. The administration must provide adequate CLOTHING, NUTRITION, BEDDING, MEDICAL, DENTAL, AND MENTAL HEALTH CARE, VISITATION TIME, EXERCISE, AND RECREATION.
5. Each prisoner is entitled to minimal amount of either PRIVATE or SEMIPRIVATE SPACE.
6. IDLENESS or OBSTRUCTIONS TO SELF-IMPROVEMENT are not tolerable.
7. The prison must have, both in quality and quantity, SUFFICIENT STAFF to maintain minimal control over the institution. Inmates may not occupy positions of power with authority over other prisoners nor fulfill functions for which they are not qualified.

APPENDIX B

Six Basic Rights of Prisoners as Identified by
Michael Feldburg 1977: 373

1. The right to lead a reasonably healthful life, including provisions for decent sanitation and personal hygiene, access to medical and mental health care, and the provision of an adequate diet.
2. The right to be free from frequent physical abuse by other inmates and guards.
3. The right to communicate with the outside world, including freedom from unnecessary restrictions on mail and visitors, the right to confer freely and privately with counsel, the right of access to legal materials for petitioning the courts adequately, and the right to receive reading matter.
4. The right to participate in vocational, recreational, educational, and rehabilitative programs while confined.
5. The right to some procedural due process before the imposition of disciplinary sanctions.
6. The right to be free from severe overcrowding.

When prison conditions deprive inmates of one or all of these elements of a reasonably civilized life, courts have found a deprivation of the inmates' right to be free from cruel and unusual punishment.

APPENDIX C

The Sample

ALABAMA

Pugh v Locke 406 F. Supp 318 (M.D. Ala. 1976)
aff'd in substance Newman v Alabama 559 F 2d 283
(5th Cir 1977)
Newman v Alabama 438 US 781 (1978)
Newman v Alabama 466 F. Supp 628 (M.D. Ala. 1979)
Graddick v Newman 559 F2d 283 (1981)

ARKANSAS

Finney v Arkansas Board of Corrections 505 F. 2d 194
(8th Cir 1974)
Finney v Mabry 458 F. Supp 720 (E.D. Ark. 1978)
Holt v Sarver 300 F. Supp 825 (1969)
Holt v Sarver 300 F. Supp 302 (1970)
Holt v Sarver 422 Fed Reporter 2d Series 305 (1971)

COLORADO

Ramos v Lamm 485 F. Supp 122 (D. Col. 1979)
Ramos v Lamm 639 F. 2d 559 (10th Cir 9/25/80)
Ramos v Lamm 450 US 1041 (1981)
Ramos v Lamm 520 F. Supp 1059 (D. Col. 1981)

ILLINOIS

Lightfoot v Walker 486 F. Supp 504 (S.D. Ill. 2/19/80)

INDIANA

French v Owens 538 F. Supp 910 (S.D. Ind. 1982)

MASSACHUSETTS

Blake v Hall 668 F. 2d 52 (1st Cir 1981)

MISSISSIPPI

Gates v Collier 501 F2d 1291 (1974)

NEW HAMPSHIRE

Laaman v Helgemoe 437 F. Supp 269 (1977)

OHIO

Chapman v Rhodes 434 F. Supp 1007 (1977)
Rhodes v Chapman 452 US 337 (1981)

OKLAHOMA

Battle v Anderson 564 F2ds 388 (10th Cir 1977)
Battle v Anderson 708 F2d 1523 (10th Cir 1983)

RHODE ISLAND

Palmigiano v Garrahy 443 F. Supp 956 (1977)

TENNESSEE

Grubbs v Bradley 552 F. Supp 1052 (1982)

TEXAS

Ruiz v Estelle 650 F2d 555 (1981)
Ruiz v Estelle 503 F. Supp 1265 (1980)
Ruiz v Estelle 679 F2d 1115 (1982)

APPENDIX D

Basic Data Collecting Instrument

Case _____
State _____
Court _____

I. Conditions/Practices

- A. Major Condition Challenged
- B. Additional Conditions Challenged
- C. Conditions Found Unconstitutional

II. Definition of Totality

- A. Direct Court Reference to Totality
- B. Indirect Court Reference to Totality
- C. Justification of Application of Totality

III. Outline of the Court Opinion

- A. Court Opinion
- B. Concurring Opinions
- C. Dissenting Opinions

IV. Remedial Order

APPENDIX E

Major Cases in the 'Evolving Standards' of Cruel
and Unusual Punishment

- 1879 Wilkerson v Utah 99 US 130
punishments of torture and "all others in the same line of unnecessary cruelty" forbidden by 8th Amendment. First attempt by Supreme Court to interpret 8th Amendment.
- 1890 In Re Kemmler 136 US 436
torture and lingering death unconstitutional 8th Amendment forbids inhumane and barbarous punishments.
- 1892 Logan v US 144 US 263
government bound to protect against lawless violence all persons in their service or custody.
- 1910 Weems v US 217 US 349
8th Amendment not tied to a particular theory or point in time. 8th Amendment encompasses punishments disproportionate to severity of crime.
- 1947 Louisiana ex rel Francis v Resweber 329 US 459
court assumed without expressly stating that 8th Amendment included in 14th Amendment due process clause.
- 1949 Johnson v Dye 175 F2d 250 (3rd Cir)
environment of incarcerated inmate on chain gang inflicted cruel and unusual punishment cause appealed to Supreme Court, which dismissed because state remedies were not exhausted.
- 1949 Harper v Wall 85 F. Supp 783
conditions of chain gang found to violate 8th Amendment on principle of Dye; prisoner ordered released.
- 1952 Rochin v California 342 US 165
1st attempt by court to define 8th Amendment cruel and unusual "it shocks or disgusts people of reasonable sensitivity and offends more than the mere fastidious, squeamishness or private sentimentalism."
- 1958 Trop v Dulles 356 US 86
cruel and unusual punishment must draw its meaning from "the evolving standards of decency that mark the progress of a maturing society" nonphysical punishment incorporated into meaning of cruel and unusual.

- 1962 Robinson v California 370 US 660
court ruled 8th Amendment applicable to the states
through due process clause of the 14th Amendment
'cry of horror' standard added to determine 8th
Amendment violations.
- 1967 Wright v McMann 387 F2d 519 (2d Cir)
violation of 8th Amendment when conditions are "so
foul, so inhumane and so violative of basic
concepts of decency."
- 1970 Holt v Sarver 309 F Supp 382 (E.D. Ark.)
totality of circumstances approach 1st used to
determine prison conditions in violation of 8th
Amendment.
- 1974 Wolff v McDonnell 418 US 539
no "iron curtain between constitution and
prisoners."

APPENDIX F

Outline of Case, Condition/Issue, Eighth Amendment
Test and Order/Outcome

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
ALABAMA <u>Pugh v Locke</u> 406 F. Supp 318	overcrowding totality of living conditions	Conditions...constituted cruel and unusual punish- ment where they bore no reasonable relationship to legitimate institutional goals, and, as a whole, created an atmosphere in which inmates were compel- led to live in constant fear of violence, in imminent danger to their physical well being, and without opportunity to seek a more promising future.	Detailed minimum standards ...in respect to over- crowding, segregation and isolation, classification mental health care; pro- tection from violence, living conditions, food service correspondence and visitation, ed, voc, work, recreational opportunities physical facilities, staff Human Rights Committee established Judgement for Plaintiff
<u>Newman v Alabama</u> Appeal of <u>Pugh v</u> 559 F2d 283 <u>Locke</u> 5th Cir 1977		If the state furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety...that ends its obligation under the 8th Amendment. U.S. Constitution does not require that prisoners... be provided with any and every amenity which some person may think is needed	No constitutional basis for requirement inmates be housed in individual cells Design standards, without more, do not amount to per se constitutional limita- tion of number of inmates housed in a facility. Human Rights Committee-not approved-too intrusive. Failure to provide rehab.

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
		to avoid mental, physical, and emotional deterioration.	program by itself, not cruel and unusual. 8th Amendment does not require opportunities to obtain basic ed, vocational school, or transitional program prior to release. Affirmed and Remanded.
<u>Newman v Alabama</u> 438 US 781 1978	Review of <u>Pugh v Locke</u> <u>Newman v. Alabama</u>	Suit against state and its Board of Corrections was barred by 11th Amendment. Absent states consent to suit.	State of Alabama, Governor of Alabama and Alabama Board of Corrections dismissed as parties. Cert denied.
<u>Newman v Alabama</u> 466 F. Supp 628 1979	Plaintiff brought suit against defendants contending non-compliance with injunction orders resulting from <u>Pugh v Locke</u> .		Governor appointed receiver for the Alabama prison system.
<u>Graddich v Newman</u> 559 F2d 283 1981	State attorney applied for stay of an order of the		STAY denied

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
	U.S. District Court for release of some 400 state prison inmates.		
ARKANSAS			
<u>Holt v Sarver</u> 300 F. Supp 825 1969	Conditions in isolation cells. Lack of protection from assault.	Punishment...is unconstitutional if it offends concepts of decency and human dignity and precepts of civilization...or if it is disproportionate to offense or if it violates fundamental standards of good conscience and fairness.	Court would not specify specified steps to be taken to remedy situation State commissioner of corrections 30 days to set forth what steps he planned to take.
<u>Holt v Sarver</u> 309 F. Supp 302 1970	1st time convicts attacked an entire penitentiary system. Conditions and practices in Ark. penitentiary system including trusty system, open barrack system, condition in isolation cells and absence of	Confinement...within a given institution may amount to a cruel and unusual punishment where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people even though a particular inmate may never personally be subject to any disciplinary	Defendants ordered to develop a plan to eliminate the unconstitutional conditions and practices. Court reserved jurisdiction upon receipt of a written report

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<u>Holt v Sarver</u> 442 Fed Reporter 2d 305 1971	<u>Appeal of Holt v Sarver</u> 309 F. Supp 362	meaningful rehab program, amounted to cruel and unusual punishment. action. ONE CANNOT CONSIDER SEPARATELY (the conditions and practices) ALL OF THOSE THINGS EXIST IN COMBINATION; EACH AFFECTS THE OTHER AND TAKEN TOGETHER THEY HAVE A CUMULATIVE IMPACT ON THE INMATES REGARDLESS OF THEIR STATUS.	Court held suit was not against state as to be barred by 11th Amendment. Evidence supported determinator that imprisonment in Arkansas prison constituted cruel and unusual punishment. Affirmed and Remanded.
<u>Finney v Ark. Board of Corr.</u> 505 F2d 194 8th Circuit	Case had its origin in prior litigation <u>Holt I Holt II & HoltIII</u> totalality of conditions. District Court found unconstitutional conditions in prison litigations. In	Prisoner does not shed his basic constitutional rights at the state prison gates. Minimal line separating cruel and unusual punishment from conduct that is not the difference between depriving a state prisoner of privileges he may enjoy and depriving him of	Arkansas penitentiary system still unconstitutional. Directed certain corrective action in respect to housing, racial discrimination, physical abuse, rehabilitation programs. District Court should retain jurisdiction.

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<u>Finney v Mabry</u> 458 F. Supp 720 1978	Consolidated class actions con- cerning alleged denial to prison inmates of certain rights.	the basic necessities of human existence.	District Court tentatively approved. Consent decree providing Dept. of Corrections. Maintain internal grievance procedure. Confinement in punitive segregation not to exceed 30 days for any one disci- plinary episode. Services of legal advisor continue. Law libraries maintained. Dept. to institute affirmative action program

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
			Special Master appointed.

COLORADO

Ramos v Lamm
485 F. Supp
122 1979

Class action suit challenging total-ity of conditions of confinement at the maximum security unit of the Colorado State Penitentiary at Canon City

(The 8th Amendment) is intended to protect and safeguard a prison inmate from an environment where degeneration is probable & selfimprovement unlikely because of the conditions existing which inflict needless suffering, whether physical or mental. Find the conditions of confinement ...to meet all tests by all known measures of proof...the conditions shock the conscience are incompatible with evolving standards of decency, involve unnecessary and wanton infliction of pain, and evidence both deliberate indifference to the prisoners' protected interests and circumstances and conduct so grossly incompetent, inadequate or excessive as...to be intolerable to basic fairness.

Court held that the conditions constituted cruel and unusual punishment, in violation of the 8th Amendment. Court ordered the facility closed, whereby defendents could obtain relief from closure by taking immediate steps to provide plaintiff with the basic human needs...taking cognizance of the principles of productive activity, motility, health integrity and safety, and and coherence.

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<u>Ramos v Lamm</u> 639 F 2d 559 10th Cir 1980	Appeal by defen- ants of <u>Ramos v</u> <u>Lamm</u> 485 F. Supp 122	Care areas of any 8th Amendment claim are shelter sanitation, food, personal safety, medical care and adequate clothing.	Court held: 1) 8th Amendment viola- tions in area of sanitation, food, personal safety and health care. 2) restrictions on inmates' visitation rights did not violate constitution. 3) certain mail restrictions violated constitutional rights. 4) state denied inmates meaningful access to courts in violation of the constitution. 5) development in construction of new prison facilities were relevant in fashioning appropriate remedy. Finding affirmed in part set aside in part. Remedial order vacated in part. Case rewarded.
<u>Ramos v Lamm</u> 520 F. Supp 1059 1981	Remand resulting from court of appeals 639 F2d 589. Reconsider-	Earlier order requiring closing of the prison would not be overturned where the facility	

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
	ation of the proper remedy.		remained unfit for occupancy and there was no evidence adduced which would have justified a change in that portion of the order requiring closure. Plaintiff requested appointment of master denied as too intrusive. Detail plan and timetable sets forth the means by which the present conditions will be changed so that members of the plaintiff class will be forever protected from further violations of the 8th and 14th Amendment rights.

Ramos v Lamm
450 US 1041
1981

Petition for writ of certiorari.

Petition denied.

ILLINOIS

Lightfoot v Walker
486 F. Supp
1980

Health care system at the Menard Correctional Ctr.

Deliberate indifference to a prisoner. Serious illness or injury used to determine if an

Court found health care system and environmental practices and conditions at state prison violated

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
		<p>unconstitutional denial of medical services exist within a prison <u>Estelle v Gamble</u> 429 US 97.</p> <p>While a single instance of medical care denied or delayed, viewed in isolation, may appear to be the product of mere indifference by prison authorities to the agony engendered by haphazard and illconceived procedures...A series of incidents closely related in time...may disclose a pattern of conduct amounting to deliberate indifference to the medical needs of prisoners <u>Todardo v Ward</u> 565 F2d, 52</p>	<p>8th and 14th Amendment Order: (1) defendants enjoined from refusing or failing to provide minimum health care services as required by the US constitution, including the administration and delivery thereof, to the plaintiff class at Menard, (2) defendants to submit within 60 days a detailed plan how to bring the health care system in compliance with the constitution. Court issued an outline of what the plan shall include, but not limited to Master appointed, court retained jurisdiction. Injunction granted; remedial plan ordered.</p>

INDIANA

French v Owens
538 F. Supp 910
1982

Class action suit alleging that overcrowding and various other conditions and practices at the

There is no precise definition of cruel and unusual punishment nor are there any mechanical standards to apply. Rather the 8th Amendment embodies broad

Court held:
1) defendants were in violation of various Indiana statutes with respect to treatment of plaintiff class.

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
	Indiana Reformatory at Pendleton Indiana were in violation of the constitution.	<p>concepts of decency and humanity against which penal measures must be evaluated; punishments must be compatible with evolving standards of decency that mark progress of a maturing society.</p> <p>In determining whether conditions are cruel and unusual each factor cannot be viewed separately. Rather it is necessary to look at totality of conditions in evaluating claims based on 8th Amendment.</p>	<p>2) overcrowding, coupled other conditions, considered as a whole constituted cruel and unusual punishment in violation of 8th and 14th Amendments.</p> <p>Order: Detailed requirements encompassing all findings and conclusions of law in violation of the the constitution to which defendants were ordered to comply.</p>

MASSACHUSETTS

Blake v Hall
668 F2d 52 1st
Cir
1981

Class action suit alleging cruel and unusual conditions of confinement at the Massachusetts Correctional Institution - Walpole.
District Court found no unconstitutional conditions and plaintiffs

Even in a prison setting, there are no rigid standards as to what does or does not amount to cruel and unusual punishment. Prisoner's conduct can not be considered when determining 8th Amendment violations.

Court held:

- 1) Although inmate conduct may have contributed to conditions, in absence that all inmates or even a majority of them were responsible for those conditions the court could not be considered in determining whether conditions amounted to cruel and unusual punishment.
- 2) Conditions in new man's section at state

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
	appealed.		correctional institution may have amounted to cruel and unusual punishment. Remand was necessary to determine whether authorities intended to use that section and if so whether conditions prevailing at time of remand constituted cruel and unusual punishment.

MISSISSIPPI

<u>Gates v Collier</u> 501 F2d 1291 1974	Inmates brought class action suit alleging unconstitutional conditions and practices in maintenance, operation and administration at the Mississippi State Penitentiary at Parchman District Court, 349 F. Supp 881, found unconstitutional violations, defendants appealed.	Each factor separately (the conditions and practices)...may not rise to constitutional dimensions; however, the effect of the totality of these circumstances is the infliction of punishment on inmates violative of the 8th Amendment. Constitution prohibition against cruel and unusual punishment is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement that may prevail at a prison.	Court of Appeals held: 1) judgement enjoining defendant from engaging in racial discrimination practices was within remedial jurisdiction of District Court. 2) conditions of depriving inmates of basic elements of hygiene, adequate medical treatment; conditions of solitary confinement; failure to provide protection from assaults and abuses constituted cruel and unusual punishment. 3) practices of censoring all out/incoming mail was
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Case	Conditions/Issue	8th Amendment Test	Order/Outcome
			<p>unconstitutional. 4) shortage of funds did not render the relief granted impermissible. Order: Immediate and Intermediate Relief. Long Term Relief. Plan which defendants ordered to comply.</p>

NEW HAMPSHIRE

Laaman v Helgemoe 437 F. Supp 269 1977

Inmates in New Hampshire state prison brought suit alleging violation of constitutional rights protected by 8th Amendment.

Where cumulative impact of the conditions of incarceration threatens the physical, mental and emotional health and well being of the inmates and/or creates a probability of recividism and future incarceration the imprisonment does violence to societal notions of the intrinsic worth and dignity of human beings and therefore, contravenes the 8th Amendment's prescription against cruel and unusual punishment. Totality of conditions of confinement in N.H. state prison...made degeneration probable and reform of

Court held:
 1) prisoners were not given adequate medical or mental health care.
 2) totality of conditions made degeneration probable, reform unlikely.
 3) fire hazard presented by physical plant was unacceptable.
 4) statute requiring approval by superior court or governor for transfer of prisoner to hospital was unconstitutional.
 5) appropriate corrections of prison deficiencies ordered.

 Order: Detailed require-

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
		prisoners unlikely and thus did not meet constitutional requirements.	ments in areas of sanitation, physical facilities, food service fire hazard staff, medical care, mental health care, classification protection from violence, work opportunities, vocational training, services and program visitations, mail harassment. Jurisdiction retained by Court.

OHIO

<u>Chapman v Rhodes</u> 434 F. Supp 1007 1977	Prisoners at Ohio State prison brought suit challenging constitutionality of "double celling" whereby two prisoners were housed in one cell	Confinement may be unconstitutional if characterized by conditions and practices so bad as to be shocking to the conscience of a reasonably civilized people. (In prison condition cases)... The question is constantly stated as one of ascertaining the totality of the circumstances of the particular case and then inquiring into whether the totality as determined is intolerant or shocking to the conscience, or	Court held that double celling at Lucasville is unconstitutional based on: 1) prisoners were long term, 2) double celling had resulted in prison exceeding design capacity by 38%, 3) cells were designed for one person, 4) cells had approximately 63 sq. ft. 5) prisoners spent most of their time in their cell with cell mate,
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Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<u>Rhodes v Chapman</u> 452 US 337 1981	<p data-bbox="525 787 871 1112">434 F. Supp 1007 held that double celling was federally unconstitutional court of appeals, 6th circuit 624 F2d 1099, affirmed certiorari was granted.</p> <p data-bbox="525 1144 871 1461">First time Supreme Court considered the limitations that the 8th Amendment imposes upon the conditions in which a state may confine those convicted of crimes.</p>	<p data-bbox="892 787 1407 1144">Conditions of confinement must not involve wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to severity of crime. 8th Amendment must draw its meaning from the evolving standards of decency that mark progress of maturing society. Court must proceed cautiously in making 8th Amendment judgment because unless court reverses its decision that given punishment is impermissible under 8th Amendment cannot be reversed short of constitutional amendment and thus revision cannot be made in light of further experience. Courts cannot</p>	<p data-bbox="1428 446 1911 544">6) double celling was not temporary measure but represented trend.</p> <p data-bbox="1428 576 1911 738">Remedy: Ordered state to to formulate, propose and carry out some plan which would terminate double celling.</p> <p data-bbox="1428 803 1911 1534">Court held: 1) conclusion that double celling at the prison constituted cruel and unusual punishment was unsupportable. 2) the consideration on which the district court relied, prisoners long term, prison housed 38% more than design capacity recommended prisoner have at least 50-55 sq. ft. of living space as opposed to 63 sq. ft. shared by celled inmates, prisoners spent most of time in their cells, and double celling was not temporary condition, were insufficient to support conclusion of cruel and unusual punishment.</p>

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
		<p>assume that state legislatures and prison officials are insensitive to the requirements of the constitutional or to the socio logical problems of how best to achieve the goals of the penal function in the criminal justice system.</p> <p>Courts have responsibility to scrutinize claims of cruel and unusual punishment.</p> <p>A court considering an 8th Amendment violation must consider the totality of the circumstances.</p>	<p>Judgment of Court of Appeals Reversed.</p>

OKLAHOMA

Battle v Anderson
564 F2d 388
10th Circuit
1977

Class action suit alleging deprivations of constitutional and civil rights at

McAlester Penitentiary and Oklahoma State Penitentiary

After order directing defendant to undertake

Persons are sent to prison as punishment not for punishment. It is incumbent on the incarcerating body to provide the individual with a healthy habilitative environment. Anything less would be to subject the individual to further punishment than was given by the sentencing trial court. 8th Amendment is

Court held:
1) Overcrowded conditions when considered with other circumstances, amounted to cruel and unusual punishment.
2) Claim that transfer of inmates to other institutions with less security or greater population than desired would place violent and passive

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<p>certain remedial steps and granting them adequate opportunity to comply (376 F. Supp 402) District Court ordered specific inmate redirections. Defendants appealed.</p>	<p>intended to protect and safeguard a prison inmate from an environment where degeneration is probable and selfimprovement unlikely because of the conditions existing which inflict needless suffering whether physical or mental. The court has the authority and duty to insure that the Constitution does not stop at the prison gate but rather insures to the benefit of all, even those behind prison walls.</p>	<p>inmates in close association, reduce supervision, increase likelihood of escape and subject people of Oklahoma to increased danger was not such as to preclude entry of order. District Court decision and order affirmed.</p>	
<p><u>Battle v Anderson</u> 708 F2d 1523 10th Circuit 1983</p>	<p>State appealed decision and order of 564 F2d 388</p>	<p>In cases which courts intervene in operation of state institution to eliminate unconstitutional practices, intervention is not to prevent isolated instances of misconduct but, rather to remove a threat to constitutional values posed by the manner of operation of the institution and the court's remedies must be designed to achieve institutional change. Suite involves intervention in the</p>	<p>Court held: District court required to continue to exercise jurisdiction until unconstitutional practices had been discontinued and there was no reasonable expectation that practice would recur.</p>

Case	Conditions/Issues	8th Amendment Test	Order/Outcome
		<p>operation of state institution to eliminate unconstitutional practices, an intervention described as structural reform.</p>	
RHODE ISLAND			
<p><u>Palmigiano v Garrahy</u> 443 F. Supp 956 1977</p>	<p>Prisoners and pre-trial detainees at the Adult Correctional Institutions in Rhode Island brought suit alleging violation of constitutional rights due to the conditions of their confinement</p>	<p>(the condition)...create a total environment where rehabilitation is inevitable and which is unfit for human habitation and shocking to the conscience of a reasonably civilized person. Prisoners retain all those rights enjoyed by free citizens except those necessarily lost as an incident of confinement. Officials who engage in massive, systematic deprivation of prisoner's constitutional rights are entitled to, and can expect, no deference from federal courts.</p>	<p>District court held: 1) conditions at prison constituted cruel and unusual punishment. 2) medical treatment violated constitutional rights of prisoners. 3) failure to provide classification for inmates violated state law. 4) pretrial detainees could only be subjected to such restraint as necessary to insure that they would show up at trial. 5) failure to comply with minimum standards set forth in court's order would necessitate closing of such facilities as remained unfit for human habitation.</p>

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
			<p>Detailed plan to take immediate action to correct abuses and minimum standards by which defendants to comply.</p> <p>Master appointed.</p>

TENNESSEE

<p><u>Grubbs v Bradley</u> 552 F. Supp 1052 1982</p>	<p>Prisoners brought suit challenging constitutionality of conditions of confinement in 12 of Tennessee's adult penal institutions.</p>	<p>The 8th Amendment must be examined in light of developing thought and must draw its meaning from the evolving standards of decency that mark a civilized society. Under the totality test various conditions either alone or in combination, may deprive inmates of the minimal civilized measures of life's necessities. The totality test does require courts to consider challenged conditions in the content of the entire prison environment and pay particular attention to the conditions that are closely related; it cannot be used to</p>	<p>District Court held that certain conditions, overcrowding, sanitation, medical care and holding inmates without an opportunity to exercise, amounted to cruel and unusual punishment.</p> <p>Order:</p> <ol style="list-style-type: none"> 1) defendants to develop plan with specific remedies for each finding of unconstitutional condition and practice. 2) court established timetable for defendants to submit proposed remedy. 3) immediately enjoined from holding inmates in segregation without opportunity for exercise. 4) court retained juris-
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Case	Conditions/Issue	8th Amendment Test	Order/Outcome
		<p>expand substantially the scope of the 8th Amendment protections. Absent a finding of some specific constitutional violation, a court may not rest upon a 'vague conclusion' that the total prison environment is unconstitutionally oppressive.</p> <p>An unconstitutional finding based on totality test cannot be used to justify a remedy that is broader than necessary to correct specific constitutional deficiencies.</p>	<p>diction.</p> <p>5) master appointed.</p>

TEXAS

<p>Ruiz v Estelle 503 F. Supp 1265 1980</p>	<p>Prisoners brought suit alleging conditions and practices of the Texas Dept. of Corrections were unconstitutional.</p>	<p>Detailed, scientifically exact proof of harms caused to inmates by overcrowding is not required in order to establish violation of the 8th Amendment</p> <p>Prison officials have constitutional duty to provide inmates under their management with reasonably adequate food,</p>	<p>District Court found inadequate unconstitutional conditions and practices in the areas of overcrowding, sanitation, recreational facilities, health care, hearing procedures for discipline, access to courts, and fire safety and sanitation standards.</p>
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Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<u>Ruiz v Estelle</u> 650 F2d 555 1981	Defendants appealed 503 F. Supp 1265, seeking stay on portions of injunction while appeal of the constitutional issues is being completed and	It is never the respon- sibility of the federal court to decide what a good prison should be or how it ought to be operated. That is for the correctional experts and the policy making offices of the state. Federal courts may inter-	Order: defendants ordered to remedy each unconsti- tutional finding based on plan/outline of remedy presented by court. Defendants ordered to make organization change and retrofitting. Defendants barred from locating any new penal facility from population centers unless able to establish satisfactory ability to recruit and maintain adequate number of qualified professional and paraprofessional staff Jurisdiction retained. Master appointed. Court of appeals held: 1) stay or portion of injunction requiring single celling, rotation of triple celled inmates, release of specific number of inmates on work furloughs and temporary dates. 2) did not stay portion

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
	decided.	<p>ere only to protect prisoners against cruel and unusual treatment.</p>	<p>requiring the Dept. to review inmate's records regarding "good time." 3) STAY portion requiring Dept to submit plan regarding reorganization, decentralization of management of each unit housing more than 500 inmates and relating to the location of future units. 4) STAY portion requiring rotation of inmates under the building tender system 5) State entitled to present facts relating to unit hospital in order to decide whether state entitled to stay of portion requiring downgrading of hospital to use solely as infirmary. Motion to stay granted in part; denied in part.</p>
<p><u>Ruiz v Estelle</u> 679 F2d 1115 1982</p>	<p>Defendants appealed 503 F. Supp 1265 in which the court had found conditions of</p>	<p>Duty to protect inmates' constitutional rights does not confer power to manage prisons, for which federal courts are illequipped, or capacity to second-guess</p>	<p>Court held: 1) portion of decree requiring Dept to file report on number and space per inmate; reduce overall population;</p>

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
<p>confinement in the Texas Dept. of Corrections penal institutions to be unconstitutional.</p>	<p>prison administrators. In reviewing claims by prison inmates of cruel and unusual punishment, test to be applied is that of totality of circumstances. The "totality of the circumstances" test does not authorize federal courts to reform all deficient prison conditions. Remedy must be confined to elimination of those conditions that together violate the constitution.</p>	<p>40 sq. ft. per inmate in dormitories; verbatim report on all discipline hearings; require inmates in administrative segregation opportunity for exercises, access to courts. <u>Affirmed</u> 2) various portions regarding redirection of inmate population. <u>Reversed</u> 3) portions requiring Department to take certain steps relating to good time parole, work furlough and inmate furlough programs impermissibly interfered with prison administration. 4) portion requiring Department to take various steps to improve state hospital, invalid. 5) District Court properly appointed special Master and special monitors to supervise the implementation of an compliance with the decree, but the order and reference was to sweeping in that it permitted the Master to submit to the District</p>	

Case	Conditions/Issue	8th Amendment Test	Order/Outcome
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Court reports based on his
 own observations and
 investigations in the
 absence of a formal
 hearing before him.
 Affirmed in part.
 Reversed in part.

APPENDIX G

Comparison to Themes Identified in
Laaman v Helgemoe 437 F. Supp 269 (1977)

THEME 1: PHYSICAL PLANT

Conditions	Cases	# of Cases	% of Cases
living conditions	<u>Pugh v Locke</u>	9	64
housing/physical facility	<u>406 F. Supp 318</u> <u>Holt v Sarver</u>		
open barracks	<u>309 F. Supp 362</u>		
ventilation	<u>Finney v Board of</u>		
lighting	<u>Corrections</u>		
heating	<u>505 F.2d 194</u>		
noise control	<u>Ramos v Lamm</u>		
electric	<u>639 F. Supp 122</u>		
plumbing	<u>French v Owens</u> <u>538 F. Supp 910</u> <u>Gates v Collier</u> <u>501 F.2d 1291</u> <u>Laaman v Helgemoe</u> <u>437 F. Supp 269</u> <u>Palmigiano v</u> <u>Garrahy</u> <u>443 F. Supp 956</u> <u>Grubbs v Bradley</u> <u>552 F.Supp 1052</u>		

THEME 2: SANITATION

Conditions	Cases	# of Cases	% of Cases
food service	<u>French v Owens</u>	9	64
sanitation	<u>538 F. Supp 910</u> <u>Pugh v Locke</u> <u>406 F. Supp 318</u> <u>Ramos v Lamm</u> <u>639 F. Supp 122</u> <u>Ramos v Lamm</u> <u>639 F. Supp 122</u> <u>Lightfoot v</u> <u>Walker</u> <u>486 F. Supp 504</u> <u>Laaman v</u> <u>Helgemoe</u> <u>437 F. Supp 269</u> <u>Palmigiano v</u> <u>Garrahy</u> <u>443 F. Supp 956</u> <u>Grubbs v Bradley</u> <u>552 F. Supp 1052</u> <u>Ruiz v Estelle</u> <u>503 F. Supp 1265</u>		

THEME 3: MINIMAL SAFE ENVIRONMENT

Conditions	Cases	# of Cases	# of Cases
classification system	<u>Gates v Collier</u> 501 F.2d 1291	11	79
protection from violence	<u>Laaman v Helgemoe</u>		
fire safety	437 F. Supp 269 <u>Battle v Anderson</u> 564 F.2d 388 <u>Palmigiano v Garrahy</u> 443 F. Supp 956 <u>Grubbs v Bradley</u> 552 F. Supp 1052 <u>Ruiz v Estelle</u> 503 F. Supp 1265 <u>Pugh v Locke</u> 406 F. Supp 318 <u>Holt v Sarver</u> 300 F. Supp 825 <u>Holt v Sarver</u> 309 F. Supp 362 <u>Ramos v Lamm</u> 485 F. Supp 122 <u>Ramos v. Lamm</u> 639 F. Supp 122		

THEME 4: MINIMAL PROVISIONS

Conditions	Cases	# of Cases	# of Cases
med/mental health care	<u>Pugh v Locke</u> 406 F. Supp 318	12	86
correspondence/visitation	<u>Finney v Board of Correction</u>		
food and clothing	505 F.2d 194		
ed, voc, work, rec. opp.	<u>Ramos v Lamm</u> 485 F. Supp 122 <u>Ramos v Lamm</u> 639 F. Supp 122 <u>Lightfoot v Walker</u> 486 F. Supp 504 <u>French v Owens</u> 538 F. Supp 910 <u>Gates v Collier</u> 501 F.2d 1291		

THEME 4: continued

Conditions	Cases	# of Cases	% of Cases
	<u>Laaman v</u>		
	<u>Helgemoe</u>		
	437 F.Supp 269		
	<u>Battle v</u>		
	<u>Anderson</u>		
	564 F.2d 388		
	<u>Palmigiano v</u>		
	<u>Garrahy</u>		
	443 F. Supp 956		
	<u>Grubbs v</u>		
	<u>Bradley</u>		
	552 F. Supp 1052		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

THEME 5: SPACE

Conditions	Cases	# of Cases	% of Cases
overcrowding living space	<u>Pugh v Locke</u>	7	50
	406 F. Supp 318		
	<u>Finney v Board</u>		
	<u>of Correction</u>		
	505 F.2d 194		
	<u>Ramos v Lamm</u>		
	485 F. Supp 122		
	<u>French v Owens</u>		
	538 F. Supp 910		
	<u>Battle v</u>		
	<u>Anderson</u>		
	564 F.2d 388		
	<u>Grubbs v Bradley</u>		
	552 F. Supp 1052		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

THEME 6: REHABILITATION

Conditions	Cases	# of Cases	% of Cases
degeneration probable rehabilitation idleness	<u>Holt v Sarver</u>	8	57
	309 F. Sup 362		
	<u>Finney v Dept.</u>		
	<u>of Correction</u>		
	505 F.2d 194		

TABLE 6: continued

Conditions	Cases	# of Cases	% of Cases
	<u>Ramos v Lamm</u>		
	485 F. Supp 122		
	<u>Ramos v Lamm</u>		
	639 F. Supp 122		
	<u>French v Owens</u>		
	538 F. Supp		
	<u>Laaman v</u>		
	<u>Helgemoe</u>		
	437 F. Supp 269		
	<u>Battle v</u>		
	<u>Anderson</u>		
	564 F.2d 388		
	<u>Palmigiano v</u>		
	<u>Garrahy</u>		
	443 F. Supp 956		

THEME 7: STAFF

Conditions	Cases	# of Cases	% of Cases
staff	<u>Pugh v Locke</u>	6	36
trusty system	406 F. Supp 318		
	<u>Holt v Sarver</u>		
	309 F. Supp 362		
	<u>Finney v Board</u>		
	<u>of Correction</u>		
	505 F.2d 194		
	<u>Lightfoot v</u>		
	<u>Walker</u>		
	486 F. Supp 504		
	<u>Gates v Collier</u>		
	501 F.2d 1291		
	<u>Laaman v</u>		
	<u>Helgemoe</u>		
	437 F. Supp 269		

APPENDIX H

Comparison of Cases to the Rights
Identified by Michael Feldberg

1. RIGHT TO A HEALTH LIFE

Conditions	Cases	# of Cases	% of Cases
sanitation	<u>Pugh v Locke</u>	12	86
med/MH care	406 F. Supp 318		
living conditions	<u>Finney v Board</u>		
food service	<u>of Correction</u>		
fire safety	505 F.2d 194		
ventilation	<u>Ramos v Lamm</u>		
lighting	485 F. Supp 122		
heating	<u>Ramos v Lamm</u>		
noise control	639 F.2d 559		
electric	<u>Lightfoot v</u>		
plumbing	<u>Walker</u>		
	486 F. Supp 504		
	<u>French v Owens</u>		
	538 F.Supp 910		
	<u>Gates v Collier</u>		
	501 F.2d 1291		
	<u>Laaman v</u>		
	<u>Helgemoe</u>		
	437 F. Supp 269		
	<u>Battle v</u>		
	<u>Anderson</u>		
	564 F.2d 388		
	<u>Palmigiano v</u>		
	<u>Garrahy</u>		
	443 F. Supp 956		
	<u>Grubbs v Bradley</u>		
	552 F. Supp 1052		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

2. RIGHT TO FREEDOM FROM PHYSICAL ABUSE

Conditions	Cases	# of Cases	% of Cases
protection from	<u>Pugh v Locke</u>	11	86
violence	406 F. Supp 318		
trusty system	<u>Holt v Sarver</u>		
open barracks	300 F. Supp 825		
	<u>Holt v Sarver</u>		
	309 F. Supp 362		
	<u>Finney v Board of</u>		
	<u>Correction</u>		
	505 F.2d 194		
	<u>Ramos v Lamm</u>		
	485 F. Supp 122		

RIGHT 2: continued

Conditions	Cases	# of Cases	% of Cases
	<u>Ramos v Lamm</u>		
	639 F.2d 559		
	<u>Gates v Collier</u>		
	501 F.2d 1291		
	<u>Battle v</u>		
	<u>Anderson</u>		
	564 F.2d 388		
	<u>Palmigiano v</u>		
	<u>Garrahy</u>		
	443 F. Supp 956		
	<u>Grubbs v Bradley</u>		
	552 F. Supp 1052		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

3. RIGHT TO COMMUNICATE WITH OUTSIDE WORLD

Conditions	Cases	# of Cases	% of Cases
correspondence & visitation access to court	<u>Pugh v Locke</u>	7	50
	406 F. Supp 318		
	<u>Finney v Board of Correction</u>		
	505 F.2d 194		
	<u>Ramos v Lamm</u>		
	485 F. Supp 122		
	<u>Ramos v Lamm</u>		
	639 F.2d 559		
	<u>Gates v Collier</u>		
	501 F.2d 1291		
	<u>Laaman v Helgenoe</u>		
	437 F. Supp 269		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

4. RIGHT TO PARTICIPATE IN VOC., REC., ED., REHAB.

Conditions	Cases	# of Cases	% of Cases
ed., voc., work rec., opp. rehab. programs idleness	<u>Pugh v Locke</u>	8	57
	406 F. Supp 318		
	<u>Finney v Board of Correction</u>		
	505 F.2d 194		

RIGHT 4: continued

Conditions	Cases	# of Cases	% of Cases
	<u>Ramos v Lamm</u>		
	435 F. Supp 122		
	<u>French v Owens</u>		
	538 F. Supp 910		
	<u>Laaman v Helgemoe</u>		
	437 F. Supp 269		
	<u>Palmigiano v Garrahy</u>		
	443 F. Supp 956		
	<u>Grubbs v Bradley</u>		
	552 F. Supp 1052		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

5. RIGHT TO DUE PROCESS BEFORE DISCIPLINARY SANCTIONS

Conditions	Cases	# of Cases	% of Cases
disciplinary procedures	<u>Finney v Board of Correction</u>	3	21
	505 F.2d 194		
	<u>Gates v Collier</u>		
	501 F.2d 1291		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

6. RIGHT TO FREEDOM FROM SEVERE OVERCROWDING

Conditions	Cases	# of Cases	% of Cases
overcrowding	<u>Pugh v Locke</u>	6	43
	406 F. Supp 318		
	<u>Finney v Board of Correction</u>		
	505 F. 2d 194		
	<u>French v Owens</u>		
	538 F. Supp 910		
	<u>Battle v Anderson</u>		
	564 F.2d 388		
	<u>Grubbs v Bradley</u>		
	552 F. Supp 1052		
	<u>Ruiz v Estelle</u>		
	503 F. Supp 1265		

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