"'And Some Grow Mad, And All Grow Bad:'" Prisoners' Constitutional Right to Receive Psychiatric Treatment

"An old aphorism holds that one measure of the moral strength of a society is the degree of concern which it exhibits for the welfare of those confined to its penal institutions."2

Application of this aphorism to the present penal environment within which we incarcerate our nation's inmate masses invites inquiry as to whether today's penal conditions3 are any more humane than those of past penal systems scorned by our enlightened society.

Approximately 580,000 people currently reside within our nation's penal institutions.4 This populace, representative of the "lowest rungs of the economic benefits ladder,"5 are "legitimately dependent"6 upon

3. In this Note "conditions and confinement" and "penal conditions" will encompass those physical, environmental conditions of confinement as well as the mental and emotional stress factors which an inmate experiences daily as a result of his incarceration.
5. Recent Developments in Prison Law, supra note 4, at 727. This milieu of citizenry is representative of a cross section of our nation's "poor, undereducated and underemployed from various 'discreet and insular minorities.'" Id.
6. "Legitimized dependency" has never been defined by the courts. It is used in this Note to refer to a prisoner's complete dependency upon the penal institution(s) to provide the basic daily necessities of life. It is this symbiotic relationship which gives birth to this notion of "legitimized dependency." See Estelle v. Gamble, 429 U.S. 97 (1976) (At common law, the public is required to care for the prisoner, who cannot, by reason of his liberty deprivation indigenous to incarceration, care for himself). In his remarks at the 1976 ABA Convention in Dallas, Texas, Chief Justice Burger expounded upon the state's duty to care for its incarcerated masses. He stated:

[When a sheriff or marshall takes a man from the courthouse and transports him to confinement, this is our act. We have tolled the bell for him. [And], whether like it or not, we have made him our collective responsibility. We are free, he is not.]

the penal institutions, both state and federal,\textsuperscript{7} to provide the "basic necessities of life."\textsuperscript{8} It is this notion of "legitimized dependency" which gives birth to constitutional challenges appertaining to the quality of life provided inmates by the various penal institutions.\textsuperscript{9} Frequently, these challenges are stated in terms of eighth amendment violations, specifically asserting that they, the inmate populace, are subject to needless cruel and unusual punishment\textsuperscript{10} through exposure to existing conditions of confinement. Such challenges normally do so upon grounds that the conditions are not only physically abusive and debilitating, but also psychologically destructive.\textsuperscript{11}

Historically, the eighth amendment was thought to prohibit only "barbarous and torturous" forms of punishment.\textsuperscript{12} However, the courts


7. For the purposes of this Note, all references to "penal institutions" or "facilities" shall include both state and federal institutions unless explicitly stated to the contrary.


9. See, e.g., Rhodes v. Chapman, 452 U.S. 337 (1981) (class action suit challenging prison practice of double celling as violative of eighth amendment); Estelle v. Gamble, 429 U.S. 97 (1976) (failure to provide medical care violative of eighth amendment prohibition against cruel and unusual punishment); Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982) (challenge to total conditions of confinement within Texas penal system as violative of eighth amendment); Inmates of the Allegheny County Jail v. Pierce, 612 F.2d 754 (3rd Cir. 1979) (civil action by pretrial detainees challenging the conditions of their confinement as violative of eighth amendment); Capps v. Atiyeh, 495 F Supp. 802 (D. Ore. 1983) (class action suit by prisoners challenging totality of conditions of confinement as violative of eighth amendment).

10. U.S. Const. amend. VIII provides: "Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted."

11. See, e.g., Turner, Challenging Conditions in Prisons Which Violate the Eighth Amendment in Prisoners' Rights Sourcebook 113-21 (Hermann & M. Haft eds. 1973) [hereinafter referred to as Due Process Behind the Walls].

The lower courts have invoked the eighth amendment to protect prisoners from certain kinds of conditions or punishments. In general, the cases break down into four categories: (1) the overall conditions of the jail or prison sink into an intolerably barbaric level, (2) physical punishments are impermissible, (3) denial of needed medical care in some circumstances is cruel and unusual, and (4) various kinds of disciplinary confinement.

Id. at 113-21. See also Trop v. Dulles, 356 U.S. 86, 101 (1958) (A punishment may be deemed cruel and unusual if it is found not to "comport with human dignity," or if it involves "the unnecessary and wanton infliction of pain."). See, e.g., Furman v. Georgia, 408 U.S. 238, 270 (1972) (Brennan, J., concurring); Weems v. United States, 217 U.S. 349, 375, 378 (1910).

12. See infra note 14 and accompanying text.
have in recent years expanded the amendment's prohibitions to encompass pain and suffering\textsuperscript{13} borne by an inmate through infliction of penal conditions falling below those required by a decent society.\textsuperscript{14} Through this expansion, the courts have recognized that eighth amendment violations accrue whenever a prisoner is denied access to needed psychiatric,\textsuperscript{15} as well as medical\textsuperscript{16} care.

This Note will address prison inmates' penumbral rights under the United States Constitution, to receive psychiatric treatment while incarcerated. Development of the jurisprudential basis for finding such a right will begin with historical analysis of the development of the right by both the state and federal courts. Individual case analysis will present the elusive tests employed historically by the judiciary in determining the parameters of this right. Discussion of the present, vacuous and vacillating standard employed by federal and state courts in the forefront of addressing this issue will then follow. Finally a proposed standard, capable of evolution and responsive to our society's contemporary quest for moral decency, will conclude this Note.

I. HISTORICAL DEVELOPMENT OF RIGHTS AND LIBERTIES LOST

"To live in fear of one's life, to suffer neglect and poor medical care are not only unnecessary inflictions of pain, but are bad penology."\textsuperscript{17}

\textsuperscript{13} Gregg v. Georgia, 428 U.S. 153, 170-71 (1976). The Court stated: "The eighth amendment in only three words imposes the constitutional limitation upon punishments: they cannot be 'cruel and unusual.'" The Court has interpreted these words in a "flexible and dynamic manner" and has extended them beyond the "barbarous" and physical punishments at issue in the Court's earliest cases. \textit{Id.} at 171.

\textsuperscript{14} Rhodes v. Chapman, 452 U.S. 337 (1981). In order to satisfy the eighth amendment's prohibition against cruel and unusual punishment, "conditions of confinement must not involve the wanton and unnecessary infliction of pain" \textit{Id.} at 337. Accord \textit{Estelle v. Gamble}, 429 U.S. 97, 104 (1976) ("denial of medical care is cruel and unusual [because] it can result in pain "). \textit{See Gregg v. Georgia}, 428 U.S. 153 (1976). In its opinion, the Supreme Court expanded upon the scope of the eighth amendment: "[T]he amendment prohibits punishments which, although not physically barbarous, involve the unnecessary and wanton infliction of pain. Thus, the eighth amendment prohibits infliction[s] (sic) of pain which are totally without penological justification." \textit{Id.} at 173-74.

\textsuperscript{15} Inmates of the Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3rd Cir. 1979). "[F]ailure to provide necessary psychological or psychiatric treatment to inmates with serious mental or emotional disturbances will result in the infliction of (eighth amendment) pain and suffering just as real as would result from the failure to treat serious physical ailments." \textit{Id.} at 763.


\textsuperscript{17} Capps v. Atiyeh, 495 F Supp. 802, 805 (D. Ore. 1980) stayed Atiyeh v. Capps, 449
Incarceration within a penal institution is a form of punishment, subject to the strictures of the eighth amendment's proscription against the infliction of cruel and unusual punishment. Prison conditions alone or combined may deprive inmates of the minimal civilized measures of life's necessities, thereby raising a constitutional deprivation. An inmate is sentenced to prison by our society as a means of punishment for violations of its mores and offenses. This is a legitimate retributive penal objective of our society. Yet, it is when this...
objective becomes the embodiment of a societal vendetta against the inmate population in general that the prisoner becomes sentenced FOR punishment and not AS punishment. When this occurs, the opportunity for the unconscionable emasculation of an individual prisoner's constitutional rights becomes exacerbated.  

By the very nature of incarceration, a multitude of rights previously possessed by the inmate as a free member of society are abrogated. However, a prisoner is not stripped of all rights; the constitutional guarantees do not stop at the prison gate "but rather inure(s) to the benefit of all," even to those incarcerated behind prison walls. Lib-

Justice Rehnquist reiterated that retribution is a legitimate goal of incarceration.).


25. See Due Process Behind the Walls, supra note 11, at 83. “Although incarceration in a penal institution is viewed by many as an inflexible dichotomy - one is either in or out of prison - it is clear that gradations of institutional freedom exist after the denial, by incarceration, of liberty in its traditional sense.” Id.

26. Sneidman, Prisoners and Medical Treatment: Their Rights and Remedies, 4 CRIM. L. BULL. 450 (1968). As Sol Rubin noted:

During the terms of the commitment the prisoner is subject to controls exercised by the state and its representative, as governed by statute. Subject to constitutional limitations (particularly the prohibition of cruel and unusual punishment) the state determines what may be done to the prisoner. [However, a prisoner is not stripped of all his rights, eds.] Rights not specifically taken away by the legislature are retained by the prisoner, but their exercise is necessarily curtailed as a consequence of imprisonment. On the other hand, certain rights are inherent or are specifically granted; for example, the state is obliged to furnish necessary medical services.


27. Johnson v. Levine, 450 F Supp. 648 (D. Md. 1978). The Johnson court addressed the loss of rights incident to incarceration and the respective duty of the State to provide for its incarcerated masses. The court noted:

It is axiomatic that a lawfully convicted and sentenced state prisoner must necessarily suffer the loss of rights and privileges which ordinary citizens enjoy to the fullest extent. The Supreme Court has stated that: “lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.”


Utility interests have their origin in the constitution, giving a prisoner a reasonable expectation of having various rights and privileges. When the existence of a right or privilege rests at the unfettered discretion of prison officials and these privileges are arbitrarily withheld, a prisoner is denied his liberty interests. However, federal courts have continued to recognize and affirm the broad discretion of prison administrators to withhold certain liberty interests where such deprivations fulfill a legitimate penal goal and are necessary in order to maintain orderly and secure institutions. Lawful incarceration, therefore, limits the constitutional rights of convicted prisoners but does not eliminate individual rights entirely.

between the Constitution and the prisoners of this country." Id.


30. Prisoner's Rights, supra note 26, at 601-02. The mere fact that an involuntarily committed prisoner has been sentenced under proper procedures, as established by either state or federal law, does not deprive him of all substantive liberty interests under the due process clause of the fourteenth amendment. See Youngberg v. Romeo, 457 U.S. 313 (1982). Whether the individual's constitutional rights have been violated must be determined by balancing the liberty interests against the state's interests. See also Pell v. Procunier, 417 U.S. 817, 823 (1974). "It is in light of these legitimate penal objectives that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners." Id. See Prisoner's Rights, supra note 26, at 591. Cf. Vitek v. Jones, 445 U.S. 480 (1980). The right to personal security has been recognized as a historic liberty interest protected substantively by the due process clause of the fourteenth amendment; and that right is not extinguished by lawful confinement, even for penal purposes. Id. at 492.

31. See, e.g., Pugh v. Locke, 406 F Supp. 318, 328 (M.D. Ala. 1976) (When prison policy advances a valid goal such as deterrence, rehabilitation and institutional security, a court is required to weigh competing interests of the prisoner and of the state in pursuing that goal). See also E. Schopler, Annotation: Supreme Court's Views As To The Concept of 'Liberty' Under Due Process Clauses of the Fifth and Fourteenth Amendments, 47 L.Ed.2d 975 (1977).

Given a valid conviction, a criminal defendant has been constitutionally deprived of his liberty to the extent that the State may confine him and subject him to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution; the fact that life in prison is much more disagreeable than in another does not signify, in itself, that a fourteenth amendment liberty interest is implicated. Id. at 1004. See supra note 23 and accompanying text.

In determining whether an individual's rights have been violated, the courts will give broad recognition to legitimate penal interests and will balance individual liberty interests against those of the penal system.\textsuperscript{33} The Second Circuit in \textit{Sostre v. McGinnes}\textsuperscript{34} recognized an important caveat that courts should consider before upholding legitimate penal objectives and foreclosing an individual's liberty interests. The \textit{Sostre} court, concerned with the prevention of the abuse of this sanctioned foreclosure warned:

\[\text{T}hat\ (prison officials)\ may\ not\ avoid\ the\ rigor\ of\ due\ process\ by\ labeling\ an\ action\ which\ has\ serious\ and\ onerous\ consequences\ as\ a\ withdrawal\ of\ a\ 'privilege'\ rather\ than\ a\ 'right'\ \text{T}he\ distinc-
\text{T}ion\ between\ a\ 'right'\ and\ a\ 'privilege'\ \text{T}is\ nowhere\ more\ mean-
\text{T}ingless\ than\ behind\ prison\ walls.\textsuperscript{35}\]

The duty of protecting these vestigial rights of the prison society rests on the government, both state\textsuperscript{36} and federal.\textsuperscript{37} "[W]here a state has created a right, the prisoner's interest has real substance and is sufficiently embraced within the constitution's protections, thereby ensuring the prison populace that such state-created rights will not be arbitrarily abrogated."\textsuperscript{38}

At common law, the public is required to care for those incarcerated who cannot, by reason of the deprivation of their respective liberties,

\textsuperscript{33} See supra notes 23 and 31 and accompanying text.
\textsuperscript{33} See supra note 29 and accompanying text. See, e.g., \textit{Prisoner's Rights}, supra note 26, at 601. See also \textit{Bell v. Wolfish}, 441 U.S. 520 (1979).
\textsuperscript{34} 442 F.2d 178 (2d Cir. 1971).
\textsuperscript{35} Id. See supra note 26 and accompanying text. See \textit{infra} note 43 and accompanying text.
\textsuperscript{37} \textit{Estelle v. Gamble}, 429 U.S. 97, 102 (1976) (citing \textit{Spicer v. Williamson}, 191 N.C. 487, 490, 132 S.E. 291, 293 (1926)). "It has been just that the public be required to care for the prisoner, who cannot by reason of his liberty deprivation care for himself.'" See, e.g., \textit{18 U.S.C.} \textsection 4042 (1982) which provides: "The Bureau of Prisons shall provide suitable quarters and provide for the safekeeping, care and subsistence of all persons charged with or convicted of offenses against the United States"
\textsuperscript{38} 47 L.Ed.2d at 975 (1977).
care for themselves. The Court of Appeals for the Ninth Circuit, in *Hoptowit v. Ray*, addressed the issue of the depth and parameters of the public's duty, under the United States Constitution, to care for its incarcerated masses. The petitioners in the case argued that the corrections department of the State of Washington was systematically abridging their rights to be free from "cruel and unusual punishment(s)." The *Hoptowit* court succinctly enunciated the scope of the state's duty to its prison populace under the eighth amendment. They formulated the following standard in scrutinizing an alleged violation of the state's constitutional duty to care for those whom it incarcerates, and ascertained: "In analyzing claims of eighth amendment violations, the courts must look at discrete areas of basic human needs. [A]n institution's obligation under the eighth amendment is at an end if it furnished sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety."

Further, the *Hoptowit* court stated that withholding any of the prisoner's "basic necessities of life" would be violative of both the eighth amendment's prohibition against cruel and unusual punishment and of society's common law duty to care for those whom it incarcerates.

40. 682 F.2d 1237, 1245 (9th Cir. 1982). *Hoptowit v. Ray* was a class action suit filed against the Governor of the State of Washington and various officials of the State of Washington's correctional system alleging infliction of eighth amendment violations as suffered by members of the inmate populace.
41. *Id.* at 1246. See also *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981), (quoting *Wolfish v. Levi*, 573 F.2d 118, 125 (2d Cir. 1978), rev'd on other grounds sub nom. *Bell v. Wolfish*, 441 U.S. 520 (1979)).
42. *Hoptowit*, 682 F.2d at 1246-47. The *Hoptowit* court in assessing the implications imposed upon the eighth amendment stated: "The eighth amendment is not a basis for broad prison reform. It requires neither that prison be comfortable, nor that they provide every amenity that one might find desirable." *Id.* at 1246. See *Rhodes v. Chapman*, 452 U.S. 337, 346-47 (1981). See also *Wolfish v. Levi*, 573 F.2d 118, 125 (2d Cir. 1978), rev'd on other grounds sub nom. *Bell v. Wolfish*, 441 U.S. 520 (1979). In expanding further, the *Hoptowit* court noted: "[T]he eighth amendment proscribes the unnecessary and wanton infliction of pain, which includes those sanctions and are 'so without penological justification that it results in the gratuituous infliction of suffering.'" *Id.* at 1246. See, e.g., *Gregg v. Georgia*, 428 U.S. 153, 173, 183 (1976). *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982). The *Youngberg* Court defined the states' common law duty to its prisoners:

The state has a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of care that the State must provide. The State also has the unquestionable duty to provide safety for all residents and personnel within the institution. If the State furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under amendment eight.
The prohibition of the eighth amendment is not intended as a broad basis of prison reform but, rather, is designed to protect and safeguard an inmate from an environment where "degeneration is probable and self-improvement unlikely." \(^4\) The eighth amendment does not condone conditions of confinement which inflict needless suffering, mentally as well as physically,\(^4\) upon those imprisoned. However, the United States Constitution does not mandate comfortable prisons,\(^4\) and, to the extent that prison conditions are restrictive and even mentally harsh, they are part of the penalty that criminal offenders pay for their offenses.\(^4\) Yet, heinous deprivations of an individual's basic needs for psychiatric and physical treatment do not comport with the concept of "human dignity"\(^7\) and, indeed, are violative of the eighth amendment's prohibition against "cruel and unusual punishment."

II. RECOGNITION OF THE RIGHT TO RECEIVE PSYCHIATRIC TREATMENT

The recognition and development of a psychological care right has been made tenuously by the courts.\(^4\) The standards employed by the lower courts to the inquiry concerning a medical care right have been adopted in a similar mode by other courts addressing the inquiry of whether a psychological care right exists at all for the inmate

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\(^{43}\) Battle v. Anderson, 564 F.2d 388, 393 (10th Cir. 1977).


[Failure of the Board of Corrections to provide sufficient medical facilities and staff to afford inmates the basic elements of adequate medical care constitutes a willful and intentional violation of the rights of prisoners guaranteed under the eighth and fourteenth amendments.


\(^{47}\) Furman v. Georgia, 408 U.S. 238 (1972). Furman enunciated the concept of human dignity as a concern which must be balanced by penologists when setting or inflicting penal policies. Id. at 271. See supra note 19 and accompanying text.

population.

One of the landmark cases that defined a state’s duty to provide adequate medical care to its incarcerated masses was *Estelle v. Gamble*. The controlling issue for Justice Brennan of the Supreme Court was whether denial of adequate medical care constituted a denial of an inmate’s “basic necessities of life” and, resultantly, inflicted “cruel and unusual punishment,” upon the prisoners involved. Earlier, the Third Circuit, in *Estelle*, had failed to find a sufficiency of facts to support Gamble’s alleged eighth amendment violation. The Supreme Court affirmed this finding. Yet, in the absence of an eighth amendment violation having been shown, the Court set forth necessary guidelines determinative of a state’s duty to provide adequate medical care to those whom it incarcerates.

The United States Supreme Court in *Estelle* therefore, set the parameters and controlling principle governing a state’s duty to its inmate populace with respect to medical services. The standard the Court ascertained is that “a state has a duty to provide medical care for those whom it is punishing by incarceration.” Failure of the penal institution to provide its inmate populace with the basic elements of adequate medical care has been held to constitute a willful and intentional violation of a prisoner’s rights guaranteed by the eighth and fourteenth amendments.

The determination of a psychological care right as a “necessity of life” indigenous to the penal environment was recognized by the
Fourth Circuit in *Bowering v. Goodwin*. In that premier case, the court recognized the psychological care right as a parallel right to the already-determined medical care right. The court noted that "we see no underlying distinction between the right to medical care for physical ills and its psychological counterpart. Modern science has rejected the notion that mental or emotional disturbances are the products of afflicted souls, hence beyond the purview of counseling, medication and therapy."  

The emasculation of the archaic notion that psychiatric care was merely a frivolous desire by the *Bowering* court was paramount to the further development of the psychiatric care right. The foresight of the Fourth Circuit in *Bowering* was later expanded and applied by the Third Circuit in reaching its decision in *Inmates of the Allegheny County Jail v. Pierce*. The Allegheny court asserted "for we perceive no reason why psychological or psychiatric care should not be held to the same standard [as medical care]." No underlying distinction, the court further explained, exists between the right to care of physical ills and its psychological counterpart. The recognition by the judiciary that mental illness can be as debilitating as physical illness, and resultanty inflict similar pernicious suffering, was an important step in recognizing the everyday stresses of prison life and the psychological toll they take on those incarcerated.

Mental illness, acquired prior to or during incarceration, is exacerbated when adequate services are not made available to the inmate by the institution. Failure of the institution to adequately provide psychiatric care, or deliberate withholding of such care, constitutes a breach of the state's common law duty to care for those whom it incarcerates. In order to comport with this duty, it is incumbent upon those charged with the care of the inmate populace to provide mentally-ill inmates with adequate psychiatric care, for such care is as much a

58. See *Bowering*, 551 F.2d at 47.
59. *Pierce*, 612 F.2d 754, 763 (3rd Cir. 1979).
60. Id.
61. Id.
62. See supra notes 36 and 42 and accompanying text.
63. *Pierce*, 612 F.2d at 759. See, e.g., *Hoptowit v. Ray*, 682 F.2d 1237 (9th Cir. 1982). The *Hoptowit* court succinctly set forth the eighth amendment requirements in the area of mental health care. The court stated: "The Eighth Amendment requires that prison officials provide a system of ready access to adequate medical care. Prison officials must provide adequate facilities and staff to handle emergencies [t]hese requirements apply to physical and mental health." *Id.* at 1253.
"basic necessity of life" as is adequate medical care.

When psychiatric services are withheld, or the existence of such services is totally inadequate as to provide little or no relief, "a large number of inmates resort to self-mutilation suicide attempts or voluntarily subject themselves to inhumane conditions of prison isolation cells as dramatic cries for help." 64 Judge Justice, writing for the Court of Appeals for the Fifth Circuit in Ruiz v. Estelle 65 succinctly expounded upon the stresses involved in everyday prison life which lend an inmate to such extremes as volitional exile. He wrote:

But the inequitous and distressing circumstances are prohibited by the great constitutional principle that no human being, regardless of how disfavored by society, shall be subjected to cruel and unusual punishment or be deprived of due process of law.

It is often the very confinement itself which, by virtue of the penal environment, impermissibly contravenes the eighth amendment rights of the prison populace. 66 These deprivations, coupled with an inmate's inability to acquire psychiatric services on his own, exacerbate his mental condition. 67 Where adequate psychiatric care is foreclosed to an inmate, he suffers "pain" 68 within the meaning of the eighth amend-

64. Pugh v. Locke, 406 F Supp. 318, 324 (M.D. Ala. 1976). The court noted: "Rather than face this constant danger, some inmates voluntarily subject themselves to the inhumane conditions of prison isolation cells." Id. at 324. See, e.g., Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982). See also supra note 59 and accompanying text.

65. 679 F.2d 1115 (5th Cir. 1982).


67. Pugh v. Locke, 406 F Supp. 318, 329 (M.D. Ala. 1979). The court reaffirmed this notion citing Holt v. Shriver, 309 F Supp. 362, 373-74 (E.D. Ark. 1970), aff'd 442 F.2d 304 (8th Cir. 1971). The Pugh court stated: "[C]onfinement itself within a given institution may amount 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 reasonably civilized people." Id. at 329. See infra note 84 and accompanying text.


69. 530 F Supp. at 938. (The refusal to treat, in combination with the state's conduct in confining the individual in a manner that prevents him from getting any help on his own, amounts to the infliction or aggravation of 'pain' and suffering.) 530 F Supp. 930 (citing Comment, Right to Treatment for the Civilly Committed; A New Eighth Amendment Basis, 45 U. CHI. L. REV. 731-47 (1978)). Cf. Richardson v. Belcher, 404 U.S. 78, 83-
ment as he is forced to bear an untreated illness.\textsuperscript{70}

III. THE PAIN REQUIREMENT FOR AN EIGHTH AMENDMENT DEPRIVATION

The brutality of the prison experience itself can be said to be part of the total punishment inflicted upon an inmate as retribution for offenses committed against society.\textsuperscript{71} It is, however, when this punishment exceeds eighth amendment standards that the experience falls within the purview of the proscription against the "imposition of unnecessary and wanton infliction[s] of pain."\textsuperscript{72} Eighth amendment pain, it has long been recognized, may be inflicted through acts\textsuperscript{73} or omissions.\textsuperscript{74} Once an inmate experiences pain, as defined by the strictures of the eighth amendment, a constitutional deprivation is said to have occurred.

The determination of what constitutes "pain" for purposes of the eighth amendment has wreaked havoc on the judiciary.\textsuperscript{75} The courts have recognized that the "pain" requirement for constitutional challenges will likely occur when the inmate is forced to bear an untreated ailment for an appreciable length of time.\textsuperscript{76} The Supreme Court has

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70. \textit{Pierce}, at 763. See \textit{infra} note 74 and accompanying text.
71. See \textit{infra} note 74 and accompanying text.
72. See e.g., McCrary v. Burrell, 516 F.2d 358, 367-68 (4th Cir. 1975). The issue in this case was whether eighth amendment pain could occur as a result of a failure of correction officials to follow procedure. McCrary was placed in isolation for emotional disturbances, yet, psychiatric help was not summoned until 48 hours later, when prison regulations required he (McCrary) be seen by a competent psychiatrist within 24 hours. The \textit{McCrary} court held that "the eighth amendment was violated when the administrative directive was not followed." \textit{Id.} at 371. See also Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981) (an inmate suffers eighth amendment pain whenever that inmate must endure the untreated effects of a serious mental illness).
75. See, e.g., Inmates of the Allegheny County Jail v. Pierce, 612 F.2d at 763 (failure to provide necessary psychological treatment will result in the infliction of pain and suffering if the inmate endures the untreated illness for an appreciable length of time); Capps v. Aityeh, 495 F Supp. at 919 (Inmate suffers eighth amendment pain whenever he must endure untreated serious mental illness for any appreciable length of time); Robert E. v. Lane, 530 F Supp. at 941 (Estelle makes it clear that "pain" is present whenever an inmate is forced to bear the untreated consequences of a serious medical problem); Hoptowit v. Ray, 682 F.2d at 1243 (the longer prisoners are without those benefits, the closer it comes to being an unwarranted infliction of pain).
\end{footnotesize}
established the threshold criteria necessary for a constitutional challenge to the adequacy of psychological care offered by the penal system.77 Primarily, prisoner's complaints must allege enough facts of prior psychiatric illness, treatment, expert medical opinion, or behavior clearly evincing some psychiatric ill, creating a reasonable inference that psychiatric treatment is necessary for their continued well-being.78 In addition, it must be alleged that they suffered from a serious mental illness at some point during their incarceration and continued to so suffer at the time the complaint was filed.79 To establish an eighth amendment violation at a minimum, the complaint must show: acute depression, paranoid schizophrenia, psychosis or nervous collapse.80 Mere emotional and personality problems will not suffice.81

IV TESTS DETERMINATIVE OF A CONSTITUTIONAL RIGHT TO PSYCHIATRIC TREATMENT

"In this idleness, filth and despair, the rampant violence and jungle atmosphere existing in the majority of our nation's penal institutions, the mental condition of those incarcerated can be expected only to deteriorate."82

For the mentally-ill inmate, adequate psychiatric treatment is as much a "basic necessity of life" as is adequate medical care.83 The daily suffering an inmate faces while incarcerated requires responsive psychiatric care for those unable to cope with the daily tensions, indigenous to incarceration either because of a prior mental illness or from an emotional imbalance resulting from incarceration. Judge Justice, writing for the Fifth Circuit Court of Appeals in Ruiz v. Estelle,84 outlines at length the pernicious emotional stresses an inmate faces while

78. Robert E. v. Lane, 530 F. Supp. at 939. See also Capps v. Atiyeh, 495 F. Supp. at 862. The Court held, "[t]o establish that mental health care offered at prisons violates the eighth amendment, inmates must show a serious mental illness, for which the inmate wants treatment, which they do not receive thereby causing them (the inmate) to suffer mental pain." Id. at 812.
80. Id. at 939.
82. Capps, 495 F Supp. at 919.
84. Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982).
incarcerated: "the sheer misery the physical suffering and wretched psychological stresses which must be endured .., the sense of abject helplessness the bitter frustration. For those who are incarcerated these conditions and experiences form the content and essence of daily existence." These stresses, alone or in combination cause an inmate to suffer "pain" within the meaning of the eighth amendment.

Litigation by prisoners alleging systemic constitutional deficiencies within the penal systems has mushroomed in recent years. The Supreme Court's opinions in the area of prisoners' rights litigation have suggested a pendulum approach. In no other area is this vacillation more apparent than in the controversy over the determination of an inmate's legitimate constitutional right to receive psychiatric treatment while incarcerated. At one moment, the Court expands the depth and substance of the right, yet, at the next moment, reverts to the antiquated "hands-off" approach employed by the judiciary of years past. The Court has developed a myriad of standards determinative of


87. See, e.g., Rhodes v. Chapman, 452 U.S. 337 (1981) (court impliedly reverted to the "hands-off" doctrine of prior litigation and adopted the "totality of the circumstances" approach to determine constitutional deprivations); Inmates of the Allegheny County Jail v. Pierce, 612 F.2d 754 (3rd Cir. 1979) (court applied "deliberate-indifference" standard in determining whether the medical treatment offered prisoners was adequate under the constitution); Battle v. Anderson, 564 F.2d 388 (10th Cir. 1977) (court applied the "hands-off" approach in determining constitutional deprivations); Robert E. v. Lane, 530 F. Supp. 930 (D. Ill. 1981) (court expanded the notion of eighth amendment pain to encompass deliberate indifference on the behalf of prison authorities to an inmate's medical needs, both mental as well as physical, which he must endure for a period of time); text.


whether an inmate's constitutional rights have been violated by the state or federal government[s]. These standards are an excogitation of the Court's concern for the protection of an inmate's vestigial constitutional rights from unconscionable abrogation by prison authorities.

In scrutinizing the quality of psychological services offered at any given institution, the courts have delineated numerous standards useful in determining whether the institution has complied with the eighth amendment's strictures. It is the confusion of the courts evidenced by these chameleon-like standards that is responsible for the excessive vacillation in the adjudication of this issue. The Supreme Court, during the current Burger era, has attempted to succinctly define applicable standards. This Court, more sympathetic to prisoner's rights litigation, has developed more enlightened standards determinative of constitutional deprivations and, for the most part, abolished the "hands-off" approach to prison reform suits employed by the Court of years past.

A. The Hands-Off Doctrine

In its earliest years, the Court followed a per se "hands-off" approach to prison reform suits where prisoners alleged systemic constitutional deprivations. Under this approach, the judiciary would defer to the determination of penologists as to the components of a prisoner's "basic necessities of life." The result was that many fundamental


92. See Trop v. Dulles, 356 U.S. 86 (1958); Oakes v. Wainwright, 430 F.2d 241 (5th Cir. 1970); Cates v. Ciccone, 422 F.2d 926 (8th Cir. 1970). This doctrine is a judicially self-imposed restraint based on the theory that corrections is an administrative matter for those with the expertise not possessed by judges. The courts were fearful that judicial review of inmates challenges to the essentials of prison life would jeopardize prison administrators' authority; Trop v. Dulles, 356 U.S. 86 (1958).

93. See supra note 91 and accompanying text.

94. See, e.g., Bell v. Wolfish, 441 U.S. 520, 562 (1979). See also Procunier v. Martinez, 416 U.S. 396, 404-05 (1974). In an oft quoted maxim the court noted:

[C]ourts 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; to punish justly, to deter future crime, and to return imprisoned persons to society with an improved chance of being useful, law abiding citizens.

Id. See also Rhodes v. Chapman, 452 U.S. at 352 and supra notes 26, 42, 44 and accompanying text.
tal necessities were foreclosed to inmates under the thinly veiled guise that such denials were essential to maintain prison security or further other penal goals.\textsuperscript{95} Such flagrant deprivations, the Court later recognized, were violative of the state's common law duty to provide those incarcerated with the "basic necessities of life."\textsuperscript{96} In order to comport with this duty, it is incumbent upon those so charged to provide mentally-ill inmates with adequate psychiatric care.\textsuperscript{97} Recognizing that the "hands-off" doctrine and its approach did not adequately respond to the needs of the inmate society, particularly those psychologically-ill, the Court developed other standards determinative of an inmate's constitutional right to receive psychiatric treatment.

B. The Decency Standard

The decency premise utilized today by the judiciary in assessment of this issue, is a responsive test. Under this test, the court\textsuperscript{98} will first ascertain whether systemic deficiencies exist within the penal environment, and will then evaluate deficiencies existing within the realm of psychiatric services.\textsuperscript{99}

The decency standard, first enunciated by the Supreme Court in \textit{Weems v. United States},\textsuperscript{100} was an attempt to define eighth amend-

\textsuperscript{95} See, e.g., Youngberg v. Romeo, 457 U.S. 307 (1982) (suit on behalf of involuntarily committed retarded person that denial of rehabilitative therapy was violative of the confines of eighth amendment rights and served no legitimate penal goal); Estelle v. Gamble, 429 U.S. 97 (1976) (prisoners challenge that denial of adequate medical care constituted cruel and unusual punishment and served no legitimate penal goal); McCrory v. Burrell, 516 F.2d 357 (4th Cir. 1975) (civil rights action filed by prisoner alleging his isolation on two separate occasions in solitary confinement, naked, constituted cruel and unusual punishment and did not serve a legitimate penal goal, (i.e.) removal served as precautionary measure to prevent inmate from harming himself); Pugh v. Locke, 406 F Supp. 318 (M.D. Ala. 1976) (challenge by inmates alleging that conditions of confinement in Alabama penal institutions bore no reasonable relationship to legitimate penal goals).

\textsuperscript{96} See supra notes 42 and 44 and accompanying text.

\textsuperscript{97} Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). The Ray court succinctly set forth the eighth amendment requirements in the area of mental health care. The court stated: "The [e]ighth [a]mendment requires that prison officials provide a system of ready access to adequate medical care. Prison officials must provide . adequate system for responding to emergencies . these requirements apply to physical and mental health. Id. at 1253.

\textsuperscript{98} Any reference to "court" means state and federal court.


\textsuperscript{100} Weems v. U.S., 217 U.S. 349 (1910). Weems was sentenced to fifteen years of hard labor for falsifying a government document. The Court held the penalty imposed was
ment proscriptions relative to the evolving societal mores of its time. In its analysis of the eighth amendment, today's Court has expanded the historical eighth amendment proscriptions, to include the meting out of punishment totally in excess of the nature of the offense committed.101

The scope of the Weems decision was later broadened by the Court in Trop v. Dulles,102 and Gregg v. Georgia.103 In Trop, the Court stated that: "the meaning and interpretation of the eighth amendment [m]ust be drawn from the evolving standards of decency that are the mark of the progress of a maturing society."104 The Court in Gregg expanded the decency premise to include the prohibition against "wanton and unnecessary infliction(s) of pain."105 The Gregg standard was employed by the Court in reviewing challenges by prisoners of systemic liberty deprivations within the penal environment.

In Rhodes v. Chapman,106 the Court utilized a modified Trop standard in determining the adequacy of medical treatment afforded by the penal institution within the strictures of the eighth amendment. The Court states that "confinement in a prison is a form of punishment subject to the scrutiny under the eighth amendment standards"107 and that the determination of whether conditions of confinement are cruel and unusual "must draw its meaning from the evolving standards of decency that 'mark the progress of a maturing unconstitutional as it was too severe in light of the nature of the offense. The Court further recognized the eighth amendment's prohibition against cruel and unusual punishment "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice [society]." Id. at 378. See, e.g., Trop v. Dulles, 356 U.S. 86 (1958). In Trop the Court held that no static test can exist by which courts determined whether conditions of confinement are cruel and unusual. Trop, 356 U.S. at 100-01.

103. Gregg v. Georgia, 428 U.S. 153 (1976). A class action suit was filed by prisoners of the Georgia prison system, challenging the conditions of their confinement. The prisoners alleged that certain practices of the Georgia Corrections Department inflicted cruel and unusual punishment upon them. In Gregg the Court stated: "the amendment prohibits barbarous punishments which, although not physically barbarous, 'involve the unnecessary and wanton' infliction of pain. Thus the eighth amendment prohibits infliction of pain which are totally without penological justification." Id. at 171.
107. Id. at 344.
society.' 108

Various lower federal courts adopted this standard and employed it in the determination of alleged eighth amendment violations occurring as a result of inadequate psychiatric and mental health care within penal institutions. 109 The adoption of the decency standard by lower federal courts is best evidenced by the Tenth Circuit's decision in Battle v. Anderson. 110 In its opinion, the court asserted: "[T]he prohibition of the eighth amendment against imposition of 'cruel and unusual punishment' is intended to protect and safeguard an inmate from an environment where degeneration is probable. [R]etribution does not mean that infliction of cruel and unusual punishment can be countenanced in an orderly society." 111

The decency premise, therefore, allows the penal institutions the freedom to deprive an inmate of certain liberties and services where such deprivations fulfill a legitimate penal goal. Yet the decency premise tempers this permissible deprivation by mandating that such withdrawals fulfill a legitimate penal goal, and neither inflict "wanton and unnecessary pain" 112 nor are so extreme that they cannot "be countenanced by an orderly society." 113 A modicum of humanism is necessary to the decency standard. It is humanism, therefore, which is the "mark of a maturing society." 114

C. Tests Determinative of the Decency Standard

1. The Deliberate-Indifference Test

The judiciary, as previously noted, was slow to recognize a need for psychological services in the prison environment. Where the need was discovered, constitutional challenges to the adequacy of psychological services were made inferentially through the recognized right of the prison populace to receive medical treatment. 115 The constitutional right to adequate medical treatment was first enunciated by the Fifth Circuit in Estelle v. Gamble. 116 In deciding Gamble's challenge to the

108. Id.
111. Id. at 391.
112. See supra notes 14, 20 and 26 and accompanying text.
114. Id. at 101.
115. See supra note 108 and accompanying text.
adequacy of medical services, the court determined that Gamble failed to prove "deliberate-indifference" on the behalf of the prison administration to his serious medical needs. In addition, as Gamble failed to prove that the prison officials intentionally interfered with prescribed treatment, his eighth amendment claim failed.\textsuperscript{118}

The \textit{Estelle} court's "deliberate-indifference" test was later employed by the judiciary to the psychological care inquiry in much the same manner as applied to earlier medical care challenges. A crucial step in the development of the penumbral constitutional right to receive psychiatric treatment was made by the Court of Appeals for the Third Circuit in \textit{The Inmates of Allegheny County Jail v. Pierce}.\textsuperscript{119} In its decision, the \textit{Allegheny} court adamantly asserted that the right to psychiatric treatment was no different from the already-determined right to medical treatment. The \textit{Allegheny} court perceived "no underlying distinction" between the "medical and psychological rights," and discerned that there was "no reason why psychological care should not be held to the same standard (as medical care)".\textsuperscript{120} Through the application of the deliberate-indifference to serious medical needs test\textsuperscript{121} the \textit{Allegheny} court found the determinative factor of eighth amendment violations with respect to psychological care to be whether "inmates with serious mental or emotional illness or disturbances are provided reasonable access to medical personnel qualified to diagnose and treat such illness or disturbances."\textsuperscript{122}

\begin{itemize}
\item \textsuperscript{117} \textit{Id.} at 105. The Court stated: "Deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the eighth amendment whether the indifference is manifested by intentionally interfering with the treatment once prescribed; or delaying access to medical care." \textit{Id.}
\item \textsuperscript{118} \textit{Id.} at 97.
\item \textsuperscript{119} \textit{Inmates of the Allegheny County Jail v. Pierce}, 612 F.2d 754 (3d Cir. 1979).
\item \textsuperscript{120} \textit{Id.} at 763.
\item \textsuperscript{121} \textit{Estelle} v. Gamble, 429 U.S. at 105. See \textit{Pierce}, 612 F.2d at 771. The court stated: "[T]he 'Deliberate-indifference' standard for determining whether medical treatment afforded prisoners is constitutionally adequate is applicable in evaluating the constitutional adequacy of psychological or psychiatric care provided at a jail or prison" \textit{Id.} at 756.
\end{itemize}
2. Series-of-Incidents Test

Psychological illness and disturbances are a recognized source of eighth amendment "pain" when they continue untreated for an appreciable length of time.\textsuperscript{123} Eighth amendment pain, however, can also occur when an inmate receives inadequate mental health care. In \textit{Robert E. v. Lane},\textsuperscript{124} the inmates of an Illinois state correctional facility specifically challenged the adequacy of psychiatric care afforded them by the institution. In the \textit{Robert E.} decision, the Fifth Circuit Court applied the previously articulated deliberate-indifference to serious medical needs test\textsuperscript{125} formulated in \textit{Estelle v. Gamble},\textsuperscript{126} and expanded it to include a pattern of deprivation, or series-of-incidents, which, taken in their totality, evidenced a constitutional deprivation.\textsuperscript{127} The recognition of a pattern of incidents as indicative of an eighth amendment violation was crucial to the court's reasoning in \textit{Robert E.}

The pattern of deprivation, or series-of-incidents test, was first enunciated by the Second Circuit in \textit{Bishop v. Stoneman}.\textsuperscript{128} \textit{Robert E.}, however, was one of the first courts after \textit{Bishop} to utilize its pattern of deprivation test fully. The pattern of deprivation/series-of-incidents test formulated in \textit{Bishop} focuses upon a pattern of suffering as determinative of an eighth amendment violation. Once a pattern is shown, the presumption is that the series of sufferings were not random occurrences "it becomes reasonable to infer that the series of events transpired for some reason "\textsuperscript{129} and that prison authorities are responsible. Liability, therefore, is imputed upon prison authorities, given their dictatorial control over prison living condition(s). The \textit{Bishop} court further ascertained, "a pattern of similar incidents presumptively indicates that prison administrators have, through their practices and procedures, created an environment where psychological and physical deterioration are probable, and eighth amendment violations

\begin{itemize}
\item \textsuperscript{123} 530 F Supp. at 930. In \textit{Robert E.}, inmates brought a class action against prison administrators alleging constitutional deficiencies in the mental health care afforded them at the institution.
\item \textsuperscript{124} The court stated: "[W]hether a single instance of medical care denied or delayed viewed in isolation may appear to be the product of mere negligence, repeated examples of such treatment, exacerbated by the agony endured by haphazard and ill-conceived procedures evidences an eighth amendment violation. \textit{Id.} at 935.
\item \textsuperscript{125} \textit{Estelle}, 429 U.S. at 103.
\item \textsuperscript{126} See \textit{Robert E. v. Lane}, 530 F Supp. 930, 931 (N.D. Ill. 1981). "In order for a prisoner to prevail on a claim of infliction of pain outlawed by the 8th amendment [they] must first establish that they suffered pain \textit{Id.} at 931. \textit{See supra note 125 and accompanying text.}
\item \textsuperscript{127} \textit{Bishop v. Stoneman}, 508 F.2d 1224 (2d Cir. 1974).
\item \textsuperscript{128} \textit{Id. at 1227}.
\item \textsuperscript{129} \textit{Id. at 1227-28}.
\end{itemize}
accrue."  

In order to overcome this presumption where a definitive pattern of deliberate-indifference to an inmate's serious psychological needs are shown, prison officials must show that the pattern in question arose in fact from a "reason" independent of the official's behavior.  

The expansive series-of-incidents test formulated in Bishop and employed by Robert E. is a gauge to determine whether eighth amendment violations have resulted from the penal institution's deliberate-indifference to the serious psychological needs of the inmate. It is the isolation of the prisoner from society, coupled with his inability to access private psychological care, which causes an inmate to suffer eighth amendment pain and the state to breach its common law duty. Robert E., therefore, mandated that prisoners be provided with reasonable access to adequate psychological services and required that the deliberate-indifference test be applied to the evaluation of the adequacy of psychological services afforded inmates.

3. Totality of the Circumstances Test

The issue of inadequate mental facilities was later challenged after Allegheny in the case of Ruiz v. Estelle. In that action, inmates of the Texas correctional facilities challenged the totality of the conditions of their confinement specifically alleging that, as a result of the gross inadequacies within the system's proviso of medical and psychiatric care, their eighth amendment rights were violated. The Ruiz court found the standard of medical care within the system "rudimentary at best." The Fifth Circuit in Ruiz viewed the totality of the circumstances involved in the alleged violation(s), as determinative of whether deliberate-indifference was exhibited by the prison administrators through their overt responses to inmates' requests for medical and psychological services.

130. Id.
131. Robert E., 530 F Supp. at 940. See, e.g., Bishop, 508 F.2d at 1226; Capps, 495 F Supp. at 933.
132. Bishop, 508 F.2d at 1234.
133. 679 F.2d 1115 (5th Cir. 1982). See infra note 136 and accompanying text.
134. See Texas Prisoners are Entitled to Mental Health Care, 5 MENTAL DISAB. L. REP. at 150 (1981). The Ruiz court stated that given the proportional percentage of mentally ill within the system (5% actually mentally ill, 68% mentally disturbed) the care offered was totally inadequate.
135. Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982). Ruiz was a class action suit filed on behalf of the inmates of various institutions operated by the Texas Department of Corrections. The inmates challenged the totality of the conditions of their respective institutions as violative of the eighth amendment's proscription against cruel and unusual punishment. But see Cohen, Correctional Law Development: The Texas Prison Conditions
4. The Serious Need for Treatment Requirement

Need for psychiatric service is the key factor in all tests employed by the various courts in determining the issue of an inmate’s right to receive psychiatric treatment.\(^{136}\) The Robert E. decision was crucial to this issue. Its considerations relative to the determination of psychological need were tempered later by the Fifth Circuit court in *Woodall v. Foti*.\(^{137}\) The Woodall court set forth a series of considerations which courts should take into account when evaluating a challenge to the adequacy of mental health services furnished by an institution. The Woodall court stated: “[I]t is commendable that an inmate desires psychiatric treatment in order to help him deal with his behavioral and emotional problems so he can better cope with the world outside the prison walls.”\(^{138}\) Such desires, however, the Woodall court further explained, do not inflict eighth amendment “pain” upon the prisoner, for psychiatric treatment is only desired and not eminently necessary to allow the inmate to function normally.\(^{139}\) It is when this desire becomes a serious need that the state has a duty to avail the prisoner of adequate readily accessible\(^{140}\) psychiatric care.\(^{141}\)

The Woodall\(^{142}\) considerations are useful guidelines, determinative of whether eighth amendment violations have accrued through denial of necessary psychiatric care. The Woodall court, therefore, limited the deliberate-indifference standard and asserted that a serious need for psychiatric care must be shown to be necessary for the continued well-being of the inmate. Serious need, not desirability, was the determinative factor in evaluating constitutional deprivations in the area of psy-

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Case: *Ruiz v. Estelle*, 17 CRIM. L. BULL. 252 (1981) [hereinafter referred to as Correc-
tional Law Developments]. The author states that:

In assessing the merits of a claim for denial of psychiatric care, the court
should balance: the seriousness of the illness, the need for immediate treat-
ment, the possibility of substantial harm caused by postponing treatment,
the risk of danger the prisoner presents against the expense of providing
psychiatric treatment and the effect of such care on ordinary jail
administration.

*Id.* at 271-72.

137. 648 F.2d 268 (5th Cir. 1981).
138. *Id.* at 275.
139. *Id.* See supra note 77 and accompanying text.
140. *Id.* at 272. See also Hoptowit v. Ray, 682 F.2d 1237, 1247 (9th Cir. 1982). See
supra note 41 and accompanying text. See, e.g., Estelle v. Gamble, 429 U.S. 97 (1976)
(state has a duty to provide prisoners ready access to adequate medical facilities).
141. Woodall, 648 F.2d 268, 272.
Wanwright, 430 F.2d 241 (5th Cir. 1970); Cates v. Ciccone, 422 F.2d 926 (8th Cir. 1970).
V The Present Elusive Standard

The federal judiciary curtailed its prior progressive momentum in the area of prison reform suits and in *Hoptowit v. Ray*, retrenched and reaffirmed the antiquated "hands-off" approach to penology set forth in earlier decisions. In applying the "hands-off" approach, the Ninth Circuit Court of Appeals in *Hoptowit* viewed the adequacy of penal conditions as a more suitable determination for state officials, not the judiciary, to legislate. The court, in overtones in federalism, noted: "Federal courts have no power to interfere with decisions made by state officials absent constitutional violations." The *Hoptowit* court further denounced the "series-of-incidents test" and reaffirmed the antiquated focus on specific conditions of confinement as determinative of alleged eighth amendment violations.

In a later decision, *Capps v. Atiyeh*, the Ninth Circuit Court of Appeals succinctly summarized the present standards employed by the federal courts in the assessment of eighth amendment violations in the area of psychiatric care. *Capps* adopted the reasoning of the *Hoptowit* court and reaffirmed the need for "eighth amendment pain" to be borne by the inmate as a requisite criterion for violations to accrue.

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143. *Hoptowit*, 682 F.2d at 1247.
144. See supra notes 88, 90, and 92 and accompanying text.
145. This phrase was coined by President Ronald Reagan to refer to the deferment of the federal government to polices of the states. In essence, a return to a state's governance of issues indigenous to state control.
146. See supra note 92 and accompanying text. See, e.g., Bishop v. Stoneman, 508 F.2d 1224 (2d Cir. 1974).
147. *Hoptowit*, 682 F.2d at 1248.
148. Id.
149. *Capps v. Atiyeh*, 559 F Supp. 894 (D. Ore. 1980). Inmates brought suit challenging the conditions of confinement in general; the medical and psychiatric care afforded them in particular, as violative of the eighth amendments proscriptions against cruel and unusual punishment.
150. Id. at 910.
151. Id. The court further enunciated the state's duty regarding provision of needed medical care. The court stated:
   The State's obligation is three-fold. First, prisoners must be able to make their [serious] medical problems known to the medical staff. Second, the medical staff must be competent to diagnose their illnesses. Third, the staff must be able to treat the inmates' medical problems or to refer [them] to outside sources [of help].
   Id. at 910.
152. Further, the *Capps* court stated: "[T]o show the State fails to fulfill one of these obligations, the inmates must demonstrate a pattern of suffering sufficient to pre-
Deliberate-indifference to a prisoner's serious mental illness must also be shown by the inmate, either through a pattern of suffering or a series-of-incidents of sufferings. Where either criterion is sufficient to raise the presumption that prison officials have, through their programs and procedures, created an unacceptable environment where it is probable that serious mental illness will go untreated, eighth amendment violations are presumed to accrue.\textsuperscript{153}

The \textit{Capps} court further defined a state's present duty to its inmate populace in the area of the proviso of psychiatric services: "To provide minimally-adequate mental health care, the State must have sufficient numbers of trained staff to identify and treat those treatable inmates suffering from serious mental disorders\textsuperscript{154} It is when these duties are not upheld a presumption arises, evidenced by either a pattern of behavior or specific instances of behavior, that deliberate-indifference on the part of prison officials to the prisoner's serious mental illness has occurred and the state has breached its common law duty.\textsuperscript{155}

\section*{VI. Conclusion}

This Note has presented the case for an eighth amendment right to psychiatric treatment for our nation's incarcerated masses. This Note has argued that the reasoning of the cases in the forefront of addressing this issue be extended to afford incarcerated inmates ready access to responsive, adequate psychiatric treatment when needed by an inmate to prevent psychological deterioration. Lest the reader misunderstand, this Note does not purport to attempt to suggest that high quality psychiatric care of the sort available in the free market be afforded those incarcerated. Rather, this Note, is concerned with a system of psychiatric treatment that is responsive to the psychological treatment needs of captives in such a primitive fashion, that by omission, the penal facility would be imposing a form of constitutionally impermissible punishment; the very archetype of impermissible punishment prohibited by the eighth amendment.

The standards by which the courts can address a challenge to the adequacy of psychiatric services offered are succinctly set forth in

\begin{thebibliography}{1}
\bibitem{153} \textit{Capps}, 555 F Supp. at 910. The court explained: "And while a single instance of medical care denied or delayed, viewed in isolation, may appear to be the product of mere negligence, repeated examples of such treatment bespeak a deliberate indifference by prison authorities to the agony engendered by haphazard and ill-conceived procedures." \textit{Id.} at 910 (quoting Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977)).
\bibitem{154} \textit{See supra} note 152 and accompanying text.
\bibitem{155} \textit{See supra} notes 36, 37 and 44 and accompanying text.
\end{thebibliography}
These standards, later tempered by the Court in *Rhodes v. Chapman*, impose an affirmative duty upon penal institutions to provide adequate psychiatric care to its incarcerated masses. A violation of this duty, the courts have explained, resultantly inflicts eighth amendment "pain" upon an inmate and raises the presumption that a constitutional violation has accrued.

An inmate's recognized right to psychiatric treatment is meaningless without legal remedy sufficient to enforce it. *Capps* and *Rhodes* represent an enlightened approach to challenges by inmates to overall penal conditions. The progressive movement in *Capps* and *Rhodes*, cannot be curtailed. The Supreme Court must finally disregard the antiquated "hands-off" doctrine utilized by federal courts in addressing prison reform (psychiatric services) cases. Humanism is the key criterion determinative of an enlightened society. The judiciary must follow the momentum created in *Capps* and *Rhodes* and address eighth amendment suits by inmates with this element of humanism which is the "mark of an evolving society."