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GATES v. COOK: ARE COURTS EQUIPPED TO MANAGE PRISONS?

KATHERINE T. WAINWRIGHT*

In *Gates v. Cook*,¹ the Fifth Circuit considered whether injunctive relief was justified by prison conditions in violation of the Eighth Amendment's prohibition against cruel and unusual punishment.² The Court held, *inter alia*, that an injunction requiring prison officials to reduce a preventative maintenance schedule and program to writing violated the principle that courts are not to micromanage prisons.³ The Court also held that injunctions mandating that prison officials return inmates' laundry clean and without a foul smell and allowing prisoners to wear sneakers rather than flip-flops were invalid because they were not tailored to remedy Eighth Amendment violations.⁴

In determining which injunctions were appropriate and which involved judicial micromanagement of the prison, the court noted that federalism concerns require that federal courts must provide the least intrusive remedy that will bring the prison in line with the minimum constitutional standards when prescribing corrections for state prisons.⁵ However, Mississippi prison conditions have been a problem at least since 1972, and despite the remedies courts have issued for many years, the unconstitutional conditions persist.⁶ Deference to prison officials and legislative inaction has left a void where no entity is willing to take active steps to improve the prison system. The current rule, that courts must provide the least intrusive remedy that will meet the minimum constitutional standard, serves to perpetuate what has proven to be an ineffective method of remedying unconstitutional prison conditions. Where courts are the only branch of government willing to address this problem, they should not

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1. 376 F.3d 323 (5th Cir. 2004).

2. U.S. CONST. amend. VIII. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.*

3. *Cook*, 376 F.3d at 338 (citing *Bell v. Wolfish*, 441 U.S. 520, 562 (1979)).

4. *Id.* at 344.

5. See *Alberti v. Klevenhagan*, 790 F.2d 1220, 1227 (5th Cir. 1986) (quoting Special Project, *The Remedial Process in Institutional Reform Litigation*, 78 COLUM. L. REV. 784, 869 (1978)).

6. See, e.g., *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974) (holding prison conditions unconstitutional in 1974) and *Cook*, 376 F.3d 323 (holding prison conditions unconstitutional in 2004).

unnecessarily restrict themselves with such an inflexible standard, but should be free to tailor remedies that are appropriate under the circumstances.

I. THE CASE

A. *Gates v. Collier and the History of Unconstitutional Conditions in the Mississippi State Prison System*

Like a number of other states, the Mississippi state prison system has been struggling to reform its prison system for many years. The struggle began at the Mississippi State Penitentiary at Parchman in 1974 when two overlapping classes of prisoners sued the Superintendent of the State Penitentiary, members of the Penitentiary Board, and the Governor of Mississippi, challenging conditions of confinement under the Eighth Amendment in *Gates v. Collier*.⁷ The suit alleged a wide range of unconstitutional prison conditions. The housing units were “unfit for human habitation under any modern concepts of decency,”⁸ with hazardous human waste disposal facilities and a contaminated water supply leading to the spread of infectious disease.⁹ Combined with frayed and exposed wiring, the lack of adequate firefighting equipment made it almost impossible to put out a fire at Parchman.¹⁰ The bathroom, heating, kitchen, and housing facilities were grossly inadequate, with broken windows, oil drums cut in half for washbasins, and otherwise horrid conditions.¹¹ The medical staff did not provide adequate medical care for the inmates resulting in delayed and inefficient medical examination, treatment, and medication.¹² Rampant unsanitary conditions compounded the inadequate medical care to produce a dangerous and unhealthy environment.¹³

Additionally, solitary confinement at Parchman involved a six-foot by six-foot “dark hole.”¹⁴ The cell had no lights, commode, sink,

7. *Collier*, 501 F.2d at 1294. The first class consisted of all inmates at Parchman, while the second class included black inmates who additionally claimed racial discrimination and segregation. *Id.*

8. *Id.*

9. *Id.* at 1299.

10. *Id.*

11. *Id.*

12. *Id.* at 1300.

13. *Id.*

14. *Collier*, 501 F.2d at 1305.

furnishings, window, bedding, or hygienic materials and had only a hole in the floor for a toilet.¹⁵ Furthermore, inmates were placed there naked, given inadequate food, and were not allowed to wash.¹⁶

Additionally, Parchman maintained a racially segregated prison system where blacks were subject to disparate treatment.¹⁷ Blacks were housed in more crowded quarters, assigned to different work details, denied the same vocational training opportunities, and were punished more severely than whites for the same offenses.¹⁸

The trial court issued both short and long-range injunctive relief to the inmates.¹⁹ The court ordered the prison officials to: (1) cease censoring prisoners' mail; (2) establish definite and constitutional rules and regulations for inmate discipline; (3) cease corporal punishment so severe as to "offend present concepts of human dignity"; (4) cease using disciplinary segregation and isolation except where it satisfies constitutional standards; (5) improve medical facilities and staff; (6) institute reasonable procedures to protect inmates from assault by other inmates; (7) abolish the trusty system in its use of prisoners to oversee other inmates;²⁰ and (8) make certain renovations of Parchman's physical facilities that posed hazards to prisoner health.²¹

When the Mississippi Department of Corrections (hereinafter MDOC) challenged these injunctions, the Fifth Circuit examined whether the district court correctly determined the extent to which Parchman's facilities and practices had to be modified to meet constitutional standards.²² The Fifth Circuit ruled that the trial court's discretion in providing a remedy was limited to that minimally required to comport with the Constitution's prohibition against cruel and unusual punishment.²³ In that case, the prison officials did not even challenge the district court's holdings that equal protection required reclassification of prisoners on a non-racial basis and that the

15. *Id.*

16. *Id.*

17. *Id.* at 1299.

18. *Id.*

19. *Id.* at 1295.

20. *Id.* at 1299. The trusty system was the prison's practice of using inmates, who had supposedly proved themselves trustworthy, as guards. *Id.* They were generally untrained and armed, and for the most part had not actually shown any signs of trustworthiness, but rather obtained their positions through favoritism, bribery, and extortion. *Id.*

21. *Collier*, 501 F.2d at 1295-96.

22. *Id.*

23. *Id.* at 1303.

Eighth Amendment required improvements in Parchman's physical and medical facilities as well as the abolition of the trusty system.

The court found that all of the injunctions were appropriate and within the jurisdiction of the district court.²⁵ The court recognized that these limits only alleviated conditions to meet the minimal constitutional standard.²⁶

B. What the State Has Done

The state legislature has done relatively little to combat the problems in the Mississippi prison system. The Mississippi Code contains several general provisions that prisoners must be treated humanely, but no substantive regulations have been enacted to enforce these provisions.²⁷ In the original 1942 prison legislation, the state policy for Operation and Management of Prisons directed that, "Those convicted of violating the law and sentenced to a term in the state correctional system shall have humane treatment"²⁸ Additionally, the policy states that the Department of Corrections shall be "responsible for the proper care, treatment, feeding, clothing, and management of the offenders therein."²⁹

In 1976, the legislature included in the General Powers and Duties of the Department of Corrections a duty "(t)o provide for the care, custody, study, training, supervision and treatment of adult offenders committed to the department."³⁰ That same year, the legislature also authorized the Bureau of Building, Grounds and Real Property Administration and the State Board of Health to conduct inspections of the institutional housing and service facilities for repairs and maintenance, sewage collection and treatment, solid waste collection, rodent and pest control, and a number of other factors.³¹

In 1985, the legislature adopted provisions to deal with overcrowded prison conditions,³² but these were repealed in 2004.³³

25. *Id.* at 1310-31.

26. *Id.*

27. *See infra* text accompanying notes 26-34.

28. MISS. CODE ANN. § 47-5-1 (2004).

29. § 47-5-23.

30. § 47-5-10.

31. § 47-5-94.

32. §§ 47-4-707 to 47-5-729 (These provisions required the prison Commissioner to notify the Governor and State Parole Board whenever the prison exceeds 95% of its capacity; that the State Parole Board meet and report its determination of whether they have taken all

The legislative provisions that withstood the 2004 act were largely procedural. Then, in 1989, the legislature added that if an inmate files a civil action *in forma pauperis* against an employee of the Department of Corrections pertaining to the inmate's condition of confinement, the Department must pay all court costs unless the prisoner has brought three or more previous actions that were dismissed as frivolous or malicious.³⁴ Finally, pursuant to the federal Civil Rights of Institutionalized Persons Act,³⁵ the Mississippi Legislature authorized the MDOC to create an administrative review procedure for remedying prisoner actions against the state of Mississippi, the MDOC, or its officials or officers.³⁶

C. Mississippi Prison Conditions Today: Gates v. Cook

Appellee Willie Russell sued MDOC alleging that he and other prisoners confined to death row in the Mississippi State Penitentiary in Parchman, Mississippi were knowingly and deliberately subjected to conditions that violated the Eighth Amendment.³⁷ Specifically, Russell asserted that MDOC subjected death row inmates to profound isolation, dangerously high temperatures and humidity, lack of adequate exercise, intolerable stench and filth, malfunctioning plumbing, constant exposure to human excrement, uncontrolled

appropriate actions to remedy the situation; that the Governor has the power to declare a state of emergency; and to conditionally advance the dates of parole eligibility).

33. § 47-5-731.

34. § 47-5-76(1). This provision does not apply to appeals. *See Carson v. Hargett*, 689 So.2d 753 (Miss. 1996).

35. 42 U.S.C. § 1997 (2004); 28 C.F.R. 40 (2004).

36. MISS. CODE ANN. § 47-5-801 to 47-5-807 (2004). Accordingly, MDOC implemented the administrative remedy program. The administrative process begins with a prisoner's written complaint about a prison condition or other issue. MISSISSIPPI DEPARTMENT OF CORRECTIONS, PRISONER HANDBOOK, Ch. VIII, § II (2004) [hereinafter MDOC, HANDBOOK]. The Legal Claims Adjudicator then screens all complaints and rejects those that are either not within the power of the MDOC to remedy or are otherwise objectionable. *Id.* § V. If the request is accepted, the Legal Claims Adjudicator is supposed to provide some response or, where appropriate, a meaningful remedy. *Id.* § II. A prisoner may not obtain judicial review of his complaint until he has exhausted the administrative remedy program. Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997e(a) (2004). Mississippi prisoners have filed 377 administrative review petitions at Parchman, and 1,065 review petitions statewide. Mississippi Dept. of Corrections, Admin. Remedy Program, at http://www.mdcc.state.ms.us/administrative_remedy_program.htm (October 16, 2004). Additionally, MDOC has an offender legal assistance program to provide offenders adequate opportunity to present claims that their fundamental constitutional rights have been violated. MDOC, HANDBOOK, Ch. VIII, § I.A. However, this program is limited to 42 U.S.C. § 1983 claims. *Id.* § III D.

37. Brief for Plaintiffs-Appellees at 1, *Cook*, 376 F.3d 323 (No. 03-60529).

mosquitoes and insect infestations, deprivation of basic mental health care, and constant exposure to severely psychotic inmates in adjoining cells.³⁸ Russell alleged that exposure to these conditions caused inmates intense physical and emotional pain and suffering which was likely to cause serious mental illness, placing class members at a high risk of premature death.³⁹ A corrections expert testified that “virtually every environmental condition, every physical condition, has the effect of causing continuing pain far beyond discomfort, a condition I can only describe as hellish.”⁴⁰

Inmates were confined in profound isolation, which causes tremendous stress⁴¹ and can combine with other conditions to cause complete psychiatric breakdowns.⁴² Prisoners were exposed to dangerously excessive heat and humidity.⁴³ In August, prisoners were subjected to a heat index that ranged from 101-140° Fahrenheit without access to air conditioning, sufficient cool water, fans in their cells, or adequate cool showers.⁴⁴ After visiting Parchman’s Death Row, one of the plaintiffs’ experts, a Texan used to extreme heat, testified that the heat in the cell “was simply unbearable. One couldn’t draw a breath. I became almost panicked.”⁴⁵

This excessive heat could lead to heat stroke, which leads to serious neurological damage or death.⁴⁶ Additionally, excessive heat creates a heightened risk for existing illnesses such as heart disease⁴⁷ and Parkinson’s disease.⁴⁸ The experts concluded that, “inevitabl[y] ... a prisoner will die of heat-related illness;” it was pure luck that it had not happened already.⁴⁹

Uncontrolled mosquito and insect infestation exacerbated the heat conditions and posed risks of its own.⁵⁰ “Insects swarm in the prisoners’ food and in their beds, and a prisoner must choose between

38. *Id.*

39. *Id.*

40. *Id.* at 16.

41. *Id.* at 25.

42. *Id.* at 23.

43. Brief for Plaintiffs-Appellees at 4, *Cook*, 376 F.3d 323 (No. 03-60529).

44. *Id.* at 19.

45. *Id.*

46. *Id.* at 20. Heat stroke has a 50% mortality rate. *Id.*

47. Centers for Disease Control & Prevention, About Extreme Heat, *available at* <http://www.bt.cdc.gov/disasters/extremeheat/about.asp> (last modified May 14, 2004).

48. Centers for Disease Control & Prevention, Frequently Asked Questions About Extreme Heat, *available at* <http://www.bt.cdc.gov/disasters/extremeheat/faq.asp> (last modified May 18, 2004).

49. Brief for Plaintiffs-Appellees at 20, *Cook*, 376 F.3d 323 (No. 03-60529).

50. *Id.* at 10.

opening his window for relief from the stifling heat, or closing his window and covering his entire body as protection from the mosquitoes.”⁵¹ This combination causes chronic sleep deprivation, which induces mental illness and worsens existing illness.⁵² Nevertheless, the prison had no pest control program and provided only damaged and inadequate screening.⁵³

Furthermore, the prison toilets had malfunctioned since the unit was built in 1990.⁵⁴ “Ping-pong toilets” caused fecal and other matter flushed from one toilet to bubble up into the toilet in the adjoining cell.⁵⁵ This malfunction exposed prisoners to the risk of contagion from the microorganisms in the fecal matter.⁵⁶ MDOC had known about the problem before the unit was occupied, and the Mississippi Department of Health had warned prison officials that the problem required immediate attention every year for the previous eleven years.⁵⁷

Although prison conditions were sufficient to induce and exacerbate psychosis⁵⁸ in inmates, the facility provided grossly inadequate mental health care.⁵⁹ Of the inmates on Death Row, three were extremely psychotic, over eight were very psychotic, twenty had very serious mental illness, and half had very significant mental illness.⁶⁰ Plaintiffs’ experts concluded that the profound isolation, idleness, extreme squalor, stench, filth, excessive heat, mosquito and insect infestation, and grossly inadequate mental health care created “an environment highly toxic to mental health.”⁶¹ Psychotic inmates would smear their cells with excrement and garbage, throw feces down the halls, and shriek at night.⁶² These behaviors caused chronic insomnia, leading to and exacerbating mental disorders in other

51. *Id.*

52. *Id.* at 10-11.

53. *Id.* at 11.

54. *Id.*

55. Brief for Plaintiffs-Appellees at 11, *Cook*, 376 F.3d 323 (No. 03-60529).

56. *Id.*

57. *Id.* at 11-12.

58. Psychosis is a mental disorder involving hallucinations and delusions. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION 297 (4th ed. 1994).

59. Brief for Plaintiff-Appellees at 12, *Cook*, 376 F.3d 323 (No. 03-60529).

60. *Id.* The terms “extremely psychotic,” “very psychotic,” “very serious mental illness,” and “very significant mental illness” are not defined in the DSM-IV; nor are the terms defined in the district court opinion, the appellate court opinion, or the Brief for Plaintiff-Appellees.

61. *Id.*

62. *Id.*

inmates.⁶³ The presence of psychotic prisoners creates a management problem which lessens the security of the prison by distracting guards and workers.⁶⁴ Moreover, MDOC rotated prisoners into cells recently occupied by psychotic inmates, which were covered with garbage, urine, feces, and ejaculate, and refused to provide inmates with cleaning supplies.⁶⁵

Any mental health care provided was inadequate because it took place at the cell front where prisoners could not reveal anything of substance for fear of being overheard by other inmates or prison guards.⁶⁶ Additionally, psychiatric medications were dispensed by prison officials rather than mental health professionals, were sporadically monitored, and often dispensed incorrectly or not at all.⁶⁷ This practice was extremely dangerous and potentially life-threatening because of the medications' toxicity and side effects.⁶⁸

Finally, the prison did not conduct or have a plan for maintenance and preventive maintenance.⁶⁹ The unit was filthy, with water from flooded toilets and rain sinking in from overhead, walls encrusted with excrement thrown by psychotic inmates, and laundry returned dirty and foul-smelling.⁷⁰ The only time inmates were allowed to clean was when they were given a mop and bucket once a week, although the bucket did not contain any soap or sanitizing agent.⁷¹ In fact, hand-washing clothes was a rule infraction.⁷²

Holding that the plaintiffs had shown that they were incarcerated under conditions imposing a substantial risk of harm, the court issued ten injunctions to remedy the unconstitutional conditions.⁷³ The first injunction directed MDOC to ensure that the cell to which an inmate is moved is cleaned prior to the move.⁷⁴ The second injunction mandated that prison officials provide adequate cleaning supplies to inmates so that they may clean their cells at least

63. *Id.* at 13.

64. *Id.*

65. Brief for Plaintiff-Appellees at 13, *Cook*, 376 F.3d 323 (No. 03-60529).

66. *Id.* at 14.

67. *Id.*

68. *Id.*

69. *Id.* at 16.

70. *Id.* at 16-17.

71. Brief for Plaintiff-Appellees at 17, *Cook*, 376 F.3d 323 (No. 03-60529).

72. *Id.*

73. *Russell v. Johnson*, No. 1:02CV261-JAD, 2003 WL 22208029, at *5 (N.D. Miss. 2003 May 21, 2003).

74. *Id.* (noting that while an inmate should be required to clean his own cell, he should not be required to clean the cell of another inmate in order to live in it).

once a week.⁷⁵ The third injunction required MDOC to create a written preventative maintenance schedule and program within sixty days of the order.⁷⁶

The fourth injunction directed MDOC to determine the heat index and ensure that each cell would be equipped with a fan, that ice water would be available to every inmate, and that each inmate be allowed to take one shower a day either when the heat index reached ninety degrees or, alternatively, between the months of May and September.⁷⁷ The fifth injunction required MDOC to continue their efforts at pest eradication and to ensure that all cell windows are repaired and screened with an eighteen-gauge screen or better.⁷⁸

The sixth injunction directed MDOC to ensure that the problem of ping-pong toilets was addressed and to provide the court with a plan to eradicate the problem within sixty days of the order.⁷⁹ The seventh injunction required MDOC to upgrade the lighting in each cell.⁸⁰ The eighth injunction mandated that MDOC ensure that proper chemical agents be used in the laundry so that the inmates' clothing were returned clean and not foul smelling.⁸¹

The ninth injunction required MDOC to ensure that each inmate on Death Row be given a comprehensive mental health examination in private on a yearly basis.⁸² The injunction also directed that psychotic inmates and those diagnosed with severe mental illness be housed separately and that all inmates receiving psychotropic medication be monitored and assessed in accordance with appropriate medical standards.⁸³ The final injunction directed MDOC to provide inmates with the opportunity to wear sneakers while exercising.⁸⁴

The Fifth Circuit granted review to determine whether the case should have been brought under the framework of *Gates v. Collier*,

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 6. This injunction purported to apply to all of Unit 32 rather than just Death Row. *Id.*

79. *Russell*, 2003 WL 22208029, at *6.

80. *Id.* This injunction also purported to apply to all of Unit 32. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

whether the injunctions were justified by conditions constituting cruel and unusual punishment under the Eighth Amendment.⁸⁵

II. LEGAL BACKGROUND

A. Origin and Background of the Eighth Amendment's Prohibition Against Cruel and Unusual Punishment

Judicial interpretation of the Eighth Amendment's prohibition against cruel and unusual punishment has evolved over time. The drafters' primary concern was to proscribe torture and other barbarous methods of punishment;⁸⁶ however, in recent years, courts have held that punishments incompatible with "the evolving standards of decency that mark the progress of a maturing society" also violate the Eighth Amendment.⁸⁷

The United States Supreme Court has held that the Eighth Amendment requires the government to care for inmates.⁸⁸ Part of the logic behind this change is the idea that when the government takes someone into custody against their will, the government is restraining their liberty and rendering them unable to care for themselves.⁸⁹ Accordingly, the Constitution imposes a duty upon the government to provide humane conditions of confinement, clothing, shelter,⁹⁰ adequate food,⁹¹ exercise,⁹² hygiene,⁹³ and medical care,⁹⁴ and to take reasonable measures to guarantee the safety of inmates.⁹⁵

85. *Cook*, 376 F.3d at 323. The court also reviewed whether the class members exhausted their administrative remedies. *Id.*

86. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976), *rehearing denied* 429 U.S. 1066 (1977) (citing Anthony F. Granucci, *Nor Cruel and Unusual Punishment Inflicted: The Original Meaning*, 57 CAL. L. REV. 839 (1969)).

87. *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958).

88. *Helling v. McKinney*, 509 U.S. 25, 32 (1993).

89. *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199-200 (1989).

90. *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984).

91. *French v. Owens*, 777 F.2d 1250, 1255 (7th Cir. 1985) (requiring safe, sanitary, and nutritious food).

92. *Id.* at 1255.

93. *Collier*, 501 F.2d at 1318.

94. *Estelle*, 429 U.S. at 105-06 (holding that prison officials violate the 8th Amendment when they act with deliberate indifference to prisoners' serious medical needs).

95. *Alberti*, 790 F.2d at 1228 (requiring the presence of a specific number of guards on each floor during each shift and requiring hourly inspections of inmates' cells to ensure their safety).

B. The Eighth Amendment Standard

A prison official violates the Eighth Amendment only when (1) the deprivation is sufficiently serious and (2) the prison official has a sufficiently culpable state of mind.⁹⁶ For the first prong of the test, a deprivation is sufficiently serious when a prison official's act or omission results in the extreme denial of the minimal civilized measures of life's necessities.⁹⁷ In a case alleging that prison conditions are unconstitutional, the burden of proof is on the inmate to show that the conditions pose a substantial risk of serious harm.⁹⁸ For the second prong, a prison official has a sufficiently culpable state of mind when he or she is deliberately indifferent to the safety or health of the inmate.⁹⁹

Determining the first prong, whether prison conditions pose a substantial risk of harm to a prisoner, is a question of law that is contingent upon factors which vary based on the nature of the conditions.¹⁰⁰ For example, courts will consider the amount of time an inmate is exposed to harsh conditions when determining whether they have been deprived of any minimal civilized measure of life's necessities.¹⁰¹ Current injury is not a prerequisite to recovery; a prisoner is only required to show that the conditions pose an unreasonable risk of serious harm to a prisoner's future health.¹⁰²

96. *Id.* at 834.

97. *Id.* (citing *Helling*, 509 U.S. at 35).

98. *Id.*

99. *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294, 302-303 (1991)).

100. *Hudson v. McMillian*, 503 U.S. 1, 5 (1992) (holding that the use of excessive force may constitute cruel and unusual punishment even though the inmate does not suffer serious injury). These factors include what the conditions are, how serious they are, and how long prisoners have been exposed to the conditions. For example, in deciding that housing two inmates in a single cell did not constitute cruel and unusual punishment, the court examined how "double celling" would affect prisoners. *Rhodes v. Chapman*, 452 U.S. 337, 348-49 (1981). In determining that limiting some prisoners to less than five hours of indoor exercise per week was not a constitutional violation, the court considered the prison's facilities and that prisoners were usually allowed ninety minutes of outdoor exercise per week during good weather. *French*, 777 F.2d at 1255-56.

101. *Davis v. Scott*, 157 F.3d 1003, 1006 (5th Cir. 1998) (holding that inmate did not make out an Eighth Amendment claim where there was blood on the walls and excrement on the floor of a cell when he was only confined there for three days and was given cleaning supplies).

102. *Helling*, 509 U.S. at 33 (holding that a prisoner's Eighth Amendment claim could be based upon future harm to health as well as present harm arising out of exposure to environmental tobacco smoke).

Determining the second prong, whether a prison official has been deliberately indifferent to the safety or health of an inmate, is a question of fact¹⁰³ judged by a subjective standard.¹⁰⁴ The Eighth Amendment forbids only cruel and unusual *punishment*.¹⁰⁵ Courts have defined punishment as a deliberate act intended to chastise or deter.¹⁰⁶ If there is no actual intent to punish, a prison official must recklessly disregard the risk.¹⁰⁷ The official must be aware of facts from which he or she could draw the inference that a substantial risk of serious harm exists and the official must have actually made that inference.¹⁰⁸ For example, in *Duckworth v. Franzen*, the court considered whether transporting handcuffed prisoners in a vehicle where all exits were sealed from prisoners rose to the level of cruel and unusual punishment when an accident caused a fire, killing one prisoner and severely injuring several others.¹⁰⁹ The court held that the prison officials' conduct, even if negligent, was not sufficiently reckless to constitute punishment.¹¹⁰

In order to constitute an Eighth Amendment violation, conduct that does not purport to be punishment must be callous and wanton, not simply inadvertent or an error in good faith.¹¹¹ An official must know of and disregard a risk to inmates' health or safety.¹¹² For example, in *Farmer v. Brennan*, a transsexual prisoner claimed that prison officials showed "deliberate indifference" by placing him with the general prison population and failing to keep him from harm despite knowing that the prisoner was a transsexual who would be particularly vulnerable to sexual attack.¹¹³ The United States Supreme Court held that in order to establish an Eighth Amendment violation, the prison official must know of and disregard an excessive risk to inmates' health or safety.¹¹⁴ Accordingly, the Court remanded the case for further consideration to determine whether the prison official knew of the risk to the plaintiff.¹¹⁵

103. *Brice v. Virginia Beach Ctr.*, 48 F.3d 101, 105 (4th Cir. 1995).

104. *Farmer*, 511 U.S. at 829.

105. *Wilson*, 501 U.S. at 300.

106. *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985).

107. *Farmer*, 511 U.S. at 830.

108. *Id.* at 837.

109. *Duckworth*, 780 F.2d at 648.

110. *Id.* at 653.

111. *Whitley v. Albers*, 475 U.S. 312 (1986).

112. *Farmer*, 511 U.S. at 837.

113. *Id.* at 830-31 (prisoner was raped and beaten by another inmate).

114. *Id.* at 837.

115. *Id.*

In deciding whether prison conditions violated the Eighth Amendment, courts formerly held that they need not weigh each practice and condition separately, but may look to see whether the totality of the circumstances of confinement offend the Constitution and are cruel and unusual, rather than merely harsh and restrictive.¹¹⁶ However, *Wilson v. Seiter* established that although some conditions of confinement may establish an Eighth Amendment violation in combination when each would not do so alone, this occurs only when they have a mutually enforcing effect that deprives the prisoner of a single identifiable human need, such as food, warmth or exercise.¹¹⁷ For example, a low cell temperature at night, combined with the refusal to issue blankets, together would result in the denial of warmth to a prisoner.¹¹⁸

C. The Remedy

Once a constitutional violation has been established, district courts have wide discretion to fashion a remedy¹¹⁹ to address each element contributing to the violation.¹²⁰ Normally, this discretion is limited only by the requirement that the remedy is tailored to the underlying cruel and unusual conditions.¹²¹ However, federalism concerns require that when federal courts are fashioning remedies for state prisons, they must provide the least intrusive remedy that will still be effective.¹²² This is based on the principle that “[a] federal court should not, under the guise of enforcing constitutional standards, assume the superintendence of jail administration.”¹²³

When deciding whether a remedy is appropriate, appellate courts look to whether the remedy will help to correct the

116. *Alberti*, 790 F.2d at 1223-24.

117. *Wilson*, 501 U.S. at 304.

118. *Id.*

119. *Alberti*, 780 F.2d at 1227.

120. *Hutto v. Finney*, 437 U.S. 678, 685 (1979).

121. *Id.*

122. *Id.* (citing *Special Project: The Remedial Process in Institutional Reform Litigation*, 78 COLUM. L. REV. 784, 869 (1978)). For example, in *Duckworth v. Franzen*, the court stated that “prison administrators ... should be accorded wide-ranging deference in the adoption and execution of policies and practices ...” in deciding that transporting prisoners in handcuffs with the exits sealed did not constitute cruel and unusual punishment. 780 F.2d at 655. Likewise, in *Castillo v. Cameron County, Texas*, the court considered whether a temporary injunction was narrowly drawn and the least intrusive remedy to correct the violation to hold that the record did not contain sufficient evidence to support the injunction. 238 F.3d 339, 354-55 (5th Cir. 2001).

123. *Jones v. Diamond*, 636 F.2d 1364, 1368 (5th Cir. 1981).

unconstitutional conditions, whether it will interfere with prison administration, and the experience of the trial judge with the problem at hand.¹²⁴ For example, the court in *Gates v. Collier* held that the district court alleviated conditions only to the minimum constitutional standard where the district court did not abolish solitary confinement, but rather ordered: (1) that inmates in solitary confinement be fed the daily ration each day; (2) that they be issued regular prison clothing; (3) that they be provided with soap, towels, a toothbrush, and shaving needs; (4) that the cell be heated, ventilated and sanitary; and (5) that prisoners be kept in solitary confinement for no more than twenty-four hours.¹²⁵ This order specifically corrected the unconstitutional conditions without interfering with the prison's ability to use solitary confinement.

III. THE COURT'S REASONING

In *Gates v. Cook*, the Court of Appeals for the Fifth Circuit considered whether each injunction was supported by an underlying Eighth Amendment violation after holding that the case need not have been brought under the *Gates v. Collier* framework and that the class had satisfied the requirement that it exhaust its administrative remedies.¹²⁶ The court affirmed seven of the ten injunctions ordered by the trial court and vacated three injunctions, holding that they were not supported by Eighth Amendment violations.¹²⁷

After establishing the relevant standards of law, the court then turned to the individual injunctions. First, it considered whether the first and second injunctions, prohibiting MDOC from requiring inmates to clean the cells into which they are transferred and requiring MDOC to provide adequate cleaning supplies to inmates at least weekly, were justified by constitutional violations.¹²⁸ MDOC argued that these injunctions could not stand because there was no proof of medical injury or illness resulting from these practices and no showing of deliberate indifference by MDOC employees.¹²⁹ The court held that since living in such conditions would present a substantial risk of serious harm to inmates and such conditions were typical and easily

124. *Hutto*, 437 U.S. at 687-88.

125. 501 F.2d 1291.

126. *Cook*, 376 F.3d at 327-44.

127. *Id.* at 337-44.

128. *Id.* at 337-38.

129. *Id.* at 338.

observed, the trial court's conclusion that MDOC officials showed deliberate indifference to the cells' cleanliness was not clearly erroneous.¹³⁰

Next, the court considered whether the third injunction, directing MDOC to reduce a general preventive maintenance plan to writing, was supported by evidence of cruel and unusual punishment.¹³¹ In response to MDOC's argument that the requirement was not supported by a constitutional violation, the prisoners argued that the risks of squalid conditions were obvious and that the same problems would continue to recur unless MDOC put a written plan in place.¹³² However, the court applied the principle that courts are not to micromanage state prisons,¹³³ to vacate the injunction because the additional requirement of a written preventative maintenance plan was not independently supported by additional unconstitutional conditions since the trial court had entered injunctions to remedy directly each condition that constituted an Eighth Amendment violation.¹³⁴

The court then addressed whether the fourth injunction, directing MDOC to provide fans, ice water, and daily showers when the heat index is above ninety degrees or, alternatively, between the months of May and September, was valid.¹³⁵ MDOC argued that the injunction was invalid because no inmate in Unit 32-C had ever suffered from a serious heat-related illness.¹³⁶ The court affirmed the injunction, holding that since there was a realistic possibility of heat-related illness and these conditions were open and obvious, there was a substantial risk of serious harm to which prison officials were deliberately indifferent.¹³⁷

In turn, the court looked to see whether the fifth injunction, requiring MDOC to continue its efforts at pest eradication and provide eighteen-gauge window screens in all cell windows, was supported sufficiently by cruel and unusual conditions.¹³⁸ Although MDOC argued that there was no basis for the district court to order MDOC to continue what it was already doing, the court found that MDOC had

130. *Id.*

131. *Id.*

132. *Cook*, 376 F.3d at 338.

133. *Id.* (citing *Bell*, 441 U.S. at 562).

134. *Id.* at 339.

135. *Id.* The court found that the injunction was invalid to the extent that it purported to apply to parts of Unit 32 beyond Unit 32-C. *Id.*

136. *Id.*

137. *Id.* at 340.

138. *Cook*, 376 F.3d at 340. The court found that the injunction was invalid to the extent that applied to Unit 32 beyond Unit 32-C. *Id.*

not met the burden of proving that its efforts at pest control had mooted the issue.¹³⁹

Next, the court considered whether the “ping-pong toilet” problem rose to the level of an unconstitutional condition.¹⁴⁰ MDOC argued that there is no evidence of any serious medical problem caused by the “ping-pong toilets” and that exposure to raw sewage is not cruel and unusual punishment where there is no showing of adverse medical reaction.¹⁴¹ However, the court distinguished a case where exposure to raw sewage was held not to constitute cruel and unusual punishment¹⁴² because the prisoners had been regularly exposed to each other’s feces for over a decade.¹⁴³ Based on expert testimony that the “ping-pong toilets” created a serious health hazard, the court held that the toilets created a substantial risk of serious harm to inmates and affirmed the injunction as it applied to unit 32-C.¹⁴⁴

The court next addressed the issue of whether the injunction requiring MDOC to upgrade the lighting in each cell was valid.¹⁴⁵ Although MDOC argued that the lighting posed no substantial risk of serious harm, the court found that the injunction was supported by evidence that the lighting was grossly inadequate for sanitation, personal hygiene, and reading, thus further contributing to mental health deterioration.¹⁴⁶

Next, the court considered whether the eighth injunction, requiring MDOC to return prisoners’ laundry clean and without a foul smell, was supported by an Eighth Amendment violation.¹⁴⁷ MDOC supported its contention that there is no constitutional violation by referencing a case where a court found that an injunction requiring a prison to provide laundry services was overturned because prisoners were provided with laundry detergent and could wash their clothes in their sinks.¹⁴⁸ Although the petitioner tried to distinguish that case

139. *Id.*

140. *Id.* at 340-41. The term “ping-pong toilets” refers to the problem that when one toilet is flushed, the feces and other material flushed bubble up in the adjoining cell unless both are flushed at the same time. *Id.* at 334.

141. *Id.* at 341 (citing *Tokar v. Armontrout*, 97 F.3d 1078 (8th Cir. 1996)).

142. *Tokar*, 97 F.3d 1078 (finding that exposure to fecal matter was not cruel and unusual punishment where inmates were exposed for only a few days).

143. *Cook*, 376 F.3d at 341.

144. *Id.*

145. *Id.* To the extent that the injunction purported to apply to all of Unit 32-C, the court found that it was invalid. *Id.*

146. *Id.* at 342.

147. *Id.*

148. *Id.* (citing *Green v. Ferrell*, 801 F.2d 765, 771 (5th Cir. 1986)).

because the prisoners here were not provided with detergent, the court did not find the distinction significant and vacated the injunction.¹⁴⁹

The court then addressed whether the ninth injunction, imposing various requirements to alleviate the inadequate mental health care problem, was justified by cruel and unusual conditions.¹⁵⁰ The court found that the inadequate mental health care did pose a substantial risk of significant harm based on testimony that conditions create an environment “toxic” to prisoners’ health, that severely psychotic prisoners smear garbage and excrement in the cells and scream all night, and that medical monitoring was sporadic, leading to extremely dangerous physical effects or psychotic breakdowns.¹⁵¹ Accordingly, the court upheld the injunction finding that the trial court was not clearly erroneous in deciding that prison officials were deliberately indifferent to this risk when the conditions were obvious and pervasive.¹⁵²

Finally, the court considered whether the tenth injunction, requiring MDOC to allow prisoners access to sneakers instead of flip-flops while exercising and to provide a shaded area for exercise and access to water, was permissible.¹⁵³ Although Russell argued that flip-flops did not allow vigorous exercise, the court noted that inmates were allowed an hour of exercise four or five days a week and that inmates used shoes and boots to kick other inmates and throw at MDOC staff.¹⁵⁴ Accordingly, the court found that an hour of exercise in flip-flops without water or shade did not constitute cruel and unusual punishment¹⁵⁵ and vacated the tenth injunction.¹⁵⁶

IV. ANALYSIS

Although the court claims to apply two rules, it really draws an arbitrary line between the injunctions it decides are permissible and those it holds impermissible. First, the court states that each injunction must be tailored to an underlying Eighth Amendment violation.¹⁵⁷

149. *Cook*, 376 F.3d at 342.

150. *Id.*

151. *Id.* at 343.

152. *Id.*

153. *Id.* at 343.

154. *Id.* at 344.

155. *Cook*, 376 F.3d at 344.

156. *Id.*

157. *Id.* at 338.

Second, it states that courts are not to micromanage prisons.¹⁵⁸ Under the guise of these general rules, the court draws a seemingly arbitrary line between, on the one hand, invalidating an injunction mandating that a preventative maintenance schedule be reduced to writing,¹⁵⁹ and, on the other hand, upholding an injunction that dictates the exact gauge of screen to be used.¹⁶⁰

Instead of continuing this confusing pretense, courts need a new, more flexible standard to allow meaningful and open consideration of the realities of legislative and administrative inaction. Therefore, the court should have adopted a flexible test weighing the federalism interests of the state and the prison authorities in being able to effectively run the prison against the likelihood that those institutions will protect the prisoners' Eighth Amendment rights considering all of the facts and circumstances. Then, district courts would be able to fashion remedies suited to the particular circumstances of the case and the jurisdiction.¹⁶¹ In *Cook*, this would have allowed the court to consider the history of unconstitutional conditions in the Mississippi prison system and its failure to remedy them to uphold the injunction requiring a written preventative maintenance plan. This one injunction might have negated the need for some of the other injunctions and would likely have been particularly effective in the long run.

In Mississippi, federal courts remain the only institution willing and able to correct and prevent unconstitutional prison conditions. The court has been willing to review prison conditions and provide specific injunctions against unconstitutional conditions ever since *Gates v. Collier*. Yet their authority is limited to providing the least burdensome remedy possible to get the prison into compliance with the Constitution.¹⁶² Although courts have noted that they are not to assume control of prisons, no case has established where this line is drawn except to say that if an injunction is not supported by an underlying Eighth Amendment violation, it cannot stand. Thus, it is very unclear what this limit actually is. Perhaps this is because courts are aware of legislative inaction and see the need for intervention,

158. *Id.*

159. *Id.* at 338.

160. *Id.* at 340.

161. Additionally, any remedy would require an accompanying enforcement mechanism, but that issue is beyond the scope of this paper. For a discussion on the enforceability of federal remedies, see Barry Friedman, *When Rights Encounter Reality: Enforcing Federal Remedies*, 65 S. CAL. L. REV. 735 (1992).

162. *Alberti*, 790 F.2d at 1227.

making them disinclined to leave a vague remedial order in the hands of prison officials who have proved time after time to be ineffective in protecting prisoners' Eighth Amendment rights.

MDOC has been struggling with unconstitutional prison conditions for at least thirty-two years, and aside from eliminating racial discrimination, it has achieved relatively little. Deference to the state and prison officials has left a void in reforming prison conditions that no governmental entity has been willing to fill. Additionally, the district courts' power to fashion remedies is limited to remedying unconstitutional conditions through damages for past harms and injunctions to prevent future unconstitutional conduct.¹⁶³ These limits allow courts to order very few concrete changes. Although it is within the legislature's power to establish laws to positively protect and guard the rights of prisoners, they have delegated that task, with very little guidance, to the MDOC.¹⁶⁴ In turn, MDOC has not issued concrete regulations directing prisons how to protect the rights of prisoners. Instead, all they have done is to establish the limited administrative review program and legal assistance program.¹⁶⁵ Thus, in Mississippi, the federal courts remain the only institution with the ability and will to require the improvement of prison conditions. Therefore, the federalism-based requirement that courts must choose the least intrusive remedy that will still be effective ignores the reality of legislative inaction; courts must exceed that limit in order to provide effective remedies.

In *Gates v. Cook*, it would seem that the court might have transgressed the current boundary in several places. First, the court directed MDOC to determine the heat index by taking the temperature several times a day for a period of time and to provide fans, ice water, and daily showers when the heat index is ninety degrees or above.¹⁶⁶ This seems incredibly specific and would seem to transgress any reasonable interpretation of "assuming superintendence of prisons." However, the court held that the injunction was proper because it was supported by an Eighth Amendment violation and MDOC did not show that the trial court's finding that there was an extreme probability of heat-related illness was clearly erroneous.¹⁶⁷

163. *Cook*, 376 F.3d at 303.

164. MISS. CODE ANN. § 47-5-801 (2004) (authorizing MDOC to create an administrative review procedure).

165. MDOC, HANDBOOK, *supra* note 34, at §§ II, V.

166. *Cook*, 376 F.3d at 338.

167. *Id.* at 340.

Similarly, the court's affirmation of the trial court's direction that all cell windows were to be repaired and screened with eighteen gauge window screen or better¹⁶⁸ would seem to violate the doctrine that courts are not to assume the superintendence of prisons. If an injunction specifying the particular gauge of window screen is not assuming the superintendence of a prison, it is hard to imagine what might cross that line. However, the court upheld the injunction because it was supported by an Eighth Amendment violation.¹⁶⁹

Although the court upheld the very specific injunctions above, it rejected an injunction directing MDOC to reduce a general preventative maintenance schedule and program to writing. The court stated that the injunction was inappropriate because it was not independently supported by Eighth Amendment violations not corrected by other injunctions. Such an injunction would likely do a good deal to correct some of the other violations. An enforceable maintenance schedule could correct the problems of ping-pong toilets, inadequate screens, and filthy cells. Additionally, it would prevent similar future problems. The petitioner's environmental health and safety expert testified that "these same problems would continue to recur" if there was no written plan in place.¹⁷⁰ The court, while admitting that such a plan was "desirable," nevertheless held that it was not independently supported by unconstitutional conditions and vacated the injunction.

Instead of continuing with the confusing façade of fashioning remedies that are the least intrusive possible to remedy the underlying Eighth Amendment violations while really drawing arbitrary lines, the court should have adopted a standard that allowed the court to consider all of the facts and circumstances. If they had done so, the court could have considered that MDOC has had similar problems since 1972, and since it had proven unwilling to remedy these conditions on its own, could have upheld the preventative maintenance schedule.

V. CONCLUSION

The State of Mississippi has proven itself to be an ineffective guardian of prisoners rights, thus federalism concerns are superseded by the need to protect this vulnerable class of people. Although the

168. *Id.*

169. *Id.*

170. *Id.* at 336.

courts have been working to remedy unconstitutional prison conditions at Parchman for over thirty years now, it appears that the judiciary has failed to motivate prison administrators to address the problem themselves. Since the court is the only body willing to assume the role of guarding prisoners' rights, they need a new standard that will allow them to provide specific remedies tailored to the facts and circumstances of the case. A more flexible standard could help the federal court bring Mississippi prisons in line with today's "evolving standards of decency that mark the progress of a maturing society."¹⁷¹

171. *Trop*, 356 U.S. at 101.

