Prisoners’ Rights to Physical and Mental Health Care: A Modern Expansion of the Eight Amendment’s Cruel and Unusual Punishment Clause

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Abstract

This article addresses the need for appropriate mental health care in the prison system. Applying the eighth amendment’s cruel and unusual punishment clause, the article outlines the current system for medical care and psychological programs within jails and prisons. Focusing on the deficiencies of medical care, the article proposes adding support to the modernization of mental health care by recognizing that the eighth amendment applies not just to the terms of imprisonment but to the availability of care.

KEYWORDS: prisoner, eighth amendment, cruel and unusual, health care, prison

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PRISONERS’ RIGHTS TO PHYSICAL AND MENTAL HEALTH CARE: A MODERN EXPANSION OF THE EIGHTH AMENDMENT’S CRUEL AND UNUSUAL PUNISHMENT CLAUSE

Stuart B. Klein*

I. Introduction

In recent years, the primary constitutional amendment used as a means to alleviate poor prison conditions has been the eighth amendment’s prohibition against the infliction of cruel and unusual punishment. The eighth amendment to the United States Constitution is interpreted to prohibit certain actions by the government and to require other affirmative actions. This prohibition against cruel and unusual punishment is often utilized to insure that adequate health care, including psychiatric care, is provided for inmates. The courts have required correctional authorities to establish

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2. U.S. CONST. amend. VIII states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

adequate medical and psychological programs both in prisons and jails.\(^4\)

This Article will describe the history and development of the eighth amendment's ban on cruel and unusual punishment and analyze its application to medical care. In addition, it will set forth statistics reported by various governmental agencies describing present conditions in the penal system. Finally, it will discuss recommendations from a variety of organizations involved in mental health care, with special emphasis on the standards adopted by the American Public Health Association, will be discussed.

II. The Prisoner's Constitutional Rights to Medical Treatment and Mental Health Care

A. The History of the Eighth Amendment's Ban Against Cruel and Unusual Punishment

The language of the eighth amendment to the United States Constitution was taken from the English Bill of Rights of 1689.\(^5\) Its prior history may be traced to the Magna Carta,\(^6\) and perhaps much earlier.\(^7\) The English cruel and unusual punishment provision was designed as a protection against the executions and tortures which were prevalent in England during the Stuarts' reign.\(^8\) The clause prohibited punishments which were unauthorized by statute and beyond the discretion of the sentencing court as well as

\(^4\) For purposes of this Article the Law Enforcement Assistance Administration's distinction between jails and prisons will be used. As defined in the Survey of Inmates of Local Jails, a jail is a locally administered institution that has authority to retain adults for 48 hours or longer. The "intake point for the entire criminal justice system," the local jail is used both as a detention center for persons convicted of serious offenses, jails house both the accused and the convicted, the latter more often than not serving time for misdemeanor-type offenses. National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, Survey of Inmates of Local Jails Advance Report at iii (1972).

\(^5\) The English Bill of Rights of 1689 provided that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Note, Constitutional Law — The Eighth Amendment and Prison Reform, 51 N.C.L. REV. 1539, 1540 (1973) [hereinafter cited as Eighth Amendment and Prison Reform].

\(^6\) "A free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude. . . ." A. Howard, Magna Carta: Text and Commentary 40 (1964).

\(^7\) Granucci, Nor Cruel and Unusual Punishments Inflicted: The Original Meaning, 57 Calif. L. REV. 839, 840 (1969) [hereinafter cited as Granucci].

punishments disproportionate to the offense.9

After having been adopted by nine colonial constitutions, the eighth amendment was incorporated into the United States Constitution in 1791.10 Like their English counterparts, the American draftsmen were primarily concerned with preventing tortures and other barbarous methods of punishment.11 Use of the clause through the nineteenth century, however, in this country was limited and attempts to extend the meaning of the clause to include punishments disproportionate to the crime were rejected.12 The early cases in this country which arose under the eighth amendment addressed the issue whether the particular punishment was too cruel and inhumane to pass the eighth amendment's ban against cruel and unusual punishment.13

9. Granucci, supra note 7, at 860. In Furman v. Georgia, 408 U.S. 238 (1972), Mr. Justice Brennan discussed the history of the use of torture to extract confessions from persons suspected of crimes, as well as the use of torture to those convicted. Id. at 264-65 (Brennan, J., concurring).

10. Granucci, supra note 7, at 840.

11. Id. at 841 (citing J. ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 111 (2d ed. 1881)):

[Congress will] have to ascertain, point out, and determine, what kinds of punishments shall be inflicted on persons convicted of crimes. They are nowhere restrained from inventing the most cruel and unheard-of punishments and annexing them to crimes; and there is no constitutional check of them, but that racks and gibbets may be amongst the most mild instruments of their discipline.

Granucci, supra note 7, at 841 (emphasis in Granucci).

In Furman v. Georgia, Justice Marshall stated, "there is no doubt whatever that in borrowing the language and in including it in the Eighth Amendment, our Founding Fathers intended to outlaw torture and other cruel punishments." 408 U.S. at 319 (Marshall, J., concurring).

12. See generally Cruel and Unusual Clause, supra note 8 & Granucci, supra note 7.

13. In Wilkerson v. Utah, 99 U.S. 130 (1879), unnecessary cruelty was held to be no more permissible than torture, although the court sustained a sentence of public execution by a firing squad for the conviction of premeditated murder. The Court said:

Difficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture, . . . and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the Constitution.

Id. at 135-36.

Eleven years later in In re Kemmler, 136 U.S. 436 (1890), the Court explained that the death penalty would violate the eighth amendment's ban against cruel and unusual punishment if the method chosen involved torture or lingering death. Id. at 446-47. A punishment, however, is not necessarily unconstitutional simply because it is new and unusual, so long as the legislature has a humane purpose in selecting it. Id. at 447. The Court held constitutional the New York statute providing for execution by electrocution, id. at 449, because the legisla-
In *O'Neil v. Vermont*, the United States Supreme Court began to expand its view of the cruel and unusual clause. The dissenting opinion by Justice Field expressed the view that, "the whole inhibition of the Eighth Amendment is against that which is excessive either in the bail required, or fine imposed, or punishment inflicted."

The Court began to interpret the eighth amendment in a more flexible and dynamic manner by the year 1910 when it decided *Weems v. United States.* The Court held that a sentence of fifteen years at hard labor for the crime of falsifying governmental records was too stringent. The Supreme Court held the statutory penalty unconstitutional under the Philippine Bill of Rights, which contained a provision prohibiting cruel and unusual punishment patterned on the eighth amendment. The *Weems* Court, interpreting the eighth amendment stated, "a principle to be vital must be capable of wider application than the mischief which gave it birth." *Weems* rejected the position that only inhumane and barbarous punishments were prohibited by the eighth amendment, and focused on the disproportion between the crime and the offense.

The decision became a landmark case because it held that excess...
sive punishment is as objectionable as punishment which is cruel and, because it was the first time that the Supreme Court struck down a penalty prescribed by a legislature. This decision laid the foundation for the concept that the cruel and unusual clause is a progressive, fluid concept which is capable of becoming more inclusive as public opinion becomes more sensitive to prison conditions.

Chief Justice Warren further broadened the concept of inherently cruel punishment in a 1958 decision, Trop v. Dulles. The Court held that an army private's sentence for desertion (three years hard labor, a dishonorable discharge and revocation of his citizenship) was cruel and unusual punishment. Although the private had suffered no physical mistreatment, and despite society's prior acquiescence to such punishment, the Court found the punishment violated the eighth amendment because there was a total destruction of the individual's status in organized society. Chief Justice Warren, writing for the majority, stated "the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of maturing society." He continued, "the basic concept underlying the Eighth Amendment is nothing less than the dignity of man."

To determine the constitutionality of any punishment under the eighth amendment, the punishment must be analyzed in terms of the effect upon the individual's dignity as judged by standards of contemporary society. According to Gregg v. Georgia, a later de-
sion, such an analysis would require an evaluation of objective indicia that reflect the public's attitude toward a given sanction. The punishment must satisfy a two-pronged analysis. First, the punishment must not inflict unnecessary and wanton pain, and second, the punishment must not be grossly out of proportion to the severity of the crime.

Both inhumane treatment of prisoners and lack of adequate medical care of prisoners have been attacked as inherently cruel methods of punishment in the correctional system. Prison authorities cannot inflict punishment which is "shocking to the conscience," a vague standard which is subject to the collective conscience of society taken as a whole and gauged by "evolving standards of decency." One writer contends that the ineffectiveness of the barbarous con-

34. The Court also cautioned that "our cases also make clear that public perceptions of standards of decency with respect to criminal sanctions are not conclusive. A penalty also must accord with 'the dignity of man,' which is the 'basic concept underlying the Eighth Amendment.'" 428 U.S. at 173 (citations omitted).

35. Id. (citing Furman v. Georgia, 408 U.S. at 392-93 (Burger, C.J., dissenting); Weems v. United States, 217 U.S. at 381; Wilkerson v. Utah, 99 U.S. at 136). Little attention has been given to the "unusual" language of the eighth amendment, and the Court has recognized this. See Furman v. Georgia, 408 U.S. at 331.


37. This standard was articulated in Rochin v. California, 342 U.S. 165 (1952), where the Court reversed the appellants' narcotics conviction because evidence was obtained in violation of the due process clause of the fourteenth amendment. Id. at 172. The Court found that forcing a suspect to submit to having his stomach pumped was "conduct that shocks the conscience." Id. The concept has been extended to determinations of prisoners' claims of cruel and unusual punishment in prisons. Williams v. Field, 416 F.2d 483, 486 (9th Cir. 1969), cert. denied, 397 U.S. 1016 (1970). It has also been applied to claims specifically asserting lack of adequate medical care. Church v. Hegstrom, 416 F.2d 449, 451 (2d Cir. 1969).

Survivors of a deceased prisoner brought the action in Church against prison officials for failing to provide medical attention to decedent who was suffering from emphysema and bronchitis. Id. at 450. The court found that the complaint was insufficient because mere negligence does not shock the conscience; there was no violation of the eighth or fourteenth amendments. Id. at 451. In Church, the Second Circuit contrasted the facts of that case to other cases where claims sufficiently shocking to the conscience were upheld. Id. at 451. For example, in Hughes v. Noble, 295 F.2d 495 (5th Cir. 1961), the plaintiff was jailed immediately after sustaining a neck injury in an automobile accident, and in Coleman v. Johnston, 247 F.2d 273 (7th Cir. 1957), the plaintiff was jailed with a bullet wound in his leg.


39. Neisser, Is There a Doctor in the Joint? The Search for Constitutional Standards for Prison Health Care, 63 Va. L. Rev. 921 (1977). In an excellent article, Mr. Neisser discussed the inadequacy of the barbarous conduct standard for health care and attributed its reformation to several reasons. First, the standard was incapable of conforming to complaints of denial of medical care for serious physical ailments neither immediately life-threatening nor
duct norm for claims of inadequate medical care generated pressure for new standards, and resulted in such judicial tests as "abuse of discretion,"29 "deprivation of basic elements of adequate medical treatment,"30 and "deliberate indifference"31 being applied by the courts to inmates' requests for essential medical treatment. In a recent decision the Supreme Court resolved the confusion by adopting the standard of "deliberate indifference."32

B. The Role of the Courts

Traditionally, the courts have refrained from interfering in the operation of both state and federal correctional systems.40 A variety

leading to permanent injury. Id. at 924. Second, the standard could not absorb increasing allegations of misconduct by health personnel. Id. Third, the rise of the use of the due process clause and equal protection clauses, in addition to the eighth amendment, in evaluating the adequacy of conditions imposed upon pretrial detainees. Id. at 924-25. Fourth, frequent individual and class action medical grievances alerted the judiciary to medical deprivations which could no longer be ignored. Id. at 925.

40. As the Fifth Circuit explained in Flint v. Wainwright, 433 F.2d 961 (5th Cir. 1970), when it denied a prisoner's claim of cruel and unusual punishment based upon a denial of psychiatric care, "federal courts will not inquire into the adequacy of medical care provided to inmates by state prisons unless there appears an abuse of discretion which prison officials possess." Id. at 962. In Haskew v. Wainwright, 429 F.2d 525 (5th Cir. 1970), the Fifth Circuit again denied a prisoner's money damage claim for denial of emergency medical care because there was no showing of "abuse of the broad discretion which prison officials possess in this area." Id. at 526.

41. Campbell v. Beto, 460 F.2d 765, 768 (5th Cir. 1972). The Campbell action was brought by a "4-F" prisoner with heart problems who was forced to work in a "hoe squad" and carry 100 pound sacks. Id. at 766-67. He was refused his prescription drugs and suffered a heart attack. Id. at 767. After bringing a suit against the prison officials, he was placed in disciplinary lock up for 15 days on a diet of bread and water, despite a doctor's order for three meals daily. Id. The court granted Campbell leave to appeal in forma pauperis, id. at 769, saying "the courts cannot close their judicial eyes to prison conditions which present a grave and immediate threat to health or physical well being." Id. at 768.

42. "[A] charge of deliberate indifference by prison authorities to a prisoner's request for essential medical treatment is sufficient to state a claim." Corby v. Conboy, 457 F.2d 251, 254 (2d Cir. 1972). The Eighth Circuit has stated "the claimed inadequacy of treatment must be predicated on obvious neglect or intentional misconduct by the prison officials. . . ." Freeman v. Lockhart, 503 F.2d 1016, 1017 (8th Cir. 1974). Freeman met that standard. The prisoner was placed in a cell with an inmate afflicted with tuberculosis. Id. at 1017. He soon contracted the disease which settled in his eyes and created a hazard to his vision. Id. After an optometrist advised surgery, Freeman's requests to meet with the prison's doctor were denied and he was given eyedrops. Id.

43. In Estelle v. Gamble, 429 U.S. 97, rehearing denied, 429 U.S. 1066 (1976), the Court "conclude[d] that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment." Id. at 104 (citations omitted).

44. See generally Eighth Amendment and Prison Reform, supra note 5. In Gregg v. Geor-
of reasons have been advanced to explain the court's "hands-off" policy including the principle of separation of powers. Another rationale is that because the courts lack expertise in the field, the administration of prisons and jails is best left to knowledgeable corrections officials. The hands-off policy is also explained by courts' apprehension that intervention would subvert internal prison discipline resulting in harm to the prison system.

Georgia, 428 U.S. 153 (1976), the Court acknowledged "some" role for the courts. Id. at 174. The eighth amendment limits the exercise of legislative power because courts have the power to review any punishment which the legislature may impose. Id. The assumption of the validity of the legislature's choice, however, remains. Id. at 175. "This is true in part because the constitutional test is intertwined with an assessment of contemporary standards and the legislative judgment weighs heavily in ascertaining such standards." Id.


Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions. More fundamentally, this attitude springs from complimentary perceptions about the nature of the problems and the efficacy of judicial intervention. Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree.

Id. at 404-05.


[Inasmuch as Congress has placed control of the federal prison system under the Attorney General, and inasmuch as the control of a state prison system is vested in the Governor or his delegated representative, a federal court is powerless to intervene in the internal administration of this executive function even to protect prisoners from the deprivation of their constitutional rights.

Id. at 849 n.8.

47. See generally Eighth Amendment and Prison Reform, supra note 5. In Novak v. Beto, 453 F.2d 661 (5th Cir. 1971), the court stated, "We simply are not qualified to answer the many difficult medical, psychological, sociological, and correctional questions..." Id. at 670.


The court in Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969), articulated a more pragmatic reason. "If actions of this nature brought by prisoners are permitted indiscriminately, they could seriously disrupt prison discipline and give 'jailhouse lawyers' a field day in the courts at great expense to the administration of justice and the public treasury." Id. at 509.
Some courts have purposely limited their judicial review of these matters. The Fifth Circuit has refused to review the sufficiency of medical care available to state inmates unless there appears to be a clear abuse of prison officials' discretion. Other courts have permitted judicial inquiry of actions that have fallen short of such clear abuse of discretion. These courts have begun to view themselves as integral components in a unified system for the administration of justice and believe that their responsibilities extend beyond the sentencing process.

In the mid and late 1960's, national news coverage of the atrocities within the Arkansas prison system brought the issue of prisoners' rights to the public's awareness. The explosive violence at Attica and San Quentin and news media coverage of outspoken inmates also exposed the public to prison conditions and increased the concern for inmates who eventually return to society. These circumstances contributed to a change in judicial attitudes toward incarceration and brought commonly accepted standards of confinement under the scrutiny of both state and federal courts.

The United States Supreme Court has taken the judicial initiative, rapidly extending the application of the eighth amendment. In 1962, in Robinson v. California, the Court held that the eighth amendment's prohibition against the infliction of cruel and unusual punishment, incorporated into the due process clause of the four-

49. Haskew v. Wainwright, 429 F.2d 525, 526 (5th Cir. 1970); Roy v. Wainwright, 418 F.2d 231, 232 (5th Cir. 1969); Thompson v. Blackwell, 374 F.2d 945, 946 (5th Cir. 1967).

50. For example, Woolsey v. Beto, 450 F.2d 321 (5th Cir. 1971), held that a prisoner's allegation of unreasonably punitive work assignments and solitary confinement which aggravated his tubercular condition did state a cause of action under the eighth and fourteenth amendments.

51. See Eighth Amendment and Prison Reform, supra note 5, at 1541-42. "[C]ourts have found that prison regulations should not always supersede the personal rights of the convict." Id.


54. In Procunier v. Martinez, 416 U.S. 660 (1974), inmates challenged the prison's policies of censoring mail and banning law students and paralegals from interviewing prisoners. Id. at 398. The Court stated that "[w]hen a prison regulation or practice offends a fundamental constitutional guarantee [i.e., the first amendment], federal courts will discharge their duty to protect constitutional rights." Id. at 405. See also Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968), for the Eighth Circuit's observation of the willingness of the Court to entertain petitions asserting violations of fundamental rights. Id. at 577.

teenth amendment, protects state as well as federal prisoners from unconstitutional conditions imposed by prison authorities under color of law.\textsuperscript{56}

Five years later, the Court clearly rejected the hands-off policy in \textit{Johnson v. Avery}.\textsuperscript{57} In a decision following \textit{Johnson}, Justice Powell explained the more active role of the courts: "[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights."\textsuperscript{58} These decisions clearly established that prisoners do not lose all of their rights merely by reason of their status as prisoners.\textsuperscript{59} The newly developed eighth amendment has become the primary means to achieve improved mental health treatment in jails and prisons. The due process clauses of the fifth and fourteenth amendments have also been employed, principally in the jails, but also in the prison setting.\textsuperscript{60}

Protection of eighth amendment rights are usually asserted under title forty-two of the United States Code, section 1983.\textsuperscript{61} To sustain

\textsuperscript{56} See id. at 666. A California statute which made the status of being a drug addict a crime violated the eighth amendment.

\textsuperscript{57} 393 U.S. 483, 486 (1969). \textit{Johnson} involved a challenge to the Tennessee prohibition on prisoners assisting each other to prepare writs. Id. at 484. The Court held that this was an impermissible restriction on prisoners' access to courts. Id. at 487. Acknowledging that discipline and administration of state prisons are state functions, the Court nevertheless went on, "[i]t is clear, however, that in instances where state regulations applicable to inmates of prison facilities conflict with such [statutory or constitutional] rights, the regulations may be invalidated." Id. at 486. It is arguable that Thomas v. Pate, 493 F.2d 151 (7th Cir.), vacated and remanded sub nom. Cannon v. Thomas, 419 U.S. 813 (1974), reversed and remanded sub nom. Thomas v. Pate, 516 F.2d 889 (7th Cir. 1975), a case involving racial discrimination, eliminated the hands-off doctrine by allowing inmates to sue under the Civil Rights Act. 493 F.2d at 153.

\textsuperscript{58} Procunier v. Martinez, 416 U.S. 396, 405-06 (1974).

\textsuperscript{59} See Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944), cert. denied, 225 U.S. 887 (1945). The court stated, "[a] prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law." Id. at 445. Habeas corpus relief was granted to a prisoner who had been assaulted because the prisoner was "deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits." Id.

\textsuperscript{60} Nadeau v. Helgemoe, 561 F.2d 411 (1st Cir. 1977); Newman v. Alabama, 559 F.2d 283 (5th Cir.), rehearing and rehearing en banc denied, 564 F.2d 97, 98 (5th Cir. 1977); Sanabria v. Village of Monticello, 424 F. Supp. 402 (S.D.N.Y. 1976).

\textsuperscript{61} Civil Rights Act of 1871, § 1, 42 U.S.C. § 1983 (1970) provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage,
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a section 1983 action for inadequate medical treatment constituting cruel and unusual punishment, a plaintiff must show that the defendant was callously indifferent to his or her medical needs, that those needs were serious, and that the failure to treat them resulted in considerable harm. In recent years numerous cases have been brought for damages for injuries caused by inadequate medical treatment. Unless the party can show an intentional deprivation resulting in serious injury, not merely negligent deprivation, the action for damages will be denied.

The courts, however, will not allow prison inmates to suffer from a lack of medical care which is so egregious as to independently shock the conscience. If the medical system in a correctional facil-

of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.


The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. ...

Section 2201 states:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

The Supreme Court has stated that "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. at 106.

In Webster v. Jones, 554 F.2d 1285 (4th Cir. 1977), a prisoner's allegations that the prison physician inadequately examined him and later failed to examine him despite complaints did not sustain an eighth amendment claim, although his vision deteriorated to 20/400 and would never be completely restored. A doctor's negligence is not "deliberate indifference to serious medical needs." Id. at 1286. See also Watson v. Briscoe, 554 F.2d 650 (5th Cir. 1977), and Todaro v. Ward, 431 F. Supp. 1129 (S.D.N.Y. 1977), both of which rejected prisoners' actions based upon negligent treatment.

64. Estelle v. Gamble, 429 U.S. at 106.

65. When the court found medical services at the New Hampshire State Prison deficient due to inadequate facilities, space, staff, record keeping, and financing, Laamon v. Helgemoe, 437 F.Supp. 269, 324 (D.N.H. 1977), the court stated "if the medical system provided inmates
ity presents a "grave and immediate health danger to the physical well-being" of the prisoners, the court may enjoin those conditions prior to any harm resulting. In *Smith v. Sullivan*, the Fifth Circuit upheld a district court's injunction requiring adequate medical care where prisoners with contagious or communicable diseases were incarcerated in the midst of the other inmates for a month or more.

Class actions may be brought if the complaint alleges eighth amendment violations affecting so many inmates that joinder of all members of the class would be impracticable. Inmates are completely dependent upon the prison authorities for medical attention. Therefore, they may, as a class, attack an unconstitutionally deficient system upon which they must depend for their life and health needs. In general, requirements for injunctive relief to halt practices which might gravely affect the physical well-being of the inmates, or directed at securing future services, are less stringent than those required to sustain an action for damages.

C. Medical Care for Prisoners

The courts and legislatures have recently demonstrated a growing
concern for the medical needs of prisoners. The common law right to medical treatment, addressed in Spicer v. Williamson, has been codified and broadened by both state and federal statutes. The eighth amendment's ban on cruel and unusual punishment and the due process clause of the fourteenth amendment provide the bases for the prisoner's right to receive psychiatric care. The prisoners' constitutional rights and the goals of penology are not necessarily inconsistent.

An important penological aim is the deterrence of crime. Imprisonment itself is the punishment for crime and serves a number of

72. In Estelle v. Gamble, 429 U.S. 97 (1976), the Court noted that "the infliction of unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation," id. at 103, and cited the following statutes as examples: ALA. CODE tit. 45, § 125 (1958); ALASKA STAT. § 33.30.050 (1975); ARIZ. REV. STAT. § 31-201.01 (Supp. 1975); CONN. GEN. STAT. ANN. § 18-7 (West 1975); GA. CODE ANN. § 77-309(e) (1973); IDAHO CODE § 20-209 (Supp. 1976); ILL. ANN. STAT. ch. 38, § 103-2 (Smith-Hurd 1970); IND. CODE ANN. § 11-1-1-30.5 (Burns 1973); KAN. STAT. § 75-5429 (Supp. 1975); MD. ANN. CODE ART. 27, § 688 (1976); MASS. ANN. LAWS, ch. 127, § 90A (Michie/Law Co-op 1974); MICH. STAT. ANN. § 14.84 (1969); MISS. CODE ANN. § 47-1-57 (1972); MO. ANN. STAT. § 221.120 (Vernon 1962); NEB. REV. STAT. § 83-181 (1971); N.H. REV. STAT. ANN. § 619.9 (1974); N.M. STAT. ANN. § 42-2-4 (1972); TENN. CODE ANN. §§ 41-318, 41-1115, 41-1226 (1975); UTAH CODE ANN. §§ 4-9-13, 64-9-19, 64-9-20, 64-9-53 (1968); VA. CODE § 32-81, 32-82 (1973); W. VA. CODE § 25-1-16 (Supp. 1976); WYO. STAT. § 18-299 (1959); 429 U.S. at 103 n.8.

73. 191 N.C. 487, 132 S.E. 291 (1926). The court emphasized prison authorities' duty to provide medical care to prisoners. "It is but just that the public be required to care for the prisoner, who cannot, by reason of the deprivation of his liberty, care for himself." Id. at 491; 132 S.E. at 293.

74. Comment, The Right of Prisoners to Medical Care and the Implications for Drug-Dependent Prisoners and Pre-Trial Detainees, 42 U. CHI. L. REV. 705 (1975) [hereinafter cited as Rights of Prisoners to Medical Care]. The author points out that most states have enacted statutes which define general standards of medical care to be used in the prisons and jails. The language of the legislation is generally broad and imprecise and there has been little judicial interpretation, resulting in difficulty in ascertaining the scope and effectiveness of the statutes.


76. See Bowring v. Godiva, 551 F.2d 44 (4th Cir. 1977); Laamon v. Helgemoe, 437 F. Supp. 269 (D.N.H. 1977). In Fitzke v. Shappell, 466 F.2d 1073 (6th Cir. 1972), fundamental fairness and due process were held to mandate that medical care be provided to an inmate who may be suffering from serious illness or injury where circumstances clearly indicate such a need. See also Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 678, 688 (D. Mass.), aff'd, 494 F.2d 1196 (1st Cir.), cert. denied, 419 U.S. 977 (1974).

purposes. As the Supreme Court stated in *Pell v. Procunier*,

[the premise is that by confining criminal offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, they and others will be deterred from committing additional criminal offenses. This isolation, of course, also serves a protective function by quarantining criminal offenders for a given period of time while, it is hoped, the rehabilitative processes of the corrections system work to correct the offender's demonstrated criminal proclivity.]

When punishment of imprisonment is compounded by the deprivation of medical care, the resulting punishment in excess of the sentence imposed by the trial court may constitute cruel and unusual punishment. Arguably, this is a denial of due process and a violation of the fourteenth amendment.

In *Estelle v. Gamble* the Supreme Court defined the standard of care to be applied in determining whether medical care is inadequate and thus violates the eighth and fourteenth amendments. The Court adopted the standard of "deliberate indifference" which courts had defined as a standard to apply to cases of eighth amendment claims. The Court did not choose the most liberal alternative.

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79. Id. at 822-23.
81. While the eighth amendment has been the basis for most of the litigation concerning mental health in the prison system, the due process clauses of the fifth and fourteenth amendments have also been employed, principally in the jails but also in the prison setting. See Nadeau v. Helgemoe, 561 F.2d 411 (1st Cir. 1977). The due process argument is based on the theory that any punishment added to the prisoner's sentence is excessive and that the prisoner has a right to be protected against mental or physical degeneration as a result of incarceration. This argument was specifically rejected by at least one circuit which refused to consider any issues not based upon the eighth amendment. Newman v. Alabama, 559 F.2d 283, 291, rehearing and rehearing en banc denied, 564 F.2d 97, 98 (5th Cir. 1977).
82. 429 U.S. 97 (1976).
83. The Court in Estelle v. Gamble, 429 U.S. at 104, adopted the "deliberate indifference" standard in accord with: Westlake v. Lucas, 537 F.2d 857, 860 (6th Cir. 1976) ("prison authorities may not be deliberately indifferent to the suffering of prisoners"); Russell v. Sheffer, 528 F.2d 318 (4th Cir. 1975); Williams v. Vincent, 508 F.2d 541, 544 (2d Cir. 1974) ("deliberate indifference"); Newman v. Alabama, 503 F.2d 1320, 1330 n.14 (5th Cir. 1974), cert. denied, 421 U.S. 948 (1975) ("callous indifference"); Thomas v. Pate, 493 F.2d 151, 158 (7th Cir.) ("a claim of medical mistreatment rises to fourteenth amendment proportions when it asserts a refusal to provide essential medical care"); Dewell v. Lawson, 489 F.2d 877, 882 (10th Cir. 1974) ("conduct so grossly incompetent, inadequate or excessive as to shock the conscience or to be intolerable to basic fairness"); Page v. Sharpe, 487 F.2d 567, 569 (1st
The Court of Appeals for the Fourth Circuit had adopted a broader view of the standard of care required by the eighth amendment holding that inmates are entitled to reasonable care. A few years later, the Fourth Circuit reaffirmed a prisoner's right to reasonable medical care, although the treatment must still be capable of "shocking the conscience" in order to state an eighth amendment claim. These decisions seem to have allowed the Fourth Circuit sufficient flexibility and yet conformed to the standard accepted by the majority of courts which interpret "evolving standards of decency" as requiring willful deprivation of needed medical services.

The question was resolved by the Supreme Court in Estelle which adopted the majority view of lower courts for what is required to state a cause of action for damages based on the eighth amendment. The Court stated that "in order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the eighth amendment."

To reach constitutional proportions there must be elements of willful, wanton, or reckless conduct by prison officials who are responsible for providing medical care. Treatment which is grossly...
negligent or administered with a callous disregard for the prisoner’s welfare is impermissible and the equivalent of an intentional deprivation of needed medical care. Mere negligence is not actionable because it is considered to be the inevitable consequence of attending to the prisoner’s medical needs, not the equivalent of cruel and unusual punishment. For intentional deprivation to constitute cruel and unusual punishment, it must be extraordinary, shocking or barbaric. An independent demonstration of bad faith is needed first.

The rationale for such restrictive medical care is that the courts will not presume intentional cruelty on the part of prison officials and because courts are unwilling to review medical decisions. Courts will, however, investigate the practices of a prison system to determine if the medical care which has been prescribed by a physician is being properly administered. Although the courts understandably do not want to arbitrate potentially frivolous patient-physician disputes, the effect of this restrictive approach is the entrenchment of the prisoner’s constitutional right to medical care to the unfettered discretion of very few persons.

treatment is necessary or proper for his care, and, absent factual allegations of obvious neglect or intentional mistreatment, courts should place their confidence in reports of reputable prison physicians that reasonable medical care is being rendered. In Church v. Hegstrom, 415 F.2d 449 (2d Cir. 1969) a complaint merely alleging that jail officials knew of prisoners’ illnesses and intentionally stood by doing nothing failed to state a cause of action for which relief could be granted, in the absence of allegations of severe and obvious injuries or exceptional circumstances.

89. Ramsey v. Ciccone, 310 F. Supp. 600, 605 (W.D. Mo. 1970). This case held that to state a cause of action for cruel and unusual punishment, a complaint must allege that the medical treatment provided was not supported by any competent, recognized school of medical practice, and that the treatment was a denial of medical care. Short of this, the prisoner is left to his state tort remedies. Id. at 604.

90. Id. at 605. See also Estelle v. Gamble, 429 U.S. at 105-06, where the Court agreed that “an inadvertent failure to provide adequate medical care cannot be said to constitute ‘an unnecessary and wanton infliction of pain’ to be ‘repugnant to the conscience of mankind’.”

91. The Rights of Prisoners to Medical Care, supra note 74, at 457.

92. Id. at 464.

93. In Reynolds v. Swenson, 313 F. Supp. 328 (W.D. Mo. 1970), the court recognized that if a physician has prescribed medications, and if the administrators intentionally or recklessly deny the patient-inmate the medical treatment, a cause of action would arise. Tolbert v. Eyman, 434 F.2d 625 (9th Cir. 1970) granted relief when a diabetic was prevented from receiving prescribed medication from home. In Sawyer v. Sigler, 320 F. Supp. 690 (D. Neb. 1970), aff’d, 445 F.2d 818 (8th Cir. 1971), the court granted relief where a warden disregarded the physician’s order for an inmate to receive medicine in pill form and ordered all pills crushed in the interest of drug safety within the prison.

94. Rights of Prisoners to Medical Care, supra note 74, at 714.
D. *Bowring v. Godwin*

*Bowring v. Godwin*\(^95\) may become a landmark case in the area of psychiatric treatment for prisoners. In *Bowring*, the Fourth Circuit squarely addressed the question of whether or not a prisoner has a constitutional right to psychiatric treatment while he is incarcerated after conviction of a criminal offense.\(^96\)

Larry Grant Bowring’s application for parole from prison in Virginia was denied, in part because psychological evaluation concluded “Bowring would not successfully complete a parole period.”\(^97\) While incarcerated, Bowring filed a *pro se* pleading which the court construed as a section 1983 action,\(^98\) claiming that he was denied the right to treatment and, therefore, was subjected to cruel and unusual punishment under the eighth amendment made applicable to the states through the fourteenth amendment.\(^99\)

Bowring argued that the state must provide him with psychological diagnosis and treatment to enable him to qualify for parole, and that failure to provide such treatment constitutes cruel and unusual punishment and a denial of due process of law.\(^100\) The United States District Court for the Western District of Virginia dismissed Bowring’s complaint on the grounds that a state prisoner does not have the constitutional right to outside psychiatric or psychological assistance.\(^101\) An appeal followed.\(^102\)

The Fourth Circuit held that a prisoner:

> is entitled to psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes with reasonable medical certainty (1) that the prisoner’s symptoms evidence serious disease or injury; (2) that such disease is curable, or may be alleviated; and (3) that the potential for harm to the prisoner by reason of delay or the denial of care would be substantial.\(^103\)

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95. 551 F.2d 44 (4th Cir. 1977).
96. Id. at 46.
97. Id. The prisoner was denied parole for three reasons: (1) the types of crimes he had committed (robbery, attempted robbery, and kidnapping); (2) his work performance and conduct in prison; (3) the findings of a psychological examination.
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id. at 47. In Laaman v. Helgemoe, 437 F. Supp. 269 (D.N.H. 1977), which cited *Bowring* as controlling precedent, the court defined “serious” medical need as one that has
The right to treatment is of course limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity and not simply that which may be considered merely desirable.\textsuperscript{104} The Bowring court, citing Estelle, said that the complaint must allege prison officials deliberate indifference to the inmate's continued health and well-being for a constitutional tort to arise and a section 1983 action to exist.\textsuperscript{105}

The court based this limited right to psychiatric treatment on the eighth amendment's bar against cruel and unusual punishment.\textsuperscript{106} Interpreting the eighth amendment in light of "evolving standards that marks [sic] the progress of a maturing society,"\textsuperscript{107} the court recognized psychiatric and psychological illness as valid medical problems requiring treatment and stated, "We see no underlying distinction between the right to medical care for physical ills and its psychological or psychiatric counterpart."\textsuperscript{108} The sciences of psychiatry and psychology are recognized as valid sciences, perhaps even as favored disciplines.\textsuperscript{109} Society has been progressing toward an awareness of the significance of medical treatment for persons who suffer a restraint of liberty regardless of the reasons for their loss of liberty.\textsuperscript{110} The Bowring decision makes it clear that prison officials' deliberate indifference to the serious medical-psychological needs of an inmate violates the eighth and fourteenth amendments.\textsuperscript{111} A 1977 decision, Laaman v. Helgemoe,\textsuperscript{112} confirmed the Bowring standard and held that prison inmates are

\textsuperscript{104} 551 F.2d at 47-48.
\textsuperscript{105}  Id. at 48. The starting point for a determination of whether a complaint is entitled to treatment, is an evidentiary hearing in district court to determine if the inmate is suffering from a "qualified" mental illness.  Id. at 49.
\textsuperscript{106}  Id. at 48.
\textsuperscript{107} Trop v. Dulles, 356 U.S. at 101.
\textsuperscript{108} Bowring v. Godwin, 551 F.2d at 47.
\textsuperscript{109} See T. Szasz, Law, Liberty and Psychiatry (1963). Organized psychiatry in the United States is an example of a favored social institution. Not only is psychiatry accorded recognition by state and federal governments; it is also provided with privileges and protections that are withheld from other medical specialities.  Id. at 79-80.
\textsuperscript{110} Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977). This attitude is premised "upon notions of rehabilitation and the desire to render inmates useful and productive citizens upon their release."  Id. at 48.
\textsuperscript{111}  Id. at 48.
\textsuperscript{112}  437 F. Supp. 269 (D.N.H. 1977).
entitled to reasonable psychiatric and psychological treatment when reasonably necessary.113

E. A Prisoner’s Right to Treatment

The right to psychiatric treatment is directed toward the goal of rehabilitation and the desire to send useful and productive citizens into society after their release from prison.114 One of the purposes of incarceration, similar to the purpose of a mental hospital, is to rehabilitate and reform the incarcerated individual.115 Some penologists believe that the primary purpose of a correctional institution is to “correct” the individual and that incarceration without an attempt to correct the inmate’s behavior may violate the Constitution.116 Nevertheless, it is apparent that a prison inmate will not have a greater right to mental treatment than an individual who is civilly committed.

The Bowring court agreed with Judge Johnson’s decision in Newman v. Alabama117 which noted that deficiencies in health care, including psychological treatment, foster inmate frustration and resentment which in turn “thwart . . . the purported goal of rehabilitation” and “jeopardize . . . the ability of inmates to assimilate into the population at large when ultimately released.”118 The

113. Id. at 328.
115. In Pell v. Procunier, 417 U.S. 817 (1974), the Court states that incarceration “serves a protective function by quarantining criminal offenders for a given period of time while, it is hoped, the rehabilitative processes of the corrections system work to correct the offender’s demonstrated criminal proclivity.” Id. at 823. See Williams v. New York, 337 U.S. 241, 248, rehearing denied, 337 U.S. 961, rehearing denied, 338 U.S. 841 (1949) (“Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence.”); United States v. Brown, 381 U.S. 437, 458 (1965) (“It would be archaic to limit the definition of ‘punishment’ to ‘retribution’. Punishment serves several purposes: retributive, rehabilitative, deterrent - and preventive”); Anderson v. Nosser, 438 F.2d 183, 190, rehearing and rehearing en banc granted, 456 F.2d 835 (5th Cir.), cert. denied, 409 U.S. 948 (1971). (“Incarceration after conviction is imposed to punish, to deter, and to rehabilitate the convict”). See also Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976), where the court followed Pell v. Procunier, 417 U.S. at 822-23, and said that if the legitimate correctional goals of specific or general deterrence, rehabilitation, and institutional security are not met, the prison restriction cannot stand. 406 F. Supp. at 328.
117. 503 F.2d 1320 (5th Cir. 1974), cert. denied, 421 U.S. 948 (1975).
118. 503 F.2d at 1333.
Supreme Court, however, has squarely rejected the contention that there is a constitutional right to rehabilitation in the case of a narcotic addict convicted of a crime.\footnote{119. Marshall v. United States, 414 U.S. 417, 421 (1974). The Fifth Circuit rejected the right to rehabilitation argument in Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).}

In \textit{Bowring v. Godwin},\footnote{120. 551 F.2d 44 (5th Cir. 1977).} the court considered the goals of incarceration in reaching its conclusion; arguments based on analogous situations may also be used to advance a claim for a prisoner's constitutional right to rehabilitation. The argument for such a right may be based upon recent decisions establishing the rights of several classes of people to rehabilitative treatment: involuntarily civilly committed mental patients,\footnote{121. Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974), cited two reasons supporting a civilly committed person's right to treatment: (1) because civil commitment has fewer procedural safeguards than criminal incarceration, the constitutional justification for circumventing those safeguards is the right to treatment and (2) "because plaintiffs have not been guilty of any criminal offenses against society, treatment is the only constitutionally permissible purpose of their confinement", a theory based upon the eighth and fourteenth amendments. \textit{Id.} at 496. Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973), held that a person confined under the state's "Sexually Dangerous Persons Act" had stated a legally sufficient claim by alleging failure to be treated. \textit{Id.} at 686. Welsch and other similar cases have frequently cited Wyatt v. Stickney, 325 F. Supp. 781 (M. D. Ala. 1971), as precedent. In a class action by patients and employees at a state mental hospital, \textit{id.} at 782, the Wyatt decision stated, "[t]he purpose of involuntary hospitalization for treatment purposes is \textit{treatment} and not mere custodial care or punishment. \textit{This} is the only justification, from a constitutional standpoint, that allows civil commitments to mental institutions. ..." \textit{Id.} at 784 (emphasis in original).} incarcerated juvenile offenders,\footnote{122. Nelson v. Heyne, 491 F.2d 352 (7th Cir.), \textit{cert denied}, 417 U.S. 976 (1974), held that juveniles at a medium security correctional institution have a fourteenth amendment due process right to rehabilitative treatment. \textit{Id.} at 360. Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), agrees that incarcerated juveniles have a right to treatment derived from the due process clause of the fourteenth amendment. \textit{Id.} at 175. Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972), concluded that if a state places juveniles in detention "it can meet the Constitution's requirement of due process and prohibition of cruel and unusual punishment if, and only if, it furnishes adequate treatment to the detainee." \textit{Id.} at 585.\textit{123. Millard v. Cameron, 373 F.2d 468 (D.C. Cir. 1966), where the court held that indefinite confinement of sexual psychopaths is justifiable only if treatment is involved. \textit{Id.} at 472-73.}} and those sentenced to indefinite terms for sex offenses.\footnote{124. Welsch v. Likins, 373 F. Supp. at 499; Morales v. Turman, 364 F. Supp. at 175.} Where the right to rehabilitative treatment has been recognized, it is derived from fundamental notions of due process.\footnote{125. Welsch v. Likins, 373 F. Supp. at 499; Morales v. Turman, 364 F. Supp. at 175.} That is, an individual committed to an institution for the express purpose of rehabilita-
tion is entitled to adequate treatment designed for his rehabilitation.\textsuperscript{125}

In 1966, dicta in Rouse v. Cameron,\textsuperscript{126} indicated that failure to provide a program of treatment inside an institution might violate the inmate's constitutional rights.\textsuperscript{124} In Wyatt v. Stickney,\textsuperscript{128} the court adopted the implications of Rouse and held that patients who are involuntarily committed for treatment have a constitutional right to receive the type of individual treatment which will afford them a realistic opportunity to improve their mental condition.\textsuperscript{129} One commentator advocates that confinement for any purpose other than rehabilitation is cruel and unusual punishment, and that rehabilitation must be considered a protected right.\textsuperscript{130} This extreme approach hardly appears to be the direction the courts will follow.

Recently, the United States Supreme Court held in O'Connor v. Donaldson,\textsuperscript{131} that it was a violation of an individual's right to liberty to be confined in a state mental hospital, where the individual was not dangerous to himself or others, was capable of surviving safely in freedom, and was not receiving treatment.\textsuperscript{132} Chief Justice Burger, in his concurring opinion rejected the quid pro quo theory and found that the right to treatment rests on a broad due process foundation.\textsuperscript{133}

The Supreme Court may also have limited the right to treatment in the O'Connor case. First, the majority opinion seems to have purposely evaded the right to treatment issue and, instead, based

\begin{itemize}
\item \textsuperscript{125} Wyatt v. Stickney, 325 F. Supp. 781, 785 (M.D. Ala. 1971). The court stated, "to deprive any citizen of his or her liberty upon the altruistic theory the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process." \textit{Id.} at 785.
\item \textsuperscript{126} 373 F.2d 451 (D.C. Cir. 1966). \textit{Rouse v. Cameron} is the first case to discuss the constitutional issue concerning a mental patient's right to treatment. See \textit{id.} at 454.
\item \textsuperscript{127} \textit{Id.} at 453.
\item \textsuperscript{128} 325 F. Supp. 781 (M.D. Ala. 1971).
\item \textsuperscript{129} \textit{Id.} at 784.
\item \textsuperscript{130} \textit{Eighth Amendment and Prison Reform, supra} note 5, at 1549, advocates enactment of state and federal statutes to establish rehabilitation as the primary purpose of the correctional system. The courts' primary concern would then be the proper administration of the statutes, and rehabilitation would be acknowledged as a prisoner's right. The author foresees no change, however, until the public alters its punitive attitude. \textit{Id.}
\item \textsuperscript{131} 422. U.S. 563 (1975).
\item \textsuperscript{132} \textit{Id.} at 576.
\item \textsuperscript{133} \textit{Id.} at 586 (Burger, C.J., concurring). The quid pro quo theory calls for a trade-off in the form of minimally adequate treatment for an involuntary commitment procedure that does not afford full criminal due process despite the individual's loss of freedom.
\end{itemize}
their decision on a loss of liberty. Secondly, Chief Justice Burger's rejection of the quid pro quo theory placed limitations on the procedural due process argument for the right to treatment. If the Court is hesitant to expand the right to treatment in cases of civil commitment, an even greater reluctance should be expected in cases of prisoners who have a more limited right to treatment.

At the present time, prisoners do not have an enforceable right to rehabilitation although the purposes of incarceration have been rationalized as punishment, deterrence, isolation from the community, and rehabilitation. The courts have sanctioned prison systems without rehabilitation programs because the prisons serve many other purposes, but some courts have viewed the absence of a rehabilitation program as a factor in determining whether prison conditions are unconstitutional.

Long term rehabilitation, including psychological services, should be an enforceable right in the prison context. Based upon evolving concepts of what is humane, it is arguable that it is an extension of the right to medical care and consistent with society's recognition of rehabilitation as one of the primary goals of incarceration. It appears to be a very difficult step from Wyatt, which involved

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134. "[T]here is no reason now to decide whether mentally ill persons dangerous to themselves or to others have a right to treatment upon compulsory confinement by the State..." Id. at 573.

135. Lottman, What Ever Happened to Kenneth Donaldson? [1977] MENTAL DISABILITY L. REP. 490. The author contends that the courts opinion limits the right to treatment theories. The Court negated the Fifth Circuit's opinion in Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974), by holding that the Fifth Circuit's opinion was no longer the law of the case. 422 U.S. at 573. The Fifth Circuit had based its holding on Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), and other cases finding a right to treatment. 493 F.2d at 519-20. The author, with whom I concur, views the Chief Justice's opinion as a whittling down of the procedural due process argument to the right to treatment. Chief Justice Burger may have also hurt the substantive due process argument by not conceding that the sole justification for hospitalization of those dangerous to themselves and those seeking treatment, is treatment. 422 U.S. at 578-89. The Chief Justice said that the parens patriae commitment also imposes a duty upon the state for mere custodial care. Id. at 583.

136. See note 119 supra and accompanying text.


138. "[C]ourts have thus far failed to elevate a positive rehabilitation program to the level of a constitutional right..." Pugh v. Locke 406 F. Supp. 318, 330 (M.D. Ala. 1976).

139. In Jones v. Wittenberg, 330 F. Supp. 707 (N.D. Ohio 1971), the judge's order mandated group and individual counseling, remedial education, and constructive work projects. Id. at 717.

rights of civilly committed persons, to a holding that persons committed to penal institutions are also entitled to rehabilitation programs. Society, as well as the individual, may benefit if a greater number of prisoners would have the opportunity to become productive members of society. Whether the present Supreme Court is increasing the difficulties of requiring the expansion of such services is still uncertain.

F. Totality of Circumstances

In addition to individual suits seeking damages for allegedly inadequate medical care, other actions have been brought seeking injunctive relief alleging that conditions in an entire institution were a violation of the eighth and fourteenth amendments. The courts have been more willing to grant injunctive relief if they have found that conditions "taken as a whole" are so objectionable that incarceration becomes cruel and unusual punishment.

The first case in which a court viewed a prison system in a comprehensive manner, was Holt v. Sarver. The court found that conditions in the Arkansas prison system, viewed in their totality, were so intolerable as to constitute cruel and unusual punishment, violating the eighth and fourteenth amendments. The Holt decision's finding that the inadequacy of mental health facilities is a factor in determining whether overall conditions in the prison vio-

Ark. 1970), aff'd, 442 F.2d 304 (8th Cir. 1971), refused to evaluate prison training and rehabilitation programs, matters "which in the last analysis are addressed to legislative and administrative judgment." Id. at 369. Similarly, the court in Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977), stated, "[W]e decline to enter this uncharted bog.... The Constitution does not require that prisoners, as individuals or as a group, be provided with any and every amenity which some person may think is needed to avoid mental, physical, and emotional deterioration." Id. at 291.

141. See notes 66-69 supra and accompanying text.
142. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970). The court found that where the trustees ran the prison, there were open barracks, poor conditions in isolation cells, and the absence of a meaningful rehabilitation program, when viewed in total, constituted cruel and unusual violation prohibited under the eighth and fourteenth amendments. The court assumed a continuing supervisory role in ordering improvements in the prisons.
143. Id. at 365. "As far as the Court is aware, this is the first time that convicts have attacked an entire penitentiary system in any court, either State or federal." Id.
144. In the Court's estimation 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 even though a particular inmate may never personally be subject to any disciplinary action.

Id. at 372-73.
late the eighth and fourteenth amendments set a precedent for other courts.\textsuperscript{145}

The court in \textit{Newman v. Alabama}\textsuperscript{146} examined psychiatric services in an Alabama prison and considered psychiatric services as a factor in the evaluation of overall conditions. The court emphasized the lack of adequate care for the mentally ill and mentally retarded\textsuperscript{147} and held that the cruel and unusual clause of the eighth amendment was violated by prison authorities who intentionally refused to provide inmates with prescribed medication.\textsuperscript{148} \textit{Holt} and \textit{Newman} have been followed by many courts which have placed significant weight on deficient mental health services in determining whether overall conditions of a prison are unconstitutional.\textsuperscript{149}

The courts have begun to impose duties upon prison administrators to take affirmative steps to alleviate substandard conditions.\textsuperscript{150} A federal district court enjoined the state of Alabama from maintaining a prison system that did not comply with constitutional requirements for mental health care along with other violations.\textsuperscript{151} An injunction was issued in another where county jail inmates with contagious or communicable diseases were not given medical attention and were incarcerated in the midst of other inmates for a month or more.\textsuperscript{152} The courts have also ordered proposals to be submitted

\textsuperscript{145} \textit{Id.} at 380.

\textsuperscript{146} 349 F. Supp. 278 (M.D. Ala. 1972). Inmates filed a class action seeking declaratory and injunctive relief from deprivation of proper and adequate medical treatment. \textit{Id.} at 280. The court examined all facets of the medical care and placed great emphasis on the inadequate and unqualified nature of the staff. \textit{Id.} at 283.

\textsuperscript{147} \textit{Id.} at 284. The court noted that only nominal assistance is given to the mentally ill despite an estimate that one-third of the inmate population suffers from mental retardation and that 60\% of the inmates require psychiatric treatment.

\textsuperscript{148} \textit{Id.} at 285-86.

\textsuperscript{149} In Barnes v. Government of Virgin Islands, 415 F. Supp. 1218 (D.V.I. 1976), the court found glaring deficiencies at a prison in the area of medical, dental, and psychiatric care. \textit{Id.} at 1227. The court relied upon a report by the Corrections Task Force of the National Advisory Commission on Criminal Justice Standards and Goals and determined that medical care should be comparable in quality and availability to that obtainable by the general public. \textit{Id.} at 1227-28. Battle v. Anderson, 376 F. Supp. 402 (E.D. Okla. 1974), found inadequate medical care where there were no psychiatric staff available for treatment on a regular basis. \textit{Id.} at 415. Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971). In Costello v. Wainwright, 387 F. Supp. 324 (M.D. Fla. 1973), the court said that a medical hospital is only one element of the overall health picture needed to determine whether there is adequate medical care. Psychiatric services must also be considered. \textit{Id.} at 325-26.


\textsuperscript{152} Smith v. Sullivan, 553 F.2d 373, 380 (5th Cir. 1977).
for adequate psychiatric and mental health care programs.\textsuperscript{153}

Significant studies have been made of medical care facilities in
jails and prisons. Mental health care has become accepted as a
necessary and integral part of medical care. The courts are aware
of these developments and have recognized that inmates require
adequate medical care for their psychological well being as well as
their physical well being.\textsuperscript{154}

\section*{III. Present Conditions}

Statistics show that the large prison and jail populations are
served by meager, under-staffed, medical facilities. A 1972 survey
indicated that throughout the United States, there were 141,588
inmates housed in 3,921 jails.\textsuperscript{155} The average facility housed 36 in-
mates, compared with approximately 40 per facility in 1970.\textsuperscript{156} A
total of 2,901 facilities housed 20 inmates or less, while 907 facilities
housed between 21 and 249 inmates and 113 facilities housed 250 or
more inmates.\textsuperscript{157}

Medical facilities at jails cannot meet inmate needs. The 1972

\textsuperscript{153} In Finney v. Hutto, 410 F. Supp. 251 (E.D. Ark. 1976), the court warned against sole
reliance on group treatment and suggested that it be augmented with one on one treatment
where possible. \textit{Id.} at 260. The court ordered the employment of one or more psychiatrists or
psychologists on a full-time basis in order to utilize them in diagnosing, evaluating and
treating individual inmates by conventional methods of individual psychotherapy. \textit{Id.} at 260-
61. The court specifically held that not only must the state provide inmates with reasonable
and necessary medical and surgical care, but such protection extends to the field of mental
health and to other fields of health care. \textit{Id.} at 258.

In Alberti v. Sheriff of Harris County, 406 F. Supp. 649 (S.D. Tex. 1975) the court, upon
finding medical care inadequate at a jail, ordered the initiation of psychological services for
those inmates found to have psychological problems on intake, including alcoholism and drug
addiction and ordered a screening process for present inmates. \textit{Id.} at 677. The court also
ordered mentally ill inmates to be separated from the jail general population. \textit{Id.} at 677-78.
In Jones v. Wittenberg, 330 F. Supp. 707 (N.D. Ohio 1971), Judge Young ordered, along with
other improvements, the establishment of a group and individual counseling program. \textit{Id.} at 717.

\textsuperscript{154} \textit{See} notes 117-29 \textit{supra} and accompanying text.

\textsuperscript{155} National Criminal Justice Information and Statistics Service, Law Enforcement
Assistance Administration, U.S. Department of Justice, \textit{The Nation's Jails} (1975) [hereinafter cited as \textit{Nation's Jails}]. This study was based upon the most recent, comprehensive
survey of jail and prison inmates compiled in 1972. These figures included inmates
jailed for detention purposes, along with those incarcerated for sentences of less than one year.
The figures did not reflect juvenile inmates who are channeled to other facilities. A jail is
deemed as a locally administered institution that has authority to retain adults for forty-
eight hours or longer.

\textsuperscript{156} \textit{Id.} at 1, 22.

\textsuperscript{157} \textit{Id.}
survey discovered that one out of every 8 jails, usually the larger ones, had some type of medical facility. Less than 5% of the small jails contained in-house medical facilities. Approximately 86% of the large jails had infirmaries, compared with 27% of the medium-sized jails and 2% of the small jails. One commentator found, based on a 1970 report, that only the largest urban jails employed a physician, frequently on a part-time basis.

In 1972, a total of 44,298 persons were employed in jails. Of this figure, 39,627 or 89% were full-time employees, while 4,671 were part-time employees. Custodial personnel comprised 46%, 27% were administrative staff, and 17% clerical staff. The remaining 10% were professional employees of whom over 40% worked less than full-time.

Eighty four per cent of the large jails employed a full-time or part-time physician compared with 38% of the medium-sized jails and 10% of the small jails. Of the nation’s 3,921 jails, 744 jails or 19% employed a medical doctor, and of that figure only 34% served on a full-time basis. Only 6% of the jails, 229, employed any of the 747 nurses working in corrections. A total of 166 psychiatrists were found in 114 jails, 3% of the total jails. New York and New Jersey employed 65 of those 165 psychiatrists, 39% of all psychiatrists employed. There were 137 psychologists employed in 95 of the 3,921

158. Id. at 7.
159. Id. at 7, 30.
160. Id.
162. Nation’s Jails, supra note 155, at 8, 23. Professor Mattick in Contemporary Jails of the United States, supra note 161, cites a 1970 Law Enforcement Administration Agency survey finding that there were 28,053 full-time jail employees in the 4,037 jails surveyed. Administrative, clerical, supervisory, vocational, medical and culinary workers comprised 78% of all employees and professional staff made up less than three percent. Many part-time personnel, particularly with the medical and psychiatric staff were amongst these figures. Most of the professional staff were concentrated in a handful of large urban areas.
163. Nation’s Jails, supra note 155, at 9, 34.
164. Id.
165. Id.
166. Id. at 10, 34.
167. Id. at 10, 11, 37.
168. Id. at 11, 37.
169. Id.
170. Id.
Sixteen states did not have a psychologist, and of the 137 psychologists employed, roughly one-half worked part-time. A more encouraging figure is found in regard to social workers, with two-thirds of them working full-time. Collectively, 136 jails employed 367 academic teachers, of whom 48% were full-time employees.

A nationwide survey by the American Medical Association verifies the findings by the Law Enforcement Assistance Administration. The survey showed that 31.1% of responding jails had no physician, and in only 38% of the jails surveyed were physicians available on a regular basis. The majority of jails had no formal arrangement with physicians. Most jails had no dental, nursing, or psychiatric services. The ratio of mental health professional to inmate was very low.

Only about one-third of the local jails provided alcoholic treatment and drug addiction programs were available in approximately one-fourth of those jails. A combination of counseling, remedial education, vocational education, and job placement programs were found in less than one-fifth of all jails. Overall, only about one-tenth of the national inmate population participated in these programs.

171. Id.
172. Id.
173. Id. at 12, 37.
174. Id.
175. ABA, Criminal Justice Section Project on Standards Relating to The Legal Status of Prisoners § 5.1 (Tent. Draft), in 14 AM. CRIM. L. REV. 377 (1977) [hereinafter cited as Section Project on Standards].
176. Id. at 467.
177. The following are selective findings. See Contemporary Jails of the United States, supra note 161: psychologists 4282:1, psychiatrists 2,436:1, and social workers 846:1. According to my calculations based on the 1972 report, the following are the updated ratios: psychologists 1033:1, psychiatrists 853:1, and social workers 291:1. Neither figure accounts for part-time personnel. I am in full agreement with Professor Mattick when he wrote:

If a jail's staff is inadequate in its initial qualification for the job, in screening, in training, in numbers, and in motivation and morale, even the most modern, well-designed and fully equipped penal plant will be defeated in its every function and purpose. An understaffed jail with untrained and demoralized personnel tends to perpetuate its own condition.

Id. at 804.
179. Id.
180. Id.
Statistics describing state correctional facilities show even more scant mental health services. As of January, 1974, there were 600 separately administered correctional facilities operated or funded by state governments.\(^{(181)}\) Approximately 190,000 prisoners are kept in facilities ranging from small community centers, or half-way houses, to large enclosed prisons containing thousands of inmates.\(^{(182)}\) The institutions included 401 prisons, 158 community centers and 33 classification or medical centers.\(^{(183)}\) Most states had no administratively separate medical centers, and only two states had more than two.\(^{(184)}\) These facilities held 5% of all inmates for evaluation to determine the correctional setting most conducive to their rehabilitation.\(^{(185)}\)

A majority of all state correctional institutions had a dispensary in which medicines prescribed by a physician were kept for distribution to inmates while more than half had quarters where the sick could be isolated.\(^{(186)}\) Of the 172 large enclosed institutions, only one did not have a dispensary and 13 did not have a sick bay.\(^{(187)}\)

Most states offered some type of rehabilitative services.\(^{(188)}\) Of the 592 facilities used in this particular survey, 487 or 82% of the facilities had a group counseling program, and 540 or 91% of the facilities had an individual counseling program.\(^{(189)}\) In 489 institutions, 83% of all facilities, there was an alcoholic treatment program.\(^{(190)}\) A significant number of facilities recognized the need for mental health care and had implemented programs to treat psychological problems. In a survey conducted among 187,500 inmates, 57,400 had completed a rehabilitation program; of those completing a program 15,300 or 27% completed psychological-social counseling, 6,500 or 11% completed an alcoholic treatment program and 5,600 or 8% completed

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182. *Id.*

183. *Id.* at 1, 2, 18. The classification or medical centers included facilities known as reception, classification, or diagnostic centers, as hospitals, and as psychiatric units.

184. *Id.* at 3, 18, 19. North Carolina had five such units and New York had four.

185. *Id.*

186. *Id.*

187. *Id.* at 12, 18, 19.

188. *Id.* at 13, 30.

189. *Id.*

190. *Id.*
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a drug treatment program.\textsuperscript{191}

The prisons and jails across the country are inadequately staffed to effectively cope with an enormous need for psychiatric services. The poor mental health care conditions found by Judge Johnson in Newman v. Alabama,\textsuperscript{192} are probably similar to most prison systems. He said, "Mental illness and mental retardation are the most prevalent medical problems in the Alabama prison system. It is estimated that approximately 10% of the inmates are psychotic and another 60% are disturbed enough to require treatment."\textsuperscript{193} Although conditions have improved slightly, a greater effort is needed in the area of mental health care to give the eighth amendment's ban against cruel and unusual punishment a more effective meaning.

IV. Mental Health Care Proposals

Several standards for health care have been proposed to remedy the deficiencies of medical care in the penal system. The present conditions are seriously inadequate and deserve immediate attention.\textsuperscript{194}

The American Bar Association has proposed the following standard: "Prisoners should be entitled to proper medical services, including, but not limited to, dental, physical, psychological, psychiatric, physical therapy, and other accepted medical care."\textsuperscript{195} The meaning of "proper" is ambiguous, although it appears that proper may be equated with reasonable or adequate. The ABA does recognize the importance of mental health care services and refers to

\textsuperscript{191} National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, Survey of Inmates of State Correctional Facilities Advance Report (1976) [hereinafter cited as Survey of State Inmates]. This survey was separate from Census of State Correctional Facilities, supra, note 181. "Completed program" was not specifically defined by the Survey of State Inmates, thus its meaning is ambiguous. Note that the percentages would be significantly less if compared to the total inmates surveyed. The figures would be eight percent, 3.5 percent and three percent respectively.

\textsuperscript{192} 349 F. Supp. 278 (M.D. Ala. 1972).

\textsuperscript{193} Id. at 284.

\textsuperscript{194} National Advisory Commission, Criminal Standards and Goals, cited in Law Enforcement Assistance Association, Department of Justice, Compendium of Model Correctional Legislation and Standards (2d ed. 1975), recommends immediate steps to fulfill the right of offenders to medical care. Services guaranteeing physical, medical and social well-being, as well as treatment for specific diseases, would be included. Such medical care should be comparable in quality and availability to that obtainable by the general public.

\textsuperscript{195} Section Project on Standards, supra note 175, at 466.
psychiatric, psychological, and other medical care, which includes social workers, rehabilitation counselors or psychiatric nurses.

The National Sheriffs' Association recommends a chief medical doctor, a technician, a psychiatrist, and a psychologist for an institution of 500 or more prisoners. Other recommendations include a dentist for an institution of 300 inmates, a minimum of one full-time physician, and a nurse for institutions of at least 50 inmates.

The American Medical Association recommends twenty-four hour health care availability to be implemented by a resident physician or by contracting with a private physician. If the facility has only emergency, diagnostic and acute medical care available, then the minimum requirements are: medical, surgical, dental and psychiatric programs for emergency and acute care, rehabilitative and health hygiene, and sanitation consultation inspections. The AMA recognizes that many mentally ill and deficient persons are now being confined instead of being provided with the care they need in the open community. AMA Standards propose that screening and referral care be provided to all mentally ill or deficient inmates and that facility personnel be trained to recognize symptoms of mental illness and to make appropriate referrals.

In the most comprehensive report on mental health care in prisons, the American Public Health Association recommends that mental health services be available at every correctional institution. The recommendations assume that many prisoners may have psychological problems and that incarceration may create or

196. Id. at 472.
197. Id.
198. American Medical Association, Models for Health Care Delivery in Jails (1977). The model merely states that the minimum of care would vary depending on whether the system offers acute medical care or comprehensive services.
199. Id.
200. AMA, Standards for the Accreditation of Medical Care and Health Services in Jails § 5167 (1977) (Draft No. 12) [hereinafter cited as AMA Standards], notes that incarceration frequently occurs because of minor changes which would not have been processed except to confine the suspected mentally ill.
201. Id.
202. Id. at § 5168.
203. Id. at § 5169. AMA Standards recommends that all services of assistance for mentally ill or deficient inmates should be identified in advance of need, and that referrals should be made in all such cases. Admission to appropriate health care facilities in lieu of detention should be sought for all suspected mentally ill or deficient inmates.
intensify the need for mental health services. Under the plan, the services would not be mandatory unless the individual poses a clear and present danger of grave injury to himself or others. If treatment is required, it must be the least drastic measure and the most appropriate treatment available for the disorder. The individual's rights are insured by requiring an immediate judicial hearing where the individual has an opportunity for an independent psychiatric evaluation and the protection of due process of law.

Each facility would be required to provide hospital facilities, but mental health treatment would be provided only on a voluntary basis for those with legitimate psychological need for treatment. Confidentiality must be maintained; the only exceptions are the ethical and legal obligations of a psychotherapist to alert prison officials to a clear and present danger of a serious injury to the inmate himself or other prisoners or to escape plans. The American Public Health Association recommends that varied modalities of direct treatment services be provided so that the prisoner has

205. Id. Correspondingly, outside prison, a person may not be committed unless he is a danger to himself or others. The prisoners right to the best treatment available corresponds to a contention in The Rights of Prisoners to Medical Care, supra note 74, and this is similar to the holding in Barnes v. Government of Virgin Islands, 415 F. Supp. 1218 (D.V.I. 1976), where the court held that medical care should be comparable in quality and availability to that obtainable by the general public. This recommendation insures that the inmate is afforded a real opportunity for effective treatment.

206. Id.

207. A.P.H.A., supra note 204, at 28.

208. Id. at 28, 29. This recommendation calls for drastic but much needed changes in the present system. Mental health care in the correctional system is presently inconsistent and a disgrace.

209. Id. at 30. The mental health professionals providing direct therapeutic services to the prisoner should be separate from those professionals who participate in administrative decision making, such as but not limited to parole and furlough. Exceptions are provided for professionals involved in the treatment of hospitalized inmates, where decisions relating to the inmates' activity are integral elements of the treatment program of the illness for which the patient was hospitalized. In addition, a treating professional may be involved in forensic decisions when he believes the person may be incompetent to stand trial and the issue has not yet been litigated. This recommendation would secure confidence in the patient in the therapeutic relationship and foster disclosure of personal information. Confidentiality is recognized as vital to effective therapy and the ethical responsibility of the mental health professional must be safeguarded. Therapy is fostered by encouraging an individual to speak openly without fear that a breach of confidentiality would prejudice him. The professional should explain the parameters of their relationship. Records must be kept but it is recommended that sensitive or highly personal data not be included in the medical record. Id. This is an excellent recommendation, which I fully endorse.
access to effective individual treatment. The American Public Health Association’s recommendations are sensitive to the changing concept of physical and mental health care and are in the best interests of inmates and society.

V. Conclusion

In conclusion, the development of the concept of cruel and unusual punishment has progressed from its original purpose of protection against torture and other barbarous methods of punishment. Today’s concept of cruel and unusual punishment must be interpreted in light of evolving standards of decency in order to insure that the punishment is not disproportionate to the crime. Erosion of the “hands off” policy has led to a more involved and responsible stance by the courts in changing conditions within the prison system.

The eighth and fourteenth amendments, as well as state and federal statutes, provide the basis for the right to medical care for prisoners. To deny needed medical and psychological care is to add punishment in excess of the punishment imposed by the sentencing court. The debate over what standard of care is constitutionally required has been resolved. A recent United States Supreme Court decision required “deliberate indifference” to the serious medical needs of prisoners in order to constitute cruel and unusual punishment. Following this standard, the lack of psychiatric care to a prisoner with a serious illness which may be cured or alleviated and which might be magnified by denial or delay of needed care, would constitute cruel and unusual punishment. Under the recently enunciated standard, denial of psychiatric services would constitute

210. Id. at 31-32. The following shall be made available as a minimum: crisis intervention with special attention paid to suicide, brief and extended evaluation, short-term group and individual therapy, long-term group and individual therapy, therapy with family and significant others, “counseling” over sexual matters arising in provision of medications with periodic revisions, de-toxification for drug and alcohol abuse, and in-patient hospitalization for the severely disturbed. This recommendation surpasses the standards of many mental health facilities in the community. Id. When viewed in light of the highly dependent state of the inmate and the lack of opportunity for the inmate to care for himself, I believe these standards are excellent. It is a waste of money and resources to provide “some” mental health care which is minimally if at all effective.

211. Id. at 33.
a constitutional violation when analyzed from either an individual stance or when viewing the circumstances as a whole. Psychological treatment is necessary to at least attempt to make prisoners productive members of society upon release from prison and to meet one of the express purposes of incarceration, rehabilitation.

Statistics indicate that prisons and jails are terribly understaffed to adequately meet the treatment needs of the inmates. Ratios of professional medical and mental health personnel to inmate population are so low so as to raise serious questions concerning the intent of efforts thus far. Standards for health care have been proposed by a variety of organizations. The most comprehensive and potentially effective recommendations have been proposed by the American Public Health Association. The recommendations are sensitive to mental health care needs. The A.P.H.A. recognizes that incarceration may create or intensify mental illness. The proposals call for substantial availability of mental health services at all prisons and jails. These proposals concurrently seek to protect the inmate's right to refuse treatment and insure individual dignity.