Curtailment of Prisoners’ Ability to Protect Their Right to Be Free from Cruel and Unusual Punishment: A Post-Wilson Circuit Survey of Prison Conditions Cases

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THE CURTAILMENT OF PRISONERS' ABILITY TO PROTECT THEIR RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT: A POST-WILSON CIRCUIT SURVEY OF PRISON CONDITIONS CASES

INTRODUCTION

Confinement restricts many of the rights and privileges citizens normally enjoy, but it does not eliminate all constitutional protection. The Eighth Amendment, for example, prohibits more than physically barbarous punishments; it censures the infliction of any conditions that fall below socially accepted standards of decency. "In electing to impose imprisonment as a punishment for a crime, society has incurred an obligation to provide those in custody with the basic necessities of a humane living environment." The state must provide prisoners with reasonably adequate food, clothing shelter, sanitation, medical care, and personal safety.

Section 1983 of Title 42 of the United States Code allows a person deprived of a constitutional right to seek redress in the

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2 The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. CONST. amend. VIII.


5 Harris v. Thigpen, 941 F.2d 1495, 1511 (11th Cir. 1991) (citing Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977)).

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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 the proper proceeding for redress.
federal courts. In combination, the Eighth Amendment and § 1983 purport to provide relief for prisoners suffering cruel and unusual conditions in state prison. In pursuit of other objectives, however, the Supreme Court has limited the scope — and therefore the utility — of this avenue of redress.

This article analyzes how Eighth Amendment jurisprudence, as interpreted by Wilson v. Seiter, inadequately serves prisoners attempting to enforce their right to be free from cruel and unusual punishment. In Wilson, the Supreme Court effectively stifled all but the most egregious prisoner complaints by not only reaffirming the stringent totality of conditions test, but more significantly by raising the threshold of proving deliberate indifference. Indeed, Wilson's introduction of a culpable state of mind component has shifted the focus of Eighth Amendment analysis from the harm inadequate prison conditions impose on prisoners to the culpability of prison officials.

This article argues (1) that Wilson embraced a legal standard that unfairly increases the burden on prisoner-plaintiffs to prove cruel and unusual treatment and (2) that the Wilson standard promotes excessive deference to the discretion of prison officials. Part I discusses the current status of Eighth Amendment jurisprudence, especially with regard to deliberate indifference analysis. Part II describes the Wilson decision. Part III presents a survey of how the federal courts in each circuit have addressed the Wilson standard. Part IV analyzes Wilson's effect on Eighth Amendment deliberate indifference analysis and the consequent effects on prisoners' rights.

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7 To bring a § 1983 action to challenge conditions of confinement, the prisoner must establish that a person, acting under color of state law, caused the conditions — either through its policy or custom — resulting in the violation of the plaintiff's Eighth Amendment rights. Monell v. N.Y. City Dep't of Soc. Serv., 436 U.S. 658, 690 (1978).


9 For an opposing view, see Montick, supra note 5, at 233 (citing Comment, Cruel But Not So Unusual Punishment: The Role of the Federal Judiciary in State Prison Reform, 7 CUMB. L. REV. 31, 44 nn. 86 & 87 (1976) (arguing that the totality of conditions approach is an effective means to check the fomenting problem of inhumane prison conditions)).
I. EIGHTH AMENDMENT CRUEL AND UNUSUAL PUNISHMENT ANALYSIS

The Supreme Court has offered no static test to determine unconstitutional infliction of cruel and unusual punishment, drawing the meaning of the Eighth Amendment instead from "evolving standards of decency." Legal standards thus reflect changing public opinion regarding socially acceptable punishments. Currently, a prisoner-plaintiff claiming an Eighth Amendment violation under § 1983 must first show that he has been denied a basic human need due to a deficient prison condition or a combination of conditions. The prisoner-plaintiff must then prove that prison officials acted or omitted to act with "deliberate indifference.

The Supreme Court introduced the totality of conditions test in Rhodes v. Chapman. Under the Rhodes test, if no single condition establishes an Eighth Amendment violation, a prisoner may assert an accumulation of harmful conditions. This perspective recognizes the practical side of prison life — namely that overcrowding, inadequate medical care, and increased prison violence are common in an era of tremendous prison population growth.

In Wilson v. Seiter, the Court reaffirmed the totality of conditions test. The real significance of Wilson, however, is that it embraced the deferential "deliberate indifference" standard first applied to prison conditions in Estelle v. Gamble. In Estelle, the Court dismissed a prisoner's claim that correctional officers provided inadequate treatment for a back injury that the prisoner-plaintiff sustained while engaged in prison work. The Court held that prison officials act or omit to act with

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14 Rhodes, 452 U.S. at 346.
deliberate indifference only when they cause "unnecessary and wanton infliction of pain [as] proscribed by the Eighth Amendment." Estelle's definition of deliberate indifference narrowed previous notions of the culpability standard by characterizing deliberate indifference as an intentional act by prison authorities: the standard applies regardless of whether prison doctors manifested indifference to prisoner's needs, or whether prison guards intentionally denied or interfered with the prisoner's access to medical care.

Although Estelle guided Eighth Amendment analysis of prison medical care, the Court left unclear whether the deliberate indifference standard applies in other contexts. Moreover, it left unclear exactly what "deliberate indifference" means. Subsequent reformulations of the deliberate indifference standard have failed to clarify the test. For instance, in Martin v. White, the Eighth Circuit held that deliberate indifference means intent to violate, or reckless disregard for, a prisoner's constitutional rights. Courts have equated reckless disregard with a failure to take reasonable measures to respond to a pervasive risk of harm to inmates. The contradictions are inherent: does failure to take reasonable measures constitute intent? The Wilson Court inherited this muddled definition of deliberate indifference.

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18 Id. at 104. Although the Court recognized that a prisoner could successfully demonstrate deliberate indifference by showing failure to care for a serious illness or injury, it did not find the facts compelling in this case.


20 Estelle, 429 U.S. at 104-05.

21 The standard of culpability was left unclear in cases involving: (1) overcrowding; (2) violence by prison guards or other inmates; and (3) other aspects of prison life that have the potential to create conditions of cruel and unusual punishment.

22 742 F.2d 469, 474 (8th Cir. 1984). In Martin, a superintendent failed to protect inmates from other violent prisoners. The court held that official tolerance of such attacks was an Eighth Amendment violation but only if prison officials exhibited reckless disregard for prisoner safety.

23 Id. To show pervasive risk of harm, a prisoner must demonstrate only that an identifiable group of prisoners fears for its safety. Whithers v. Levine, 615 F.2d 158, 161 (4th Cir.), cert. denied, 449 U.S. 849 (1980).
II. WILSON v. SEITER AND ITS IMPLICATIONS

In Wilson v. Seiter, a prisoner-plaintiff alleged that overcrowding, excessive noise, and inadequate heating and cooling constituted cruel and unusual punishment. The prisoner-plaintiff "charged that the authorities, after notification, had failed to take remedial action." The District Court granted summary judgment for the prison officials because the affidavits failed to establish the prison officials' requisite state of mind. The Sixth Circuit affirmed. The conditions were not serious enough to establish an Eighth Amendment violation, and the prisoner-plaintiff had failed to establish that the prison officials had acted with "persistent malicious cruelty."

In Wilson, the Supreme Court reaffirmed both the Rhodes totality of conditions test and the Estelle deliberate indifference test. About the totality of conditions test the Court stated that "[s]ome conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need."

Extending the deliberate indifference standard beyond the Estelle context, the Court in Wilson held that the Eighth Amendment's ban on cruel and unusual punishment implicitly requires that prison officials acted or omitted to act "wantonly." The Court found the deliberate indifference standard articulated in Estelle to be the appropriate level of culpable

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25 Id. at 2323.
26 Id.
27 Wilson v. Seiter, 893 F.2d 861, 867 (6th Cir. 1990), aff'd, 111 S. Ct. 2321 (1991). The Supreme Court had only once before used this stringent state of mind requirement. In Whitley v. Albers, 475 U.S. 312 (1986), the Court held that a prison official who shot a prisoner in an attempt to rescue a hostage during a prison riot did not violate the prisoner's Eighth Amendment rights. "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishment Clause." Id. at 319.
28 111 S. Ct. at 2327.
29 Id. at 2326-27. Wilson found no significant distinction between claims alleging inadequate medical care and those alleging inadequate conditions of confinement.
30 Id. at 2323.
intent required to prove an Eighth Amendment violation. Nevertheless, the meaning of "wanton" varies with the type of conduct challenged.

The *Wilson* Court concluded that the "malicious and sadistic" standard did not apply, and instead implicitly adopted a lesser standard of wanton behavior, an acknowledgment that prison officials involved in conditions cases should have their actions closely monitored. Although by choosing the lesser standard, *Wilson* may mark a victory for future prisoner-plaintiffs, *Wilson*'s affirmation of deliberate indifference presents lower courts with the opportunity to interpret the standard strictly, with grave implications for prisoners' civil rights claims.

Under the deliberate indifference standard, the *Wilson* Court has deferred prisoner complaints to prison authorities, refusing to permit judicial intervention in many cases where prisoners suffer truly inhumane conditions. *Wilson* recognized that prison officials face substantial practical difficulties in responding to this nation's dilapidated and overcrowded prisons. But in attempting to strengthen the subjective component of §1983 cruel and unusual punishment claims, the Court ignored the objective harm caused by the increasingly

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32 Id.

33 *Wilson*, 111 S. Ct. at 2326.

34 See Arthur B. Berger, Note, An Unsatisfying Attempt at Resolving the Imbroglio of Eighth Amendment Prisoners' Rights Standards, 1992 UTAH L. REV. 565, 588. When acting in highly dangerous circumstances like those in *Whitley*, prison officials are likely to make more errors, and thus should logically be subject to less scrutiny.


36 The Supreme Court has accommodated practical necessities in other areas as well, particularly criminal procedure. See, e.g., *New York v. Quarles*, 467 U.S. 649 (1984) (holding Miranda warnings are unnecessary prior to questioning that is reasonably prompted by a concern for public safety); *Moran v. Burbine*, 475 U.S. 412 (1986) (holding police do not have an affirmative duty to secure legal representation for defendants); *U.S. v. Leon*, 468 U.S. 897 (1984) (creating a good faith exception to the exclusionary rule in Fourth Amendment searches and seizures cases).
grim conditions prisoners must face. Rather than use the judiciary as a means to push legislatures to address these problems, the Supreme Court has denied prisoner-plaintiffs a remedy when they cannot show that prison officials have deliberately caused the inhumane conditions. Without viable § 1983 claims, prisoners' lack of political power prevents them from effectively promoting prison reform.\textsuperscript{37}

Wilson's interpretation of the Eighth Amendment shifts the focus of inquiry from an objective cruel and unusual punishment standard to a subjective one. The deliberate indifference standard suggests that a prisoner-plaintiff must establish that prison officials inflicted intentional, ad hoc punishment.\textsuperscript{38} Consequently, an actionable violation requires more than living conditions which themselves could be considered cruel and unusual.\textsuperscript{39}

This shift in inquiry creates a barrier that many prisoners subject to inhumane conditions cannot overcome. While demonstrating mental intent itself is elusive, the vague deliberate indifference standard exacerbates the problem.\textsuperscript{40} Russel Gray notes that

\begin{quote}
[c]onfusion abounds when attempts are made to distinguish degrees of culpability between the two extremes of negligence and intentional conduct. Nonetheless, this is precisely the task of the courts in interpreting the meaning of "deliberate indifference;" a task that will largely determine the impact of Wilson. The term "deliberate indifference" is confusing and has a number of possible meanings.\textsuperscript{41}
\end{quote}

Varying treatment in the lower courts\textsuperscript{42} confirms Gray's analy-
sis. As the following survey of the lower courts' approaches to Wilson suggests, the deliberate indifference standard indeed frustrates prisoners' ability to plead successful Eighth Amendment claims.\footnote{U.S. 312, 319 (1986); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976)).}

III. A CIRCUIT SURVEY OF POST-WILSON LOWER COURT RULINGS

Analysis of post-Wilson cruel and unusual punishment cases confirms that the deliberate indifference standard is not only unclear but also a significant obstacle to prisoners' ability to enforce their Eighth Amendment rights. Prisoners seeking relief from inhumane prison conditions find no clear guide as to how to frame their § 1983 claims. Some courts promote extreme deference to prison officials by reading a rigorous subjective component into the deliberate indifference standard; others require only a showing that prison authorities were negligent.\footnote{See id. at 195.}

What follows is a survey of the lower federal courts' approaches to deliberate indifference. Measuring official conduct on a scale ranging from criminal recklessness to negligence, Russell Gray notes that a continuum has developed in the circuits.\footnote{Gray, supra note 31. Gray contributes to the post-Wilson debate by highlighting the indeterminacy of the subjective prong of the deliberate indifference standard.}

The Seventh and First Circuits require that the prisoner-plaintiff show that the prison officials acted with criminal recklessness. The Third, Fourth, Sixth and Tenth Circuits require that the prisoner-plaintiff show that the prison officials failed to act on their knowledge of harmful or risky conditions facing prisoners. The Eleventh Circuit requires that the prisoner-plaintiff show systematic deficiencies. The Second, Eighth, Fifth, and Ninth Circuits have commented on the Wilson standard but failed to offer their own interpretations.
A. CRIMINAL RECKLESSNESS

1. Seventh Circuit

The Seventh Circuit's deliberate indifference standard has generally been described as criminal recklessness. It focuses not on whether conditions of confinement are objectively harmful but rather whether they amount to punishment that is not formally part of the prisoner's sentence. In *Jackson v. Duckworth*, the Seventh Circuit adopted the following interpretation of *Wilson*:

The minimum intent required is "actual knowledge of impending harm easily preventable." A failure of prison officials to act in such conditions suggests that the officials *actually want the prisoner to suffer the harm*.

In *Steading v. Thompson*, the Circuit's first post-*Wilson* cruel and unusual punishment decision, the court affirmed the dismissal of an asthmatic inmate's claim alleging that exposure to environmental tobacco smoke violates the Eighth Amendment. The court found no violation. Judge Easterbrook wrote in *Steading* that if the prison officials "do not intend [the prisoner-plaintiff's] discomfiture they have not punished him, and so do not violate the cruel and unusual punishments clause as Wilson interprets that amendment."

Following *Steading*, the Seventh Circuit reasserted that the focus of Eighth Amendment inquiry should be unauthorized punishment of prisoners — not conditions of confinement. In

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46 955 F.2d 21 (7th Cir. 1992).
47 *Id.* at 22 (quoting *Duckworth v. Franzen*, 78 F.2d 645, 653 (7th Cir. 1985)).
50 *Id.* at 500. Since the "Eighth Amendment is concerned with 'punishment,'" *id.*, showing that prison authorities had a culpable state of mind is essential to finding a constitutional violation. See also *McGill v. Duckworth*, 944 F.2d 344 (7th Cir. 1991); *Thomas v. Cabanaw*, No. 91-2173, 1992 U.S. App. LEXIS 27488 (7th Cir. October 23, 1992); *James v. Milwaukee County*, 955 F.2d 696 (7th Cir. 1992).
Duane v. Lane, for example, the Seventh Circuit stated that prison officials must want to harm the prisoner or demonstrate "total unconcern" for a prisoner’s welfare. The court in Duane held that the prison officials were not liable because they were not "entirely indifferent" to the prisoners’ safety.

Under the Seventh Circuit’s approach, Eighth Amendment violations turn on the culpability of prison administrators and the limitations facing them, not the actual conditions of prison life. Like Wilson, Steading fails to recognize that prisoners suffer the same hardships from inhumane conditions, regardless of whether the conditions result from formal sentencing, administrative neglect, overcrowding, or resource limitations.

2. First Circuit

The First Circuit followed the Seventh Circuit in Steading in adopting a criminal recklessness standard. In DesRosiers v. Moran, a prisoner filed suit alleging that the prison officials had failed to furnish him with adequate medical care during his incarceration. The district court found that the prison officials had made a good faith effort to provide the plaintiff DesRosiers with the best care possible, and entered a judgment for the defendants. The Court of Appeals affirmed the district court. Citing Wilson and the Seventh Circuit’s decision in Steading, the court held that the prisoner must prove both that the prison officials had a culpable state of mind and intended to wantonly inflict pain. The court further described the standard as recklessness, "not in the tort-law sense, but in the appreciably stricter criminal-law sense, requiring actual knowledge of impending harm, easily preventable."

Indeed, DesRosiers extended Wilson’s requirement that prison officials act with deliberate indifference. Under the

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51 959 F.2d 673 (7th Cir. 1992).
52 Id. at 676. An Eighth Amendment violation occurs only when prison officials fail to prevent an injury that they know will cause a harm. Id.
53 Id. at 677.
54 949 F.2d 15 (1st Cir. 1991).
55 Id. at 19 (citing Wilson v. Seiter, 111 S. Ct. 2321, 2324-25 (1991) and Steading v. Thompson, 941 F.2d 498, 500 (7th Cir. 1991), cert. denied, 112 S. Ct. 1206 (1992)).
56 Id. (citing Wilson, 111 S. Ct. at 2324-26; McGill v. Duckworth, 944 F.2d 344, 347 (7th Cir. 1991)).
DesRosiers criminal recklessness standard, for example, prison administrators are essentially free to ignore the obligation imposed on them by Estelle v. Gamble.\textsuperscript{57} The holding in DesRosiers suggests that prisoners' medical needs will go unmet because they must rely on the good will of prison authorities to provide medical attention.\textsuperscript{58} By requiring a prisoner to show that prison officials deliberately or intentionally failed to provide medical care, the First Circuit makes asserting Eighth Amendment violations for lack of adequate medical care virtually impossible. While the Wilson Court acknowledged the practical limitations facing prison officials, DesRosiers goes quite far in deferring to prison administrators; at some point, limited resources, overcrowding, and inadequate facilities necessarily limit prisoners' medical care.

B. KNOWLEDGE AND FAILURE TO ACT

The Third, Fourth, Sixth, and Tenth Circuits require a prisoner asserting an Eighth Amendment claim to show that prison officials failed to act on dangerous or inhumane conditions about which they knew or should have known. In contrast, the criminal recklessness standard requires that a prisoner show that prison officials desired a harmful condition. The "knowledge plus failure to act" interpretation of deliberate indifference is thus less stringent than criminal recklessness, but it nevertheless presents significant obstacles to a prisoner's ability to protect their Eighth Amendment rights.

1. Third Circuit

In the Third Circuit, a prisoner-plaintiff meets the burden of establishing deliberate indifference by showing that prison administrators, faced with inadequate prison conditions, chose not to pursue curative measures. This standard thus frees prisoners from proving intent,\textsuperscript{59} but nevertheless focuses on the culpability of prison officials.

\textsuperscript{57} 429 U.S. 97 (1976) (holding that prison officials must provide minimally adequate medical care).

\textsuperscript{58} See id. at 103.

\textsuperscript{59} See Gray, supra note 31, at 1368.
The Third Circuit addressed Wilson for the first time in Simmons v. City of Philadelphia. In Simmons, an emotionally disturbed inmate hanged himself after being arrested for intoxication. His estate alleged that the prison officials' failure to provide adequate medical care constituted cruel and unusual punishment. The Third Circuit affirmed the judgment in favor of the estate. The Simmons court stated that a prisoner establishes deliberate indifference if he shows that the prison officials "were aware of the number of suicides in City lock-ups and of the alternatives for preventing them, but either deliberately chose not to pursue these alternatives or acquiesced in a long standing policy or custom of inaction." Only a showing of some affirmative action by prison officials, like preventative measures or enhanced officer training, could defeat a prisoner's claim.

In Young v. Quinlan, the Third Circuit attempted to clarify the standard articulated in Simmons. In Young, a federal prisoner alleged that prison officials had inflicted cruel and unusual punishment upon him by failing to protect him from attacks by other inmates and by confining him to unsanitary living conditions. Acknowledging the split in the circuits regarding the quantum of knowledge needed to satisfy the Wilson standard, Young found deliberate indifference to occur when prison officials knew or should have known of a serious danger to an inmate and failed to act.

2. Fourth Circuit

To prove an Eighth Amendment violation in the Fourth Circuit, a prisoner must establish both that prison conditions were objectively cruel and unusual and that the defendants

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60 947 F.2d 1042 (3d Cir. 1991).
61 Id. at 1064.
62 Id. at 1071. The Simmons court articulated its understanding of deliberate indifference not in the context of defining the scope of the test, but rather in determining whether the record was "critically deficient of the minimum quantum of evidence" from which the jury reasonably could have concluded that the failure of City Policy makers to take any of those preventative measures amounted to deliberate indifference.
63 960 F.2d 351 (3d Cir. 1992).
64 Id. at 353-56.
65 Id. at 360-61.
acted with a culpable state of mind. In Williams v. Griffin,\textsuperscript{66} for example, an inmate alleged that overcrowded and unsanitary conditions in his prison constituted cruel and unusual punishment.\textsuperscript{67} Even though the district court did not require the plaintiff to prove deliberate indifference, it granted the prison officials’ motion for summary judgment. The Fourth Circuit reversed.\textsuperscript{68} Citing Rhodes and Wilson, the Williams court defined the deliberate indifference standard to require a showing that "prison officials had knowledge of the conditions that are the subject of the complaint."\textsuperscript{69}

3. Sixth Circuit

The Sixth Circuit has endorsed the knowledge and failure to act standard. In Doe v. Sullivan County,\textsuperscript{70} the plaintiff alleged that systematic deficiencies at the prison violated the Eighth Amendment. The district court’s jury instructions defined deliberate indifference to require that the particular official was "aware that a particular act or inaction was certain to or substantially certain to deprive plaintiff of his constitutional rights and that the defendant decided to act or not act in spite of that knowledge."\textsuperscript{71} Finding in favor of the prison officials, the Sixth Circuit concluded that the "instructions accurately stated each element that a plaintiff was required to establish under the Eighth Amendment, including the requirement that the evidence support a finding of 'deliberate indifference.'"\textsuperscript{72}

In Gibson v. Foltz,\textsuperscript{73} an inmate’s widow filed a § 1983 claim following the stabbing death of her husband. Affirming the district court’s grant of summary judgment for the defendants, the Sixth Circuit stated that a lack of due care for a prisoner’s safety is insufficient to support an Eighth Amendment violation.\textsuperscript{74} The Gibson court found that "obduracy and

\textsuperscript{66} 952 F.2d 820 (4th Cir. 1991).
\textsuperscript{67} Id. at 821, 822. Twelve inmates were cramped into a twenty foot square cell, with six beds and a urine-soaked toilet.
\textsuperscript{68} Id. at 826-27.
\textsuperscript{69} Id. at 826.
\textsuperscript{70} 956 F.2d 545 (6th Cir. 1992).
\textsuperscript{71} Id. at 555 (emphasis added).
\textsuperscript{72} Id. at 555-56.
\textsuperscript{73} 963 F.2d 851 (6th Cir. 1992).
\textsuperscript{74} Id. at 853 (citing Wilson v. Seiter, 111 S. Ct. 2321, 2327 (1991) and
wantonness, not inadvertence or good faith error, characterize deliberate indifference."\(^7\) Thus Gibson confirms that cruel and unusual conditions do not obviate Wilson's subjective intent requirement.

4. **Tenth Circuit**

Although the Court of Appeals for the Tenth Circuit has never itself detailed the contours of deliberate indifference, it has followed Wilson. In *Miller v. Glanz*,\(^7\) the Tenth Circuit reviewed a district court's dismissal of a claim alleging deliberate indifference to medical needs following a beating the prisoner had allegedly received at the hands of four correctional officers. After noting that Wilson clarified Estelle's deliberate indifference standard to have both an objective and a subjective component, the court concluded:

Although the injuries and accompanying deprivation of medical care that [the plaintiff] alleges in his amended complaint may be sufficiently serious to meet the objective component of the deliberate indifference standard, the amended complaint fails to allege that any of the defendants acted with the state of mind required to meet the subjective or intent component of the standard.\(^7\)

Since the district court dismissed the prisoner's complaint for failing to allege the defendants' subjective state of mind, *Miller* did not address the requirements of the deliberate indifference standard. Nevertheless, it follows *Wilson* in holding that the plaintiff must show defendants' culpability.

In *Baker v. Holden*,\(^7\) the district court for the Northern District of Utah suggested that the Tenth Circuit will adopt the "knowledge and failure to act" interpretation of deliberate indifference. Adopting Wilson's pragmatic approach to constitutional analysis, the court in *Baker* held that no Eighth Amendment violation occurs without a showing of official knowledge of

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\(^7\) *McGhee v. Foltz*, 852 F.2d 876, 880-81 (6th Cir. 1988)).

\(^7\) *Id.*

\(^7\) 948 F.2d 1562 (10th Cir. 1991).

\(^7\) *Id.* at 1569.

a prisoner's need and an unwillingness to act. The court stated that judges should defer to correctional authorities, giving consideration to the limitations they face. "[t]his court may not impose its own enlightened views of correctional policy on state correctional authorities." 

D. A SOFTER INTERPRETATION OF WILSON? THE ELEVENTH CIRCUIT'S SYSTEMATIC DEFICIENCIES APPROACH

In Harris v. Thigpen, the Eleventh Circuit stated that "systematic deficiencies" can provide a sufficient basis to find deliberate indifference. On its face this approach is more favorable to prisoner-plaintiffs than both criminal recklessness and the "failure to act on knowledge" standard. Through the development of the Circuit's approach, it appears Wilson's subjective component still presents significant obstacles to prisoners seeking to enforce their Eighth Amendment rights.

In Payne v. Monroe County, an inmate alleged that prison officials violated his Eighth Amendment rights by failing to prevent another inmate from slashing him with a razor blade. The plaintiff charged (1) that the prison officials knew or should have known that the attacker had a history of committing assaults in prison, and (2) that the officials failed to isolate the attacker from the general prison population. The plaintiff asserted also that his attacker possessed a razor blade because prison officials failed to enforce prison policy.

The magistrate's report in Payne found that the plaintiff properly alleged that overcrowding at the jail was a "prison custom," and that the Eighth Amendment violation was caused

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79 Id. at 1018.

80 Id. at 1015-1016.

81 Id. at 1016. A demonstration of limited administrative resources would prevent official liability in the face of even the worst conditions of confinement. But the court went on to state that "[h]owever, the deference accorded prison officials is not absolute. In this regard, inmates may not be confined in unsafe conditions." Id. (citations omitted).

82 941 F.2d 1495 (11th Cir. 1991).


84 Id. at 1332.

85 Id.
by the overcrowding. However, the magistrate granted the prison officials' motion to dismiss. *Payne* held that although the prison authorities' acts may have amounted to negligence, the plaintiff failed to allege facts which would meet *Wilson*'s subjective intent requirement. To meet the deliberate indifference standard, the prisoner-plaintiff would have had to show that the prison officials knew or should have known that the attacker was likely to attack.

The *Payne* court properly applied *Wilson*'s subjective intent requirement. That the court dismissed the plaintiff's claim illustrates the harsh result compelled by the deliberate indifference standard. Even where the negligence of prison officials leads to egregious harm, *Wilson* puts Eighth Amendment remedies beyond prisoners' reach.

One month after the *Payne* decision, the Eleventh Circuit adopted the "systematic deficiencies" interpretation of deliberate indifference. In *Harris v. Thigpen*, the plaintiffs challenged the defendant-prison's policy of testing all incoming inmates for sexually transmitted diseases, and of separating those who test positive for HIV from the general prison population. Finding no Eighth Amendment violation, the Eleventh Circuit stated that systematic deficiencies can provide a sufficient basis for a finding of deliberate indifference. Significantly for future prisoner-plaintiffs, the court said that "a series of incidents closely related in time may disclose a pattern of conduct amounting to deliberate indifference."

Despite its "liberal" approach to the deliberate indifference standard, the *Harris* court was unable to find sufficient evidence in the record to support such a finding. Still, this decision turned on the facts, and not the subjective component of *Wilson*. This interpretation of the deliberate indifference standard

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86 Id. at 1334.
87 Id.
88 Id.
89 941 F.2d 1495 (11th Cir. 1991).
90 Id. at 1505 (citing Rogers v. Evans, 792 F.2d 1052, 1058 (11th Cir. 1986)).
91 Id. Specifically, systematic and gross deficiencies in staffing, facilities, equipment, or procedures may constitute deliberate indifference. Id. (citing Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980)).
suggests that the prisoner litigant in the Eleventh Circuit may have a less demanding burden to meet.

E. OPEN QUESTIONS

The Second and Eighth Circuits have established no clear position on the subjective inquiry continuum, thus perpetuating the uncertainty prisoners face in bringing Eighth Amendment claims. The Fifth and Ninth Circuits are uncertain about their interpretation of deliberate indifference.

1. Second Circuit

The Second Circuit has never interpreted the deliberate indifference standard. In Nolley v. County of Erie,92 however, the Western District of New York appeared to require prisoners asserting Eighth Amendment claims to prove official culpability beyond simple negligence. In Nolley, a former holding center inmate who had tested positive for the human immune-deficiency virus (HIV), claimed that she did not get proper medical treatment because she received her AZT93 treatments late or not at all. The court held that the prisoner had alleged sufficient facts to satisfy Wilson’s objective requirement by showing “deplorable conduct in the care of an HIV+ inmate,”94 but had failed to meet the subjective component of the test.95 The court in Nolley did not address specifically what the plaintiff must show to satisfy the subjective mental state requirement of the deliberate indifference test. It did state, however, that the "Supreme Court held [in Wilson] that for conditions of confine-

93 According to a doctor’s testimony, AZT must be taken every four hours to avoid serious harm to an HIV+ person. Id. at 719.
94 Id. at 740.
95 Id. The court reached the following conclusion: [S]everal instances where plaintiff’s AZT was either not delivered or was delivered late, did ... deprive plaintiff of a necessity of life under the Eighth Amendment. AZT is an absolutely vital medication for HIV+ persons because it is the only medication known to slow the advance of the disease. With the objective component of the Eighth Amendment violation thus proven, the question is whether defendants late delivery or non-delivery of AZT amounted to "deliberate indifference." The court finds that it did not.

Id.
ment to violate the Eighth Amendment, prison officials creating those conditions must have possessed a culpable state of mind. 96

2. Eighth Circuit

While its opinion in Murphy v. Dow 97 suggests approval of the Seventh Circuit’s criminal recklessness standard, the Eighth Circuit ultimately avoided framing its own definition of deliberate indifference. In Murphy, the plaintiff alleged that involuntary exposure to environmental tobacco smoke (ETS) violates the Eighth Amendment. The district court granted summary judgment for the prison officials based on their qualified immunity. Although the Court of Appeals for the Eighth Circuit affirmed the district court on this ruling, 98 the Murphy court in dicta followed the Seventh Circuit’s standard. 99 The court stated "that mere exposure to ETS alone cannot constitute cruel and unusual punishment because smoke is not ‘punishment.’" 100

Noting the high burden Wilson’s subjective component places on prisoners, the Eighth Circuit noted that under Steading "it is next to impossible for a prisoner to prove such a claim because prison officials who allow inmates to smoke ‘could not plausibly be accused of reaching this decision because they hope the smoke will injure other prisoners.’" 101 Thus, while the Eighth Circuit avoids precluding prisoners with a strict interpretation of deliberate indifference, it perpetuates the uncertainty they face in presenting their claims.

3. Fifth Circuit: Another Resource Limitations Argument

The Fifth Circuit has not established an interpretation of the deliberate indifference standard, but its holding in Alberti v. Sheriff of Harris County, 102 suggests at least some inquiry into

96 Id. at 740 (citing Wilson, 111 S. Ct. at 2323-26).
97 975 F.2d 435 (8th Cir. 1992).
98 Id. at 437.
99 Id. (citing Steading v. Thompson, 941 F.2d 498, 499-500 (7th Cir. 1991), cert. denied, 112 S. Ct. 1206 (1992)).
100 Id.
101 Id. (citing Steading, 941 F.2d at 500).
102 937 F.2d 984 (5th Cir. 1991), cert. denied sub nom. Richards v. Lindsay,
the prison officials' culpability. Perhaps more significantly, the decision in Alberti echoes Wilson’s invidious "pragmatism." It requires a review of the constraints facing prison officials in alleviating poor prison conditions.\(^{103}\)

In Alberti, a prisoner brought a § 1983 class action alleging that the conditions in the overcrowded county jails violated the Eighth Amendment. In the district court, the parties and the court focused on the objective conditions of confinement in the county’s jails. They did not consider the state’s intent an element of the cause of action. While the appeal in Alberti was pending, the Supreme Court decided Wilson v. Seiter.\(^{104}\) In light of the Wilson opinion, the Fifth Circuit in Alberti remanded the case to determine whether the state was deliberately indifferent to conditions at the jails in violation of the Eighth Amendment.

Alberti illustrates Wilson's crippling effect on Eighth Amendment jurisprudence. The district court held that the objectively cruel and unusual prison conditions in the county jails violated the constitution. Yet because Wilson’s subjective component requires official culpability, the Fifth Circuit remanded the district court's decision. Moreover, Alberti's conclusion that a finding of deliberate indifference includes a review of the constraints on prison officials further limits prisoners' claims. Assuming a prisoner satisfies the objective and subjective components of Wilson, the affirmative defense of financial incapacity may frustrate an Eighth Amendment claim.\(^{105}\)

4. Ninth Circuit: Actual Knowledge and Failure to Act—One Successful and One Unsuccessful Claim

The confusion and inconsistency in the Ninth Circuit illustrates the difficulty prisoner-plaintiffs have in determining the culpability requirements for their Eighth Amendment claims. The Ninth Circuit seems to interpret deliberate indifference as

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105 Fortunately, lack of legislative funding is only a consideration in the inquiry and is not dispositive. Rubin, supra note 103, at 229 (citing Alberti, 937 F.2d at 999-1000).
requiring actual knowledge and a failure to act, but offers conflicting applications of the Wilson standard. In Redman v. County of San Diego, a pretrial detainee claimed that in light of prisoners' threats of violence and his pleas for protection, he was improperly placed in a dangerous situation. Reversing the district court's directed verdict for the defendant officials, the Ninth Circuit concluded that the plaintiff had demonstrated deliberate indifference by the county and prison officials who were responsible for the prison procedural policies that resulted in overcrowded jails and safety problems. The Redman court held that "the term 'policy' generally implies a course of action consciously chosen from among various alternatives." Although not directed at the prisoner and not intended as punishment, this consciously chosen course of action satisfied the deliberate indifference standard.

Whitmore v. Sumner, however, suggests that in the future the Ninth Circuit will interpret Wilson's subjective component more strictly. In Whitmore, the plaintiff claimed that in-prison exposure to the human immune-deficiency virus violates the Eighth Amendment. In a memorandum opinion, the Ninth Circuit affirmed the district court's summary judgment for the defendant prison officials. The plaintiff failed to present sufficient evidence of deliberate indifference. The dissent in Whitmore points out that the facts belie the conclusion that there was not sufficient evidence to prove the prison officials were deliberately indifferent:

Here, plaintiffs presented evidence that prison officials placed plaintiffs in contact with an HIV-infected inmate who had not only thrown his urine at other inmates, but had also engaged in self-mutilation in an effort to infect other persons through contact with his blood. Plaintiffs also presented evidence that suggested that prison officials had taken precautions to protect staff of

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106 942 F.2d 1435 (9th Cir. 1991).
107 Id. at 1443-46.
108 Id. at 1445 (quoting City of Oklahoma v. Tuttle, 471 U.S. 808, 823 (1985)).
110 Id. at *1 (citing Wilson v. Seiter, 111 S. Ct. 2321 (1991)).
the correctional facility, but did not show similar concern for the safety of prisoners.\footnote{Id. at *3 (dissenting opinion).}

Thus even in a situation where prison officials allowed a violent, HIV-infected inmate to remain in contact with the general prison population, the Ninth Circuit refused to find an Eighth Amendment violation.

In \textit{McKinney v. Anderson},\footnote{924 F.2d 1500 (9th Cir. 1991), \textit{vacated sub nom.} Helling v. McKinney, 112 S. Ct. 291 (1991).} the Ninth Circuit held that housing a prisoner in an environment that exposes him to environmental tobacco smoke is cruel and unusual punishment because it poses an unreasonable risk of harm to his health.\footnote{Id. at 1503-04.} On the plaintiff's appeal from the court's refusal to allow damages, the Supreme Court vacated the judgment, and remanded for further consideration in light of its decision in \textit{Wilson}.\footnote{112 S. Ct. 291 (1991).} On remand, the Ninth Circuit recognized that the Supreme Court had expanded the requirements of an Eighth Amendment claim by adding a subjective component.\footnote{McKinney v. Anderson, 959 F.2d 853, 854 (9th Cir. 1991).} Even though the conditions of his confinement amounted to cruel and unusual conditions, ultimately the prisoner's claim failed. The defendant prison officials did not act with a sufficiently culpable state of mind.

\section*{IV. ANALYSIS}

The prediction that "[t]he Court's decision in \textit{Wilson} will tighten the thumb screws on Eighth Amendment jurisprudence"\footnote{Daniel T. Dalton, \textit{Tightening the Thumb Screws on Civil Liberties: Wilson v. Seiter: It's Impact on Prisoner Claims and Eighth Amendment Jurisprudence}, 60 U. MO-KAN. CITY L. REV. 542, 543 (1992).} proved prophetic. \textit{Wilson} and its progeny have limited prisoners' ability to enforce the Eighth Amendment through § 1983 actions by deferring to the judgment of prison officials. Indeed, the \textit{Wilson} Court's emphasis on recognizing the limitations on prison officials essentially requires courts to ignore the dangerous and inhumane conditions prisoners face. Given that prisoners' lack of political power prevents them from
promoting prison reform elsewhere, the Wilson standard is particularly invidious.

By routinely deferring to the expertise of prison administrators in setting institutional policy, Wilson and the cases following it subordinate inmates' needs to the demands of maintaining order and discipline. Commentators point out that

[t]he courts stress the complexity of prison problems. The constant risk of violence requires an assessment of danger that involves more than the individual case and specific facts. Prison officials must make intuitive judgments based on imponderable factors, necessarily subjective and predictive. Their expertise is almost mystical. It not only justifies deference by legitimating the delegation of discretion, but finally it requires that courts remove themselves from the process. Prison is so complicated and so dangerous that judicial intervention can only do harm.

Wilson's deliberate indifference standard embraces this view. By according generous deference to prison officials, the Wilson Court has placed a roadblock in the path of prisoners' efforts to obtain humane prison conditions through Eighth Amendment claims. Indeed, overcrowding, deteriorating facilities, and limited funding make providing humane prison conditions difficult; the deliberate indifference standard's


118 Id.; Berger, supra note 34, at 596.


121 Berger, supra note 34, at 566.
focus on the culpability of prison officials makes using the courts to address these difficulties impossible for prisoners.

Specifically, *Wilson* and its progeny limit prisoners' ability to vindicate their right to be free from cruel and unusual punishment in two ways. First, the vagueness of *Wilson*'s deliberate indifference standard frustrates successful Eighth Amendment claims not only by making determinations of local culpability requirements difficult for prisoners, but also by presenting the lower courts with opportunities to interpret the deliberate indifference test strictly. Second, a rigorous subjective standard makes it difficult for individual prisoners to allege sufficient instances of misconduct to satisfy the deliberate indifference standard. In the Seventh Circuit, for example, prisoners unable to prove that prison officials intended the inhumane conditions state no Eighth Amendment claim.

A. *WILSON'S DEFERENTIAL APPROACH MISGuidES EIGHTH AMENDMENT ANALYSIS*

*Wilson*'s excessive deference results in standards which can be manipulated to prevent prisoners from obtaining redress for conditions which are patently Eighth Amendment violations. By narrowing the definition of wantonness and enlarging the applicability of the qualified immunity doctrine, the *Wilson* decision has limited the ability of prisoners to demand liveable prison conditions.

Demonstrating its commitment to deference to prison authorities, the Court in *Wilson* delineated an affirmative defense to the subjective state of mind requirement. Conduct is "wanton," or per se deliberately indifferent, only if it is extreme, relative to the constraints facing the official. Russell Gray argues that by predicing wantonness on the difficulties facing prison officials, the Court left open the possibility that problems like overcrowding and lack of funding could vitiate otherwise valid Eighth Amendment claims. Such an

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124 *Wilson*, 111 S. Ct. at 2326.

approach makes Eighth Amendment concerns subordinate to the financial considerations of prison management.\textsuperscript{126}

The \textit{Wilson} decision's emphasis on deference to prison officials also effectively limits culpability by reformulating the doctrine of qualified immunity.\textsuperscript{127} Judicial deference allows prison officials to set the standard by which the reasonableness of their actions will be judged. In doing so, they are able to create qualified immunity for decisions which impose even the most egregious conditions on prisoners. "Under the current standard, qualified immunity protects officials acting within the scope of their discretionary duties unless their conduct violates clearly established constitutional rights of which a reasonable person would have known."\textsuperscript{128} After \textit{Wilson}, prison officials attempting to maintain prison security or control may unjustly constrain prisoners' constitutional rights.

B. A VAGUE DELIBERATE INDIFFERENCE STANDARD CREATES UNCERTAINTY AND OPPORTUNITIES TO FURTHER RESTRICT EIGHTH AMENDMENT ANALYSIS

Because the term "deliberate indifference" is so flexible,\textsuperscript{129} the ability of lower courts to interpret it simultaneously presents opportunities to obviate \textit{Wilson}'s worst consequences and threatens further attacks on prisoners' rights. One possible interpretation, for example, favors prisoners' claims by basing culpability on inexcusable lack of knowledge. A "prison official's lack of knowledge of harmful conditions may be so offensive that

\textsuperscript{126}Berger, \textit{supra} note 34, at 595.

\textsuperscript{127}The defense of qualified immunity limits prison officials' liability by denying prisoners a damage remedy for conduct that violates the Constitution. \textit{See} David Rudovsky, \textit{The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights}, 138 U. Pa. L. Rev. 23, 26 (1989) (positing that the Supreme Court requires that the unconstitutionality of an official's action be clearly established to be outside the qualified immunity doctrine); \textit{see also} Stephanie E. Balcerzak, \textit{Qualified Immunity for Government officials: The Problem of Unconstitutional Purpose in Civil Rights Legislation}, 95 YALE L.J. 126, 132 (1985) (arguing that in \textit{Harlow v. Fitzgerald}, 457 U.S. 800 (1982), the Supreme Court set out to increase the protection afforded governmental officials).


\textsuperscript{129}Gray, \textit{supra} note 31, at 1343.
it also rises to the level of deliberate indifference."\textsuperscript{130} Russell Gray argues that "courts should attempt to avoid defining 'deliberate indifference' as a high degree of tortious or criminal recklessness in the context of prisoners’ Eighth Amendment challenges to confinement conditions."\textsuperscript{131} Applying such a standard poses the problematic task of examining the intent of prison officials.

Ultimately, however, Wilson’s failure to define deliberate indifference gives lower federal courts an opportunity to construe the standard to the detriment of a prisoner plaintiff. For example, federal courts within the First and Seventh Circuits have concluded that conduct is deliberately indifferent only when it reaches the level of criminal recklessness.\textsuperscript{132} Prison officials must know of the high degree of risk in their actions or inactions, rather than merely acting or failing to act in a highly risky manner. Gray criticizes the Seventh Circuit for adopting the most extreme subjective standard,\textsuperscript{133} and predicts that the Supreme Court will resolve the confusion over deliberate indifference by adhering to this stringent criminal recklessness requirement.\textsuperscript{134} Gray’s conclusions seem justified given the prominent role the subjective component of the deliberate indifference inquiry plays in nearly every circuit — a reflection of the general deference to correctional facility administrators.

As the survey in Part III suggests, the experience of prisoner-plaintiffs in the lower federal courts leaves a muddled picture of the Wilson standard. Even if the Supreme Court does not frustrate Eighth Amendment claims by requiring criminal recklessness, the confusion over deliberate indifference itself obstructs prisoners’ claims. A prisoner who cannot ascertain

\textsuperscript{130} Id. at 1371.

\textsuperscript{131} Id.

\textsuperscript{132} See, e.g., Steading v. Thompson, 941 F.2d 498 (7th Cir. 1991), cert. denied, 112 S. Ct. 1206 (1992); Jackson v. Duckworth, 955 F.2d 21 (7th Cir. 1992); DesRosiers v. Moran, 949 F.2d 15 (1st Cir. 1991). Amanda Rubin argues that only the Steading decision has promulgated a strict interpretation of the deliberate indifference standard. Rubin, \textit{supra} note 103, at 230. This is a questionable reading of the case law. Although it avoided the term "actual intent," the Seventh Circuit in Jackson equated a failure to act in the face of a known harm with conduct that suggests that an official wanted a prisoner to suffer the harm. \textit{See supra} note 48 and accompanying text.

\textsuperscript{133} Gray, \textit{supra} note 31, at 1379.

\textsuperscript{134} Gray argues the Court will move towards criminal recklessness to promote deference to prison administrators. \textit{Id}. 
what a specific court requires for a successful Eighth Amendment claim will not be able to handle his claim effectively. The confusion over the subjective standard thus exacerbates the problems of proving intent in the first place.

CONCLUSION

To reduce the burden on prisoners to raise a sufficient Eighth Amendment claim, courts must first clarify the deliberate indifference standard. This would eliminate a great deal of the ambiguity and uncertainty which has plagued the lower courts and frustrated prisoner plaintiffs. This solution, however, does not address the heavy burden of the subjective state of mind component of deliberate indifference. Eliminating or softening this requirement is essential to revitalizing the efficacy of Eighth Amendment causes of action.

The simplest approach to reforming the subjective standard inquiry is to eliminate it. Although a state of mind requirement may be appropriate in instances where a single official act of misconduct is alleged to be unconstitutional, this inquiry should be unnecessary in cases of "continuing" or "systemic" conditions. The Eleventh Circuit, for example, has taken such a systematic deficiencies approach.

A return to the objective standard described in Rhodes v. Chapman has a strong policy basis. Without a state of mind requirement, courts could focus on whether prisoners are in fact denied the most basic human needs. Focusing on the suffering of the victim and the severity of the harm, instead of on the intent or motivation of the inflictor, is a key step to forcing the courts to protect the convicted from excessive suffering. Moreover, financial constraints and other practical difficulties would be irrelevant under an objective standard.

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137 See, e.g., Harris v. Thigpen, 941 F.2d 1495 (11th Cir. 1991).
138 452 U.S. 337 (1981). "The Rhodes decision properly focused on the objective conditions as experienced by the inmates and whether those conditions result in the 'unquestioned and serious deprivations of basic human needs,' or 'deprive inmates of the minimal civilized measures of life's necessities.'" Rubin, supra note 103, at 234 (citing Rhodes).
139 Gray, supra note 31, at 1359.
A solely objective reading of the Eighth Amendment's cruel and unusual punishment clause can be reconciled with the constitutional language. The reading proposed in the Brief for the United States as Amicus Curiae in Wilson argued that "although 'purpose to inflict unnecessary pain' suggests an intent requirement, the second part of the quotation, 'nor any unnecessary pain,' suggests that unnecessary pain without regard to the state of mind of the inflictor would be sufficient to constitute cruel and unusual punishment."140 The plaintiff would have to show that neither inhumane conditions were formally sanctioned as punishment nor a prison official was deliberately indifferent in the face of the harms which these conditions pose. That the conditions exist, and that they inflict some consequence which would fail to meet minimal standards of human decency (i.e. unnecessary pain) would be sufficient.

Several Supreme Court Justices have called for the abandonment of the state of mind requirement. In Wilson, Justice White, joined by Justices Blackmun, Stevens and Marshall, argued in a concurring opinion that the intent of prison officials should be irrelevant in evaluating the constitutionality of conditions of confinement. Justice White argued that the Wilson majority's subjective standard "disregards our prior decisions that have involved challenge to conditions of confinement, where we have made it clear that the conditions are themselves part of the punishment, even though not specifically 'meted' out by statute or judge."141

The Wilson standard frustrates prisoners' only means of protecting their right to be free from cruel and unusual punishment. As wards of the state, prisoners are at the mercy of prison officials and should not forfeit what few constitutional privileges they have because the officials were not sufficiently culpable. While official culpability may at times exacerbate the cruelty of inhumane conditions, deference to prison officials should not frustrate courts' attempts to protect prisoners from

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140 Gray, supra note 31, at 1349 (citing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE at 16-17, Wilson v. Seiter, 111 S. Ct. 2321 (1991) (No. 89-7376)).

truly inhumane conditions. Hopefully in the future courts will recognize the importance of maintaining a federal forum for the redress of genuine prisoner grievances.

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