THE EIGHTH AMENDMENT AND PRISONERS' RIGHTS:
A Summary of post-*Campbell* and *Jackson* Jurisprudence

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Chief Judge Bryant's 1975 and 1976 decisions in *Campbell v. McGruder*[1] and *Inmates of DC Jail v. Jackson*[2] were the first in a series of cases that addressed DC prisoners' complaints alleging Eighth Amendment violations of the protection against cruel and unusual punishment. In several cases in the 80's and 90's, D.C. District Court judges made several rulings that marked (what some will criticize and others applaud) a period of judicial activism relative to prison conditions and management[3] in the name of the dynamic "evolving standards of decency"[4] that are to be recognized in Eight Amendment challenges. The district judges' analyses, however, as well as the remedies they afforded plaintiffs, became increasingly checked by the D.C. Circuit, and by the Supreme Court's Eight Amendment jurisprudence that developed over the same period.

Litigation in the District of Columbia

In *Campbell*, Judge Bryant found in favor a class of pretrial detainees, or "unsentenced residents,"[5] of the DC Jail, who complained of the conditions of their confinement. Judge Bryant held that there existed a plethora of problems at the facility due to severe overcrowding, in addition to violations of DC building, plumbing, and health codes.[6] *Jackson* involved a class of convicted inmates complaining of those same conditions. In *Jackson*, Judge Bryant analyzed the evolving standards of the Eighth Amendment, and although he did not draw a line determining what level of perceived mistreatment might constitute a constitutional deprivation of rights, he did hold that, wherever that point may be, the situation in the jail was undoubtedly unconstitutionally cruel and unusual.

Several later cases involving Eighth Amendment claims also resulted in judicial condemnation of DC prison facilities. The District entered into consent decrees in 1982[7] and 1984[8] to settle claims of inmates who charged that their exposure to "unchecked violence" due to insufficient security measures, unqualified staff, and improper classification, as well as overcrowding,

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[1] 416 F. Supp. 100 (D.D.C. 1975).
[2] 416 F. Supp. 119 (D.D.C. 1976).
[3] *See* Charles J. Ogletree, Jr., *Symposium: The Bicentennial Celebration of the Courts of the District of Columbia Circuit: Judicial Activism or Judicial Necessity: The D.C. District Court's Criminal Justice Legacy*, 90 GEO. L.J. 685, 708-19 (2002).
[4] *Trop v. Dulles*, 356 U.S. 86, 101 (1958).
[5] *Campbell*, 416 F. Supp. at 103.
[6] Of the violations Judge Bryant found, "By far the most flagrant and shocking encroachment on the constitutional rights of the plaintiff class is the overcrowding." *Campbell*, 416 F. Supp. at 105.
[7] Settlement of *Twelve John Does v. District of Columbia*, No. 80-2136 (D.D.C. filed 1980) (complaint ended in Final Settlement and Consent Decree, and was later consolidated into *Twelve John Does v. District of Columbia (Twelve John Does II,) 668 F. Supp. 20 (D.D.C. 1987)).*
[8] Settlement of *John Doe v. District of Columbia*, No. 79-1726 (D.D.C. filed 1979) (complaint ended in Final Settlement and Consent Decree and was later consolidated into *Twelve John Does II)).*

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constituted violations of their Eighth Amendment rights. Later efforts by the district court to monitor those decrees proved problematic, and in 1987, the district court imposed a civil contempt sanction against the District and issued an order enjoining the U.S. Attorney General from designating any future prisoners for detention in DC's Lorton prison facility.[9] At the same time, in another matter, the court went so far as to order a population cap at DC's Occoquan facilities, following riots there in 1986.[10] Both the injunction in the former case and the population cap in the latter were vacated and remanded by the D.C. Circuit.[11]

Perhaps the most interesting case of the series is *Marsh v. Barry*,[12] which arose from inmates' complaints subsequent to an inmate-caused fire in 1983. After a brief volley with the court of appeals, the district court held that a prison riot can be both foreseeable and foreseen as a result of overcrowding. The court also determined that damages action was appropriate, rather than an order for injunctive relief, both because of the limited bounds of relief that the Circuit allowed, and also because the court determined that any such order was likely to be ignored or otherwise prove inadequate, as demonstrated by the persistent litigation of similar issues since *Campbell* and *Jackson*.[13]

Finally, *Women Prisoners v. District of Columbia*[14] presented the first case in the District inviting scrutiny of the specific treatment of female inmates, particularly sexual harassment by guards. The court found[15] that the obviousness of the sexual harassment that occurred amounted to deliberate indifference to the prisoners' treatment, and therefore rose to the level of a violation of their Eighth Amendment rights.

Supreme Court Precedent

The Supreme Court has developed a framework for Eighth Amendment violations arising from prison conditions. In 1976, the Court determined that "deliberate indifference" towards inmates' *medical* needs qualifies as one such violation.[16] Five years later, the Court decided the hallmark case *Rhodes v. Chapman*,[17] which specifically addressed the situation of prison overcrowding that lay at the heart of much of the litigation in the District of Columbia. In *Rhodes*, the Court adopted a totality test for the circumstances of confinement, [18] and held that prison conditions

[9] *See Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1136 (D.C. Cir. 1988).
[10] *Inmates of Occoquan v. Barry*, 650 F. Supp. 619, 620 (D.D.C. 1986), vacated and remanded, 844 F.2d 828 (D.C. Cir. 1988).
[11] Citing the relatively recent Supreme Court case *Rhodes v. Chapman*, *infra*, in *Inmates of Occoquan*, the D.C. Circuit noted that the Eighth Amendment is about "decency – elementary decency – not professionalism . . ." 844 F.2d at 837.
[12] 705 F. Supp. 12 (D.D.C. 1988).
[13] See *id.*
[14] 877 F. Supp. 634, 638-39 (D.D.C. 1994), vacated in part, modified in part, 899 F. Supp. 659 (D.D.C. 1995), remanded by 93 F.3d 910 (D.C. Cir. 1996).
[15] After determining that the plaintiffs met the Supreme Court's objective and subjective tests laid-out in *Rhodes*, *see infra*.
[16] *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).
[17] 452 U.S. 337 (1981).
[18] *Id.* at 347 ("Prison conditions "*alone or in combination,* may deprive inmates of the minimal civilized measure of life's necessities"); *see also Hutto v. Finney*, 437 U. S., at 687 ("We find no error in the court's conclusion that, taken

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"must not involve wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting punishment."[19] Furthermore, the Court noted that, to the extent possible, objective factors will control over the "subjective views" of district court judges.[20]

The Court revisited the issue ten years later in two cases. First, in *Wilson v. Seiter*,[21] the Court required plaintiffs to establish *intent* on the part of the defendants, to inflict cruel and unusual punishment.[22] The requisite intent, "deliberate indifference," lies between negligence and malice.[23] Thereafter, the Court clarified in *Harmelin v. Michigan*[24] that to find an Eighth Amendment violation plaintiffs must show their treatment constitutes *both* cruel *and* unusual punishment.[25] In short, after these cases, courts looked to "consistent and repeated failures over an extended period, coupled with actual knowledge of the substandard conditions and the harm they may cause, to establish deliberate indifference,"[26] and will aggregate the conditions of confinement, then applying "realistic yet humane standards" in its analysis of those conditions to test whether the alleged treatment of prisoner plaintiffs is both cruel and unusual.[27]

Most recently, the Court clarified its deliberate indifference standard in *Farmer v. Brennan*,[28] holding that prison officials must both know and disregard "an excessive risk" to an inmate's health or safety to be held liable for an Eighth Amendment violation.[29] This test can be met by proved failure to act despite knowledge of such conditions.[30]

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as a whole, conditions in the isolation cells continued to violate the prohibition against cruel and unusual punishment") (emphasis added).

[19] *Rhodes*, 452 U.S. at 347. The reasoning behind the Court's decision in *Rhodes* was soon expanded to situations beyond criminal confinement. The following year, in *Youngberg v. Romeo*, 457 U. S. 307 (1982), the Court extended its analysis of treatment of State dependents beyond the Eighth Amendment, holding that involuntarily committed inmates of State medical facilities are unable to care for themselves because of their institutionalization, and therefore entitled to certain protections under the Fourteenth Amendment's Due Process clause. (It is noteworthy that, in both *Campbell* and *Jackson*, inadequate mental health services at the D.C. jail was a factor in Judge Bryant's findings.) By the end of the decade, the Court explained that, "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989).

[20] *Id.* at 346.

[21] 501 U.S. 294 (1991).

[22] *Id.* at 300.

[23] *See id.* at 303; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

[24] 501 U.S. 957 (1991).

[25] *See id.* at 967, 976 ("a disproportionate punishment can perhaps always be considered 'cruel,' but it will not always be (as the text also requires) 'unuaual.'").

[26] Olinda Moyd, *Louisa Van Wezel Schwartz Symposium on Mental Health Issues in Correctional Institutions: Mental Health and Incarceration: What a Bad Combination*, 7 D.C. L. REV. at 205-06 (2003).

[27] Debra Borenstein, *Double-Ceiling at Pontiac: Are Inmates Being Subjected to Cruel and Unusual Punishment Arising Out of Overcrowded Conditions?*, 60 CHI.-KENT L.REV. 291, 298 (1984).

[28] 511 U.S. 825 (1994).

[29] *Id.* at 837.

[30] Id. at 842.

Subsequent Congressional Action

Two years after *Farmer*, Congress passed the Prison Litigation Reform Act,[31] which, among other things, requires that prior *physical* injury must be shown for an inmate to bring a justiciable Eighth Amendment claim.[32] However, it remains that "denial of adequate care for serious mental health needs may constitute deliberate indifference" under the constitutional standards laid out by the Supreme Court.[33] Furthermore, given the D.C. District Court's decision in *Marsh*, it remains plausible that a court could find that physical injury is a foreseeable consequence of certain psychologically abusive conditions.

Finally, it is worth noting that the National Capital Revitalization and Self-Government Improvement Act of 1997[34] placed prisoners who violated the D.C. criminal code in the custody of the Federal Bureau of Prisons, although the D.C Jail remains largely a pre-trial detention facility run by the D.C. Department of Corrections.[35]

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[31] Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, §§ 801-810, 11- Stat. 1321 (1996).
[32] Id. at § 803(d). *Compare supra*, n. 19. Psychological, rather than physical injury was also a major factor in *Women Prisoners, supra*. For a more thorough discussion of that case, *see* Katherine C. Parker, *Female Inmates Living in Fear: Sexual Abuse by Correctional Officers in the District of Columbia*, 10 AM. U.J. GENDER SOC. POL'Y & L. 443 (2002).
[33] Moyd, *supra*, 7 D.C. L. REV. at 205.
[34] Pub. L. Mo. 105-33 111 Stat. 712 (1997) (codified at D.C. Code Ann. 24-101 et seq. (West 2003)).
[35] *See* Moyd, *supra*, 7 D.C. L. REV. at 202.